REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P 306 of 2014
IRO No. 23 of 2013 and
Trade Dispute No. 717 of 2013

In the Matter of a Trade Dispute
under the Industrial Relations Act, Chap 88:01

And

In the Matter of an Industrial Relations Offence
under the Industrial Relations Act, Chap 88:01

Between

TRINIDAD AND TOBAGO NATIONAL PETROLEUM MARKETING CO. LTD.

Appellant

And

OILFIELD WORKERS' TRADE UNION

Respondent

PANEL: **A. MENDONÇA, J.A.**
N. BEREAUX, J.A.
R. NARINE, J.A.

APPEARANCES: **S. Jairam SC, A. Khan, D. Ali, A. Cheeseman instructed by T. Rojas for the appellant**
D. Mendes SC, M. Quamina, A. Bullock instructed by I. Ali for the respondent

DATE DELIVERED: 24 March 2016

I have read in draft, the judgment of Bereaux J.A. I agree with it and have nothing to add.

A. Mendonça
Justice of Appeal

JUDGMENT

Delivered by Bereaux, J.A.

Introduction

[1] These are appeals from the Industrial Court in respect of two disputes heard concurrently by the Court. In the first decision the Court dismissed a complaint filed by the appellant company, Trinidad and Tobago National Petroleum Marketing Co. Ltd. ("the company") alleging that the respondent union, Oilfield Workers' Trade Union ("the union") and some eighty-five workers (all members of the union) had committed industrial relations offences contrary section 63 of the Industrial Relations Act ("the IRA").

[2] As to the second decision, the court found that the dismissal of sixty-eight workers by the company was harsh and oppressive and not consistent with good industrial relations practice. It ordered the company to reinstate the workers with immediate effect and to pay each of them, all salary and pecuniary benefits forgone during the period, as well was damages in the sum of forty thousand dollars ($40,000.00). The dismissal of the workers had been referred to the Industrial Court as a trade dispute.

[3] The broad issues which arise on these appeals are:

(i) Did the Industrial Court have the jurisdiction to entertain the trade dispute having regard to sections 63 and 64 of the IRA.

(ii) If it did, is its finding that the dismissals of the workers were harsh and oppressive and contrary to good industrial relations (together with its findings of fact) justiceable on appeal having regard to the provisions of section 10(3) and section 18(1).

(iii) Was the Court right to order reinstatement, the payment of benefits foregone during the period of dismissal and the payment of forty thousand dollars ($40,000.00) damages to each worker.

If we find that the findings are not reviewable that is sufficient to dismiss the substantive appeal. It will be still necessary to consider the remedies ordered by the Court. There is the additional issue raised by the company that the interventions of the President of the Court, adversely affected its counsel's advancement of its case before the Industrial Court.

[4] By letters dated 21st October 2013, the company purported to dismiss the sixty-eight workers contending that their *"actions on the 2013 August, 13th, 14th, 15th constituted a fundamental breach of contract going to the root of the contract of employment, thereby entitling the company to terminate your services".* Not all of the allegations against all of the workers covered the entire period of 13, 14, 15 August. Some of the actions were alleged to have been taken on one or two of the days. Some allegations covered all three days.

[5] Each worker was given a letter of suspension specifying the breaches and when they were supposed to have occurred. They were subsequently given notices of the dates of hearing on which a disciplinary panel would hear the allegations made against them.

[6] Three disciplinary panels, consisting of three members, were appointed to hearing the allegations against the suspended workers. One such panel comprised Mr. Anthony Inniss (President of the panel), Ms. Deborah Dinoo-Benjamin (General Manager Retail and Industrial Fuels) and Ms. Kerlina Niles. This panel sat at the Cara Suites on 7th, 8th and 9th October 2013 and heard the cases of

twenty-seven workers.

[7] The other two panels each sat on the 8th, 9th and 10th October and heard the cases of the thirty and twenty eight workers respectively. The panels then made recommendations which were considered by a fifteen member committee comprising of fourteen senior members of the company and one junior member of staff. Ms. Dinoo-Benjamin also sat on this committee. After considering the recommendations, the committee caused letters of termination to be served on sixty eight workers.

[8] The complaint and the trade dispute were filed as separate actions. By consent they were heard together. The company agreed to present its case first and led evidence from four witnesses in respect of both the complaint and the trade dispute. Those witnesses were cross-examined by counsel for the union. At the close of the company's case, counsel for the union made a no-case submission which was accepted by the Court. It dismissed the complaint and ruled for the union in the trade dispute. The Court gave a written ruling and made findings of fact. The company appealed both decisions and obtained a stay of the orders for reinstatement, the payment of pecuniary benefits and damages.

[9] The grounds of appeal are extensive to the point of prolixity. Many are repetitive. It is unnecessary to address them all because of the decision to which I have come. I shall address the issues as I have outlined them at paragraph 3 above and shall deal with Mr. Jairam's main submissions in so far as they are relevant.

Summary of decision

Issue (i) - jurisdiction

[10] (i) The Industrial Court had the jurisdiction to entertain the trade dispute. The provisions of sections 63 and 64 do not bar the Court from

considering whether the dismissals are a trade dispute under the dispute resolutions provisions of Part V of the IRA.

Issue (ii)

(ii) The Court's ruling that the dismissals were harsh and oppressive and contrary to good industrial relations is not reviewable on appeal having regard to the provisions of section 10(6) of the IRA. The findings of fact upon which the Court made its ruling are sufficiently well founded to debar the Court of Appeal from reviewing those findings as well as its decision. In any event, I agree with the decision and consider it to be correct both in fact and in law.

Issue (iii) - The interventions of the President of the Court

The President of the Court's interventions were at best robust but they in no way affected counsel's presentation of his client's case.

Issue (iv) - Orders of the Court

(iii) The Industrial Court was under no duty to call upon Mr. Jairam to address it on the question of remedies. It was open to Mr. Jairam to have led evidence on those issues or to address the Court on them at the close of his case. He chose not to. He cannot now complain. Thus, the Court having committed no procedural breach, its orders are also not reviewable having regard to section 10(6) of the IRA. The appeal must be dismissed.

The company's evidence

[11] The facts which gave rise to the filing of the complaint and the trade dispute remain in contention. The company alleged that the issues between the parties arose out of the union's contention that the workers should be paid a shift allowance because of the company's alteration of working hours at its Pointe-a-

Pierre bond. The company asserted that there was no shift system in place at the bond and that the alteration of the working hours was consistent with its implementation of an order of the Industrial Court. The workers initiated unlawful protest action. They refused to work overtime. The union and its members, from time to time embarked on *"a series of shut downs and/or withholding of labour and or refusal to work"* which the company attempted to address at a bilateral level *"hoping that it would resolve itself in the bilateral process"*. There were several instances of work stoppages in the past, which had affected the supply of fuels to the public.

[12] The company filed four witness statements in the trade dispute. Its witnesses were Geeta Ragoonath - General Manager, Human Resources, Deborah Dinoo-Benjamin, Shyam Mahabir and John Gormandy. Ms. Ragoonath also filed a witness statement in the complaint. There is very little difference between both witness statements. Ms. Dinoo-Benjamin's evidence is quite relevant, so too Mr. Mahabir's.

[13] Mr. Gormandy's evidence can be disposed of summarily. He deposed to the *"work stoppages"* on 13th and 15th August 2013, being *"the fifth or sixth such stoppage for the year"* and that *"it affected all areas of the company's operations ..."* He stated that on 14th August 2013, the Sea Lots workers *"walked off"* the plant at around 6:30 a.m. On 15th August 2013 he went to a meeting at Ms. Ragoonath's office at which there was a detailed exercise directed at *"identifying workers who had withheld their labour during the period of work stoppage"*. Ms. Dinoo-Benjamin was also at that meeting. He said that *"as the names were confirmed along with the respective dates of participation"* the industrial relations manager gave the relevant instructions *"for the completion of letters of suspension"*.

Ms. Geeta Ragoonath

[14] She stated on 13th August, 2013 that two employees at the Pointe-a-Pierre

bond were *"released for the day"* from their duties for refusing to obey a legitimate work instruction, namely, to train management personnel in gantry operations. The truck drivers at the Pointe-a-Pierre bond then refused to work in direct response to the actions taken against the two employees. Ms. Ragoonath stated that *"the union had unjustifiably and/or unreasonably alleged that these two workers were dismissed ..."* and *"This was the beginning of more illegal work stoppages ... without any or any lawful excuse".* There was no distribution of fuel from the Pointe-a-Pierre bond on that day.

[15] Ms. Ragoonath added that:

> ***"At or around the same time that the Union was spreading the untruth about Kissoon and Ramlochan having been dismissed the fire alarm at the Company's operations at Sea Lots, Port-of-Spain was triggered and rang out, resulting in an immediate and unscheduled work stoppage. There was also an unscheduled and simultaneous meeting at the main gate by the Union and the workers … (or some of them) where and when Mr. Wayne Leacock addressed the workers. The unlawful or improper triggering of the fire alarm was neither accidental nor indicative of a genuine emergency but was triggered deliberately by a worker or workers who remain unknown but acting in concert with the Union. This was … designed to cause maximum disruptions to the Company's operations, work or business, which it in fact caused".***

[16] She added that on 14th August, 2013 workers, both at Sea Lots and Pointe-a-Pierre downed tools. When asked why they were not performing their job functions they indicated that they had instructions from the union to withhold their labour. Eighty-five workers were engaged in the work stoppage. The industrial action continued into 15th August, 2013.

Ms. Deborah Dinoo-Benjamin

[17] Ms. Dinoo-Benjamin was a major player in the events which led to the disturbances on the compound, to the subsequent filing of the complaint and to the reporting of the trade dispute. She was a member of the disciplinary panel which sat at the Cara Suites. She also sat on the managerial committee which reviewed the recommendations of the panels and ultimately decided on the dismissal of the sixty-eight workers. Her account of how the work stoppage was precipitated is important as it reflects the active part she played in the events.

[18] She stated that on 13th August 2013, Messrs. Ricky Ramlochan and Ramdass Kissoon refused to train some five employees. Mr. Ramlochan had also refused to do so the day before. She called both men to a meeting and asked for the reasons for refusing to train their *"colleagues".* They were eventually joined by Mr. Lex Francois, union shop steward who indicated that the union had instructed that the workers should not comply with the company's instructions. She said that *"I subsequently relieved Mr. Ramlochan and Mr. Kissoon of their duties for the day for refusal to obey a legitimate/lawful work instruction".*

[19] She added that *"upon learning that both men left for the day",* the road tank wagon (RTW) drivers and gantry workers at the Pointe a Pierre Bond informed their supervisor that they were not working. The union *"falsely alleged that these two workers were dismissed, when in truth and in fact they were simply relieved of their duties for that day…No fuel was delivered for the remainder of that day".*

[20] I note that whether in fact the instruction to train the five employees was lawful, was moot at best. Of even greater controversy was whether the workers had been *"relieved for the day"* or dismissed. But these issues demonstrate that Ms. Dinoo-Benjamin's role was direct and controversial and that she should have played no part in the disciplinary hearings or in the management committee's deliberations which decided the fates of the eighty-five workers.

Shyam Mahabir

[21] Mr. Shyam Mahabir, Senior Estate Constable, deposed that he was normally assigned to monitor employee and union activities from time to time. On 13th August 2013 he was instructed to monitor a meeting to the union branch at the emergency evacuation shed, Sea Lots plant and to document the names of all workers present at the meeting.

[22] On 14th August there was another gathering at the shed and he continued monitoring it, compiling the list of persons at that location. He said that "*for unknown reasons"* the alarm system was activated and workers left their work station and joined the gathering. The same activity occurred on 15th August 2013 at about 6:30 a.m. Many workers had placards berating members of management. He said that *"the vast majority of workers did not go into work on that day and like the day before, no company RTWs left the plant to deliver fuel. All deliveries were being done by the contractors".* He finalised the formal list of names of workers *"who I observed protesting and withholding their labour during the period"* and forwarded it to his supervisor.

The Union's evidence

[23] The union on the other hand alleged that on 13th August, 2013, there was a work stoppage at the Pointe-a-Pierre premises of the company following the dismissal of two workers who were verbally informed that they had been dismissed. The workers in question, Ricky Ramlochan and Ramdass Kissoon, two senior employees, refused to train senior members of staff in gantry operations, because such training was not part of their functions. They had been instructed to do so by Ms. Dinoo-Benjamin. They both allege that when they refused they were told by Ms. Dinoo-Benjamin that they were dismissed.

[24] Seven workers provided witness statements in respect of the trade dispute. They were; Errol Pierre, Sean Nanton, Sheryl Strachan, Lex Francois, Matthew

Ottway, Wayne Leacock and Ricky Ramlochan. The union filed no witness statements in the complaint. None of the union's witnesses gave oral evidence because of the union's no case submission, made at the close of the company's case, which was upheld. But the contents of the witness statements illustrate the conflict in the versions of fact asserted by each side.

[25] The union's witnesses sought to refute the company's allegations that the workers had engaged in illegal industrial action. Their evidence, although filed in the trade dispute, was directly relevant to the allegations raised in the complaint. In its evidence and arguments before the Industrial Court in respect of the trade dispute, the union contended:

(i) that the workers did not abandon their jobs

(ii) that the termination of their services was harsh, oppressive and contrary to the principle of good industrial relations practice

(iii) and that the company failed to take account of the workers unblemished record of services as a mitigating factor.

[26] The union alleged that on the 12th August 2013 three (3) employees of the Society of General Surveyors (SGS) came to the Point a Pierre bond and proceeded to the supervisor's (Rawlson Rampaul) office. Mr. Rampaul called Ricky Ramlochan (acting gantry Foreman) to his office. In the presence of the three SGS employees he asked him to train them. He refused saying that that was not in his portfolio. Mr. Rampaul then called Lex Francois and asked him if Mr. Ramlochan can train these persons in the operations of the gantry. Mr. Francois responded that training is not a *"component"* of the plant attendant's job. To do so would change the worker's job classification. The company needed to adhere to the collective agreement and consult with the union.

[27] On the 13th August 2013 at Pointe a Pierre Ms. Deborah Dinoo-Benjamin

and Dexter Hosein , Distribution Manager, entered the car park at about 9:55 a.m. Ms. Benjamin called Mr. Ramlochan and Mr. Ramdass Kissoon, the acting chargehand, individually to Mr. Rampaul's office. She asked Mr. Ramlochan to train Mr. Rampaul, Pamela Roopchand and Gerard Maloney together with the SGS employees in gantry operations. She asked that she too be trained. Mr. Ramlochan repeated that the request is outside his remit and he would like to have his union representative present. Ms. Benjamin replied that that was not a union issue and there was no need to have a union representative. Mr. Ramlochan insisted on having a representative and called Walter Jules and Lex Francois.

[28] Mr. Walter Jules and Mr. Lex Francois entered the office. Upon entering Ms. Benjamin said angrily *"Mr. Francois this is not a union matter".* Mr. Francois then referred her to the collective agreement telling her *"you cannot unilaterally change the worker job classification as the company must consult with the union."* Ms. Benjamin shouted at Mr. Francois that she is aware of the agreement.

[29] She got up from her chair approaching Mr. Francois gesticulating with her hand, shouting at him to get out of the office. At this point Mr. Francois felt threatened. Ms. Benjamin instructed Mr. Rampaul to call Petrotrin police to escort Mr. Francois off the compound. Mr. Francois told her that she is denying the worker his right to representation. Mr. Francois then went outside and asked Mr. Ramlochan to excuse himself. He did but returned upon the arrival of two (2) Security Officers. While Mr. Francois was outside Ms. Benjamin told Mr. Ramlochan *"you are dismissed. Get off the compound".*

[30] Ms. Dinoo-Benjamin then called Mr. Kissoon into the office. She told him to train the employees. Mr. Kissoon responded that the training was outside his scope of work. Ms. Benjamin said he is dismissed and to get off the compound.

[31] The union contended that the dismissal of the two workers created an

unsafe condition, causing an immediate shut down of the gantry operations because senior supervisors were required to be present for its safe operation. Ms. Benjamin later told Mr. Francois and Mr. Jules the two workers were dismissed because of their failure to carry out a direct instruction. They asked for a copy of the dismissal letters and that she copy the union, Ms. Benjamin replied she will *"organize it"*.

[32] There was therefore sharp division between the accounts of the union and the company (and the oral evidence in support of each account) as to what transpired on the days in question and what was the cause. The findings of fact of the Industrial Court assumed great importance.

The relevant correspondence from the company

[33] The letters of suspension, the notices of disciplinary hearing and the letters of termination respectively sent to the workers by the company are relevant. As I have stated earlier, the letters of suspension and the notices of hearing were tailored to address the alleged offences of each worker as they relate to all or some of the days in question. While the specific details varied, the substance of each letter was the same. It is sufficient to refer to one of them.

[34] The letter of suspension so far as relevant stated as follows:

> ***"We refer to your refusal to report for work and carry out duties on 14/08/2013 and 15/08/2013 along with other employees, whilst on the Plant. This constitutes an illegal withholding of your labour and violation of the terms and conditions of your employment, possibly going to the root of the contract of your employment.***
>
> ***In this regard, you are suspended with full pay with effect from 16/08/2013 pending completion of our investigations. We will***

communicate with you during the course of which you will be expected to be available to assist with such investigations."

I note that, contrary to what the letter says, it does not appear that any of the workers was called upon to participate in the investigations or that any of them was interviewed.

[35] By letters dated 4th September, 2013 the company informed the workers that disciplinary hearings were scheduled for September 2013 (subsequently rescheduled for October 2013). The terms of each letter were the same. It is sufficient to refer to one of them:

"Reference is made to our letter dated 2013 August 16.

The Company has concluded its investigations and in this regard you are required to attend a Disciplinary Hearing on 2013 September 11 Wednesday commencing from 3:30 p.m. at Employers' Consultative Association, #17 Samaroo Road Aranguez Roundabout North, Aranguez.

The purpose of this Hearing is to afford you the opportunity to provide your explanation to the following disciplinary allegations against you.

(1) Refusal to perform job functions on 2013 August 14 & 15
(2) Participating along with others in an illegal work stoppage on 2013 August 14 & 15
(3) Absence from workstation without authorization on 2013 August 14 & 15

Please be advised that if you unable to attend this Hearing the Company may proceed in your absence if an acceptable and

reasonable excuse is not provided. In light of the circumstances, you are further advised that the Company considers these allegations to be sufficiently serious that if established, may go to the root of your contract of employment.

In keeping with the provisions of the Collective Agreement, you are allowed to be accompanied by a Shop Steward/Union Official at this Hearing."

[36] The letter of termination stated as follows:

"Reference is made to the Disciplinary Hearing of 2013 October 07 in which you were afforded the opportunity to provide an explanation relative to the following specific allegations in the presence of your Union representatives:

(1) Refusal to perform job functions on 2013 August 13, 14 and 15

(2) Participating along with others in an illegal work stoppage on 2013 August 13, 14 and 15

(3) Absence from workstation without authorization on 2013 August 13, 14 and 15

The Disciplinary Panel having heard your defence of the existence of unsafe conditions as contemplated under Section 15 and 16 of the OSH Act has determined that your explanations are unsustainable and/or unsubstantiated.

Your actions, in the context of the illegal work stoppage were completely unsatisfactory thereby causing the Company to suffer losses and as such you are fully culpable in all three (3) areas of disciplinary allegations made against you.

In this regard it has been determined that your actions on the 2013 August 13, 14 and 15 constitute a fundamental breach of contract going to the root of the contract of employment, thereby entitling the Company to terminate your services.

Accordingly, the Company has decided that your employment be terminated with immediate effect.

The Company shall communicate with you on or before 2013 October 31 regarding accrued vacation leave and any other entitlements due."

The company contended that the sixty-eight workers were terminated after taking independent legal and industrial relations advice. Fifteen workers were exonerated while two were suspended for two weeks without pay. Curiously, the letters of termination were all signed by Ms. Dinoo-Benjamin in her capacity as General Manager - Retail and Industrial Fuels as opposed to the General Manger Human Resources.

Submissions

[37] Mr. Jairam for the company submitted that the Court had no jurisdiction to entertain the trade dispute. He submitted in effect that the dismissal of a worker for taking illegal industrial action contrary to section 63 leaves the worker with recourse only to section 64. The Court held that it had jurisdiction. Mr. Jairam has renewed his challenge before us.

[38] Mr. Mendes for the union contends that insofar as the company challenges the Court's finding that the workers were dismissed in circumstances that were harsh and oppressive and contrary to the principles of good industrial relations, such a challenge is not maintainable, on appeal, in light of the provisions of section 10(6) of the IRA. He added that further challenges to the Court's findings

of fact are also prohibited by section 18(1) of the IRA.

I shall address the jurisdiction issue first then the section 10(6) question and the Court's findings of fact. Thereafter I shall consider the remedies ordered by the Court.

Discussion and conclusions

Issue 1- Jurisdiction

[39] Section 63 provides, inter alia, -

> ***"(1) Where any industrial action is taken otherwise than in conformity with this Part -***
>
> ***(a) …***
>
> ***(b) a trade union taking such action is guilty of an industrial relations offence and, in addition to any other penalty under subsection (2), the Court may order the cancellation of its certificate of recognition, if any;***
>
> ***(c) subject to sections 64 and 65(2)(b), where a worker takes part in such action the employer may treat the action as a fundamental breach of contract going to the root of the contract of employment of the worker.***
>
> ***(2) A person guilty of any industrial relations offence under this section is liable -***
>
> ***(a) in the case of an employer, to a fine of twenty thousand dollars; or***

(b) in the case of a trade union, to a fine of ten thousand dollars."

Industrial action is defined in section 2 of the IRA as follows:

"industrial action" means strikes and lockouts, and any action, including sympathy strikes and secondary boycotts (whether or not done in contemplation of, or in furtherance of, a trade dispute), by an employer or a trade union or other organisation or by any number of workers or other persons to compel any worker, trade union or other organisation, employer or any other person, as the case may be, to agree to terms of employment, or to comply with any demands made by the employer or the trade union or other organisation or by those workers or other persons, and includes action commonly known as a "sit-down strike", a "go-slow" or a "sick-out", except that the expression does not include -

(a) a failure to commence work in any agricultural undertaking where work is performed by task caused by a delay in the conclusion of customary arrangements between employers and workers as to the size or nature of a task; and

(b) a failure to commence work or a refusal to continue working by reason of the fact that unusual circumstances have arisen which are hazardous or injurious to health or life".

Section 64 provides as follows:

"(1) Where a worker is, pursuant to section 63(1)(c), dismissed

by his employer, or his contract of employment is determined, the recognised majority union or, in the absence of such a union, any trade union, of which the worker is a member, may within fourteen days apply to the Court for an order that the worker is to be treated as having been excused from the consequences of such action as is referred to in section 63(1)(c) and from the operation of section 63(1)(c) and accordingly that the exercise of the power of dismissal or the termination of the contract of employment shall be set aside.

(2) The Court may upon such application make the order, if it is satisfied that the industrial action by the worker was caused by exceptional circumstances and that it is otherwise fair and just to excuse the worker from the consequences of such action and from the operation of section 63(1)(c)."

Section 65(2)(b) is not relevant. Section 51 provides:

"(1) Subject to this section, any trade dispute, not otherwise determined or resolved may be reported to the Minister only by –
(a) the employer;
(b) the recognised majority union;
(c) …."

Section 2 defines "trade dispute" 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 any such workers, including a dispute connected with the terms and conditions of the employment or labour of any such workers, …"

[40] Mr. Jairam submitted that sections 63 and 64 were special provisions. The specificity of these provisions overrode the general provisions of section 51 consistent with the maxim *generalia specialibus non derogant*. He referred to several well known cases on statutory interpretation to support his submission.

[41] The principles of construction relied on by Mr. Jairam are well established but they have no application to this case. Section 63 (and by extension section 64) is properly invoked when there is no dispute as to the illegality of the actions of the workers or the union; that is to say, when the actions complained of and their illegality are not disputed by the workers themselves or their union. Where there is no such dispute, the worker submits to the jurisdiction of the Court by invoking section 64. It will then be a question whether there were special circumstances which permitted the worker to be excused from the action.

[42] In this case the workers denied that they took part in illegal industrial action at all. The facts alleged by the company and its witnesses are all disputed. There was thus a dispute as to what actually occurred. Most of the workers alleged that their actions were motivated by their concern for health and safety issues. Some workers alleged that they were not at work on some of the days alleged. Many others contended that they reported for work but were not assigned work. All of the dismissals were disputed by the union.

[43] In my judgment the provisions of section 51 et al set out a procedure for the resolution of disputes. Section 63 does not preclude the invocation of that procedure, in cases such as this in which the facts as well as the allegation of taking illegal industrial action are disputed. The facts upon which the Court had to decide were common to the complaint and to the trade dispute. It was open to the Court to proceed as it did; that is to say, to hear both matters and ultimately to

decide whether there was a breach of section 63 or that the dismissals were unjustified.

The foundation of both the complaint and the trade dispute was the dismissals of the sixty eight workers. At the heart of the issue with respect to those dismissals was the company's contention that the workers engaged in illegal industrial action on the 13th, 14th and 15th of August 2013. The evidence on behalf of the company and the union was common to both the complaint and the trade dispute and was in conflict. It was for the Court to consider the evidence and decide the issues.

Section 63 does not exclude the Courts' jurisdiction to consider the dismissals as a trade dispute. Mr. Jairam's objection has no merit. The Industrial Court was right to reject it.

Issue 2 - The Section 10(6) prohibition

[44] Mr. Mendes contended that to the extent that the company challenges the finding of the Industrial Court that the workers' dismissal was harsh and oppressive and contrary to the principles of good industrial relations, that challenge is not maintainable by virtue of Section 10(6). Mr. Jairam countered that the section 10(6) prohibition does not bar an appeal in which there was no evidence for the basis of the finding. He submitted that in this case, there was no evidence of harshness and oppression. Such an absence of evidence is an error of law pursuant to section 18(2)(d).

[45] The complaint of the company was directed at both the union and the workers. The company alleged, first of all, that the union had committed an industrial relations offence by taking illegal industrial action contrary to section 63(1)(c). It also alleged that illegal industrial action was taken by the workers at the union's instruction. In its evidence and arguments before the Industrial Court the company alleged that the union had:

- ***Embarked on unlawful protest action to demonstrate its disapproval of the company implementation of the Industrial Court's order which permitted the company to run its operations on a twenty four hour basis.***

- ***Embarked on a series of shut downs/withholding of labour/refusal to work which the company attempted to deal with at a bilateral level.***

- ***Directed open hostility and threats at the company's executives and directed challenges to its authority.***

- ***Directed Mr. Ramlochan and Mr. Kissoon to refuse to train its employees in gantry operations. The two workers were not on a frolic of their own "but were specifically acting on specific instructions of the union".***

- ***Spread untruths about Mr. Ramlochan and Mr. Kissoon having been dismissed.***

- ***On 13th August 2013 acting in concert with worker or workers unknown, deliberately triggered the fire alarm causing an immediate and unscheduled work stoppage and a simultaneous and unscheduled meeting at the main gate of the Sea Lots Port of Spain where they were addressed by Mr. Wayne Leacock.***

- ***The triggering of the fire alarm had to be the "efficient organizational hand" of the union and not mere coincidence.***

- ***Directed the workers on 14th August 2013, to not carry out their duties. Mr. Walter Jules, NP/OWTU Shop Steward, blatantly refused to carry load trucks. At 10:30 a.m., the workers walked off the offices and plant after the alarm rang out. They went straight to the gate where they were addressed by Mr. Teddy Stapleton 2nd Vice President of the union.***

- ***Caused the workers to continue their unlawful actions on Thursday 15th August 2013 at Pointe a Pierre and Sea Lots, Port of Spain.***

[46] The company further alleged that the workers' actions, including that of Mr. Leacock were as a result of direct instructions from the union. It added that the company kept its promise to unleash the might of the OWTU on the company and took illegal industrial action against the company contrary to the IRA. That conclusion was irresistibly to be drawn from all the surrounding circumstances or as an inference from the established facts/evidence.

[47] The Court's decision was based in part on a finding that the disciplinary hearings did not meet the minimum standards of natural justice and consequently that those hearings were not conducted in accordance with the principles of good industrial relations. The Court made certain findings of fact on which it founded that aspect of its decision. These were:

(i) There was no evidence that the workers were informed that among the allegations they had to answer was that they had taken illegal industrial action.

(ii) There was no evidence that the workers were given the opportunity to respond to the company's allegations that they were involved in illegal industrial action.

(iii) There was no evidence that an email report in the company's possession, allegedly about the workers activities on the days in question was presented to the workers.

(iv) There was no evidence that the list compiled by Shyam Mahabir was given to the workers before or at the hearing.

I shall refer to these findings of fact as the natural justice findings.

[48] But the Court made other findings of fact on which it also founded its decision to dismiss the complaint and uphold the union's case in the trade dispute. These were:

(i) While there was some sort of disruption of work on the days in question, there was no evidence that the union instigated these disruptions.

(ii) There was no evidence that the union made a demand on the company.

(iii) There was no evidence that the union was involved in industrial action which was not in conformity with the IRA.

(iv) The genesis of the incidence which occurred on the three days was a result of the company's arrogance and lack of regard for the rights of its workers.

I shall refer to these findings as the other findings of fact. The question is whether the Court's findings as set out in paragraphs 47 and 48 can be challenged on appeal having regard to section 18(1) of the IRA. I shall consider first the Court's other findings of fact. It is convenient at this stage to consider the complaint as it relates to the union.

The complaint against the union

[49] The company's case before the Industrial Court was that the union *"instructed the workers to illegally withhold their labour and to take illegal action"* over the period 13th August to 15th August 2013 contrary to the provisions of the IRA. The provisions of section 10(4), (5) and (6) and the provisions of section 18(1) and 18(2) are relevant:

> ***"10. (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."

"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."

[50] The effect of sections 10(6), and 18(1) and (2) were adjudicated upon by Hyatali CJ in **Flavourite Foods Ltd. v. Oilfield Workers' Trade Union, Civil Appeal No. 81 of 1978**. At page 4 he stated:

"It is of importance to note that the provisions of section 18(1) are made subject to the provisions of s. 18(2) only, whereas the provisions of s. 18(2) are made subject to the whole of the Act. The use of the expressions "subject to subsection (2)" occurring n s. 18(1) and "subject to this Act" occurring in s. 18(2) makes this abundantly clear. The consequences to which they lead are of utmost significance. In my judgment they are as follows:

(a) that the right of appeal conferred by s. 18(2) on the statutory grounds therein set out and no other, overrides the summary commandments of s. 18(1) that an order or decision of the Court shall not be inquired into, queried, appealed against or quashed or be subject to prohibition mandamus or injunction in any court on any account whatever and

(b) that the right of appeal aforesaid under s. 18(2) being subject to the whole of the Act is subject in the result to section 10(6) thereof.

It follows therefore that s. 10(6) is to be read together with and given effect to as a proviso to s. 18(2). In my opinion this conclusion is fortified by the fact that s. 10(6) occupies a special place in the earlier part of the Act and to all appearances has been deliberately inserted there to put it beyond doubt that appeals will not be allowed against the Court's opinion in what is manifestly a highly specialized area of industrial relations, namely, whether or not a worker has been dismissed in circumstances that offend against the principles of good industrial relations practice or are otherwise harsh and oppressive.

Consequently, if an appellant is unable to rely on any of the statutory grounds of appeal specified in s. 18(2) then he is barred from appealing altogether since the Act prohibits him from relying on any other ground. If however, he is able to rely on one or other of those statutory grounds he will nevertheless be barred from appealing if the only ground of appeal on which he relies involves a challenge against an opinion of the Court given in pursuance of s. 10(6)".

[51] The judgment of de la Bastide CJ in **Caroni (1975) Ltd v Association of Technical, Administrative & Supervisory Staff (2002) 67 WIR 223**, is also relevant. At page 225 F he said:

"The wording of s 10(6) is very explicit. However reluctant this court may be to accept that its jurisdiction has been ousted by an Act of Parliament and that it is thereby denied the opportunity of

investigating an alleged injustice and correcting it, if found to exist, the intention of Parliament is too clear in this instance to be deflected by any presumption of law or canon of construction. It is clearly the duty of this court to give effect to it. We must not be tempted to do otherwise by pictures painted of the gross injustices which may be perpetrated if we recognise and accept the restriction which Parliament has imposed on our right to interfere. In any case, s 10(6) does not oust any pre-existing jurisdiction of the Court of Appeal. The Industrial Court is a comparatively recent creation of statute, and so is the right given to appeal from it to the Court of Appeal. The intention of Parliament, clearly expressed in s 10(6), is that the question whether the dismissal of a worker is in any case harsh and oppressive and contrary to the principles of good industrial relations practice, should be reserved to the Industrial Court. What distinguishes a dismissal that is harsh and oppressive from one that is not, is a matter which the Act clearly regards as grounded not in law, but in industrial relations practice. The practice, which is not codified in our jurisdiction, is to be determined and applied to the facts of each case by the Industrial Court. The policy of the statute is obviously to entrust that function only to judges of the Industrial Court who come equipped with experience of, and familiarity with, industrial relations practice. This is a qualification which judges of the Supreme Court do not necessarily or even ordinarily have. It is considerations like these which presumably underlie the prohibition in s 10(6) against the Court of Appeal reviewing the decision of the Industrial Court that the dismissal of a particular worker does, or does not, have the quality which triggers the grant of the remedies of compensation and reinstatement.

A harsh and oppressive dismissal is something which, according

to the Act, may be identified only by the Industrial Court.

It does not matter whether the party challenging the decision of the Industrial Court on this issue claims, not merely that the decision was against the weight of the evidence, but goes further and claims that no reasonable judge properly directed could have come to the same conclusion, having regard to the evidence. In the latter case, the ground of appeal has graduated from a question of fact to a question of law; but it is nonetheless barred by the prohibition contained in s 10(6). This is not to say that a decision of the Industrial Court as to whether a dismissal is harsh and oppressive is so sacrosanct that it can never be challenged on any ground whatever. If, for instance, there has been some procedural irregularity which involves a breach of the rules of natural justice, then clearly an appeal would lie to the Court of Appeal, notwithstanding s 10(6). In such a case it would be the process by which the Industrial Court reached its opinion and not the opinion itself, that was challenged."

The recent decision of the Court of Appeal in **Schlumberger Trinidad Inc. v. OWTU, Civil Appeal No. 3 of 2012** however holds that section 10(6) does not bar an appeal where there is "no evidence to support the primary fact on which the Court's opinion is based. See Mendonça, JA at paragraphs 41 and 56.

[52] Relying on the **Schlumberger** exception Mr. Jairam contends that an absence of evidence to support the court's conclusion is an error of law per section 18(2)(d). I agree. But it also follows that if there is a sufficient evidential foundation upon which the court could have come to its conclusions, there is no error of law. I consider that, in this case, there also was a proper evidential basis upon which the Industrial Court could have come to its conclusions.

[53] The company contended that it was the union which caused the workers to

take illegal action over the period 13th August to 15th August 2013.

[54] The Court's other findings of fact however effectively rejected the allegations of union complicity. In my judgment, these are findings the Court was entitled to make on the evidence. Despite the forceful assertions of the company, there was no clear evidence of any specific direction by the union. The company produced transcripts of comments made to the media by the president, the vice president and the branch president of the union as evidence of such instructions asking the Court to draw appropriate inferences. But as Mr. Mendes rightly submitted, the comments of these officials do not necessarily mean that they instigated the work stoppages. That conclusion simply does not follow. While there was evidence that the union's directed the workers not to follow Ms. Dinoo-Benjamin's instruction to train senior members of staff, there was a genuine dispute as to whether such training fell within the workers' job description. The company produced no evidence to support its contention that such training was part of their job description.

[55] With specific reference to the finding that there was no evidence that the union had made a demand of the company, Mr. Jairam referred to several transcripts of media statements by officials of the union which he contended were evidence of demands made by the union of the company.

[56] The problem with that evidence is that it was difficult to pinpoint what was the exact nature of the demand. The alleged demands of the union seem to vary from calls to reinstate Messrs. Ramlochan and Kissoon (who the company alleged were not dismissed), to demands that workers not be instructed to train managers in gantry operations, to demands about unsafe working conditions and the breach of occupational health and safety laws as well as demands that management desist from outsourcing contractors to perform tasks normally performed by workers.

Further, the company in its evidence and arguments posited that the initial work

stoppages began because the union embarked on protest action to demonstrate its disapproval of the company's implementation of an Industrial Court order. It was not clear whether the alleged work stoppages of 13th, 14th and 15th August 2013 were part of that grand design. Moreover, if the company were to be believed, Ramlochan and Kissoon were not dismissed but had been sent home for the day. A demand for their *"reinstatement"* was therefore unrealistic and served no purpose. Mr. Jairam however countered that it was sufficient that demands were made. Whether they may be based on fictitious perceptions was immaterial. There are orderly procedures provided for the settling of disputes. If the union chose, misguidedly, to make demands based on its own fictitious impressions, then it must suffer the consequences.

[57] The submission is misconceived at best. In my judgment section 63(1)(c) is aimed at a particular mischief which is illegal industrial action taken by the union or workers with the intention of forcing the employer to comply with a demand which has been directly and unambiguously communicated to the employer. The state of the evidence of a demand was quite unsatisfactory. Against that backdrop was the admission by Ms. Ragoonath in answer to the Court, that the union made no formal written demand of the company.

[58] However, the Court considered the comments of the union's officials to the media, and in particular, the comments of the president of the union, Ancil Roget, made on 14th August 2013 to an IETV news reporter. It held that the news clips and in particular Mr. Roget's statements, did not amount to a demand within the meaning of the IRA. There had to be communication of the demand to the other party. At highest Mr. Roget appeared to be informing the public of the reason for the work stoppage and the union's position as it relates to workers training members of management.

[59] I consider that that was a conclusion to which the Industrial Court could reasonably have come in regard to the evidence. The Court was well entitled to make that finding having regard to the state of the evidence as a whole.

[60] Mr. Jairam also contended that the fact that the union was cleared of a demand did not mean that the workers automatically were. However logical that submission may be, it belies the fact is that the company's complaint, buttressed by Miss Ragoonath's written an oral evidence, was founded on the basis of demands being made by the union on behalf of the workers and is reflected in the company's efforts to ascribe blame to the union by the actions of union officials in particular by the branch president, vice president and the president of the union. It followed that the Court, having found that there was no evidence of a demand by the union, was constrained to dismiss the complaint against the union. There being a sufficient evidential basis for the finding, the section 10(6) prohibition applies and there is no basis for interference by this Court.

The complaint against the workers

[61] Since the company's case was that the union made demands on behalf of the workers, it followed its finding of no evidence of a demand by the union meant that the company's complaint against the workers had also to be dismissed.

The Trade Dispute

[62] The dismissals of the workers were at the heart of the trade dispute because the workers were summarily dismissed for taking allegedly illegal industrial action. Their dismissals were reported to the Court as a trade dispute. Since the effect of the dismissal of the complaint was that the workers took no illegal industrial action, it followed that the union's case in trade dispute had to be upheld because the basis of the dismissals no longer stood. But in any event the Court went on to find, based on the natural justice findings that the dismissals were harsh and oppressive and contrary to the principles of good industrial relations because the disciplinary hearing(s) did not meet the minimum standards of natural justice in significant respects. It exercised its section 10(4) powers and ordered the workers reinstatement the payment of salaries and other benefits forgone and the payment of compensation.

[63] Mr. Jairam's challenge to the natural justice findings are as I have stated before; there was no evidence upon which the Court could have come to those conclusions more so since the union led no evidence in the trade dispute.

[64] In my judgment the natural justice findings are impeccable. While section 10(6) does not bar an appeal in which there is no evidence on which to found the primary finding of fact of the Court below, (per Mendonça JA in **Schlumberger (supra))** it cannot be said that the Schlumberger exception applies to this case. Even without the oral evidence of the union's witnesses there was a proper basis upon which the Court could have found as it did. A consideration of the letters of suspension and the notices of hearing shows that, the workers were not informed that one of the allegations they had to answer was that they had taken illegal industrial action contrary to section 63. None of the particulars in the notice of hearing or even the letters of suspension makes out such an allegation. If no such allegation was raised in the notice of the disciplinary hearing how could the workers be expected to defend it neither could they have been found to be guilty of a breach of section 63(1)(c).

[65] Important elements of the definition of industrial action are that a demand must be made of the employer by the workers or trade union and that the actions of the workers were directed at forcing compliance with the demand. For example the letters and the notices should have spelt out that the purpose of the illegal action (e.g. work stoppage, refusal to work, withholding of labour) was to compel the company to do something specific e.g. reinstatement of Messrs. Ramlochan and Kissoon. Merely to state that the alleged breaches *"go to the root of the contract"* is not sufficient. Unless the allegations set out that the actions taken were in furtherance of a demand the details of which are also clearly spelt out, the elements of the charge are not properly conveyed to the employee. In this case the company was alleging that the demands were made on behalf of the workers by the union officials. But the letters of suspension and the notices of hearing do not set out what the demands were or that they were made through the union and its officials. These were serious allegations for which there was a

serious consequence to the worker. It was important that those particulars be clear so that the worker would be under no doubt as to the consequences.

[66] The letters and notices fell woefully short of what was required to convey to the workers that they were accused of a breach of section 63(1)(c). There was therefore a proper evidential basis upon which the Court came to its findings set out at paragraph 47(i) and (ii) above. The section 10(6) prohibition applies and the Court of Appeal cannot interfere.

[67] But there is an additional factor to which the Industrial Court did not advert, which of itself, also invalidated the entire disciplinary proceedings. Ms. Dinoo-Benjamin because of the role she played in the events leading up to the work stoppages, should have had no part in the disciplinary hearings (except as a witness). As a significant player in the events which led to the disturbances, she should never have sat on any disciplinary panel. Neither should she have participated in the deliberations of the management committee which considered the recommendations of all three panels. She was a direct party to the controversy which arose out of Mr. Ramlochan and Mr. Kissoon refusing to carry out her "*instruction"*. Her evidence and her assertions were in direct conflict with that of Mr. Ramlochan, Mr. Kissoon and Mr. Francois.

[68] Despite this, she sat on the disciplinary panel at Cara Suites and worse still, in the hearings of the allegations against Mr. Ramlochan, Mr. Kissoon and Mr. Francois. She was both judge and witness at the same cause. I have not encountered a better (or worse) example of conflict of interest. The union rightly took several objections to her presence but on every occasion the objection was shot down by the president of the panel. Ms. Dinoo-Benjamin chose not to recuse. One such occasion is seen at line 20 page 409 of the record (at volume 2 of the core bundle) during the disciplinary hearing of Mr. Gerard Browne. Among the responses of the president was his comment that *"we feel we have the right to have whoever we want here present in the inquiry"* (see also page 586 line 4 of the same volume).

[69] Moreover, the manner in which the company approached the proceedings, did not fill me with confidence that it was doing so objectively. The notice of the hearing spoke of the company having "*completed its investigations"*. The company invited the various workers to disciplinary hearings but rather than inform the workers of the results of the investigations, it chose to keep those findings within its breast. It is unclear what those *"investigations"* entailed but it is fair to conclude that the list of errant employees prepared by Mr. Shyam Mahabir would have been considered. The manner in which this list was drawn up by Mr. Mahabir left a lot to be desired. This made it all the more important for the results of the *"investigations"* to have been made available to the workers.

[70] The Court spoke of an email report on the workers' activities which was in the company's possession. It is unclear if that email report related to company's investigations. If that report was the culmination of the company's *investigations* then it was only fair that each worker should have been told of the contents of the report in so far as those contents may have affected them adversely. But whether or not the e-mail report were related to the *"investigations"*, the results of the investigations ought still to have been disclosed.

[71] The workers were entitled to be told of the results of the investigations for the conduct of their defence. Although the letters of suspension stated that the workers may be required to assist in the investigation none of them was interviewed. Not only were the results of the investigations not revealed to the workers but in the disciplinary hearing of Mr. Shurland Simmons his request to be shown *"some findings of the investigation"* was met with outright refusal by Mr. Inniss. The exchange between Mr. Simmons and Mr. Inniss, at page 481 line 23 of core bundle volume 2 of the record is relevant:

> ***"A. In your letter here you've indicated that you've concluded an investigation and in this regard I'm required to attend this hearing. Is there any documentation? Can I see some findings of the investigation?***

Q. No, Mr. Simmons. This is an inquiry into -

A. So this is an investigation not a disciplinary hearing?

Q. Well Mr. Simmons, you - I never go to law school.

A. I just want to be clear of what I'm facing.

Q. Exactly what this letter says."

[72] The tone of that exchange from the president of the panel (I have already commented on what the letter did not say) very much reflected his cavalier approach to the proceedings. At times he appeared to consider the hearing to be an *"inquiry"* intended only for fact finding by the company with the workers' evidence having no exculpatory value. There appeared at times to be a clash of egos between the president and the union representatives with the president determined to have his way rather than taking an objective view of the assertions of the union.

[73] The other panels' hearings were also brief and perfunctory, with no appreciation for the consequences to the worker of a guilty finding. Unsurprisingly, the termination letters did not attempt to demonstrate why the workers explanations were rejected. My examination of the record revealed that none of the workers who raised health and safety concerns was spared dismissal. The company in its evidence and arguments was adamant that such allegations were raised as an afterthought by the union. Anyone who raised those issues as a defence was therefore doomed to dismissal. In at least two cases there were workers with no discernible differences in the substance of their defence. One was dismissed while the other was exonerated. Further, an examination of the transcripts of the disciplinary panels would reveal that no question of a demand being made of the company by the workers was ever or directed at the workers. A similar criticism can be made of the deliberations of management committee, having regard to the evidence of Ms. Ragoonath. Her responses particularly under cross-examination revealed that the committee members never really directed their minds to the essential elements of a breach of section 63(1)(c). Mr. Mendes was correct in his submission that her evidence demonstrated that no

consideration was given to the essential elements of a 63(1) breach. The entire disciplinary process reeked of arbitrariness.

[74] Mr. Jairam submitted that, given the nature of the provisions of section 63, it was not necessary to hold a disciplinary hearing. The submission very much mirrored the panels' approaches to the hearings of which I spoke in the preceding paragraph. It also begs the question who is to decide whether illegal industrial action was taken and on what facts. The thrust of Mr. Jairam's submission can only be that the company is the sole judge of those facts. Thereafter the recourse of the workers is simply to proceed under section 64. The submission needs only to be stated to be rejected. Fundamentally flawed though the hearings were, they still resulted in the exoneration of some fifteen workers. A fair disciplinary hearing which results in their exoneration spares the dismissed workers the oppression (financial and other wise) of a long dispute resolution process of which this appeal forms part.

[75] The submission is not the first example of the company seeking to justify taking unilateral action in this case. As the Industrial Court noted, the company alleged that the training of the staff in gantry operations was part of the lawful duty of Messrs. Ramlochan and Kissoon but it presented no evidence to justify its contention either before the disciplinary panels or the Industrial Court. Further, based on that unsubstantiated claim, Ms. Dinoo-Benjamin allegedly *"suspended"* the workers for the day. The company then conducted its own investigations into the work stoppages without the input of the workers under investigation and then kept the results of its investigations to itself.

[76] The Industrial Court was entirely correct to find that the disciplinary hearings did not meet the minimum requirements of natural justice and that they were not conducted in accordance with the principles of good industrial relations. It would follow that the Court's finding that the worker's dismissals were harsh, oppressive and contrary to good industrial relations practice, was also correct. There was a proper evidential basis upon which it could have made its findings of

fact. The section 10(6) prohibition applies and the Court of Appeal cannot interfere. In any event I agree with the findings.

[77] Mr. Jairam sought to make a distinction between labour law and public law, contending that a public law approach in so far at natural justice is concerned has no place in industrial relations practice. But the issue of fairness which is at the heart of the natural justice concept is a universal concept. Indeed, the resurgence of the concept can be traced to the decision of the House of Lords in **Ridge v. Baldwin**, a case which has no little connection with labour law principles. The submission is without merit.

Interventions by the President of the Court

Finally, Mr. Jairam submitted that the interventions of the president of the Court, prevented him from effectively presenting the company's case. I have considered the transcripts of the proceedings in the Industrial Court. At highest it may be said that the President of the Court was robust in her interventions and in her expression of her views. But those interventions, were no more numerous or robust that our own interventions this appeal. They in no way affected counsel's presentation of his client's case.

The orders made

[78] I turn next to consider the orders of the Court for reinstatement, payment of all foregone benefits and the payment of forty thousand dollars ($40,000.00) to each worker as compensation.

[79] Mr. Jairam submitted that the Court ought to have called upon him to address it on the question of remedies before making the orders it did make. He added that the company could not have known in advance that the Court would make the orders that it did. He relied on the decision of this Court in **Hydro Agri Trinidad Limited v. Oilfield Workers Trade Union, Civil Appeal No. 202 of**

2000. But that decision is distinguishable. In that case, the Court of Appeal reversed the Industrial Court's decision to award damages to the worker because the issue of liability (and damages consequent upon such a finding) was never before the Court. What had been referred to the Industrial Court for decision was the interpretation of a clause in the collective agreement signed between the company and the representative union.

[80] The same cannot be said to be the case here. The reinstatement of the workers, the payment of wages forgone during the period of dismissal and the payment of damages or compensation were all live issues which flow from any finding by, the Industrial Court that the termination of the workers' services was harsh, oppressive and contrary to the principles of good industrial relations practice. The court has the power under sections 10(4) and (5) to order reinstatement or the payment of compensation upon any finding of harshness and oppression. The important question in this case is whether it ought to have heard evidence and arguments from the parties before making the orders in respect of reinstatement, payment of salary and other lost benefits and compensation.

[81] The decision of this Court in **Caribbean Development Company Limited v. National Union of Government and Federated Workers, Civil No. 83 of 2002**, holds that the Court of Appeal has no jurisdiction to review a decision of the Industrial Court ordering reinstatement. See Sharma CJ at paragraph 23 page 12:

> ***"The Court of Appeal does not have jurisdiction to review orders for re-instatement even though such orders are not expressly ousted from the court's jurisdiction by s. 10(6). To construe s. 10(6) as conferring such jurisdiction would amount to a flagrant violation of the object and purpose of the provision. More significantly, the principles applicable to the decision to re-instate indicate that the discretion to re-instate depends in large measure on determinations of fact ...***

[24] The overriding consideration in construing the ambit of s. 10(6) must be the purpose of the provision. The Industrial Relations Act 1972 repealed and replaced the Industrial Stabilisation Act 1965 and is designed to make better provision for the stabilisation, improvement and promotion of industrial relations. Its object is the maintenance of sound industrial relations practices and the preservation of stable industrial peace. The Legislature conferred jurisdiction on the Industrial Court to ensure that these objects were achieved in employment relationships in this country.

[25] What is of critical importance is the fact that in addition to conferring this jurisdiction on the Industrial Court, the Legislature expressly ousted the Court of Appeal's jurisdiction in certain matters considered essential to determining good industrial relations practice. These matters are ones considered to be questions of fact and determinations based on the evidence which the members of the Industrial Court are best qualified to answer. This is consistent with the fact that the Legislature vested the Industrial Court with the responsibility of ensuring that good Industrial relations practices are maintained in employment relationships. S. 10(6) lists these matters as:

. The circumstances of a workers' dismissal - whether it was harsh, oppressive or contrary to good industrial relations practice.

. The orders of the court consequent on the finding that the dismissal was harsh and oppressive - orders of compensation and damages."

It would follow that the order of compensation and damages made in this case in the normal course would be precluded from review subject of course to the

Schlumberger exception.

[82] Mr. Jairam's submission however challenges the process by which the Court arrived at its decision. In effect he complains that he was not heard. The question is whether in this case the Court ought to have invited Mr. Jairam to address on the proposed reliefs. There is no practice of the Industrial Court bifurcating the issues of liability and remedies. Certainly Mr. Jairam could point to none. The union in its evidence and arguments before the Industrial Court sought in the trade dispute an order that the dismissals were harsh and oppressive. It also sought reinstatement of the workers without loss of earnings. It was thus a live issue before the Industrial Court. It was thus for Mr. Jairam to lead the evidence on the issue of remedies at least address the Court on their appropriateness. There was no duty on the Court to call upon him to address it on remedies. It could have invited his assistance but it was not bound to do so.

Section 10(4) gives the Industrial Court the discretion to order compensation or damages in addition to or in lieu of reinstatement. It may do so despite any rule of law to the contrary. Section 10(5) adds that the Court may make a section 10(4) order where it is of the opinion that the circumstances of a worker's dismissal were harsh and oppressive or not in accordance with the principles of good industrial relations practice. Further, in making an assessment for compensation or damages, the Court is not bound to follow any rule of law and it may make an assessment that in its opinion is fair and appropriate.

[83] Section 10(6) prohibits the opinion of the Court as to harshness and oppression and as to a breach of good industrial relations practice from being challenged or appealed against *"in any Court on any account whatever".*

[84] The dicta of three Chief Justices speak to the supremacy of the section 10 provisions. The dictum of Sharma CJ in **Caribbean Development Company Limited** v. **National Union of Government and Federated Workers (supra)** is to the effect that a reinstatement order cannot be reviewed even though not

expressly prohibited by section 10(6). While the union did not specifically ask for compensation, it did seek an order that the dismissals were harsh, oppressive and a breach of industrial relations practice (which itself would have invoked the Court's section 10(4) powers) reinstatement without loss of earnings and *"any further relief which the Court may deem it"*. The orders for reinstatement without loss of salary and other benefits thus fell within the claim made by the union. So too the order for compensation, as being such *"further relief"* as the Court considered appropriate.

[85] At the time of the Court's decision, these workers had been dismissed for a little more than a year. I do not consider, in that in those circumstances the award of forty thousand dollars ($40,000.00) was unduly high or that it represented a figure which is disproportionate to any damage they would have suffered. Certainly it was open to the Court to have invited submissions even evidence on the issue of compensation. But I also do not consider that the failure to do so constituted a breach of process sufficient to permit us to go behind the wide provisions of sections 10(5) and 10(6).

The appeal is dismissed. There shall be no order as to costs.

Nolan P.G. Bereaux
Justice of Appeal