

picket

LIQUIGAS

1984 Bulletin p.16

New Plymouth

IN THE HIGH COURT OF NEW ZEALAND  
NEW PLYMOUTH REGISTRY

A.2/84

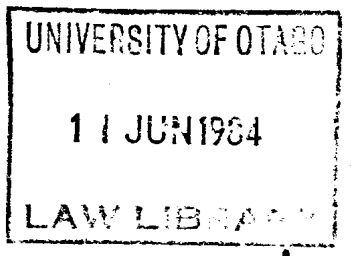
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BETWEEN

LIQUIGAS LIMITED a duly  
incorporated company having  
its registered office at  
Princess Towers, Molesworth  
Street, Wellington

PLAINTIFF

AND



NEW PLYMOUTH WATERFRONT  
WORKERS' INDUSTRIAL UNION  
OF WORKERS a Union  
registered under the  
Industrial Relations Act,  
1973 having its registered  
office at Wharf Street,  
New Plymouth

RESPONDENT

Hearing 9 February 1984 (at Wellington)  
Counsel J B Stevenson and D R Hartshorn for plaintiff  
C H Arndt for defendant  
Judgment 10 February 1984

(ORAL) JUDGMENT OF DAVISON C.J.

BACKGROUND TO THE APPLICATION

The New Plymouth Waterside Workers' Industrial Union of Workers (which I shall refer to as the "Waterfront Union") on 6 February 1984 established a picket line at the land entrance to Newton King Wharf at New Plymouth and such has to date effectively prevented the m.v. Coral Gas berthing at the wharf and loading a cargo of liquid petroleum gas intended by Liquigas Limited for shipment to the port of Dunedin.

The presence of the picket has resulted in the mooring gang, who are members of the Harbour Board's Employees Union, not entering upon the wharf and mooring the m.v. Coral Gas which is presently anchored off the port. It has also, it is alleged, resulted in two fitters employed by Liquigas who are members of the New Zealand Engineers Union not carrying out instructions given by Liquigas to check out some valves which are part of the loading out equipment on the wharf.

The presence of the picket is designed to prevent not only the berthing of the m.v. Coral Gas but essentially to prevent Liquigas employees who are members of the New Zealand Engineers Union from carrying out the loading of liquid petroleum gas into the m.v. Coral Gas when it is subsequently moored alongside the wharf.

The reason for the picket is the claim by the Waterfront Union to be entitled to do the loading out of LPG into the m.v. Coral Gas and subsequently into other vessels. That loading out is work which Liquigas requires to be done by its own staff who are covered by the Metal Trades Award and are members of the New Zealand Engineers Union. Liquigas has negotiated with the Engineers Union and signed a house agreement with it and that agreement, if approved by the Arbitration Court, will be effective as from 5 December 1983.

The reason why Liquigas requires the loading out to be done by its employees who are members of the Engineers Union is stated to be that it is special work requiring specially trained and skilled employees and that the work should be done by Liquigas employees for reasons of safety. Liquigas has contracted for the construction of a bulk petroleum gas LPG coastal tanker the "Tarihiko" which is due for delivery some time late in April 1984. The design of the "Tarihiko" and the design of marine depots at New Plymouth and Dunedin have been integrated and the transfer of product to and from the ship is treated by Liquigas as part of or an extension of the Marine Depots which it has established.

The m.v. Coral Gas has been chartered to carry liquid gas to Dunedin owing to the "Tarihiko" not yet being available. The charter of the vessel is for seven and a half days in New Zealand waters and dates from the arrival of the vessel on 6 February 1984.

#### THE PROCEEDINGS

On 7 February 1984 Liquigas issued proceedings in this Court against the Waterfront Union alleging in para 4:

- " 4. The purpose of such picket line was to deny access to the wharf to the Taranaki Harbour Boards mooring party, members of the Engineers Union and certain other persons so as to prevent the berthing of the m.v. Coral Gas or cause disruption to the transfer of LPG from the Liquigas Port Taranaki depot to the m.v. Coral Gas, an LPG ship.
5. A further purpose of such picket was to coerce the plaintiff into accepting the demands of the defendant that members of the defendant union should perform work on the Newton King Wharf relating to the transfer of LPG from the Liquigas depot at Port Taranaki to the LPG ship and that this should be a precedent New Zealand wide. The defendant and its members have no right or valid claim to the work sought and the work does not constitute 'waterside work' within the definition of the Waterfront Industry Act, 1973.
6. The picket denied access to the Harbour Board mooring party, members of the Engineers Union and others causing:
- A. Employees not to perform services normally carried out in accordance with their contracts of service;
  - B. Breaches of contract;
  - C. Unjustified interference with the economic relations of the plaintiff; and
  - D. The m.v. Coral Gas to be prevented from berthing at the Newton King Wharf. "

Liquigas seeks in its statement of claim:

- A. An injunction restraining the defendant from imposing or continuing to impose any picket which directly or indirectly causes breaches of contract or otherwise unlawfully interferes with the economic relations of the plaintiff.
- B. Damages for costs incurred by and losses suffered by the plaintiff as a result of the picket - particular whereof will be delivered.
- C. Such further or other relief as may be just.

Liquigas has now moved this Court for an interim injunction to restrain the Waterfront Union from impeding the mooring of the m.v. Coral Gas by members of the Harbour Board Union and the loading of it by members of the Engineers Union who are Liquigas employees.

LIQUIGAS CAUSE OF ACTION

Liquigas has founded its cause of action against the Waterfront Union on the tort of inducing breach of contract and/or interference with contractual or economic relations. For general discussion of the nature of that tort see: Salmond on Torts (18th ed) p 343; Halsbury (3rd ed) Vol 37, p 123; Heyden on Economic Torts (2nd ed) p 32; Fleming (5th ed) pp 676 and 677. Reference can also be made to Prosser on Torts at p 431.

The elements of that tort are distilled from certain decided cases. Those cases are: D C Thomson & Co Ltd v Deakin [1952] Ch 646, 694; Torquay Hotel Limited v Cousins [1969] 2 Ch 106, 139; Merkur Island Shipping Corp v Laughton and Ors [1983] 2 AER 189. There are also the two New Zealand cases of Pete's Towing Service Ltd v Northern Drivers' Union [1970] NZLR 32, 46, 47; and Northern Drivers' Union v Kawau Island Ferries Limited [1974] NZLR 617, 622.

Those principles which are distilled from the cases referred to are these. To establish the tort there must be:

- (a) An interference in the execution of a contract.
- (b) The interference must be deliberate, in the sense that the person responsible must know of the contract or turn a blind eye to it and intend to interfere with it.
- (c) Interference includes preventing or hindering one party from performing his contract, even though there not be a breach.

- (d) The interference must be direct. The expression 'direct interference' means direct persuasion applied by the third party to the contract breaker with knowledge of the contract and intention of bringing about its breach; or alternatively
- (e) Indirect interference is only unlawful if unlawful means are used.

Liquigas alleges that those necessary ingredients exist in the present case to establish the case against the Waterfront Union. It is claimed -

- (a) That the Waterfront Union by setting up the picket and maintaining it in the manner which it has, has interfered with contracts with which Liquigas is concerned.
- (b) That the interference by the Waterfront Union was deliberate in the sense that it knew of the matters relating to the contractual arrangements and intended to interfere with them.
- (c) That such interference includes preventing or hindering Liquigas from performing or gaining the benefit of its contractual or economic relations even though Liquigas itself may not be in breach of any contract.
- (d) The interference was direct being due to direct persuasion applied by the Waterfront Union to the mooring party who are members of the Harbour Board Union and the fitters employed by Liquigas who are members of the Engineering Union and potentially to others, and that interference was at a time when the Waterfront Union had knowledge of the contracts and that the interference was intended to bring about breaches of those contracts or interfere with their performance.

Or alternatively it is claimed -

- (e) If such interference was not direct but was in fact indirect then it was unlawful in that -
- (1) The picket was unlawful because it was in breach of the Summary Offences Act 1981 s 21(d); and
  - (2) It caused or induced interference with contractual or economic relations of Liquigas.

THE INTERIM INJUNCTION APPLICATION

The principles on which I must deal with the present application for interim injunction are well established and derive from American Cyanamid v Ethicon Ltd [1975] AC 396; and Fellowes & Son v Fisher [1976] QB 122.

A recent example of the application of the principles to an industrial case is found in Mercury Communications Ltd v Scott-Garner & Anr [1983] 3 WLR 814.

I am required at this stage not to decide the substantive issues between the parties but merely to determine whether there is a serious question to be tried and if there is then to consider whether the balance of convenience lies in granting or refusing the injunction. In approaching that task I bear in mind the observations of McCarthy P. in Northern Drivers Union v Kawau Island Ferries Limited (ante) at p 621 where he said:

" But because the issue of an interim injunction often has serious consequences, as, for example, in the case of industrial disputes, the Court will usually require a strong prima facie case, but the mere fact that there may be a doubt about the law or the facts is not sufficient to prevent the Court from granting the application. It is always a matter of discretion, and, as the citation from Lord Pearce endorses, the Court will take into consideration the balance of convenience to the parties and the nature of the injury which the defendant, on the one hand, would suffer if the

injunction was granted and he should ultimately turn out to be right, and that which the plaintiff, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right. "

IS THERE A SERIOUS QUESTION TO BE TRIED?

The essential principles of the cause of action alleged by Liquigas in tort against the Waterfront Union are now well defined and in the context of the present case I have to decide whether on the material before me there are raised serious questions to be determined by the Court at the substantive hearing.

It was not disputed by the Waterfront Union that it established the picket of which Liquigas complains for the purpose of advancing its claim to be entitled to be responsible for the actual loading out and discharge of LPG. There was a dispute, however, as to the manner in which the picket operated. For the Waterfront Union it was claimed that whilst the Union organised the picket, the Harbour Board Employees Union Members who formed the mooring party were not denied access to the port facility, but that as the Harbour Board Union employees are affiliates of the Federation of Labour that Union and its members respected the picket line which was a picket officially sanctioned by the Federation of Labour.

The picket, Mr Arndt said on behalf of the Waterfront Union, was a peaceful and lawful picket and that it will not impede the loading of the m.v. Coral Gas. Mr Rau, the President of the Waterfront Union who gave evidence before me yesterday, said in relation to the picket:

" From the very outset I had instructed our members on the picket line not to stop anybody going about their lawful work - not to use any violence of any type - bit we would ask any workers who wanted to come through the line to please respect our picket.

Q. Did a gang of Harbour Board workers come along at some stage for the purpose of going to the ship?

A. Yes, they were brought there.

Q. Did you or the members of your picket in any way seek forcibly to stop that gang or stop that gang from going to the ship?

A. We did not.

Q. If they had wished to go to the ship would they have been permitted to do so?

A. They would have.

Q. They did not go to the ship did they?

A. No, that is correct.

Q. Why was that?

A. Because they respected the right of us to lawfully picket.

Q. Did any of them make any attempt to pass through the picket?

A. The Harbour Board workers - no, they did not - none of their workers.

Q. If they had wished to pass through the picket and go aboard the ship would your picket have restricted them in any way in doing that?

A. We would not have restricted them in any way.

Q. Was there anything you wanted to add to that Mr Rau?

A. Other workers had gone through, such as the Liquigas people. As they will tell you, we did not obstruct them at all. We asked them to recognise the picket. They carried on about their business so they went through the picket line. Subsequently there had been others who had gone about their work on that berth and they have not been impeded in any way. "

However, that version of events in relation to matters on 6 February 1984 is in conflict with the evidence given by the Harbour Master Mr Giles. In his affidavit in paras 3 - 9 he says:

" 3. As Harbour Master and in accordance with the Industrial Awards covering the men involved I gave orders at approximately 3.45 p.m. on 3rd February 1984 for the pilot vessel to be ready to convey the pilot to the Coral Gas so that the pilot would be able to board the Coral Gas at



approximately 8 a.m. on 6th February 1984 and pilot the vessel to its assigned berth being Berth No 2 at the Newton King Wharf.

4. I also gave orders to the mooring gang consisting of eight men employed by the Harbours Board to be present on the wharf at 8 a.m. on 6th February 1984 for the purpose of installing moorings for the Coral Gas.
5. I also gave orders to the tug crew to have the Harbour Board's tug ready to assist in berthing the Coral Gas at 8 a.m. on 6th February 1984.
6. At approximately 9 a.m. on 5th February 1984 I received a radio message from the Master of the Coral Gas advising that its expected arrival time was now 9 a.m. on 6th February 1984. I did not change any of the orders detailed above.
7. At approximately 8.15 a.m. on 6th February 1984 I received a telephone call from the Deputy Harbour Master, Captain Raymond Norman Barlow, who informed me that a union picket line had been established at the land entrance to the Newton King Wharf. I was not surprised by this information as I had been made aware on 4th February 1984 that such a picket might be established and I had on the same day telephoned Mr John Fitzgibbon, the President of the Taranaki Branch of the Harbour Board's Employees Union and discussed his union's position regarding such a picket. I asked him whether his union members would cross such a picket line and he said that he had instructed his members not to cross the line. He said that he had particularly instructed Mr Ken Parkes, an Executive Member of the Taranaki Branch of the Harbour Boards Employees Union and a member of the mooring gang, that the mooring gang was not to cross the picket line. Accordingly, I now instructed Captain Barlow to take the foreman of the mooring gang and approach the picket and enquire whether the picket would allow the mooring gang to pass the picket line in order to moor the Coral Gas.
8. At approximately 8.35 a.m. Captain Barlow again telephoned me and informed me that the picket would not allow the mooring gang to enter the Newton King Wharf for the purpose of mooring the Coral Gas.

9. I then ordered Captain Barlow to contact the Coral Gas by radio and to instruct her to anchor off the Port until further notice. "

The evidence of Mr Rau is further in conflict with the evidence of the Deputy Harbour Master Mr Barlow. At para 6 of his affidavit Mr Barlow says:

- " 6. At approximately 8.15 a.m. on 6th February 1984 I telephoned the Harbour Master, Captain David Chichele Giles, and advised him that a union picket line had been established at the land entrance to the Newton King Wharf. Captain Giles then instructed me to take the foreman of the mooring gang and approach the picket and enquire whether the picket would allow the mooring gang to pass the picket line in order to moor the Coral Gas.
7. Accordingly I approached the picket with the foreman of the mooring gang, Mr Tony Allan. Among the group of men forming the picket I recognised Mr Henry Rau and Mr Dennis Parker who are respectively known to me as the President and Secretary of the New Plymouth Branch of the Port Taranaki Waterfront Workers Union. I spoke to Mr Henry Rau and asked him whether his picket would allow the mooring gang to pass on to the wharf to moor the Coral Gas. Mr Rau replied that the picket would not allow the mooring gang to pass for this purpose. There was no further discussion. "

In relation to events on the following day, 7 February, the evidence of Mr Giles is that there had been some apparent change of attitude on the part of the Waterfront Union. In para 4 of his second affidavit Mr Giles says:

- " 4. Mr Allan accompanied me to the picket who directed me to Mr Henry Rau. I asked him whether the picket was prepared to allow the mooring gang to pass on to the Newton King Wharf for the purpose of installing mooring for the Coral Gas. Mr Rau said that the picket would allow the mooring gang to pass for this purpose. However since this was an F.O.L. recognised picket he would expect the mooring gang not to pass it.

5. Notwithstanding this, I instructed Mr Allan to take his mooring gang across the picket line and install the moorings. Mr Allan and the other members of the mooring gang refused to do so. "

The question that arises out of that evidence of events is what were the actions of the picket on 6 February and on 7 February. That is a matter of evidence and concerns an issue basic to the plaintiff's cause of action. It raises the issue of whether or not the Waterfront Union prevented or hindered the Harbour Board Employees Union members from carrying out the mooring operations or whether the Waterfront Union picket directly persuaded the mooring party not to berth the m.v. Coral Gas. Further, the evidence raises the issue relating to the conduct of the picket in relation to inducing breach of contract or merely advising breach of contract. There are a number of cases dealing with this matter. One or two are McKernan v Fraser (1931) 46 CLR 343, 401; the wellknown Crofter Hand Woven Harris Tweed Co v Veitch [1942] AC 435, 440, and the cases to which I have earlier referred of D C Thomas & Co Ltd v Deakin, and Torquay Hotel Limited v Cousins.

The evidence also raises the issue of the lawfulness of the picket as will be later discussed in this judgment. Further, the reference to the picket being an F.O.L. picket or a picket recognised by the F.O.L. raises the issue as to whether the moral sanction of such a claim on other Unionists was not equally as effective as a physical barrier in preventing them from entering upon the wharf to moor the vessel Coral Gas. The issues raised by the above matters are all, in my view, serious questions which must be tried and in respect to which evidence must be called and submissions made at the substantive hearing.

Another matter that arises from the conduct of the picket is whether or not the picket was lawful. The right to picket in New Zealand is governed by the common law except for such restrictions as are imposed on that right by the Summary Offences Act 1981, s 21(1)(d). The law on this topic in New Zealand is not governed by special statutes as is the case in England.

So far as the common law right to picket is concerned, that has been discussed in Hubbard v Pitt [1976] QB 142. At p 177 Lord Denning, M.R. says in relation to picketing:

" I see no valid reason for distinguishing between picketing in furtherance of a trade dispute and picketing in furtherance of other causes. Why should workers be allowed to picket and other people not? I do not think there is any distinction drawn by the law save that, in the case of a trade dispute, picketing is governed by statutory provisions: and, in the case of other causes, it is left to the common law. But, broadly speaking, they are in line the one with the other. Picketing is lawful so long as it is done merely to obtain or communicate information, or peacefully to persuade; and is not such as to submit any other person to any kind of constraint or restriction of his personal freedom: see Hunt v Broome [1974] A.C. 587, 597 by Lord Reid."

A further reference to picketing was made by Orr L.J. in the same case at p 188:

" The judge heard the application on affidavit evidence and at the defendants' request delivered a judgment in open court in which he dealt fully with the law as to picketing and highways but, although he referred to it in general terms, expressed no conclusion on an alternative claim of the plaintiffs that the activities of the defendants had amounted to a watching or besetting of the plaintiffs' premises with a view to compelling the plaintiffs not to do acts which it was lawful for them to do, and that, on the authority of this court in J. Lyons & Sons v Wilkins [1899] 1 Ch 255, such action is capable in law of amounting to a private nuisance. On the other side of the dividing line is the decision of this court in Ward, Lock & Co Ltd v Operative Printers' Assistants' Society (1906) 22 T.L.R. 327, that picketing, without violence, obstruction, annoyance or molestation, in the vicinity of the plaintiff's business premises with a view to persuading the plaintiffs' employees to become members of a union, does not amount to a nuisance. A crucial question in the present case is on which side of this dividing line the facts lie, and

this issue, it must be assumed, will in due course, either alone or in conjunction with other issues, come on for trial on evidence including that to which Stamp L.J. has referred, and probably also oral evidence which will be of great importance, as to the defendants' intention and state of mind. In these circumstances I think it undesirable to say anything more at this stage as to that issue or any other issue which may arise at the trial, and I return to the Cyanamid case. "

The topic of picketing has been recently dealt with in New Zealand by the Public Issues Committee of the Auckland District Law Society which has published its views in 1981 NZLJ 116, 118. I believe that article in that Law Journal correctly summarizes the law on the topic in New Zealand.

" But what are these general rights, 'the personal freedom' of which Lord Denning speaks, which picketers may not infringe if their picket is to remain lawful?

First, if the picket is on a highway, footpath or footway, the pickets must not obstruct others in passing and re-passing on that highway, footpath or footway. Everyone, including a picket, is entitled to use a highway *eundo, morando et redeundo* (in going, remaining and returning). Like anyone else, a picket is entitled to use a highway *morando* but only, again like anyone else, '...for a short time'. A lengthy or indefinite blockage of a highway or part of a highway infringes the rights of others and it has been judicially held that '...it is not sufficient to say that the public could easily get by the obstruction' because at common law the public has a right to go on every part of the highway. In New Zealand (as in England) it is of course a criminal offence to obstruct any footpath or footway or carriageway without lawful authority or reasonable excuse.

Secondly, if the picket is on private property, the pickets must not infringe the law of trespass.

In New Zealand Parliament recently turned its attention to this subject in enacting the Trespass Act 1980. Under s 3 of that Act it is a criminal offence to trespass on any place and, after being warned to leave by an occupier of that place, to neglect or refuse to do so. Other statutory provisions relate to particular places as, for example, where access is restricted to certain areas for reasons of safety or security.

Thirdly, the picket must not indulge in any criminal activity. For example, the picket must not commit the crime of unlawful intimidation (s 33(1) of the Police Offences Act). He must not 'forcibly hinder or prevent any person from working at or exercising any lawful trade, business or occupation' (s 33(2) of the Police Offences Act). In conceding its protection to all who go about their lawful business, the law does not discriminate between one person and another attending lawful employment. A non-unionist or even persons alleged to be 'scabs' have the same entitlement to the protection of the law as anyone else. In cases where an award or industrial agreement specifies that only union members are to be employed and there appears to be a breach of this provision, the remedy lies in having recourse to the procedures of the Industrial Relations Act. It does not lie in those aggrieved infringing the personal freedom of others. Needless to say, a picket must not be a party to a riot, an unlawful assembly or a breach of the peace. He must not fight in a public place, obstruct a constable in the execution of his duty, use foul language in a public place or commit any other offence relating to good order. All these laws are for the benefit of the public generally and must be maintained in their full integrity. A mass picket confers no licence to break the ordinary laws relating to good order, nor should such laws be only selectively enforced in the face and provocation of mass intimidatory picketing.

Fourthly, the picket must not commit a tort, whether the tort of inducing a breach of contract (such as a contract of employment) or the tort of nuisance, whether public or private. A public nuisance may be caused by, for example, an unreasonable and prolonged obstruction of a highway. Such a nuisance may be restrained on the relation of the Attorney-General or by an adjoining occupier who has suffered particular damage. A private nuisance may be caused if picketing is associated with '...obstruction, violence, intimidation, molestation or threats' and if actual damage is suffered by the occupier of property.

In these various ways, the law in New Zealand, as in England, recognises and protects the legitimate interests of others. The law gives every liberty to picketers, as it does to demonstrators and protesters, so long as they do not use their liberty to commit crimes or to violate the rights of others. This is as it should be and as it should remain.

In New Zealand, the law has never conceded any special immunity to picketers as such. Parliament has never needed to concede a general statutory 'right to picket' for the very reason that the liberty to picket and persuade peacefully already exists at common law. "

Dr A Szakats in 1981 NZLJ 122 expresses some doubts as to the effects of s 33(1) of the Police Offences Act - now s 21(1)(d) Summary Offences Act 1981 - but I need not deal with such now as that is a matter to be determined later at the substantive hearing.

The Waterfront Union's case in accordance with the summary of law which I have just given and on the facts as it alleges them to be is that its picket was a lawful picket. Liquigas, on the other hand, claims on the facts as it says they should be found by the Court on a hearing that the picket was unlawful. Such claims, in my view, raise a serious issue to be tried at the subsequent hearing.

A further matter raised by both parties in relation to the lawfulness of the picket's actions and in relation

to alleged interference with Liquigas's contractual relations was the statutory entitlement of the Waterfront Union to carry out loading and unloading as being waterfront work reserved for waterside workers. Under the Waterfront Industry Act 1976, s 2 defines "waterside work" as meaning, subject to subsecs (2) and (3):

" The loading and unloading of ships, barges, lighters, and other vessels; and includes -

(a) The work within wharf limits of receiving and delivering cargo and other work customarily performed at the port immediately before the commencement of this section by waterside workers whose names were on the bureau register."

Section 38 establishes a bureau for each port.

Section 39 provides :

" No person whose name is not on the bureau register for any port shall be employed to do any waterside work at that port unless there is no person whose name is on the register available to do that work and ready and willing to undertake it. "

Those provisions the Waterfront Union says give them the right to load LPG as being waterside work within their domain. But there is an exclusion in the definition of "waterside work". Section 2(2) states:

" For the purposes of this Act, the terms 'waterfront industry' and 'waterside work' do not include the carrying out of work customarily performed at the port immediately before the commencement of this section by -

(b) Any employees in the course of loading, unloading, or handling -

(i) Bulk petroleum products. "

The commencing date of that section was in fact 1 April 1977.

Evidence as to what work was customarily performed at the port immediately before the commencement of that section, i.e. prior to 1 April 1977, by any employees in the course of loading bulk petroleum products was not very conclusive and the matter remains to be dealt with at the trial.



Mr Darge in his affidavit said:

" LPG constitutes a petroleum product. The Engineers Union have a long record of handling bulk petroleum products passing over wharves throughout New Zealand. To the best of my knowledge and belief, the waterside workers do not and have not handled bulk petroleum products passing over wharves in New Zealand. "

Mr Rau was also asked about that matter and he said:

- " Q. Tell his Honour how the loading of LPG was customarily performed at New Plymouth prior to 1 April 1977?
- A. Nobody has loaded LPG at the port of New Plymouth.
- Q. What about loading or unloading or handling of bulk petroleum products? The same answer?
- A. We have not loaded petroleum products as His Honour asked, so nobody else has loaded LPG at the port of New Plymouth since 1 April 1977. LPG as I understand it is cargo under the Act and I believe it is cargo and our job is to load and discharge ships.
- Q. Your Union regards it as 'cargo' under the Waterside Industry Act and it is waterside work accordingly?
- A. Yes. "

During the hearing yesterday, reference was also made to the Waterfront Industry Amendment Bill (No 2). The explanatory note of that Bill after having set out s 2(2) to which I have just recently referred, goes on to say:

" The reference to bulk petroleum products is expanded to make it clear that bulk petroleum, liquefied petroleum gases, synthetic fuels, and blended petroleum products are within the exclusion.

Bulk products designated as non-chemical products are now defined by reference to a later order of the Waterfront Industry Tribunal.

In relation to bulk petroleum, to bulk petroleum products, and to bulk products designated as non-chemical products, the exclusion is no longer to depend on the work having been customarily performed at the port immediately before the 1st day of April 1977. "

But that Bill is not yet law and for all I know it may never become law so I cannot take that into account in deciding this present application although it was urged upon me by Mr Stevenson that it merely makes clear, as the explanatory note says, what the original and present law is, but Mr Arndt endeavoured to persuade me that they had to introduce an amending Bill into Parliament because the present law did not cover LPG. I do not deal with either of those submissions. I am not required to make any further comment upon them.

The Waterfront Union, however, claimed that it was by statute entitled to carry out the loading and unloading of LPG and that its picket was in defence of its lawful rights to carry out such work. The provisions of the Waterfront Industry Act to which I have referred and the evidence which would be called in relation to those provisions raise serious questions to be tried as to whether the Waterfront Union has statutory right to load out LPG or not as it claims.

In the result, having considered the issues likely to result at the trial and having considered the evidence as presently available before me, I am of the view that there are serious questions to be tried at the substantive trial.

#### BALANCE OF CONVENIENCE

##### (a) If the injunction is not granted

First: Would damages be an adequate remedy for Liquigas?

The consequences of not being able to load the m.v. Coral Gas are referred to in Mr Darge's affidavit paras 17-20. He says:

" 17. The removal of the picket or the access of all requisite personnel is a matter of utmost urgency to Liquigas as the charter of the Coral Gas is for seven and a half days in New Zealand waters. The terminal date of the charter is strict as the Coral Gas has other commitments. The seven and a half days gave a leeway of approximately two days to achieve the purposes of Liquigas. One of such leeway days has now been used. Due to delays arising from bad weather during the voyage of the Coral Gas from Suva to

New Plymouth the ship is behind its planned schedule and I doubt the ability of the owners to grant us any extension. I believe the earliest that an alternative LPG ship could be chartered and represented at New Plymouth would be over two weeks and the cost would be substantially greater (to the order of an additional \$300,000.00). This increased cost arises partly because the Coral Gas could be diverted from her normal route to service New Zealand whereas other LPG ships will have to make a specific voyage to New Zealand at much greater cost to Liquigas.

18. The South Island market has responded to the anticipated availability of bulk shipments of LPG in February 1984. It is now not possible to meet the area's growing LPG needs using conventional transport methods. Unless a bulk shipment of LPG is made to Dunedin by mid-February 1984 severe product shortages will result. This shortage would rapidly increase causing shortages of LPG as a motor fuel and commerce and industry to run out of gas. This shortage would be inevitable and would contrast with the ready availability of LPG in the North Island.
19. There is now no possibility of the Tarihiko being available in New Zealand waters and commissioned ready to make its first delivery from New Plymouth to Dunedin before mid to late April. Liquigas must therefore charter an outside bulk LPG ship to make bulk LPG delivery to the South Island.
20. The salaries and cost incurred by Liquigas on Monday 6th February are estimated by me at not less than \$7,500.00 and the rate for the charter is about \$15,000.00 per day. "

Such matters as are raised by Mr Darge do not make it satisfactory, in my view, to find that Liquigas could be adequately compensated by an award of damages.

Second: What advantages would the Waterfront Union gain from not having an injunction made against them?

The members would not get the waterfront work on the m.v. Coral Gas because they are untrained and the loading requires skilled operators. The negotiations between the Waterfront Union and the Engineers Union have already reached an impasse and the demarcation dispute between the two Unions would apparently need to be determined by the Arbitration Court or by some other means. There does not appear to me to be any tactical advantage to the Waterfront Union in the dispute if an injunction is not granted, and it seems to me that there will be no financial advantage to the Waterfront Union or its members if an injunction is not granted.

(b) If an injunction is granted

The severe consequences to Liquigas of delay in loading the m.v. Coral Gas will be considerably mitigated. The public interest in obtaining supplies of LPG will be taken account of. The Waterfront Union members will be in no worse position than they are now. They cannot get the work of loading nor can they realistically do that work because of the lack of training which Liquigas claims is essential before workers are allowed to operate the loading system because of reasons of safety and operating efficiency. It might be suggested that Waterfront Union members should be trained but it hardly seems realistic that such training should take place in time to deal with the present problem involving m.v. Coral Gas. It seems the resolution of the dispute between the two Unions, which is the root cause of the present matter, will require the intervention of the Arbitration Court. The members of the Waterfront Union will not lose any pay because at this stage they apparently cannot get the work of m.v. Coral Gas in any event.

In the result, taking all factors into account, and taking into account as is sometimes done in these cases the maintenance of the status quo which is that at present neither Union has presently loaded LPG from the wharf, the balance of convenience, in my view, lies heavily in favour of granting the interim injunction.

The Courts are reluctant to interfere in industrial matters, preferring if possible that responsible parties will

by negotiations resolve the dispute between themselves, such tends overall to better industrial relations between the parties. Unfortunately, however, despite my encouraging the Waterfront Union and the Engineers Union, which are parties to what is in effect a demarcation dispute, they have not been able to reach complete agreement. I am sorry that that has been so. Unions, however, as are all other persons and institutions in New Zealand, are subject to the same general law and subject to the same remedies as are available for other persons and institutions in the country. Liquigas is entitled to bring proceedings for injunction against the Waterfront Union, as can such proceedings be brought against any other person, company or institution.

Having concluded that there are in this case serious questions to be tried and that the balance of convenience favours the granting of an interim injunction, such injunction will issue accordingly. The form of the injunction will be in accord with the draft which has been filed, subject to the amendment that it will read: That this Court hereby orders that until the further order of the Court (1).....

The order will issue accordingly.

*R. W. Dawson* C.J.

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