

1963 Present: Basnayake, C.J., Abeyesundere, J., and G. P. A. Silva, J.

STANLEY J. PERERA, Appellant, and YOOSOOF-SAH, Respondent

S. C. 559/62—M. C. Colombo, 10459

Industrial dispute—Non-employment of a workman—Power of Court to order compensation to be paid to the workman—Scope—Industrial Disputes Act, as amended by Acts Nos. 25 of 1956, 14 of 1957 and 62 of 1957, ss. 33, 40 (1) (a), 41, 43 (1).

Although, under section 33 of the Industrial Disputes Act, an Industrial Court can order a workman to be reinstated in service and, as an alternative to his reinstatement, payment of compensation to him, it has no power to order the payment of compensation without a decision as to reinstatement. Payment of compensation being an alternative to reinstatement the former cannot exist independently. It can only exist as an alternative to the latter.

APPEAL from an order of the Magistrate's Court, Colombo.

H. W. Jayewardene, Q.C., with *L. Kadirgamar* and *L. C. Seneviratne*, for Accused-Appellant.

R. S. Wanasundere, Crown Counsel, for Attorney-General.

February 15, 1963. BASNAYAKE, C.J.—

The appellant Stanley J. Perera, a director of Taos Limited, was tried on the following charge and found guilty :—

“ You, Stanley J. Perera, being a Director of Taos Ltd., are hereby charged that Taos Ltd., did at Colombo within the jurisdiction of this Court, in contravention of section 40 (1) (a) of the Industrial Disputes Act, No. 43 of 1950 as amended by Industrial Disputes (Amendment) Acts, Nos. 25 of 1956, 14 of 1957 and 62 of 1957 (hereinafter referred to as ‘the said Act’) fail to comply with the terms to wit, clause 8 of an Award made by an Industrial Court and published in Government Gazette No. 12,662 of September 15, 1961, requiring the aforesaid Taos Ltd., to make payment to the workers referred to in the said Award, the sums of money due to them by way of compensation, within the period prescribed by such award, to wit, within three weeks from the 15th September, 1961, and that you being a Director of the aforesaid Taos Ltd., have thereby committed an offence punishable under section 43 (1) read with section 41 of the said Act.”

This appeal is from that finding. Shortly the facts are as follows :— An industrial dispute arose between the United Engineering Workers' Union and Taos Limited of which the appellant was a director. The matter in dispute is thus stated in the reference made by the Minister on 7th February 1961 under section 4 (2) of the Industrial Disputes Act :

“The matter in dispute between the United Engineering Workers' Union and Taos Limited, Kew Road, Colombo 2, is whether the non-employment of the following workers is justified and to what relief they are entitled to. (The names of the workers are appended.)”

On 31st August 1961 Mr P. O. Fernando, a Judge of the Industrial Court at Colombo made his award which was in terms of section 25 (1) of the Act published in Gazette No. 12,662 of September 15, 1961. The 8th clause of the award reads—

“When an employee participates in a strike he is using a fundamental right. He does not commit any offence when he takes part in a strike and an employer is not justified in dismissing a worker merely because he absents himself in furtherance of a strike. Action against a striker could be taken by an employer only when the strike is illegal and totally unjustified or when a striker commits misconduct by assaulting or threatening workers or by damaging the property of the employer. This question has been discussed in a number of cases in India. Several cases have been cited including *Smith Stanistreet Company v. Workers Union* reported in 1953, I Labour Law Journal, 67, and *Caltex v. its Workers* reported in 1955, II Labour Law Journal, page 693. I consider that the management acted unreasonably in refusing to allow the employees to return to work on December 30th, and that their action amounted to an unfair labour practice. It is clear that the Company had very little work to give its employees and the management appears to have taken this opportunity to get rid of its employees without paying them any relief. Ordinarily they would be entitled to reinstatement and I would have ordered reinstatement but for the fact that I was informed that the Company had practically lost all orders from the Fisheries Department and would have to close down in the near future. The Company was started a few years ago and none of the employees have been there for a long period. Considering all the circumstances of the case I consider the employees should be granted relief by the payment of two months' salary as compensation. But in the case of those who had already been given notice of discontinuance at the end of December, 1960, I consider it would be sufficient if they were paid one month's salary as they have already been given one month's notice of discontinuance. The salary each employee would be entitled to is his salary and allowance. Such salary and allowance which each employee is entitled to for each month would be his average monthly earnings during the three months September, October and November, 1960. The amount due to each employee should be paid through the Assistant Commissioner of Labour (Industrial Relations) within three weeks of the publication of this award.”

The Company failed to comply with the terms of the above clause and proceedings were instituted in the Magistrate's Court upon a report by P. M. M. Yoosof-Sah Labour Officer under section 148 (1) (b) of the Criminal Procedure Code to the effect that Taos Ltd. had failed to comply

with the terms of the award and pay the workers referred to therein the sums of money due to them by way of compensation. The learned Magistrate held—

“ That as far as the award P1 is concerned, the Industrial Court has not exercised Judicial power and it is therefore not *ultra vires*. The award was binding on the firm Taos Ltd. by virtue of section 26 of the Industrial Disputes Act and its failure to comply with it was therefore an illegal omission. Since acts also include illegal omissions according to section 3 (1) of the Criminal Procedure Code, the firm has contravened the provisions of section 40 (1) (a) of the Act in not complying with the award. The accused as a Director of the firm is, therefore, liable in view of the provisions of section 41 of the Act. I find the accused guilty of the charge against him.”

It is submitted by learned counsel that the order to pay compensation is not an order the Industrial Court had power to make in the circumstances of this case and that it is *ultra vires* and non-compliance with an illegal order is not an offence under the Act.

Now section 33 prescribes the decisions which may be specified in an award under the Act as follows :—

- “ (a) as to wages and all other conditions of service, including decisions that any such wages and conditions shall be payable or applicable with effect from any specified date, which may, where necessary, be a date prior to the date of the award, and decisions that wages shall be payable in respect of any period of absence by reason of any strike or lockout ;
- (b) as to the reinstatement in service, or the discontinuance from service, of any workman whose dismissal or continuance in employment is a matter in dispute, or who was dismissed or ceased to be in service at the commencement or in the course of any strike or lockout arising out of the industrial dispute ;
- (c) as to the extent to which the period of absence from duty of any workman, whom the arbitrator or industrial court has decided should be reinstated, shall be taken into account or disregarded for the purposes of his rights to any pension, gratuity or retiring allowance or to any benefit under any provident scheme ;
- (d) as to the payment by any employer of compensation to any workman as an alternative to his reinstatement, the amount of such compensation or the method of computing such amount, and the time within which such compensation shall be paid.”

It will be seen that there is power to make decisions as to reinstatement in service and payment of compensation to any workman as an alternative to his reinstatement. There is no power to order the payment of

compensation without a decision as to reinstatement. In the instant case payment of compensation has been ordered without a decision as to reinstatement. This the Judge had no power to do. Payment of compensation being an alternative to reinstatement the former cannot exist independently. It can only exist as an alternative to the latter. As it is a decision the Industrial Court had no power to make, it cannot be enforced nor does the person who fails to comply with it commit the offence created by section 40 which provides *inter alia* that any person who, being bound by an award of an industrial court, does any act in contravention of any of the terms of that award shall be guilty of an offence under the Act.

The conviction of the appellant is therefore quashed and he is acquitted.

ABEYESUNDERE, J.—I agree.

G. P. A. SILVA, J.—I agree.

Appeal allowed.

