4-1-1980

The Right of Appeal From Trinidad and Tobago's Industrial Court

R. M. Castagne

COMMENTS

The Right of Appeal From Trinidad and Tobago's Industrial Court

R. M. CASTAGNE*

The belief that common law rules and principles are ill-suited to the task of regulating union-management disputes gained acceptance as industrialization and industrial relations developed over the years.[1] In Trinidad and Tobago, this belief finds expression in the fact that labor disputes are subject to statutory regulations and are resolved by an Industrial Court—composed largely of persons with industrial relations expertise—which is expected to act with regard for the principles and practices of industrial relations. There is, however, a right of appeal to the regular, common law-oriented Court of Appeal; therefore, the extent to which the Industrial Court's non-common law decisions are challengeable on common law grounds depends largely on the extent of the right of appeal. To date, the Court of Appeal has not determined the extent of this right under the controlling statute, the Industrial Relations Act (IRA).[2]

The objective of this paper is to determine the scope of this right of appeal. By necessity, the discussion relies heavily on decisions of the Court of Appeal taken under the IRA's predecessor, the Industrial Stabilization Act (ISA).[3] The performance of the Court of Appeal under the former legislation provides an indication of its probable approach to the current provisions. The IRA provisions, however, are not identical to those in the ISA, and the extent to which the right of appeal has been altered will have to be considered.

I. THE IRA APPEAL PROVISIONS

The extent of the right of appeal from the Industrial Court to the Court of Appeal granted by the IRA is somewhat confusing. On the one hand, s. 10(3) provides as follows:

---

* Lecturer in Law, Faculty of Law, University of the West Indies, Cave Hill, Barbados; LL.B., U.W.I.; LL.M., Osgoode Hall.

1. *See generally* Weiler, *The 'Slippery Slope' of Judicial Intervention*, 9 OSGOODE HALL L. J. 1 (1971) (Canadian labor law).

2. Act No. 23 of 1972.

3. Act No. 8 of 1965, *as amended by* Act No. 11 of 1967, *repealed by* Act No. 23 of 1972.

> *Notwithstanding anything in this Act or in any rule of law to the contrary,* the Court in the exercise of its powers *shall*—
>
> (a) make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;
>
> (b) act in accordance with equity, good conscience and the substantial merits of the case before it, having regard for the principles and practices of good industrial relations. (emphasis added)

On the other hand, the Court's extremely wide discretion is limited by subsection (2) of s. 18, which states, *inter alia:*

> *Subject to this Act,* any party to a matter before the Court shall be entitled as of right to appeal to the Court of Appeal on any of the following grounds but no others—
>
> . . . .
>
> (b) that the Court has exceeded its jurisdiction in the matter;
>
> . . . .
>
> (d) that any finding or decision of the Court in any matter is erroneous in point of law; or
>
> (e) that some other specific illegality, not hereinbefore mentioned, and substantially affecting the merits of the matter, has been committed in the course of the proceedings. (emphasis added)

This section, therefore, apparently retains the right of appeal on just about any point of law. In addition, s. 18(1) provides that subject to subsection (2), the proceedings and decisions of the Industrial Court are not to be ". . . challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever." Obviously, how s. 18 is to operate in light of s. 10(3) is not at all clear, given the evident conflict between the two sections.

Although a right of appeal usually lies from a superior court to a court of appeal,[4] no such right exists unless conferred by statute.[5] If only a limited right of appeal is granted, the extent of the right can only be determined from the interpretation of the relevant provisions in the statute.[6] Hence, the extent of appeal provided for by the IRA

---

4. *See, e.g.,* The Judicature Ordinance, T. & T. Rev. Ordinances ch. 3, No. 1, s. 32 (1950).

5. H. W. Wade, Administrative Law 53-54 (3d ed. 1971); S. A. de Smith, Judicial Review of Administrative Action 23 (3d ed. 1973).

6. The right of appeal must be distinguished from that of judicial review. Review is based on the legality of the administrative proceedings. In the case

would have to be determined from the interpretation of s. 18(2), which is to operate "subject" to the Act and thus, must be considered in light of s. 10(3) and s. 18(1).

There are two possible interpretations of such an analysis. The most obvious interpretation is that the exercise by the Industrial Court of its power under s. 10(3) is subject to the right of appeal on one of the grounds stated in s. 18(2). This raises two fairly obvious difficulties, however. First, this interpretation is contrary to the actual wording of s. 10(3) that the Court is to exercise its power notwithstanding anything in the Act or in any other rule of law to the contrary. No caveat or limitation of any sort is contained in this phrase. Conversely, the right of appeal granted by s. 18(2) is made subject to the Act and is, therefore, subject to s. 10(3). Second, the stated grounds for appeal apparently allow appeal on any point of law. Hence, to allow an appeal on any of the grounds of s. 18(2) would be to make s. 10(3) subject to s. 18(2) and thus, to existing rules of law, a contrary position to that indicated by the wording of those provisions. In addition, s. 18(1) would be virtually ineffective and would only preclude an appeal to the High Court, an avenue which is already prohibited by virtue of the Industrial Court's equal status as a superior court of record.[7]

The only possible interpretation is to regard the right of appeal under s. 18(2) as subject to the Industrial Court's powers under s. 10(3). Subparagraph (a) requires that the Court pay regard, *inter alia,* to the "interests" of the parties. Presumably, this term includes legal interests. However, subparagraphs (a) and (b) together require the Court to reach a "fair and just" decision and to act in accordance with "equity [and] good conscience" and the principles and

---

of administrative tribunals, application may, unless prohibited by statute, be made to a higher judicial authority to the effect that the tribunal has exceeded its jurisdiction (i.e., acted *ultrq vires*) or committed an error of law on the fact of the record or that some other specific illegality has been committed in the course of the proceedings. The right exists quite apart from any right of appeal which may also be prescribed by the enabling statute. In other words, the right to judicial review exists unless taken away by statute; the right to appeal does not exist unless granted by statute. Wade, *supra* note 5, at 23-24, 54.

7. It could also be argued that s. 10(3) is purely procedural. The wording of the sub-section, however, tends to defeat this proposition. It is specifically stated that the Court's exercise of its powers *shall* be on certain bases, notwithstanding any other rule of law. It is a mandatory provision. Also, s. 10 as a whole concerns powers granted to the Court and is, therefore, more than merely procedural.

practices of industrial relations. Therefore, if leaving the legal interests of the parties unaffected would result in a decision which the Industrial Court considered unfair and unjust, or contrary to the principles of industrial relations,[8] then s. 10(3) would seem to require that the Court override the legal interests in order to render a suitable decision. That decision, by virtue of s. 18(1), could not be challenged in any court. In any case, such a decision would be based on the Court's own interpretation of justice, fairness, or good industrial relations practice and would, therefore, not be the result of any error of law as such.

A right of appeal under s. 18(2) would apparently lie in cases where the Industrial Court reached a decision based upon a wrongful application of a point of law,[9] or on the basis of some legal misunderstanding or illegality impugnable on one of the specified grounds. The right of appeal would probably also be available if the Court disregarded the legal interests of the parties, overlooked a legal rule that may have influenced its decision, or exceeded its jurisdiction to such an extent that it acted outside of the scope of the IRA provisions. In any event, the right of appeal is apparently severely limited, as it would be possible for the Industrial Court to avert an appeal by stipulating that, despite the legal issues involved, it reached its decision on the basis of the principles of s. 10(3), thus overriding the legal interests of the parties.[10] On the other hand, the Court of Appeal may well take the view that the legal interests or rights of the parties are, in the public interest, inviolate. To allow legal rights to be eroded, for whatever reason, may lead to the erosion of other legal rights, and a legal system based on the rule of law would be generally undermined. Hence, the Court of Appeal may well always be capable of upholding legal rights on the basis that some error of law was made.

---

8. *E.g.*, the strict rights of the parties under contract and property law may conflict with the public interest in having the dispute settled in accordance with generally accepted industrial relations principles.

9. *E.g.*, wrongful interpretation of a statute as in Kowloon Restaurants Ltd. v. National Union of Foods, Hotels, Beverages and Allied Workers, 14 W.I.R. 447 (TT. C. A. 1969); British West Indian Airways v. Superintendents Association, Civ. App. 8 of 1973 (unreported TT. C. A. 1976).

10. Conceivably, the Court of Appeal could still require the Industrial Court to show that it considered the legal interests of the parties and could set aside the award if it had failed to do so. Also, appeals would probably be allowed in cases where the Industrial Court acted in a manner not provided for in the Act.

Of further interest is the fact that the Trinidad Industrial Relations Act sections 10(3), 18(1), and 18(2) are identical with the Antigua Industrial Court Act 1976, Act No. 4 of 1976, sections 10(3), 17(4), and 17(1), respectively.

II. The Right of Appeal Under the ISA

In the absence of Court of Appeal decisions concerning the appeal provisions of the IRA, reliance must be placed upon the role of the Court under the previous legislation. The ISA s. 8 provided for a right of appeal very similar to that of the IRA:

> (1) Subject to subsection 2, a judgment order or award of the [Industrial] Court in any proceedings under this Act—
>
> (a) shall not be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatever; and
>
> (b) shall not be subject to prohibition, mandamus or injunction in any Court on any account whatever.
>
> (2) Any party to a matter brought before the Court shall be entitled as of right to appeal to the Court of Appeal—
>
> . . . .
>
> (b) [O]n a point of law from any judgment, order or award of the Court. The decision of the Court of Appeal . . . shall be final.[11]

Until the Act was amended in 1967, there was no provision analogous to what is now s. 10(3) of the IRA. S. 13(2) of the amended ISA stated:

> Notwithstanding any other law and, in addition to its powers under subsection (1), the Court in the exercise of its jurisdiction shall have power—
>
> (a) to make such order or award in relation to a trade dispute before it as it considers fair and just having regard to the interests of the persons immediately concerned and the community as a whole;
>
> (b) to act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations.[12]

S. 13(2) was subject to the right of appeal on a point of law accorded by s. 8(2). The section did not operate "notwithstanding anything in the Act" as is stipulated in s. 10(3). Thus, any judgment, order, or award, whether made pursuant to s. 13(2) or not, could be overturned on a point of law.

---

11. Subsections renumbered by Act No. 11 of 1967, s. 5(2).

12. Subparagraphs (A) and (B) were word for word the same as (A) and (B) of s. 10(3).

A right of appeal on a point of law is narrower than a general right of appeal on the merits.[13] Thus, even assuming that a general right of appeal on any point of law has been retained by s. 18(2) of the IRA, there must be areas of the Industrial Court's jurisdiction which are unimpeachable. Presumably, no right of appeal would be available once the Industrial Court exercised its discretion within its jurisdiction without infringing any rules of law.

In two cases under the ISA, the Court of Appeal recognized that the Industrial Court had properly exercised its discretion and disallowed the appeal. In *Port Contractors v. Shipping Association*,[14] the appellants objected to being joined as parties to the dispute. The Industrial Court had decided that, in order to hasten the hearing of the dispute, it would hear the evidence before making a final ruling on the issue. The appellants claimed that the Court had no power of joinder and, even if it did, the exercise of that power would be improper in this case. On appeal, it was held that the Industrial Court did have the power and was entitled to postpone its ruling. The power to postpone its ruling was analogous to the ordinary court's power of adjournment at common law.

Similarly, in *Roopchand and Moses v. National Union of Government Workers*,[15] the Industrial Court allowed a motion by the union to amend its statement of the case in order to request a payment of severence money as an alternative to the reinstatement of laid-off workers. The company appealed, claiming that the dispute, which was referred to the Industrial Court by the Minister of Labour, concerned the issue of reinstatement only and that the Court had acted *ultra vires* in allowing the amendment, as the Court only had the power to settle the dispute contained in the referral. The Court of Appeal dismissed the appeal, holding that the essence of the dispute was a claim that the workers were entitled to some form of relief. The Appeal Court noted that the Industrial Court was not fettered by the limitations or rules binding civil courts and that even civil courts may not refuse to allow an amendment simply because it introduced a new case.

These two cases seem to suggest that the Industrial Court's discretion is analogous to that exercisable by ordinary civil courts.

---

13. de Smith, *supra* note 5, at 250; Wade, *supra* note 5, at 53.
14. 21 W.I.R. 505 (TT. C. A. 1972).
15. Civ. App. 87 of 1970 (unreported TT. C. A. 1973) [hereinafter cited as Roopchand and Moses].

Roopchand and Moses indicates that s. 8 of the ISA precluded appeals on questions of fact only,[16] not an unreasonable conclusion. Although s. 8(2) precluded appeal from any "judgment, order or award," s. 8(3) provided a right of appeal on a point of law in relation to any "judgment, order or award" of the Industrial Court.[17]

This provision, however, did not inhibit the Court of Appeal from setting aside, in other cases, decisions with which it did not agree. In such cases, the appellate court would maintain that some error of law had been committed. In *Fernandes (Distillers) Ltd. v. Transport and Industrial Workers' Union*,[18] the Industrial Court purported to exercise its powers under s. 13A which stated, *inter alia*, that the Court may order the reinstatement, or compensation in lieu of reinstatement, of a worker who had been dismissed "for reasons which in the opinion of the Court are harsh or oppressive and unreasonable and unjust." The Court of Appeal rejected the argument that the case was decided essentially on the facts and was, therefore, unappealable [19] and noted that the onus was upon the union to satisfy the Industrial Court that the order should be made. It strictly construed the section and concluded that the Industrial Court had failed to observe the requirements of the Act and that it was impossible, upon the findings of the Court, for it to form the opinion that the dismissal warranted an order of reinstatement.[20]

---

16. "By s. 8 of the [ISA] a judgment of the Industrial Court based on a question of fact shall not be challenged, appealed against, reviewed or called in question in any Court." *Id.*

17. In this case, the employers had argued that there was no evidence upon which the Court could have based its judgment. The Appeal Court held that although the totality of the evidence was denied by the employers, they were all questions of fact which could not be challenged on appeal. *Compare* T.I.W.U. v. Neal and Massey Industries Ltd., Civ. App. 64 of 1972 (unreported TT. C. A. 1976) (Rees, J. A. dissenting).

18. 13 W.I.R. 336 (TT. C. A. 1968).

19. I cannot agree that the question in dispute between the parties in this case is merely a question of fact or merely the exercise of a discretion. One has first to construe s. 13(A), then consider as well the common law principles as to wrongful dismissal and having arrived at their meaning determine the facts proved brings [the worker's] case within them. *Id.* at 348.

In view of the wording of the section, it is strange that the common law rules concerning wrongful dismissal would still be considered relevant.

20. In a later and somewhat similar case, Texaco Trinidad, Inc. v. Oilfield Workers Trade Union, 20 W.I.R. 455, 461 (TT. C. A. 1972) [hereinafter cited as Texaco Trinidad], counsel for both sides agreed that the principle to be followed in cases where no error of law appeared on the face of the proceedings

The above cases strongly suggest that, under the ISA, the Industrial Court's discretion did not extend beyond the determination of facts and that any decision reached on the basis of the facts was capable of being defeated on a point of law. The right of appeal was apparently extensive: the two decisions discussed *infra* seem to suggest that even the Industrial Court's conclusions as to the facts themselves, as well as its procedures, were open to question.

Under the ISA, the Court had a wide discretion concerning the admissibility of evidence. Under s. 11(5)(b), the Court was entitled to take into consideration such facts it considered relevant "notwithstanding that such facts would be otherwise inadmissible as evidence." In *Texaco Trinidad Ltd. v. Oilfield Workers Trade Union*,[21] a company worker named Figuero was dismissed and charged with larceny. Upon being acquitted, he sought reinstatement on the basis that his dismissal was harsh and oppressive. The Industrial Court ordered him reinstated even though aspects of his testimony concerning the alleged larceny contradicted evidence he had given under oath at his trial. The appeal was allowed on other grounds,[22] but the Court of Appeal commented:

> [T]he [Industrial] Court does not appear to have applied well known rules of evidence in assessing the value to be placed on Figuero's testimony. . . . Figuero had made contradictory statements on oath. In these circumstances to describe his evidence as merely containing "blemishes and inconsistencies" is to fail to assess his testimony properly.[23]

In *T.I.W.U. v. Neal and Massey Industries Ltd.*,[24] the Industrial Court purported to make a decision in favor of the claimant without the benefit of any oral evidence. (Under s. 9(5), the Court could require evidence or argument to be presented in writing and decide matters which were to be heard orally.[25]) The company, which ran

---

was that articulated by the House of Lords in Edwards v. Bairstow, [1955] 3 All E.R. 48 (A. C. 1954):

> Although an appellate tribunal may allow an appeal . . . only if it is erroneous in law, if it should appear to the appellate court that no person, if properly instructed in law and acting judicially, could have reached that particular determination, the court may assume that a misconception of law has been responsible for the determination.

21. *Id.*
22. More than six months elapsed before the company reported the dispute.
23. Texaco Trinidad, *supra* note 20, at 462-63.
24. *See* note 17 *supra.*
25. IRA s. 8(5) also allows this.

a car assembly plant, and the union had a registered collective agreement which provided for incentive payments to be made to workers in each production section for work completed in excess of a minimum quota. Each section was dependent on the other for the ultimate production of a car, there being one continuous flow from section to section. The "trim-line" section continuously fell below the production level of the others, thereby preventing other workers from earning their incentive payments. To remedy the problem, the company decided to establish a "second" trim-line section, but it then claimed that both trim-line sections had to complete work on the minimum quota before incentives could be earned. The union argued that, in effect, there was but one trim-line section containing additional workers and that all workers were entitled to incentive payments for any work completed above the minimum quota for one section. The union based its claim on an interpretation of the collective agreement, which referred only to one trim-line section.[26] The only disputed fact was whether the union had been given notice of the company's intended action.

At the hearing, the union was asked to begin argument but it declined to do so, preferring to rely on the industrial agreement and three documentary exhibits which recounted the presence and the reasons for establishing the second trim-line section. The company also declined to lead evidence and made a motion that the union had not made out its case. The Industrial Court, surprised by these tactics, asserted that more evidence was needed for it to properly exercise its functions and threatened to call evidence of its own accord,[27] but did not do so. It reached a decision in favor of the union based on the accepted facts and its interpretation of the agreement.

---

26. Art. 26 of the collective agreement stated, *inter alia:*
Section 1 - Sub Divisions
This incentive plan shall apply to the various categories of workers directly engaged in production work in the undermentioned sections of the plant.
. . . .
(h) trim-line.
Section 3 - Money incentive
When more than eleven (11) vehicles are satisfactorily assembled in any section during the course of a normal working day, each worker present for the whole of that working day shall receive an incentive of $1.10 for each vehicle assembled over and above the minimum quota of eleven (11) vehicles.

27. IRA s. 8(2) (empowers the Court to do this on its own initiative).

On appeal, the Court of Appeal held that there was insufficient evidence to enable the Industrial Court to be properly and correctly seised of the relevant issues and facts so as to justify a decision in the union's favor.[28] To allow the Industrial Court's order to stand would have been contrary to "the principles of law, equity and natural justice." [29] This conclusion was somewhat surprising. Under the circumstances, the crux of the dispute was essentially one of interpretation.[30] Under both the ISA and the IRA, the Industrial Court is not bound to abide by the common law rules of evidence and, as Justice Rees suggested in his dissenting judgment, the essential facts of the case were not in dispute. The fact that the Industrial Court at first proposed calling its own evidence and then subsequently did not do so, was not, it is submitted, evidence of a lapse in its duties, but rather an indication that it eventually considered extra evidence unnecessary to determine the issue. This case indicates that, for the Court of Appeal, the Industrial Court's procedures in determining the facts, as well as its conclusions,[31] were open to question.

The meaning of the phrase "notwithstanding any other law" in ISA s. 13(2) was never determined by the Court of Appeal, although Justice Rees made a valiant attempt in his dissenting judgment in *Caribbean Printers*.[32] In the earlier *Texaco Trinidad* case, Justice

---

28. The Court of Appeal asked searching questions in reaching this decision, for example:

> [W]as the [Industrial] Court able with the evidence before it to "enquire into and investigate" the trade dispute . . . without hearing oral evidence. . . . Could it ascertain from the evidence before it whether what was done . . . was merely an increase in manpower of the trim-line section or did it constitute the establishment of a separate and distinct trim-line section? Was this innovation without any or any proper consultation with the union? Was the innovation made without justification and finally did this innovation result in prejudice to the workers . . . ?

T.I.W.U. v. Neal and Massey Industries Ltd., Civ. App. 64 of 1972 (unreported TT. C. A. 1976).

29. *Id.*

30. The question as to whether the union was informed was irrelevant because of the determination that a collective agreement obtains statutory force upon registration and, therefore, cannot be altered, even by the parties themselves, during the course of its operation. *See also* Texaco Trinidad, Inc. v. Oilfield Workers Trade Union, Civ. App. 68 of 1970 (unreported TT. C. A. 1973).

31. *See also,* the Caribbean Printers case, Civ. App. 30 of 1972 (unreported TT. C. A. 1975). (Appeal Court held that only common law rules may be used in interpreting collective agreements).

32. *Id.*

Phillips commented that the expression entitled the Court to make an award notwithstanding the common law rights of the parties.[33] However, as the above cases have illustrated, this did not preclude a right of appeal to have those rights respected. The apparently wide discretion granted by ISA s. 13(2) was thus more illusory than real.

An examination of the appeal decisions under the ISA noted above reveal that the Court of Appeal liberally interpreted the right of appeal. The two cases in which the appeal was disallowed hinged on minor points of procedure which were used to hasten the resolution of the dispute but which did not affect the merits of the case in any way. It is interesting that in both cases, comparison was made with lower courts of law from which a general right of appeal lies. In the cases in which appeal was allowed, the decisions either involved some "error of law" or the determination of the facts themselves were questioned on legal grounds. The appeal decisions invariably involved a thorough review of the facts and circumstances of the case. Thus, the use of the right of appeal "on a point of law" approximated the use of a general right of appeal on the merits of the case.[34] This, in effect, enabled the Court of Appeal to set aside any order or award with which it did not agree.

III. The IRA Provisions—A Change?

The ISA was repealed and replaced by the IRA. Although similar, the provisions of the present IRA differ in several material respects from the ISA provisions. First, the phrase "notwithstanding any other law" in the ISA has become "notwithstanding anything in this Act or in any rule of law to the contrary." Second, the discretionary use of this power reflected in the phrase immediately following the one quoted above—"the Court in the exercise of its jurisdiction shall have power"—has apparently become compulsory in the IRA, i.e., "the Court in the exercise of its powers shall."[35] Third, the provision that "[a]ny party . . . shall be entitled as of right to appeal to the Court of Appeal," has become: "Subject to this Act, any party to a matter before the Court

33. Texaco Trinidad, *supra* note 20.

34. *But see*, R. M. Jackson, The Machinery of Justice in England 88 (5th ed. 1967):

> [T]he Court of Appeal is very wary of questioning the facts as found by the (lower court) judge, but they may, of course, find that he drew wrong inferences from the facts or that his application of law to the facts were incorrect. . . ."

35. ISA s. 13(2); IRA s. 10(3).

shall be entitled as of right to appeal to the Court of Appeal, on any of the following grounds, but no others. . . ." [36] The right of appeal has, therefore, apparently been altered.

An indication of how the Court of Appeal is likely to consider the new provisions may be gained from *Transport and Industrial Workers Union v. Public Transport Service Corporation*,[37] one of the few judgments rendered thus far involving the IRA provisions. In that case, the union appealed a decision of the Industrial Court dismissing a dispute concerning the summary dismissal of a worker. Under s. 10 (6) of the IRA, the Industrial Court's opinion as to whether a worker has been unfairly dismissed is nonappealable. However, the Court of Appeal did not dismiss the appeal outright. Nearly seven pages of the eight-page judgment consist of a review of the facts of the case and a determination of whether the Court's decision was justifiable. The fact that the appeal itself was not permissible was not mentioned until the other objections had been discussed.

Although s. 18(2) was not considered, the Court's extensive review of the case indicated an intention to closely monitor the proceedings of the Industrial Court. The Court of Appeal has thus far always been able to set aside a decision with which it did not agree. Its extensive review and evident approval of the *Transport Union* case on the merits suggests that there may be little, if any, effective change in the right of appeal under the present legislation.

Balancing the above view, however, is the dissenting judgment of Justice Rees in *Caribbean Printers*,[38] in which he attempted to rationalize the Industrial Court's authority to act "notwithstanding any other law" with the right of appeal on point of law. He noted:

> [T]he expression "notwithstanding any other law" . . . must be given a common sense interpretation and . . . can only mean that in the exercise of its jurisdiction the Industrial Court may by-pass the common law or any other statute, if necessary, to do what is fair and just between the parties in the settlement of an industrial dispute.[39]

Justice Rees added that the Industrial Court's jurisdiction was not absolute but was restricted by equity, good conscience, and the

---

36. ISA s. 8; IRA s. 18.

37. Civ. App. 38 of 1973 (unreported TT. C. A. 1974) [hereinafter cited as Transport Union].

38. *See* note 31 *supra*.

39. *Id.*

substantial merits of the case, having regard for the principles of good industrial relations. In doing so, he attempted to define the nature of those principles and the Court's duty in regard to their use:

> In my view, to act in accordance with equity and good conscience within the meaning of [the section] is to act in accordance with what the [Industrial] Court considers right, fair, and just between man and man. The court is also under an obligation to pay due regard to the principles and practices of good industrial relations which have aptly been described as those informal, uncodified understandings which are ancient habits of dealing adopted by trade unions and acquiesced in or agreed to by employers. But this Court comprised as it is wholly of lawyers is in no position to dispute, but ought rather to accept, the conclusions of a tribunal composed of persons who are more knowledgeable and experienced in industrial relations.[40]

The above dicta is applicable to the present IRA provisions. It would clearly be against the stated intent of Parliament to interpret the IRA as providing for a general right of appeal on a point of law. During the debate on the IRA, it was stated that the Court would be essentially a court of "human relations":

> [The Industrial Court has been accorded] wide and liberal jurisdiction to dispense social justice in accordance with the principles of equity, good conscience, and good industrial relations. The jurisdiction will be completely divorced from the shackles of common law and legal technicalities will have no place in its proceedings.[41]

With these principles presumably in mind, the "grounds on which appeals can now be filled" were "clearly and carefully stated"[42] in s. 18(2). To hold, therefore, that s. 18(2) retains a right of appeal on a point of law would limit the Industrial Court within the confines of the common law rules and restrict it from making any order contrary to any rule of law. As noted earlier, this would also contradict the wording of s. 10(3). It is unfortunate that the right of appeal was not as clearly stated as Parliament may have believed it to be stated.

---

40. *Id.*

41. Statement of Hon. E.E. Mahabir, Minister of Labour, Trinidad and Tobago, Debates of the House of Representatives, OFFICIAL REPORT 956-57 (Hansard, June 14, 1972).

42. *Id.* at 958.

IV. Conclusion

The arguments for and against retaining a right of appeal from the judgments of labor arbitration tribunals generally, may be summarized as follows:

> Appeal to another authority is needed to correct egregious errors, to prevent undue extension of arbitral power, to integrate the narrow expertise of the arbitrators into the general values of the legal order, and to be a check in the background which reinforces the arbitrator's own desire to limit himself in these ways. Against this are first of all, the practical costs (in pursuing appeals). Much more important though, is the real danger of "absentee management." Interpretation and elaboration of collective agreements usually involves the exercise of judgment about difficult legal issues in which the problem appears. Where one of the decisions occasionally reaches the Courts, they see only a small part of the process and perhaps only those cases which present a rather distorted view of the general problem. In the effort to deal with these concrete instances, in opinions which use general and authoritative language, the necessarily uninformed Court can work great harm on the ongoing process.[43]

Given the composition and broad jurisdiction of the Industrial Court, some right of appeal or review is necessary. The Court has extremely wide powers affecting the legal interests and rights of persons. It would not be in the interests of justice—legal, industrial, or otherwise—to grant a tribunal of two or three persons carte blanche authority to act in a manner it considers fair and in accordance with equity, good conscience, and good industrial relations practices. Such a grant would amount to replacing the certainty of fixed and known legal rules, unsuitable though they may be, with the uncertainty of each individual judge's own conception of justice and fair play. Furthermore, the duty to act with "good conscience" is not the same as the duty to act reasonably. As Justice Scrutton observed: "Some of the most honest people are the most unreasonable; and some excesses may be sincerely believed in but yet quite beyond the limits of reasonableness." [44]

On the other hand, a broad right of appeal is also undesirable. For example, members of the Court of Appeal are not suited to

---

43. Weiler, *supra* note 1, at 64.

44. R. v. Roberts, *ex parte* Scurr, [1924] K. B. 695, 719, *cited in* de Smith, *supra* note 5, at 304.

determining labor problems: "[Labour] relations does not exhibit the degree of consensus, of shared purposes and established principles which furnishes the premises for the kind of impersonal and objective reasoning that are necessary for legitimate law-making by appointed tenured and unresponsive judges. . . ." [45] Also, members of the Court tend to be taken from, or identify closely with, the middle and upper classes in the society. Thus, it is questionable whether such a "tenured and unrepresentative body . . . can impartially weigh the competing interests of union and management and adopt the correct rule." [46] This was probably one reason why Parliament did not place the administration of the Act into the hands of the ordinary courts, but established a special court not bound by the rules of common law. Although this carries with it its own shortcomings, the retention of a right of appeal on a point of law would in effect place the ultimate control and responsibility of industrial relations into the hands of the Court of Appeal.

There is no totally satisfactory solution to this dilemma. The only conclusion is that although a right of appeal ought to be retained, the role of the Court of Appeal should be severely restricted. Perhaps it may be possible for legislation to provide for a general right of appeal to a higher authority within the Industrial Court structure with severe limitations on a further right to the Court of Appeal. It may be preferable to do away with a further right of appeal altogether. Furthermore, it should be possible for criteria to be developed upon which the Industrial Court would be required to base its decision,[47] thus providing a degree of certainty to industrial relations legislation.

---

45. Weiler, *supra* note 1, at 4.

46. *Id.* at 75. "The point is not that the Court would make what in political parlance would be called anti-labour rules because Courts tend to be conservative, . . . but . . . that the Court will draw from a body of experience not germane to the problem they will face." *Id.* at 1 n.1.

47. Such criteria could either be developed by the Industrial Court or, more preferably, by a joint consultative committee of representatives from labor, management, and government.