13 July 2020

PRESS SUMMARY

Chief Personnel Officer (Appellant) v Amalgamated Workers' Union (Respondent) (Trinidad and Tobago) [2020] UKPC 17
On appeal from the Court of Appeal of the Republic of Trinidad and Tobago

JUSTICES: Lord Kerr, Lord Wilson, Lord Carnwath, Lady Arden, Lord Kitchin

BACKGROUND TO THE APPEAL

In 1983, Mr Daniel Riley was employed by the Port of Spain Corporation ("the Corporation"). On 8 May 1999 he was charged with stealing 72 litres of gasoline. The gasoline had a value of about TT $176, a relatively modest sum of money. He was suspended without pay from 10 May 1999. In January 2002, after a trial in the Magistrates' Court, Mr Riley was acquitted. On 23 January 2002 the respondent ("the Union") wrote to the Corporation drawing its attention to Mr Riley's acquittal and requesting his reinstatement without loss of benefits. The Corporation refused. On 12 March 2002, it began disciplinary proceedings against him based on the same charge. In the meantime, he remained suspended. The disciplinary hearing began on 22 March 2002 and continued on a number of separate days until 23 January 2007, when the chairperson, Ms Laraine Alexander, adjourned it in order to write her report for the appellant ("the CPO"), who was the final decision-maker on behalf of the Corporation.

Mr Riley was not informed of the decision in the disciplinary proceedings within ten working days of the completion of the hearing, contrary to a grievance procedure set out in the notes to article 16 of a collective agreement between the Union and the Corporation, made in March 2001 ("the Collective Agreement"). The Union's representative wrote to the Corporation to complain about this failure on 6 February 2007 and later reported the matter to the Minister of Labour ("the Minister") as a trade dispute. The Minister, acting under section 59(1) of the Industrial Relations Act of 1972 ("the 1972 Act"), certified the dispute in these terms: "The dispute, as reported by the Union, concerns the failure to follow the Grievance Procedure article 16, effective 6 February 2007, in respect of the tribunal of Daniel Riley".

On 6 March 2008, Ms Alexander completed her report and sent it to the CPO. On 4 April 2008 the CPO wrote to Mr Riley informing him that he had been found guilty of the charge and terminating his employment with effect from 10 May 1999. This prompted the Union to report a second trade dispute to the Minister, which the Minister certified as follows: "The dispute as reported by the Union concerns the termination of services of Mr Daniel Riley an employee of the Port of Spain Corporation by letter dated April 4, 2008".

The first trade dispute was heard in the Industrial Court over nine days from January 2009 to March 2010. The court handed down its judgment on 9 November 2012. It also delivered orally this extract from the judgment in which it explained its conclusion:

> "Having received and considered all of the evidence in the dispute, balancing the impact of the delay on the worker with the causes of the delay proffered by the employer, we find that the delay to process an ordinary matter in accordance with the grievance procedure, and/or the principles of good industrial relations practice, was excessive, and in the absence of good cause,

> unreasonable. We therefore uphold the Union's claim and find that the employer's inaction resulted in substantial unfairness to the worker. Consequentl[y], the employer has waived the right to impose discipline on the worker.
>
> Based on our findings, the Court hereby orders that, one, the worker, Daniel Riley, be immediately reinstated in his former position without loss of seniority, emoluments and other benefits whatsoever.
>
> Two, the employer computes the worker salary and pecuniary benefits from the date of his alleged dismissal, namely, May 10, 1999 to November 9, 2012, and pays to the worker, the sum of that computation, on/or before December 17, 2012 …"

In November 2012, the second trade dispute came on for hearing in the Industrial Court. The CPO made an application for its immediate dismissal, in light of the order made in the first trade dispute. The Union resisted that application but the court, in substance, agreed with the CPO, holding that the whole dispute had been adjudicated upon and could not be reopened except by the court in the first trade dispute. The CPO then appealed to the Court of Appeal against the order in the first trade dispute. The essence of the CPO's complaint was that the first trade dispute did not extend to or encompass Mr Riley's dismissal; that the court had granted Mr Riley relief for which he had not asked; that the parties had been given no indication that the court was contemplating making an order for reinstatement or payment of salary or benefits from the date of suspension; and that the court had failed to consider the reasons given by the Corporation for the delay in making its decision. The Court of Appeal dismissed the appeal and the CPO now appeals to the Judicial Committee of the Privy Council.

JUDGMENT

The Judicial Committee of the Privy Council dismisses the appeal. Lord Kitchin gives the advice of the Board.

REASONS FOR THE JUDGMENT

The Union argued that there was no right of appeal to the Judicial Committee of the Privy Council in cases originating in the Industrial Court **[12]**. As the Board explained in *Sundry Workers (represented by Antigua Workers Union) v Antigua Hotel and Tourist Association* [1993] 1 WLR 1250; (1993) 42 WIR 145 in relation to an equivalent legislative provision, section 18(1) of the 1972 Act confined an appeal from a decision of the Industrial Court to the Court of Appeal to certain grounds, set out in subsection (2). It also prevented any collateral challenge to the decision of the Industrial Court by way of judicial review or on any other ground. However, once the appeal reached the Court of Appeal, section 18(1) of the 1972 Act ceased to be of any relevance. It does not and never did purport to limit or preclude a further right of appeal from the Court of Appeal to the Board. That right was provided by the Constitution of Trinidad and Tobago set out in Schedule 2 to the Trinidad and Tobago (Constitution) Order in Council 1962 (referred to by the Union as the Independence Constitution) and, later, the Constitution enacted in 1976 as the Schedule to the Constitution of the Republic of Trinidad and Tobago Act (referred to by the Union as the Republican Constitution) **[35]**.

It was also important to have in mind that the grounds on which an appeal to the Court of Appeal was permitted by section 18(2) may well raise issues of considerable general importance. It would be surprising if the 1972 Act had, essentially by a process of implication and without any express reference, removed or materially limited an avenue of appeal afforded by the Independence Constitution (and now the Republican Constitution) to the Board **[36]**. The CPO had properly exercised the right of appeal conferred by section 109(1)(a) of the Republican Constitution and the Board had jurisdiction to hear the appeal **[37]**.

The next issue was whether, given the nature of the first trade dispute, the Industrial Court had the power to make the order that it did, and whether the Court of Appeal had the power to uphold that

order **[38]**. The Board concluded that the Industrial Court had the power to make the order that it did. Section 10(1)(b) of the 1972 Act conferred on the court a power to make an order relating to any of the matters in dispute. Section 10(3) conferred a power to make such an order or award in relation to a dispute before it as it considered fair and just, having regard to the interests of the persons immediately concerned and the community as a whole. Here, the orders made by the Industrial Court plainly did relate to the matters in dispute. The failures by the Corporation were so substantial that, in the Industrial Court's view, the legality of the disciplinary process had been fatally undermined, necessarily rendering any subsequent dismissal for the alleged offence unfair **[51]**.

There did not have to be a dispute about reinstatement for an order for reinstatement to be made. That would be to confuse the dispute with the order the court could make in relation to it. Here the dispute arose from and concerned the Corporation's failures to comply with the grievance procedure and an important aspect of those failures was its decision to suspend Mr Riley for so long without pay. The dispute having been resolved in Mr Riley's favour, and the court having found that the disciplinary proceedings had been fundamentally compromised, an order for his reinstatement was a perfectly appropriate order for the court to consider making. That is what the Union sought in its letter of 23 January 2002. What is more, the issue of reinstatement, though not substantially developed during the course of the hearing before the Industrial Court, was raised at its outset **[52]**. The Industrial Court did not exceed its jurisdiction in making its order and the Court of Appeal made no error in rejecting this aspect of the CPO's appeal **[53]**.

The Industrial Court did not commit any breach of natural justice, and its decision or order did not involve any unfairness of the kind alleged by the CPO **[55]**. As to the CPO's submission that the decision of the Industrial Court was irrational or involved errors of law, it was a matter of judicial discretion whether a litigant who had been unlawfully dismissed or compelled to resign, and had ceased to perform any of the duties of his office, should be granted an order for reinstatement. In *Jhagroo v Teaching Service Commission* (2002) 61 WIR 510, the Board considered it would not be appropriate to make an order requiring the appointment of the appellant to a particular office, but the circumstances of Mr Riley's case were quite different **[56]**.

The CPO contended that even if an order for reinstatement was to be made, the court was bound to order that Mr Riley give credit for his earnings during the course of his suspension. However, this point was not taken before the Industrial Court and it was not developed before the Court of Appeal. It was far too late to raise it now **[57]**.

Finally, in view of the CPO's successful application for dismissal of the second trade dispute, it would be most unjust for the Board to attach any weight to the CPO's arguments that the scope of the first trade dispute did not extend to questions concerning Mr Riley's reinstatement or the payment to him of his salary and benefits from the date of his suspension. This was a clear case for the application of section 18(4) of the 1972 Act. The Board was satisfied that there had been no substantial miscarriage of justice **[59]**.