REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. p-279 of 2017

Trade Dispute No. 84 of 2014

BETWEEN

TRINIDAD AND TOBAGO ELECTRICTY COMMISSION

Appellant

And

OILFIELD WORKERS TRADE UNION

Respondent

PANEL: A. Mendonça, JA

P. Rajkumar, JA

C. Pemberton, JA

APPEARANCES:

Mr. Keith Scotland and Ms. Keisha Kydd-Hannibal for the Appellant

Mr. Lyndon Leu for the Respondent

DATE: September 20th, 2018

REASONS

Delivered by A. Mendonça, JA

1. On July 11th, 2018 we dismissed this appeal and gave brief oral reasons for so doing. We now provide full written reasons for our decision.

2. This is an appeal by the Trinidad and Tobago Electricity Commission (the company) from the decision of the Industrial Court in a trade dispute between the company and the Oilfield Workers Trade Union (the union) concerning the erroneous retirement on medical grounds of Mr. Richard Ramjattan (the worker).

3. The material facts relevant to this appeal are not in dispute and are as follows.

4. The worker was employed by the company in 1993. From then until he was retired on August 8, 2012 on medical grounds, he worked as a driver, save for a period between 2004 and 2008 when he worked as a linesman. The circumstances in which he was retired on medical grounds are referred to below.

5. In February 2011, the worker suffered a blunt chest injury from a cricket ball which subsequently induced a heart attack. The worker proceeded on sick leave and returned to work shortly aftersubmitting a fitness to resume work certificate. He resumed work on April 14, 2011.

6. In November 2011, the worker applied for the position of Telecom Operator on the advice of the Assistant Area Manager of the company. With the advice of Secretary to the Area Manager, he drafted and sent the following letter:

> ***November 14th, 2011***
>
> ***Mr. Murvie Charles***
> ***Assistant Area Manager***
> ***Trinidad and Tobago Electricity Commission***
> ***Tumpuna Road***
>
> ***Dear Mr. Charles,***
>
> ***Re: Application for Telecom Operator in Training***
>
> ***Pursuant to our informal chat, I'm formally apply [sic] in response to, your advertisement with regards to Telecom Operators, as I indicated to you earlier, I had not responded before because I was ill and did not see the advertisement.***
>
> ***I have attached copies of my medical certificates detailing that I suffered a heart attack in February of this year hence the desire to make a switch from a Driver to Telecom Operator. It is a known medical fact that a person who has suffered a heart attack is always at risk to have another one without warning and this certainly pose a safety risk in carrying out the functions of a driver.***
>
> ***It would be preferable for it to happen in a chair rather than behind a steering wheel with other lives at stake.***
>
> ***In return I bring the Commission a vast knowledge and experience of the Area's systems and operations, garnered over the past twelve years in the field, seven (7) years as a driver and five (5) years as a linesman/trainee, in addition, I have been working as a shift worker in the Emergency Department for the past three (3) years.***
>
> ***Such knowledge and experience can be best put to use to the advantage in the service of the Commission and its customers.***
>
> ***Hope this meets with your approval.***
>
> ***……***
> ***Richard Ramjattan***

Driver-less than 25,000lbs

7. However, the worker continued to work as a driver without any further health complications. In January 2012, the worker was told by the Field Controller of the company to stop driving. Despite the worker continuing to report to work every day, he was not assigned to drive.

8. In March 2012, the worker was sent by the company for a medical fitness examination by Dr. Sieunarine, a general practitioner and the company's medical adviser. He was then referred to Dr. Omardeen, a cardiologist, for further testing. Prior to undergoing further tests by Dr. Omardeen, the worker took five days sick leave and underwent a medical examination at Mt. Hope Hospital. He was discharged from the hospital with a fit to resume certificate.

9. On May 23rd 2102 the worker was assessed by Dr. Omardeen and underwent an echocardiogram.

10. After that date, the worker continued to report for work but was not given any driving duties.
11. Dr. Sieunarine subsequently submitted a report in July 2012 to the company indicating that the worker was unfit for continued employment.

12. After receiving Dr. Sieunarine's report the worker was called to a meeting with the Area Manager on July 30th 2102. He was informed at that meeting that he was being medically retired on the ground of ill health. On August 16th 2012, the worker attended another

meeting and he was given a letter dated August 15th 2012 notifying him of retirement on the ground of ill health. The letter was as follows:

August 15th 2012

Mr. Richard Ramjattan,
#78 Ladybird Avenue,
La Horquetta,
ARIMA.

Dear Mr. Ramjattan,

Re: Ill-Health Retirement

I refer to the medical Report from Mr. T. Seiunarine dated July 4th 2012 and to discussions held with you by the Area manager- Mr. Felix Alleyne on July 30th 2012. Based on your medical report, the Commission had no alternative but to retire you on the grounds of Ill-Health effective August 8th 2012.

The Commission hopes that you will experience improved health in the future.

Yours sincerely,
Jacqueline Cheesman,
Assistant General Manager- Human Resources
TRINIDAD AND TOBAGO ELECTRICTY COMMISSION

13. On August 16th, 2012 the company presented the worker with a letter dated August 15th, 2012 which detailed his retirement benefits. The worker signed the letter in acceptance of its terms. The worker was called to the head office of the company around September 2012 and was paid his retirement payments which amounted to a lump sum payment of $220,839.60 and a monthly pension of $2,822.73.

14. As a result of his retirement on the ground of ill health, the worker applied for a disability grant from the National Insurance Board. However his application for the disability grant was denied on the grounds that he was not an invalid.

15. The worker then complained to the union, which, during verbal discussions with the company, requested the reinstatement of the worker. However, this was to no avail.

16. As a result the worker obtained a referral letter from Dr. Bhagan to see Dr. Omardeen. Dr. Omardeen performed an echocardiogram on 5th October 2013. This indicated that there no significant change from the test done in 2012.

17. The worker thereafter took the results of the echocardiogram to the union, which again approached the company, requesting reinstatement. This too was to no avail.

18. The worker then sought and obtained legal advice pursuant to which he obtained a medical report from Dr. Omardeen. The medical report confirmed, inter alia, that echocardiograms were performed on the worker in May 2012 and October 2013 and that the later test showed that there was no significant change to the one done in 2012. The report also stated that although the worker "does have heart disease... the area of damage" to the heart was "not considered to be large" and there was "overall good strength remaining in the heart's function".

19. Based on Dr. Omardeen's medical report, the union wrote to the company in April 2014. The union referred to its previous discussions with the company and reiterated its position that the worker was wrongly retired on medical grounds. The union noted that the

company had refused to reopen the matter and indicated that it had to take the matter further. In May 2014 the union wrote another letter formally raising a grievance but this proved futile. Following this, the union referred the matter to the Minister as a trade dispute in June 2014.

20. Conciliation proceedings at the Ministry of Labour and Small and Micro Enterprise Development failed to bring about an amicable settlement. Accordingly the Minister, acting pursuant to section 59(1) of the Industrial Relations Act (IRA), on November 12th 2014 certified the dispute as unresolved and referred the matter to the Industrial Court. The certificate stated that the nature and scope of the dispute "as reported by the union concerned the erroneous retirement on medical grounds, effective June 3rd, ,2014 of" the worker.

21. The union, in its evidence and arguments, contended that the company wrongfully retired the worker on medical grounds and/or the process was flawed and/or the worker was denied natural justice in the decision and/or an independent medical panel of medical professionals was not convened. In essence, the union complained that the process of retiring the worker on the grounds of ill health was unfair and unjust and as a consequence not in keeping with good industrial relations practice.

22. The company contended in its evidence and arguments that the main issue to be decided was whether it had complied with the prescribed procedure in retiring the worker on the grounds of ill-health. The company submitted that it did not flaunt or disregard any of its

procedures in relation to the worker's retirement and further the decision to retire the worker was based on the report of the company's medical adviser.

23. The Industrial Court identified the main issue for its determination to be whether the procedure used by the company to retire the worker on the grounds of ill health was fair and just and in keeping with good industrial relations practice.

24. The Court found that there was no evidence that the worker had a history of prolonged ill health, that the company did not make a genuine effort to give the worker an opportunity to function in the position of Telecom Operator or even more importantly to consult with the worker and/or the union about positions in the company which may have been more suitable. The Court also noted that the company seemed to have disregarded the worker's nineteen years of service and treated him "in a less than humane manner". The Court also found that the company's decision to retire the worker was based on a medical report which was not as comprehensive as was required to make such an important decision on the "worker's right to work", that the worker was never consulted on a proposal to retire him on medical grounds and he was only informed of the company's decision after it was already made by the company. In those circumstances the Court held that the company's procedure in retiring the worker was inadequate and unfair and proceeded to award damages to the worker in the sum of one million dollars ($1,000,000.00).

25. The company appealed and in its notice of appeal it contended that the Industrial Court erred in law. The company therefore sought an order of the Court of Appeal vacating the

order of the Industrial Court and that the union pay the costs of this appeal. The notice of appeal contained twenty two (22) grounds of appeal. However, at the hearing of the appeal, Mr. Scotland, counsel for the company, rested his case on six main submissions.

26. First, he submitted that the proceedings before the Industrial Court were a nullity as it was reported to the Minister outside of the six month period allowed pursuant to section 51(3) of the IRA for a trade dispute to be reported to the Minister.

27. The second submission made by Mr. Scotland, was that the Industrial Court erred when it rejected the company's submission that the aggrieved person was not a worker within the meaning of the IRA and as such the Industrial Court lacked jurisdiction to entertain this dispute.

28. The third submission made by Mr. Scotland was in response to a submission of the union that this Court by virtue of section 10(6) of the IRA did not have the jurisdiction to hear this appeal. This section (which is reproduced later in this judgement) provides that the opinion of the Industrial Court that a worker has been dismissed in circumstances that are harsh and oppressive or contrary to the principles of good industrial relations practice shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever. Counsel contended that the Industrial Court did not find that the dismissal was harsh and oppressive or contrary to good industrial relations practice so section 10(6) of the IRA was not relevant to this appeal.

29. Counsel's fourth submission was that the Industrial Court erred in law by imposing on the company a legal duty to find alternative employment for the worker within the company.

30. Fifth, Counsel took issue with the Industrial Court placing reliance on Dr. Omardeen's medical report rather than on Dr. Sieunarine's medical report in coming to its conclusion. Mr. Scotland argued that the Court ought to have taken into consideration the fact that at the time of retiring the worker, the company had before it Dr. Sieunarine's medical report and came to its conclusion based on that report.

31. Lastly, Mr. Scotland submitted that the Industrial Court ought to have subtracted the payment of $220,839.60 which was received by the worker when he was retired from the $1,000,000.00 awarded to him.

32. Mr. Leu, counsel for the union, argued that the judgment of the Court was plainly correct. He supplemented his very comprehensive written submissions, in which he addressed all of the grounds of appeal submitted by the company, by oral submissions before the Court.

33. The first issue raised by Mr. Scotland was that this trade dispute was reported to the Minister beyond the six-month period that is provided for in section 51(3) of the IRA. It was submitted that as a consequence the proceedings before the Industrial Court were a nullity and the order of the Court should therefore be set aside. Section 51(3) is as follows

:

> ***"A trade dispute may not be reported to the Minister if more than six months have elapsed since the issue giving rise to the dispute first arose, save that the Minister may, in any case where he considers it just, extend the time during which a dispute may be so reported to him."***

34. This section on its plain wording therefore provides that a trade dispute may not be reported to the Minister if more than six months have elapsed since the issue giving rise to the dispute first arose. It however, gives the Minister the discretion to extend the time during which the dispute may be reported to him. In this case the Minister was not called upon to exercise his discretion to extend the time for the reporting of the dispute, if indeed the trade dispute was reported outside of the six month period. However, as Mr. Scotland conceded, if the dispute was reported outside of the six month period it is a question that goes to the jurisdiction of the Industrial Court. In that regard Section 18(2) (a) is relevant. This section is as follows:

> ***"18 (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."***

It is clear from this section that before this Court is competent to entertain an appeal on the ground that the Industrial Court lacked jurisdiction that objection to the jurisdiction of

the Court should be formally taken before the Industrial Court.

35. In the course of argument before this Court, Mr. Scotland, when asked whether objection was taken to the jurisdiction of the Industrial Court before that Court, conceded that the point was not raised "frontally", to use his word. It does not, however, appear to us that the point was taken at all. We note that the point was not addressed by the Industrial Court in its judgment.

36. Further, on reading the summary of the submissions before the Industrial Court as contained in the judgment of the Industrial Court, the evidence and arguments of the parties, and the written submissions of the parties before that Court, it seems to us that at no point in time during the proceedings before the Industrial Court was any objection taken at all to the jurisdiction of the Industrial Court on the ground that the dispute was referred to the Minister outside of the six month period provided for in section 51(3). Mr. Scotland referred this Court to paragraph 5.6 of the judgment of the Industrial Court, however this paragraph does not address this point that he now seeks to raise. If it had, one would have expected to see something said along the lines that the trade dispute was only referred on day one, whereas the issue arose on day two and, therefore, it was submitted that the dispute was reported to the Minister outside of the six month period provided for in section 51(3) of the IRA, but nothing like that appears. In our view, the point was not formally taken before the Industrial Court as is required by section 18(2) (a) of the IRA and this Court is not competent to entertain this ground of appeal now advanced by Mr. Scotland.

37. The second submission made by Mr. Scotland was that the worker being a retiree is not a worker within the meaning of the IRA and therefore the Industrial Court had no jurisdiction to entertain the dispute.

38. We are unable to disagree with the conclusion of the Industrial Court that the worker was a 'worker' within the meaning of the IRA. The IRA provides a definition of 'worker' at section 2. There are several categories of persons who fall within the definition of worker and one of them is a person who has entered into or works under a contract with an employer to do any skilled, unskilled, manual, technical, clerical or other work for hire or reward. This is to be found at section 2(1) (a) which is as follows:

> ***"worker" subject to subsection (3)[which is not relevant to this appeal] means-***
> ***"Any person who has entered into or works under a contract with an employer to do any skilled, unskilled, manual, technical, clerical or other work for hire or reward, whether the contract is expressed or implied, oral or in writing, or partly oral and partly in writing, and whether it is a contract of service or apprenticeship or a contract personally to execute any work or labour."***

39. There can be no dispute that prior to the worker being retired on medical grounds he was a person within the meaning of that definition and then section 2(1)(d) of the IRA provides:

> ***"Any such person who has been dismissed, discharged, retrenched, refused employment or not employed, whether or not in connection with or in consequence of a dispute, or whose dismissal, discharge, retrenchment or refusal of employment has led to a dispute."***

40. The reference to "any such person" in section 2(1) (d) includes a person referred to in the definition of "worker" at section 2(1) (a) referred to above. Section 2(1) (d) therefore refers to a person within the meaning of section 2(1)(a) who, inter alia, has been dismissed and his dismissal has led to a dispute. This in our view must apply to the worker in this appeal. He was retired on medical grounds. Stripped to its bare essentials the worker was dismissed from his employment with the company on medical grounds and it is that dismissal that has led to this dispute. In our judgment therefore the worker is a "worker" within the meaning of the IRA. It would be a startling result if it were otherwise.

41. Mr. Scotland in support of his submission that the worker because he has retired is not a worker within the IRA referred to the judgment of the Industrial Court in **Trade Dispute 244/98 Communication Workers Union v Hilton International Trinidad Limited.** In that case the Court did state that a retiree is not a worker within the meaning of the IRA.It is however important to understand the context in which the Court made that statement.

42. In the **Hilton International** case there were two broad issues. The first was whether the employer unilaterally altered the terms and conditions of the worker's employment and so wrongly retired him at the age of 62 rather than 65. The second issue related to the retirement benefits payable to the worker on retirement. The Court found that there was no merit in the contention that the worker's terms and conditions were altered and held that he had achieved the appropriate retirement age and was therefore properly retired. Having so found, the Court went on to state that the status of the worker at the time of the dispute was that of a retiree and that a retiree is not a worker within the meaning of the IRA. The position would have been different had the Court found that the worker was not

properly retired. His status would not be that of a retiree but a worker who was wrongly dismissed. This case, in our judgment, does not support the proposition that where the worker disputes that he has been properly retired but was wrongly dismissed that he does not fall within the definition of worker in the IRA. It is the fact that there is that dispute that brings the person within the definition of worker.

43. The Industrial Court in its judgment in the **Hilton International** case followed the decision of the Industrial Court in **Trade Dispute 71/1995 National Union of Government and Federated Workers v Chief Personnel Officer** where the Court also held that "retired workers" cannot be regarded as workers for the purposes of the IRA. In that case the dispute before the Court was the alleged failure of the employer to pay the retired workers benefits which were due and payable to them on their retirement. There was no dispute that the workers were properly retired unlike in this case where the contention is that he worker was erroneously retired and in essence dismissed. This is the essential difference from the facts of this case. The **Chief Personnel Officer** case therefore also provides no assistance to the company in this appeal.

44. In the circumstances we find the second submission of Mr. Scotland to be without merit.

45. The third submission of Mr. Scotland was in response to what was one of the core submissions of the union that this appeal is in essence an appeal from a decision of the Industrial Court that the worker was dismissed in circumstances that were harsh and oppressive and contrary to the principles of good industrial relations practice and is

therefore an appeal that this Court cannot entertain as a consequence of section 10(6) of the IRA.

46. The contention of Mr. Scotland was that the Court did not hold that the worker's dismissal was contrary to good industrial relations practice or harsh and oppressive and therefore section 10(6) is not relevant. We, however, do not agree.

47. The Industrial Court at paragraph 7.1 of its judgment put the issue for its determination in these terms:

> ***"The main issue to be determined by the Court is whether the procedure used by the Employer to retire the Worker on the grounds of ill health was fair and just and in keeping with good industrial relations practices."***

That was the question the Court asked itself. The Court then went on to refer to decided cases on what constitutes good industrial relations practices, then embarked on an analysis of the evidence at paragraph 9 and said at paragraph 9.4 of its judgment that:

> ***"Indeed, good industrial relations practices would have demanded that both the Worker and a Union representative should have consulted before such a decision was arrived at by the Employer. Indeed it was only after the decision was made, that the worker was verbally informed on July 30th 2012 by the Area Supervisor "…that I was being medically retired on ill health…" In the Court's opinion, the decision was already made and there was no attempt by the Employer to involve the Worker in any discussions on such an important issue of "a worker's right to work." In addition, the Union's lawyer strongly argued that there were no documents indicating a "proposed retirement on medical grounds."***

48. And then the Industrial Court stated its conclusion at paragraph 11.1 in these terms:

> ***"On the totality of all the evidence and submissions as well as the important fact that even after the Worker's retirement, he was assessed as fit for work by two medical specialists, the Court holds that the Employer's procedure in retiring the Worker as medically unfit was inadequate and unfair."***

49. It seems to us that from the way it framed the issue for its determination at paragraph 7.1 of its judgment, the cases to which it referred, its analysis at paragraph 9, particularly at 9.4, and its conclusion at paragraph 11.1 that the holding of the Industrial Court was that on the totality of the evidence the company acted contrary to the principles of good industrial relations practice. Its conclusion should be seen as directly referable to the issue it framed at paragraph 7.1; whether the procedure was fair, just and in keeping with good industrial relations practice. The holding should be understood in that light and in our judgment it is not reasonable to construe the judgment of the Court in any other way than a finding that the procedure was unfair and inadequate and not in keeping with the principles of good industrial relations practice. We, therefore, cannot agree that it was not the opinion of the Court that the dismissal of the worker was contrary to the principles of good industrial relations practice.

50. In those circumstances this brings into play section 10(6) of the IRA which is as follows:

> "***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 or on any account***

whatever."

51. As de la Bastide CJ stated in **Caroni (1975) Ltd v Association of Technical, Administrative & Supervisory Staff - (2002) 67 WIR 223:**

> ***"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."***

52. In view of the above the opinion of the Industrial Court that the worker was retired or in other words dismissed in circumstances that are contrary to the principles of good industrial relations practice is not one that can be challenged in this Court.

53. Mr. Scotland took issue with what he determined to be errors of law made by the Industrial Court. We however view these alleged errors of law as manifestations of two things: they are either findings of fact, which are not appealable by virtue of section 18(2), or expressions of what the Court considered to be good industrial relations practice from which an appeal does not lie to this Court. This can be seen from the fourth and fifth submissions of Mr. Scotland. We shall consider the fifth submission first.

54. In that submission Mr. Scotland complains of the Industrial Court's finding that the company ought not to have relied only on the medical report of Dr. Sieunarine. The Court was of the view that the company ought not to have relied solely on the opinion of Dr. Sieunarine. But here the criticism of the company's reliance on the report seems to be on the basis that good industrial relations practice required that there should have been consultation and a collaborative medical report from both Dr. Sieunarine and Dr. Omardeen, who was a cardiologist, before any decision was made as to the medical condition of the worker to continue in the company's employ. What constituted good industrial relations practice was a matter for the Industrial Court and cannot be reviewed by this Court. If we are wrong in saying that the Court's opinion was informed by the principles of good industrial relations practice and the Court was of the view that the

report of Dr. Sieunarine was not sufficiently comprehensive, that is a question of fact which it was open to the Court to find on the totality of the evidence and in any event, as it is a finding of fact, is not appealable.

55. Similarly in Mr. Scotland's fourth submission he complains of the Industrial Court imposing a legal duty to find or procure alternative employment for the worker. This however is not a fair criticism of what the Court held. What the Court found in this regard is set out at paragraph 10.2 of the Courts' judgment which is as follows:

> ***"The Employer has not convinced the Court that it made a genuine effort to give the Worker an opportunity to function in the Telecom Operator position or even more importantly to consult with the Worker and/or Union about other positions in the Company which may have been more suitable. The Employer seems to have disregarded the Worker's nineteen years of service to the Company and treated the Worker in a less than humane manner."***

56. The Court was there saying that the company failed to consult with the worker and/or the union about other positions in the company. Mr. Scotland did not dispute the fact that there was no consultation. The Court was therefore correct to find as a fact that there was no consultation with the worker. But what the Industrial Court imposed on the company was not a duty to obtain alternative employment as Mr. Scotland contends, but a duty of consultation to find alternative employment. That too in the opinion of the Court was a matter which principles of good industrial relations practice required. It is not a matter that this Court can review.

57. Lastly, with respect to the appeal against the quantum of the award made by the Industrial Court in favour of the worker, section 10(5) is very clear, that:

> ***"The Court is not bound to follow any rule of law for the assessment of compensation and the Court may make an assessment that in its opinion is fair and appropriate."***

And Section 10(6), which we have referred to above, bars an appeal from an order for compensation or damages. So whatever view we may hold in respect of the award is immaterial because it is not a decision that this Court can enquire into, quash or review.

58. The decision of this Court in **Caribbean Development Company Limited v. National Union of Government and Federated Workers, Civil No. 83 of 2002** is relevant here. Sharma CJ at paragraph 23 page 12 stated:

> ***"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 reinstate 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."

59. For the above reasons we dismissed the appeal. We made no order as to costs, there being no exceptional reason within the meaning of section 10 (2) of the IRA to order otherwise.

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Mendonça JA

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Rajkumar JA

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Pemberton JA