1968 *Present :* Weeramantry, J.

CEYLON TRANSPORT BOARD, Appellant, *and*
W. A. D. GUNASINGHE, Respondent

S. C. 133/67—Labour Tribunal Case 7/28002

Labour Tribunal—Finding of fact made by it—Right of a party to appeal therefrom to Supreme Court—Question of law—Duty of Court to act judicially and in accordance with the evidence placed before it—Incapacity of the Tribunal to make inquiries without notice to the parties—Misconduct of workman—Domestic inquiry—Admission of guilt—Evidentiary value of it at the inquiry before Labour Tribunal—Industrial Disputes Act, ss. 24 (1) (2), 31C (1), 31C (2) —Industrial Disputes Regulations 20, 21, 25.

Where a Labour Tribunal makes a finding of fact for which there is no evidence—a finding which is both inconsistent with the evidence and contradictory of it—the restriction of the right of the Supreme Court to review questions of law does not prevent it from examining and interfering with the order based on such a finding if the Labour Tribunal is under a duty to act judicially.

The question whether a particular functionary is under a duty to act judicially is different and distinct from the question whether he holds judicial office. Although the President of a Labour Tribunal does not hold judicial office, the decision in *United Engineering Workers' Union v. Devanayagam* (69 N. L. R. 289) does not free Labour Tribunals from the duty to act judicially. " Inasmuch as the Tribunal is required to give both parties a full opportunity of stating their cases, a notice of the full statement of the opposite party, and a notice of time and place of hearing and inasmuch as the Tribunal is impressed with the duty to hear evidence and its orders are made subject to a right of appeal to this Court on matters of law, it would appear to be largely academic to go further afield in quest of other indicia of the duty to act judicially. "

Section 31C (1) of the Industrial Disputes Act does not enable a Labour Tribunal to make inquiries outside the inquiry which it is conducting with notice to and in the presence of the parties.

Where, at a domestic inquiry held at the instance of the employer, a workman is found guilty of misconduct on his own admission, the evidence of the admission of guilt must be given due consideration by a Labour Tribunal which subsequently conducts an inquiry into an application made by the dismissed workman for reinstatement.

APPEAL from an order of a Labour Tribunal.

N. Satyendra, for the employer-appellant.

Nimal Senanayake, with *Miss P. Abeyeratne* and *Sam Silva*, for the applicant-respondent.

Cur. adv. vult.

October 29, 1968. WEERAMANTRY, J.—

The President of the Labour Tribunal has ordered the reinstatement of the respondent upon the basis of certain findings of fact which the appellant contends are so wholly untenable that no reasonable Tribunal could arrive at such a finding. On this basis the appellant invites the interference of this Court, submitting that the material before the President pointed only in the direction of the respondent's dismissal having been fully justified.

The respondent, a bus conductor employed under the appellant, was on the 17th of November 1969 working on a bus plying between Colombo and Kurunegala. It would appear that when the bus was on its way from Colombo to Kurunegala, officers of the Flying Squad boarded the bus at Tulhiriya.

They found a passenger who had boarded the bus at Pasyala to whom a ticket imprinted " Stage 1 " had been issued. Such a ticket could not properly have been issued to a passenger who had boarded the bus at this stage of the journey. Moreover the value of the ticket was Re. 1·65 although according to the passenger he had paid only a sum of -/95 cts. to the conductor. This ticket was marked R2 at the hearing before the President.

The officers of the Flying Squad also found another passenger who claimed to have boarded the bus at Nittambuwa who said he had paid Re. 1/05 to the conductor as his fare but had received a ticket with the fare indicated thereon as -/05 cts. This ticket was marked R6.

The Flying Squad also detected that the collections of the respondent were in excess of the sums he should have received to the extent of Rs. 8/82. The regulations of the appellant required collections to be kept distinct from the private money of conductors, but the respondent claimed that the excess represented his private money.

On 4th January 1966, a Charge Sheet, R8, was served on the respondent requiring him to show cause why he should not be dismissed. Four charges were set out therein, the first of which charged the respondent with obtaining a sum of Re. 1/05 from a passenger who travelled from Nittambuwa to Kurunegala and issuing him with a -/05 cts. ticket with fraudulent intention. The second charge was in respect of having obtained a sum of -/95 cts. from a passenger bound from Nittambuwa to Kurunegala and having issued him with a ticket for Re. 1/65 which had in fact been issued at the outset of the journey. The third charge was on the basis that the respondent had deliberately defrauded the appellant Board of a sum of Re. 1/- which should have accrued to it and the fourth was on the basis of failure by the respondent in the correct performance of his duty.

Thereafter a domestic inquiry was held by an Inquiring Officer of the appellant Board and at this inquiry, the proceedings of which have been marked R9, the respondent was asked whether he was guilty or not guilty. In answer the respondent stated that he pleaded guilty and that he desired in mitigation to explain the circumstances in which he came to issue the tickets.

The Inquiring Officer, who himself had had former judicial experience as the President of a Village Tribunal, warned the respondent that his plea of guilt might render him liable to dismissal, but the respondent still maintained his plea of guilt. He proceeded to state that, accepting the warning and realising the gravity of the plea of guilt, he was nevertheless reiterating his plea of guilt in the hope that any punishment meted out to him would be of such a nature as to give him a chance of making good in the future.

His explanation in mitigation was that at Pettah about five passengers boarded the bus and asked for five Re. 1/65 tickets and that whilst reeling out these five tickets an additional ticket of the same value was also reeled out. As he could not issue any other ticket without tearing this off, he removed this from the machine and kept it in his possession until at Pasyala a passenger who boarded the bus asked for a ticket to Kurunegala to the value of -/95 cts. He therefore issued the extra ticket which he had in his hand to this passenger and received -/95 cts. from him, honestly thinking that he was not committing any offence.

In regard to the other ticket his position was that he could not remember whether he had collected Re. 1/05 from the passenger who had boarded the bus at Nittambuwa.

In his statement the respondent went on to say that he had admitted his faults to the officers of the Flying Squad.

The excess sum of Rs. 8/82 that was found with his collections he still maintained was his private money and not moneys collected from any passengers.

As I have observed earlier, the entirety of this statement as well as of the other proceedings before the Inquiring Officer was put in evidence before the President who therefore had before him material showing that both before the officers of the Flying Squad and before the Inquiring Officer the respondent had admitted his guilt.

At the hearing before the President the appellant called an officer of the Flying Squad who spoke to the matters to which I have already referred, and also the Inquiring Officer, who produced the record of the proceedings. The Inquiring Officer stated that having found the respondent guilty of the charges, he had recommended suspension for a period of six months.

The respondent did not himself give any evidence nor was any witness called on his behalf.

The President in the course of his order has observed that there was no evidence before him to show at what point the passenger who had paid -/95 cts. had boarded the bus. He observed that the Flying Squad officer had stated that he had got this information from the passenger but that the passenger himself had not been called to give evidence. In these circumstances, the President took the view that the charge relating to the issue of that ticket had not been proved.

In regard to the other charge, that of collecting Re. 1/05 on a ticket for -/05 cts., the Flying Squad officer had been unable to read the number of the ticket or show that it had been issued from the ticket machine which had been used by the conductor. On this basis, the President held that there was no evidence to show that this ticket had been issued by this conductor.

In regard to the excess cash found to be with the conductor the President took the view although there was evidence that conductors were expected to keep their private money separate from their collections, this evidence by itself did not show that the conductor had defrauded the appellant of any amount.

In this view of the matter, and observing also that there had been no admission of the charges before him, the President held that the appellant had failed in the burden of justifying the dismissal, and he ordered reinstatement of the respondent.

I do not think the approach of the President to the material placed before him was correct.

At an inquiry such as that which the President was conducting, the admission of the respondent was a circumstance on which the appellant was entitled to rely in the absence of any evidence by the respondent to the contrary. It was not open to the President to disregard that admission, for an admission by a party, no less than evidence offered

against him by his adversary, is evidence before the Tribunal, which the Tribunal is under a duty to consider. It was wrong, therefore, for the President to take the view that there was no evidence before him in support of the charges, nor was it correct for him to rest his order on the technicality that there had been no admission of the charges *before him*. Such an attitude which may perhaps have been appropriate in a criminal trial, was, as Tennekoon J. has observed in *Ceylon Transport Board v. Ceylon Transport Workers' Union* [1], wholly inappropriate to an inquiry before a Labour Tribunal. Indeed the applicability of such an approach even to a criminal trial is strictly limited to confessions obtained in certain defined circumstances outside which admissions are evidence which a criminal court is under a duty to consider. In the present case all such circumstances as would be required to justify exclusion of such evidence even at a criminal trial were completely absent. In fact, the admission was made before an officer with judicial experience who had given due warning to the respondent of the consequences of the admission which he proposed to make—a circumstance the President should not have failed to consider before deciding to ignore the admission.

The conclusion of the President is thus clearly unsustainable, for the material placed before him could lead to no other conclusion than that the respondent was guilty of the charges against him. There was a total absence before the President of any evidentiary material on which a contrary finding could be based.

The question then arises whether, inasmuch as the decision of the President which is now assailed turns on his findings on questions of fact, the procedure of an appeal to this Court is available to the appellant.

Where a statute makes an appeal available only in respect of questions of law, the Appellate Court is not without jurisdiction to interfere where the conclusion reached on the evidence is so clearly erroneous that no person properly instructed in the law and acting judicially could have reached that particular determination.[2] It is true that Courts will be more ready to find errors of law in erroneous inferences from facts than in erroneous findings of primary fact, but it has been repeatedly held that a Tribunal which has made a finding of primary fact that is wholly unsupported by evidence has erred in point of law.[3]

The statement of this principle has perhaps achieved its clearest expression at the hands of Lord Normand who in *Inland Revenue v. Fraser* [4] observed : "In cases where it is competent for a tribunal to make findings of fact which are excluded from review, the Appeal Court has always jurisdiction to intervene if it appears . . . *that the tribunal has made a finding for which there is no evidence or which is inconsistent with the evidence and contradictory of it.*"

[1] *(1968) 71 N. L. R. 158 : 75 C. L. W. 33.*
[2] *Edwards, Inspector of Taxes v. Bairstow and another (1955) 3 All E. R. 48.*
[3] *de Smith, Judicial Review of Administrative Action, pp. 86–7.*
[4] *(1942), 24 Tax Cases, 498.*

In the present case the Tribunal would, for the reasons I have stated, appear to have made a finding for which there is no evidence—a finding which is both inconsistent with the evidence and contradictory of it. The restriction of this Court's right to review questions of law would not appear therefore to prevent it from examining and interfering with the order based on such a finding if the Tribunal was under a duty to act judicially.

The question whether Labour Tribunals are under a duty to act judicially is then the only matter remaining.

It appears to me that the decision in the case of *United Engineering Workers' Union v. Devanayagam*[1] must not be thought to mean that Labour Tribunals do not and are not required to act judicially. It must be emphasised that the question whether a particular functionary is under a duty to act judicially is different and distinct from the question whether he holds judicial office. Some dicta in the majority judgment in *United Engineering Workers' Union v. Devanayagam*[2] would appear to be indicative of the view that the President of a Labour Tribunal even when hearing an application under section 31B (1) is not acting judicially, but what the Privy Council in fact decided therein was that Presidents of Labour Tribunals do not hold judicial office. In my view this latter is the true *ratio decidendi* of this case and any attempt to read more into this decision than this underlying principle may well have repercussions which their Lordships did not intend.

Though we are thus bound to the view that such functionaries are not judicial officers, we are, with the greatest respect, not bound to consider such officers as being freed of the duty to act judicially—for it is manifest that the duty to act judicially is not exclusively confined to those who hold judicial office. This is a view which this Court has expressed on more than one occasion.[3] "Judicial power and power in the exercise of which there is a duty to act judicially are two different things."[4]

In deciding whether Labour Tribunals are required to act judicially we are fortunate in having for our guidance a particular set of requirements in accordance with which such Tribunals function. An examination of that large body of decided cases dealing with the tests for determining whether a body is under a duty to act judicially hence becomes largely academic and it does not become necessary to examine in detail the nice distinctions drawn therein.

Section 31 C (1) states that it shall be the duty of the Tribunal to make all such inquiries into the application and to hear all such evidence as the Tribunal may consider necessary and *thereafter* to make such order as may appear to the Tribunal to be just and equitable.

[1] *(1967) 69 N. L. R. 289.* [2] *(1967) 69 N. L. R. 289.*

[3] *Tennekoon v. The Principal Collector of Customs, (1959) 61 N. L. R. 232, Omer v. Caspersz, (1963) 65 N. L. R. 494.*

[4] *Rola Company (Aust.) Pty. Ltd. v. The Commonwealth (1944), 69 Commonwealth L. R. at 203.*

The Tribunal has in this case considered it necessary to hear certain evidence and has in fact heard it. Its duty does not end when the evidence so considered necessary is in fact heard. The duty of hearing evidence must necessarily carry with it the duty of considering such evidence for the duty to hear is meaningless without the duty to consider. The present case reveals quite clearly a total omission by the Tribunal to consider evidence which has been placed before it and it cannot be said that the Tribunal has been acting in accordance with the duties laid down for it by statute.

The rules made for regulating the procedure to be observed before these Tribunals are also strongly indicative of the judicial nature of their functions. For example parties are required to submit to the Tribunal statements setting out in full their respective cases in regard to the matters in dispute, one copy of each statement being required to be sent to the other party (Rule 20). So also Rule 21 enables the Tribunal by written notice to call upon the parties to transmit statements setting out in full their respective cases in regard to the matters in dispute. Rule 25 requires every person considered likely to be affected by a dispute to be informed by written notice of the date, time and place of hearing.

The provision of a right to appeal to this Court is also an important factor which appears to mark off such Tribunals from those which are purely administrative. Were they not under a duty to act judicially, appeals to this Court would be meaningless and unworkable except in cases of clear violation of statute, and few such can be visualised when a Tribunal is empowered to make an order which is ' just and equitable '. This important factor alone is sufficient to distinguish the two cases of *Robinson v. Minister of Town & Country Planning* [1] and *Liversidge v. Anderson* [2] which were relied on by the appellant. The Minister in making the decision in both these cases was not making his decision subject to a right of appeal to any Court. Assuming he was acting bona fide the Minister was in those cases the sole judge of the matters which he decided.

Inasmuch, then, as the Tribunal is required to give both parties a full opportunity of stating their cases, a notice of the full statement of the opposite party, and a notice of time and place of hearing and inasmuch as the Tribunal is impressed with the duty to hear evidence and its orders are made subject to a right of appeal to this Court on matters of law, it would appear to be largely academic to go further afield in quest of other indicia of the duty to act judicially.

It is said on behalf of the respondent that the terms of section 31 C (1) impose on the Tribunal the duty of making all such inquiries into the application and hearing all such evidence as the Tribunal may consider necessary, and that the Tribunal is therefore not limited to the evidence

[1] *(1947) 1 All E. R. 851.* [2] *(1941) 3 All E. R. 338.*

which may be led before it. I do not agree that this provision enables the Tribunal to make inquiries outside the inquiry which it is conducting with notice to and in the presence of parties.

Section 31 C (2) lays down the procedure for an "inquiry" before a Tribunal and in so laying down this procedure makes no distinction between "inquiries into the application" and "hearing all such evidence". The procedure so laid down would thus appear to govern both aspects referred to in section 31 C (1), namely "inquiries" and "evidence", and both these aspects alike would appear to be subject to such requirements as that the inquiry should be conducted with notice to and in the presence of parties. There would thus appear to be no place in the scheme of our legislation for inquiries conducted without notice to and in the absence of the parties. Similar provisions in regard to Industrial Courts appear in section 24 (1) and (2) where again although the Court may make inquiries and hear evidence, no distinction is drawn, so far as concerns procedure, between inquiries and evidence. No analogy may therefore be drawn upon the basis of section 31 C (1) between the case of Labour Tribunals and cases such as *Robinson v. Minister of Town & Country Planning*[1] and *Liversidge v. Anderson*[2] where the Minister was empowered to make his own inquiries and was not even under a duty to reveal the nature and sources of the information on which he acted.

Having regard to all these matters it becomes clear that the decision in *United Engineering Workers' Union v. Devanayagam*[3] does not free Labour Tribunals from the duty to act judicially. This case should not therefore be viewed, as it sometimes tends to be viewed, as granting to Labour Tribunals a free charter to act in disregard of the evidence placed before them. They are, in arriving at their findings of fact, as closely bound to the evidence adduced before them and as completely dependent thereon as any Court of law. Findings of fact which do not harmonise with the evidence underlying them lack all claims to validity, whatever be the Tribunal which makes them.

Proper findings of fact are a necessary basis for the exercise by Labour Tribunals of that wide jurisdiction given to them by statute of making such orders as they consider to be just and equitable. Where there is no such proper finding of fact the order that ensues would not be one which is just and equitable upon the evidence placed before the Tribunal, for justice and equity cannot be administered in a particular case apart from its own particular facts. I am strengthened in the conclusion I have formed by a perusal of the judgment already referred to, of my brother Tennekoon,[4] who has observed that it is only after the ascertainment of the facts upon a judicial approach to the evidence that a Labour Tribunal can pass on to the next stage of making an order that is fair and equitable having regard to the facts so found.

[1] *(1947) 1 All E. R. 851.* [2] *(1941) 3 All E. R. 338.*
[3] *(1967) 69 N. L. R. 289.*
[4] *Ceylon Transport Board v. Ceylon Transport Workers' Union (1968) 71 N. L. R. 158; 75 C. L. W. 33.*

A point has been made on behalf of the appellant that the proceedings before the domestic Tribunal have not been properly marked in evidence and that the inquiring officer did not identify these documents or the signature of the applicant thereon. This submission seems to me to be without merit for it assumes a strictness in the proof of documents which is wholly foreign to the functions and objects of Labour Tribunals. In the spirit in which the inquiries of these Tribunals should be conducted there is little scope for reliance on such legal technicalities.

I take the view therefore that there is in this case a right of appeal from the order of the Labour Tribunal to this Court, and in the exercise of this Court's powers in appeal I set aside the order of the President and direct that the application be inquired into afresh by another Tribunal. The appellant will be entitled to the costs of this appeal.

Order set aside.