In the Supreme Court

The Full Court

Before: Smith, C.J., Vanderpump & Patterson, JJ.

R. v. The Industrial Disputes Tribunal,
Eric Feanny, Pansy Jones and Peter Lennox

Ex parte Knox Educational Services Ltd.

Robert Baugh for Applicant

Dennis Edmunds for the Tribunal

Earl Witter for other Respondents.

1982 - July 6, 7 and 8

SMITH, C.J. :

On March 20, 1980, the Minister of Labour made a reference to the Industrial Disputes Tribunal (the Tribunal) under the provisions of the Labour Relations and Industrial Disputes Act (the Act) in the following terms :

> " To determine and settle the dispute between Knox Educational Services Limited, on the one hand, and Mrs. P. Jones, Messrs. E.G. Feanny and P. Lennox, workers formerly employed by the Company, on the other hand, over the dismissal of the workers. "

A division of the Tribunal heard evidence and submissions by the parties and their representatives at fifteen sittings extending over the period from June 12, 1980 to January 26, 1981. A majority of the members of the Tribunal found that the three workers named in the reference were unjustifiably dismissed and ordered their reinstatement by March 16, 1981 and the payment to them of all outstanding salaries and other benefits. The award of the Tribunal is dated March 10, 1981 and records the fact that the employer's representative on the Tribunal did not agree with the award.

By leave of Morgan, J., granted on May 4, 1981, Knox Educational Services Ltd. (the applicant) applied to the Court for an order of certiorari to quash the award of the Tribunal. On July 8, 1982, the Court gave judgment quashing the award as it related to Mrs. Pansy Jones and otherwise refusing the application. The following are my reasons for agreeing with the judgment of the Court.

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It was submitted on behalf of the respondents that the applicant should be precluded from obtaining the relief it sought because of the delay in pursuing its application to the Court. Mr. Edmunds, for the Tribunal, submitted that the Court ought to hold as a matter of principle that delay in certiorari proceedings in relation to an order for reinstatement made by a Tribunal in dismissal proceedings "should not be tolerated because of its prejudicial effect on the workings of the Court, the Tribunal and the potential beneficiary of the order."

The application for leave to apply for the order of certiorari was made within the time limited by the Civil Procedure Code, as was the filing of the notice of motion consequent on the grant of leave. The motion was set down for hearing on July 6, 1981 but was removed from the list, without opposition, on the application of counsel for the applicant. No application was made during Michaelmas term 1981 to set the matter down for hearing. On January 27, 1982 a summons was taken out on behalf of Mr. Eric Feanny to have the proceedings dismissed for want of prosecution. On the following day the attorneys-at-law for the applicant wrote to the Registrar asking that the motion be set down. On the summons coming on for hearing on February 8 it was adjourned sine die as the Judge was of the opinion that he had no jurisdiction to hear it, being a matter, he felt, for the Full Court. The motion was before the Full Court on March 3 but was taken out of the list.

The affidavits filed in connection with the application to dismiss the proceedings show that the matter was adjourned on July 6, 1981 because a transcript of the notes of the proceedings before the Tribunal had not, up to then, been received by the parties. It was, however, received by the legal advisers of the applicant before the end of July. Thereafter, up to the time the application was made to dismiss the proceedings, the delay in having the matter set down was due to the unavailability of Queen's counsel of the applicant's choice. It was not until some time in January, 1982 that other counsel was retained.

Though the delay in having the motion set down for final disposal was unreasonable, particularly the delay between July 1981 and January 1982, it did not seem to me that this was the kind of delay which

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should disentitle an applicant to relief at the hearing. In my view, the proper remedy for inordinate and inexcusable delay in prosecuting an action or application which has been regularly filed and is pending is having it dismissed on that ground by interlocutory order, as one of the respondents sought to do in this case.

There were three grounds argued before us in support of the application. It was contended, firstly, that the Tribunal had no jurisdiction to order the reinstatement of Mrs. Pansy Jones; secondly, that there was a breach of the rules of natural justice in that the Tribunal refused to allow the applicant's counsel to cross-examine the dismissed workers; and thirdly, that the award was wrong in law as there was no evidence upon which the finding that each of the three workers was unjustifiably dismissed could be based.

The application succeeded on the first ground. There was undisputed evidence before the Tribunal that Mrs. Jones was employed by a body called the Knox Community Development Foundation (the Foundation) as its chief accountant. In that capacity she was responsible for the "financial accounting requirements" of the applicant company, a subsidiary of the Foundation. Messrs. Feanny and Lennox were employees of the applicant company. The Minister's terms of reference wrongly described Mrs. Jones as an employee of the applicant company. The Foundation was not a party to the reference. No objection was taken at the hearings before the Tribunal to the dispute concerning Mrs. Jones being considered. The Tribunal was, obviously, aware that Mrs. Jones was not employed to the applicant company but to the Foundation as its order of reinstatement is directed to "Knox Educational Services Limited and or Knox Community Development Foundation Limited."

It was submitted for the respondents that it was not open to the applicant to complain of the Tribunal's lack of jurisdiction in this respect, and it should be precluded from raising this ground, because it openly acquiesced in, and contributed to, the error committed by the Tribunal. Reference was made to the transcript of the proceedings where, at the first sitting of the Tribunal, counsel for

the applicant expressly approved of the terms of reference and, subsequently, in his opening submission he stated that Mrs. Jones was employed to the Foundation as chief accountant and was accountable "for all the financial accounting and reporting of the Community Services of the Foundation", including the applicant company (see pp. 2, 71 and 72 of supplementary bundle). It was argued that the representatives of the applicant made it plain that it did not matter one way or the other, for the purposes of the proceedings before the Tribunal, whether Mrs. Jones was employed to the Foundation or to the applicant, particularly as she was carrying out the functions of chief accountant for the applicant company.

These submissions are not without merit, especially as the record of the proceedings before the Tribunal show that the management and control of the Foundation and of the applicant company were in the same hands. There are, however, legal impediments to acceeding to them. In the first place, the Foundation, as such, was not named as a party and was not represented before the Tribunal and so cannot be said to have acquiesced, or to have authorised anyone to acquiesce, in the proceedings. it is that acquiescence which is important. Secondly, and more importantly, since the Foundation was not expressly named as a party in the Minister's terms of reference, the award, insofar as it directed the reinstatement of Mrs. Jones, is not binding on the Foundation (see s. 12(6) of the Act) and so is not enforceable. The Tribunal clearly had no jurisdiction to make it. Mr. Baugh, for the applicant, submitted that the section of the award referring to Mrs. Jones was not severable from the rest and so the entire award should be struck down. I did not agree.

When the Tribunal sat on the first day to hear the dispute, and again on the fourth day, the Chairman announced the procedure which the Tribunal had decided should be followed. The applicant's case should be presented first by an opening submission and the calling of witnesses in support of the case; the case for the dismissed workers would then be presented by a "full" submission and the calling of witnesses, to be followed by a closing submission on behalf of the applicant. By the

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(Mr. Long was counsel for the applicant and Mr. London a member of the Tribunal).

Mr. Long commented that Mr. Feanny "having adopted the position that he did not wish to put himself in a position to be cross-examined" there was nothing he could do about it. After further exchanges and the recall of one of the applicant's witnesses (Mr. Campbell) for further questioning by Mr. London, Mr. Long began his closing submission, which he completed on the seventeenth day.

The second and third contentions in support of the application were argued in the alternative to this effect: if the contents of Mr. Feanny's submission was evidence upon which the Tribunal was entitled to rely in coming to its decision, a breach of natural justice was committed by the Tribunal in refusing to allow cross-examination of the dismissed workers; alternatively, if the contents of the submission was not evidence, there was no evidence upon which the Tribunal's finding of unjustifiable dismissals can be based.

The whole question of what was, or was not, evidence on which the Tribunal could act was raised in the argument before us as well as before the Tribunal, where questions as to the admissibility of hearsay evidence and the basis for the admittance of documentary evidence were specifically raised. Reference was made to s. 17 of the Act - the power of the Tribunal to summon witnesses to give evidence or produce documents and to administer oaths to them; to s. 18 - the rights and privilege of such witnesses; to s. 19 - referring to the hearing of evidence by the Tribunal; and to s. 20 - which authorises the Tribunal to regulate its procedure and proceedings as it thinks fit. These provisions gave rise to the question whether or not "evidence" must be sworn evidence as well as : what is permitted to a tribunal which is given the power contained in s. 20 ? The following reference to two authorities which were not cited during the argument provide the answers.

In R. v Deputy Industrial Injuries Commissioner Ex parte Moore, (1965) 2 W.L.R. 89 ((1965) 1 Q.B. 456, 1 All E.R. 81), the (U.K.) Court of Appeal heard an appeal from the Divisional Court, which refused

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an application for an order of certiorari to quash the decision of a deputy industrial injuries commissioner dismissing the appeal of a claimant under the provisions of the National Insurance (Industrial Injuries) Act, 1946. Regulations made under that Act (Reg. 26(1)(b)) gave the deputy commissioner the right to determine his own procedure and one of the grounds upon which it was sought to quash his decision was that he had treated as evidence matters which were not evidence. The following lengthy extract from the judgment of Diplock, L.J. (as he was then) is illuminating. He said, at pp. 116 and 117 :

> " Where, as in the present case, a personal bias or **mala** fides on the part of the deputy commissioner is not in question, the rules of natural justice which he must observe can, in my view, be reduced to two. First, he must base his decision on evidence, whether a hearing is requested or not. Secondly, if a hearing is requested, he must fairly listen to the contentions of all persons who are entitled to be represented at the hearing.
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> In the context of the first rule, 'evidence' is not restricted to evidence which would be admissible in a court of law. For historical reasons, based on the fear that juries who might be illiterate would be incapable of differentiating between the probative values of different methods of proof, the practice of the common law courts has been to admit only what the judges then regarded as the best evidence of any disputed fact, and thereby to exclude much material which, as a matter of common sense, would assist a fact-finding tribunal to reach a correct conclusion .....
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> These technical rules of evidence, however, form no part of the rules of natural justice. The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer, but he may take into account any material which, as a matter of reason, has some probative value in the sense mentioned above. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. "

Diplock, L.J. pointed out that the evidentiary material to which it was contended the deputy commissioner wrongly attached weight was hearsay but that that went to the weight of the material only. Later, the learned Judge said (at pp. 118, 119) that the second rule of natural justice required the deputy commissioner, at a hearing, inter alia,

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"to allow each person represented to comment upon any such 'evidence' and, where the 'evidence' is given orally by witnesses, to put questions to those witnesses."

In T.A. Miller Ltd. v Minister of Housing and Local Government & another, (1968) 1 W.L.R. 992 at 995 Lord Denning, M.R. said :

> " A tribunal of this kind is master of its own procedure, provided that the rules of natural justice are applied. Most of the evidence here was on oath, but that is no reason why hearsay should not be admitted where it can fairly be regarded as reliable..... Hearsay is clearly admissible before a tribunal. No doubt in admitting it, the tribunal must observe the rules of natural justice, but this does not mean that it must be tested by cross-examination. It only means that the tribunal must give the other side a fair opportunity of commenting on it and of contradicting it. "

In that case the tribunal was an inspector, who held an inquiry on behalf of the Minister. He admitted in evidence, and relied on, a letter whose writer was not called as a witness. The letter was put to witnesses of the opposing party, who did not accept it as accurate.

It was not contended before us by counsel for the respondents that the Tribunal was entitled to use Mr. Feanny's submission, or any part of it, as evidence. Quite the contrary, as Mr. Edmunds submitted that the submission was invalid insofar as it sought "to give evidence." In my opinion, it would be wrong for the Tribunal to accept as evidence anything Mr. Feanny said in his submission (as distinct from the documents he produced) in support of the cases of the dismissed workers. In the first place, Mr. Feanny addressed not only on his own case but on the cases of his colleagues. He could not, therefore, give oral "evidence" on their behalf. Secondly, though it seems clear from the authorities cited above that the Tribunal, in exercise of its unlimited power to regulate its procedure and proceedings, could hear and act on oral "evidence" from witnesses who were not sworn, to do so in this case would breach the second rule of natural justice enunciated by Diplock, L.J. The witnesses for the employer, the applicant, having given sworn evidence, were cross-examined at length by Mr. Feanny. To allow Mr. Feanny in those circumstances to give unsworn "evidence" during his submission and so deprive counsel for the applicant of the opportunity of testing it by cross-examination would be grossly unfair. There is

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no rule which justifies such a procedure. This is not like a criminal case in which an accused person may elect to make an unsworn statement.

Whatever procedure is adopted by the Tribunal for the adduction of evidence, it must be uniform for both sides, if the rules of natural justice are to be observed. A worker has no right to decide whether or not oral "evidence" given by him should be sworn or unsworn or whether or not he should be questioned or cross-examined on such "evidence". The employer is entitled to cross-examine him if what he says, sworn or unsworn, is being put forward as "evidence" and the Tribunal should do nothing to deprive the employer of that right.

In support of the applicant's third contention, that there was no evidence upon which the Tribunal's finding of unjustifiable dismissals can be based, it was submitted that the Tribunal "functioned" on the basis that Mr. Feanny's submission was evidence and was taken "into consideration" by the Tribunal in arriving at its decision. Reference was made to passages in the transcript of the proceedings which, it was said, supported this submission. There is the following passage at p. 331 of the supplementary bundle :

" Mr. White: Before you go down, are you saying that the KCDF Board could be abandoned ?

Mr. Feanny: Yes, sir, but we hear Mr. General Manager, Mr. O'Neil was attending meetings of the Board of KCDF Board and he is the General Manager, and here is Mr. Feanny the Managing Director, let us say, he was the Managing Director, he was shut out of meetings....

Mr. Long: Mr. Chairman, I would like to raise an objection to that allegation on the basis that Mr. O'Neil was here at the time and this was not put to Mr. O'Neil as to what capacity he, in fact, attended the Board meeting as General Manager or, in fact, by invitation or by right, but he attended and that is the important thing. The trend is one, a member of the Board or as one attending a meeting by invitation. At no time was any question put to him - did he attend all Board Meetings.

Mr. Feanny: I remember putting a question to him as to whether he attended a meeting of the Board of Directors on a particular date.

Chairman: You know, sir, we are going to make objection, objection.

Mr. Long: Yes, but let us have the thing under a proper footing. "

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" Chairman: It is for us to say we are going to expunge this from our minds.

Mr. Long: But, am I to sit here and not do justice to the people I represent ?

Chairman: When we come to look at the overall thing, we will see that Mr. Long raised the objection, the point of objection was that and we give that thought. "

Passages on pp. 336 to 338 were pointed out but these relate to the admissibility of documentary evidence, with which I deal below. Finally, reference was made to a passage on p. 415, where Mr. Feanny is, apparently, referring to aspects of his submission as "evidence". Reference was also made to the document containing the Tribunal's award where, on page 5, there is the following paragraph :

" With reference to the allegations against Mr. Feanny, he denied the charges refuting them with the support of documentary evidence. "

Counsel emphasized the fact that documents were being referred to here as "evidence."

At the outset of the Tribunal's sittings Mr. Feanny stated that he had no witnesses to call. His submission was, however, not limited to commenting on the case presented by the applicant. There were large areas which were plain statements of fact, both in respect of his own conduct and those of his colleagues. The fact that this was allowed by the Tribunal and at the end Mr. Feanny was asked whether or not he wished to be questioned gave rise at least to a suspicion that his statements were regarded as evidence by the Tribunal. This suspicion is heightened by an exchange during the submission when, after a lengthy uninterrupted statement of fact by Mr. Feanny, occupying a full page of the transcript (p. 315 of the supplementary bundle), counsel for the applicant intervened to inquire whether Mr. Feanny intended to call witnesses to prove a particular statement he had made and objecting to it on the ground that the statement was hearsay. The following exchange then occurred (at p. 316) :

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The objections of counsel on technical grounds to the admissibility of documents produced by Mr. Feanny were without merit. So were the objections on the ground that a document would introduce hearsay evidence. Where there was a failure to put a document to a witness called for the applicant, this fact would not make the document inadmissible. It would be a factor to be borne in mind by the Tribunal in considering what weight should be given to the evidence contained in it, in the same way that the weight of hearsay evidence has to be determined. The Chairman, at least, was aware of this responsibility of the Tribunal as evidenced by a statement made by him during the proceedings when counsel objected to a document produced by Mr. Feanny on the ground that it was hearsay and, therefore, inadmissible as it had not been put to two of the applicant's witnesses. The Chairman is recorded (at p. 329 of the supplementary bundle) as saying on that occasion :

> " When it comes back to our time it is within our powers to say this thing is inadmissible judging on the weight of that when we come to our decision. You are going to have a chance to conclude. "

The sense of the statement is clear, even if there is a lack of clarity in expression.

As indicated in the last line of the statement just quoted, counsel for the applicant had the opportunity, in his closing submissions to comment on and, if necessary, to contradict any documentary evidence introduced by Mr. Feanny. He actually commented on some of those documents and, in addition, he had the opportunity of eliciting further evidence from one of the applicant's witnesses, the Rev. Mr. Campbell, who was recalled by a member of the Tribunal, at the close of Mr. Feanny's submission. There can have been little doubt about the authenticity of many of the documents produced by Mr. Feanny. As already stated, many of them were exhibited with the written submission of the dismissed workers and looking at those exhibited one sees that they are copies of letters, minutes and other documents generated in the running of the applicant company's business and that of the organisation of which it was a subsidiary. They are documents, it seems to me, to which those

representing the interests of the applicant had access. Indeed, in the instance to which reference is made in the immediately preceding paragraph, counsel for the applicant stated that he had a copy of the document to which he was objecting, that he objected because it was "merely hearsay" and that Mr. Feanny "had the opportunity to examine the person (namely, applicant's witness) from whose hands it is alleged to have originated (and) he never did so"(emphasis added). In my opinion, it was for the Tribunal to decide whether any of the documents produced before it had any value as evidence and was entitled to use such of them as it considered to be of value in arriving at its decision.

What was argued by Mr. Baugh for the applicant was that Mr. Feanny's submission and the documents he produced were taken into account by the Tribunal in arriving at its decision and that if they are ignored then one is "left with only that portion of the award of what the (applicant) company's position has been, which witnesses were called to support". Learned counsel failed to satisfy me that the Tribunal relied on anything Mr. Feanny said in his submission in arriving at its decision that the workers were unjustifiably dismissed. In the document containing the award, no reasonsare given for the decision. There is nothing to indicate what "evidence" was accepted or rejected. Reference is made in the document to statements made by Mr. Feanny "in defence" of the workers by use of introductory phrases such as "it was stated", "it was further stated", "Mr. Feanny said" and "it was submitted" but this, in my judgment, is not necessarily an indication of acceptance of the statements quoted as evidence. It seems clear that it is the case presented by the dismissed workers which was being outlined and not the "evidence" in support of the case. Similar phrases were used in outlining the case for the applicant and there can be no doubt that what was referred to there was not "evidence" which was being accepted. When, during his reply, Mr. Baugh was reminded of the contention of opposing counsel, that it did not necessarily follow that because no proper evidence was presented on behalf of the dismissed workers that

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VANDERPUMP, J.

On 8th July last we ordered that Certiorari should go to quash that part of the order relating to Mrs. Jones as the Tribunal had no jurisdiction to make it. As far as Feanny and Lennox were concerned we held that the Applicant had not discharged the burden of showing that there was no evidence upon which the Tribunal could have based its decision that these two men had been unjustifiably dismissed. Sufficiency or insufficiency of evidence is a matter of Law.

The Terms of Reference were common form

The Award ordered the reinstatement by 16th March, 1981 in their respective positions after finding that they were unjustifiably dismissed.

The Usual Statement after the prayer for Certiorari to issue set forth the grounds upon which that relief was sought.

These were:

a) The Tribunal in making its award exceeded its jurisdiction in that it made a decision it had no jurisdiction to make, namely that it ordered that Mrs. Pansy Jones be reinstated by Knox Education Foundation Ltd. This succeeded.

b) The Tribunal refused to grant the request of the Applicant's Attorney-at-Law to cross-examine the dismissed workers in breach of the rules of natural justice.

c) Was abandoned.

It ended with a submission that there was no evidence upon which the Tribunal could have based its decision that these three workers had been unjustifiably dismissed. That submission did not succeed.

There was a motion by Mr.Feanny to dismiss this application for want of prosecution as it was submitted in affidavit form that inordinate delay had been suffered in setting it down for hearing. This delay it seems was the usual delay occasioned in the High Court and is the fate of nearly all the actions coming before it. This is caused by the heavy work load and the unavailability of busy counsel appearing in them. No merit in that submission.

Mr.Feanny was the only dismissed worker who appeared before the Tribunal. As he did not give sworn testimony he could not be cross-examined.

> "..... A tribunal of this kind is master of its own procedure, provided that the rules of natural justice are applied. ..... Tribunals are entitled to act on any material which is logically probative, even though not evidence in a court of law .... Hearsay is clearly admissable before a tribunal. No doubt in admitting it, the tribunal must observe the rules of natural justice, but this does not mean that it must be tested by cross examination. It only means that the tribunal must give the other side a fair opportunity of commenting on it and of contradicting it."

Miller v Minister of Housing 1968 A.E.R. 633,634 GH. Lord Denning, M.R.

The emphasis on the rules of natural justice is to be observed. As

> " All persons exercising judicial or quasi judicial functions must have due regard to the dictates of natural justice..... else their decision will be voidable"

30 Hals 3rd ed. paragraph 1368.

Judgments of the full court are replete with guidance and guidelines laid down from time to time for the edification of tribunals. To no avail. The stage has now been reached where differently constituted tribunals each do their own thing, to use a colloquialism. It is bordering on the farcical.

Consideration should be given to either amending the law to set out the vital requirement of the observance of these rules or else set up an Industrial Court with appropriately trained personnel.

In Trinidad the Industrial Stabilisation (Amendment) (No.2) Act added to the parent Act:

> " 13A (1) Without prejudice to its powers under section 13 or under any other law, the court may, in making an award, order the reinstatement within a specified period in his former or a similar position of a worker who has been dismissed -
> "(a) .....
> (b) for reasons which in the opinion of the court are harsh or oppressive and unreasonable and unjust and the onus of satisfying the court that an order for reinstatement should be made is on the party seeking the order."
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> " ..... the onus lay on the union to satisfy the court that ..... Wallace's dismissal by the company was excessive ..... wrong ..... lacking the elements of justice ..... the issue was not whether the company justify the legality or propriety of the dismissal."

Fernandes v Transport 1968 13 W.I.R. 339 E.F., 344 A.B.

That Act is not in force here nor any with similar provisions. So that the onus is not on the union to prove anything. The reasons for the dismissal of the three workers must have been peculiarly within the knowledge of their employers, the company so that it was incumbent on the company to prove that they were not unjustifiably dismissed. They failed as the Tribunal held that they had been and ordered their reinstatement. The applicant could not show us that there was no evidence upon which the Tribunal could have based that decision despite counsel going through it with a fine teeth comb.

GEO M. VANDERPUMP,
J.

Patterson J.

I have had the advantage of reading the judgment of the Chief Justice with which I am in complete agreement, and there is very little that I need add. The grounds on which the application was based, the arguments advanced by Mr. Baugh in support thereof, and the arguments of Mr. Edmunds have been admirably set out in the leading judgment of the Chief Justice and I need not repeat them. However, from the arguments, it seemed obvious to me that the Industrial Disputes Tribunal ought to consider regularizing its procedure and proceedings.

In the instant case, the Chairman presiding over the division of the Tribunal hearing this matter, at the first day's sitting, found it necessary to "deal with the format" because, as he said to the parties, he was "getting a little feedback to suggest that you may have in mind a different format than the one the Tribunal has in mind". The Chairman then made it clear that the Tribunal was

> "dealing with a dismissal case, and we always ask the company that did the dismissal to state to the Tribunal fully why you took that course of action, then the Union will carry on and then we come back to you to close your case. Of course, when you start, you can call your witnesses, examine them, there is cross-examination and you re-examine if you want but not long, and that is the way it goes. So, the format is, you start, carry on with your witnesses, then the Union with your witnesses and then you close the whole case. Maybe I have corrected something".

In reply to this Mr. Long, who appeared on behalf of the applicants, informed the Tribunal that he was "under the impression that it would be Mr. Kelly's side in fact presenting; we have no dispute". The Chairman then said, "Now that we have changed, could it be different".

At the fourth day's sitting, the Chairman returned to the procedure to be followed. He had this to say:

> "I should have told both sides, it being a dismissal case, the Company makes its submission first, call his witnesses, examine them and then you cross-examine. If it is necessary, you re-examine at the end of your submission, then you come down with your full submission whatever you want to submit, tear to pieces what he said and then you close your submission".

The Labour Relations and Industrial Disputes Act, enacted in 1975, established the Industrial Disputes Tribunal with power to deal with industrial disputes referred to it for settlement, in a summary manner. I agree with Mr. Witter's submissions that it is plain that Parliament did not intend to set up a Court of Law when establishing the Industrial Disputes Tribunal, and that the strict rules of procedure and of evidence applicable to trials, were not intended to apply to the Tribunal. However, the Tribunal must apply the rules of natural justice and it must act in good faith.

The Act allows any party to a dispute which has been referred to the Tribunal to appear either in person or by an attorney-at-law or by a trade union officer, or even, with the permission of the Tribunal, by any other person whom he wishes to represent him. The Tribunal has power to summon witnesses and to swear them. The Tribunal may sit in private, and section 20 of the Act gives the Tribunal wide powers to regulate its procedure and proceedings as it thinks fit, subject to the provisions of the Act. It is therefore unhelpful for the Court to lay down strict rules governing the exercise of the wide powers conferred on the Tribunal, as to do so would tend to restrict the liberty and privilege conferred by the clear language of the Act. Parliament in its wisdom, must have realised that a Tribunal would be required to exercise its powers in various circumstances, dealing with matters that are not only difficult, but at times extremely delicate and explosive, and for that reason thought it fit not to regulate, limit or restrict the procedure and proceedings of the Tribunal. This Court, in my judgment, ought not therefore, to attempt to fetter the wide powers given to the Tribunal. Nevertheless, it should not be taken that the Tribunal has free rein sub-ordinated to no rules whatsoever. The duty of reducing the exercise of its powers to a uniform method devolves on the Tribunal itself, and its procedure and proceedings should be so regulated that those who appear before it are sure of the way in which the Tribunal will proceed, notwithstanding the composition of any particular division.

In the instant case, the applicant complains of the manner

end of the twelfth day's sitting, the case for the applicant had been presented by the making of an opening submission by counsel and the calling of six witnesses who gave sworn evidence.

Apart from a brief participation in the proceedings by representatives of an organisation called Thossy Kelly and Associates (which,it is recorded, represented the dismissed workers), the respondent Feanny was the spokesman presenting his case and those of his dismissed colleagues. At the end of the twelfth day's sitting the Chairman addressed Mr. Feanny thus :

> " Wait a while, Mr. Feanny, because you are going to make your submissions now. You know it is one submission you are going to make. You go right through the whole thing. You have heard the allegations over here, you are going to say so and so, and you go right through and you call your witnesses, if necessary. I mean, if you want them. Then he closed (sic) over this side. " (See p. 310 of supplementary bundle).

At the commencement of the sitting on the thirteenth day, Mr. Feanny was called on to make his submission. He began then and ended on the sixteenth day with these words :

> " Mr. Chairman, you have seen, sir, you have evidence both from this side and that side, sir, that these three people are worthy of such a request, sir, reinstatement without victimization and that they are given their rightful place as Managing Director, as Chief Accountant and as Sales Manager, sir, and that Mr. Feanny's bonus be given back to him, sir. I, sir, don't need to weary your ears any more, gentlemen, because you have sufficient facts, sir, on the records to go back (sic). I would imagine by now, Mr. Chairman, after hearing both sides you shouldn't have much problem at arriving at an early decision. " (see p. 421).

The transcript of the proceedings show that off-the-record discussions took place following the close of the submission and then the following exchanges occurred (p. 422) :

> " Chairman: Okay, we are going on the record now. Mr. Feanny, you don't wish to be questioned by Mr. Long ?
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> Mr. Feanny: I think Mr. Long had asked the question and answered it himself.
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> Mr. London: Yes or no.
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> Chairman: Do you wish to be questioned ?
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> Mr. Feanny: No, sir, I have closed my case. "

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" Chairman: We are saying, this is left for us to say what is hearsay or not hearsay.

Mr. White: Mr. Chairman, are you agreeing that that is hearsay or what ?

Chairman: It is left for us to come to an opinion, Mr. White, but I am asking Mr. Feanny to go ahead. It is in the record that he says it is hearsay, our opinion is not recorded.

Mr. Long: Mr. Chairman, I am not holding up time but the Tribunal is, in fact, hearing evidence which is hearsay, this is why I am applying to record it that evidence is recorded which is, in fact, hearsay. We are dealing in semantics and we are getting into something that is total verbiage.

Mr. London: It is left to Mr. Feanny to put his case how he sees it, he is conducting his own case, he doesn't intend to call any witnesses in support of what he says, he Eric Feanny did at this place. We can't stop him from saying these things, he is empowered. But, as the Chairman has said, we will have to decide at the end of the day what weight to give to all of this. I think the crux of the matter here my brother is that we can't tell the gentleman how to put forward his case. "

Later in the proceedings, the Chairman made a statement which can be regarded either as indicating the opposite of what is conveyed by the above extract or as explanatory of it. Counsel for the applicant had made one of his frequent interventions to inquire whether Mr. Feanny had proof of facts he had just stated. The Chairman is recorded as replying (at p. 378) :

> " Let me again reiterate. If Mr. Feanny is saying all of this and he can't affirm them when we come, and Mr. Long point this out, then it will be hopeless, but here is it he is trying to tell us something, let him go along, and at the end of it sir, how he says how can he prove it? (sic). So this is a waste and we are here to be the judge on that. "

This statement is not as clear as one which the Chairman made immediately after, when Mr. Long said: "Very well, sir" in response to the earlier statement. The Chairman is recorded as saying (at p. 379) :

> " Let me make it quite clear. If Mr. Feanny is wasting our time by telling us a lot of things that he cannot prove, then that will be a waste of time. "

Several interventions were made by counsel for the applicant to object to documents to which Mr. Feanny referred during his submission and which he wished to have admitted as evidence. The grounds of objection were that the particular document was hearsay, or not properly introduced, or was not put to a witness for the applicant when giving evidence "for ratification" or to say whether or not he received it and, generally, not produced in accordance with the rules of evidence. Both parties were required, before the hearings began, to make written submissions to the Tribunal setting out the cause of the dispute. This was done and I believe the practice is for these submissions to be exchanged by the parties. The written submissions were exhibited before us. Each was supported by copies of documents regarded as relevant to the case to be presented. The applicant's submission exhibited some eleven separate documents and that of the dismissed workers exhibited twenty-two. Many, if not all, of the documents to which Mr. Feanny referred during his submission before the Tribunal were included among the twenty-two.

There could be no valid objection to documentary exhibits being received as evidence during Mr. Feanny's submission. I saw one instance in the record where counsel for the applicant tendered a document during his opening address and it was received (see p. 35 of supplementary bundle). There was also an occasion (see p. 396) when counsel said he would have no objection to Mr. Feanny putting in evidence two letters to which he had referred. It is clear from the authorities cited above that the Tribunal was not bound by strict rules of evidence. In R. v Deputy Industrial Injuries Commissioner Ex parte Moore, Pearson, L.J. said, at pp. 113, 114 :

> " The deputy commissioner could determine the procedure for this particular case. No doubt the procedure has to be reasonable, and, when there is a hearing, it has to be a well-conducted hearing. But the deputy commissioner would not render his procedure unreasonable, nor his hearing ill-conducted, merely by admitting as evidence something which, according to the strict rules of evidence for court proceedings, would be inadmissible ..... The deputy commissioner's discretion to determine the procedure under regulation 26(1)(b) must be wide enough to enable him, in a proper case, to admit good evidence notwithstanding that there might, according to the rules of evidence, be some technical objection to its admissibility. "

there was no evidence upon which the Tribunal could have found unjustifiable dismissals, he concluded his reply by the concession that it would be difficult to advance the argument that the only conclusion to which the Tribunal could come, in the absence of Mr. Feanny's submission, was that the dismissals were justified.

In the absence of counsel going through the oral and documentary evidence put before the Tribunal on behalf of the applicant and showing that the evidence was all one way, that it showed justifiable grounds for the dismissals and could not reasonably have been rejected by the Tribunal, he could not successfully maintain his argument. Reference to exchanges which occurred during Mr. Feanny's submission, when he was dealing with one of the allegations against Mrs. Pansy Jones (see pp. 398 to 403 of supplementary bundle), will show that the evidence produced in proof of it was not very convincing. It is clear from what is recorded on p. 399 that one member of the Tribunal, at least, did not accept the evidence. That same member, from what he is reported as saying on p. 404, clearly did not accept the evidence given by another of the applicant's witnesses. It may be of some significance that in the document containing the award (at p. 4) it is stated that witnesses, naming them, were called by the company" in an attempt to substantiate its allegations against the three employees" (emphasis added).

At the commencement of the third day's sitting, the Chairman of the Tribunal addressed counsel for the applicant thus " :

> " As I intimated previously Mr. Long, it being a dismissal, the Tribunal is going to ask you to commence your submission as to why these workers were dismissed. "

In my opinion, it is plain that in adopting this procedure the Tribunal was placing the burden on the applicant to satisfy it that the workers were justifiably dismissed. At the hearing of the application before us, it was not demonstrated on behalf of the applicant that, on a consideration of the evidence adduced on the applicant's behalf together with the documents produced by Mr. Feanny, this burden was discharged.