

1970

Present: Alles, J.

BATA SHOE COMPANY OF CEYLON LTD., Appellant, and
H. G. SIRISENA, Respondent.

*S.C. 29/69 L.T. 7/29/68—In the matter of an Appeal under Section 31/D(2)
of the Industrial Disputes Act*

*Labour Tribunal—Ex parte hearing—Defaulting party's absence due to mischance or
accident—Effect—Industrial Disputes Regulations, Regulation 28.*

Where, at an inquiry before a Labour Tribunal, a party was accidentally
absent because he had misplaced the notice of the day fixed for the hearing—

Held, that the case should be remitted for a fresh inquiry and adjudication.

APPEAL from an order of a Labour Tribunal.

L. Kadirgamar, for the employer-applicant.

S. S. Sahabandu, for the applicant-respondent.

Cur. adv. vult.

September 17, 1970. ALLES, J.—

The employer-appellant appeals from an order of the President of the Labour Tribunal granting relief to the employee-respondent whose services were discontinued by the appellant on 26th August 1968 at the termination of his probationary period. The respondent was appointed as a machine operator on a weekly salary of Rs. 22. According to the conditions of service he was entitled to be confirmed in his appointment after a lapse of six months only if his services were found to be satisfactory. The appellant filed answer and stated that during the period of probation the respondent's work was unsatisfactory and that therefore they were justified in terminating his services.

At the inquiry, the appellant was not present, although notice of the date of inquiry had been served on the firm and they were unaware of the president's order until it was served on them. In the position of

appeal the appellant states that "notice of the day fixed for the hearing of the respondent's application had been accidentally misplaced in the office and, for that reason, the officer of the appellant firm in charge was unaware of the date of the hearing and was unable to make arrangements for the representation of the appellant at the inquiry".

Counsel for the appellant draws attention to Regulation 28 of the Regulations framed under Section 39 of the Act which provides that the President is only entitled to proceed with an inquiry *ex parte* if he is satisfied that *no sufficient cause* for a party's absence has been shown by the party in default. It does not appear from the order of the learned President that he has given his mind to the provisions of this Regulation before he decided to proceed with this inquiry *ex parte*.

In *Danny v. William*¹ the defaulting party stated in his petition of appeal the reasons why he could not be present at the inquiry and supported the facts stated therein, with a medical certificate and an affidavit, but in the circumstances of this case no supporting evidence of the facts stated in the petition of appeal had been furnished. At the hearing of the appeal however, learned Counsel for the respondent was not able to dispute the facts stated in the petition of appeal. I would respectfully agree with the observations of Jenkins L.J. in *Grimshaw v. Dunbar*² cited by Samerawickrame J. in *Danny v. William* and hold that the appellant has been deprived of presenting its version of the facts before the Tribunal to enable a just and equitable order to be made. I therefore set aside the order of the learned President and remit the case for inquiry and adjudication on the application of the employee respondent. The respondent, who was in no way responsible for the failure of the appellant to appear at the inquiry, will be entitled to his costs of the date of inquiry which I fix at Rs. 50. There will be no costs of appeal.

Case remitted for fresh inquiry.