IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO. M 35 OF 1980

Reg. v. Industrial Disputes Tribunal

Ex parte Alcan Jamaica Company

(Application for Order of Certiorari)

Coram: Parnell, Chambers, JJ & Wolfe, J (Ag.)

Heard: December 1, 1980

Emile George, Q.C. and Maurice Long for the applicant,
Dennis Edmunds for the Tribunal,
Enoch Blake and Everton Bird for the N.W.U. (bargaining agents for the workers).

Parnell, J:

At the end of the hearing on December 1, the Court unanimously ordered that certiorari should go to quash the award of the Industrial Disputes Tribunal (hereinafter referred to as the Tribunal). The Union which appeared in support of the Tribunal's award was ordered to pay the costs of the applicant. We promised to put our reasons in writing. This we now do.

Award bad on its face

The award of the Tribunal is regarded for all practical purposes as final and conclusive. But the Labour Relations and Industrial Disputes Act, under which it operates, makes it very clear, that an award may be impeached on the following grounds:

(1) That the Tribunal erred in law in arriving at its decision;

(2) That the conditions of employment regulating the work of the employees at the work place, are controlled or regulated by statute and the award of the Tribunal, conflicts with the statute in question.

(3) That the award is inconsistent with the national interest (See section 12(4) and 7) of the Act.

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Where an error of law is alleged, the error may appear on the face of it. A "speaking award" may be made by the Tribunal. In such a case, the summary of the evidence or reasons on which the award is based is outlined and the error is discernible. But where an inconsistency with the national interest is said to be involved the detection of the error may not be easy to discern. The reason for this is that: the "national interest" like "public policy" is a horse high and refractory. Getting astride the animal may be difficult. And once the judge is aboard, there may be genuine differences of opinion, whether or not he earned praise in the handling of the reins.

In this case, it has been urged that the award of the Tribunal is bad on the face of the record. Learned Counsel who appeared for the Tribunal did not seek to support it. He was satisfied with his putting in an appearance merely for the purpose of protecting the Tribunal against an order for costs if the applicant succeeded in its contention.

Brief history of the dispute

1. At the applicant's Kirkvine Works, there is an Instrument Section attached to the Electrical Department. The Instrument Section was manned by 18 workers. The Manager of the applicant's plant took a decision to appoint one B, an ex-hourly rated employee as a technician in the Instrument Section. But this proposed move did not meet with the approval or pleasure of the union delegate. The union delegate suggested that a particular worker from the Instrument Section should be named to the post. The delegate made it very clear that if the decision of the Manager was implemented there would be "problems". This warning - which was nothing short of a threat to resort to industrial action - was issued on Friday the 30th June, 1978.

2. The Manager told the union delegate on June 30, that B would be taking up duties on either Monday the 3rd July or Monday the 17th. The newly appointed technician B reported for duty on July 3. Of the 18 men in the Instrument Section, 13 reported for duty on July 3. The absence of 5 men including the union delegate was satisfactorily accounted for.

3. It seems that the "problems" which the union delegate had prophesied would have developed if B was appointed, started on the very day he took up duty. At about mid-day, one worker deserted his post without

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informing his foreman of his intention or assumed reason for so doing. And by 2:15 p.m. another worker ceased working. But he claimed that he was "ill."

4. On Tuesday the 4th July, the Instrument Section was wholly deserted. None of the 13 men reported for duty. But "sick leave" certificates were forwarded to the Personnel Department for 7 of the men. All the certificates were effective as from July 4. Six recommended four days "sick leave" and one recommended three days. Claiming that an "epidemic" could have hit a section of the plant, the Manager contacted the Company's Medical Director and the executive of the Union.

5. On July 5, six "sick leave" certificates were received. All these certificates recommending periods of three to four days "rest", were effective from July 4.

6. On July 6, the company sent telegrams to the 13 "sick" employees that they each should obtain a "fit to resume" certificate before reporting back to work. This was a strategic but wise move on the part of the Company's management. It was wise in the sense that if - against enormous odds - an epidemic had broken out which affected only the instrument men, the health and comfort of the other 681 workers at the plant including the other five men whose absence on July 4 was accounted for, should not have been imperilled. And it was strategic in the sense that if a "sick-out" under the pretence of genuine illness was put in operation, the camouflage could have been detected without much difficulty.

7. On the 7th July, 3 men reported to work but without the appropriate resumptive certificate. The three men obtained the certificates but two of them refused to surrender them to their foreman.

8. On July 10, all the unionised instrument men who were due to resume reported. There were two absentees. One man was absent without leave. Permission was granted to the other man to be absent.

9. On the 10th July, the men who reported for work without resumptive certificates, were directed to obtain them. On the advice of the union delegate, they refused. Men who had "fit to resume" certificates, refused to carry out work which was assigned to them. And those without the certificates were not assigned any work.

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10. On the 17th July, the Medical Director of the applicant informed its Personnel Manager that no epidemic existed. As a result, the requirement to obtain the "fit to resume" certificates was no longer necessary.

Claim for pay during "illness"

At a meeting held on July 18, the Personnel Manager and the Instrument Department conveyed to the Chief Union Delegate, Mr. L. Pitter, the decision of the Company that no pay would be given for the alleged sick leave:

> "as Alcan viewed the matter as concerted industrial action on the part of Instrument employees."

The reaction of Mr. Pitter was swift. The grievance procedure in the collective agreement was ignored. By telephone, he issued a strike notice to the Personnel Manager to the effect that unless the men were paid for the alleged sick leave period that very day, then the plant would be closed down within 72 hours. On the same day, the secretary of the union informed the Company that a grievance had arisen.

The Industrial Relations Manager of the Company wrote a letter on July 19 to the General Secretary of the Union. The General Secretary was informed of the strike notice issued by Mr. Pitter, the Chief Delegate. I shall quote the second and third paragraphs of the letter of the Industrial Relations Manager:

> " I urge you to use your influence with the local to prevent them from executing his threat of taking strike action. I remind you that our Collective Labour Agreement provides for the processing of any grievance or complaints which an employee or the Union might have and recommend that this machinery be utilized in the instant case. The Company is committed to deal with any matter processed through the grievance procedure as a matter of urgency.
>
> Please bear in mind, too, that the closure of any production unit in the industry at this time from whatever cause, will certainly result in hardships to our employees, loss of production to the Company and serious damage to our already battered national economy."

Eventually good sense prevailed. The threat was not carried out but the union pressed its claim that the men should be paid for the period when they were not on duty owing to "illness."

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Claim referred to Tribunal

The claim of the Union that the workers be paid for the period July 4 to 17, 1978, was not accepted by the Company. As a result, the dispute was reported to the Minister of Labour. By letter dated October 24, the Minister referred the dispute to the Tribunal for settlement under the following terms of reference:

> "To determine and settle the dispute between Alcan Jamaica Limited (Kirkvine Works) on the one hand and certain categories of workers employed by the Company and represented by the National Workers Union on the other hand over incidents resulting in the non-payment of wages by the Company to certain workers employed in the Instrument Department of Kirkvine Works for the period 4th July, 1978 to 17th July, 1978."

Tribunal's meetings

Between March 1, 1979 and April 23, 1980, the Tribunal held nine meetings when submissions were made. Mr. Emile George, Q.C., led the team for the Company. The General Secretary of the National Workers Union, led for the Union. It seems that what appears to be a very simple matter, took nine meetings over a period of nearly fourteen months to be ventilated. And on the 9th June, 1980, the Tribunal made its award. I shall quote certain passages contained in a memorandum of six pages. The three members who constituted the panel were unanimous in their conclusion.

(1) "From the evidence tendered by the Company and the circumstantial implications, the Tribunal does not believe that the workers were ill. However, the medical evidence that they were ill is uncontestable and must be accepted by the Trobunal." (page 4 of award).

(2) "The Tribunal finds that in demanding the 'fit to resume' certificates, the Company was merely exercising its rights.....and consequently the conduct of those workers who refused to obtain the certificates and of those who had certificates and refused to work cannot be condoned." (p.5).

(3) "On the other hand, the Tribunal is not satisfied that the Company seriously considered the possibility of an 'epidemic'..... Apart from the fact that no report of this suspected epidemic was made to the Health Authorities, with the facilities available to the Company and the Medical Director it should have been established well before the 17th July that no epidemic existed." (p.5).

Under the heading "recommendation" at page 6, this interesting comment is made:

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> "The award in respect of the first period (i.e. that covered by the medical certificates) has been reluctantly made since it appears to the Tribunal that this is a case where industrial action was planned and carried out with the unwitting support of the medical profession. It is clear that this pattern of behaviour must be discouraged; the remedy whatever it may be, does not lie with a Tribunal of this nature."

Summary of findings

From the excerpts above mentioned, the Tribunal, in my view, found the following:

(1) That no genuine illness was suffered by any of the 13 men who withdrew their services from the Instrument Section as from the 4th July.

(2) That industrial action was planned and executed under the pretext of "sickness."

(3) That the management of the Company exercised its rights when it demanded that the men whom the manager considered were on strike should produce "fit to resume" certificates before they were allowed to resume duties.

The reasoning of the Tribunal is, with respect, not free from a certain amount of confusion. If the management of the Company honestly believed that the men were on a "sick-out" but in fact were exercising industrial action, then the question of "considering seriously that an epidemic had broken out" did not arise. And there was no duty on the part of anyone to make any report to the Health Authorities of a "suspected epidemic" at Kirkvine Works. It seems to me that what the Company did was to resort to that clause under the Collective Agreement between the Union and itself which gives the right to call for a medical certificate from a worker who claims that owing to "illness" he was absent from duty. However, the request for the medical certificate was not a move designed to prove that any "epidemic" had broken out. That was rejected by the Company. The object was designed to get documentary and circumstantial evidence if possible to support the contention that the men had feigned their illness.

Conduct whether antecedent or subsequent in relation to an event is admissible. And it is relevant evidence in order to throw light on the nature and quality of the event under inquiry. It is open to a party to a

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dispute to rely on any proper method which he has adopted in order to collect material which may be useful in any step or proceeding which he envisaged.

The Tribunal should have examined the Company's move in that light particularly where there was a finding inconsistent with the existence of an epidemic and consistent with the belief of the management that the men were only pretending that they were sick.

In my judgment, the Tribunal misdirected itself in this particular area of the evidence.

Error of law on the face of record

The error of law which is apparent on the face of the memorandum containing the award, is the erroneous opinion of the Tribunal that the evidence or opinion of an expert or of a professional man in his field of learning must be accepted by a Tribunal of fact unless it is contested. The language of the Tribunal should be repeated:

> "However, the medical evidence that they were ill is uncontestable and must be accepted by the Tribunal."

I am of the opinion that the adjective "uncontestable" is an error and that "uncontested" is what was meant. The epithet "incontestable" could not have been intended since I do not think that the Tribunal would have gone to the extent of saying that medical evidence is not capable of being challenged or contradicted.

I, therefore, proceed on the basis that the Tribunal in its use of the epithet "uncontestable" did mean to convey the idea that there was no evidence to challenge the contents contained in the medical certificates touching the health of the men and therefore, the Tribunal was bound by the medical evidence. If this is what is meant, then it is not the law and it has never been the law. Even where there is no evidence of an expert which is in opposition to the evidence of one called by a Court or Tribunal, the evidence given is not bound to be accepted. And it can be rejected if there is lay evidence which common sense dictates should be preferred. The function of an expert is merely to assist the Judge or jury in reaching the truth. And no tribunal is bound to accept evidence of opinion whether by a lay or expert witness. Once the Tribunal came to the conclusion that the

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men had planned and executed industrial action at the plant under the pretence that they were sick, the production of medical certificates suggesting that they were ill could not affect the finding which the other evidence and the circumstances strongly support. By the finding in (1) above, the production of the medical certificates should have been regarded as part of or a step towards the planned action.

But the issuing of the medical certificates indicating illness on the part of the patients, is not to be regarded as "unwitting support of the medical profession." A patient is in a position to mislead a medical man when he relates his history or symptoms. In such a case, the doctor is likely to resolve any reasonable doubt in favour of the patient so as to allow the symptoms complained of to run a reasonable course. Where the medical practitioner, therefore, is not aware of the circumstances, he is likely to be led astray by a scheming patient with the result that his patient leaves his surgery with a "sick certificate" when in fact nothing is wrong. From the facts and circumstances, the findings by the Tribunal show clearly that the men involved obtained sick leave certificates in order to support their industrial action and to ground a claim for pay based on illness. The Tribunal was, therefore, in error in making the award which the applicant has challenged. It was to the effect that the Company should pay the workers their wages for the period covered by the medical certificates and for the period, July 13, 14 and 17.

Labour Relations Code

The Labour Relations Code, established in accordance with section 3 of the Labour Relations and Industrial Disputes Act, was approved and published over four years ago. (See Jamaica Gazette Supplement No. 106 dated September 30, 1976). Paragraph 6(1) of the Code states:

> "The worker has a responsibility to his employer to perform his contract of service to the best of his ability; to his trade union to support it financially and to vest in it, the necessary authority for the performance of its functions efficiently; to his fellow workers in ensuring that his actions do not prejudice their general well-being including their health and safety; to the nation by ensuring his dedication to the principle of productive work for the good of all."

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And paragraph 7 states:

> "The main objective of a trade union is to promote the interest of its members, due regard being paid to the interest of the total labour force and to the greater national interest. To achieve this aim, trade unions have a duty to maintain the viability of the undertaking by ensuring co-operation with management in measures to promote efficiency and good industrial relations."

Trade unions and workers should be reminded of the existence of the Code. Staging a sick-out at a plant on the ground of an alleged grievance is not in the national interest. And where a trade union official, who knows the facts, supports a sick-out as a weapon and further supports the alleged "sick workers" to claim wages during the period of "illness", he shows by his conduct that he is irresponsible and that in the exercise of his functions, he disregards the national interest.

The workers at a plant should be properly instructed and led. False pretences and irresponsibility on their part should be discouraged. Frankness, devotion to duty, discipline and responsibility should be advocated and maintained.

Power of the Tribunal

Tha Act proceeds on the basis that every imaginable industrial dispute as defined in the interpretation section, is capable of being settled. It is the Tribunal which is required to settle the dispute if all other means ~~is~~ which are available to the parties have been unsuccessful. To suggest therefore - as the Tribunal has stated in this case - that the pattern of behaviour complained of by the applicant, does not lie within the power of the Tribunal to deal with effectively, is in my view and with respect, a demonstration of weakness and lack of foresight. Dismissing a claim which is unjust or irregular; balancing the national interest with the interest of the workers and with a leaning towards the interest and concern of the nation; chiding recalcitrant workers and belligerent trade union executives in appropriate language and refusing to be influenced by plausible but unsound rhetoric, are some of the methods which may safely be resorted to when a dispute has been referred for settlement.

Where it is believed that a point of law arises during the hearing and that it is likely that an award may depend on the identification

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and interpretation of the point of law in question, the Tribunal should seek advice. One simple method of doing this, is to summon an attorney from the department of the Law Officers of the Crown. The attorney will then appear as an amicus curiae and advise the Tribunal in the presence and hearing of the parties. If this course was followed, there is the likelihood that the opinion that would have been tendered would be consistent with the stand taken by Counsel before us who appears for the Tribunal. The conduct of Mr. Edmunds in his refusing to offer support to an obviously erroneous award is commendable.

In his submissions before us Mr. Blake on behalf of the Union criticised Mr. Edmunds for his refusal to support the award. The criticisms were unfortunate. Mr. Blake appears to have forgotten certain legal ethics which every practising counsel should know. Counsel should never attempt to keep his personal conscience and his professional conscience in separate compartments. It is in the highest tradition of the Bar that Counsel does not attempt to support a course of action which he conscientiously believes is untenable. He may be wrong in his refusing to argue that a certain stand is maintainable but if he honestly feels that he cannot support it, he is free to say so without being subject to any censure from anyone including a colleague who finds himself on the other side of the fence.

It was Touchstone, an amusing character in Shakespeare's "As you like it", who related the story concerning a quarrel on the "Seventh cause". The seventh cause is to charge a man with the "Lie Direct". And the "Lie Direct" follows closely the "Lie Circumstantial". But the consequences of alleging a lie direct may be avoided by a condition introduced by the word "if". (See Act 5, scene 4, lines 89-109). Both the lie circumstantial and the lie direct were present in the alleged grievance which the Union claimed to have existed between the management and the workers in its refusal to pay wages during illness. The proposition and finding that in the circumstances there was a lie which based the claim, did not change with the formula:

"if a medical certificate is produced."

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A lie seeks to dodge careful examination. Truth invites it.

Where a motion is sought to seek an order to quash the order of an inferior tribunal, the tribunal members are not liable to pay costs, unless it is shown that they were guilty of a serious impropriety and they appear at the hearing of the Full Court in opposition to the relief sought. But the Union having appeared to support the award, it makes itself liable to pay the costs of the applicant.

It is for the reasons which I have attempted to outline, why I joined in the order proposed and announced at the end of the hearing.

Chambers J.

I have had the benefit of reading in draft the views expressed by my brothers Parnell J. Senior Puisne Judge, and that of Wolfe J. (Ag.) I agree with them but I wish to express some observations of my own owing to the importance of this case.

Mr. Emil George Q.C. for the applicant Alcan Jamaica Company (formerly Alcan Jamaica Limited Kirvine Works) hereinafter referred to as the applicant moved this Court by Certiorari to quash the Award of the Industrial Disputes Tribunal (hereinafter referred to as the Tribunal) which award was made on the 9th day of June 1980 on the main ground that there was an error in law on the face of the record. Mr. George cited to the Court the well known principle and referred to the treatise on the Principles of Administrative Law by J.A.G. Griffith and H. Street 5th Edition at page 216:

> " Whereupon the face of the record it appears that the determination of the inferior tribunal is wrong in law, certiorari will be granted".

This statement is mentioned in the 4th Edition at page 223. The principle is supported as long ago as 1922 in Rex v Nat Bell Liquors Ltd. (1922) 2 A.C. 128 at page 160 (per Lord Summer).

Mr. George further submitted that an error of law appears on the face of the record of the proceedings before the Tribunal in that the Tribunal wrongly held that expert evidence was not capable of being contested or was uncontestable and must be accepted by the Tribunal. What is recorded is in these words:

> " However, the medical evidence that they were ill is uncontestable and must be accepted by the Tribunal".

Mr. Enoch Blake for the National Workers Union which represented the workers who were on a "sick-out" did not at first deal specifically with the question of "Error on the face of the record" but submitted to this Court that:

> " The finding of the Tribunal is that the workers were genuinely sick".

He argued that this finding is to be inferred. Further that as the Tribunal came to the conclusion that the men were sick that is the end of the matter. It is not clear whether by this submission he intended that this Court should hold that if the finding of the Tribunal was otherwise the matter does not end there?

Mr. Blake further submitted that there was no evidence from which the Tribunal could have come to the conclusion that the workers were not ill.

Mr. Blake made the two submissions outlined hereunder and I am at a loss to understand how he could have made them on the face of the record before this Court. Part of the Record includes the Memorandum dated 5th January 1979 prepared by Mr. Emil George Q.C. and submitted to the Industrial Disputes Tribunal. The two submissions were to this effect.

(1) That the Tribunal came to the conclusion that the men were sick.

(2) That there was no evidence from which the Tribunal could have come to the conclusion that the workers were not ill.

In respect of submission No. (1) this is what the Tribunal stated in their conclusions:

> " First Part - from the evidence tendered by the Company and the circumstantial implications, the Tribunal does not believe that the workers were ill."

Is counsel saying that the Tribunal's conclusion is that they disbelieved their own disbelief in the men's illness? I detect some illogicality here.

Is Mr. Blake basing this No. (1) submission on the very grounds of the application of the applicant to this Court that there is an error in law on the face of the record, namely, as the Tribunal in their conclusion as to their disbelief in the men's illness went on to say:

> " However, the medical evidence that they were ill is uncontestable and must be accepted by the Tribunal?"

Does this not mean that although the Tribunal does not believe, inspite of the medical certificate, that the men were ill they were in law bound to accept the medical evidence that the men were ill as the medical certificates were uncontestable?

Before referring to the law of evidence on this point it is noteworthy and it would seem that Mr. Blake made submission No. 1 based on the fact that the Tribunal accepted the medical certificates because the Tribunal said they were bound to accept them.

The question of an error on the face of the Record has already been referred to but Mr. Blake had something to say in answer to the following two questions posed by the Court:

Question (a) "Could the Tribunal have rejected the Medical Evidence?"

Answer: Yes.

Question (b) Having said that the Medical Evidence is uncontestable and must be accepted, is that an error in law?

Answer by Mr. Blake:"Yes but I am saying that that is not before the Court".

Mr. Blake admits to the Court that that matter is an error in law and in spite of that admission goes on to state and infer that although such error in law forms part of the conclusions of the Tribunal leading to the award which is before us that it is not before us. With respect this sounds as if some confusion has emerged.

Further, the Act under which this matter is brought before the Full Court allows points of law to be so brought. Section 12 sub-section 4(c) of the Labour Relations and Industrial Disputes Act states -

> "An award in respect of any Industrial Dispute referred to the Tribunal for settlement shall be final and conclusive and no proceedings shall be brought in any Court to impeach the validity thereof except on a point of law".

The emphasis here by me is "on a point of law".

Now what is the law on the acceptance or rejection of

expert evidence. Lord President Cooper in Davie v Edinburgh Magistrates (1953) S.C. 34 at page 40 repudiated the suggestion that the judge or jury is bound to adopt the views of an expert even if they should be uncontradicted, because:

> "The parties have invoked the decision of a judicial tribunal and not an oracular pronouncement of an expert".

Mr. Blake accepted that this is the law and he also accepted that the Tribunal did make the statement or conclusion that the medical evidence that the workers were ill was uncontestable and that that conclusion is an error in law. In view of this acceptance and admission by him I am unable to understand his attacking Mr. Dennis Edmunds of the Attorney General's Department who stated to the Court that he was not able to support the findings of the Tribunal - no doubt because he Mr. Edmunds was of the opinion that there was an error of law on the face of the record. Was Mr. Blake challenging Mr. Edmund in his right to say what he told the Court ?

Mr. Blake's submission No. (2), namely, that there was no evidence from which the Tribunal could have come to the conclusion that the workers were not ill is not supported by the records before us, especially the Memorandum of the 5th of January 1979 to which I have already adverted . In addition the submission is not supported by the recorded conclusions of the Tribunal. However Mr. Blake in his final submissions conceded that the Tribunal was entitled on the facts to find that there was a "sick-out". Mr. Blake further submitted thus:

> "A crucial point in this argument, - does the Court make a distinction between a sick-out which we submit the Tribunal was entitled to find on the facts, and on the facts, on the other hand, proof that the workers were sick. The Tribunal was entitled to find that there was a sick-out. Proof that a man was sick requires evidence of a certain nature".

I must state further, that Section 12 subsection (8)(c) of the Labour Relations and Industrial Disputes Act lays it down that any document purporting to be a copy of the award, order requirement, or decision of the Tribunal shall be received as prima facie evidence without proof being given that such award, order

requirement or decision was properly made.

I therefore hold that such decision by the Tribunal was, on the evidence before this Court properly made on the evidence submitted to the Tribunal, except in so far as they made an error in law in relation to their finding that they were bound to accept the medical certificates - the "evidence of a certain nature".

I must repeat here for emphasis that the conclusion of the Tribunal was that:

> " From the evidence tendered by the Company and the circumstantial implications, the Tribunal does not believe that the workers were ill".

Parnell J. posed the following question to Mr. Blake "What is a sick-out" and Mr. Blake replied:

> " A sick-out is a form of industrial action instituted by the work force at the particular work place. On reflection that action may or may not be justified but certainly in the eye of the workers it is justified on the ground of some perceived wrong".

Mr. Blake further submitted that the issue before your Lordships is very important for the N.W.U. and the working people.

I must state here and now that the importance referred to in the law is the importance to the National interest not the importance to any particular union or to the working people - a matter which I will comment on later.

Mr. Enoch Blake then strayed in his argument in relation to Public Interest when he submitted that Public Interest must be the interest of the workers and that that Public Interest includes justice and law. Mr. Blake should have, as required, dealt with National Interest not Public Interest.

I must observe here that the words "Public Interest" appear only once in the Labour Relations and Industrial Disputes Act, 1975, and that is, in the Marginal Note to Section 10(1) of the Act and is stated thus:

> "Minister may act in public interest to settle dispute"

but the body of the section itself uses the words "National

Interest" - a vast difference in the meaning of the respective words. I shall also deal later with those words used by Mr. Blake about justice and law.

I must now state that it is elementary law that Marginal notes are not regarded as part of the statute.

In Allchin v Courtland (1942) 2 All E.R. 39 at page 43, Greene, M.R. said:

> "S. 114 of a (local Act) has as its Marginal Note the words 'application of revenue of undertakings' and the same phrase appears in the preamble ..... I cannot attach to this phrase the importance that counsel for the Crown suggests that it bears. It is in fact a misdescription of the contents of the section. The section gives no directions as to the application of revenue as such".

Similarly, as I have stated earlier the use of the words "Public Interest" in the Marginal Note of our statute is a misdescription of the contents of the section.

Nowhere in Section 12 of the Labour Relations and Industrial Disputes Act do the words "Public Interest" appear, either as a Marginal Note or in the contents of the section.

The relevant portion of Section 12 as it applies to this issue before this Court is Section 12 subsection 7(b), and reads as follows:-

> "Where any industrial dispute referred to the Tribunal involves questions as to wages, or as to hours of work, or as to any other terms and conditions of employment, the Tribunal -
>
> (b) shall not make any award which is inconsistent with the national interest".

Now Mr. Blake, and Mr. George unwittingly in their submissions used the words "Public Interest" for the words "National Interest". "Public" in the Concise Oxford Dictionary is stated as:

> "Of or concerning the people as a whole".

By stating in his submissions before the Court that "Public Interest" must be the interest of the workers. Mr. Blake was in error; Employers also form a part of the "Public Interest".

In support of this legal meaning of the words "Public Interest"

which refers to a class of the community and not just the workers, I can do no better than quote from the ~~diction~~ dictum of Campbell, C.J. in R. v. Bedfordshire 24 L.J. Q.B. 84 when he stated:

> that a "Matter of Public Interest" "does not mean that that which is interesting as gratifying curiosity or a love of information or amusement, but that in which a class of the community have a pecuniary interest by which their legal rights or liabilities are affected".

Surely the employers be they multi-national, as referred to by Mr. Blake, or otherwise, like the workers, are part of the class of the community who have a pecuniary interest for which their legal rights or liabilities in this issue are affected.

Now as I stated earlier in this judgment that the words to be stressed are not "Public Interest" but, "National Interest" and the meaning of "National" as contained in the Concise Oxford Dictionary is "Of a, or the nation , common to the whole nation".

This definition of "National Interest" is completely different to the definition of "Public Interest" as another decided case has shown. See the case of Re Amalgamated Anthracide Colliers Ltd. 43 T.L.R. 672 at page 673 where Mr. Justice Sankey said:

> "The main difficulty in which the court finds itself in deciding this question is to come to a satisfactory conclusion as to the meaning of the words "National Interest" which is further complicated by the fact that we have no independent assistance upon this point either by Counsel or the witnesses. When we say this, we must not be thought to be in any way impugning the good faith of the promoters, but they are <u>interested parties</u> and naturally think that a scheme which provides in a great measure for their <u>own interest</u> is also in the interest of the nation..... Any scheme which substantially increases the economy and efficient production and user of coal, provided it is satisfactory in other respects can be said to be in the national interest..... After all, the question whether a particular thing is in the national interest in a question of the times and is a question of fact".

> "This question is more fitting for the High Court of Parliament than for the High Court of Justice. After all, what is in the National Interest is rather a question of policy to be pursued by Parliament from time to time than a question of legal decision, and as above pointed out, a Court is likely to be embarrassed when considering a topic of this sort. It hears one side - namely, the side of those who with perfect good faith

> desire to persuade the Court that what is obviously in their own interest is in the national interest - but it does not bear adverse criticism".

Mr. Justice Sankey continued:

> "We agree with three main tests which were proposed by the applicants themselves, and in considering a scheme of this character, we think it right to satisfy ourselves that first, that the workers whether manual or clerical, who are engaged in the undertaking should receive not merely a living but a reasonable wage for their exertions; (underlining mine) secondly that those who are willing to risk their capital in such an undertaking should receive a reasonable return for the money they lend; and thirdly that the persons who are to use the articles produced, that is to say the consumer - should be able to get such article at the lowest rate, having regard to the first two propositions. It is not necessary to enlarge upon these topics. A Judicial mind would, we think, recognize the justice of all of them".

Following on what Sankey J.said, I must state that there was in this present issue, no exertion by the workers during the period of the "sick-out", and the resultant further non-exertion period by them for which they the workers were entitled to be paid any wage.

However, in the instant matter before this Court we have a submission by Mr. Blake for the union, that Public Interest is in the interest of the workers while there is the evidence by affidavit (paragraph 3 thereof) sworn to by Mr. Keith St. Elmo Panton a Vice President, Personnel of Alcan Jamaica Company sworn to on the 4th of July 1980 that Alcan has certain production targets which must be met and when workers stay away from work when they are not genuinely ill their action creates unnecessary disruption at the work-place, thereby causing reduced production and hence a loss of foreign exchange at a time when the Nation (emphasis mine) suffers from an acute shortage of foreign exchange.

I must here and now state that I was delighted to see the word "Nation" mentioned for the first time in the record especially as the law refers to "National Interest" and not "Public Interest".

As I promised earlier in this judgment to deal with the words used by Mr. Blake that Public Interest includes justice and law. I must state here and now that the public normally suffers from every industrial dispute and ought to know in a particular incident who is right. The Tribunal and the Courts are there to investigate the merits of the dispute and to help the party who is in the right. In this way the public would then know who is right, for the Court that investigated the dispute would tell them. Those therefore who suffer or are affected by injustice would then be supported by the Courts as well as by public opinion, even though such support may be absent with the workers who were affected by their supposed grievance if any.

Finally I must state that the definition of "Industrial Action" as contained in Section 2 of the Labour Relations and Industrial Disputes Act 1975 means:

(a) any lock-out or

(b) any strike or

(c) any course of conduct (other than lock out or strike) which, in contemplation of an industrial dispute, is carried on by one or more employers or by one or more group of workers, whether they are parties to the dispute or not, with the intention of preventing or reducing the production of goods or the provision of service.

There is no provision in our laws for what is known as a "sick-out".

The Industrial Disputes Tribunal has stated that they did not believe that the men were ill, and this was inspite of the medical evidence tendered. In this regard the Tribunal's finding was a finding of fact which in law they were entitled to find. They however committed an error of law in stating that the medical certificates could not be repudiated - see Davie v. Edinburgh

Magistrates (1953) S.C. 34 at page 40 cited supra.

A "sick-out" is a deliberate misrepresentation of and concerning the health of the persons going on a "sick-out". It is noteworthy that their supposed illness was not accepted by the Tribunal.

Workers therefore who deliberately misrepresent the true condition of their health as is envisaged in a "sick-out" place themselves on industrial action and would therefore be absent without leave and would not be entitled to any pay for such period of absence arising from such alleged indisposition.

Put another way, a "sick-out" amounts to a kind of conduct which though in the eye of the workers and some others is bravery and defiance of authority, such action is really in fact cowardly, as some of the workers may secretly fear, while others are not sure whether being absent without proper leave or excuse may result in the loss of the job or of remuneration or some other form of disciplinary action.

Then to seek the assistance of medical men in order to further this deception in the hope of receiving remuneration for such deception is not only immoral but manifestly mischievous.

By such deception any attempt to obtain wages while absent from duty should not be allowed or tolerated.

A "sick-out" is a false allegation of illness with intent to deceive, and anyone expecting and attempting to obtain payment for the period of their absence owing to false allegations is virtually attempting to obtain money by false pretences.

The Tribunal however, inspite of the Medical Certificates was not deceived as to the health of the men in the sick-out, and so stated, but I must repeat that the Tribunal committed an error in law when they stated thus:

> "However, the medical evidence that they were ill is uncontestable and must be accepted by the Tribunal".

For the above reasons I agreed that certiorai must be granted and the order of the Tribunal quashed with costs against the National Workers Union who alone saw it fit to oppose the application.

It is fervently hoped that workers will now cease to resort to "sick-out" for which the individuals, if such sick-out was in an essential service could be fined up to $200 on summary conviction before a Resident Magistrate pursuant to Section 13 (2) (b) of the Act.

Wolfe, J. (Ag.):

Alcan Jamaica Company (hereinafter referred to as the Applicant) sought an Order of Certiorari to quash the award of the Industrial Disputes Tribunal (hereinafter referred to as the Tribunal) made on the 9th day of June, 1980.

At the outset, Mr. Edmunds of the Attorney General's Department, with commendable frankness, informed the Court that he was unable to support the award and that his appearance was limited to the question of costs.

The stand taken by Mr. Edmunds incurred the wrath of Mr. Blake, for the National Workers Union, who argued that the matter being one of great public interest ought to have been supported by the legal representative of the Tribunal.

I take time out to remind Mr. Blake and indeed all counsel at the Bar that it has never been the duty of counsel to seek to support by specious arguments a position which is palpably untenable and about which he is so convinced. Were this to be appreciated, in many instances valuable judicial time would not so often be wasted.

Having listened to Mr. Blake's arguments, in support of the Award, I am respectfully of the view that he might have acquitted himself well, had he been as frank as Mr. Edmunds.

Having disposed of that preliminary matter, I shall now proceed to deal with the substantial issues.

The Applicant sought to have the Award quashed on two grounds, viz:

1. That there was an error of law on the face of the record.
2. That the Tribunal in making the Award was not acting in the National interest.

These are two of the grounds on which a court may interfere with an Award made by the Tribunal under the Act.

Section 12(4) and (7)

My Brother, Parnell J., in his judgment has given a brief history of the dispute which occasioned the reference to the Tribunal. I shall therefore refrain from reciting the historical aspect of the dispute.

The Tribunal at page 4 of its Memorandum of Award unanimously found:

> " From the evidence tendered by the Company and the circumstantial implications, the Tribunal does not believe the workers were ill. However, the medical evidence that they were ill is uncontestable and must be accepted by the Tribunal. "

It appears to me that the word "uncontested" was intended for "uncontestable."

It is in this finding that the Applicant says there is an error of law on the face of the record.

It is clear from such a finding that the Tribunal rejected the contention that the workers were genuinely ill, but notwithstanding they were bound in law to accept the evidence tendered by way of the medical certificates, unless there was evidence to the contrary.

Undoubtedly, the Tribunal misdirected itself in law. This was conceeded by Mr. Blake in his responses to questions posed by the court.

The Court of Session in Davie v. Edinburgh Magistrates [1953] S.C. 34 at page 40, repudiated the suggestion that the judge or jury is bound to adopt the views of an expert, even if they should be uncontradicted. In dealing with the evidence of an expert, Lord President Cooper said:

> " Their duty is to furnish the judge or jury with necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the judge or jury to form their own independent judgment by the application of these criteria to the facts proved in evidence. "

Not only did the Tribunal misdirect itself in this regard but at page 6 of the Memorandum of Award headed "Recommendation", the Tribunal had this to say:

> " The Award in respect of the first period (i.e. the period covered by the medical certificates) has been reluctantly made since it appears to the Tribunal that this is a case where industrial action was planned and carried out with the unwitting support of the medical profession. It is clear that this pattern of behaviour must be discouraged; the remedy whatever it may be does not lie with a Tribunal of this nature. It is therefore strongly recommended that a meeting be convened between the Jamaica Medical Association, the Employers' Federation and the Unions to discuss what steps could be taken to prevent a recurrence. "

(Emphasis mine)

Such a pronouncement by a Tribunal whose award is by section 12(4) (c) "final and conclusive and no proceedings shall be brought in any court to impeach the validity thereof except on a point of law " is a cowardly abdication of its function, which is to settle disputes referred to it in a manner not inconsistent with the national interest.

I perceive that the Tribunal fell into this error because it laboured under the view that any award which reflected a rejection of the medical evidence would be an indictment upon the medical profession. Even if this were so, the embarrassment which the Tribunal sought to prevent was far less than the national chaos which would have resulted from such an Award.

For workers to be paid when staying away from work under the pretence of being ill while in fact they are pursuing a course of industrial action must of necessity be inconsistent with the national interest.

As was pointed out by the court during the arguments, such action is tantamount to receiving money by a false pretence. A criminal offence. It certainly cannot be in the national interest to encourage the commission of a criminal offence.

This unlawful practice which has for a long time manifested itself in disputes between employers and employees of all categories must be laid to rest once and for all.

It was urged by Mr. Blake that the court ought to consider the ramifications of any decision which would set aside the Award. He further urged that the interest of the workers was paramount in deciding what was in the national interest.

Certainly, the court must consider the ramifications of any Order which it would make but to suggest that the workers' interest is paramount in deciding what was in the national interest is a submission which is wholly misconceived.

The concept of the national interest is far more comprehensive than the narrow interpretation which counsel sought to ascribe to it.

For these reasons and the reasons advanced by my brothers, I too hold that certiorari should go to quash the award made by the Tribunal with costs against the National Workers Union.