

BETWEEN:

LIAT (1974) LIMITED - Appellant
and
LEONARD TOMLINSON - Respondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Moe
The Honourable Mr. Justice Byron

Appearances: J. Simon and Mrs. A. Murdoch for the Appellant
Miss B. Lake, Q.C., and Mrs. C. Hill for the Respondent

1991; Feb. 26,
June 17.

JUDGMENT

BYRON, J.A.

The appellant has appealed against a judgment of the Industrial Court delivered on 14th September, 1990 in which it was ordered to pay to the respondent compensation for unfair dismissal and a fine for contempt of Court, after the appellant had removed the respondent from its payroll during the continuance of a trade dispute which the respondent had referred to the Court, and the Court had restrained the appellant, by interlocutory injunction from purporting to dismiss him pending the determination of that reference.

This appeal challenges the jurisdiction of the Industrial Court to grant compensation for breach of such an injunction on the basis of a finding that the employee had been unfairly dismissed. The amount of the compensation awarded was also challenged.

In dealing with this appeal I think that the jurisdictional issues will be fairly covered by considering the questions

- (1) Did the Industrial Court have jurisdiction to make the interlocutory injunction
- (2) Did it have jurisdiction to hear and adjudicate on allegations of its breach
- (3) Did it....

- (3) Did it have the power to impose sanctions both punitive and compensatory in nature
- (4) Did it have the power to award sanctions of a compensatory nature in respect of which no claims had been made in the reference.

BACKGROUND FACTS

The respondent was employed with LIAT as a pilot since 25th November, 1968. He went on sick leave on 3rd December, 1988. He underwent transsphenoidal surgery for the removal of non-secreting pituitary macroadenoma.

On 15th September, 1989 the Manager of the Neomedical Certification Division of the U.S. F.A.A. wrote the respondent.

"Our review of your medical records has established that you are eligible for a first-class medical certificate."

On 2nd November, 1989, Dr. R.E. L. Williams issued a certificate as follows:

"This is to certify that I have examined Mr. Leonard Tomlinson and he is found fit to fly. However if he is to perform to his maximum capacity it is recommended that he takes hot meals every 4-6 hours."

On that date the respondent had reported for duty but was not assigned any duties. Instead, he was informed that the appellant's policy was to pay its pilots a meal allowance in lieu of meals and that the Doctor's recommendations, if followed, would disrupt the airline schedules.

At a meeting on 10th November, 1990 the respondent was advised by the appellant that there was no guarantee that the Doctor's recommendations could be complied with and therefore until the matter was clarified he was not fit for work.

The respondent consulted his solicitor and eventually the dispute procedure was instituted and proceedings undertaken.

On the 4th April, 1990 the respondent filed a reference in the Industrial Court to question whether as an employee he was entitled to an allocation of adequate time for proper meals and whether a term in the Collective Agreement between the LIAT's Pilots Association and the appellant providing for the payment of a stipend in lieu of a meal break contravened the Antigua Labour Code and proper safety standards.

/On 6th....

On 6th April, 1990 the respondent filed his Memorandum setting out the details of his claim and he also made application for an ex parte interlocutory injunction. This injunction was supported by an affidavit and on the same day it was heard and an Order made as follows:

"It is hereby ordered and directed: -

- (1) That the Employer be restrained and an injunction is hereby granted restraining him, whether by himself, or his servants, or agents, or any of them or otherwise howsoever from purporting to dismiss the Employee for any cause pending the determination of the issues, the subject-matter of of the Reference or until further Order.
- (2) That the Employer be restrained and an injunction is hereby granted restraining him from pursuing the present refresher training programme to which the employee has been subjected pending the determination of the issues, the subject-matter of Reference or until further Order.
- (3) That the amended ex parte application as granted by the President on 6th April 1990 be served on the Employer with return date not later than the 3rd day of April 1990.

AND FURTHER TAKE NOTICE that failure to comply with this Order will be construed as CONTEMPT OF COURT

AND ALSO the Court may determine the matter as it deems fit."

It was this Order that the appellant contends the Industrial Court had no jurisdiction to make.

On 17th April, 1990 the appellant filed an application for the dismissal of the ex parte interlocutory injunction. On 23rd April, 1990 the Industrial Court dismissed the application by the appellant and confirmed the interlocutory injunction. On 27th April, 1990 the appellant filed its Memorandum setting out the details of its position with regard to its opposition to the respondent's claims.

On 21st May, 1990 the Reference came on for hearing. There was an adjournment to 23rd and the hearing continued on 24th and 25th May when it was adjourned to 2nd July, 1990. At that time evidence had been adduced by the respondent and one witness on his behalf, Dr. R.E.L. Williams.

On 30th May, 1990 the appellant wrote the respondent a letter (indicating that payment of his salary would cease from 30th May, 1990) as follows:-

/"Dear.....

"Dear Mr. Tomlinson,

The Company has ceased to pay your salary as of the 30th May, 1990. The Company has taken this action because at the present moment you are not performing any duties and it cannot justify paying your salary if you are not actually at work. Moreover your Antiguan licence is not current thereby permitting you to operate the Company's Aircraft. It must be clearly understood that you are still in the employment of the Company and the payment of your salary shall recommence when you resume your duties.

Yours sincerely,
(Signed)
for C.A. Potter (Mrs.)
General Manager Personnel &
Administration

C.C. Managing Director
General Manager Operations
Capt. Murray
Steve Browne."

It was this letter which the Industrial Court held repudiated the contract and was in breach of its Order of 6th April, 1990.

On 2nd July, 1990 the appellant did not attend the Court at all. The appellant's solicitor sent the Court a letter apologising for his absence on the ground of illness. On that day the Court commenced hearing the respondent's application for contempt of Court proceedings against the appellant.

On 4th July, 1990 the Court wrote the appellant's solicitor requesting that he agree to dates for continued hearings. This proved ineffective.

On 25th July, 1990 the Court wrote the appellant's solicitor, including the notes of evidence and exhibits tendered on 2nd July, 1990 and ordered that any submissions, arguments or evidence in reply, be tendered to the Court in writing not later than 17th August, 1990 in accordance with section 8(5) of the Industrial Court Act, 1976.

On 27th July, 1990 the Court received a letter from the appellant's solicitor opposing the application of 8(5) to the proceedings and indicating that he would be out of the State from 1st August, to 4th September, 1990.

On 3rd August, 1990 a new solicitor for the appellant wrote the Court asking for clarification of the letter of 25th July, 1990 and the Court responded by letter dated 13th August, 1990.

/On 20th....

On 20th August, 1990 the new solicitor for the appellant asked for extension of time to 21st August, 1990 for making written submissions and on 22nd August, 1990 filed its submissions.

On 3rd September, 1990 hearing resumed. The appellant called two witnesses and the respondent returned to the stand and was cross-examined. Argument was advanced by solicitors for both sides.

On 14th September, 1990 the Court delivered its judgment.

It found inter alia:

- (1) That the Order of the Court had been breached and the employee was entitled to compensation under section 10(1)(b) of the Industrial Court Act 1976.
- (2) That there had been contempt of Court or a wilful disregard of the Court's Order to retain the status quo until the determination of the substantive issues before it.
- (3) The employer's conduct made it impossible for the employee to go on working and showed an intention no longer to be bound by the contract. The employee accepted the repudiation of the employer who thereby effectuated the dismissal of the employee. In these circumstances the employee is entitled to substantial remuneration.

DID THE INDUSTRIAL COURT HAVE THE POWER TO ORDER THE INTERLOCUTORY INJUNCTION?

The Industrial Court is created by the Industrial Court Act 1976 section 4(1) which prescribes:

"For the purposes of this Act, there is hereby established an Industrial Court which shall have the jurisdiction and powers conferred on it by this Act."

This section is contrasted with the Industrial Relations Act of Trinidad and Tobago section 4(1) which prescribes:

"For the purposes of this Act, there is hereby established an Industrial Court which shall be a Superior Court of Record and shall have in addition to the jurisdiction and powers conferred on it by this Act all the powers inherent in such a Court."

I agree with Counsel for the appellant that the legislature intended that the Industrial Court should not be a Superior Court
/of Record....

of Record with the inherent jurisdiction associated with such a Court but rather that it should exercise the statutory jurisdiction prescribed by the Industrial Court Act 1976 hereinafter referred to as the Act.

The relevant sections of the Act are 7(1) which deals with jurisdiction and 8(1) with procedure.

The jurisdiction of the Court is conferred by section 7 of the Act. Section 7(1) prescribes:

- "(1) The Court shall have jurisdiction -
 - (a) to hear and determine trade disputes referred to it under this Act;
 - (b) to enjoin a trade union or other organisation of employees or other persons or an employer from taking or continuing industrial action;
 - (c) to hear and determine any complaints brought in accordance with this Act as well as such matters as may from time to time be referred to it under this Act."

The procedure of the Court is prescribed by section 8:

Section 8(1) prescribes:

- "(1) The Court, as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its jurisdiction, shall have all such powers, rights, and privileges as are vested in the High Court of Justice on the occasion of an action."

Counsel for the appellant submitted that the jurisdiction to grant injunctions conferred by section 7(1)(b) was limited to restraining industrial action and did not include any power to grant interlocutory injunctions to restrain the dismissal of an employee and neither does section 8(1) if properly construed in accordance with the *eiusdem generis* rule.

Counsel for the respondent submitted that section 8(1) does confer that power and argued that the whole tenor of the Act and the Antigua Labour Code required the exercise of such jurisdiction unless a contrary intention was expressed in the statutes.

Counsel for the appellant referred to *Benton Statutory Interpretation*, para. 378:

"The latin words *eiusdem generis* (meaning 'of the same kind or nature'), have been attached to a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character.

/The principle.....

The principle may apply whatever the form of the association, but the most usual form is a list or string of genus-describing terms followed by wider residuary or sweeping-up words."

He submitted that the words "other matters" should not be given such a general interpretation as would make the power of the Industrial Court equal and co-extensive with the High Court and that none of the matters specified before that phrase related to any equitable jurisdiction such as granting injunctions.

The problem with this argument is identified in Benton (supra) at para. 379:

"For the ejusdem generis principle to apply there must be a sufficient indication of a category that can properly be described as a class or genus, even though not specified as such in the enactment."

When one examines the matters with which the subsection deals there are basically 4 matters, (i) attendance and examination of witnesses, (ii) production and inspection of documents, (iii) enforcement of Court Orders, (iv) other matters necessary or proper for the due exercise of the Court's jurisdiction. The closest that one can get to identify a category would be "matters Necessary for the due exercise of the Court's jurisdiction".

I cannot agree that there is any genus describing terms which limit the general words "other matters" so as to exclude anything which is necessary or proper for the due exercise of the Court's jurisdiction. I think that the legislature intended to be concise in ensuring that the Industrial Court had all the powers, rights, and privileges which would guarantee its ability to be effective in discharging the functions for which it was established. It would frustrate the whole purpose of the section if there was a matter necessary or proper for the exercise of the Court's jurisdiction, which has been vested in the High Court, but was held to be inapplicable to the Industrial Court merely because it did not relate to the attendance and examination of witnesses, the production and inspection of documents or the enforcement of the Orders of the Court.

I would therefore reject the contention that section 8(1) should be so restrictively construed.

The High Court of Justice does have the power to grant interlocutory injunctions to restrain the dismissal of employees pending the final determination of actions before it. No argument was advanced in opposition to this proposition but I will nevertheless list some examples of the exercise of this power.

/In Hill....

In Hill v C.A. Parsons & Co. Ltd. (1971) 3 All E.R. 1345 the litigation was commenced after the employer had written terminating the employment. The employee issued a writ for wrongful dismissal and asked for an interim injunction.

The Court of Appeal granted the interlocutory injunction (Stamp L.J. dissenting) restraining the defendant from treating a letter addressed to the plaintiff which purported to dismiss the employee as having determined his employment until trial of the action.

At 1350 Denning M.R. in dealing with the argument that an injunction to restrain dismissal was really specific performance of the contract of services and that in the ordinary course the Court will not do that for it is inconsistent with the confidential nature of the relationship that it should continue contrary to the will of the parties thereto said:

"The Court can in a proper case grant a declaration that the relationship still subsists and an injunction to stop the master treating it as at an end. That was clearly the view of the Privy Council in the latest case on the subject. Francis v Municipal Councillors of Kuala Lumpur 1962 3 All E.R. 633 at 637, where Lord Morris of Borth-y-Gest said:

".....when there has been a purported termination of a contract of service a declaration to the effect that the contract of service still subsists will rarely be made."

He added that in 'special circumstances' it may be made.

".....It may be said that, by granting an injunction in such a case, the Court is indirectly enforcing specifically a contract for personal services. So be it. Lord St. Leonards L.C. did something like it in Lumley v Wagner (1843-60) All E.R. 369. And I see no reason why we should not do it here."

In Jones v Lee (1980) I.C.R. 310 the litigation was also commenced after the employer had purported to dismiss the employee by letter. The substantive relief which the employer sought was an injunction to restrict his dismissal without the consent of the relevant authority given after a hearing in accordance with his condition of tenure. The Court of Appeal granted an interlocutory injunction restraining the employer from treating him as being dismissed pending the trial of the action.

In Powell v London Borough of Brent (1987) IRLR 466 the employer had not purported to dismiss the employee. The litigation was to compel the employer to honour an agreement to promote the employee.

/After....

After applying, being interviewed and then being told by telephone that she was selected for the new post by her employers, the employee was told to revert to her old position after one of the unsuccessful applicants for the job protested.

The Court of Appeal granted an interlocutory injunction requiring the employer to treat her as if she was properly employed in the new post and to stop it from advertising or otherwise filling the post until it was determined at the Trial of the action whether she had been validly and effectively appointed to the office in question.

In Waddock v London Borough of Brent (1990) IRLR 223 the employee had received a letter dismissing him after he refused to comply with an order reallocating him to another division. He issued a writ claiming that the reallocation was unreasonable and his dismissal wrongful. The High Court granted an interlocutory injunction requiring the employer, pending trial, to allow the plaintiff to work for them in the newly allocated division at the usual rate of pay, on his undertaking to work in accordance with the orders, instructions and wishes expressed by his team leader or any other member of the department having authority over him.

The above cases are examples where the High Court of Justice has exercised the power to grant interlocutory injunctions restraining employers from dismissing or treating employees as being dismissed pending the final determination of an action between them.

Is such a power necessary and proper for the exercise of the jurisdiction of the Industrial Court? In 1978 Sachs L.J. in Hill v Parsons (supra) at 1355 expressed views with which I respectfully agree when he said:

".....it seems appropriate to repeat that in matters of practice and discretion it is essential for the Courts to take account of any important changes in that climate of general opinion which is so hard to define but yet so plainly manifests itself from generation to generation. In that behalf account must, inter alia, be taken of the trend of the views of the legislature explained on behalf of the community in its enactments and also of the trend of judicial decisions. Over the last two decades there has been a marked trend towards shielding the employee, where practicable from undue hardships he may suffer at the hands of those who may have power over his livelihood - employers and trade unions. So far has this now progressed and such is the security granted to an employee under the Industrial Relations Act 1971 that some have suggested that he may now be said to acquire something akin to a property in his employment. It

/surely then....

surely then is for the Courts to review and where appropriate to modify if that becomes necessary, their rules of practice in relation to the exercise of a discretion such as we have today to consider - so that its practice conforms to the realities of the day."

In the Antigua Labour Code of 1975 one of the public policies which were therein declared to underlie its provisions was stated at section C2(b) thus:

"As an individual works at a job, he gradually earns an equity therein above and beyond his periodic wages, privileges and allowances; and the maintenance of this equity requires protection."

The Industrial Court Act 1976, section 10 confers wide powers on the Industrial Court, for example:

Section 10(1) (a) the Court may make an order or award including a provisional or interim order or award; section 10(3) requires the Court to make orders as it considers fair and just; and section 10(4) specifically empowers the Court to order the re-employment or reinstatement of a dismissed employee.

In my judgment the wide jurisdiction conferred by section 7(1) of the Act when coupled with the powers in section 10 require that the Court be able to make orders for the preservation of the status quo pending the trial of issues which come before it. The power to order reinstatement in my view must necessarily include the power to restrain dismissal. I think that the ability of the Industrial Court to exercise its jurisdiction would be severely handicapped if the power to grant interlocutory injunctions did not exist. In my view that power is necessary and proper for the due exercise of the jurisdiction of the Court.

No argument was advanced against the discretion of the Court in making the Order. However when one considers that it was alleged to the Court that the employer was preparing to victimise the employee or otherwise frustrate the exercise of the Court's jurisdiction by terminating the employment on a spurious ground before the Court could adjudicate on the issue which was before it, it reinforces the view that I hold. If the Industrial Court did not have the power to order the interlocutory injunction it made, the trial process upon which it had embarked would have been reduced to an exercise in futility and that is exactly what section 8(1) intended to prevent.

In my judgment therefore the Industrial Court did have the power to make the interlocutory injunction it did.

/DID THE.....

DID THE COURT HAVE JURISDICTION TO HEAR AND ADJUDICATE ON ALLEGATIONS OF BREACH OF THE INTERLOCUTORY INJUNCTION?

In Clarke and Others v Chadburn and Others (1995) 1 All E.R. 211
Sir Robert Megarry v-C said at 213:

"I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed. Wilful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal."

I agree with this proposition of the Law. Section 8(1) of the Industrial Court Act 1976 gives the Industrial Court the same power as is vested in the High Court of Justice to enforce its orders and adjudicating on allegations of breach of an injunction is a power that is exercised by the High Court and it is unnecessary for me to cite any authority for this proposition either.

In addition the Industrial Court Act 1976 deals with contempt of Court,

Section 7(2)(b) as amended by the Industrial (Amendment) Act 1985 prescribes:

"The Court shall have power -

.....

(b) to impose fines for a contempt consisting of failure to comply with its orders or awards but such fines shall not exceed ten thousand dollars and shall be payable within a definite time being not less than twenty-one days from the imposition thereof."

Section 7(3):

"Proceedings for contempt for failing to comply with an order or award of the Court shall be commenced by an application by the person or organisation for whose benefit the order or award was made, and shall be in such form as may be prescribed. The application shall be served on the person who will be affected thereby not less than three clear days before the hearing thereof."

It can be clearly seen, therefore the Industrial Court Act 1976 specifically empowers the Court to hear and adjudicate on allegations of breaches of injunctions.

In dealing with this issue the Court had to look at the Order it had made and which was alleged to have been broken. It had ordered that the respondent be restrained "from purporting to dismiss the employee". It is a matter of elementary logic that in order to determine whether that order was breached the Court had to consider

/the question.....

the question did the employer by its letter of 30th May, 1990 purport to dismiss the employee. Unless that question was considered and answered in the affirmative the proceedings for contempt had to fail. It was therefore necessary for the Court to determine whether the appellant's letter of 30th May, 1990 constituted a dismissal or a purported dismissal.

DID THE INDUSTRIAL COURT HAVE THE POWER TO IMPOSE SANCTIONS OF BOTH PUNITIVE AND COMPENSATORY NATURE?

The Industrial Court Act 1976, section 7(2)(b) (supra) gives the power to impose punitive sanctions by way of fine for contempt of Court.

Section 10(1)(b) gives the power to award compensation in addition to its powers to punish under section 7(2)(b),

"10(1) The Court may in relation to any matter before it -

.....

(b) without prejudice to and in addition to its powers under section 7(2), award compensation on complaints brought and proved before it by a party for whose benefit the order or award was made regarding any breach or non-observance of an order or award or any term thereof (other than an order for the payment of damages or compensation)."

It is therefore clear that the Court has the power to award compensation in addition to imposing punitive sanctions.

DID THE COURT HAVE POWER TO AWARD SANCTIONS OF A COMPENSATORY NATURE IN RESPECT OF WHICH NO CLAIM HAD BEEN MADE?

Section 24 of the Industrial Court Act 1976 as amended by the Industrial Court (Amendment) Act 1985 provides:

"24 A(1) -

In making its award, the Court shall not be restricted to the specific relief claimed by the parties or to the demands made by parties in the course of the trade dispute but may include in the award any matter or thing which it thinks necessary or expedient for the purpose of settling the trade dispute."

I interpret this to mean that once the Court is properly seized of a trade dispute it is not restricted to the specific relief claimed by the parties but in making its award may include any matter it thinks necessary or expedient for settling the dispute. The intention of the legislature that the Court should have the power to go outside the framework of what is claimed in order to do justice to the parties is unambiguous. In my judgment therefore the Court had the power to do that.

/This leaves.....

This leaves the question as to whether that power should have been exercised in this case.

Counsel for the appellant submitted that by dealing with the issue of compensation in the way it did the Court deprived the appellant of the opportunity of being heard on the issue of whether the dismissal was wrongful and as to the quantum of damages to be applied because there was no dispute properly brought before the Court for unfair dismissal or anything akin thereto.

The reference before the Court was limited to the respondent's claim for determination as to his right under his contract of employment to be allowed time for meals every 4-6 hours. It is true that nothing in that dispute relates to the question of dismissal, and there could have been no dispute with regard to dismissal because the respondent was still employed.

When the reference was filed the respondent applied to the Court for protection because he feared that the appellant would have arbitrarily dismissed him and the Court made an order restraining the appellant from doing that, pending the determination of the trial.

While the trial was in progress, after the respondent and one witness Dr. Rodney Williams had given evidence the proceedings were adjourned from 25th May, 1990 to 2nd July, 1990. It was during that adjournment that the appellant wrote the respondent and told him that he was removed from the payroll.

It may be significant that on 2nd July, 1990 the appellant did not appear. It is true that its solicitor had tendered a letter indicated that he was ill. The Court proceeded to hear the respondent's application that the appellant had been in contempt of Court, and took evidence from the respondent. The Court then adjourned the hearing and by letter requested the appellant to agree on dates for continued hearing. This proved ineffective. The Court then sent the appellant's solicitor notes of the evidence and exhibits it had taken and fixed a date for the appellant to reply.

The appellant eventually complied with that Order and on 3rd September, 1990 the hearing continued. The employer had submitted written submissions prior to the hearing. These submissions admitted the letter and that payment had ceased. But they alleged that they were entitled to cease paying the respondent and contended that they were not in breach of the injunction.

/On 3rd September....

On 3rd September, 1990 the appellant adduced evidence through 2 witnesses, Mr. Phillips, Director of Civil Aviation for the Eastern Caribbean and Captain Delilse, General Manager (Operations) L.I.A.T.

On 5th September, 1990 the respondent was recalled to the witness stand where he gave further evidence and was cross-examined by the appellant.

When the hearing resumed on 2nd July, 1990 the dispute had now changed from being related to his rights under the contract to his rights as a result of the termination of his contract.

The hearings that ensued thereafter were predicated by the issue of the appellant's contempt of Court. The question, "did the appellant's letter of 30th June, 1990 repudiate the contract, or was it a purported dismissal of the respondent?" was necessarily included.

Counsel argued that the issue as to whether it was a dismissal was severable from the question as to whether the dismissal was unfair or wrongful. It was the appellant's contention that the appellant had a right to do what it did. The Court was bound to make findings on those questions.

The Court found that the removal of the respondent was a repudiation of the contract of employment and that the respondent having accepted the repudiation the employee had been dismissed, that the dismissal was a contempt of Court, that it was in circumstances that were harsh and offensive and not in accordance with good industrial relations practice, and that the behaviour of the employer was outrageous and outlandish.

In my view these findings were directly relevant to the issue with which the Court was confronted. They were the exact issues, even if not worded in the same way, of which the appellant was given notice in the contempt proceedings and the evidence adduced therein by the respondent, and these were the issues which the appellant addressed in the evidence it adduced. Once the Court had made these findings of fact what was it to do?

As I have already explained the Court has power to both punish and award compensation for contempt of Court. In this case the Court decided to both punish and award compensation, and as I have indicated then it is empowered to include in its award matters that are not claimed by the parties to the dispute. There was ample material before the Court to justify the exercise of its discretion in that manner.

/WAS THE.....

WAS THE AMOUNT ORDERED EXCESSIVE OR INADEQUATE?

Both the appellant and the respondent appealed against the amount awarded, the one alleging that it was excessive and based on wrong principles and the other that there were errors in computing the amount to the detriment of the respondent.

Counsel did not labour this issue. The findings of fact which the Court made were supported by the evidence before it and these findings provided a proper basis for the application of the principles employed by the Court. All of the heads of damage were required to be addressed once the employee was being compensated for his wrongful dismissal. He was entitled to the "basic award" under section C 44 of the Labour Code. The Court was entitled to award him compensation for immediate loss, the benefit of his contributory pension fund, as well as compensation for loss of future earnings including his fringe benefits during such period as it would reasonably take for him to get a job with comparable salary. The Industrial Court Act 1976, section 10(5) specifically gives the Court full power to make an award of exemplary damages where it finds that the dismissal was in circumstances that were harsh and unconscionable and definitely not in accordance with the principles of good industrial relations practice, and section 10(2) of the said Act gives power to make an order for costs in exceptional cases.

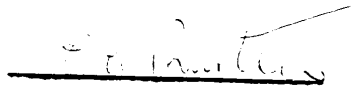
The respondent's argument that there was an error in computing his earnings was accepted as being accurate. He was not being paid on a monthly basis, but on a control period of 28 days, thus his annual emoluments were based on multiples of 13 times his emoluments and not 12 as the Court had computed.

While I have not been persuaded that the award was excessive, I do not think that in the circumstances it should be varied upwards to give effect to this error as the respondent has already been well compensated.

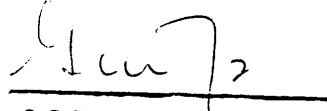
In the circumstances therefore I would dismiss the appeal.



C.M.D. BYRON,
Justice of appeal



L.L. ROTHAM,
Chief Justice



G.C.R. MOE,
Justice of Appeal