IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M 38 AND 56 OF 1994 (CONSOLIDATED)

BETWEEN	JAMAICA ASSOCIATION OF LOCAL GOVERNMENT OFFICES	APPLICANTS
	NATIONAL WORKERS UNION	
A N D	THE ATTORNEY GENERAL	RESPONDENT

Lord Gifford Q. C. and Maurice Manning for the Applicants.

Lennox Campbell and Kissock Laing for the Respondent.

Heard: 30th, 31st January, 1st, and 14th February, 1995.

JUDGMENT

COOKE J.

As I write our schools are closed - teachers have taken strike action. The water in our pipes may soon be no more as certain categories of persons employed to the National Water Commission have withdrawn their labour. The workers in the Bauxite Industry have only just gone back to work, having taken industrial action. Seething murmurs of employee discontent pervades the land. In all this, resolution there must be and perhaps there may be references to the Industrial Dispute Tribunal, (the Tribunal) established under the The Labour Relations and Industrial Disputes Act. On all accounts, the Tribunal created to settle disputes which have defied hitherto conciliatory efforts and procedures has played on invaluable role in the conflicts which arise from time to time between employees and employers. No doubt it will continue to do so. It is therefore important that the Tribunal recognises its independence - an independence that can only add to the confidence of those persons or parties who appear before it. In September of 1993 the Minister of Labour and Welfare made a reference to the Tribunal in the following terms:-

> To determine and settle the dispute between the Government of Jamaica represented by the Ministries of the Public Service and Local Government, Youth and Sport on the one hand and those members of the Jamaica Fire Service represented jointly by the Jamaica Association of Local Government Officers (JALGO) and the National Workers Union (NWU) on the other hand over the Union's claim for increased wages and other improved conditions of employment.

The Tribunal made an award. It is this award which is now being challenged. I think it would be useful to outline the chronology of events and to this I now turn my attention.

1. On or about the 7th of September, 1992 the Ministry of the Public Service was in receipt of claims on behalf of fire brigade officers. The claims issued from two bodies - The Jamaica Association of Local Government Officers (JALGO) and The National Workers Union (NWU). JALGO and the NWU represent the fire brigade officers in negotiations over wages and conditions. These respective claims were identical in all respects.

2. On or about the 16th of September, 1992 the claims were referred to the Permanent Salaries Review Board (the Board). This was set up under Ministry Paper No. 8 dated 17th June 1992. The terms of reference of this Board as stated in paragraph 5 (2) of the Ministry Paper was:-

> To undertake on an on-going basis reviews of the salaries, fringe benefits and other conditions of service, as requested, of all categories of employees of Central and Local Government and designated Statutory Bodies. However, matters not directly relevant to wages, salaries and monetary allowances may be referred by the Board to the Ministry of the Public Service or to other relevant authorities.

3. JALGO and NWU made submissions before the Board on the 18th December 1992, 8th January 1993 and 28th May 1993. Apparently the reason for this protracted period was that during this time there was a reclassification exercise in respect of the fire brigade officers. The Board makes its recommendation and by paragraph 23 of the Ministry Paper:

> The recommendation made by the Board shall be sent to the Minister of the Public Service who shall consult with the unions or the Cabinet.

4. On the 26th of August 1993, JALGO and NWU received notification of the recommendation of the Board and of the decision of the Minister of the Public Service as approved by Cabinet. This displeased JALGO and NWU.

5. By letter dated 24th September 1993 the Minister of Labour and Welfare made a reference to the Tribunal.

6. On the 22nd March 1994, the Tribunal handed down its award and to this I now advert.

The award made by the Tribunal was in identical terms as to that approved by Cabinet. The Tribunal stated in its findings that:-

> Cabinet's final approval constitutes a policy decision which in the light of the judgment in Suit M 14 of 1980 - Regina v the Industrial Disputes Tribunal - Ex parte Seprod Group of Companies, is not subject to modification by the Tribunal.

and that:-

The Tribunal awards that the said Cabinet decision stands.

It is clear that the Tribunal considered itself bound to accept what it felt was a policy decision of the Cabinet. The applicants JALGO and NWU in this consolidated motion challenges this approach.

The relief sought by the Applicants were:-

(i) An Order of Certiorari to remove into the Supreme Court of Judicature of Jamaica and to quash an award made by the Industrial Disputes Tribunal dated the 22nd March 1994, in respect of an industrial dispute between the Government of Jamaica and the Applicant.

(ii) An Order of Mandamus directed to the Industrial Disputes Tribunal to determine the said dispute according to law.

Some six (6) grounds upon which the relief sought were filed but for the purpose of my judgment I will only set out the first three (3) in extenso:-

(1) That the Tribunal erred in law in holding that (in relation to the claim for increased wages and improved conditions of employment for fire officers which was the subject of the dispute) "Cabinet's final approval constitutes a policy decision which is not subject to modification by the Tribunal."

(2) That the Tribunal erred in law in holding that they were bound by the decision of this Honourable Court in R V Industrial Disputes Tribunal - Ex parte Seprod Group of Companies (M 14 of 1990) which decision related to a wholly different set of circumstances.

(3) That the Tribunal misdirected itself in holding that Section 12 (7) (b) of this Labour Relations and Industrial Disputes Act (which provides that the Tribunal shall not make any award which is inconsistent with the nation interest)

constrained it to accept the Government of Jamaica's decision upon the Applicant's claim as being final.

I will now look at the stance of the government in this matter. In my view the Ministry Paper was designed to rationalize the pay structure of public servants over wide and diversified areas of employment and it was towards this end that the Board was established. The Ministry Paper endeavoured to facilitate the solution to what it regarded as "persistent problems in public personnel administration." It was never intended, nor could it have sought to exclude the Tribunal from its function and authority given to it by law. Indeed the Ministry Paper recognised that despite the best efforts of all those concerned acting within the framework contained therein resolution may not be achieved. Then it would be time for the Tribunal to convene. After dealing with various procedural steps the last is to be found in paragraph 27 of this Ministry Paper which is in these terms:-

> Any award handed down by the Industrial Disputes Tribunal following reference thereto by the Minister of Labour, Welfare and Sports may be appealed on a point of Law as provided for in Section 12 (4) (c) of the Labour Relations and Industrial Disputes Act.

The document from the Cabinet is headed:

> **STATUS OF CLAIM SUBMITTED BY LOCAL GOVERNMENT OFFICERS (JALGO) AND THE NATIONAL WORKERS UNION (NWU) ON BEHALF OF FIREARM AND FIRE OFFICERS.**

The document is divided into three (3) columns.

ITEMS OF CLAIM	PSRB'S RECOMMENDATION	CABINET'S DECISION
	(the Board)	

Under the column "Cabinet's Decision" was stated the decision of the cabinet vis-a-vis the various items of the claims. Perhaps the word "decision" may have been ill chosen since what was contained in that column was, perhaps, no more than the reaction of the Cabinet to the set of circumstances before it which would include the claims; the recommendations of "the Board" and no doubt the financial constraints. It is beyond my comprehension that in this particular matter it was open to the cabinet to "decide" on any of the issues.

The Industrial Disputes Tribunal was established by virtue of Section 7 (1) of the Labour Relations and Industrial Disputes Act (The Act) By Section 12 (1) of the Act:

> The Tribunal shall in respect of any industrial dispute referred to it make its award within twenty-one (21) days after that dispute was so referred or if it is impracticable to make the award withn that period it shall do so as soon as maybe practicable and shall cause a copy of the award to be given forthwith to each of the parties and to the Minister.

Section 12 (2) (a) and (b) of the Act deals with the extension of time by the Tribunal and Section 12 (3) states:-

> The Tribunal may, in any award made by it, set out reasons for such award if it think necessary or expedient so to do.

In making its award the Tribunal

> Shall not make any award which is inconsistent with the national interest. (Section 12 (7) (b) of the Act.)

By Section 12 (4) (c) of the Act it is stated that an award -

> Shall be final and conclusive and no proceedings shall be brought in any court to impeach the validity therefor, except on a point of Law.

I have set out these sections of the Act to demonstrate that the purpose of the Tribunal is to settle disputes. It does not have to give reasons. Its determination of the respective merits of rival contentions is final and conclusive. This is eminently sensible as otherwise the tensions inherent in industrial disputes might find expression in ways which could have disastrous consequences. The assumption is that the Tribunal will from a position of unquestionable objectivity arrive at a just balance. The further assumption is that the contending parties will accept the award made. The sine qua non of these assumptions is that the Tribunal displays an impartiality which is and must be the foundation of confidence. However in handing down its award the Tribunal "shall not make any award which is inconsistent with the national interest."

In its findings, the Tribunal grounded its award on a judgment of this Court - Suit M 14/1980 R V The Industrial Disputes Tribunal - Ex parte Seprod Group of Companies (the Seprod Case). As already stated the Tribunal concluded that the approval of Cabinet was a policy decision and therefore "not subject to modification by the Tribunal." In the submissions before the Tribunal the Seprod case was not mentioned. Perhaps if it had been, the Tribunal may have benefitted from assistance as to its relevance to the particular proceedings before it.

Perhaps if the Seprod case came to its attention after the formal conclusion of the hearings and the Tribunal considered it binding, then the hearing might have been reconvened so that the parties could address on it. This was not done. In purporting to rely on "Seprod case" the Tribunal fell into error. Even if Cabinet's decision could be properly termed "a policy decision" there is nothing in the Seprod case to say that the Tribunal must slavishly follow the dictates of the government because that is the policy of the government. The background to the Seprod case is that at the time of the award wage increase limits were set out in Ministry Paper 22 which had been laid on the table of House on 9th May 1978. The decision in the Seprod case in so far as it is relevant to this judgment was that the Tribunal in making its award, had failed to have regard to the wage limits policy of the Government and therefore had made an award which was inconsistent with the national interest.

Parnell J. in the Seprod Case made it quite clear that in the context of the legislation - it was not for the government to impose on the Tribunal its view of what the national interest demanded. He said thus:-

> The Act has not defined the term "national interst" Parliament had deliberately left it open for the Tribunal and the courts to deal with it if in any given case the question as to what is covered by the term comes up for determination.

Parnell J. further opined as follows:-

> The categories of what is deemed to be in the national interest are not closed. What was relevant in the horse and buggy period may not be suitable in Jamaica of today. The national interest varies with the period. The requirements of a rapidly changing society may influence a shift in a course of action once thought to be suitable. Public opinion may play a great part in shaping or refurbishing "national interest" but it is the government of the day which is competent to declare it. And where this has been done it is left to a Tribunal or a court to say whether in any given set of circumstances the national interest is involved.

These two) passages from the judgment of Parnell J. makes it clear that the tribunal is not a rubber stamp of the government. In the dynamics of the evolving relationship between employer and employee, Parnell J. recognised the central and critical role of the government of the day. Section 69 (2) of the Constitution is in these terms:-

> The cabinet shall be the principal instrument of policy and shall be charged with the general direction and control of the government of Jamaica and shall be collectively responsible therefor to Parliament.

When Parnell J. stated that "it is the government of the day to declare it" (i.e. national interest) he was saying no more than that "the Cabinet shall be the principal instrument of policy".

Now if there is a stated policy by the government - and I doubt it is so in this case - the Tribunal would be obliged to give any such policy due consideration being always mindfull that "the cabinet shall be the principal instrument of policy and shall be charged with the general direction and control of the government of Jamaica". The government submissions may be so well founded as to make the acceptance of them irresistible. However, the Tribunal can only come to that conclusion after consideration of the merits of the submissions made before it. When the Tribunal found that "Cabinet's final approval constitutes a policy decision which ..... is not subject to modification by the Tribunal" it erred in law. The Tribunal adopted an erroneous approach based on a misunderstanding of the Seprod case.

I have earlier adverted to the fact that the Tribunal is not required by law to give reasons. Here it gave a reason. At this juncture I will refer to de Smith's Judicial Review of Administrative Action - 4th Edition where on page 406 the learned authors stated:-

> Where a tribunal that is not expressly obliged to give reasons for its decisions chooses not to give any reasons for a particular decision, it is not permissible to infer on that ground alone that its reasons for that decision were bad in law. But if the grounds or reasons stated, even in an informal document written after the decision, disclose a clearly erroneous legal approach, the decision will be quashed.

That passage in my view represents an accurate statement of the law. In its reasoning as set out by the Tribunal, there was disclosed "a clearly erroneous legal approach." The error lay in its misconception of the Seprod case resulting in their approach that "Cabinet's decision was not subject to modification." The Tribunal abandoned its role as designated to it by law. If the Tribunal was so bound as it said, what was the purpose of the eight sittings that were held? What would be the purpose of the Tribunal? Accordingly, the award of the Tribunal cannot be regarded as "final and conclusive" there being an error in law.

In conclusion I would grant the orders sought.

MALCOLM J.

I have had the opportunity of reading in draft the judgment of Cooke J. which deals thoroughly with all the issues raised at the hearing of the consolidated applications herein.

On the 1st February, 1995 we unanimously ordered that Certiorari and Mandamus should go with costs to the applicants to be agreed or taxed.

I need only emphasise and add that I agree entirely with the reasoning of my learned Brother.

PITTER J.

I have read the draft judgment of Cooke J, and I concur.