IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO. M.24 of 1977

Reg. v. The Industrial Disputes Tribunal
Ex.p. ESSO West Indies Limited
(Motion for certiorari)

Coram: Parnell, J.

Marsh, W.D., J.

White, J.

R. Henriques for the applicant (ESSO)

Earl Witter for the National Workers Union

R. Langrin for the Tribunal

Heard: 1977 - July 6, 7 and 8
September 19 and 20

November 30, 1977

Parnell, J.

This is a motion seeking an order to quash an award of the Industrial Disputes Tribunal dated June 22, 1976. The award was interpreted on July 7, 1976 and further interpreted on March 21, 1977.

At the end of the hearing on September 20, the Court unanimously dismissed the motion with costs. We promised to put our reasons in writing. This we now do.

Union makes a claim

ESSO West Indies Limited hereinafter called "the company" employs certain categories of workers who are represented by the National Workers Union, hereinafter referred to as "NWU" or "the union." Negotiations between the company and the union concerning certain claims made on behalf of the workers started in January, 1976. A collective labour agreement between the parties was due to expire at midnight on March 16, 1976. The Company pursued its negotiations with the union:

> "in the light of the Wage Guidelines for the private sector and commercially operated enterprises which formed the basis of Ministry Paper No.55 and tabled in Parliament."

An offer by the Company in the context of the Government's Wage Guidelines was rejected by the Union. The Company operates an essential service and was threatened with industrial action after midnight on March 16, 1976.

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Union's demands

The demands on behalf of the workers are spelt out in a letter of six pages. The letter is dated January 12 1976, and is addressed to Mr. Vernon Meikle, the Manager of Kingston Refinery of ESSO West Indies Limited. The demands were put forward as "proposed amendments to the present Labour Agreement between your company and the Union."

The amendments ranged far and wide. Without making any detailed comment thereon, I shall outline some of them:

(1) "There shall be an increase of not less than 80 per cent on all wages." (Claim 1).

(2) "The company shall pay the fuel cost on the employee's electricity bill." (Claim 7c).

(3) "All employees shall be given the day off with pay on their birthday." (Claim 19c).

The item which has caused some difficulty and which forms an important component in the foundation of the motion before the Court is placed under -

"Claim 18 overtime."

Item 18(e); the submissions made by the parties before the Tribunal touching that item; the award of the Tribunal on this issue and the subsequent events following the award all form the substantial ground which engaged the time of this Court for a period lasting for five days. "Claim 18 Overtime" is put thus:

(a) overtime done on schedule days of work shall be paid at double time (except for public holidays), with a guarantee of four hours;

(b) work done on schedule rest days shall be paid at triple time. There shall be a guarantee of four hours at triple time;

(c) work done on public holidays shall be paid at triple time, with the first four hours guaranteed if the holiday falls on the employee's rest day;

(d) all work done after the employee's 5th day of the schedule work week shall be paid at double time

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(except for Public Holiday) until the employee is given two rest days;

(e) work done on Sunday as part of the schedule work week shall be paid at double time (except on Public Holiday).

Parties submit briefs

Following the breakdown of negotiations, the Minister named a Tribunal under the Labour Relations and Industrial Disputes Act, to settle the dispute. The parties submitted their briefs in due course. The Company submitted a 31-page document in which each item under a claim is carefully examined. The position of the company is explained with a prayer either to reject the claim or accept a counter proposal. In Appendix A of the brief, the Company relied on the "Guidelines" in Ministry Paper No.55, to support its stand. Paragraph 6 of the Appendix states as follows:

> " The Guidelines as enunciated in Ministry Paper No.55 had an important provision whereby workers and employees were to be free to bargain for additional wage increases arising from increase in productivity or profitability subject to the condition that any such wage increase would not be allowed as a ground for a price increase."

The brief of the union contains one page only with this statement:

> " We reserve the right to make further submissions orally."

There is no sign in the brief of any attempt to formulate principles or to offer facts in support of any of the claims. Whereas the Union has a clear picture of what the Company's contention will be at the hearing before the Tribunal, nobody including the members who are to adjudicate on the dispute is given a reasonable hint as to what the facts, arguments and vision of the Union will be.

In this matter for instance, nothing is alleged or indicated why the economic guidelines of the government should not be considered relevant in the computation of an offer to the workers. What is contained in the brief is what the Union calls "reasons why the Company's offer on wages and fringe benefits was refuted." Four reasons are given and each "reason" is a comment which begs for facts and reasons for stating it.

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In a matter of this kind, the Court is not concerned with the adequacy of the award nor with the reasons for it. However, I am forced to make this comment. Where the Tribunal finds that one of the contending parties in a dispute is unwilling or reluctant to state clearly in its brief what facts, arguments and conclusions it is going to rely on or propound at the hearing, the Tribunal should be on its guard. And where an obvious element in a claim or counter proposal calls loudly for a statement, note or reference from the other side which decides to remain silent in its brief, then the Tribunal may safely rely on the proposition that that party has nothing relevant to offer on the point in question.

Ambit of Claim 18(e)

In the Company's brief, the item 18(e) is discussed under the heading "overtime." The commentary is put in this way:

> " The Company's position is that currently negotiated premiums for overtime worked are extremely reasonable and in line with competitive practice. An increase in the overtime premiums in addition to a significant dollar increase in rates of pay would be excessive in terms of the wage restraints to which the government is committed. For these reasons the Tribunal is invited to make no award other than the conditions prevailing in the 1974 Collective Agreement in respect of overtime premiums."

It seems on the face of the document that what the Union was demanding was this: that where a shift worker is required to work on a Sunday as part of his normal work week, he should be paid at double time because of his working on a Sunday. It has been argued by Mr. Witter that the item, although appearing under the heading "overtime", is not strictly speaking dealing with overtime on a Sunday. It is dealing with normal working time of eight hours per day for a shift worker who finds himself working on a Sunday in order to complete his work week.

The Company by the nature of its operation at the work plant, has to devise a system whereby the plant is open and kept busy for twenty four hours daily. And as a result there must be shifts among the workers. From time to time workers as part of their work week, are required to work on a Sunday.

Understanding the item as debated

The Tribunal held eight sittings between March 29 and May 18, 1976, to hear arguments. On the 18th March, 1976, the Minister of Labour and

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Employment had referred the dispute for settlement with the following Terms of Reference -

> "to determine and settle the dispute between ESSO West Indies Ltd. on the one hand, and the unionised workers employed by the Company and represented by the National Workers Union on the other hand, over wages and terms and conditions of employment."

At the hearing, Mr. Vernon Meikle led the Company's team in the presentation of their case. The Union's team was led by Mr. Lascelles Perry, an officer of the said union.

The Union's submissions in respect of claim 18(e) were urged on the 4th day before the Tribunal. A copy of the transcript of the hearing on that day is exhibited before us. On the 7th day Mr. Ramon Gordon, an executive officer of the Company put his arguments before the Tribunal in respect of claim 18(e). A copy of the transcript showing the arguments and exchanges has also been placed before us. As a result of the exchanges between Mr. Gordon, Mr. Perry and the Chairman of the Tribunal during the submissions of Mr. Gordon (for the Company), it has been suggested that the Company's representative was misled into believing - owing to a remark by the Chairman - that claim 18(e) was dealing solely with overtime and nothing else. And as a result of this remark which Mr. Henriques has not elevated beyond the pale of an "innocent blunder" - if it was a blunder - it has been contended that the Company did not deal with the claim in any other context other than on the footing of a claim for overtime on a Sunday. As a result it is claimed that a breach of natural justice occurred with the result that ground 3(b) in support of the application for certiorari is put in this way:

> "That in making the said award the Tribunal failed to act in accordance with the principles of natural justice or to act in a quasi-judicial manner."

Tribunal makes an award

On the 22nd June, the Tribunal made its award. With regard to claim 18(e), the result is put thus:

> "we award that work on a Sunday as part of the scheduled work week shall be paid for at double time."

By letter dated June 24, 1976, the Company requested a clarification of "certain areas of the award." The application was made pursuant to Section 12(10) of the Act which states:

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> "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."

The letter seeking clarification makes mention of two particular issues, to wit

(1) The extent, if any, to which the award would relate to workers who prior to March 17, 1976, were in receipt of rates of pay higher than $3.49 per hour;

(2) Whether the award under claim 18 could not be interpreted to apply only to overtime work done on a Sunday and if this is correct, whether this interpretation is not inconsistent with a submission of the Union on the fourth day of the hearing.

The "inconsistency" is said to relate to a request for the workers to be treated in a similar manner as what obtains in the bauxite industry where work done on Sundays attracts a premium of 25¢ per hour.

In order to add clarity to the request for a clarification and perhaps to show signs of bewilderment at the magnitude of the award with its attendant consequences the Company attached a ten-page document to the letter of request. Areas of the award are meticulously examined, the difficulties in implementation are outlined. If the picture which is painted does not show a bewailing in the situation of the Company as a result of the award, then at least it hinted that gnashing of teeth was not far away. At page 3 of the document, the Company outlined in clear terms what a literal interpretation would entail. It is alleged that in the case of ESSO West Indies, for regular hours worked on a Sunday as part of a regular schedule the following would result:

(a) An additional increase in pay of over 20% to a group of employees; or

(b) An additional payment of $35.00 for eight hours work on a Sunday.

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Tribunal's response to request for interpretation

The Tribunal met on Thursday, July 1, 1976, for the purpose of interpreting their award of June 22. At the hearing, only the Company (the applicant) made submissions. The Union, by letter dated June 28, had informed the Tribunal "that it did not propose to avail itself of its entitlement to be heard". It could be suggested that the Union took the line that the award was reasonably clear, that the workers secured what they requested under the claim in question and that no useful contribution could have been made by the union's representation at the clarification hearing on the 1st July.

On the 7th day of July, the Tribunal handed down its interpretation. As will be shown hereunder, the Tribunal was economical in the use of language in its "clarification" or "interpretation." This is what the Tribunal has outlined:

1. Claim No. 1 - Wages

> "The award of the Tribunal is to be applied to the unionised workers employed by the Company and represented by the National Workers Union."

2. Claim No.18 - Overtime

> "The award 'that work on a Sunday as part of the scheduled work week shall be paid for at double time' means exactly that and no more."

No complaint is made with regard to (1) above. With regard to (2), Mr. Langrin has frankly conceded that the clarification was not a clarification since the Company is sent back to the award of June 22, which drove the Company to its statutory right to ask for an interpretation.

The posture adopted by the Tribunal on this point cannot be supported. Pontius Pilate chartered his own course when as judge he was asked to correct part of his written judgment. In an imperious tone, he replied:

> "What I have written I have written." (St.John 19 v.22).

And Humpty Dumpty displayed a contemptuous smile in his dialogue with Alice about the meaning of a certain word used by him. Alice was not clear what the word "glory" meant and the "interpretation" given did not satisfy her. This is what Humpty Dumpty said:

> "When I used a word, it means what I choose it to mean - neither more nor less."

If Humpty Dumpty got away with his stance, his escape was made easy because there was no restraint that Alice could have used to force a clarification. But a statutory Tribunal cannot assume the role of an irascible schoolmaster or an evil Humpty Dumpty.

The Company was entitled to a clarification or an interpretation of that part of the award which worried its general manager and which prompted him to resort to his right as a party to a dispute. To refer him to the text of the award for his own clarification is to invite danger on the industrial front and to encourage confusion, uncertainty and unrest which the Tribunal is required to avoid.

But another request for clarification did reach the Tribunal. This time it was the Union that asked for it. The request was made after the award of June 22, 1976 had expired. The Tribunal, on March 21, 1977, made the interpretation very clear. What should have been done on July 7, 1976, was not done until March 21, 1977, a delay of nearly 8 months. I shall refer to this second clarification or interpretation in due course.

How did the Company interpret Claim 18(e)

Mr. Henriques in his usual forceful and laconic style put the Company's case - as I understand him - in this wise:

(1) Under the heading "overtime" the Union was asking for double time on a Sunday as part of the scheduled work week;

(2) The Company on the other hand was not clear whether the Union was asking for double time for "overtime" on a Sunday or asking for double time on a Sunday which forms part of an ordinary work week;

(3) The position before the claim was submitted was this: Where Sunday was not a part of the scheduled work week, the worker was paid double time as overtime. But where he worked on a scheduled work week and in excess of eight hours, he was paid the excess as overtime at the rate of time and a half;

(4) The Company understood the Union to be asking that the latter worker was to receive as overtime, the double time which the shift worker received on a Sunday when he was not required to work on Sunday as part of his scheduled work week.

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Mr. Earl Witter replied to the arguments of Mr. Henriques with fervour and determination. Appearing in the case for the purpose of asking for an adjournment and to explain the reason for the absence of Mr. K. D. Knight who was briefed to argue the case, Mr. Witter submitted to the hortatory invocation of the Court to hold the fort in the absence of Mr. Knight. As the case progressed, he appeared to have acquired assurance and to have relished the quick assignment. It could be that as a result of the manner in which he was asked to argue the case, he unwittingly attempted to contravene Section 564E of the Civil Procedure Code. In a matter of this kind, the parties are allowed to rely on affidavit evidence and no new matter may be raised unless with leave of the Court by way of amendment and with the support of evidence by way of affidavit. In every move, there must be proper notice served on the other side with copies of such affidavits as are necessary. No one should be taken by surprise and every party should be given an opportunity to have a fair run. The Union filed no counter affidavit to those of the Company up to the time when Mr. Witter embarked on his reply. He was not therefore, allowed to attempt by way of argument, any contradiction of the facts deponed nor was he allowed to raise anything new. What he resorted to, therefore, was a combing of the several documents which formed the brief of the Company. In particular, he resorted to a minute analysis of the transcripts of the Tribunal's proceedings when claim 18(e) was under discussion.

Union's points in reply

I understand Mr. Witter's arguments as follows:

(1) Claim 18(e) was unfortunately placed under the heading "overtime" but it is not dealing with overtime. And neither the Tribunal nor the Company's representative was misled by this factor;

(2) The argument of the Company before the Tribunal, the affidavits before the Court and the surrounding circumstances indicate that no one could have been misled;

(3) That before the Tribunal, the Union put in the alternative the case for double time on a Sunday as a part of a normal work week. That is, that Sunday should be regarded as a "Special Day" to attract double time for ordinary work. Alternatively that a premium should be paid on that day

I shall refer briefly to the main points urged by the parties before the Tribunal in relation to claim 18(e). Mr. Perry argued as follows:

> "Mr. Chairman, work done on a Sunday as part of the scheduled work week shall be paid at double time. May we point out, Mr. Chairman that Sunday in most cases, and certainly in the Western World, is recognised as a day of rest, and one on which we should go to Church and make peace with the Saviour for all the sins we committed during the course of the week. However, Sir, not everybody is that fortunate to be at Church on Sundays. Some, like the hourly paid employees at ESSO, have to work etc."

Mr. Perry then continued:

> "May I also point out, Sir, that another premium industry that recognise that Sunday is a special day, is the bauxite industry, in the payment of a premium or what is called a Sunday premium. I think the existing rate is 25¢ per hour for all work done on Sunday."

When the Company's representative (Mr. Gordon) dealt with this apsect of the matter, he introduced a document marked "comparison of Top rates in Jamaican Indistries." This document was marked "Exhibit No.3" in the hearing before the Tribunal and it is exhibit No. 1 before us. It seems that in order to support his contention that ESSO was at the head of the table in the payment of shift premium, Mr. Gordon produced this document to show comparisons of payments in five named establishments. And four named establishments are shown with their treatment of "overtime and public holiday premiums." With the document before him, Mr. Gordon said:

> ".....and we are showing here Sir, that we are ahead at the present time and by giving two paces which had based upon the ten per cent movement under the guidelines, we would arrive at 42¢ for the three shift Sir, 14¢ for each one and we think that it is reasonable and we will ask the Tribunal to award accordingly."

During the exchanges, Mr. Perry appeared to have confessed his inability to understand a point made by Mr. Gordon. Mr. Perry said this:

> "Again they want to be competitive Sir. Would it be proper for me to ask some questions on those documents Sir? I don't understand exhibit 3, the comparison of overtime and public holidays premium....."

The document shows that a shift worker gets time and a half as overtime on a Sunday while a non-shift worker gets double time.

Mr. Perry continued:

> "If he works overtime he gets time and a half. So in the interest of accuracy if I were to write overtime about Sunday it would be giving me the accurate impression of what you are talking about, except that Sunday would be a normal work day for shift workers."

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Chairman: "Well a normal work day will be a normal work day here."

Mr. Perry: "I am simple you know Mr. Chairman."

Chairman: "I am saying the whole thing is dealing with overtime, that's what we are saying."

Mr. Perry: "Well really, overtime on public holidays - I see this document is left out again Sir, I think it is intentional. Sunday premiumsbeing paid in the Bauxite Industry for normal shift work a premium for working on Sunday."

Mr. Meikle: "We are talking about overtime on public holidays. I would like to spend five minutes to round up the Company's case."

In paragraph 9 of the affidavit of Mr. Meikle, he states as follows, after reciting the dialogue above:

> "As a consequence of these remarks I came firmly to the conclusion that what was in dispute was a question of pay for overtime on Sundays and therefore did not argue any question about pay for normal shift work on Sundays as the Union had not made any claim for extra pay on Sunday for normal work beyond a shift premium such as is paid in the Bauxite Industry namely 25¢ per hour."

But "these remarks" referred to by Mr. Meikle refer to the Chairman saying:

> "I am saying that the whole thing is dealing with overtime that is what we are saying"

and Mr. Perry saying that it was overtime on public holidays with which Mr. Meikle concurred. A Sunday is not a public holiday although it may fall on a public holiday. In such a case, by our law, the Monday following is generally observed as the public holiday. Even if the Chairman erred in saying that the "whole thing" was dealing with overtime, both Mr. Perry for the Union and Mr. Meikle corrected him by specifying the particular area to which the sub-head on the document (exhibit 3) referred. And I am satisfied that "the whole thing" referred either to the document (exhibit 3) which Mr. Meikle himself introduced or to the sub-head in exhibit 3 which was being specifically dealt with by Mr. Meikle at the time the Chairman's interjection was made.

It was Swift who in his preface to the "Tale of a Tub" said:

> "Where I am not understood, it shall be concluded that something very useful and profound is couched underneath."

Parties who argue cases before Statutory Tribunals are to be credited with a reasonable amount of expertise in their field, common sense and knowledge of the use of what Touchstone in As you Like it" calls the "Retort Courteous." If Counsel does not understand a retort of his learned opponent or a comment of the trial judge, he only has himself to blame if he changes his tactics or

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abandons some of his armoury in his presentation of his client's case. The saying that if a man should ask, it shall be given to him, holds good in a debate. Mr. Meikle has only himself to blame if in fact "the remarks" complained of put him off his guard. What is clear is that the remarks did not prevent him from putting his arguments at length and with clarity even to the point of repitition. He elected to ask for only "five minutes to round up the Company's case," after the exchanges.

But even assuming that the remarks of the Chairman did contribute to the cutting short of the Company's case or even if they were the sole cause of the alleged contraction, it has not been alleged nor has it been suggested that the Chairman deliberately and consciously uttered the words with the intention of shutting off the Company's case at that point. Any such suggestion has, in my view, been correctly and properly repudiated by Mr. Henriques.

A breach of natural justice presupposes that either a party to a cause did not get a fair opportunity of being heard or that there was a real likelihood of bias in the Tribunal which heard the cause. It seems to me that in the absence of any of the two elements above being alleged and proved, the Company's contention under this head would have had to break new ground for it to succeed. And the new ground would be something like this:

> "If during the hearing of a matter the Chairman of the Tribunal consisting of three members should make an innocent remark which could reasonably lead a party to believe that no useful purpose would be served in his arguing a certain point, it is a breach of natural justice if the judgment or award of the Tribunal indicates that the result could have been otherwise if the aggrieved party was not misled. And the proposition holds good even if the law under which the Tribunal operates shows clearly that a majority decision - and not the decision of the Chairman - is that of the Tribunal."

But any such proposition would only have to be stated so that it may be rejected. And this being the position and in addition since the Company's case on this ground which was ably argued by Mr. Henriques turns out to be what I have outlined above, I had no hesitation in rejecting it.

Can a "clarification" be clarified?

After the Tribunal handed down its interpretation of Claim 18(e) of the Award on July 7, 1976, the Company put its own interpretation on it. Mr. Meikle puts the point succinctly in paragraph 12 of his affidavit:

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> "As a result of this interpretation I came to the conclusion that I had been right in the first place in saying that the double time only operated in respect of overtime on Sundays and implemented it on that basis."

The implementation on the basis of the Company's interpretation met with the opposition of the Union and the workers. The Tribunal lost an opportunity in July 1976, to make clear what was awarded. The result of the impasse caused a threat of industrial action at the plant and it further caused the Union to urge that criminal proceedings be instituted against the Company under Section 12(9) of the Act. The relevant portion states:

> "Any person who fails to comply with any order or requirement of the Tribunal made pursuant to subsection (5) or with any other decision or any award of the Tribunal, shall be guilty of an offence."

The problem was now obvious. The Tribunal handed down an Award which was not clear to the Company. The Company relied on its statutory right to ask for an interpretation of a part of the Award. The Tribunal responded by referring the Company to the portion which is obscure to the applicant. The applicant Company now relies on its own interpretation. In those circumstances, can it be said that the Company has failed -

"to comply with an order or requirement of the Tribunal"

within the meaning of Section 12(9) of the Act? The answer must be a resounding "no." One is not surprised, therefore, to find that the Director of Public Prosecutions refused to prosecute the Company when the Commissioner of Police referred statements alleging that the Tribunal's Award has not been implemented. The opinion of the learned Director of Public Prosecutions was given on March 16, 1977, the date that the Award expired. On the following day, the Union addressed a letter to the Chairman of the Tribunal, requesting an interpretation. In the letter, reference is made to the "interpretation" which the Tribunal handed down on June 22, 1976, as a result of the application of the Company. The letter states in part as follows:

> "Since the handing down of that interpretation, the Company has still refused to honour the original Award on the basis of its continued ambiguity. A position of intransigence has arisen regarding the interpretation and at present there is a dispute between the parties concerning same."

It is not clear whether the opinion that there is "continued ambiguity" in the Award is genuinely shared by the Union or whether the Union wanted a removal of the "ambiguity" if it existed so as to pave the way for a criminal

prosecution of the Company. Perhaps, the Union wanted some clarity in order that any unsatisfied vested right of the workers under the Award may be enforced. Whatever may have been the motive behind the request of the Union, the Tribunal responded with speed. Within four days, that is to say, on the 21st March, 1977, the Tribunal ruled as follows:

> "If a continuous shift employee as part of his 40-hour work week is scheduled to work on a Sunday then his pay for the Sunday shall be at double time."

At the hearing on the 21st March, 1977, the Attorney for the Company submitted that the Tribunal had no jurisdiction to reclarify its own clarification. This submission was rejected by the Tribunal and in my opinion rightly so. And one of the grounds relied on in this motion, which Mr. Henriques urged strenuously is stated as follows:

> "That the Tribunal having exercised its powers under Section 12 subsection 10 of the Labour Relations and Industrial Disputes Act, 1975, and interpreted the award on the 7th day of July, 1976, had no jurisdiction again to interpret the award on the 21st day of March, 1977."

I need not repeat the provision of Section 12(10) of the Act. Under the Act the following parties have the right to ask for an interpretation of an Award:

(a) The Minister;

(b) Any employer;

(c) The trade union or worker to whom the award relates.

It is well known that an Award may deal with several matters and that the language which may be used by the Tribunal which is fully composed of laymen, may appear to be somewhat nebulous. The Minister, employer or trade union may each entertain a genuine doubt as to the full meaning and implication of a particular part of an award. And each of the parties aforesaid may put varying interpretation on the Tribunal's Award. Surely in such a case, an employer's application for an interpretation cannot bar an application from the trade union if the interpretation given on the former's application does not satisfy the latter. If a joint application is made by the employer and the trade union, it could be argued - and I make no final decision on the point - that the latter elected to exhaust his right to ask for a clarification on the particular point. But even if this is so, the right of the Minister to ask for a clarification or

interpretation in the public interest would be left unimpaired.

The burden of Mr. Henriques' argument on this aspect of the case is, with respect, based on the fallacy that where Parliament has granted power to a Tribunal to do some act, the power is exhausted by a single exercise. Section 34(1) of the Interpretation Act states clearly as follows:

> "Where any law confers a power or impose a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires."

A point of ambiguity may arise on the award and a question arising on such a point may have to be decided. Many questions could possibly arise for consideration in order to make the Award clear.

When Parliament set up the Industrial Disputes Tribunal, it indicated that the settlement of disputes should be removed as far as possible from the procedure of the Courts of the land. The judges are not trained in the fine art of trade union activities, in the intricacies of collective bargaining, in the soothing of the moods and aspirations of the industrial workers and in the complex operation of a huge corporation. As a result, Section 12(4)(c) states clearly that an award of the Tribunal "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."

It could be that what is a point of law within the meaning of the section may be wider than what certiorari embraces. For example, whether the first interpretation of the Tribunal in these proceedings was an "interpretation" within the meaning of the Act could be regarded as a point of law. And whether proceedings could have been instituted before us to determine that question without first asking the Tribunal to clarify what is claimed to have been clarified, may be another point of law. I need not multiply the examples nor is it to be construed that I am laying down any decision on the question. I am satisfied however, that when the Tribunal in effect on July 7, 1976, said:

> "that what we have written we have written and it means what is says"

that was no answer to the Company's request for an interpretation and in law, it was not an interpretation. It was therefore, open to the Union to ask for an interpretation and the Union as a party was, on the face of it, exercising a statutory right. But even if the decision on July 7, 1976, was an interpretation the power to entertain another application for an interpretation from a diffe[illegible]

party to the dispute could have been properly exercised in the circumstances.

Mr. Langrin has earnestly asked the Court to give some guidelines concerning the question of the power of the Tribunal to entertain more than one application to interpret an award. It has been said that he who rises from prayer a better man, his prayer has been answered. Without laying down anything to be regarded in the light of the "law of the Medes and Persians", I for my part will venture to say the following:

(1) Where one party to a dispute seeks a "clarification" of an award under Section 12(10) of the Act, the decision of the Tribunal does not preclude another party from seeking a further clarification on the same point if it reasonably appears that the original award is not clear;

(2) The Tribunal may be asked to interpret as many questions as possible which may fairly and reasonably arise under the Award. And so long as it is clear that the application is not frivolous, or vexatious or an attempt unreasonably to delay the implementation of the Award or to frustrate a collective agreement made or amended between the contending parties, the Tribunal should make plain, by way of interpretation, what the Award embraces or contains;

(3) Where an Award has expired and a right under it has not been sufficiently vindicated or identified, any party to the dispute may seek an interpretation with a view to enforcing or identifying the right in question provided that an application is bona fide made, either before the collective agreement has expired or within a reasonable time after its expiration;

(4) For the purpose of enforcing the criminal law where an Award is not implemented or obeyed, or in the interest of the public generally the Minister may seek an interpretation of an award where none of the contending parties has sought one or where an interpretation given on the application of one or both of them does not

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clearly identify the issues or settle effectively the dispute, which he referred to the Tribunal.

General Comments

The Tribunal is required to hold the scales evenly and to do right having regard to the public interest. It must be remembered that the general public interest and the likely effect that an award may have on the economy, are matters greater than the interest of the interested parties, who form a small part of the community. It seems to me that the award under Claim 18(e) appears to have been over generous and to have overlooked a simple fact. And the fact is this. When the workers at ESSO were employed, they knew or ought to have known that the shift system to cover Sundays as part of the scheduled work week was in operation. And that they would have to work within that system. To say therefore, that compensation for working on a Sunday as part of the scheduled work week because it is a Sunday should be calculated at double time, without any other balancing element was asking for too much. The policeman, nurse, fireman, airport worker, newspaper and hospital employees are required by the nature of their employment to work on Sundays periodically as part of their normal work week. Are these also to be paid double time for doing what they are required to do on a normal work day?

The Court has no power to vary the award of the Tribunal. But in an appropriate case the Court has the right to make comments on the implications of an award which comes up for review. If trade unions and workers demonstrate too much zeal in the wisdom and good judgment which they claim they have, members of the Tribunal should counter with a display of the agility of an acrobat and the foresight of a seer.

My brother Marsh, who is unable to be here today has directed me to say that he specifically concurs in the reasoning of that part of the judgment, which deals with the power of the Tribunal to entertain an application for an interpretation of an award.