1968 *Present :* **Tennekoon, J.**

CEYLON TRANSPORT BOARD, Appellant, *and* CEYLON TRANSPORT WORKERS' UNION, Respondent

S. C. 134/67—Labour Tribunal Case No. 7/28,632

Industrial Disputes Act—Sections 31B (1), 31C (1), 36 (4)—Termination of a workman's services—Application to Labour Tribunal for relief—Extent to which the Tribunal is not bound by the provisions of the Evidence Ordinance—Power of Tribunal to make a "just and equitable" order—Scope—Duty of Tribunal to act judicially in evaluating evidence.

The Ceylon Transport Board terminated the services of a workman because he was a party to the theft of certain articles belonging to the Board. When application for relief was made to a Labour Tribunal in terms of section 31B(1) of the Industrial Disputes Act, evidence of a written statement made by the workman to a Security Officer admitting his complicity in the theft was not given due weight by the President on the ground that "the statement would probably not have been admissible in a criminal case; although the Tribunal is not bound by the rules of evidence, such a statement must be received with caution".

Held, that Section 36 (4) of the Industrial Disputes Act which provides that in the conduct of proceedings a Labour Tribunal shall not be bound by any of the provisions of the Evidence Ordinance is only intended to permit a Labour

Tribunal in its discretion (which must be exercised reasonably) to admit as evidence all matter which it considers material even though a court of law would not regard it as judicial evidence. It does not enable a Tribunal to apply exclusionary rules of evidence more rigorous than those contained in the Evidence Ordinance. A proceeding before a Labour Tribunal is not a criminal case and even if the President was inclined to guide himself by the rules of relevancy contained in the Evidence Ordinance, Section 24 thereof (which was obviously the only Section which he could have had in view) could not be availed of, since that Section applies only to criminal cases.

Held further, that Section 31C (1) of the Industrial Disputes Act which provides that " where an application under Section 31B is made to a labour tribunal, it shall be the duty of the tribunal to make all such inquiries into that application and hear all such evidence as the tribunal may consider necessary, and thereafter make such order as may appear to the tribunal to be just and equitable " must not be read as giving a labour tribunal a power to ignore the weight of evidence or the effect of cross-examination on the vague and insubstantial ground that it would be inequitable to one party so to do. It is only after he has ascertained the facts in a judicial manner that the President must proceed to make an order that is fair and equitable, having regard to the facts so found. " The reference in many texts and judgments to the powers of industrial courts and similar tribunals as ' arbitral ' as opposed to ' judicial ' must not be understood to mean that these tribunals are licensed to act arbitrarily."

APPEAL from an order of a Labour Tribunal.

N. Satyendra, for the Employer-Appellant.

No appearance for the Applicant-Respondent.

Cur. adv. vult.

July 13, 1968. TENNEKOON, J.—

This is an appeal to this Court under section 31 D (2) of the Industrial Disputes Act taken by the Ceylon Transport Board—the Employer—from an Order made by a Labour Tribunal under section 31 C (1).

The respondent—the Ceylon Transport Workers' Union—applied for relief or redress under section 31B (1) of the Act on behalf of a workman, one R. D. Premadasa, whose services had, it was alleged unjustifiably, been terminated by the Employer. The Employer-Appellant's position was, substantially, that the workman Premadasa collaborated with another or others in the dishonest removal of a timing chain from the Stores section of the Ceylon Transport Board's installations at Werahera. The appellant had no direct evidence of the theft but produced a document (R1), admittedly signed by the applicant, in which he admitted complicity in the theft. Evidence was also produced of the circumstances in which the workman came to make that confession. The Security Officer Mapitigama was the main witness for the appellant. He stated that he received certain information which led him, together with Watcher Wilman and another, to keep watch on the movements of the

workman Premadasa and in particular to see whether Premadasa or anyone else would try to remove an item of Ceylon Transport Board property that had been secreted in a tea kiosk standing near the main gate at Werahera ; he stated further that he and Wilman apprehended the workman and one Siriwardene as they were leaving the tea kiosk ; a timing chain was found in a parcel which Siriwardene was carrying and the applicant when questioned admitted his complicity. Mapitigama recorded the statement of the applicant and this was signed by him. The lawyer appearing for the applicant cross-examined the Security Officer and in the course of cross-examination put the following question which, it is legitimate to assume, was on instructions from his client :—

" Q. I am instructed that you forced him to sign on a blank paper ? " which was answered with a denial.

Wilman, a watcher of the Ceylon Transport Board, stated that he went out with the Security Officer about 4.30 p.m. on that day and followed Premadasa when he was leaving after work ; Premadasa entered the tea kiosk and he followed him, keeping out of his view. Here he saw the workman take a parcel from the kitchen section of the kiosk and hand it over to Siriwardene, a boy of about 18 employed at the kiosk ; the workman left the boutique by a side door and Siriwardene left shortly thereafter ; he and the Security Officer, who had been hiding outside the kiosk apprehended both Siriwardene and the workman. The parcel in Siriwardene's hand contained the timing chain. Except for noting a very minor and inconsequential contradiction in the evidence of Mapitigama and Wilman the President of the Labour Tribunal does not say that he disbelieves these two witnesses.

The applicant himself gave evidence ; while not denying his presence in and near the tea kiosk at the time when Siriwardene and he were apprehended, he stated as follows in evidence-in-chief :—

" Before I went to the halt I went to the boutique, had a cup of tea and then lit a cigarette and walked to the bus stand. Many workers went to have tea at that time on that day. I stayed in the boutique for about 5 minutes. When I was at the bus halt Mr. Mapitigama and the watcher came and called me to a side saying that they had to tell me something. When I went near them Mr. Mapitigama, the Security Inspector, held me by my hand and took me inside the office of Security Inspector. That office was inside the workplace. Mr. Mapitigama showed me a parcel and asked me whether I had given it to a boy. He also showed me the boy. The boy was inside the office of the Security Inspector. I did not know what was inside the parcel. It was wrapped up in paper. I did not take it into my hand. They opened the parcel and showed me a Timing Chain and they asked me whether it was handed over by me. I said that I did not know anything about it. I knew that the boy was an employee of the tea boutique. I did not make a written statement. Mr. Mapitigama took the photo pass from me and showed me the signature and asked me whether I

could sign it on a piece of paper and threatened that if I did not put it down that I would be assaulted. I put my signature at the very bottom of the paper as it was indicated to me."

The suggestion here (as in the question put in cross-examination to Mr. Mapitigama) was that he was forced by fear of threats of assault to put down his signature *at the bottom of a single blank sheet of paper.* In cross-examination he was shown the original of his statement; it consisted of two pages; the applicant's signature appears at the bottom of the first page and at the end of the statement on the 2nd page; on the 2nd page the statement ends close to the middle of the page and the signature is at that point and nowhere near the bottom of that page; both pages were shown to the applicant and he admitted that both signatures were his. The cross-examination continued as follows :—

"Q. I put it to you that Mr. Mapitigama reduced to writing what you stated to him ?

A. I deny that.

Q. After reducing it to writing it was read and explained to you ?

A. I deny that.

Q. You also read it before you signed it ?

A. I was asked to sign *on a blank paper.*"

The cross-examination ended at this stage and it is obvious that the applicant's story of his having been forced to place his signature on a blank sheet of paper which was later filled up by Mapitigama was unworthy of credit. The President of the Labour Tribunal himself stepped in at this stage with some questions. The record reads as follows :—

"*TRIBUNAL :* On one blank sheet or on more than one blank paper ?

A. Two blank papers.

Q. You said you were given a blank form ; where did you sign ?

A. I signed where it was pointed out to me. He asked me to sign right at the bottom.

Q. Then in the next page he asked you to sign in the middle of the page ?

A. Yes."

After this there was naturally no re-examination when the President had put into the mouth of the witness the answers which he should give if he was to be believed.

I now reproduce extracts from Premadasa's statement to the Security Officer (R1), the original of which is in Sinhala in the handwriting of Mapitigama and signed by Premadasa on both pages :

"I work in the Civil Engineer's Division. I work there as an engineering-labourer. Today (22-3-66) I came for work at 7.30 a.m. At about 2.30 p.m. when I went for tea to canteen number 1, I met

there Mr. Norman who works in the Stores Section. He asked me to come into the Supplies Division (canteen) where tea is served. He said that there was an article for removal. He said, "you come in. There is an article. Take it for me to the road." At about 2.40 p.m. after I have had my tea, and as requested by him I entered through the "D" door, went through the middle of the workshop, came out from the door of the engineering section, entered through the door of the Supplies Division and went to the tea-drinking place. At this time Norman came up to me from "E" and "F" stores. Thereafter he gave me a chain which he had rolled in the shape of a ball and which he had secreted in his waist. When this chain was handed over to me it was not wrapped in anything. It had been shaped to the shape of a ball. I then took it and hid it in my waist.....
.....Taking the chain with me I returned to the tea-drinking place in the supplies section along the same route I took and got out from the main gate and went to the planked tea boutique (which is situated to the South when one proceeds towards the road) which is close to the main gate. Norman came to the spot (tea-boutique) as mentioned when handing over the article. All this took place at the tea time. At that time Norman told me to hide the chain in the rear of the boutique to be removed when leaving after work.

As requested by him I hid the chain at a certain place behind the boutique. Thereafter Norman went in the direction of the road. I went to my place of work. I worked till 4.30 p.m. and after my work was over, I went once again to the boutique where the article was kept. I met U. D. Ratnapala Siriwardene inside the boutique. Then I showed him the chain which I hid, asked him to bring it to the road and told him that Mr. Norman and I will be at the bus halt. I asked him to give back the article at the bus halt."

The President made his order on 13-9-67 and concluded as follows :—

"The evidence in this case does give rise to a suspicion that the workman concerned himself with the theft of this chain but the case against the applicant in my opinion was not proved with such degree of probability as would justify the conclusion that the workman was guilty of the charges preferred against him by the Board. At the same time I am of the view that the workman should not have put himself into that position of suspicion that is apparent in this case. I order that the workman be reinstated. He will not, however, be entitled to any wages for the period of non-employment."

It seems to me that the Tribunal has completely failed to evaluate the evidence before him. After summing up the evidence on both sides the President says :—

"The statement R1 would probably not have been admissible in a criminal case; although the Tribunal is not bound by the rules of evidence such a statement must be received with caution."

Section 36 (4) of the Act provides that in the conduct of proceedings a Labour Tribunal shall not be bound by any of the provisions of the Evidence Ordinance. This is only intended to permit a Labour Tribunal in its discretion—which of course must be exercised reasonably—to admit as evidence all matter which he considers material even though a court of law would not regard it as judicial evidence. Section 36 (4) must not be regarded as a provision which enables a Tribunal to apply exclusionary rules of evidence more rigorous than those contained in the Evidence Ordinance. A proceeding before a Labour Tribunal is not a criminal case and even if the President was inclined to guide himself by the rules of relevancy contained in the Evidence Ordinance, section 24 thereof (which is obviously the only section he could have had in view) could not have been availed of, since that applies only to criminal cases. Two questions arose for the Tribunal in regard to the alleged admission R1. The first was whether the statement was in fact made by Premadasa; the second, if so whether it could safely be relied on as containing the truth. The Tribunal has failed to deal with either question. If it had. it seems to me on a full evaluation of the evidence that the answer to both questions should have been in favour of the Employer-Appellant.

Immediately after the sentence quoted above appears the following :—

> " The main evidence against the applicant before this Tribunal is this confession and the statement of the watcher that he saw the applicant hand over a parcel to Siriwardene. I do not think that it would be equitable to hold either on the document R1 or on the rest of the evidence in this case that the respondent Board has proved that the applicant committed theft or attempted to commit theft of the Timing Chain."

The Tribunal is here perhaps echoing the words of section 31 C (1) which reads as follows :—

> " Where an application under section 31B is made to a labour tribunal, it shall be the duty of the tribunal to make all such inquiries into that application and hear all such evidence as the tribunal may consider necessary, and thereafter make such order as may appear to the tribunal to be just and equitable."

This section must not be read as giving a labour tribunal a power to ignore the weight of evidence or the effects of cross-examination on the vague and insubstantial ground that it would be inequitable to one party so to do. There is no equity about a fact. The tribunal must decide all questions of fact " solely on the facts of the particular case, solely on the evidence before him and apart from any extraneous considerations " (see *R. v. Manchester Legal Aid Committee Ex parte Brand & Co. Ltd.* [1]). In short, in his approach to the evidence he must act judicially. It is only after he has so ascertained the facts that he enters

[1] *(1952) 1 A. E. R. 480.*

upon the next stage of his functions which is to make an order that is fair and equitable, having regard to the facts so found. To say of one party's case that it would not be equitable to reach a conclusion against the other on the evidence produced by the former is to apply an undisclosed and unascertainable standard of proof to that party's case and indeed to act arbitrarily and not judicially. The reference in many texts and judgments to the powers of industrial courts and similar tribunals as 'arbitral' as opposed to 'judicial' must not be understood to mean that these tribunals are licensed to act arbitrarily. I find it difficult in the circumstances to regard the decision of the Tribunals in this case as a decision within the meaning of the Act.—

The appeal is accordingly allowed and the order of the Tribunal set aside.

Appeal allowed.