**ANTIGUA AND BARBABUDA**

**IN THE COURT OF APPEAL**
**(INDUSTRIAL)**

SUIT NO 21 OF 1993

BETWEEN:

**UNIVERSAL CARIBBEAN ESTABLISHMENT**

Appellant

and

**JAMES HARRISON**

Respondent

Before:

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| The Hon. Mr. Dennis Byron | Chief Justice [Ag.] |
| The Hon. Mr. Satrohan Singh | Justice of Appeal |
| The Hon. Mr. Albert Redhead | Justice of Appeal |

Appearances:

Mr. John Fuller for the Appellant
Ms. Joyce Kentish and Mr. Ly Choy for the Respondent

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1997: November 12; 24.

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*Industrial Law* - Unfair dismissal - Respondent recruited from Scotland - Quantum of damages - Order for compensation in a sum equivalent to the emoluments due for the balance of the respondent's contractual term, plus vacation pay, compensation for unfair dismissal and the value of a return ticket to the U.K. - Whether Industrial Court has jurisdiction to hear matters of unfair dismissal not involving a trade dispute - Principles and rules of statutory interpretation, and relevant aids to construction - *Industrial Court Act 1976* - *1975 Labour Code* - Whether an individual employee has a personal right to bring a claim for unfair dismissal, or to be a party to a trade dispute.

**JUDGMENT**

**BYRON, C.J. [AG.]**

This is an appeal against the decision of the Industrial Court delivered on 21st October 1993, ordering the appellant to pay compensation for the unfair dismissal of the appellant in a sum equivalent to the emoluments due for the balance of his contractual term, and a return ticket to the U.K., from whence he was recruited.

The appeal challenges the jurisdiction of the Industrial Court to hear matters of unfair dismissal that did not involve a trade dispute, and the assessment of compensation.

**The Jurisdiction section**

The only section of the Industrial Court Act 1976 which expresses itself as conferring jurisdiction is Section 7(1) which provides:

"The court shall have jurisdiction

(a) To hear and determine trade disputes referred to it under this Act;
(b) To enjoin a trade union or other organisation of employees or other persons or an employer from taking or continuing industrial action;
(c) To hear and determine any complaints brought in accordance with this Act as well as such matters as may be from time to time be referred to it under this Act."

**Principles of Interpretation**

Submissions were advanced on the principles of Statutory Interpretation to be applied.

The first principle to affirm is to recognise the separation of power between the Legislature and the Judiciary. It is the province of Parliament to make the law and for the Court to interpret it, without basing its construction of the Statute on a perception of its wisdom or propriety or a view of what Parliament ought to have done.

The dominant purpose in construing a Statute is to ascertain the intention of the legislature as expressed in the Statute, considering it as a whole and in its context. It is only where the words of the Statute are not clear and unambiguous that it is necessary to enlist aids for interpretation.

In the context of this case, it is generally agreed that the Industrial Court Act (borrowing the words of Counsel for the respondent) is an "amorphous piece of Legislation, poorly drafted, creating jurisdiction not in a precise methodical and linear fashion, but obliquely and by disorganised composition."

This, however, does not mean that the statute cannot be construed on the basis of its internal language. Because where the main object and intention of a statute is clear, it should not be reduced to a nullity by a literal following of language, which may be due to want of skill or knowledge on the part of the draftsman, unless such language is intractable.

However, speculation as to Parliament's intention is not permissible, but the policy which dictated the Statute may be taken into account. Of course, one must bear in mind the oft-repeated danger involved in that case, as opinions, as to what the policy is, may differ greatly.

In this case, two conflicting contentions exist as to the policy which influenced the Act. The Industrial Court Act 1976 followed on and was linked to the 1975 Labour Code of Antigua and Barbuda for example see section 10(1)(3)(b) which requires the Court to:

> "act in accordance with equity, good conscience……. and, in particular, the Antigua and Barbuda Labour Code."

The Labour Code was an innovative and important enactment, which made substantial changes to the industrial law of Antigua. It declared a national policy underlining the legislation and which included the proposition that as an individual works he gradually earns equity in his job above and beyond his wages, an equity that requires protection. In particular it created a new right not to be unfairly dismissed. This right had not been known to the common law. The code created new and comprehensive machinery for dispute resolution. This involved a network including the Minister of Labour, the Labour Commissioner, decisional officers, an Arbitration tribunal, a National Labour Board, Hearing Officers, the Board of Review.

In 1976 the Industrial Court Act created the Industrial Court.

There was a change of Government between the passage of the Labour Code and the Industrial Court Act. Counsel for the appellant suggested that the new legislation reflected a change of policy, in that trade disputes, as opposed to labour or employment disputes, should be dealt with by an Industrial Court, instead of the Labour Code Machinery.

Since its establishment, however, very few trade dispute cases have been referred to it and, the Industrial Court has been exercising jurisdiction in labour and employment disputes and in particular in cases of unfair dismissal, subject to a right of appeal to the Court of Appeal and even to the Privy Council. This procedure completely supplanted the network set up by the Labour code. The Industrial Court adjudicates in the "largest cluster of legal rights for which redress is most vigorously pursued before any court in Antigua and Barbuda".

In this context, one should bear in mind the provisions of section C67 of the Labour Code which state:

> "The provisions of this Part shall become effective upon the date on which the Labour Board becomes a functioning body under section B19."

No evidence was adduced as to whether the Labour Board became a functioning body under Section B19 and no findings of fact were made in the Court below. Yet the practice whereby the Industrial Court has been functioning instead of the dispute resolution procedures under the Code, raises the question, whether there was any alternative jurisdiction to that being exercised by the Industrial Court.

This gives rise to a contrary view of that the new policy was to provide a judicial process to replace the quasi-judicial administrative dispute resolution system provided by the code.

On my own views of the probabilities, the miniscule volume of trade dispute litigation, and consideration for the lack of cost effectiveness of constituting a Court for that purpose only, makes it unlikely that a national policy could be based on that alone. On the other hand, giving every employee access to a Court, for speedy and effective resolution of employment disputes is a socially important development which would seem more amenable to national policy initiatives. However, the relevant Hansard Debates have been unavailable and it is not possible to ascertain the national policy which informed the Act by any external material. Thus, we are deprived of this aid to construction.

If the language of a Statute is ambiguous so as to admit of two constructions, a Court is also entitled to consider the consequences of the alternative construction, and to rule against adopting a construction which leads to manifest public mischief, or great inconvenience, or repugnance, inconsistency, unreasonableness or absurdity or to great harshness or injustice.

In the context of this case, the decision could not be based on the principle that any alternative will create great public mischief, or inconvenience because no view is likely have universal support, as there is room for reasonable difference of opinion.

Against this background the respondent submitted that the practice of the court in exercising a jurisdiction in unfair dismissal cases which has lasted for over two decades should involve the cannon of construction of presumed continuity or settled practice, and the failure of Parliament to change the practice evinces tacit legislation.

I do not propose to consider the impact of these propositions unless I conclude that the meaning to be ascribed to the Statute cannot be ascertained by reference to its words, and its legislative context.

I would, therefore, proceed to examine the Statute itself, bearing in mind that the words of a statute should be construed in the light of their context as stated by the learned authors of 4th Halsbury Vol.44 para.872:

> "**Statute be construed as a whole**. For the purposes of construction, the context of words which are to be construed includes not only the particular phrase or section in which they occur, but also the other parts of the statute.
>
> Thus a statute should be construed as a whole so as, so far as possible, to avoid any inconsistency or repugnancy either within the section to be construed or as between that section and other parts of the statute."

**Previous Judicial Expressions by our Supreme Court**

Another important aid to construction is judicial precedent. In this context the jurisdiction of the Industrial Court has been ruled on by the Trial Division of the High Court, and subject to obiter in the Court of Appeal.

Whereas it is necessary to consider these circumstances, as a Court of Appeal, we are not bound by these decisions which will have the weight only of their persuasiveness. Further, we accept the assurance by counsel that this Act, as was the Labour Code was specially crafted for Antigua & Barbuda, and there is no basis for comparison with Judicial decisions in other countries.

In the case of **Island Provisions Limited v Constantine Samios** No.86 of 1993 Benjamin J, in a judgment delivered on 16th January 1995 concluded:

> "In the premises, in my view, it is not competent for an employee to refer a complaint of unfair dismissal to the Industrial Court. Such a reference would be in violation of section 19 of the Industrial Court Act. The procedure to be followed in a matter of unfair dismissal is set out in Part 5 of the Labour Code and cannot be circumvented by a direct reference to the Industrial Court. I must inevitably hold that the reference by the respondent in the present case was without foundation, thus rendering the award of the Industrial Court null and void and of no effect."

In the case of **Krebbs v Universal Caribbean** No 136 of 1993 Redhead J. (as he then was) in a judgment delivered on 10th October 1997 found that the real difficulty lay in the construction of section 7(1)(c) of the Industrial Act. He eventually concluded:

> "I must therefore interpret any dispute as appears in sectins10; 18(1) and every dispute as appears in section 16 to mean Trade Dispute. I hold that under section 7(1)(c) of the Act 'the Court has jurisdiction to hear and determine complaints or disputes brought in accordance with this Act' means complaints which the Court can properly hear and determine i.e. maters involving trade disputes as defined above."

The learned judge went on to assert that as a matter of law statutory provisions giving jurisdiction to inferior courts must be strictly construed, and he was of the view that if the court's ruling creates a void it was for Parliament to fill it and not the court by judicial legislation. He also observed that the case was concerned with the interpretation of a statute not the disturbance of a long established practice.

In the case of **Diane Camacho v Camacho & Sons Ltd** – Civil Appeal No.11 of 1994 (Antigua), which was concerned with the question of the unfair dismissal of an employee, a submission as to lack of jurisdiction was raised by the respondent and Matthew J.A. (Ag) expressed the view, which was not

necessary to the decision of the Court, and a view from which the other members specifically expressed reservations that:

> "It seems to me that to get to the Court in relation to a matter such as the present one, the appellant would need to be armed with a reference under section 19 of the Act and in my judgment, the Industrial Court has no jurisdiction to entertain a complaint directly from an Employee or an Employer."

**Does the Industrial Court Act 1976 relate only to trade disputes**

A major contention of the appellant, supported by the judicial views expressed in the cases of **Samois, Krebbs and Camacho**, to which reference was earlier made, is that the Industrial Court Act 1976 related only to Trade Disputes. I think that it is therefore necessary, to consider this proposition in the context of the definition of Trade Dispute.

The Act employs the definition of the Antigua and Barbuda Labour Code Section A 5, which states:

> "'trade dispute' (or 'industrial dispute') means any disagreement between employer and workers….over conditions of employment…..which disagreement has led, or may lead, to an interruption of employment by lock out or strike;"

This definition of trade dispute is quite clear and unambiguous. Unless disagreement has led or may lead to a lock out or strike it cannot be a trade dispute. This necessarily means that there is a distinction between a claim for compensation for unfair dismissal and a trade dispute. The unfair dismissal case cannot be a trade dispute unless it has led, or may lead, to a lock out or strike.

In my view, the language of the Act is inconsistent with the concept that it confers jurisdiction only in trade disputes because several sections indicate that the jurisdiction is in "trade disputes or other matters". I allude to a number of examples:

- Section 4(8)

"The Court shall be duly constituted if it consists of the following members assigned by the President-

(a) When hearing **a trade dispute,** two or more members; or

(b) When hearing **any other matter**, one or more members."

- Section 9(2)

"A party to **any trade dispute or any other matter** may be represented at proceedings before the court-……."

- Section 10(1)

"The court may in relation to **any matter** before it-

(a) Make **an order or award** (including a provisional or interim order or award) relating to any or all of the matters in dispute or give a direction in pursuance of the hearing or determination;
(b) Without prejudice to and in addition to its powers under section 7(2), award compensation on complaints brought and proved before it by a party for whose benefit the order or award was made regarding any breach or non-observance of an order or award or any term thereof (other than an order or award for the payment of damages or compensation).

Section 10(4)

" Notwithstanding any rule of law to the contrary, but subject to subsections (5) and (6), in addition to its jurisdiction and powers under this Part, the court may, in **any dispute concerning the dismissal of an employee**, order the re-employment or re-instatement (in his former or a similar position) of an employee, subject to such conditions as the court thinks fit to impose, or the payment of compensation or damages whether or not in lieu of such re-employment of re-instatement, or the payment of exemplary damages in lieu of such re-employment or re-instatement."

The phrases "any matter" "any dispute" and even more clearly "any other matter" and "any dispute concerning the dismissal of an employee" must embrace matters and disputes in addition to trade disputes.

The provisions for "order or award" also suggest that the draftsman was drawing a distinction between trade disputes and other disputes or matters. These terms are not defined in the Act, but their meaning can be extracted from the context in which they are used. In several sections they are used together while in some one is used and not the other. The inference from Part IV of the Act headed "Awards Duration and Enforcement" contained in sections 24-26, is that the award results from a trade dispute. On the other hand, Part III Sections 21-23 headed Lockouts and strikes indicate that the result of the hearing of applications to restrain industrial action is an order and not an award. The word "order" is also used in relation to the re-instatement of, and payment of compensation to employees. (See 10(4) supra).

A specific power that is not necessarily connected to the determination of a trade dispute is conferred by Section 15(2) which states:

"Where there is any question or difference as to the interpretation or application of the provisions of a collective agreement any employer or trade union having an interest in the matter or the Minister may make application to the Court for the determination of such question of difference."

This subsection obviously may be required in circumstances where the disagreement as to interpretation could lead to strike a lock out, but it is clearly not limited to those circumstances. The court is clearly empowered to deal with references in circumstances where there is no trade dispute. The point is advanced by the fact that the Minister can be the applicant. This is significant because under Section 19(3) the Minister is not listed as an envisaged party to a Trade Dispute.

I am persuaded that the Industrial Court Act was intended to relate to Trade Disputes and other matters.

**Are Sub-Sections 7(1)(b) and (c) Ancillary to 7(1)(a)**

Counsel for the appellant submitted that applying the ejusdem generis rule would indicate that section 7(1) dealt only with trade disputes and that subsections (b) and (c) were ancillary to subsection (a). Thus, if there was a trade dispute, the injunctive procedure became applicable under (b) and the complaint procedure under (c) only arose, where there was a trade dispute and it was alleged that the conduct of parties violated the orders or awards of the court or the progress of the dispute resolution process, or there was a complaint under some specific provision of the Act. The principle is explained in 4th Halsbury Vol.44 at para.877:

> "As a rule, where in a statute there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified, although this, as a rule of construction, must be applied with caution, and subject to the primary rule that statutes are to be construed in accordance with the intention of Parliament. For the ejusdem generis rule to apply, the specific words must constitute a category, class or genus and the general words must not by their nature exclude themselves from the category, class or genus, so that, for example, a superior thing will not be held to be within a class of inferior things. If the particular words exhaust a whole genus, the general words must be construed as referring to some larger genus. It seems that the ejusdem generis rule can have no application where the general words precede the enumeration of particular instances, and may not be relevant for the construction of international conventions. Even where the ejusdem generis rule does not apply to a general word because there is no genus, a court may find other indications that the general words should be given a restrictive construction."

An analysis of the section will show that the specific words "trade dispute" in 7(1)(a) which it is sought to identify as a category, class or genus, are not followed by general words in 7(1)(b) or (c) which could be confined to that same kind of dispute. In other words, no common genus or category has been legislated upon in the section. An analysis will demonstrate.

**7(1)(a)**

Part II of the Act, section 19, deals with the Trade Dispute Procedure. This is clearly regulatory of the jurisdiction conferred by section 7(1)(a).

**7(1)(b)**

Part III of the Act, sections 20-23, deals with the powers of the court in regard to Lockouts and Strikes. Section 20 prohibits lockouts and strikes (i) when trade dispute proceedings are pending before the Courts and (ii) as a result of disagreement with an order or award of the Courts. Section 21 provides for the Minister to apply to the court for injunctive relief in cases where the strike or lockout is not in contravention of section 20 but many threaten or affect the national interest.

An important distinction that should be noted is that 7(1)(a) provides jurisdiction for “Trade Disputes”, while 7(1)(b) for “industrial action”. It is clear that there are occasions when industrial action can be taken outside of the ambit of Trade Disputes, and in fact section 20 indicates the scenario where it is taken to protect a decision of the court.

Part III, therefore, is regulatory of the injunctive relief. Section 21, for example, provides an interesting variation to section 19, in that the Minister is the applicant, whereas in section 19, he is not recognised as a party to trade dispute proceedings.

These powers of the Court fall under the jurisdiction conferred by section 7(1)(b). The injunctive relief exercisable in accordance with these provisions is separate and distinct from the trade dispute procedures prescribed in section 19. This is a special jurisdiction, which is not dependent upon section 7(1)(a).

**7(1)(c)**

There is no part of the Act which is entitled “complaint” so as to appear to directly regulate sub-section (c). Counsel for the respondent suggested that, whereas the jurisdiction in regard to the determination of Trade Disputes, and enjoining industrial action was novel the assumption that there was familiarity with “complaint procedure” would have been open to a draftsman, and could have accounted for his omission to dedicate a part of the Act to the complaint jurisdiction.

Undoubtedly, the Act would have been more symmetrical if it had devoted a part to the complaint procedure, but Part I of the Act does contain the provisions which regulate the complaint procedure including unfair dismissal cases.

I think that there are a number of sections in Part I which relate to the procedure under 7(1)(c) which could conveniently have been put together as a part of the Act.

In any event, the Act did make provision for the issue of rules if it was considered necessary or desirable. Section 12:

> "Subject to this Act, the President may, by rules, regulate the practice and procedure of the Court for the hearing and determination of all matters before it."

This section gives the court power to regulate its procedures for matters under section 7(1)(c).

Sub-section (c) has two limbs, each of which must be given a separate and distinct meaning, (i) matters brought in accordance with the Act, and (ii) matters referred under the Act.

It would seem to me that the first limb would include matters brought under section 10(1)(b) and 26(2) which specifically prescribe for complaints to be brought to compel compliance with awards or orders of the court. An example of a non-trade dispute matter under section 26(2) would be a complaint to enforce an injunctive order under 7(1)(b) where there was industrial action as opposed to a trade dispute.

The second limb would include all references, some of which are clearly not connected with the determination of trade disputes eg. references by the Minister under section 21 (supra), references under section 15(2) for the interpretation of collective agreements, and, as I will develop references under section 10(4).

The sub-section has a very broad ambit. There are no words or expressions which are capable of limiting either limb to the determination of trade disputes.

I would therefore conclude that each of these subsections are sui generis.

**Individual access to the Industrial Court**

Sub-section (b) clearly does not confer jurisdiction in unfair dismissal cases, sub-section (a) clearly does not do so in any case that is not part of a trade dispute. I can easily agree with the conclusion of Redhead J (as he then was) in **Krebbs** that the difficulty in the section is to determine the scope of sub-section (c). In dealing with the specific question raised, that is, whether the court has jurisdiction to hear an individual employee claim for unfair dismissal, when it is not part of a trade dispute it may be useful to consider firstly, whether

an individual employee can bring an unfair dismissal claim under any circumstances.

There is no doubt that the Act clearly provides for an individual employee to benefit by orders of re-instatement, compensation, and damages, including exemplary damages. This is set out in section 10.

In this context counsel for the appellant submitted that individual access was permissible under 7(1)(a) if the dismissal of the individual employee had led or may lead to a lock out or strike. In Part II of the Act, Section 19 (3) does not envisage an individual employee being a party to a trade dispute. It reads:

> (3) "For the purposes of subsection (2) the expression "a party to the trade dispute" shall include –
> (a) an organisation of employees, on behalf of employees who are parties to the dispute and are members of that organisation;
> (b) an organisation of employers, where the dispute is between the employers and employees in the employment of those employers;
> (c) an employer, where the dispute is between that employer and employees in the employment of that employer; or
> (d) a trade union, on behalf of employees who are parties to the dispute and are members of that trade union."

In part I of the Act, it is provided in the Section following the provision of Section 10 as follows:

> "11. In addition to the powers conferred on it under the foregoing provisions of this Part, the Court may –
>
> (a) proceed to hear and determine a trade dispute in the absence of any party who has been duly summoned to appear before the Court and has failed to do so;
> (b) order any person –
> (i) who in the opinion of the Court may be affected by an order or award; or
> (ii) who in any other case the Court considers it just to be joined as a party, to the proceedings under consideration on such terms and conditions as the Court may direct;
> (c) make all such suggestions and do all such things as appear to be right and proper for reconciling the parties;
> (d) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the trade dispute or any other matter before it."

Section 11(b) gives the court power to order that an individual employee who may be joined as a party to proceedings

> (i) when he may be affected by an order or award or
>
> (ii) in any other just case.

The question whether this power is limited to proceedings for determining trade disputes can be answered by the difference in language in 11(a) and 11(b). In 11(a) the phrase “trade dispute” is employed, while in 11(b) “proceedings under consideration”. In my view section 11(b) would embrace trade disputes and other matters. 11(d) supports this view by giving power to give directions for the hearing of the “trade dispute or any other matter”.

I would therefore conclude that section 11 envisages that an individual employee can be a party to any proceeding before the Industrial Court. This is very significant when one considers that in Part II of the Act Section 19, it is clear that an individual employee was not intended to be a party to a trade dispute. It would seem therefore that the individual participation gives effect to the concept of access to enforce individual rights to protect the workers equity in his employment which the Labour Code introduced.

> Further there is Section 16:
> “The court shall expeditiously hear, inquire into and investigate every dispute and all matters affecting the merits of such dispute before it and, without limiting the generality of the foregoing, shall in particular hear, receive and consider submissions, arguments and evidence made, presented or tendered (whether orally or in writing) -
> (a) by or on behalf of the employer or employee concerned;
> (b) by the trade union concerned on behalf of the employees involved in the dispute;
> (c) in the name of the Attorney General if he has intervened under section 18.”

When one considers subsection (a), in context, it must be taken *inter alia*, to regulate proceedings brought by an individual employee, in particular, his right of audience, and his right to give evidence and present arguments orally and in writing. These are rights which support the view that it was the intention of Parliament that the individual employee had a personal right to be a party before the court.

In my view, the legislation clearly envisages that an individual employee can be a party to trade dispute or any other matters.

**Jurisdiction for unfair Dismissal**

This brings us to the important question of what provisions, if any, illuminate the concept of “other matters” so as to disclose whether the cause of the action for unfair dismissal, that is not attendant on trade disputes falls within the jurisdiction of 7(1)© of the Act.

Section 10(4):

> "Notwithstanding any rule of law to the contrary, but subject to subsections (5) and (6), in addition to its jurisdiction and powers under this Part, the court may, **in any dispute concerning the dismissal of an employee,** order the re-employment or re-instatement (in his former or a similar position) of an employee, subject to such conditions as the court thinks fit to impose, or the payment of compensation or damages whether or not in lieu of such re-employment of re-instatement, or the payment of exemplary damages in lieu of such re-employment or re-instatement."

Section 10(5)

> "An order under subsection (4) may be made where, in the opinion of the Court, an employee has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice; and in the case of an order for compensation or damages, the Court in making an assessment thereon shall not be bound to follow any rule of law for the assessment of compensation or damages and the Court may make an assessment that is in its opinion fair and appropriate."

Section 10(6):

> "The opinion of the Court as to whether an employee has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice and any order for compensation or damages including the assessment thereof made pursuant to sub-section (5) shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever."

The powers conferred on the Industrial Court by these subsections, while they can be used in trade dispute matters, are not limited in any way to such matters. For example, the provision in 10(4), giving the court power to order compensation in "any dispute concerning the dismissal of an employee" is not limited to those disputes which can lead to a strike or lock out. Similarly, although the dismissal of an employee in circumstances that are harsh and oppressive may lead to a strike, Sections 10(5) and 10(6) contain no such limitation of application. These sub-sections empower the court in any case where the dismissal of an employee is accompanied by the circumstances therein described. In my view these subsections are not capable of an interpretation which limits them to trade disputes. I would therefore hold, that these provisions clearly indicate that the individual access to the court is not limited to matters of the determination of trade disputes under section 7(1)(a).

The necessary result of that view is the jurisdiction conferred by section 7(1)(c) empowers the court to hear any disputes concerning the dismissal of an employee.

Regretfully, and with great respect, I have to disagree with the reasoning and conclusions reached in **Samois, Krepps** and **Camacho** (supra).

I would therefore conclude that section 7(1)(c) gives jurisdiction to hear cases for unfair dismissal in cases other than trade dispute matters.

**The Issue of Liability and Quantum of Damages**

The evidence supported the finding that the appellant had been appointed Chief Engineer at Jolly Beach Resort from 1st November 1989 on contract, the terms of which were contained in a letter dated 25th October 1989. The contract was for a period of two years subject to two months notice on either side. At the expiration of that contract the parties renewed the contract for a further period of two years. On 28th September 1992 the employee's contract of employment was terminated effective 1st November 1992 on the grounds that his post was abolished. There was no evidence to show that a redundancy situation did in fact exist. The respondent's contention, that the provision for termination by two months' notice operates only at the end of the two year period in respect of the rights to and obligation for renewal is clearly untenable. The finding that there was breach of contract was therefore justified on the grounds that (a) less than two months notice was given and (b) the grounds of dismissal were an improper redundancy.

The challenge to the amount of compensation is based on the proposition that it was a wrong in principle to order the balance of the contract term in the context that there was an agreement for two months' notice and the evidence of mitigation of loss was somewhat suspect. The respondent said he was not employed. But he was recruited from Scotland, on terms which included a return ticket at the end of his contract. He has found love in Antigua, did not intend to return to Scotland and has taken out Antiguan citizenship. There was no evidence of the job market in Scotland to show whether a return to his homeland would have produced employment in mitigation of his loss. On the other hand, if his employment prospects are to be judged by the economic climate in Antigua, he should not be entitled to a return ticket.

The Labour Code makes it clear that the employee is entitled to more than his contractual rights. He has an equity in his job which requires protection, and he has a right not to be unfairly dismissed. Section 10(3) of the Industrial Court Act 1976 affirms this and requires the Court to consider equity, good conscience inter alia. Many decisions have already been given laying down the principles on which compensation is to be measured.

In the circumstances, it would seem that if he was given the value of his return ticket, his contractual entitlements ie. two months of his basic salary, and other emoluments as awarded by the Industrial Court, his vacation pay of $3,416.00 and compensation for the unfair dismissal on the basis of improper

redundancy in the sum of a further four months emoluments subject to a discount for the one month salary already paid to him, that would satisfy the justice of the case.

This case became a major issue because of the jurisdiction question. We feel that this exceptional reason makes it proper to order costs to the respondent in accordance with Section 10(2) of the Industrial Court Act.

The order of the Court therefore is that the appeal is dismissed. The Industrial Court is declared to have had jurisdiction in the case, and to determine matters of unfair dismissal brought by an individual employee, in circumstance that do not involve a Trade Dispute.

The Order of the Court below is varied to the extent that the respondent is entitled to:

(1) two months' emoluments in lieu of notice less the one month already received
(2) vacation pay
(3) return ticket
(4) four (4) months emoluments as compensation.

The respondent to recover his costs of appeal.

DENNIS BYRON
Chief Justice [Ag.]

I Concur.

SATROHAN SINGH
Justice of Appeal

I Concur.

ALBERT REDHEAD
Justice of Appeal