

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M61 OF 1987

IN FULL COURT

BEFORE: The Hon. Mr. Justice Malcolm J.

The Hon. Mr. Justice Walker J.

The Hon. Mr. Justice Smith J.

BETWEEN DOMESTIC AND INDUSTRIAL SECURITY APPLICANT
AND NATIONAL WORKERS UNION RESPONDENT

R. M. Millingen for the Applicant

Clarke Cousins for the Respondent

DELIVERED; 31ST. JANUARY, 1990

The applicant company by way of Notice of Motion seeks to move this Court to grant an Order of Certiorari quashing what is described as "the award or decision" made by the Industrial Disputes Tribunal on the 10th August, 1987.

This "award" or "decision" was made pursuant to a reference from the Minister of Labour, Welfare and Sports, the terms of which were:

"To determine and settle the dispute between Domestic and Industrial Security Ltd. on the one hand, and unionised workers employed by the company and represented by the National Workers Union on the other hand, over the suspension of employment of Messrs. P. Thomas, L. Blake, H. Gordon and L. Williams."

Having heard evidence in the matter the Tribunal found as follows:

"We find that the company has not terminated the services of P. Thomas, H. Gordon, L. Blake and L. Williams and that, since they have not been assigned duties for an extended period, these individuals have been virtually laid off indefinitely."

Mr. Milligen on the one hand submitted that these findings were incomplete and were silent as to the basis thereof. Mr. Clarke Cousins on the other hand urged the Court to find that inherent in the findings of the Tribunal was a finding that the workers were not suspended for cause by the company having regard to the evidence and the manner in which the hearing was conducted.

We have given careful consideration to the submissions of both counsel and are unanimous in the view that these findings are imprecise having regard to the terms of reference and the provisions of s. 5A of the Employment

(Termination and Redundancy Payments) Act to which we were referred by Mr. Milligen.

Section 5A reads inter alia as follows:

- "1. For the purposes of section 5, an employee who has been laid off without pay for a period in excess of one hundred and twenty days may by notice in writing to the employer elect to be regarded as dismissed by reason of redundancy from such date (not being less than fourteen days or more than sixty days after the date of the notice) as may be specified in the notice, which date shall, for the purposes of this Act, be regarded as the relevant date.
2. Where a notice is given pursuant to subsection (1) then, subject to section 6(3) and (4), the notice shall for the purposes of this Act have effect, in accordance with its terms, as if it implemented a dismissal of the employee on the ground of redundancy on the relevant date.
3. For the purposes of this section -
 - (a) an employee is laid off without pay if, other than on disciplinary grounds -
 - (i) he is laid off without pay in accordance with the terms of his employment; or
 - (ii) the circumstances of his employment are changed so that for some period he receives no pay pending a decision by his employer to reinstitute previous, or similar, circumstances of employment; and
 - (b) a person may, subject to regulations, be regarded, during any period, as laid off without pay notwithstanding that during that period he receives some pay or is engaged to work for limited times only."

In our opinion the Tribunal should have gone on to determine and state whether or not any of the workers had been laid off on grounds other than disciplinary grounds and in this regard we think that section 12 (10) of the Labour Relations and Industrial Disputes Act is relevant. This section reads:

"If any question arises as to the interpretation of any award of the Tribunal the Minister or any employer, trade union or worker to whom the award relates may apply to the chairman of the Tribunal for a decision on such question, and the division of the Tribunal by which such award was made shall decide the matter and give its decision in writing to the Minister and to the employer and trade union to whom the award relates, and to the worker (if any) who applied for the decision. Any person who applies for a decision under this subsection and any employer and trade union to whom the award in respect of which the application is made relates shall be entitled to be heard by the Tribunal before its decision is given."

In these circumstances we are of the view that Certiorari is not the

appropriate remedy and does not lie.

Accordingly the Notice of Motion is dismissed. We make no order as to costs.

Phalce In

Special Atty.

J. Smith