1946 *Present :* **Dias J.**

BROWN & CO., LTD., Petitioner, *and* ROBERTS, Respondent.

303—Application for a writ of certiorari *against T. W. Roberts.*

Writ of Certiorari—*Essential Services (Avoidance of Strikes and Lockouts) Order, 1942, s. 6—Meaning of "trade dispute"—Powers of Tribunal appointed to settle dispute.*

K, a workman employed in an essential service, was dismissed by his employer, B & Co. Thereupon, the trade union to which K and a large number of other workmen in B & Co. belonged presented a petition on their behalf stating that K had been wrongly dismissed and that he should be reinstated.

***Held,* that a "Trade dispute" had arisen within the meaning of section 6 (2) of the Essential Services (Avoidance of Strikes and Lockouts) Order, 1942.**

***Held, further,* that the person appointed as tribunal to settle the dispute had jurisdiction to award damages to K on the ground of wrongful dismissal.**

APPLICATION for a writ of *certiorari*.

A labourer named Kittu who was employed under Messrs. Brown & Co., Ltd., an engineering firm, engaged in performing "essential services" was dismissed from his employment. Complaint was made by a trade union on behalf of Kittu and "a large number" of other workmen employed in Messrs. Brown & Co., Ltd., that the dismissal of Kittu was wrongful and that he should be reinstated. The Controller of Labour, acting under section 6 (2) of the Essential Services (Avoidance of Strikes and Lockouts) Order, 1942, referred the dispute to Mr. T. W. Roberts for settlement. Mr. Roberts decided that Kittu had been dismissed without cause and that, without being reinstated, he should be awarded a sum of Rs. 250 as damages for the wrongful dismissal. Messrs. Brown & Co., Ltd., thereupon, made the present application for a writ of *certiorari* to quash the decision of Mr. T. W. Roberts on the ground that it was made without jurisdiction.

H. V. Perera, K.C. (with him *E. F. N. Gratiaen* and *G. E. Chitty*), for the petitioner.—The petitioner moves for a mandate in the nature of a writ of *certiorari* to quash the decision and award of the tribunal set up under section 6 of the Essential Services (Avoidance of Strikes and Lockouts) Order of 1942 on the ground that it is void and of no effect as the tribunal had no jurisdiction to make it. In 1939 the Imperial Emergency Powers (Defence) Act was passed empowering the Governor to make Defence Regulations for certain purposes. Acting under these powers he issued Defence Regulation 43c enabling the establishment of a tribunal for the settlement of trade disputes in essential services in order to prevent strikes and lockouts in such services. In 1942, the Governor made an Order under Regulation 43c. "Trade

Dispute " is defined in Defence Regulations 43c (4) and in section (1) of the Order of 1942, as follows :—" a trade dispute means any dispute or difference between employers and workmen or between workmen and workmen, in or in connexion with, or incidental to the performance of any essential services ". This definition is not as wide as the definition of a " trade dispute " in the Trade Union Ordinance or the definition of an " industrial dispute " in the Industrial Disputes Ordinance. According to the definition in Defence Regulation 43c, a trade dispute can only arise between two parties of which one party must be a set or class of workmen at the time the dispute arose. There is no trade dispute in this case because, firstly, only one workman and not a class was involved and, secondly, at the time the petition was presented Kittu was not a workman. Further, section 2 (3) of the Order of 1942 allows a trade union to represent workmen, but it does not provide for a trade union representing a single workman. The fact that a trade union takes up a workman's dispute does not make it a trade dispute. In settling a trade dispute the tribunal cannot make any order it pleases. Neither the Defence Regulation nor the Order of 1942 states how a trade dispute may be settled. From section 9 of the Order of 1942 it is possible to infer how it may be settled. This section does not seem to regard an order for reinstatement or for damages as a method of settling a trade dispute.

S. Nadesan, for United Engineering Workers' Union, on notice.—The definition of trade dispute in Defence Regulation 43c is wider in its terms than the definition in either the Industrial Disputes Ordinance or the Trade Union Ordinance. In this case there was a dispute between Brown & Co. and a group of its employees on a matter arising " in connexion with or incidental to the performance of any essential services ". The dispute here is as to whether an unskilled workman who does semi-skilled work should be paid the wages of a semi-skilled workman and as to whether the dismissal of Kittu was justifiable or not. The trade union, of which a number of workmen of Messrs. Brown & Co. were members, acting under section 2 (2) of the Order of 1942, presented a petition to the Controller of Labour who referred it to the tribunal for settlement. The tribunal in settling a trade dispute has very wide powers but it cannot make an illegal order. The fact that it makes an offensive order will not affect its jurisdiction.

In this case the tribunal settled the dispute by awarding a sum of Rs. 250 to Kittu. If this matter was not a trade dispute then perhaps the workmen could have struck and the purpose of the Defence Regulation would have been defeated.

M. F. S. Pulle, Acting Solicitor-General (with him *H. Deheregoda, C.C.*), on notice as *amicus curiae*.—For a proper understanding of the Essential Services (Avoidance of Strikes and Lockouts) Order, 1942, it is necessary to examine the legislation relating to labour disputes prior to 1942. In the Industrial Disputes (Conciliation) Ordinance (Cap. 110) machinery was provided for the voluntary settlement of industrial disputes ; and strikes were prohibited as long as a settlement was in force. In 1935, the Trade Unions Ordinance was

passed. It made registration of trade unions obligatory and conferred on them certain rights, immunities and privileges. *Vide* sections 20 to 24. Strikes or lockouts in furtherance of trade disputes were not illegal. "Trade dispute" is defined in the Ordinance in terms identical with the definition in the Trade Disputes Act, 1906. By section 1 (1) of the Emergency Powers (Defence) Act, 1939, provision was made for making regulations necessary or expedient for, *inter alia*, the efficient prosecution of the war and for maintaining supplies and services essential to the life of the community. Defence Regulation 43c (1) which corresponds to the English Regulation 58AA provides for the establishment of a tribunal for the "settlement" of trade disputes. No restriction is placed on how the tribunal is to settle a dispute. The definition of "trade dispute" in this Regulation while different to the definition in the Trade Union Ordinance is wider. The dismissal of Kittu can be described as a thing arising in connexion with the performance of essential services. The dispute is between Brown & Co. and Kittu or one between the Company and its employees who are members of the Trade Union. A dispute can be taken up by a Trade Union of which the workmen who have a grievance are members. *Vide* the judgment of Lord Wright in the case of *The National Association of Local Government Officers v. Bolton Corporation*[1]. A trade dispute may arise between an employer on one side and a workman on the other—see *Conway v. Wade*[2] and the Interpretation Ordinance (Cap. 2) section 2 (*x*) read with Defence Miscellaneous Regulation 2 (4).

If the definition of the expression "trade dispute" in the Order is construed as narrower in meaning than in the Trade Union Ordinance one of the objects of emergency legislation would be defeated. If arising out of Kittu's dismissal a strike had been called, then, upon the arguments submitted for the petitioner, the remedies provided in the order against strikes would not be available. At the same time the strikers would be entitled to the rights and privileges conferred by the Trade Union Ordinance because the "non-employment" of Kittu would come within the definition of "trade dispute" in that Ordinance. In other words workmen would be placed in a position completely to paralyse the essential services without there being a remedy.

The "settlement" of a trade dispute would include the power to order a re-instatement. The National Arbitration Tribunal in England has ordered re-instatement where the dispute consisted of demand for reinstatement—*Vide* Award No. 488. If re-instatement is not prudent, compensation in lieu of reinstatement is justifiable.

H. V. Perera, K.C., in reply.—Where jurisdiction is conferred, then an oppressive order will not deprive the tribunal of jurisdiction. But here the question is whether the tribunal has jurisdiction to make the award in question. Section 9 of the Order of 1942 indicates the type of award that may be made. It does not show that an order for damages may be made. The petition submitted by the trade union does not allege that there is a trade dispute between the employer and his workmen. The mere fact that some workmen view with alarm and concern a fellow workman's dismissal cannot make it a trade dispute. There is no

[1] *(1942) 2. A. E. R. 425.*

[2] *(1909) A. C. at p. 517.*

evidence to show that the workmen supported the trade union in presenting the petition. The mere fact that the workmen could have struck in this case will not make this dispute a trade dispute.

Cur. adv. vult.

November 7, 1946. DIAS J.—

The petitioners, Messrs. Brown & Company, Limited, are an engineering firm engaged in performing " essential services ". They had an employee named Kittu, a labourer for eighteen years. He was an unskilled workman who did cooly work. His duties were to clean the machinery in the electric department, sweep the place and do odd jobs. On November 27, 1945, Mr. Grant of the petitioner's firm found Kittu " idling ". Grant, therefore, ordered him to " copper " some carbon brushes. Kittu told Grant that if he was to do semi-skilled work, he should be given higher pay. This the firm was unwilling to do, and the upshot of the matter was that Kittu was given one day's notice and sent away.

Some time previous to this incident, there had been correspondence between the United Engineering Workers' Union, to which some employees of the petitioner's firm, including Kittu, belonged. On October 25, 1945, that is to say more than a month before the trouble about Kittu took place, the Union was in correspondence with the firm regarding the wages of two workmen in the petitioner's carbon brush department. Obviously, this could not refer to Kittu—see exhibits P1 and P2.

When the trouble about Kittu arose in November, Kittu complained to the Union which telephoned to the Managing Director of the firm. On November 30, 1945, the Union received the letter P3 from the Managing Director stating that the firm had " made a full enquiry, and were satisfied on the evidence available that Kittu tendered his resignation which was accepted." The Union was told that the question of Kittu's re-employment, therefore, did not arise. It is clear that the Union on behalf of Kittu and other employees in the petitioner's firm was endeavouring to persuade the petitioner to re-employ Kittu, whereas the petitioner was unwilling to do so. A dispute had therefore arisen. One obvious solution of the deadlock was for Kittu to file a civil action for wrongful dismissal. The Union, however, took a different course of action. The question is whether that action and the subsequent proceedings were lawful.

On December 27, 1945, the Union presented to the Controller of Labour the petition X 1. It states that " a large number of the employees of the respondent company who are engaged in an essential service are members of the Union ; that Kittu was unlawfully and wrongly dismissed without sufficient cause ; that this action was a ' victimisation' of an employee and that the ' members of the petitioner's union view with alarm and concern the said action of the respondent ' ". It was stated that a " trade dispute " had thereby arisen. The Union demanded that Kittu should be reinstated and his wages paid for the days he was unable to work. The Union requested the Controller to refer the dispute to the appointed tribunal.

After some delay, the Controller of Labour, acting under section 6 (2) of " The Essential Services (Avoidance of Strikes and Lockouts) Order, 1942 "[1],—hereafter referred to as " the Order of 1942 "—referred the petition to the " Tribunal " appointed under section 5 of the Order of 1942, to " settle " this dispute. The tribunal consisted of Mr. T. W. Roberts, the respondent to this application.

The inquiry before Mr. Roberts commenced on April 30, 1945. The Union, the petitioners, and the Controller of Labour were all represented by their respective lawyers. Mr. Rowan, who appeared for the petitioner, took the preliminary objection that the Tribunal had no jurisdiction to hold the inquiry or to grant the relief claimed.

The objections were (1) that Kittu was at that date no longer an employee of the firm and, therefore, no trade dispute could arise, (2) that the claim for his reinstatement was a matter for the civil Courts, (3) that the Tribunal had no jurisdiction to order reinstatement, and (4) that there was no " trade dispute " between the petitioners on the one hand and their workmen on the other. Mr. Roberts brushed aside the last three objections and ruled that in order to decide whether the first point was sound, certain issues of fact had to be decided, and directed that the inquiry should proceed.

The Tribunal eventually decided (1) that Kittu had been dismissed without cause, (2) that he should not be reinstated, (3) that one day's notice was inadequate in the case of a servant who had served the petitioner for eighteen years, and (4) he awarded a sum of Rs. 250 as damages to Kittu for wrongful dismissal.

Under section 8 (1) of the Order of 1942, the findings of the Tribunal must be embodied in an award. Section 8 (2) provides that such award, subject to the provisions of section 9 (which have no bearing or relevance to this case) shall be final and shall not be called in question in any Court of law. It is common ground, however, that if this Court finds that the Tribunal acted without jurisdiction, or in excess of its jurisdiction, the award cannot stand.

The petitioner firm now moves for a writ of *certiorari* to quash this decision and award on the ground that it is void and of no effect.

Certiorari is the process by which this Court examines, and, if necessary, corrects, unless expressly withheld by statute, the proceedings of any inferior Court or statutory authority vested with judicial or quasi-judiciary functions, if the latter has usurped a jurisdiction which it does not possess. It is conceded by all parties that the Tribunal was acting judicially or quasi-judicially in holding this inquiry. The only question then is whether the Tribunal acted either without jurisdiction or in excess of its jurisdiction.

Before proceeding to discuss the arguments advanced at the hearing, it would clarify matters if the history of the Order of 1942 is considered.

In the year 1931, the Industrial Disputes (Conciliation) Ordinance (Chap. 110) was enacted. The key-note of that statute was the " settlement " of industrial disputes by conciliation. No compulsion could

[1] Reproduced in " A reprint of the Orders, Notifications and other Subsidiary Legislation under the Defence (Miscellaneous) Regulations in force on May 1, 1944 " pages 64–65.

be brought to bear by law on employers and workmen in trade disputes. It is obvious that the provisions of this enactment would be of little or no value at a time of national emergency, like a state of war or its aftermath.

The Trade Union Ordinance (Chap. 116) became law in 1935. It gave legal recognition to registered Trade Unions. It was realised that employers and employed should work in combination to safeguard their mutual interests. The definition of the expression "Trade Union" in section 2 (c) of the Ordinance indicates that the Union was the representative of the parties in trade disputes. Once the Union was registered the law accorded to it certain rights and privileges—see sections 20–22, but it was not a legal person [1]. The acts of the Union are the acts of its members. It is not a corporation, but is a body more in the nature of a Club.

At the outbreak of the War in 1939, the Imperial Emergency Powers (Defence) Act [2] was passed. It empowered the Governor to make Defence Regulations *inter alia* for securing the public safety, the defence of the Realm, the maintenance of public order, and the efficient prosecution of the war "and for maintaining supplies and *services essential* to the life of the community". Acting under these powers the Governor issued Defence Regulation 43C. The principle underlying that Defence Regulation is "to prevent work being *interrupted by trade disputes in essential services* [3]." This regulation empowered the Governor to establish a tribunal for the "*settlement*" of trade disputes in essential services and *to make strikes in such services illegal*. Chapter 110 of our Ordinances was specially preserved by section 43C, sub-section (3). It will be observed that section 12 of the Order of 1942 gives effect to this provision. Section 43C, sub-section (5) makes it a criminal offence to contravene any prohibition or other provision contained in any Order made under section 43C (1).

The Order of 1942 is based on section 43C of the Defence Regulations. Its object is to ensure that there should be peace and tranquillity in essential services during a national emergency. Section 3 of this Order makes it a criminal offence to commence, continue, or participate in, or do any act in furtherance of any strike or lock-out in connection with any "trade dispute" in any *essential services*. For example, were it not for the existence of the prohibition in section 3 of the Order of 1942, it would not have been illegal for this Union to have called out a strike of the petitioner's workmen when the firm refused to reinstate Kittu. It is pointed out by the Solicitor-General and counsel who represents the Union that if the contention advanced by the petitioner is right, that there was in this case no "trade dispute" which was lawfully referred to the Tribunal, the Union by calling a strike in an essential service could have brought the work in the petitioner's firm to a standstill. It is pointed out that the law, having deprived the workers of their right to strike in an essential service, gave them in exchange a Tribunal whose

[1] See 32 Hailsham p. 456.
[2] *2 and 3 Geo. V. Chap. 62.*
[3] See Defence (Miscellaneous) Regulations Consolidated Reprint, page 47.

duty it was, not to adjudicate according to strict legal rights, but "*to settle*" trade disputes, so that work in essential services would not be paralysed by strikes and lock-outs.

The Order of 1942 defines a "trade dispute" to mean "any dispute or difference between employers and workmen, or between workmen and workmen in, or in connexion with, or incidental to, the performance of any essential services". This definition follows that given in Defence Regulation 43c (4), but departs from the definition of "trade dispute" contained in Chapters 110 and 116 which are identical and read as follows: "A 'trade dispute' shall mean any dispute or difference between employers and workmen, or between workmen and workmen connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person".

The main question for decision here is whether the facts disclose the existence of a "trade dispute" as defined by the Order of 1942. The petitioner's contention is that a "dispute" may have risen, but that it was not a "trade dispute", and that the reference of such a dispute to the Tribunal was irregular, and that the Tribunal was acting without lawful jurisdiction in dealing with the matter. It is pointed out that the use of the word "means" in the definition indicates that it is a hard and fast definition, and that no other meaning can be assigned to the expression than is put down in the definition [1]. This contention is sound and cannot be controverted.

It is urged on behalf of the petitioner that a "trade dispute" under the Order of 1942 cannot arise between the employer and *a single workman*, and that no such dispute can arise in connexion with the *non-employment* of a single workman. In other words, the contention is that the definition indicates by the use of the word "*workmen*" that for a dispute to become a "trade dispute" there should be a dispute or a difference between the employer on the one hand and his *workmen* on the other. Otherwise, it is contended, there can be no "trade dispute" within the meaning of the Order of 1942.

It is to be observed that the plural is used in no less than three places in the definition of the expression "trade dispute", namely "employers", "workmen" and "essential services". Unless there is something repugnant in the subject or context, section 2 (*x*) of the Interpretation Ordinance (Chap. 2) provides that "words in the singular number shall include the plural, and *vice versa* [2].

I am unable to accept the interpretation sought to be placed on this definition by the petitioner. Assume there can be no "trade dispute" between an employer and a single workman, it must then also follow that no "trade dispute" can arise between a single employer like Messrs. Brown & Company and a group of their workmen. I can find nothing repugnant in the subject or context for interpreting the word "workmen" to include "workman". It was pointed out that if the petitioner's contention is right, no "trade dispute" in an essential service could arise between a group of workmen and a single employer.

[1] Stroud's Judicial Dictionary p. 1181 and cf. *Ibrahim v. Edirisinghe* (1931) 32 N. L. R. at p. 215, *Bulankulam v. Omeru* (1913) 1 B. N. C. at p. 42, *Bliss v. Perera* (1912) 1 C. A. C., p. 82.

[2] See *Thamotherampillai v. Govindasamy* (1946) 47 N. L. R. at p. 198.

There is nothing to be gained by considering cases decided under the English Law which is different from the local Defence Regulations and the Order of 1942 [1]. Therefore such observations as "it would be strangely out of date to be told, as was argued, that a trade union cannot act on behalf of its members in a trade dispute, or that a difference between a trade union acting for its members and their employer cannot be a trade dispute" [2], cannot be applied to local conditions except with great care and caution, because our law regarding trade unions has not developed as far as it has done in Britain. The English Law on the point had its origin in the Trade Disputes Act of 1906 [3], whereas our Law on this point only began in the year 1931, and is still in an early stage of its evolution.

I hold that there was evidence before the Controller of Labour on the petition X 1 on which he could be satisfied in terms of section 6 (2) that a "trade dispute" had arisen between the petitioner and Kittu as well as a group of workmen of the petitioner's firm who were members of this Union, and who were dissatisfied with the manner in which Kittu had been treated. Although the petition X 1 does not specifically state this, it is clear that that is what is meant. Under section 2 (2) of the Order of 1942 "where any act is authorised or required to be done by any workmen, that act may be done by any such workmen as the representative of all the workmen, *or by any officer of any registered trade union of such workmen*". It is argued that while the Union may lawfully represent a body of workmen, it cannot espouse the cause of a single workman, and that, therefore, the matter was irregularly placed before the authorities. I am unable to accept this contention. It is clear from the terms of X 1 that the union was acting for a bodyof men and not on behalf of one man. I cannot accede to the argument that because Kittu had been dismissed at the date X 1 was submitted, therefore, there was no dispute between the employer and a workman. I agree with the petitioner that the reinstatement or "non-employment" of a workman is not referred to in the definition of "trade dispute" in the Order of 1942, but the definition, if anything, is wider than the corresponding definition in Chapters 110 or 116, for it refers to "disputes or differences in, or in connexion with, or incidental to the performance of any essential services". I think this case is caught up in those words. The fact that Kittu personally makes no claim does not appear to affect the question at all.

It is urged that the Tribunal had no jurisdiction to award damages What the Tribunal was doing was not the adjudication of a claim according to strict legal rights. It was "settling" a trade dispute in an essential service. The word "settlement" has not been defined in the Order of 1942 or in the Defence Regulations. It clearly means "the adjustment of differences" or the compromising of a trade dispute. As we know, when parties to an action "settle" a case, they do not always proceed

[1] See "The Conditions of Employment and National Arbitration Order, 1940" made by the Minister of Labour and National Service under Regulation 58AA of the Defence (General) Regulations, 1939.

[2] Per Lord Wright in the *National Association of Local Government Officers v. Bolton Corporation* (1942) 2 A. E. R. at p. 435 (H of L).

[3] 6 Edw. VII. c 41.

according to strict legal rights. Once the Controller has satisfied himself under section 6 (2) that a trade dispute in an essential service existed and transmits the dispute to the Tribunal for " settlement ", I do not think Mr. T. W. Roberts had any option but to proceed. If he acted illegally in making his award, he is not indemnified. Assuming he acted unreasonably (*e.g.*, by awarding Kittu a lakh of rupees) or illegally (*e.g.*, by ordering that one of the parties should be imprisoned), that would not affect his *jurisdiction* to deal with the matter and to effect a " settlement ". Naturally, officers who are appointed to function as a tribunal are chosen persons, and it is expected that they will act judicially and reasonably. I can see nothing unreasonable in the manner in which Mr. Roberts " settled " the dispute. Whether the sum of money ordered to be paid to Kittu is called damages, or compensation, or a solatium, it was a " settlement ", the effect of which was to avoid the dislocation of work in an essential service. In the circumstances, it is impossible to say that such order was either illegal, unreasonable, or made without jurisdiction or in excess of jurisdiction.

The petitioner's application, therefore, fails and must be dismissed with costs.

I desire to record my indebtedness to the learned acting Solicitor-General, Mr. M. F. S. Pulle, for the assistance he rendered this Court as *amicus curiae*.

Application dismissed.