

1962

Present: Sansoni, J.

CEYLON TRANSPORT BOARD, Appellant, and SAMASTHA  
LANKA MOTOR SEWAKA SAMITHIYA, Respondent

*S. C. 31 of 1961—Labour Tribunal, 1/4118*

*Industrial Disputes Act—Dismissal of workman by employer—"Just and equitable"—"Discrimination"*.

A workman employed by the Ceylon Transport Board was dismissed because he had broken a rule which provided that any employee who removed a vehicle belonging to the Board, either without authority or without a driving licence, would be dismissed.

*Held*, (i) that the punishment of dismissal was not too severe. In considering whether an order of dismissal is "just and equitable", the judicial discretion must be exercised reasonably and not arbitrarily.

(ii) that the fact that, about a year later, the Board did not dismiss, but merely transferred and warned, another employee for a similar offence was not proof of discrimination against the workman in the present case.

**A**PPEAL from an order of the President of a Labour Tribunal.

*A. Mahendrarajah*, with *P. Nagendra*, for the Employer-Appellant.

*A. S. Wijetunge*, for the Applicant-Respondent.

*Cur. adv. vult.*

July 26, 1962. SANSONI, J.—

This is an appeal by The Ceylon Transport Board from the order of the President of a Labour Tribunal directing that a workman, who had been dismissed, be reinstated with back wages.

The workman concerned was an apprentice mechanic who had been about 2 years and 9 months in service. He was dismissed because he had broken a rule which provided that any employee who removed a vehicle belonging to the Board, either without authority or without a driving licence, would be dismissed. It was found that this workman had taken a bus belonging to the Board out of the Piliyandala Depot and driven it a distance of about 3/4th mile without permission, and when he had no certificate of competence to drive a motor vehicle. The bus had gone off the road, whereupon the workman returned to the Depot and took a breakdown van to tow the bus back to the Depot.

Before the Tribunal it was submitted that the punishment of dismissal was too severe, and also that the Board had been guilty of discrimination in dismissing the workman. There is no reference in the order to the severity of the punishment, perhaps because it was not pressed. It can hardly be argued that a breach of the rule in question, which has been framed in order to protect the property of the Board from damage and in the interests of other users of the road, does not warrant dismissal.

What the President had to consider under the Act was whether the order of dismissal was "just and equitable". This involved the exercise by him of a judicial discretion; but seeing that the workman had broken a very salutary rule framed in the interests of discipline and the safety of the public, I should have been surprised if he came to the conclusion that the order of dismissal was unreasonable or excessive. A judicial discretion must be exercised reasonably and not arbitrarily.

The submission that the Board was guilty of discrimination was based on something that happened about a year later. An assistant Foreman attached to the same Depot drove a bus without authority and without possessing a driving licence. He was not dismissed, but he was transferred and given a final warning. I need only remark that he seems to have benefited by misplaced sympathy: The President of the Tribunal, however, has held that the case of the Assistant Foreman was proof of discrimination against the apprentice mechanic who was dismissed. In support of this finding he has cited a passage from Volume 2, page 845 of *Labour Disputes and Collective Bargaining* by Ludwig Teller which reads: "The credibility of an employer who invokes a company rule as the basis for a discharge is impaired by evidence of uneven application of the rule or the anti-union origin thereof. Thus an employer's invoking of a company rule as a ground of discharge will constitute evidence of an intent to discriminate where prior infractions of the rule went unnoticed."

It seems to me that this passage has no relevance in the present case, for it does not depend on the credibility of an employer, nor was the Assistant Foreman's case prior to the present case. With respect, I think the President misunderstood the passage which I have quoted, and thereby convinced himself that he had no option but to order that the workman be reinstated.

I can only interfere in this appeal on a question of law. The President has, in my opinion, misdirected himself in law by thinking that the passage quoted applied to the present case. His decision is based on a misconception of what constitutes discrimination, and is therefore erroneous in point of law.

I allow this appeal and direct that the order of dismissal of the employee be restored.

*Appeal allowed.*