[2025] UKPC 42
Privy Council Appeal No 0021 of 2024

JUDGMENT

University of the West Indies (Respondent) *v* Occupational Safety and Health Authority and Agency (Appellant) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Lloyd-Jones
Lord Sales
Lord Burrows
Lord Richards
Lady Simler

JUDGMENT GIVEN ON
16 September 2025

Heard on 25 June 2025

Appellant
Robert Strang
Pettal John-Beerens
(Instructed by Charles Russell Speechlys LLP (London))

Respondent
David Alexander
(Instructed by Dave de Peiza (Trinidad))

LADY SIMLER:

Introduction

1. This appeal raises a short question of statutory interpretation concerning the time limit for bringing a prosecution in respect of a "safety and health offence" under the Occupational Safety and Health Act (Chap 88:08) (as amended by Act No 3 of 2006, referred to below as "the Act").

2. The question for the Board is whether a prosecution for a safety and health offence must be made within "six months of the date on which the alleged commission of the offence came to the knowledge of an inspector" under section 93 of the Act; or whether the two-year time limit in section 97B applies to such a prosecution as a "proceeding" under the Act that must be "initiated no more than two years after the cause of action has arisen". The Industrial Court held that the two-year time limit applies, and accordingly the prosecution had been initiated within the time allowed. The Court of Appeal reversed that decision holding that the six-month time limit applies, and the prosecution was not therefore initiated in time.

3. The appellant is the Occupational Safety and Health Authority and Agency (referred to below as "the Authority" and where relevant, "the Agency"). This is the body responsible (among other things) for enforcing the provisions of the Act. It is empowered to bring prosecutions under the Act.

4. The Authority has for the past decade organised its investigations, prosecutions and limited resources on the basis that a two-year time limit applies to prosecutions in the Industrial Court. It estimates that in the period 2021 to 2022 (they are the two calendar years immediately prior to the Court of Appeal's decision) some 244 safety and health complaints were brought before the Industrial Court on the basis that the section 97B two-year time limit applied. The Authority is concerned that the outcome of the appeal will therefore have a significant impact on the public interest and on the interests of the injured workers and their families whose cases are the subject of the affected complaints.

5. As the Authority accepts, if the Court of Appeal's interpretation of the Act is correct, then these considerations plainly cannot justify overturning its ruling. But the Authority submits that the Court of Appeal erred, because its approach to the two provisions, while apparently reasonable on the words of the provisions alone, ignores counter-indications elsewhere in the Act and the overall scheme, and leads to anomalous and inconsistent results. It contends that the settled practice in the Industrial Court amounts to a good reason to prefer the Industrial Court's interpretation.

The factual background

6. The facts are not critical to the Board's determination, but the factual background can be summarised shortly in any event. The respondent is the University of the West Indies. It employed an employee who was injured (though not critically) in a workplace accident on 10 March 2016.

7. Section 46A of the Act requires workplace accidents to be reported by employers to the Chief Inspector of the Authority within four days of any such occurrence. The respondent did not report the accident within the four-day period allowed by section 46A. The accident was reported by a notice dated 21 March 2016 but only received by the Authority on 6 April 2016.

8. This led to a complaint by the Authority, made on 20 November 2017 (over a year and a half later), alleging a safety and health offence by the respondent for breach of the reporting duty in section 46A. The complaint is subject to the jurisdiction of the Industrial Court under section 83(1) of the Act. At a hearing in the Industrial Court on 9 January 2019, the respondent raised a preliminary objection that the complaint was made out of time pursuant to section 93 of the Act because it was made more than six months after the Authority had knowledge of the alleged offence.

9. The Industrial Court rejected the respondent's preliminary objection by a judgment delivered on 10 July 2019 (No 162 of 2017). It held that there are two separate prosecution regimes under the Act: one for summary offences triable in the Magistrates' Court to which section 93 applies; and one for safety and health offences triable in the Industrial Court to which section 97B applies. In reaching this conclusion, the Industrial Court followed a series of decisions, the first of which was in 2014, in which the Industrial Court had held that the time limit for bringing a prosecution before it in relation to safety and health offences is the two-year time limit in section 97B. The Industrial Court also regarded this result as consistent with Parliament's intention to decriminalise safety and health offences. It held accordingly, that section 97B governed the time limit for the complaint against the respondent which was therefore in time.

10. The Court of Appeal reversed that decision by a judgment dated 5 April 2023: Civil Appeal P295 of 2019. James C Aboud JA (with whom Mendonça and Moosai JJA agreed), held the plain meaning of section 93 encompassed the prosecution of both summary offences before a magistrate and safety and health offences before the Industrial Court (para 17). Section 97B, in contrast, creates a two-year limitation period for civil proceedings, and does not apply to safety and health offences (para 22). This conclusion was reinforced by the use of the expression "cause of action" in section 97B which is the language of civil law (para 21).

11. On 1 November 2023, the Court of Appeal granted the Authority final leave to appeal to the Judicial Committee of the Privy Council. In short, the Authority contends that the Court of Appeal was in error in overturning the decision of the Industrial Court. If section 93 is to be read as applying to the criminal jurisdiction of the Industrial Court and section 97B is to be read as applying only to its civil jurisdiction, then there is an inconsistency between the two provisions and unacceptable anomalies arise. The answer, it submits, is to read section 97B as providing the time limit for all proceedings in the Industrial Court, both civil and criminal, as the Industrial Court held.

12. However, to the extent that both interpretations of the relevant provisions – that of the Industrial Court and that of the Court of Appeal – are permissible or available, the Authority submits that settled practice argues in favour of the Industrial Court's interpretation.

The statutory context

13. The Act was first enacted in 2004 but only came into operation on 17 February 2006 (see section 2). By the time of commencement, it had already been subject to amendment. The original version of the Act was enacted in Act No 1 of 2004 and the version which eventually came into operation was as amended by Act No 3 of 2006. This is the version referred to below (unless otherwise stated).

14. The Authority was established by section 64 of the Act, with overall responsibility for supervising the operation of the Act and enforcing its provisions. The Agency was established by section 69 of the Act as the executive arm of the Authority. The Agency includes an inspectorate, headed by the Chief Inspector appointed under section 70(1) and staffed by such further inspectors as are appointed or designated by the Minister under section 71(1), with the powers and functions given to them by sections 72, 73 and 74. The inspectors are empowered by section 80 to bring prosecutions under the Act. The Board understands that the common practice now is for inspectors of the Agency to bring prosecutions in the name of the Agency, and for that purpose to describe the complainant, as in the present case, as the "Occupational Safety and Health Authority and Agency".

15. Before the Act was first introduced, health and safety type offences were only triable as summary offences under the Summary Courts Act (Chap 4:20). Ordinary rules of criminal procedure and evidence applied, and these offences were tried in the Magistrates' Court. The time limit for bringing a prosecution for these offences, as with all summary offences, was six months.

16. This position was largely unchanged by the Act as first enacted (in its original form as Act No 1 of 2004). Section 83(1) (in original form) provided that contravention of its provisions was an offence to be dealt with in the summary courts:

> "83. (1) Notwithstanding anything contained in this Act, but subject to subsection (2), where a person contravenes a provision of this Act or any Regulations made thereunder or fails to comply with any prohibition, restriction, instruction or directive issued under this Act or any such Regulations, he commits an offence and is liable to be dealt with in accordance with the provisions of the Summary Courts Act." (Emphasis added)

The six-month time limit in section 93 of the Act undoubtedly applied in respect of prosecutions for these offences.

17. As originally enacted, the only safety and health offence created by the 2004 version of the Act was created by section 10(1A). Section 10(1) imposed a duty on every employee while at work (among other things) "to take reasonable care for the safety and health of himself and of other persons who may be affected by his acts or omissions at work". Section 10(1A) then provided: "A person who refuses to comply with subsection (1) commits a safety and health offence and is subject to the jurisdiction of the Industrial Court."

18. The Act retains certain summary offences. These are generally identified in the Act by the use, when prescribing the penalty, of the words "… liable, on summary conviction, to …" (see for example sections 11(2), 13(9), 26(2), (10) and (16), 46(4), 47(2), 48(6) and (7) of the Act). Section 67 of the Interpretation Act (Chap 3:01) provides that where an offence is declared to be punishable on summary conviction, the procedure for prosecution of the offence shall be in accordance with the Summary Courts Act.

19. In addition to section 10(1A) (which remains in the same form as originally enacted), the Act has also created a series of additional safety and health offences which generally fall within the jurisdiction of the Industrial Court. Thus section 83(1) (as amended) now provides:

> "83. (1) Subject to subsection (2), where a person contravenes a provision of this Act or any Regulations made thereunder or fails to comply with any duty, prohibition, restriction, instruction or directive issued under this Act or any such Regulations, he commits a safety and health offence and is subject to the jurisdiction of the Industrial Court unless otherwise specified.
>
> (2) A competent person, employer, occupier or owner of premises only commits an offence under this Act or

> Regulations made thereunder if it is proved that he failed to take reasonable steps to prevent the commission of the offence.
>
> (3) Where an offence under this Act or Regulations made thereunder is proved to have been committed with the consent, connivance or acquiescence of, or to have been facilitated by neglect on the part of a director, manager, secretary or other officer of a company, such director, manager, secretary or other officer, as well as the company, is liable to be proceeded against for the commission of the offence." (Emphasis added)

20. It follows that unless an offence under the Act is specified as a summary offence, it is treated as a safety and health offence within the Industrial Court's jurisdiction. Section 83(2) and (3) cover both safety and health and summary offences.

21. In addition to the two broad categories of offence created by the Act (summary offences and safety and health offences), there is a third (slightly anomalous) category of offences under the Act which are not expressly designated as summary or safety and health offences. Two provisions (sections 18(5) and 55(2)) create offences where no penalty is prescribed, and the offences are not described as safety and health offences; and section 10(2) creates an offence that is triable on indictment or as a summary offence (presumably depending on seriousness). Section 85 (set out below) may apply to these offences. It provides so far as material:

> "85. (1) Subject to the provisions of this Act, any person who commits an offence under this Act for which no penalty is expressly provided, is liable, on summary conviction to a fine of twenty thousand dollars and to imprisonment for one year, and if the offence, other than a safety and health offence, in respect of which he was convicted is continued after the conviction, he is liable to a further fine of ten thousand dollars for each day on which the offence continues.
>
> (2) A person who commits a safety and health offence under this Act for which no penalty is expressly provided, is liable upon conviction to a fine of twenty thousand dollars."

22. The Act also provides, by section 83A, an avenue for people who are aggrieved by decisions taken or things done under the Act (typically an employee injured by an employer's failure, or a union on behalf of such an employee) to apply for redress. This includes compensation and redress in the form of a declaration. Section 83A is the only avenue by which to do so. It provides:

> "83A. An aggrieved person may apply to the Industrial Court for redress and the Industrial Court may make an award in favour of the aggrieved person and impose any penalty, other than a term of imprisonment, that a summary Court may impose in respect of that contravention or failure to comply."

23. In addition, there are four specific provisions in the Act which enable an aggrieved person to seek redress under section 83A: under section 6(13), an "employee may challenge a decision of the employer in accordance with section 83A"; under section 18(4), a "person who is aggrieved by a decision of the Chief Inspector may apply to the Industrial Court to have the matter determined"; under section 77A where an inspector acts outside the authority granted by the Act and the person is aggrieved by such action; and finally section 86 provides:

> "86. (1) Subject to subsection (2), where a person dies, is critically injured or develops an occupational disease in consequence of an employer, occupier or owner having contravened this Act, the employer, occupier or owner shall, without prejudice to any other liability or right of action arising out of the death or critical injury or disease, be liable to a fine of one hundred thousand dollars, or of an amount equivalent to three years pay of that person, whichever is greater, and the whole or part of the fine may be applied for the benefit of the victim or of his estate, or otherwise as the Court may determine.
>
> (2) In the case of an occupational disease, the employer, occupier or owner shall not be liable to a fine under this section unless the disease resulted directly from the contravention."

24. Consistently with the provisions of the Act referred to so far, section 4(1) of the Act, the interpretation provision, defines "Court" for the purposes of the Act, as follows:

> "'Court' –
>
> (a) in relation to criminal proceedings, means a Court of summary jurisdiction; or
>
> (b) in relation to proceedings under sections 83A and 97A, means the Industrial Court.

> 'Industrial Court' means the Court established under the Industrial Relations Act…"

25. The statutory provisions that are at the heart of this appeal are in Part XIV of the Act entitled "Offences, Penalties and Legal Proceedings". They are as follows:

> "93. A complaint for an offence under this Act shall be made within six months of the date on which the alleged commission of the offence came to the knowledge of an inspector. …
>
> 97A. All offences referred to as safety and health offences in this Act shall be determined by the Industrial Court.
>
> 97B. All proceedings under this Act shall be initiated no more than two years after the cause of action has arisen."

Approach to statutory interpretation

26. The well-established approach to statutory interpretation is not in dispute on this appeal. Courts are to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision: see *R (Quintavalle) v Secretary of State for Health* [2003] 2 AC 687, para 8 (per Lord Bingham of Cornhill); *R (O) v Secretary of State for the Home Department* [2023] AC 255, paras 29-31 (per Lord Hodge).

27. In *Quintavalle* Lord Bingham said at para 8:

> "The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

28. Another principle of statutory interpretation that may have relevance in this case is the presumption against absurdity. This was explained in *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28; [2023] 1 WLR 2594 at para 43 by Lord Sales:

> "The courts will not interpret a statute so as to produce an absurd result, unless clearly constrained to do so by the words Parliament has used: see *R v McCool* [2018] 1 WLR 2431, paras 23-25 (Lord Kerr of Tonaghmore JSC), citing a passage in *Bennion on Statutory Interpretation*, 6th ed (2013), p 1753. See now *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), section 13.1(1): 'The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by the legislature.' As the authors of *Bennion, Bailey and Norbury* say, the courts give a wide meaning to absurdity in this context, 'using it to include virtually any result which is impossible, unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief'. The width of the concept is acceptable, since the presumption against absurdity does not apply mechanistically but rather, as they point out in section 13.1(2), 'The strength of the presumption … depends on the degree to which a particular construction produces an unreasonable result'."

29. Settled practice is relied on by the Authority as an aid to interpretation in this case. In *Wathen-Fayed v Secretary of State for Housing, Communities and Local Government* [2025] UKSC 32 at paras 62-66, Lord Hamblen discussed this possibility. He referred to *Bennion, Bailey and Norbury* which states in section 24.20(2):

> "Where the meaning of a statute has been considered by the lower courts and business or other activities have been ordered on that basis for a significant period of time, the courts may be slow to overturn settled practice and understanding. However, the extent (if any) to which settled practice is relevant to interpretation is presently unclear."

30. He also discussed *R (N) v Lewisham London Borough Council* [2014] UKSC 62, [2015] AC 1259 where Lord Carnwath expressed the view that settled practice may be a legitimate aid to statutory interpretation in appropriate circumstances, including where a statute is ambiguous but has been the subject of authoritative interpretation in the lower courts, and businesses or activities have reasonably been ordered on that basis for a significant period without serious injustice (para 95). In the same case however, both Lord Neuberger (para 148) and Lady Hale (para 168) expressed strong reservations about whether there is a settled practice or customary meaning principle or rule. Lord Hamblen explained that *Wathen-Fayed* was not an appropriate case to address what amounts to settled practice and its relevance to statutory interpretation, continuing at para 66:

> "If there is such a principle, there is much to be said for the view that its relevance is limited to providing evidence that the statutory words are capable of conveying the settled meaning and that that meaning is workable in practice – see D Bailey, *Settled Practice in Statutory Interpretation* (2022) 81 CLJ 28."

31. The Board respectfully agrees. In any event, for reasons which are apparent below, this too is not an appropriate case to address the relevance of settled practice as an aid to statutory interpretation.

The Authority's case on statutory interpretation

32. The Authority accepts that safety and health offences under the Act are criminal offences, because they provide for a penalty for contravention of the law. Nonetheless, Mr Strang on behalf of the Authority relied on the definitions in section 4 which he said make a distinction between "criminal" proceedings, which refer specifically to proceedings in the summary courts, and proceedings under section 97A for the prosecution of safety and health offences in the Industrial Court. The implication he drew from this distinction is that, for the purposes of the Act, prosecutions under section 97A are not "criminal" proceedings as that phrase is used in section 4.

33. In other words, prosecutions under section 97A are not the same as ordinary criminal proceedings and the Act is to be read as treating criminal prosecutions in the Industrial Court as materially distinct from summary prosecutions in the summary courts under the Summary Courts Act.

34. Mr Strang relied on differences between prosecutions in the Industrial Court and those in the Magistrates' Court under the Summary Courts Act: for example, the Industrial Court is not bound by the rules of procedure and evidence but can regulate its own procedure, it decides cases on the civil standard of proof, and it has no powers of imprisonment. Of particular significance, he submitted, is that there are different rules for initiating cases under the two regimes: a prosecution of a safety and health offence under the Act does not require that the prosecution in the Industrial Court be begun by a "complaint" as that word is peculiarly understood in the context of summary offences under the Summary Courts Act which must be begun by a "complaint". In the context of the Act, references to a "complaint" are limited to the method of instituting proceedings in the Magistrates' Court for summary offences under the Summary Courts Act. Safety and health offences are different and distinct, and they are separately identified and instituted as such. This is supported by the fact that section 83A provides that in the Industrial Court (and only in the Industrial Court) the same proceedings can invoke both the civil and the criminal jurisdictions of that court; or to be precise, the criminal jurisdiction of the Industrial Court may be invoked by an application for a civil remedy.

35. Mr Strang submitted that it follows that properly construed, the reference to "proceedings" in section 97B encompasses both civil and criminal proceedings so that on the face of it, there could be an inconsistency between section 93 and section 97B. But the inconsistency is avoided by reading section 97B as part of a pair, with section 97A, so that section 97B is read as applying to *all* proceedings in the Industrial Court, including prosecutions of safety and health offences. Section 93, on the other hand, properly understood, refers only to criminal proceedings in the summary courts because the words "complaint for an offence" do not include prosecutions of safety and health offences within their scope. This is consistent with the definitions in section 4 which make a distinction between "criminal" proceedings, which are in the summary courts, and proceedings in the Industrial Court; and with the special meaning given to the word "complaint" in this context as exclusively relating to the initiation of a prosecution for a summary offence.

36. This result, he submitted, is consistent with the overall scheme of the Act, which provides for a distinct category of safety and health offence prosecuted in the Industrial Court, in respect of which the procedure is relatively "decriminalised" when compared to the summary courts.

Which time limit applies?

37. Attractively as these submissions were presented by Mr Strang, the Board does not accept them. The Board's reasons are as follows.

38. The starting point is section 83(1) which clearly operates as a default provision: it makes clear that unless a particular prohibited act or omission under the Act is specified to be the commission of a summary offence, all prohibited acts or omissions under the Act are safety and health offences and subject to the jurisdiction of the Industrial Court. The words "unless otherwise specified" can only relate to specification as summary offences. So, summary offences are preserved by the Act, but unless an offence is specified as a summary offence, it will be a safety and health offence. This is consistent with the fact that the Act is principally concerned with safety and health offences which make up the majority of offences under the Act. However, summary offences are covered too.

39. Several provisions in the Act apply both to summary and safety and health offences without distinction. Thus section 82A provides that in "any proceedings for an offence under any of the relevant statutory provisions consisting of a failure to comply with a duty or requirement to do something so far as is practicable, or so far as is reasonably practicable, or to use the best practicable means to do something" the onus of proving the limits of what is practicable in relation to the offence lies on the accused person. Likewise, subsections 83(2) and (3) (set out above at para 19) apply both to summary and safety and

health offences. These are clear indications that the Act is not seeking to draw the distinction between these two categories of offence suggested by Mr Strang.

40. By section 97A the Industrial Court has exclusive jurisdiction for determining all safety and health offences under the Act. Summary offences remain for the courts of summary jurisdiction under the Summary Courts Act. The two types of offence are dealt with under the Act, but both are criminal and the Board can see no basis for the inference Mr Strang sought to draw from this distinction that, for the purposes of the Act, prosecutions under section 97A are not "criminal" proceedings. Put another way, there is no reason to infer that prosecutions under section 97A are not criminal proceedings. It is true that the Industrial Court operates differently from the summary courts in terms of rules of evidence and procedure and cannot impose a sentence of imprisonment, but it deals with persons alleged to have committed offences, determines their guilt or otherwise, and can impose penalties on conviction. The Industrial Court is undoubtedly exercising a criminal jurisdiction in this respect and, as the Authority accepts, safety and health offences under the Act are criminal offences because they provide for a penalty for contravention of the law.

41. Against this background, the Board can see no principled basis for giving the word "complaint" in section 93 a technical meaning that applies only to summary offences. Complaint is an ordinary English word. It is not defined in the Act or given a special meaning by it. Where it is used in the Act there is no cross-reference to the Summary Courts Act.

42. Significantly, section 80 empowers an inspector to "prosecute or conduct before the Court any complaint or other proceedings arising under this Act or in the discharge of his duties as an inspector." Clearly, "complaint" in section 80 has its ordinary, non-technical meaning, as a natural descriptor for a situation where an inspector wishes to complain about a breach of a provision of the Act. Given that the bulk of offences an inspector would wish to complain about and prosecute under the Act are safety and health offences, "complaint" reads naturally as relating both to those offences and to summary offences. Read fairly, this reference to a "complaint" cannot be restricted to summary offences.

43. Likewise, section 91(1) provides, "In proceedings under this Act, a complaint may state the name of the ostensible employer, occupier or owner, as the case may require." This provision also draws no distinction between the summary and safety and health jurisdictions. There is no sensible reason why it should, or why the word "complaint" in this provision should be interpreted as restricted to summary offences. To do so makes little sense.

44. In short, nothing in the wording of any of these provisions suggests that "complaint" has a technical meaning that restricts its application to prosecutions for summary offences only. It follows that "complaint" in section 93 relates to the initiation of both summary and safety and health prosecutions. Section 93 therefore applies to the prosecution of all criminal offences under the Act; that is, both safety and health offences on the one hand, and summary offences on the other. Time is expressed to run from the date of knowledge of the commission of the offence. No distinction is drawn between the two categories of offence. It is clear to the Board (even without reference to the marginal note to section 93 "Limitation of time for prosecution") that section 93 provides the time limit for the prosecution of *all* criminal offences under the Act.

45. Mr Strang submitted that before the amendments to the 2004 version of the Act, section 93 could only have referred to prosecutions in the summary courts, because until its subsequent amendment, the offences in the 2004 version of the Act were all to be prosecuted in the summary courts and the original version of section 83(1) (see para 16 above) did not create offences to be prosecuted in the Industrial Court. Therefore, he submitted that the wording of section 93, as originally drafted, was intended to refer only to complaints in the summary courts. The simultaneous addition of sections 97A and 97B (along with section 83A) indicate that a different scheme and time limit for such prosecutions was enacted. The Board does not accept these submissions. It can see no reason to conclude that the scope of section 93 was not widened to include safety and health prosecutions in the Industrial Court and thereby maintain the same six-month time limit for prosecutions as had previously existed for those same offences, albeit as offences attracting the Summary Courts Act jurisdiction rather than that of the Industrial Court. Put another way, the Board cannot see any good reason why there should suddenly have been an increase in the time limit for bringing a prosecution from six months to two years for these sorts of offences, without anything indicating that this should be so.

46. The Act draws a deliberate contrast between section 93 (concerning a complaint about the commission of an offence) and section 97B which concerns proceedings based on a cause of action. The reference to a "cause of action" more naturally refers to civil proceedings to secure a remedy under the Act (most obviously for the tort of breach of statutory duty), and such proceedings have a two-year limitation period.

47. The Act does provide for civil proceedings to be taken under the Act in section 83A. As already indicated, section 83A allows a person who is aggrieved to apply to the Industrial Court for redress. Although as Mr Strang submitted there are four specific provisions in the Act that provide for the right to apply under section 83A for redress (see sections 6(13), 18(4), 77A and 86(1) referred to above), these are not the only provisions that do so and none of them concern breaches of obligations under the Act. Rather, section 83A is a general provision affording a wider right to any person who is aggrieved by a contravention of or failure to comply with the Act. Aggrieved person is not a defined term. It must extend to cover employees, trade unions and others affected by a contravention of or failure to comply with the Act. The inspector is certainly an aggrieved

person for the purposes of section 92 which deals with appeals, and in the Board's view, there is no reason to think that an inspector cannot be an aggrieved person for the purposes of section 83A as well.

Ambiguity or inconsistency

48. It is true as Mr Strang submitted, that if the aggrieved person establishes a contravention or failure to comply under section 83A, the Industrial Court's criminal jurisdiction is then engaged, and the Industrial Court may impose any penalty (other than imprisonment) "that a summary Court may impose in respect of that contravention or failure to comply". However, that does not mean that proceedings under section 83A are criminal or even hybrid proceedings as Mr Strang suggested. The aggrieved person does not become a prosecutor, though the Industrial Court's criminal jurisdiction may be engaged. Moreover, it seems to the Board that the Industrial Court's discretionary power to impose a penalty must extend to penalties that it (the Industrial Court) may impose by virtue of its jurisdiction in relation to safety and health offences. It would be odd otherwise for the Industrial Court to be clothed with jurisdiction to impose penalties that can be made by summary courts, but not penalties it has the jurisdiction to impose in any event. In that sense, this is a further provision that appears to negative the distinction Mr Strang sought to draw between summary offences on the one hand and safety and health offences on the other.

49. Mr Strang submitted that an unacceptable anomaly would arise if an aggrieved person, by application under section 83A, would have a two-year time limit in which to apply for redress and thereby also invoke the criminal jurisdiction of the Industrial Court, whereas the Authority (assuming it is not an aggrieved person entitled to bring proceedings under section 83A) would only have a time limit of six months in which to invoke the same criminal jurisdiction by a complaint under section 93. The short answer to this point as the Board has explained, is that there is no reason why the Authority or an inspector in the Authority cannot be an aggrieved person.

50. The Board accepts that section 83A may create an anomaly in that the penalty imposed by the Industrial Court (on an application for redress by an aggrieved person) may be in relation to an offence that was not prosecuted within the time limit set by section 93. In other words, this provision creates a potential route to making a criminal complaint outside the six-month time limit. However, the anomaly is not so significant as to cause the Board to reach a different view. Moreover, it is quite possible to envisage circumstances that justify the Industrial Court imposing a penalty notwithstanding the expiry of the primary limitation period for prosecuting a complaint. Take a case, for example, where the facts of an incident are unclear so that proceedings for a safety and health offence are not commenced within the primary limitation period but, following proceedings for redress by an aggrieved employee under section 83A, facts emerge that indicate a serious breach and justify imposition of a penalty.

51. Section 91(2) has a potentially similar anomalous effect. It provides:

> "(2) Where, with respect to or in consequence of any accident in an industrial establishment, a report is made by a commission of enquiry or a coroner's inquest is held, and it appears from the report or from the proceedings at the inquest that this Act was not complied with at or before the time of the accident, summary proceedings against the person liable to be proceeded against in respect of such non-compliance may be commenced at any time within six months after the making of the report or the conclusion of the inquest."

52. This enables a prosecution of "summary proceedings" to be brought outside the Act's primary limitation period where it emerges from an enquiry report or a coroner's inquest into a workplace accident that the Act was not complied with at or before the time of the accident. The words summary proceedings do not appear to have been used in their technical sense to convey proceedings for a summary offence only under the Summary Courts Act but extend to cover safety and health offences too. Where something significant emerges in these circumstances, summary proceedings can be brought against the person liable to be proceeded against at any time within six months of the report or conclusion of the inquest. This makes obvious sense. Moreover, the use of the phrase "summary proceedings" supports the conclusion the Board has reached that no distinction is drawn by the Act between summary and safety and health offences.

53. For all these reasons, the Board is in no doubt that section 97B creates a two-year limitation for civil proceedings and does not apply to safety and health offences or other criminal offences under the Act. Complaints in respect of summary and safety and health offences all fall within the six-month time limit in section 93. There is no irreconcilable or other inconsistency as between sections 93 and 97B of the Act. On the contrary, the Act is consistent and creates a rational scheme for the prosecution of criminal offences under the Act, all of which (without distinction) must be commenced within six months of the inspector's date of knowledge of commission of the offence. Civil proceedings in the Industrial Court (pursuant to section 83A) must be brought within two years of the cause of action arising pursuant to section 97B.

54. No ambiguity arises and the question of settled practice also does not arise in these circumstances. The Board recognises the consequences of this decision as described by the Authority but, as the Authority accepts, there is no scope for any principle of settled practice to operate.

Conclusion

55. The appeal is dismissed.