

1969

*Present : Samerawickrame, J.**P. DANNY, Appellant, and J. K. P. WILLIAM, Respondent**S. C. 140/68—Labour Tribunal Case No. G/3887**Labour Tribunal—Date of inquiry—Absence of respondent by reason of accident or mischance—Liability of order of the tribunal to be set aside in appeal.*

Where an application before a Labour Tribunal has been concluded in the absence of the respondent on the date of inquiry, the order of the tribunal may be formally vacated in appeal if it is shown that the respondent was prevented by accident from appearing on the inquiry date and that, by reason of circumstances beyond the control of the tribunal and of the parties, an order has been made that is not just and equitable.

A PPEAL from an order of a Labour Tribunal.

A. C. Nadarajah, for the respondent-appellant.

S. Gunasekera, for the applicant-respondent.

Cur. adv. vult.

October 1, 1969. SAMERAWICKRAME, J.—

The respondent-appellant states that the inquiry into this matter was fixed for 6th June, 1968, and on the night of the 5th he suffered a fracture of the elbow of his left arm. The next morning he went to a

specialist and had his arm attended to and by the time he came to the office of the Labour Tribunal the inquiry had been concluded. He set out these facts in the petition of appeal. He has also submitted an affidavit along with a medical certificate from a ayurvedic physician from whom he obtained treatment. Notice of the affidavit had been given to the applicant-respondent but the facts stated have not been controverted.

Counsel for the applicant-respondent submitted that the respondent-appellant should have in some way informed the tribunal of the fact of his inability to appear and the reason for it. The appellant was not represented by a lawyer through whom he could have conveyed this fact to the tribunal. While it would have been desirable that he should have made some effort to inform the tribunal before the inquiry began, I do not think that in the circumstances he should be shut out from obtaining relief by his failure to do so.

In a situation which is similar but not identical, Jenkins, L.J. in *Grimshaw v. Dunbar*¹ stated :—

“ Be that as it may, a party to an action is prima facie entitled to have it heard in his presence. He is entitled to dispute his opponent's case and cross-examine his opponent's witnesses, and he is entitled to call his own witnesses and give his own evidence before the court. If by some mischance or accident a party is shut out from that right and an order is made in his absence, then common justice demands, so far as it can be given effect to without injustice to other parties, that that litigant who is accidentally absent should be allowed to come to the court and present his case .”

It would appear to follow that the fact that the appellant was deprived of the rights referred to in this dictum by reason of his absence has resulted in a finding against him that cannot be regarded as just and equitable. The tribunal is, of course, in no way responsible in that it gave the appellant notice of the hearing and was unaware that the appellant had been prevented by the accident from appearing. It would appear therefore that by reason of circumstances beyond the control of the tribunal and of the parties an order has been made that was not just and equitable.

The applicant-respondent is entitled to be compensated for the expenses of the trouble that he has incurred in respect of the proceedings that would be rendered abortive if the appeal is allowed. I accordingly order the appellant to pay to the applicant-respondent a sum of Rs. 50 as costs.

I formally set aside the order of the Labour Tribunal and send the matter for inquiry and adjudication on the application made to it by the applicant-respondent. There will be no costs of appeal.

Order formally set aside.

¹ (1953) 1 A. E. R. 350 at 355.