IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO. M.10 OF 1981

Regina v. The Industrial Disputes Tribunal

Ex parte Bata Shoe Company (Ja.) Ltd.

(Full Court Division)

CORAM: Parnell, Malcolm and Gordon JJ.

Heard: May 4, 5, 6, 1981.

Emil George Q.C., and R. Henriques Q.C. for the applicant
Bata Shoe Company
Earl DeLisser and Alton Rose for the B.I.T.U.
(representing the workers)
No Counsel appeared for the Tribunal.

December 17, 1981

Parnell, J:

On the 6th May, the Court unanimously concluded that certiorari will go to quash the award of the Tribunal dated the 13th February, 1981. The B.I.T.U. (hereinafter called "the union") was ordered to pay the costs of the applicant.

As the matter was of such great importance, we attempted to put in writing the general grounds on which the conclusion was based with a promise to give detailed reasons at a later date. This we now do. The general grounds referred to on the 6th May will be deemed to be incorporated in this opinion where any of them is not specifically outlined.

Historical outline

The union is the bargaining agent of certain workers employed by the applicant. A dispute arose between the applicant and the union in January 1979 concerning:

> "the union's claim for increased wages and improved conditions of employment made on behalf of the said workers".

The Production and Warehouse workers were the persons on whose behalf the claim was made. When the applicant and the union were unable to arrive at a cordial settlement, the Industrial Disputes Tribunal was brought into the picture. And on the 16th January 1979, the dispute was referred to the Tribunal for determination and settlement.

Tribunal makes an award

On the 12th June, 1979, the Tribunal made an award. A retroactive award was made in respect of the claim for an increase in the basic and incentives weekly rates of the workers. The increased basic weekly rates of pay and of the increased weekly incentives, were made retroactive to January 1, 1979. The Secretary to the Tribunal sent a copy of the award to the applicant by mail. The applicant's then Managing Director (Mr. Joseph Tillie) stated in evidence that he did not receive the copy of the award until either June 16 or 17. The recital in the award, suggests that the Tribunal found that it was on June 18, that Mr. Tillie received the award. It seems, however that if the union was informed of the award by the same process, namely, the mail, the despatch and the receipt thereof were more expeditious. On June 14, about three days before the applicant's Managing Director received his copy, the Vice-President of the Union, addressed the letter hereunder to the applicant's Personnel Manager:

> "Dear Sir,
>
> We wish to refer to Arbitration Award, dated June 12, regarding Production and Warehouse Staff, and to request that the new rates of pay contained therein be put into effect on week ending the 22nd instant, and that the retroactive payments, arising out of the Award be paid to the workers within three weeks from the 22nd instant."

The union showed signs that it was in a hurry. And the workers showed no less enthusiasm. This is borne out by subsequent events which I shall advert to in due course.

June 22, development

A management team of the applicant met an officer of the Union at the plant site on the morning of June 22, 1979. This was a Friday and it was the date suggested by the Vice President of the Union when the new rates of pay under the award should be put into effect.

The management team of three men including Mr. Tillie informed the Union team (including delegates for the production workers) that owing to a shortage of raw materials about 36 workers would have had to be laid off. The union's team was well aware that problems concerning the lack of raw materials were affecting the applicant's production section.

The meeting lasted for about thirty to forty-five minutes. But before the meeting came to an end, the Union's officer inquired of the company's reaction touching the implementation of the award. Mr. Grant, the Union's officer was told that within a week, the company would indicate in writing its response towards the award in question.

Serious turn of events

The meeting ended at about 10.30 - 10.45 a.m. as I have already indicated. However, within two hours, about 30-40 workers invaded the office of the Managing Director. What took place inside the office is painful to relate. The level of indiscipline demonstrated beggars description; the conduct of the workers was not only uncontrolled desperation and defiance but it was action which had put in motion - a situation calculated to destroy trade unionism and themselves as workers. The incident was bound to be noted by other employers, persons local and foreign likely to invest in Jamaica, by workers in general and finally by well thinking citizens.

First move

At about 12.10 p.m., Mr. Vincent Whyte a worker, was observed sitting on the sidewalk of the drive way in front of the Company Manager's car. Whyte was heard to say that he was waiting for Mr. Tillie. The

tone of Whyte's voice left the impression on the mind of an executive of the company that a confrontation with Mr. Tillie was in the making. When Whyte was told that he should not ask for trouble his reply was unmistakably clear. He said he was not going to leave the premises until he was told when his retroactive money would be paid.

At about 12.30 p.m. when the workers were expected to be at their posts, they were addressed on the lawn by the chief union delegate, Mr. Gebert Graham. It was shortly after Mr. Graham had addressed about forty workers that an "invasion force" was seen moving towards Mr. Tillie's office.

Action in the office of General Manager

The evidence as to what happened may be summarised as follows:

(1) The General Manager, Mr. Tillie was imprisoned in his office; he was assaulted and abused;

(2) He was called "a white bastard who should go back to South Africa." The workers were demanding payment of the retroactive awarded salary;

(3) The lights in the office were turned off twice presumably for the purpose of making it difficult for Mr. Tillie to identify those who rained blows to his head resulting in his being temporarily stunned;

(4) When Mr. Tillie told his assailants that earlier that day he had discussed with the union and the delegates the question as to the retroactive payment, the reaction was quick and explicit.

"they said they had nothing to do with the Union, they had nothing to do with the delegates, they wanted to be paid now and I had to write down on a piece of yellow paper that we would promise to pay them on Tuesday the 25th."

(5) Mr. Tillie was forced to sign a document suggesting that the retroactive payment would be made on Tuesday, June 25. This date was later changed to

Thursday, June 20.

(6) An appeal for calm and peace issued by the Personnel Manager (Mr. Neville Smart) was summarily rejected. Mr. Smart who clearly identified twenty-six workers in the room of Mr. Tillie was a signatory to the document which was procured by force and threats. Part of his examination-in-chief by Mr. Henriques, counsel for the applicant on the seventh day's sitting makes interesting reading.

Mr. Smart had just given the names of four delegates in the room when the incident took place. The four were Robert Graham (Chief Delegate), Winnifred Tucker, Cyril Johnson and Douglas Robinson.

Q: "Did any of the delegates try to quiet the workers or maintain some order?

A: None of the delegates or anyone else in that room attempted to bring any peace, except myself.

Q: Did anybody sympathise with Mr. Tillie when the lights came on back and his nose was bleeding?

A: No, they were laughing."

(See p.11 of Transcript of the seventh day's sitting).

The charged and ugly atmosphere was earlier described by Mr. Smart. The evidence at pages 5 and 6 of the transcript of the seventh day's hearing gives an indication of what was happening. Mr. Smart was under examination-in-chief.

Q: "And you went into Mr. Tillie's office, when you went in where did you go? What part of the office?

A: I went inside by Mr. Tillie's desk on the right hand side of his chair.

Q: Explain for me slowly. You got in there, what was happening?

A: The crowd started to throw abuses at Mr. Tillie.

Q: What were the abuses?

A: Company has made so much money, some mentioned millions. Their children were starving, they had waited a long time for their money. The Tribunal had given an award. Mr. Tillie had their money and won't give them and today was going to be the day they were going to have to get an answer."

Threat to kill issued

Preparation of the ground for action is mentioned by Mr. Smart at page 6.

> Q: "What was Mr. Tillie doing when you were trying to quiet the crowd?
>
> A: Well, Mr. Tillie was putting his arms up and asking for peace.
>
> Q: Were they saying anything to him or about him?
>
> A: They were passing remarks like, kill the white bastard, go back to South Africa and words to that effect; the place was just in a mess.
>
> Q: Were you successful in quieting the crowd?
>
> A: No.
>
> Q: What happened?
>
> A: Well, they were still going on you know, abusive words coming from all angles and suddenly the lights went out."

This may be a convenient point to outline a principle of law which is founded on good and solid sense. Where a concerted attack like an assault or the destruction of property following a show of violence, is being executed by some persons in the presence of others, the mere presence of those watching the spectacle if unexplained is some evidence of encouragement to those engaged in the combat or the attack. And it is a question of fact whether in all the circumstances, the watchers by their mere presence or demeanour aid and abet the actors. That famous judge of the Victorian era (Cave, J.) put the point laconically in Reg. v. Coney and others: (1882), 8 Q.B.D. 534 at p. 540 15 Cox c.c. 46 at 51.

> "Where presence may be entirely accidental, it is not even evidence of aiding and abetting. Where presence is prima facie not accidental, it is evidence but no more than evidence for the jury."

Events following the incident in the office of the General Manager

After the General Manager signed the document promising to effect the payment of the retroactive salary, the workers left the office. An objective was achieved. But the following took place thereafter.

(1) The police were summoned and investigations started.

(2) Mr. Tillie sought medical examination. The doctor issued a certificate after an examination. His findings were consistent with the use of force applied to the face of Mr. Tillie.

(3) The plant of the applicant was closed for about three weeks.

(4) A dismissal notice dated July 17, 1979 was issued to each of the twenty-six (26) workers who were identified as having been present in the Managing Director's office and participated in a riot and assault, on June 22, 1979.

The letter was couched as follows:

> "As a result of your breach of contract in an attack on the Company Manager and your participation in riot and assault on the company's premises on June 22, 1979, the Company has decided to terminate your employment from the date under reference.
>
> Any amount owing to you under leave entitlement or earnings will be paid as soon as verified."

(5) On June 23, 1979, the applicant's Administrator wrote to the Union's Head Office as follows:

> "On Friday, June 22, 1979, our Company Manager was assaulted, mauled and coerced into signing a document purporting to be a reply to your letter of June 14, 1979.
>
> The original document signed after the violent attack and threats of further physical violence was rejected and a new document drafted to refer to your letter to the Company as to when payment would be made.
>
> The owners of the Company will not honour this or any agreement effected under duress, physical assault and threats."

(6) The twenty-six dismissed workers were subsequently charged jointly with riot and assault. At the instance of the Director of Public Prosecutions, they were summoned to appear before the Resident Magistrate,

St. Andrew at Half-way-Tree. And when the Tribunal had its second day's sitting on January 20, 1980 the fact that criminal charges were pending against the workers was adverted to. To this development, I shall return in due course.

Dismissal for misconduct

It is trite law that an employer is entitled to dismiss a worker who is guilty of misconduct. And whether or not the misconduct is so grave as to warrant such a course of action is a question of fact. It would be nothing short of being an insufferable situation and an alarming phenomenon if at a work place, workers were free to be obstructive, offensive and indisciplined as their whim and caprice dictated.

At the date of the incident under review, the Collective Labour Agreement between the Company and the Union recognised the right of the Company (the applicant), to dismiss an employee who violates the company's disciplinary rules of conduct touching certain "offences". Two of the offences listed are as follows:

"9: Fighting a fellow worker, a foreman or supervisor."

"12: Rioting or inciting employees to disorder."

In my view, the heading at (9) above would cover a case where a senior executive is assaulted and humiliated in his office by workers acting in concert and who claim that they are pursuing an alleged grievance. Paragraph 3 of the Collective Agreement recognises that the company shall have the sole right to:

"exercise all prerogatives, powers, authority and customary functions of management and to use its own judgment."

Reference to the Tribunal

By letter dated September 11, 1979, the Minister of Labour in accordance with Section 11A (1)(a) of the Labour Relations and Industrial Disputes Act, referred to the Tribunal for settlement, the dispute between

the Company and the Union. The terms of reference were stated as follows:

> "To determine and settle the dispute between Bata Shoe Company Jamaica Limited on the one hand, and certain workers formerly employed by the Company and represented by the Bustamante Industrial Trade Union on the other hand, over the dismissal of the said workers."

The list of the names of the dismissed workers is mentioned in the reference.

Substance of the dispute

The Tribunal held ten sittings between December 17, 1979 and May 9, 1980. But it was not until February 25, 1981 about nine months after the last sitting, that a majority decision was made in which it was held that:

> "all twenty-six workers were unjustifiably dismissed by the company and awards that these workers are to be reinstated effective from the date that they were dismissed, without loss of earnings for the period of time."

A minority report was submitted by the Employer's Representative. He found that on the evidence:

> "the dismissal of the twenty-six employees who were identified was more than justified."

It is clear that the substance of the dispute was whether the facts as outlined and accepted warranted dismissal. To put it in another way: did the facts and circumstances support the stand of the applicant in dismissing the twenty-six workers who were placed in the office of the General Manager at the time he was roughly treated?

It is also clear that the Chairman of the Division of the Tribunal which heard the matter had an eye on what was happening at the Half-way-tree Court with regard to the criminal charges brought against the very workers whose dismissal was the subject of the dispute. There can be no other rational explanation for:

(1) The delay of nine months before an award was made in a dispute which generated public interest and concern. A certain amount of expedition was inherent in the circumstances for the making of an award.

(2) The hint of lamentation which appears at page 4 of the award: The relevant portion reads:

> "The same twenty-six workers were subsequently charged by the Police for Riotous Assembly and Common Assault and the case is still before the Half-way-tree Court for upwards of one year."

Misdirection on the face of the award

An award of the Tribunal is impeachable on a point of law where it is evident that but for the error committed, the award made would not have been so formulated.

Once it appears that the decision arrived at was influenced by an erroneous conception of the law, the award is vulnerable and will be quashed on the complaint of a party aggrieved. The error may appear on the face of the award if reasons are given or it may be deduced from the findings and circumstances as outlined.

Company's compassion used as a weapon

The evidence shows that in order to effect a settlement of the dispute and to restore production at the plant, the applicant offered to withdraw the dismissal notice in respect of fourteen of the workers. However, the Union took a short-sighted and unfortunate stand. All the dismissed workers should be reinstated was the posture adopted. As a result, the applicant recalled the offer to withdraw the fourteen dismissal notices. This show of compassion was in my view unwisely relied on by the majority in arriving at its conclusion.

Error made clear

Page 4 of the Award shows the following:

"Findings of the Tribunal

> The workers conduct was indisciplined, but the Company's witnesses have failed to identify any of the Manager's Assailants and have put forward no basis for selecting the 26 workers who were dismissed while the services of some 14 others from among them have been retained.
>
> The arbitrary selection in these circumstances was unjustified, as not all the workers who went to the manager's office to make representations were guilty of acts warranting dismissal."

It is on the reasoning above quoted that the finding of "unjustifiable dismissal" is made and the order of reinstatement is grounded.

In effect the majority award is based on a recital of the main facts and circumstances outlined by the applicant's witnesses which is accepted but with the qualification that there was no evidence to identify the workers who actually slapped, boxed, or maltreated the General Manager in his office. The evidence that the lights were turned off at least twice ostensibly to blur the identification of the attackers appeared to have had no significance. And what was forgotten was the fact that the issue of a riot or a riotous assembly was under consideration.

Inherent in the approach of the majority is a thread leading to an erroneous conclusion. And it is this: it is assumed that if in the course of a riot or riotous assembly it is proved that a person was assaulted or ill-treated but it is not proved who delivered the blow, then even if it is proved who were the persons that were present during the melee or attack, none of them is guilty of committing the offence of riot.

Another error inherent in the reasoning is the view that if an assembly is perfectly innocent at the start, it is not capable of becoming riotous at some period thereafter.

It was proved at the hearing that Mr. Tillie, practised what was called "an open-door policy" whereby workers were free to enter his office and discuss their problems with him. This "policy" was never intended to be used as an invitation or an umbrella for workers in vast numbers to invade the office and use force, threats, abuse and intimidation in order that their demands may be satisfied.

Even if it is assumed that the "invasion" of the General Manager's office showed a prima facie pursuit of an innocent and regular practice, what took place inside including the acts words and deameanour of those who entered, pointed strongly to a riot. The majority of the Tribunal, therefore, misdirected itself in the omission to consider the question of the common purpose of the invaders and their intention of

voluntarily presenting themselves in the room or office of Mr. Tillie.

There was no "arbitrary selection" of twenty-six of the workers. What was established was that there was an agreement among the applicant's witnesses that the twenty-six who were dismissed were among the forty who formed part of the invasion force. The remaining fourteen or so were fortunate that there was no unanimity among the witness as to their presence.

The colour of a riot

Hawkins, in his famous book, "Pleas of the Crown", outlined the identification marks of a riot. That definition still remains. Famous Judges of different periods have relied on that definition in directing juries when cases of riot or riotous assembly were under review.

> "A riot seems to be a tumultuous disturbance of the peace, by three persons, or more, assembling together of their own authority, with an intent mutually to assist one another against any who shall oppose them, in the execution of some enterprise of a private nature, and afterwards actually executing the same in violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful."
>
> (C.65, S.1)

Was the Tribunal competent to hear the matter while criminal proceedings were pending?

Before us, Mr. George with his usual eloquence, skill and ingenuity, argued two points to which I shall make reference. We did not call on Mr. DeLisser to answer the submissions touching these grounds. However, out of respect for the efforts of Mr. George, I shall make a few comments.

Firstly, it was contended that since criminal proceedings charging riot and assault had been launched against the twenty-six dismissed workers and that the very subject of the Tribunal's hearing was covered by the pending charges, the Tribunal was purporting to adjudicate on the same subject matter that was before the Criminal Court.

I did not accept this argument. In my judgment it is unsound for the following reasons:

(1) Whether or not there was an incident resulting in a riot and assault within the meaning of the Collective Labour Agreement was an issue in the dispute;

(2) A labour dispute which is cognisable before the Tribunal may be referred for settlement although the facts to be considered may show that criminal offences are also involved;

(3) When Parliament created the Industrial Disputes Tribunal it did not mark out for exemption, the hearing of a dispute in which the commission of a criminal offence is involved or is likely to be the subject of public prosecution;

(4) When a worker is charged with a criminal offence which occurred at his work place or which arose out of the execution of his duty as a workman, the relevant parties are the Queen and the worker charged. But when an "industrial dispute" as defined arises, the relevant parties are different. The Queen has nothing to do with it. The result is that a decision in one forum is irrelevant to the hearing on the merits in another forum. And a judgment, decision or award in one forum cannot be pleaded as a "res judicata" so as to bar the hearing on the same facts in another place.

I agree that since it was brought to the attention of the Tribunal that the twenty-six dismissed workers were facing criminal charges of riot and assault, it beseemed the Tribunal to approach their decision with thoroughness, vision and strength. This does not mean that if there was no criminal prosecution pending, the approach to their award should have been different. But any clash as to a finding of fact or as to a conclusion of law on the same facts and circumstances should have been avoided as far as human ingenuity dictated. An allowance is always given to a genuine difference of opinion on facts which are marshalled before a Tribunal. There, however, the facts and the law are clear, then the verdict or decision should follow without any difficulty.

Award delayed - effect of

It was further contended that since the Tribunal did not make its award within the time permitted by the Labour Relations and Industrial Disputes Act, the award itself is bad in law.

Section 12 of the Act has directed that where an industrial dispute is referred to the Tribunal, an award "shall be made" within twenty-one days after the dispute was so referred. In the alternative the award may be made outside of that period with the consent of the parties.

A fair and reasonable interpretation of the section leads one to the conclusion that this provision is not mandatory. What is intended is that the Tribunal should treat a dispute brought before it with the promptness and resolution which the matter warrants.

The section is directory only. It would be ridiculous if a lengthy, complex and momentous hearing which requires some reasonable period to consider should be annulled merely because without the consent of the parties, the Tribunal takes three months to make an award. At great expense, the parties would have to face another hearing presumably before a differently constituted division of the Tribunal. In the meantime, the dispute is still unresolved; the economy of the country is placed in serious danger while chaos and devilment reign supreme. In my view, where Parliament has created a Tribunal with the power to hear and determine a cause, the Tribunal is competent to deliver a verdict or make a decision once it is seized of the matter. And where the Tribunal is required to make a determination within a certain time, a decision given outside of that period is still good unless by clear words in the statute or by an irresistible implication, the Tribunal is barred from so doing after the time stipulated. It is in the public interest that there should be an end to litigation. It is also in the public interest that justice should not be hurried whereby haste applied or used may lead to an erroneous or an unjust decision.

Genuine prophets are born and not made. It matters not whether they claim a hearing from the pulpit, from a seat in the Legislature, or from elsewhere. When the Act came into force in 1177, no one could have

envisaged that in six years, the Tribunal would have been creaking under the weight of so many industrial disputes. It is unwise to approach the interpretation of an Act designed to tackle social and economic problems without taking into account the realities affecting the state. The law does not seek to operate in a vacuum.

For the reasons which I have attempted to outline, the contention of Mr. George must be rejected.

Labour Relations Code

The Labour Relations Code was approved by the House of Representatives on July 20, 1976 and by the Senate on August 6, 1976.

Every trade union officer is deemed to be aware of its provisions. Members of the Tribunal are expected to be familiar with the Code. Paragraph 7 of the Code states as follows:

> "The main object 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."

When the Personnel Manager of the applicant informed the Union of the decision to dismiss the twenty-six workers (including the four Union delegates), the Vice-President of the Union wrote a letter in reply dated July 20, 1979. The tone was injudicious and it carried some of the impressions of truculence and intransigence. I shall quote in full paragraph 2 of the letter.

> "Your Company's decision to dismiss twenty six workers, including the four Union Delegates, is a vicious act of oppression and discrimination by a multi-national Corporation against Jamaican workers. There is no justification for the action you have taken against the workers."

As I have pointed out in previous judgments touching industrial relations - and I shall repeat it - the workers at a plant have rights and management also has rights. Where an industrial dispute is being investigated, management does not lose its rights and privileges to the workers. It is not a one way traffic. The scales must be evenly balanced with a reminder

that the national interest may be involved. If management is honestly exercising its rights under a collective agreement this cannot amount to a "vicious act of oppression and discrimination". Such an approach is contrary to the spirit and intendment of paragraph 7 of the Code to which I have already referred. It is also inimical in the long run, to the interest of the workers themselves.

Any support of intimidation, bullying tactics, indiscipline and mistrust at the work place ought to be discouraged. No trade union leader or officer should support a worker whose conduct at a plant is prima facie questionable or objectionable.

What is amazing is the fact that the Union up to the last moment, was relying on the document extracted from Mr. Willie by force and threats, as a "genuine response" of the applicant to make payment of the retroactive portion of the award on the date therein mentioned. The contention of the applicant that the general manager was forced to write the document in order to save himself from the grip of an enraged and determined band, made no impression on the minds of those watching the union's proclaimed interest. By a strange coincidence, the unhappy events on June 22, fitted well within the date which the union had nominated when the new rates should be put into effect.

What took place at the applicant's premises should be condemned without any qualification. Those workers who were proved to be involved in the ill-advised incident merited dismissal.

Perhaps seminars with delegates and workers should include brief references to some of Aesop's fables. The story about the "goose with the golden eggs" and the "lion and the goat", would pay rich dividends when carefully digested. A perfect setting for the moral from a story from nature would then be made:

> "Most fortunate and smart is he,
> Who knows how far to disagree."

1180

MALCOLM J:

This is a motion seeking an order to quash a majority award of the Industrial Disputes Tribunal dated the 26th February, 1981. The applicants are the Bata Shoe Company (Jamaica) Limited.

The B.I.T.U. is the Union involved in this matter.

A dispute arose over the dismissal of twenty-six (26) workers (members of the above-mentioned Union) and on the 11th September, 1979, the Minister of Labour referred the dispute over the Union's claim in respect of the said workers to the Industrial Disputes Tribunal.

After several sittings terminating on the 6th May, 1980, a majority of the Tribunal made the following findings:

> " The workers conduct was indisciplined, but the Company's witnesses have failed to identify any of the Manager's Assailants and have put forward no basis for selecting the twenty-six (26) workers who were dismissed while the services of some fourteen (14) others from among them have been retained. The arbitrary selection in these circumstances was unjustified, as not all the workers who went to the Manager's office to make representations were guilty of acts warranting dismissal."

The award was as follows:

> " On the evidence presented the Tribunal finds that all twenty-six (26) workers were unjustifiably dismissed by the Company and awards that these workers are to be reinstated effective from the date that they were dismissed, without loss of earnings for the period of time."

On the facts that emerged, for the majority of the Tribunal to describe the actions of the offending workers merely as indisciplined was to clothe their bahaviour with a piety that is surely not deserved.

Before us Mr. Emil George urged that the case turned on the use of the word "assailants." He tersely commented that the Tribunal did not realise that there was a thing called riot and that the Company was alleging a riot. They did not appreciate that they were not dealing with assailants but rioting.

There is much to be said for his point of view. The Collective Labour Agreement under a heading "Disciplinary Rules of Conduct" states

in part:

> " The Union recognises the Company's rights to enforce and take disciplinary action ranging from warning to dismissal in cases where employees violate the Company's rules of conduct."

It then goes on to recite the types of offences and the penalties they incur. For rioting or inciting employees to disorder the punishment is dismissal.

On the 22nd June, 1979, a group of approximately forty (40) workers visited the office of the Manager of the Company. I was minded to employ the word "invaded" but it may be that their little excursion was peaceful and innocent at the start. Be that as it may the shock waves of what transpired in Mr. Tillie's office were felt around the business world for months. He was set upon and man handled.

The issue that stood to be decided was whether the facts as established justified the subsequent dismissal of twenty-six (26) workers.

Was there rioting at the work place that day? To determine this, one must ask the question - What is a riot? Riot is a common law offence. At page 563 of the 8th Edition of Wade and Phillips Constitutional Law the learned authors had this to say:

> " The elements essential to constitute a riot are five in number: (1) the presence of not less than three persons, (2) a common purpose, (3) execution or attempted execution of the common purpose, (4) an intent to help one another, by force if necessary, against anyone who may oppose them in the execution of the common purpose, (5) force or violence displayed in such manner as to alarm at least one person of reasonable firmness.
> It has been doubted whether it is necessary to prove the alarm of any person, at all events if the riot danger is obvious."

It certainly is not consonant with sound reasoning or common sense to imagine that a group of workers can assault a person and escape being termed rioters by calling "bad light" and saying consequently it cannot be proved who delivered the blows.

It is clear from the facts that there was rioting in the

Manager's office. In my view the majority award of "unjustifiable dismissal" is bad and cannot stand. Mr. George said before us "unless people work in a disciplined fashion no recovery is possible - we must look to the Courts for guidance." What he said can bear repitition, he has not spoken too strongly.

Mr. George touched on two other matters which I shall merely mention in passing. The first was the competence of the Tribunal to hear the dispute while criminal proceedings were in progress in the Resident Magistrate's Court, St. Andrew and secondly the effect of the delay in handing down the award.

We did not trouble Mr. Delisser to reply to the arguments advanced on these grounds.

A Tribunal may consider facts although it comes to light that offences of a criminal nature are also involved.

Mr. George further urged that the award was bad in light of the fact that the Tribunal did not hand it down within the time prescribed by the Labour Relations Disputes Act i.e. within twenty-one days. In my view Section 12 is not mandatory but merely directory and I found little merit in this particular ground.

At the end of the hearing on the 6th May we unanimously ordered that certiorari should go to quash the order of the majority of the Tribunal reinstating the twenty-six (26) dismissed workers.

If conduct such as that displayed by the offending workers is not discouraged and stamped out the whole fabric of our society will collapse. The Court must play its part.

GORDON J:

I agree with the reasons of my brothers Parnell and Malcolm and wish to make a brief contribution.

Parliament has provided that a tribunal "shall not make any award which is inconsistent with the national interest." This obtains where "the dispute referred to the tribunal involves questions as to ..... terms and conditions of employment." ---------- ---------- vide section 12(7)(b) of the Labour Relations and Industrial Disputes Act.

The words "terms and conditions of employment" are wide enough to embrace discipline on the job and the contention of the Company in this dispute is that there was a break down of discipline in that some workers were involved in a riot, assaulted the General Manager and by sheer force and intimidation demanded and obtained from him an undertaking in writing as to the date of payment of retroactive and increased wages.

In the disciplinary rules of conduct contained in the Collective Labour Agreement between the Company and the Union "the Union recognises the Company's rights to enforce and take disciplinary action ranging from warning to dismissal in cases where employees violate the Company's disciplinary rules of conduct."
There are then set out 23 rules. Rule 9 reads:-

"Fighting

(a) Fellow workers - Dismissal

(b) Foreman or Supervisor - Dismissal"

Rule 18 reads:-

"Rioting or inciting employees to disorder - dismissal"

There follows after Rule 23 this:-

Note:-

> " It is obviously not practicable to specify all offences and the above schedule has therefore been confined to those which are more or less common to most industrial establishments. The schedule will be generally followed but the

> " Company reserves the right to treat any offence against the Company's rules and regulations on the merits of the case -------- as the schedule shows, disciplinary measures will be more severe if previous offences are recorded on the delinquent's file. Minor offences will not be taken into account for the purpose of dismissal if a period of a year has elapsed since the last offence."

The words "national interest" were considered by this Court in R. vs. Industrial Disputes Tribunal exParte Seprod Group of Companies on 4th May, 1981. Can it be said that it is in the "national interest" that "mob rule" be condoned?

The tribunal in their majority award accepted that

> " some 40 workers eventually congregated in the managers office vociferously demanding payments under the 12/6/79 tribunal award by 28/6/79. The manager was standing behind his desk with Mr. Smart at his right hand and the workers demanded an undertaking from him in writing to pay by 28/6/79. The lights suddenly went out and the manager was struck several times in his face by persons unnamed, after which assault the lights again went out and the manager was further assaulted while being shielded by Mr. Smart. When the lights came on again after a few seconds, the workers kept up demand for an undertaking from the manager in writing to pay the award by 28/6/79. Under the pressure, the workers dictated a memo which the manager signed and it was further typed and approved by their delegate and the manager again signed under pressure." (underlining mine)

The majority award of the tribunal failed to direct itself in law on the Company's complaint that the conduct of the workers constituted a riot and as such the workers were in breach of a condition of their employment. The tribunal also failed to consider whether the conduct of the workers was such as to fall under the umbrella provided by the note appended to the Disciplinary Rules of Conduct in the Collective Labour Agreement.

The majority award sought refuge in a finding that -

> " the workers' conduct was indisciplined, but the Company's witnesses have failed to identify any of the manager assailants ..... not all the workers' who went into the manager office to make representations were guilty of acts warranting dismissal."

There is unchallenged evidence of the part some of the workers played in the events that occurred in the manager's office.

The Employers' Representative in his dissenting minority findings properly directed himself on the law and contemplated the issues of riot and common design. In law there was evidence before the tribunal that the 26 workers were part of the invading mob.

The tribunal failed to observe the provisions of section 12(7)(b) of the Labour Relations and Industrial Disputes Act.

The award is inconsistent with the national interest.