1971 *Present :* Samerawickrame, J., and Thamotheram, J.

UNITED PLANTATION WORKERS' UNION, Appellant, *and* THE SUPERINTENDENT, CRAIG ESTATE, BANDARAWELA, Respondent

S. C. 47/69 (with S. C. 48/69)—Labour Tribunal B. 2234

Labour Tribunal—Date of order made by it—Requirement of prior notice of it to the parties—Failure of Tribunal to comply with such requirement—Resulting position if appeal is filed out of time—Maxim actus curiae neminem gravabit—*Industrial Disputes Act (Cap. 131), ss. 31 C (1) (2), 31 D (3) (4).*

Section 31 C (2) of the Industrial Disputes Act, which enables a Labour Tribunal to lay down the procedure to be observed by it in the conduct of an inquiry, is wide enough to impose upon it the obligation to give the parties notice of the particular day on which its order or decision will be made, though it is not necessary that the order should be pronounced in the presence of the parties. The day on which order is made after such notice will determine the commencement of the appealable period of 14 days specified in section 31 D (3) of the Act.

When an appeal is filed out of time on account of the failure of the Tribunal to give prior notice to the parties about the date of its order, the appeal will nevertheless be heard in accordance with the principle *actus curiae neminem gravabit.*

The Superintendent, Mulana Estate, Makandura v. Janis Appu Diddenipola (71 N. L. R. 332) overruled.

APPEAL from an order of a Labour Tribunal.

Miss Suriya Wickremasinghe, for the applicant-appellant.

S. C. Crossette-Thambiah, with *A. M. Coomaraswamy* and *K. Thevarajah*, for the employer-respondent.

Cur. adv. vult.

[1] *(1963) 65 N. L. R. 121.*

November 16, 1971. SAMERAWICKRAME, J.—

Learned counsel for the employer-respondent raised the objection that the appeal has been filed out of time. It was common ground that the date of the order was 20th March, 1969 and that if time for filing the appeal ran from that date, the appeal was out of time by one day. Learned counsel for the appellant stated, the parties were not given notice and were unaware that the order was to be made on 20.3.69. A certified copy of the order was posted to the appellant by the Secretary on 23.3.69 and was received by it on the following day. She submitted that time for filing the appeal should not run from a date on which her client was not merely unaware but had no opportunity of ascertaining that order had been made.

In *Superintendent, Mulana Estate, Makandura v. Janis Appu*[1]— where the facts were on all fours with those in this case—De Kretser J., held that the appeal had been filed out of time. He was not unaware that the view he had taken might lead to an unjust result in some cases but he stated that the remedy was an amendment to the relevant provision. When this appeal came up before Alles, J., he doubted the correctness of De Kretser J.'s decision and referred this appeal for decision by a Bench of two Judges. The appeal has thus come up before us.

The relevant provisions are ss. 31 C (1) and (2), 31 D (3) and (4) of the Industrial Disputes Act (Cap. 131) which are as follows :—

"31C. (1) 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.

(2) Subject to such regulations as may be made under section 39 (1) (ff) in respect of procedure, a labour tribunal conducting an inquiry may lay down the procedure to be observed by it in the conduct of the inquiry.

31D. (3) Every petition of appeal to the Supreme Court shall bear uncancelled stamps to the value of five rupees and shall be filed in the Supreme Court within a period of fourteen days reckoned from the date of the order from which the appeal is preferred.

(4) In computing the time within which an appeal must be preferred to the Supreme Court the day on which the order appealed from was made shall be included, but all Sundays and public holidays shall be excluded."

I think the words " procedure to be observed by it in the conduct of the inquiry " in s. 31 C (2) should be given a wide interpretation and may include the giving of notice of the day on which order will be made if such notice is necessary.

[1] *(1968) 71 N. L. R. 332.*

It may be useful to consider first what the position is on the provisions of the Act apart from any regulations that may have been made. It is obviously necessary that a party adversely affected by an order should be aware of the order for at least two reasons. He has to comply with it : he may be directed in the order to reinstate the workman forthwith. Again, he has a limited time within which he may appeal if he is dissatisfied with the order. The procedure adopted by the Labour Tribunal under s. 31C (2) should, therefore, be such that the parties will be aware of the making of the order. In respect of parties to an action in a Court this is done by the requirement that the order should be delivered or pronounced in open court in the presence of parties or after notice to them. In the absence of any express provision to that effect the pronouncing of the order in the presence of parties is not necessary in respect of orders made on applications to a labour tribunal. Notice to the parties that the order will be made on a particular day will be sufficient to afford them, or either of them, the opportunity of ascertaining the purport of the order. I am therefore of the view that the procedure should include notice to the parties of the day on which order will be made. This may appropriately be done by giving a date for the order at the conclusion of the hearing of evidence or if no date is then given for the order or if the order is not made on the date given then notice may be given to the parties of the date later fixed for that purpose.

It is now necessary to consider whether the regulations or any of them has altered the position. The relevant regulation 33 of the Industrial Disputes Regulations, 1958, published in Government Gazette Extraordinary No. 11,688 of 2nd March, 1959, reads :—

> " Every order or decision of a Labour Tribunal shall be made in writing. The Secretary shall notify the applicant and the employer of the order or decision by forwarding a certified copy thereof. A certified copy of such order or decision shall also be sent to the Commissioner by the Secretary."

Though this regulation does deal with the giving of notice of an order, an examination of it shows that it provides for the communication of the order which is to be done by sending a certified copy of it. It does not relate to prior notice of the making of an order. It has been suggested by the one side and not denied by the other that it is not beyond the pale of possibility that in an extreme case the certified copy of the order may reach the party affected after the time within which an appeal may be filed has lapsed. Apart from that, in all cases the party adversely affected by the order will in fact have less than the 14 days allowed to him by law within which to prefer an appeal. What is required to be done by this regulation, therefore, does not obviate the need for notice to be given to the parties of the proposed making of the order. It will be observed that s. 31C (2) does not say, " until regulations are made " but " subject to such regulations as may be made ". While a labour tribunal has therefore to observe the regulations, it is not absolved from

taking such other steps of procedure as are necessary. I am, therefore, of the view that the regulations have not altered the position which I have arrived at upon a consideration of the relevant provisions of the Act, namely, that a labour tribunal should give the parties notice of the day on which the order will be made though, as I have already indicated, it is not necessary that the order should be pronounced or made in their presence.

It is necessary to consider the effect of making an order on a particular day without prior notice to the parties that it will be made on that day. The order will not be void. There is no breach of any express provision of law but only the adoption of a faulty procedure. Nevertheless, on the principle, "*actus curiae neminem gravabit*", no obligation of compliance with the order will arise and no time for making the appeal from it will run against a party adversely affected by it till notice has been given to him that the order had been made. On this basis the appeals filed on this matter as well as in the connected matter have not been filed out of time.

De Kretser, J., has referred to *North-Western Blue Line Bus Co. Ltd. v. Green Line Omnibus Co. Ltd.*[1]. In that case Sansoni J., had to consider the effect of certain sections of the Motor Traffic Act, 14 of 1951. Section 211 (1) provided for a decision and notice of the decision in writing to be given by the Secretary to the parties. Section 212 (2) provided that "the petition of appeal.....shall be presented to the tribunal by the appellant within 21 days after the date of the tribunal's decision against which the appeal is preferred". There was also in the Act another provision in regard to an appeal from the Commissioner's decision which expressly provided that it should be made within fourteen days of *the service* on the appellant of the notice of determination. In view of the distinction in the two cases he held that time ran in the case of an appeal against the decision of the tribunal from the date of the decision itself. There does not appear to have been any provision corresponding to s. 31C. (2). The statutory provisions Sansoni J., had to consider were not identical and his decision is not applicable to the matters in the instant case and is therefore distinguishable. De Kretser J., cited a passage from the judgment of Sansoni J., in that case and considered that *mutatis mutandis* it applied in all respects to the case before him. With respect, I am unable to agree. I am therefore not in agreement with the decision in *The Superintendent, Mulana Estate, Makandura v. Janis Appu Diddenipota* (supra).

I hold that the appeal in this case as well as the appeal in the connected case S.C. 48/'69 have been filed in time. These appeals will now be listed before a single Judge in due course for disposal.

THAMOTHERAM, J.—I agree.

Appeal to be listed in due course for disposal.

[1] *(1954) 56 N. L. R. 116.*