Trinity Term
[2020] UKPC 17
Privy Council Appeal No 0081 of 2015

JUDGMENT

Chief Personnel Officer (Appellant) *v* Amalgamated Workers' Union (Respondent) (Trinidad and Tobago)

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

before

Lord Kerr
Lord Wilson
Lord Carnwath
Lady Arden
Lord Kitchin

JUDGMENT GIVEN ON

13 July 2020

Heard on 10 February 2020

Appellant
Peter Knox QC
Olivia Wybraniec

(Instructed by Charles Russell Speechlys LLP)

Respondent
Anand Beharrylal QC
Lemuel Murphy
Ganesh Saroop
(Instructed by Alvin Pariagsingh (Trinidad))

LORD KITCHIN:

Introduction

1. In 1983 Mr Daniel Riley was employed by the Port of Spain Corporation (the Corporation) as a driver of one of its compactors. 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.

2. On 17 January 2002, after a trial in the Magistrates' Court, Mr Riley was acquitted. On 23 January 2002 the respondent, the Amalgamated Workers' Union (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 and instead, on 12 March 2002, began disciplinary proceedings against him on the basis of the same charge. In the meantime, he remained suspended.

3. The disciplinary hearing began on 22 March 2002 and continued on a number of separate days until 23 January 2007, some five years later, when the chairperson, Ms Laraine Alexander, adjourned it in order to write her report for the appellant, the Chief Personnel Officer (the CPO), who was the final decision-maker on behalf of the Corporation.

4. 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 on 26 March 2001 (the Collective Agreement). On 6 February 2007 the Union's representative wrote to the Corporation complaining about this failure and then, on 23 March 2007, the Union reported the matter to the Minister of Labour (the Minister) as a trade dispute. On 22 November 2007 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*".

5. On 6 March 2008, over a year after she had adjourned the hearing, 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.

6. This prompted the Union, by letter of 7 May 2008, to report to the Minister a second trade dispute. On 25 August 2008 the Minister certified this dispute 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*".

7. The hearing of the first trade dispute began in the Industrial Court on 30 January 2009. It continued over nine days until 3 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. This Order is effective today, November 9, 2012."

8. On 7 November 2012 the second trade dispute came on for hearing in the Industrial Court. It was met with an application by the CPO for its immediate dismissal in light of the order made in the first trade dispute which, so it was said, removed any possible grievance. The Union resisted that application on the basis that it was seeking exemplary damages, interest at 12% and costs, none of which had been ordered in the first dispute. 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 dispute.

9. Following the dismissal of the second trade dispute, the CPO appealed to the Court of Appeal against the order in the first trade dispute. It was argued on his behalf, in substance, that the court had exceeded its jurisdiction; that the order it had made was contrary to natural justice and unfair; and that its decision was irrational and wrong in law. 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.

10. The Court of Appeal dismissed the appeal and made no order for costs. It considered that the Industrial Court had well understood the extent of the first trade dispute and had found that there had been a significant breach of the grievance procedure and that this had resulted in substantial procedural unfairness. Further, the Industrial Court had broad powers under section 10 of the 1972 Act to make such directions and orders that it considered to be fair and just and, in the circumstances of this case, it was entitled to make the orders that it did.

This appeal

11. The CPO now appeals to the Judicial Committee of the Privy Council with the permission of the Court of Appeal. He does so on all the grounds he relied upon before the Court of Appeal but he also argues that the Industrial Court wrongly failed to take into account that, after his suspension, Mr Riley made substantial earnings from work he carried out more or less full time for the Volunteer Defence Force (as a paid volunteer soldier). The CPO says that these earnings ought to have been brought into account in deciding the financial award to which Mr Riley was entitled.

12. The Union responds that the CPO's appeal is devoid of merit because of the delay in dealing with the disciplinary proceedings. It argues that the length of time for which Mr Riley was suspended without pay effectively amounted to a dismissal. Further, the 1972 Act expressly gives the Industrial Court wide powers to make any order it thinks fair and just, and the orders it made were appropriate and rightly upheld by the Court of Appeal. What is more, it continues, the CPO having secured the dismissal of the second trade dispute on the basis of the order made in the first trade dispute, it would be wholly unjust to allow his appeal on the grounds relied upon, and the appeal should be dismissed under section 18(4) of the 1972 Act on the basis that no miscarriage of justice has occurred. The Union also takes a jurisdiction point: it argues that there is no right of appeal to the Board in cases originating in the Industrial Court.

13. The following issues therefore arise on this further appeal:

i) Does the Board have jurisdiction to hear this appeal?

ii) Given the nature of the first trade dispute, did the Industrial Court have the power to make the order it did or did it exceed its jurisdiction?

iii) Alternatively, did the Industrial Court make its ruling unfairly and in breach of natural justice or irrationally or is it otherwise wrong in law?

iv) Given the decision of the Industrial Court to dismiss the second trade dispute on the basis of the decision in the first, should the appeal be dismissed on the basis that no substantial miscarriage of justice has occurred?

v) If the CPO is right in saying that the award should be set aside, for what, if any, breach should Mr Riley be compensated in damages?

The legislative scheme

14. The first question to be decided is whether any appeal lies to the Board from a decision of the Court of Appeal of the Republic of Trinidad and Tobago determining an appeal from the Industrial Court. But before addressing this question, it is helpful to have an overview of some of the important aspects of the legislative scheme governing the establishment and operation of the court.

15. The Industrial Court was established by section 4 of the 1972 Act which provides, in subsection (1):

> "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."

16. Section 7(1)(a) confers jurisdiction on the Industrial Court to hear and determine trade disputes. The expression "trade dispute" is defined in broad terms in section 2(1), in essence, as any dispute between an employer and workers of that employer or a trade union on behalf of such workers, connected with the dismissal, employment, non-employment, suspension from employment, refusal to employ, re-employment or reinstatement of such workers.

17. Section 8(1) provides that the court, as regards 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, has all of the powers, rights and privileges as are vested in the High Court of Justice on the occasion of an action.

18. Section 9 confers considerable flexibility on the court as to its procedures. In particular, section 9(1) provides, among other things, that in hearing and deciding any matter before it, the court may act without regard to technicalities and legal form and is not bound to follow the rules of evidence stipulated in the Evidence Act. Instead the court may inform itself on any matter in such manner as it thinks just and may take into account opinion evidence and such facts as it may consider relevant and material, provided the parties are given an opportunity of adducing evidence in relation to them.

19. The wide range of orders the court may make is set out in section 10 of the 1972 Act which provides, so far as relevant:

> "10(1) The Court may, in relation to any matter before it -
>
> > (a) remit the dispute, subject to such condition as it may determine, to the parties or the Minister for further consideration by them with a view to settling or reducing the several issues in dispute;
> >
> > (b) make an order or award (including a provisional or interim order or award) relating to any or all of the matters in dispute or give a direction in pursuance of the hearing or determination; ...
>
> ...
>
> (3) Notwithstanding anything in this Act or in any other rule of law to the contrary, the Court in the exercise of its powers shall -
>
> > (a) make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;

(b) act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations.

(4) Notwithstanding any rule of law to the contrary, but subject to subsections (5) and (6), in addition to its jurisdiction and powers under this Part, the Court may, in any dispute concerning the dismissal of a worker, order the re-employment or reinstatement (in his former or a similar position) of any worker, subject to such conditions as the Court thinks fit to impose, or the payment of compensation or damages whether or not in lieu of such re-employment or reinstatement, or the payment of exemplary damages in lieu of such re-employment or reinstatement.

(5) An order under subsection (4) may be made where, in the opinion of the Court, a worker has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice; and in the case of an order for compensation or damages, the Court in making an assessment thereon shall not be bound to follow any rule of law for the assessment of compensation or damages and the Court may make an assessment that is in its opinion fair and appropriate.

(6) The opinion of the Court as to whether a worker has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice and any order for compensation or damages including the assessment thereof made pursuant to subsection (5) shall not be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatever. ..."

20. It is obviously desirable that trade disputes are resolved as soon as reasonably possible and the Industrial Court is therefore required by section 17 expeditiously to hear, inquire into and investigate every such dispute. No doubt for the same reason, the right to appeal to the Court of Appeal against an order of the court is circumscribed by section 18. This is of particular importance to the jurisdiction issue and provides:

"18(1) Subject to subsection (2), the hearing and determination of any proceedings before the Court, and an order or award or any finding or decision of the Court in any matter (including an order or award) -

(a) shall not be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatever; and

(b) shall not be subject to prohibition, *mandamus* or injunction in any Court on any account whatever.

(2) Subject to this Act, any party to a matter before the Court is entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no other:

(a) that the Court had no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the matter before the making of the order or award;

(b) that the Court has exceeded its jurisdiction in the matter;

(c) that the order or award has been obtained by fraud;

(d) that any finding or decision of the Court in any matter is erroneous in point of law; or

(e) that some other specific illegality not mentioned above, and substantially affecting the merits of the matter, has been committed in the course of the proceedings.

(3) On the hearing of an appeal in any matter brought before it under this Act, the Court of Appeal shall have power -

(a) if it appears to the Court of Appeal that a new hearing should be held, to set aside the order or award appealed against and order that a new hearing be held; or

(b) to order a new hearing on any question without interfering with the finding or decision upon any other question,

and the Court of Appeal may make such final or other order as the circumstances of the matter may require.

(4) The Court of Appeal may in any matter brought on appeal before it, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred although it is of the opinion that any point raised in the appeal might have been decided in favour of the appellant."

21. Sections 43 to 47 provide for collective agreements, for their registration and for their direct enforcement in the Industrial Court as agreements binding on the parties. Further, the terms and conditions of each registered agreement are, where applicable, deemed to be the terms and conditions of the individual contracts of employment of the workers forming part of the bargaining unit to which the registered agreement relates.

22. Part V of the 1972 Act contains the reporting, certification and referral procedures for a trade dispute. The dispute may be reported to the Minister by the employer, the recognised majority union or, if there is no such union, by any trade union of which the worker or workers party to the dispute are members in good standing. The report must contain particulars of the dispute and a statement in general terms of its nature and scope (section 52(1)). If the dispute is not resolved the Minister must certify it in writing (section 59(1)) and if it concerns, among other things, suspension or dismissal, either party may then refer it to the Industrial Court for determination (section 59(2)).

Jurisdiction

23. The Union has developed its submission on jurisdiction as follows. It argues, first, that the Industrial Court was created by section 4 of the 1972 Act (recited at para 15 above) as a superior court of record in its own right; that it does not form part of the Supreme Court of Judicature; and that it is not subject to the Supreme Court of Judicature Act. Any right of appeal must therefore be found in the 1972 Act.

24. Secondly, the Union points to section 18 of the 1972 Act (recited at para 20 above). It contends that, subject to section 18(2), section 18(1) precludes any appeal against or challenge to a decision of the Industrial Court in any court. Section 18(2) then confers a right of appeal to the Court of Appeal but only on five specified grounds.

Accordingly, the Union continues, the only court in which a decision of the Industrial Court can be challenged is the Court of Appeal and then only on limited grounds. The Union says that this is confirmed by section 18(3) which confers on the Court of Appeal a power, in an appropriate case, to set aside the order of the Industrial Court and order a new hearing, or to order a new hearing on a particular question without interfering with the decision upon any other question, and (in either case) to make such final or other order as the circumstances may require. That reference to finality is, says the Union, important and a further indication that the legislature intended there should be no further appeal, so excluding any possibility of an appeal to the Board.

25. The Union argues, thirdly, that it was entirely logical for the legislature to confer only this limited right of appeal. The Industrial Court is required by section 10(3) of the 1972 Act to make such order or award as it considers fair and just having regard to the interests of the persons immediately concerned and the community as a whole; and further, it must act in accordance with equity, good conscience and the substantial merits of the case having regard to the principles and practices of good industrial relations. The Union says these matters require the court to have a good understanding of local communities and industrial relations and this is something an appeal court is unlikely to have, and the Board still less so.

26. The Board readily accepts that the Industrial Court has been established as a new superior court of record with its own broad jurisdiction to deal with disputes between employers and their workers and between employers and unions which represent those workers. The court's procedures are flexible and may be informal, and wide powers are conferred on the court to make orders which are fair and just having regard to all the circumstances including the interests of the parties, others who are immediately concerned in the dispute and the community as a whole. The judges of the court are no doubt appointed on the basis of, among other things, their knowledge and expertise and their understanding of local communities and labour relations, and so they are well equipped to achieve the objective of resolving disputes speedily and, in most cases, finally.

27. It is therefore no surprise that the 1972 Act limits the right of any party to a dispute before the Industrial Court to appeal against its decisions. These limitations are contained in, among other provisions, sections 10(6) and 18(1). They render it very difficult for any party to appeal against findings of fact or to challenge evaluative decisions that necessarily involve the assessment of a number of different matters which the Industrial Court is, in light of its experience and expertise, particularly well placed to make. But these provisions are, implicitly in the case of section 10(6) and expressly in the case of section 18(1), subject to section 18(2) which provides a right of appeal to the Court of Appeal on any one of the five specified grounds. These grounds, including as they do such matters as want of jurisdiction, or that the order was obtained by fraud or error of law, provide a valuable safeguard and are eminently suitable for consideration by the Court of Appeal.

28. The 1972 Act does not expressly provide for any further appeal to the Board, however. For this one must turn to the Constitution of Trinidad and Tobago. In 1962 this was set out in Schedule 2 to the Trinidad and Tobago (Constitution) Order in Council 1962. The Constitution (referred to by the Union as the Independence Constitution) provided, so far as relevant:

> "82(1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases:
>
> > (a) where the matter in dispute on the appeal to Her Majesty in Council is of the value of fifteen hundred dollars or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of fifteen hundred dollars or upwards, final decisions in any civil proceedings;
>
> ...
>
> (3) Nothing in this section shall affect any right of Her Majesty to grant special leave to appeal from decisions of the Court of Appeal to Her Majesty in Council in any civil, criminal or other matter. ..."

29. It can be seen that section 82 afforded two potential avenues of appeal to the Board in proceedings such as these. The first, provided by section 82(1)(a), was an appeal as of right against a final decision in civil proceedings where, as here, the value of the appeal was at least TT $1,500. The second, provided by section 82(3), was an appeal with special leave from a decision of the Court of Appeal in any civil matter.

30. The Board has no doubt that proceedings before the Industrial Court are civil proceedings within the meaning of section 82(1)(a) and that a final decision of the Court of Appeal on an appeal from a decision of the Industrial Court is a final decision in civil proceedings. So too a decision of the Court of Appeal on such an appeal is a decision on an appeal in a civil matter within the meaning of section 82(3). If there were ever any doubt about this, it was resolved by the decision of the Board in *Sundry Workers (represented by Antigua Workers Union) v Antigua Hotel and Tourist Association* [1993] 1 WLR 1250; (1993) 42 WIR 145. There the Board was required to consider whether an appeal lay to the Board from a decision of the Court of Appeal of Antigua and Barbuda on an appeal from a decision of the Industrial Court in that jurisdiction. In considering the very similar wording of section 105 of the Constitution of Antigua as established by the Antigua Constitution Order 1967 (SI 1967/225), the Board could see no ground for excluding such a decision of the Court of Appeal from the ambit of the

phrase "any civil or criminal matter" in section 105(3). Nor could the Board justify excluding from the ambit of the phrase "civil proceedings" in section 105(1)(a) proceedings which were civil in character and which had come to the Court of Appeal from the Industrial Court.

31. The next question is whether such an appeal to the Board is nevertheless precluded by section 18(1) of the 1972 Act. Here the Union argues that it plainly is because section 18(1) says in terms that, subject to subsection (2), the determination of a trade dispute cannot be challenged, reviewed or called into question in any "Court" on any account. This, says the Union, includes the Board as the final court of competent jurisdiction for Trinidad and Tobago. Further, it continues, if and in so far as this required an amendment of section 82 of the Independence Constitution, this was permitted by section 38 of that Constitution. That section provided in subsection (1) that Parliament "may alter any of the provisions of this Constitution" and, in subsection (3), that in so far as it altered section 82, among other sections, a bill for an Act of Parliament:

> "... shall not be passed by Parliament unless it is supported at the final voting thereon -
>
> (i) in the House of Representatives by the votes of not less than three-fourths of all the members of the House; and
>
> (ii) in the Senate by the votes of not less than two-thirds of all the members of the Senate."

32. The 1972 Act was passed unanimously by the House of Representatives and with only one dissent by the Senate. Accordingly, says the Union, any suggestion that section 82 of the Independence Constitution permitted the Board to grant leave to appeal regardless of Parliament's express intentions set out in section 18 of the 1972 Act is wrong.

33. Trinidad and Tobago became a republic in 1976 and the Constitution (referred to by the Union as the Republican Constitution) was in that year enacted as the Schedule to the Constitution of the Republic of Trinidad and Tobago Act. Section 109 of the Republican Constitution provides, so far as relevant:

> "(1) An appeal shall lie from decisions of the Court of Appeal to the Judicial Committee as of right in the following cases:

(a) final decisions in civil proceedings where the matter in dispute on the appeal to the Judicial Committee is of the value of fifteen hundred dollars or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of fifteen hundred dollars or upwards;

...

(3) An appeal shall lie to the Judicial Committee with the special leave of the Judicial Committee from decisions of the Court of Appeal in any civil or criminal matter in any case in which, immediately before the date on which Trinidad and Tobago became a Republic, an appeal could have been brought with the special leave of Her Majesty to Her Majesty in Council from such decisions.

...

(6) Any decision given by the Judicial Committee in any appeal under this section shall be enforced in like manner as if it were a decision of the Court of Appeal.

(7) Subject to subsection (6), the Judicial Committee shall, in relation to any appeal to it under this section in any case, have all the jurisdiction and powers possessed in relation to that case by the Court of Appeal."

34. It can be seen that section 109 affords the same two potential avenues of appeal to the Board as did section 82 of the Independence Constitution. The first, contained in section 109(1)(a), is an appeal as of right against a final decision in civil proceedings where, as in this case, the value of the appeal is at least TT $1,500. The second, contained in section 109(3), is an appeal to the Board with special leave from a decision of the Court of Appeal in any civil matter. But the Union argues that these avenues are once again closed to the CPO by operation of section 18(1) of the 1972 Act. In short, the rights of appeal to the Board conferred by the Republican Constitution are no more extensive than those conferred by the Independence Constitution after its amendment by the 1972 Act.

35. The Board does not find these arguments persuasive. As the Board explained in *Sundry Workers* in relation to the equivalent provision in the legislation which

established the Industrial Court in Antigua and Barbuda (section 17(4) of the Industrial Court Act 1976), section 18(1) of the 1972 Act confines an appeal from a decision of the Industrial Court to the Court of Appeal to the grounds set out in subsection (2). It also prevents any collateral challenge to the decision of the Industrial Court by way of judicial review or on any other ground. But once the appeal has reached the Court of Appeal, section 18(1) of the 1972 Act ceases 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 provided by the Independence Constitution and, later, the Republican Constitution.

36. It is also important to have in mind that the grounds on which an appeal to the Court of Appeal is permitted by subsection (2) of section 18, including as they do matters such as want of jurisdiction, may well raise issues of considerable general importance and it would be surprising indeed 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.

37. The Board therefore concludes that the CPO has properly exercised the right of appeal conferred by section 109(1)(a) of the Republican Constitution and that the Board has jurisdiction to hear the appeal. The Union's submissions to the contrary are rejected.

Did the Industrial Court have the power to make the order that it did?

38. The next issue is 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.

39. Before addressing the CPO's arguments in relation to this issue, it is necessary to say a little more about the history. It begins with the decision to suspend Mr Riley in May 1999. At this point the grievance procedure set out in the notes to article 16 of the Collective Agreement became relevant. These notes provided, so far as material:

> "(a)(i) When disciplinary action is contemplated against a worker a written notice of the charge indicating the time and place at which, and the Officer by whom it is to be heard should be given to the worker. At such hearing the worker should be entitled to be represented by the Shop Steward or other Union Officer and may call witnesses on his behalf. Where the worker is suspended pending hearing then the charge(s) contemplated against the worker must be laid and the hearing thereof commenced within ten (10) working days from the date of receipt by the worker of the

said notification suspending him from work. The employee charged and the Union should be informed of the decision within ten (10) working days after the date of completion of the hearing and he or the Union Executive may thereafter lodge an appeal as required by this procedure.

...

(iii) A worker having been exonerated at the hearing or as a result of subsequent representations, there is an obligation on the part of the department to reinstate him without loss of pay, especially where his employment was not of a casual nature."

40. The Corporation did not, however, begin disciplinary proceedings against Mr Riley in May 1999. Those proceedings did not begin until 12 March 2002, after the Corporation's refusal to reinstate him following his acquittal on the charge of theft. As we have seen, the hearing ran for the next five years, until 23 January 2007, at which point the chairperson, Ms Alexander, adjourned it in order to write her report. When she did not produce that report within ten working days, as she was required to do by the grievance procedure, the Union wrote to the Corporation by the letter dated 6 February 2007 to which I have already referred. The letter was in these terms:

"This period [of ten working days] has now been exhausted and is therefore now the foundation for a trade dispute. We are certain that as a responsible employer you would wish that not only this matter not be precipitated but that a long standing employee not be subjected to further anxiety. Mr Riley has been on unpaid suspension for approximately seven (7) years, a situation that is seemingly unparalleled in the realms of Industrial Relations in our country and is in fact the basis for constructive dismissal. I therefore respectfully request that your attention be drawn to this situation and that in your capacity as Chief Personnel Officer you seek to right this wrong."

41. Shortly afterwards the matter was reported to the Minister as a trade dispute. By letter of 19 April 2007 and in response to a letter from the Minister seeking further particulars, the Union explained that the particular issue giving rise to the dispute first arose on 6 February 2007, but that it also wished to state that the dispute originated in a charge laid against Mr Riley on 12 March 2002, that he had been placed on unpaid suspension since 7 May 1999 and that he had therefore been "off the job without pay

for approximately eight years". On 22 November 2007 the dispute was certified in the terms set out at para 4 above.

42. On 21 April 2008, after Ms Alexander had completed her report and sent it to the CPO, and shortly after the CPO had written to Mr Riley dismissing him with effect from 10 May 1999, the CPO served his evidence and arguments in the first trade dispute. The CPO contended that the length of time the proceedings had taken was partly the result of objections taken by Mr Riley's Union representative and was not the fault of the Corporation; that the decision in the disciplinary proceedings had now been given and conveyed to Mr Riley and so the issue giving rise to the grievance no longer existed; that article 16 of the Collective Agreement concerning the grievance procedure was not mandatory and that the failure by the Corporation to comply with it did not invalidate the proceedings or the decision; and that if Ms Alexander's decision had been given in the ten working days stipulated by the grievance procedure the outcome would have been the same, that is to say Mr Riley would have been dismissed.

43. On 16 June 2008, relatively soon after the Union had reported the second trade dispute to the Minister, it served its evidence and arguments in the first trade dispute. It described the disciplinary hearing as having extended over an inordinately long period, particularly for a matter involving only about TT $176, and it referred to the efforts it had made to try to progress matters. The Union also argued that the verbal suspension of Mr Riley from May 1999 to January 2007 was harsh, oppressive and contrary to good industrial relations; that it had made numerous efforts to bring the hearing to an early conclusion but had been frustrated by the Corporation's breaches of good industrial relations practice; that after the conclusion of the hearing in January 2007, the Corporation ought to have acted diligently and expeditiously to provide Mr Riley with a decision within ten working days but had failed to do so; and that this further delay had disadvantaged Mr Riley in relation to his right of appeal and in that way had made a highly unsatisfactory state of affairs still worse. It sought the imposition of a fine and an award of such sum of damages that the court deemed appropriate.

44. It seems the Corporation served a reply in which it denied that Mr Riley had ever been suspended and it asserted that he had voluntarily resigned from or abandoned his employment position.

45. The Board has carefully reviewed the relevant parts of the transcript of the proceedings before the Industrial Court. At the outset of the hearing the court asked the representative for the Union whether it was contended that the Corporation's failures nullified Mr Riley's dismissal and he responded that that was indeed part of the Union's case, and that the effect of this was that Mr Riley should be reinstated. It must also be acknowledged that Mr Riley accepted during the course of his cross-examination that he had earned money doing other work during the period of his suspension as a

volunteer soldier in the Defence Force (for which he was paid about TT $9,000 per month) and as a taxi driver.

46. In light of these matters the CPO contends that although, in January 2002, after Mr Riley had been acquitted in the Magistrates' Court, the Union asked the Corporation to reinstate him without loss of benefits, that is not what he asked for in the first trade dispute. Nor did the Union ever suggest that Mr Riley was entitled to back pay without deductions, rather than damages. The first trade dispute concerned the failure to follow the grievance procedure in the Collective Agreement and the issues it raised were limited to a few questions, namely (i) whether Mr Riley had been suspended; (ii) whether Mr Riley had abandoned his job; (iii) whether the delay by Ms Alexander in making the decision was a material breach of the grievance procedure; and, if so, (iv) whether Mr Riley was entitled to damages.

47. Accordingly, the CPO's argument continues, the court exceeded its jurisdiction within the meaning of section 18(2)(b) of the 1972 Act by making an order in the terms that it did. Although section 10(1)(b) confers on the court a power to make an order relating to any or all of the matters in dispute, there has to be a relevant dispute about a particular matter before the court can make an order in relation to it. Here there was no claim for reinstatement or for back pay without deductions and so the necessary dispute to ground jurisdiction to make the order did not exist. Similarly, the first trade dispute did not extend to Mr Riley's dismissal, whether constructive or otherwise, so as to ground jurisdiction under section 10(4) to make an order for reinstatement or compensation. Indeed, says the CPO, the Union resisted the issue of dismissal being brought into the first trade dispute, and it resisted the consolidation of the second trade dispute with the first.

48. Turning to the Court of Appeal, the CPO accepts that it correctly held that the Industrial Court had the power to make an order under section 10(1)(b) and section 10(3)(a) and (b) consequential to its decision that there had been a breach of the grievance procedure. But the CPO says it was wrong to hold that these provisions conferred a power to make an order on a matter that was not in dispute, and on a claim of which the Corporation had not had proper notice. It also erred in holding that the order was justified on the basis that the Corporation's default in procedure vitiated the entire disciplinary process and rendered any subsequent dismissal unfair.

49. Attractively and skilfully though these submissions were advanced on behalf of the CPO, the Board does not accept them. The first trade dispute concerned the failure by the Corporation to follow the grievance procedure. The particular event which triggered the reporting of the dispute was the failure by Ms Alexander to produce her report in ten working days as the procedure required. But this was only one element of the overall failure by the Corporation to deal with its disciplinary action against Mr Riley in a timely and proper way. The failure began in May 1999 when it suspended Mr

Riley without pay for alleged theft and without taking formal disciplinary action against him. That suspension ran for nearly three years while the criminal proceedings took their course. Then, instead of abiding by the outcome of those proceedings and accepting Mr Riley's acquittal as dispositive of the allegation of theft, it chose to pursue that allegation for itself by initiating internal disciplinary proceedings. Having regard to the time that had already elapsed and Mr Riley's continuing suspension without pay, the Corporation, through Ms Alexander, as chairperson, ought to have ensured the expeditious progress of the proceedings. Instead they took some five years, an astonishing period of time having regard to the nature of the charge and the very small value of the goods allegedly stolen. Following the adjournment of the proceedings on 23 January 2007, Ms Alexander ought to have produced her decision within ten working days, which she failed to do. A yet further unacceptable delay ensued. By the time the decision was produced, on 6 March 2008, a period of a just under nine years had elapsed from the date of the alleged offence, and for the whole of this time Mr Riley had been suspended without pay.

50. The Industrial Court considered all of these matters. It assessed the extent of the delay and whether and to what extent the Corporation was responsible for it. It concluded that the delay to process an ordinary matter such as this in accordance with the grievance procedure and good industrial relations was unreasonable and resulted in substantial unfairness, and that the Corporation was substantially responsible. The Board has no doubt that these findings fell squarely within the scope of the first trade dispute and had an ample basis in the evidence. The only cause for concern, as the Court of Appeal correctly recognised, is whether the Industrial Court was then entitled to conclude, as it did, that the Corporation had waived its right to impose discipline on Mr Riley and whether it was entitled to order Mr Riley's immediate reinstatement and that he should be paid his salary and other benefits from the date of his suspension to the date of the order.

51. The Board has reached the conclusion that the Industrial Court did have the power to make these orders. Section 10(1)(b) confers on the court a power to make an order relating to any of the matters in dispute and section 10(3) confers on the court a power to make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole. These powers are deliberately broad and allow the court to frame its order in such a way as to achieve a result that it believes to be fair and just having regard to the dispute before it and the findings it has made. Here the orders made by the Industrial Court plainly did relate to the matters in dispute in that they arose from and sought to remedy the failure by the Corporation to abide by the grievance procedure over a prolonged period of time. 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.

52. Moreover, the Board does not accept that there had to be a dispute about reinstatement for an order for reinstatement to be made. That is to confuse the dispute with the order the court may 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. Indeed, that is what the Union sought in its letter of 23 January 2002. What is more, and as the Board has explained, the issue of reinstatement, though not substantially developed during the course of the hearing before the Industrial Court, was raised at its outset.

53. The Board therefore concludes that the Industrial Court did not exceed its jurisdiction in making its order. The Court of Appeal made no error in rejecting this aspect of the CPO's appeal.

Unfairness, breach of natural justice, irrationality and error of law

54. The CPO submits that the order of the Industrial Court was made in breach of natural justice and was unfair essentially because the Corporation was not given any notice of a claim for the orders the court made. He also contends that the court's decision was irrational and wrong in law for two reasons. First, the court assumed that Mr Riley's reinstatement followed from its finding that he had not abandoned his job, and the order for reinstatement was made without any consideration of (a) whether he remained ready, willing and able to perform that job throughout the period of delay, or (b) whether the circumstances at the time of the hearing or order made reinstatement appropriate. Secondly, the court failed to take into account the substantial earnings that Mr Riley had made elsewhere over the period of his suspension.

55. The Board does not accept that the Industrial Court committed any breach of natural justice or that its decision or order involved any unfairness of the kind alleged, and that is so for the reasons we have given in addressing the immediately preceding ground of appeal. The parties must at all times have been well aware of the scope of the powers conferred on the court by the 1972 Act including, under section 10(3), the power to make such order or award as the court considered fair and just and to act in accordance with the substantial merits of the case before it, having regard to the principles and practices of good industrial relations. Moreover, the issues before the court included the question whether Mr Riley had voluntarily resigned or had voluntarily accepted that his status as an employee of the Corporation had come to an end. It was or ought to have been plain that, if the court were to find in favour of the Union on this issue and more generally in relation to the first trade dispute, it would or might make an order for Mr Riley's reinstatement.

56. Turning now to the question whether the decision of the Industrial Court was irrational or involved errors of law, the Board accepts that it is a matter of judicial discretion whether a litigant who has been unlawfully dismissed or compelled to resign, and has ceased to perform any of the duties of his office, should be granted an order for reinstatement: see *Chief Constable of the North Wales Police v Evans* [1982] 1 WLR 1155; *Jhagroo v Teaching Service Commission* (2002) 61 WIR 510. In the *Jhagroo* case the Board considered it would not be appropriate to make an order requiring the appointment of the appellant to an office which, by the date of the appeal, was no doubt held by another and when, as a result of his very serious health problems, the appellant might not be well enough to discharge his duties. The circumstances of Mr Riley's case are quite different, however. There has never been any suggestion that he could not perform his duties. Further, he did not resign voluntarily, nor did he abandon his position. He took other work because he had no choice; he had been suspended without pay. No reason has ever been suggested as to why Mr Riley would have been unable or unwilling to resume his duties for the Corporation had his suspension been lifted.

57. That leaves the issue of payment without deductions. The CPO contends 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. He continues that the court's failure even to consider the point, and to make the order it did, was erroneous in law and so the order should be set aside. The Board accepts that this would have been a serious (though not necessarily unanswerable) argument had it been raised below. But the insuperable difficulty facing the CPO is that the point was not taken before the Industrial Court and it was not developed before the Court of Appeal. It is far too late to raise it now.

Has there been any substantial miscarriage of justice?

58. There is a striking feature of this appeal which the Board has not yet addressed. It has been a fundamental and recurring theme of the CPO's arguments that the Industrial Court failed properly to appreciate the limited nature of the first trade dispute; and that it made an order for the reinstatement of Mr Riley and for the payment to him of all salary and benefits as from 10 May 1999, the date of his suspension, when these matters were properly the subject of and ought only to have been considered in the second trade dispute. The CPO argues that these matters were simply not before the court in the first trade dispute.

59. The Board does not accept these submissions for the reasons it has given. However, any residual merit they may have must be considered in light of a further matter, namely that when the second trade dispute came on for hearing it was met with the application by the CPO for its dismissal on the basis that the issues it raised had been decided and made the subject of the order in the first trade dispute. Any possible grievance of Mr Riley had, it said, been removed. That application was successful. In

these circumstances it ill behoves the CPO to complain now that the court strayed beyond the boundaries of what was properly before it in the first trade dispute. Counsel for the CPO frankly recognised this point was a "thorn in his side". In the Board's view, this pithy metaphor is entirely apt. 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 is a clear case for the application of section 18(4) of the 1972 Act. The Board is satisfied that there has been no substantial miscarriage of justice.

Damages

60. In light of the foregoing, this issue does not arise.

Conclusion

61. For the reasons given above, this appeal must be dismissed.