[HIGH COURT OF AUSTRALIA.]

THE COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION . . . } APPELLANT;
INFORMANT,

AND

THE FEDERATED SEAMEN'S UNION OF AUSTRALASIA . . . . } RESPONDENT.
DEFENDANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF VICTORIA.

H. C. OF A. 1923

MELBOURNE, *Mar.* 19-21; *Aug.* 28.

Knox C.J., Isaacs, Higgins, Rich and Starke JJ.

Industrial Arbitration—Organization of employees—Breach of award—Aiding "job control"—Responsibility of organization for acts of its branch—Construction of rules.

The rules of a Union of employees registered as an organization under the *Commonwealth Conciliation and Arbitration Act* provided (*inter alia*) for the existence of branches of the Union; that the Union should be governed by the members of the Union in meeting assembled, and that the committee of management (which consisted of the general president and the general secretary of the Union, together with the secretary of each branch of the Union) should carry out all instructions given by resolution of the members of the Union in such meetings; that the committee of management should have only such powers as were delegated to it by the resolutions of the members of the Union in meeting assembled;

H. C. OF A. 1923.

COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION v. FEDERATED SEAMEN'S UNION OF AUSTRALASIA.

that, in the event of a dispute occurring as to wages or working conditions in any State, the members of the branch in such State might take such steps as would lead to an immediate settlement of the dispute, but, if there should be any likelihood of the dispute extending beyond the limits of the State, the branch officials should immediately notify the general president and the general secretary of the Union, and that those two officials should take such steps as the necessity of the case required.

By an award of the Commonwealth Court of Conciliation and Arbitration it was provided that the Union should not during the term of the award encourage or aid "job control."

Held, that acts done by members of the Union at a meeting of a branch of the Union, or by the secretary of a branch, which encouraged or aided "job control" could not under the rules be attributed to the Union so as to make it liable for a breach of the award.

Quære, as to what would constitute "job control."

APPEAL from a Court of Petty Sessions of Victoria.

In an industrial dispute between the Federated Seamen's Union of Australasia, claimant, and the Commonwealth Steamship Owners' Association, respondent, an award was made by the Commonwealth Court of Conciliation and Arbitration on 28th March 1922 and varied on 28th April 1922, which provided (*inter alia*) as follows:— "43. (c) The claimant organization shall not during the term of the award order, encourage or aid any strike or job control by any of its members. (d) The members of the claimant organization shall not, during the term of the award, strike or join in any strike to enforce rates or conditions disallowed by the Court, or exercise job control to enforce manning conditions not approved by the Manning Committee provided by the *Navigation Act* or appointed by the parties to deal with the manning of vessels."

An information was heard at the Court of Petty Sessions at Melbourne before a Police Magistrate whereby the Association charged that the Union did between 5th June and 3rd October at Melbourne commit a breach of the award in that it did between those dates aid job control by some of its members, to wit, job control exercised in connection with the s.s. *Coolana* by members of the Union to enforce manning conditions not approved by the Manning Committee

provided by the *Navigation Act* to deal with the manning of vessels, namely, to enforce a demand for employment of trimmers on the said vessel, contrary to the provisions of sec. 44 of the *Commonwealth Conciliation and Arbitration Act* 1904-1921.

The rules of the Union provided as follows (*inter alia*) :—

1. The Union shall be known as the Federated Seamen's Union of Australasia, with Branches in the various States, and shall be composed of any number of sailors, lamp-trimmers, donkeymen, greasers, firemen and trimmers, or any employees engaged in harbour or river vessels, or marine transport on deck or stokehold.

4. The Branches of the Union now established in the ports of Brisbane, Newcastle, Sydney, Melbourne, Port Adelaide and Fremantle shall continue to be Branches of the Union, &c.

13. The Union shall be governed by the members of the Union in annual general meeting, or in special general meeting, or in special meeting assembled, and the Committee of Management shall carry out all the instructions given by resolution of the members of the Union in such annual general meeting or special general meeting or special meetings of the Union.

14. The Committee of Management shall consist of the General President, the General Secretary, together with the Secretary of each Branch of the Union, &c.

15. The Committee of Management shall have only such powers as are delegated to it by the resolutions of the members of the Union in annual general meeting, or in special general meeting, or in special meeting assembled.

16. . . . (m) And the Committee of Management shall have the right to call a general or special or general special meeting of the members of the Union, or of the Committee of Management, or of any Branch or of all the Branches of this Union.

20. There shall be held yearly in the month of April a general meeting of the members of the Union, &c.

23. All financial members of the Union shall have a right to speak and take part in and vote upon any question, except the election

H. C. OF A. 1923.

COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION v. FEDERATED SEAMEN'S UNION OF AUSTRALASIA.

or suspension of Branch officials at any ordinary meeting of any Branch, but shall not have the right to vote at special meetings of Branches other than the Branches to which they belong.

47. The Secretary of the Branch shall attend all ordinary meetings of his Branch, and all special or general special meetings of his Branch whenever called upon to do so. . . . He shall without delay carry out the resolutions passed at any general or special or special general meeting of his Branch, &c.

48. The Secretary of each Branch shall submit to the General Secretary a weekly report of the Branch income and expenditure. . . . He shall report to the General Secretary whenever any dispute arises as to wages or working conditions, and as to what steps the Branch is taking to reach a settlement, &c.

50. The executive officers of the Union shall be the General President, the General Secretary, and the Vice-Presidents, to be elected by the Committee of Management.

51. The executive officers of the Union shall perform and carry out all duties delegated to them by the resolutions of the members of the Union in annual meeting, or in special general meeting, or in special meeting assembled. They shall also exercise general supervision over the affairs of the Union.

52. The duties of the General President shall be: (a) to direct the operations of the Union between meetings of the Union; (b) to take immediate steps to give effect to all resolutions of the members of the Union, &c.

(71) In the event of a dispute occurring as to wages or working conditions in any State, the members of the Branch in such State may take such steps as will lead to an immediate settlement of the dispute, but if there should be any likelihood of the dispute extending beyond the limits of the State, the Branch officials shall immediately notify the General President and the General Secretary, and those two officials shall take such steps as the necessity of the case requires.

76. The Committee of Management, notwithstanding anything to the contrary in these rules, shall not do any act which shall bind the Union to any contract or agreement relating to wages and conditions of employment nor to any legal action at the expense of the

Union nor in any way whatsoever commit the Union to any contract, agreement or action without first obtaining the sanction of the members of the Union at a special meeting called for the purpose.

After evidence had been heard the Magistrate dismissed the information with costs.

From that decision the informant appealed to the High Court by way of order to review.

Other material facts are stated in the judgments hereunder.

Latham K.C. (with him *Ham*), for the appellant. Under sec. 58 of the *Commonwealth Conciliation and Arbitration Act* 1904-1920 the respondent Union is incorporated, and it can only act by persons. When the Secretary of its Victorian Branch appointed under its rules to deal with matters in Victoria does so act, his action is that of the Union. The action of a Branch by resolution binds the Union. The effect of rule 71 is that for legal purposes in Victoria the Union acts through the Victorian Branch, and it is only when a particular dispute becomes an inter-State dispute that the Branch ceases to act for the Union. Nothing done under rule 13 can deprive the Branch of the authority which it has under rule 71 to bind the Union. [Counsel referred to *Smithies* v. *National Association of Operative Plasterers* (1).] The evidence shows that job control was exercised by members of the Union and that the Union, either by the Branch, or by the Secretary of the Branch, or by the Committee of Management of the Union or by the General President of the Union, aided the job control.

Lowe (with him *Fraser*), for the respondent. Under the rules the Union could only aid job control by the passing of a resolution at a meeting of the Union or by action taken in such a way as to give rise to the conclusion that the Union authorized the action. There is no evidence from which such a conclusion can be drawn. The case is within *Waterside Workers' Federation of Australia* v. *Burgess Brothers Ltd.* (2). [Counsel also referred to *Denaby and*

(1) (1909) 1 K.B., 310, at p. 323. (2) (1916) 21 C.L.R., 129.

H. C. OF A. 1923.

COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION v. FEDERATED SEAMEN'S UNION OF AUSTRALASIA.

Cadeby Main Collieries Ltd. v. *Yorkshire Miners' Association* (1); *Australian Boot Trade Employees' Federation* v. *Vogt* (2).]

Ham, in reply. In matters such as that in question here, the only way in which the Union can act is through the Branch (*Campbell* v. *Paddington Corporation* (3)).

Cur. adv. vult.

Aug. 28.

The following written judgments were delivered :—

KNOX C.J. The appellant laid an information charging the respondent with a breach of an award of the Commonwealth Court of Conciliation and Arbitration in that it did during the term of the said award aid job control exercised by some of its members in connection with the s.s. *Coolana* to enforce manning conditions not approved by the Manning Committee provided by the *Navigation Act* to deal with the manning of vessels, namely, to enforce a demand for trimmers on the said vessel, contrary to the provisions of sec. 44 of the *Commonwealth Conciliation and Arbitration Act* 1904-1921. The appellant and the respondent are organizations registered under that Act. The Police Magistrate dismissed the information, and the appellant now seeks to have made absolute an order nisi to review his decision.

Assuming that job control was exercised by members of the Union in connection with the *Coolana*, it was necessary for the appellant to establish that such job control was ordered, encouraged or aided by some authorized agent of the respondent Union. In my opinion, the appellant failed to establish this.

Mr. *Latham*, for the appellant, contended that the evidence showed that aid or encouragement was given by the members and the Secretary of the Victorian Branch of the Union and that it was within the scope of the authority of the Secretary of that Branch to deal with matters in Victoria. It followed, he said, that the Union was responsible for the acts of the Branch Secretary in connection with the *Coolana*, the trouble with respect to this vessel having

(1) (1906) A.C., 384, at pp. 390, 402. (2) (1921) V.L.R., 71 ; 42 A.L.T., 128.
(3) (1911) 1 K.B., 869, at p. 875.

arisen in Melbourne. I think the evidence establishes no more than that the members present at a meeting of the Victorian Branch of the Union resolved not to man the *Coolana* unless the request which had been made for the employment of three trimmers in addition to the complement prescribed by the Manning Committee was granted, and that the Secretary of the Branch so informed the owners of the *Coolana*, and, assuming that the passing of this resolution and its communication to the owners of the *Coolana* amounted to an ordering, aiding, or encouraging of job control, there is, in my opinion, nothing to show that either the members of the Victorian Branch or its Secretary acted with the authority of the respondent Union. The rules of the Union provide for the existence of Branches, and every member of the Union is attached to some Branch, but the government of the Union is in the hands of the members of the Union in general or special meetings, and the Committee of Management, which consists of the General President, the General Secretary, and the Secretary of each Branch, is charged with the duty of carrying out the instructions given by resolutions of the members of the Union in such meetings, and its powers are expressly limited to those delegated to it by such resolutions. Provision is made for meetings of members of Branches for the purpose of transacting the business of their Branch, but I can find nothing in the rules authorizing a Branch Secretary or members of a Branch to act on behalf of the Union. It is not suggested that any express authority to do the acts complained of in this case was given by the Committee of Management or by the executive officers of the Union or by any meeting of members of the Union as distinct from members of the Victorian Branch; and the rules, in my opinion, confer no power on a meeting of members of a Branch, or on a Branch secretary, to act on behalf of the Union. The decision in *Waterside Workers' Federation of Australia* v. *Burgess Brothers Ltd.* (1), to which we were referred by Mr. *Lowe*, appears to me to cover this case.

In my opinion, the order nisi should be discharged.

ISAACS AND RICH JJ. Appeal from the decision of a Police Magistrate in Federal jurisdiction dismissing an information by the

(1) (1916) 21 C.L.R., 129.

H. C. OF A. 1923.

COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION v. FEDERATED SEAMEN'S UNION OF AUSTRALASIA.

Isaacs J. Rich J.

appellant against the respondent under sec. 44 of the *Commonwealth Conciliation and Arbitration Act* for breach of a term of an award. By the award it was provided that "The claimant organization" (the present respondent) "shall not during the term of the award, order, encourage, or aid any strike or job control by any of its members." The information averred that the respondent organization did between 5th June and 3rd October 1922 "aid job control by some of its members" in connection with the ship "*Coolana* belonging to the Melbourne Steamship Company Limited." The "job control" as alleged was to enforce manning conditions not approved by the Manning Committee under the *Navigation Act*. Really it was to enforce manning conditions beyond those stated in reg. 5DD under the *Navigation Act* and made on 10th March 1922 (*Statutory Rules* 1922, No. 40). By that regulation the rating of the *Coolana* was stated to be six firemen and no trimmers.

The evidence given at the hearing of the information established that on 6th June 1922, six firemen, members of the respondent Union, signed on the ship's articles, went to work, and later in the day gave twenty-four hours' notice to leave. The chief engineer, to whom they gave the notice, said that, as the ship was due to sail at twelve o'clock, he could not accept the notice. They left at once. No reason was then given for this action on the part of the firemen, but it is clear it was because no trimmers were engaged.

The evidence discloses that several efforts were made by and on behalf of the shipping Company to obtain firemen, but without avail, because it was unwilling to ship trimmers and no firemen would engage without three trimmers being engaged. It was contended on behalf of the respondent organization that there was no "job control" within the meaning of the award. The term is a comparatively recent expression, and is of American origin. It is not defined by the award. Doubtless when the award was framed it was thought the expression was sufficiently understood to prevent controversy as to its meaning. That has proved to be too optimistic. It might be advantageous to obtain an interpretation of it under sec. 38 (*o*) of the Act. In the present case evidence was given with regard to it, and argument took place as to its proper meaning both as to the word "job" and as to what is "control." It might be

unfortunate for all parties if, in the absence of any authoritative definition by statute or award, different Courts in Australia with different evidence put varying interpretations upon the term. It was contended before us that we have to be guided as to its signification by the evidence. That may be. But it involves the result that in another case, with other evidence, we might have to come to a different conclusion as to its true meaning. Of course it can be meant by the Arbitration Court in one consistent sense only, whatever that is. Therefore sec. 38 (*o*) may be very useful.

As an instance of the difficulty in the present case, Mr. Adams, who as an expert gives the principal evidence on the subject, says: "I should say it was an attempt by the men on a particular job to refuse work on that job for the purpose of enforcing industrial conditions." The mere fact of his stating "I should say" may indicate a mere personal opinion, and not a knowledge of the meaning accepted generally by others as well as himself. Then he makes it part of the definition that the control must be "by the men on a particular job." This would exclude all men who refused work before engagement, and would therefore exclude almost all the evidence as to the *exercise* of job control by individual members in this case. Again, he says job control may be in some cases by an "organization." That is not consistent with what went before, but, if true, it is outside this case both because the information does not charge the *exercise* of job control by the organization and because the award does not include it. The word "job" hardly permits of final definition, because what is selected as the thing to be controlled, and called the "job," is naturally not susceptible of prior delimitation. It must vary with circumstances and with the progress of industrial operations. It may be a house, or a shop, or a ship, or a waterworks. "*Job control*," so far as we understand that phrase to have acquired any definite meaning, connotes the *control by employees, whether already engaged or not, or by some organization representing them, of some single enterprise or portion of an enterprise of an employer, which is selected as an isolated unit of industrial operations; the effective method of enforcing the control being, not a general strike in the industry or of the union, or even in the general service of the employer, but a strike of the employees engaged on that*

H. C. OF A. 1923.

COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION v. FEDERATED SEAMEN'S UNION OF AUSTRALASIA.

Isaacs J. Rich J.

unit or a refusal to engage on it at all. If that be the true meaning of the term it does not, as we have stated, accord with the definition in evidence in this case, nor does it entirely coincide with the application of the phrase by the terms of the award, though there is nothing in the award, so far as we can observe, inconsistent with it so far as its *meaning* is concerned. In the award "job control" as to its *exercise* is forbidden to individual members of the Union only; the organization is forbidden to *aid* that exercise. Only so far as its *exercise* by individual members is proved, can the organization possibly *aid* it.

Then on the evidence, if we are to be guided by that, was any job control exercised? The only occasion on which there was any "attempt by the men on" the "particular job" (Adams's evidence) to refuse work was on 6th and 7th June. All later refusals were by men not on the particular job. It may be added that Mr. Adams emphasized his definition a little later, when he says: "Job control is very often exercised by the men *when they are in the service* and threaten to leave the service unless" &c. There is no doubt there was "job control" exercised by the firemen when they left the job on 6th or 7th June. They had signed off the ship's articles on 7th June. Nine other men presented themselves on the 8th, and the original six were called in also by the Superintendent. At this time there were none of the men "on the particular job," and they all refused to go on the particular job. After this a month elapsed. The original six men passed out of sight and an entirely new phase was entered upon, a meeting of the Victorian Branch with a certain resolution as to the *Coolana*. This was quite outside Mr. Adams's definition. If Adams's evidence is to be the guide, the incidents of the 8th and particularly thenceforward constituted no exercise of job control. If that evidence be disregarded, we should be inclined to think there was still an exercise of job control. But how can the appellants claim to disregard it? They rested their case upon it in the Court below, and they insisted on it here. We refer to this so pointedly only in order *to emphasize the necessity of getting some authoritative interpretation of a term that has sprung up comparatively recently, tersely indicating a modern expedient and apparently not yet so fully and commonly understood as to bear*

an unquestionable meaning on its face. And yet non-observance of the term forbidding "job control" carries with it very severe penalties. We pass this subject by without further reference, because it was not the individual members who were the defendants to the information. The organization was sued, the allegation being that it did "aid the job control." In order to establish that, evidence was given that on 6th July a meeting of the Victorian Branch of the Union was held attended by about 120 to 140 members at which it was decided that in the case of one ship, the *Cycle*, the ship should be manned under the decision of the Manning Committee, and "with respect to the s.s. *Coolana* it was decided to take no action unless the request for three trimmers was granted." It was said that the mere fact of that decision being made at the Branch meeting constituted a breach by the organization of the term of the award referred to. The way in which that argument was presented was as follows:—By the registered rules of the respondent organization, Branches are established; and it was contended that each Branch so completely represented the whole organization at its own locality that whatever it did, rightly or wrongly, must be taken to be the act of the whole organization. There are, by rule 4, six Branches recognized, namely, at Brisbane, Newcastle, Sydney, Melbourne, Port Adelaide and Fremantle. The argument went so far as to say that a Branch resolution at Newcastle, such as was passed in Melbourne, would constitute a breach by the whole organization even though contrary resolutions were passed in Sydney and at every other Branch. We cannot accept so sweeping an argument. *The Union is composed of members as its units.* For convenience, Branches are established at large shipping centres, but the government and control of the Union as a corporate or quasi-corporate body is vested in a general meeting of the members, the chief executive authority being committed to a Committee of Management following the instructions of the meeting of members. A Branch has its own business; but its own Branch business is not the business of any other Branch, and still less the business of every other Branch, or of the Union as a whole. Then reliance was placed on the position of the President of the Union, Mr. Walsh, the secretary Mr. O'Neill, and a vigilance

H. C. OF A. 1923.

COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION v. FEDERATED SEAMEN'S UNION OF AUSTRALASIA.

Isaacs J. Rich J.

officer, Mr. Williams. It was said that their attitude and conduct were such as to support the action of the firemen and the Victorian Branch. But there is no affirmative evidence of such support. There is evidence of very carefully guarded statements, both verbal and in writing, of conversations that may raise considerable doubt as to the real impression made by those gentlemen on the members of the Union. But what affirmative evidence exists is in their favour, and two reasons tell in favour of maintaining the decision of the Police Magistrate. One is that no Court can act on mere suspicion, particularly when the consequences are of a penal nature. The other is that the Police Magistrate, who heard and saw the witnesses and was alone capable of judging of the true weight to be attached to their testimony, was not prepared to disbelieve them. If he was not, we cannot possibly differ from him on that point. And once that position is reached, there seems to be an end of the case.

The appeal should, in our opinion, be dismissed, and with the ordinary consequences.

HIGGINS J. An award made by the Court of Conciliation on 28th March 1922 (varied 28th April 1922) contained an order as follows (clause 43 (c)): " The claimant organization shall not during the term of the award order encourage or aid any strike or job control by any of its members."

The appellant Association filed an information in the Court of Petty Sessions saying that the respondent Union—an organization registered under the Conciliation Act—committed a breach of the award—in that the Union " did *aid* job control by some of its members " in connection with the s.s. *Coolana*, belonging to one of the members of the Association. The Police Magistrate dismissed the information, on the ground that the alleged breach had not been proved against the Union. The Association has appealed.

Mr. *Lowe*, of counsel for the respondent, not only supports the ground on which the Magistrate dismissed the information, but also has urged a further objection, which was taken before the Magistrate, that clause 43 (c) of the award is invalid, as there was no dispute on the subject matter of that clause. But if the Court agrees with the Magistrate in dismissing the information on the ground which he

stated, there is no need to discuss the validity of the clause; and I shall assume in this judgment that the clause is valid and binding.

It appears that on 10th March 1922 the Governor-General in Council made a regulation under the *Navigation Act* 1912-1920 fixing the number of firemen and trimmers to be carried by certain ships; and for the *Coolana* fixed six firemen, no trimmers. In pursuance of a Minister's reference of 1st June the Manning Committee under the Act gave its opinion that the manning already recommended was sufficient for the *Coolana* (2nd June). On the morning of 6th June five firemen were engaged by the chief engineer, and signed the articles. A sixth man, already employed, was retained. All six were members of the Union, and started work. In the afternoon, they said they were going to hand in their resignation. The chief engineer would not accept the resignation, as the twenty-four hours' notice requisite was not given—the vessel was to sail at noon the next day. The six men then left the ship. On 8th June, the chief engineer tried to engage other men. Nine other men came on board, members of the Union, saying that they had been sent down as the *Coolana* wanted firemen. The chief engineer said that there were to be no trimmers allowed; and the men said "no trimmers, no job." The chief engineer again tried to get firemen on 1st September, and no men presented themselves.

Now, I shall assume that these fifteen men were attempting what is called "job control." I shall not attempt to define "job control." There is no definition in the award, and the expression is new. They were trying to compel the shipowner to employ trimmers when the shipowner did not want trimmers. But the question remains, did the claimant organization, the Union, "*aid*" job control by these members. I have carefully perused the evidence, oral and written, and I cannot find that any such aiding is proved. The Secretary of the Victorian Branch of the Union being called as a witness for the Union says that the six men called on him, and asked him did he know whether there were to be trimmers for the ship; and he answered that he did not know that any had signed on. The men said that they were going to hand in their notices, and the Secretary said:—"You have signed on and I have nothing to do

H. C. OF A. 1923.

COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION v. FEDERATED SEAMEN'S UNION OF AUSTRALASIA.

Higgins J.

with it. You have a right to go on with the job when you have signed on." Next morning, the Marine Superintendent came, accusing the Secretary of advising the men to give in their notices; and the Secretary denied the accusation. On 7th June, the Superintendent handed to the Secretary a letter from the company requesting the Secretary to notify its members that a stokehold crew was required for the *Coolana*; and he did so. He also told members whom he met to go down to the *Coolana* and see if there were any vacancies; and they complied. The Secretary swears that he did not ask these men not to go on the ship without the trimmers. The Secretary says in a letter of 7th July to the Association that a meeting of the Victorian Branch of the Union was held on 6th July to deal with a letter from the Association, that "it was decided that in the case of the s.s. *Cycle* this ship should be manned under the decision of the Manning Committee. With respect to the s.s. *Coolana*, it was decided to *take no action unless the request for three trimmers was granted.*" In other words, the Victorian Branch would not aid the shipowner in getting firemen for the *Coolana* unless the request for three trimmers was granted; but, in my opinion, a refusal to aid the shipowner is not an aiding of job control by members of the Union within the meaning of the award. The words used in the letter, if taken literally, mean neutrality. Indeed, the Secretary, in the course of a very searching cross-examination, swore that he would personally be in favour of the men working without trimmers: "We did endeavour to get these men to work without trimmers, though they would have to work very hard." The Magistrate was entitled to believe or disbelieve the statement, and he has not found that the witness was untruthful.

But even if we can fairly treat the resolution of the Victorian Branch as an aiding of job control, it was a resolution of the Branch, not of the Union. Counsel for the Association, however, have examined the rules of the Union, and contend that the action of the Branch is action of the Union. In particular, reliance is placed on rule 71: "In the event of a dispute occurring as to wages or working conditions in any State, the members of the Branch in such State may take such steps as will lead to an immediate settlement of the dispute, but if there should be any likelihood of the dispute extending

beyond the limits of the State, the Branch officials shall immediately notify the General President and the General Secretary, and these two officials shall take such steps as the necessity of the case requires." But, in the first place, if the Branch exercise this power to try to settle a dispute confined to a State, the action which it takes is not necessarily the action of the Union. A Branch cannot usually be treated as an agent of the Union, so as to make the acts of the Branch the acts of the Union (*Denaby and Cadeby Main Collieries Ltd.* v. *Yorkshire Miners' Association* (1); *Smithies* v. *National Association of Operative Plasterers* (2)). Counsel cannot point to any clause in the rules of the Union that prevents these cases from applying to this case. Under rule 13, "the Union shall be governed by the members of the Union in annual general meeting or in special general meeting, or in special meeting assembled, and the Committee of Management shall carry out all the instructions given by resolutions of the members of the Union in such annual general meeting or special general meeting or special meeting of the Union." Under rule 15, the Committee of Management "shall have only such powers as are delegated to it by the resolutions of the members of the Union in annual general meeting or in special general meeting, or in special meeting assembled." Rule 16 prescribed the duties of the Committee of Management, to submit to such meetings reports on certain specified subjects affecting the Union; and the Committee has the right to call a general or special or general special meeting of the members of the Union, or of any Branch, or of all the Branches. There must be a general meeting of the Union in April of each year. Rule 21 prescribes on whose requisition a special meeting of the members of the Union shall be called. Rule 23 provides that "all financial members of the Union shall have the right to speak and take part in and vote upon any question except the election or suspension of Branch officials at any ordinary meeting of any Branch but shall not have the right to vote at special meetings of Branches other than the Branches to which they belong." Under rule 48 the Branch Secretary has to report to the General Secretary whenever any dispute arises as to wages or working conditions, and as to what steps the Branch is taking to reach a

(1) (1906) A.C., 384. (2) (1909) 1 K.B., 310.

H. C. OF A. 1923.

COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION v. FEDERATED SEAMEN'S UNION OF AUSTRALASIA.

Higgins J.

settlement. This report would seem to be meant to enable the Union, as distinct from the Branch, to consider what steps the *Union* as a whole should take. Under rule 51 the executive officers of the Union are to carry out orders of the *Union* meetings, and to exercise general supervision over the affairs of the Union. Under rule 52 the duties of the General President are (*inter alia*) (a) to direct the operations of the Union between meetings of the Union, (b) to take immediate steps to give effect to all resolutions of the members of the *Union* in any meeting of the *Union*. Under rule 76 the Committee of Management is forbidden to do any act which shall bind the Union to any contract or agreement relating to wages or conditions of employment, or to take any legal action at the expense of the Union, or in any way whatsoever commit the Union to any contract, agreement or action without first obtaining the sanction of the members of the Union at a special meeting called for the purpose. There is nothing in all this to suggest that the Branch's action is to be treated as the action of the Union. But even if rule 71 is to be treated as making the Branch an agent of the Union, the rule must be construed as authorizing the Branch to settle local disputes by legal, not illegal, methods; and no act of the agent can impose on the principal criminal liability for breach of the award unless the Union itself be proved to take part in or authorize the commission of the breach (*Chisholm* v. *Doulton* (1); *Roberts* v. *Woodward* (2); *Emary* v. *Nolloth* (3)).

Finding, no doubt, the difficulty of connecting the Union with the action of the men and of the Branch, the Association tried to "draw" (I do not say unfairly) the General President. The General President was in Melbourne. Under rule 52 one of his duties was "to direct the operations of the Union between meetings of the Union"; and the Association, writing to him on 1st August, inquired "whether your Union is now agreeable to the *Coolana* being manned in her stokehold with six firemen and without the three trimmers." Mr. Walsh replied on the same date, saying that there was no meeting of the Union to deal with the *Coolana*, and that he knew nothing of the meeting of the Victorian Branch. Another

(1) (1889) 22 Q.B.D., 736. (2) (1890) 25 Q.B.D., 412.
(3) (1903) 2 K.B., 264.

letter, and another reply—to the same effect. I can only say that there is here no evidence that the Union was *aiding* the men in their action. To be neutral is not to aid. The prosecution is not even for "encouraging" the men; and "aid" implies some positive assistance.

I see no ground for saying that the Magistrate was wrong in his finding that the case for the prosecution had not been proved. The appeal should be dismissed.

STARKE J. An award of the Commonwealth Court of Conciliation and Arbitration prescribed that the Federated Seamen's Union should not, during the term of the award, "encourage or aid . . . job control" by any of its members. No interpretation of the words "job control" is given in the award, and they constitute one of those loose descriptions in common use in the industrial world, but used, in all probability, in different senses by employers and employees respectively. It seems to me that the Arbitration Court might define its terms with more precision. But the facts of the case now under consideration, prove, I think, the existence of a "job control" by members of the Seamen's Union.

Starke J.

The s.s. *Coolana* was ready for sea. Firemen had been engaged and had signed the articles. Suddenly these men gave twenty-four hours' notice—"legal notice," as it was called—terminating their engagement. The real object of this act was to compel the employers to engage trimmers on the ship, though these were not required by the *Manning and Accommodation Regulations* (No. 40 of 1922), under the *Navigation Act* 1912-1920. And from the giving of the notice, firemen who were members of the Seamen's Union could not be induced to take the *Coolana* to sea unless trimmers were employed. Now, a "job" is the work on which a workman is employed or which is on offer or open to workmen to engage upon. It is not, as was suggested at the Bar, the contract of service or of employment that constitutes the "job," otherwise the "job" would terminate with the contract. The job in the case before the Court was the working of the s.s. *Coolana*, or, at least, "firing" her. The firemen required the employment of trimmers, and by their act sought to impose their will upon the employers and dictate how the "job"—i.e.,

H. C. OF A. 1923.

COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION v. FEDERATED SEAMEN'S UNION OF AUSTRALASIA.

Starke J.

the working or firing of the ship—should be performed. They "controlled" the "job," because it could not be carried on or performed unless in accordance with their demands. And as a matter of fact the ship was laid up for several months by the owners rather than comply with the demands made upon them.

The organization styled the Federated Seamen's Union was charged on information with the following contravention of the award and the Arbitration Acts: "that the defendant did . . . aid job control by some of its members to wit job control exercised in connection with the s.s. *Coolana* . . . by members of the defendant organization to enforce manning conditions not approved by the Manning Committee provided by the *Navigation Act* to deal with the manning of vessels namely to enforce a demand for employment of trimmers on the said vessel. . . ." Letters passed between the owners of the vessel, the Commonwealth Steamship Owners' Association and executive officers of the Federated Seamen's Union. The owners and the Commonwealth Steamship Owners' Association desired to know, in substance, whether the Union was agreeable to the *Coolana* being manned, in respect of the stokehold, in accordance with the decision of the Manning Committee, namely, by six firemen and without the three trimmers demanded by the firemen, but the answers of the executive officers of the Union, so far as they replied to letters written to them, were evasive and disingenuous, and no conclusion can be drawn from this correspondence whether the organization did or did not aid "job control." A meeting, however, of the Victorian Branch of the Federated Seamen's Union was held at which it was resolved that "no action" be taken with respect to the s.s. *Coolana* "unless the request for three trimmers" be "granted." This resolution distinctly supports the demand of the Union men for three trimmers and participates in that demand. The act involved in the resolution aids, in my opinion, the job control practised, in the case of the *Coolana*, by the members of the Union. But is the organization called the Federated Seamen's Union implicated by that resolution? It is necessary for the informant to establish that the act was done by the authorized agent of the organization (*Waterside Workers' Federation of Australia* v.

Burgess Brothers Ltd. (1)). A general meeting of the members of the Union did not expressly sanction the resolution, nor did the Committee of Management. The only authority for that resolution, therefore, must be found in the powers conferred upon the Branches of the Union by the rules of the organization. The Union consists of members in the various States of Australia who belong to Branches organized in all the States except Tasmania ; and power is also conferred on the Union to establish agencies in the outlying ports. The government of the Union is vested in the members in meeting assembled, and the Committee of Management is bound to carry out all the instructions given by the members of the Union in meeting assembled, and has only such powers as are delegated to it by the resolution of the members in such meeting. The rules provide for Branch meetings " for the purpose of transacting the business of the Branch " and also for special meetings of the Branch for " the business for which the special meeting was called." All financial members of the Union have a right to speak and vote upon any question, with some exceptions, at ordinary meetings, but not at special meetings of Branches other than the Branch to which they belong. But the rules do not define the business that can be brought before the Branches, nor do they provide how far the acts of the Branch bind the Union. One rule, however, declares " that in the event of a dispute occurring as to wages or working conditions in any State the members of the Branch in any State may take such steps as will lead to an immediate settlement of the dispute, but if there should be any likelihood of the dispute extending beyond the limits of a State the Branch officials shall immediately notify the General President and the General Secretary and these two officials shall take such steps as the necessity of the case requires." And another rule imposes upon the Secretary of the Branch the duty of carrying out without delay the resolutions passed at any meeting of the Branch.

The relation of the Union and the Branches under these rules is not very clear, but they do not, in my opinion, constitute the Branches the Union for local purposes, nor give them any power to commit or bind the Union or other members of the Union by their resolutions

(1) (1916) 21 C.L.R., 129.

H. C. OF A. 1923.

COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION v. FEDERATED SEAMEN'S UNION OF AUSTRALASIA.

(*Waterside Workers' Federation of Australia* v. *Burgess Brothers Ltd.* (1); *Denaby and Cadeby Main Collieries Ltd.* v. *Yorkshire Miners' Association* (2); *Smithies* v. *National Association of Operative Plasterers* (3)). The Branches have, no doubt, some powers of self-government with respect to local affairs, but those powers belong to them as independent units and not as representatives or agents of the whole Union.

The Magistrate was, therefore, right in dismissing the information; and this appeal ought, also, to be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Malleson, Stewart, Stawell & Nankivell.*
Solicitors for the respondent, *Frank Brennan & Rundle.*

B. L.

(1) (1916) 21 C.L.R., 129.
(2) (1906) A.C., 384.
(3) (1909) 1 K.B., 310.