EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

ANTIGUA AND BARBUDA

ANULTAP2015/0006

BETWEEN:

ANTIGUA AND BARBUDA TRANSPORT BOARD

Appellant

and

ANDERSON CARTY

Respondent

ANULTAP2015/0007

BETWEEN:

ANTIGUA AND BARBUDA TRANSPORT BOARD

Appellant

and

JAMES SEBASTIAN

Respondent

ANULTAP2015/0008

BETWEEN:

ANTIGUA AND BARBUDA TRANSPORT BOARD

Appellant

and

ANIQUE FRANCIS

Respondent

Before

The Hon. Mde. Louise Esther Blenman	Justice of Appeal
The Hon. Mr. Paul Webster	Justice of Appeal [Ag.]
The Hon. Mr. Anthony Gonsalves, QC	Justice of Appeal [Ag.]

Appearances:

Mr. Hugh Marshall, Jr. with him Ms. Andrea Smithen for the Appellant
The Respondents in person

2016: October 26;
2017: May 31.

Whether the Industrial Court exceeded its jurisdiction in that the court had no jurisdiction to enter a judgment on a trade dispute referred to it under the Industrial Court Act without a hearing – Whether the Industrial Court committed a specific illegality by applying procedures and rules not established in the existing Industrial Court (Procedure) Rules

The respondents ("the Employees") filed individual references ("the References") in the Industrial Court alleging that they were unfairly dismissed by the appellant, Antigua and Barbuda Transport Board ("the Employer"). The References were in substantially the same terms and were dealt with together by the Industrial Court. The Industrial Court made an order directing the parties to file their memoranda, witness statements and pre-trial questionnaires. The Employer failed to file all its documents and on 31st July 2015 applied for an extension of time to file witness statements. The court dismissed the Employer's application and granted instead an unless order stipulating that unless the Employer file and serve all outstanding documents including witness statements, bundles of documents and pre-trial questionnaire on or before 11th September 2015 judgment be entered for the Employees. The Employer was also ordered to pay costs to the Employees in the sum of $1,000.00 each on or before 4th September 2015.

On 14th September 2015 the Employees filed an application in the Industrial Court alleging that the Employer had failed to comply with the unless order and requested that the Employer be fined for contempt in accordance with section 7(2)(b) of the Industrial Court Act ("the Act") and that judgment in default of defence be entered against the Employer. The Court granted the application despite there being no hearing of the substantive dispute between the parties and ordered that judgment on liability be entered for the Employee by reason of the Employer's failure to comply with the unless order, and that the Employee's application for leave to withdraw contempt proceedings against the Employer be granted.

The Employer has appealed against the default judgment arguing that the Industrial Court exceeded its jurisdiction in that the court had no jurisdiction to enter judgment on a trade dispute referred to it under the Industrial Court Act without a hearing and that the Industrial Court committed a specific illegality by applying procedures and rules not established in the existing Industrial Court (Procedure) Rules ("the 1980 Rules").

Held: allowing the appeal; setting aside the unless order and default judgment; remitting the References to the Industrial Court for hearing and determination; and making no order as to costs, that:

1. The Industrial Court was created by the Act and is a creature of statute. Its jurisdiction is strictly regulated by the terms of the Act and rules made under it. The court's jurisdiction is to expeditiously inquire into, investigate and hear every dispute and all matters affecting the merits of such dispute even in the absence of a party who has been duly summoned to appear and fails to do so. The Act also provides a general power for the court to 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. The provisions of the Act oblige the court to hear disputes referred to it and then make a determination. Accordingly, the Industrial Court did not have jurisdiction to determine the References without a hearing and in that respect the Court exceeded its jurisdiction.

   Sections 7, 11 and 16 of the **Industrial Court Act** Cap. 214, Revised Laws of Antigua and Barbuda 1992 applied; **Theodore Francis T/A Theo's Tug & Barge v Damon Francis** ANUHCVAP2015/0009 (delivered 8th March 2017, unreported) followed.

2. The Act gives the court the power to impose fines for a contempt consisting of failure to comply with its orders or awards. Where, as in this case, a statute provides a specific remedy for a breach of its orders the party seeking to enforce the breach cannot resort to other remedies not specifically provided in the statute. Additionally, the Industrial Court's jurisdiction is regulated by rules made under it; the rules applicable to the References are the 1980 Rules. There are no provisions in the 1980 Rules for ordering pretrial questionnaires nor for entering judgment in default for failing to comply with the court's orders. Accordingly, the Industrial Court committed a specific illegality by applying procedures for breaches of its orders that are not contained in the Act or the 1980 Rules.

JUDGMENT

[1] **WEBSTER JA [AG.]**: This is an appeal by the Antigua and Barbuda Transport Board ("**the Employer**") against the order of the Industrial Court of Antigua and Barbuda by which the Industrial Court entered judgment on liability against the Employer on account of the Employer's failure to comply with the court's unless order made on 28th August 2015. The Industrial Court also ordered that a date be fixed for the assessment of compensation to be paid to the respondents ("**the Employees**") for their unfair dismissal by the Employer and that the Employer pay costs of $1,000.00 to each of the Employees.

Background

[2] The Industrial Court was established by the **Industrial Court Act** ("**the Act**").[1] Section 4 of the Act reads:

> "For the purposes of this Act, there is hereby established an Industrial Court which shall have the jurisdiction and powers conferred on it by this Act."

[3] The Act sets up a structure for the Industrial Court to deal with disputes between employers and employees. Proceedings are initiated in the Court by filing a reference.

[4] The Employees filed individual references in the Industrial Court alleging that they were unfairly dismissed by the Employer. The references are in substantially the same terms and were dealt with together by the Industrial Court. I will refer to them collectively in this judgment as "**the References**".

[5] The Industrial Court made an order directing the parties to file their memoranda, witness statements and pre-trial questionnaires. The Employer filed its memorandum in one of the References within the time stipulated by the Court. The record of appeal does include memoranda by the Employer in the other two References, one of which was a late filing and the other was filed within the extended time. However, both were served subsequent to the filing deadlines.

[6] The attorneys for the Employer, Marshall and Co., wrote to the registrar of the Industrial Court on 11th June 2015 requesting a further extension of time to file the Employer's witness statements. The registrar responded to the attorneys on 23rd June 2015 directing them to submit an appropriate application supported by evidence on affidavit and to serve the application on the Employees. The Employer did not file the application until 31st July 2015. The court directed the Employer to serve the application on the Employees, gave the Employees' liberty to file evidence opposing the application, and directed that the application be heard in chambers on 28th August

[1] Cap. 214, Revised Laws of Antigua and Barbuda 1992.

2015. The Employees opposed the application. After hearing both sides the Court made the following orders in each of the References:

"1. The Employers (sic) Application filed on 31st July, 2015 is dismissed.
2. Unless the Employer file and serve all outstanding documents including Witness Statements, Bundles of Documents, Pre-Trial Questionnaire on or before 11th September, 2015, judgement be entered for the Employee.
3. Subject to paragraph 2 above date for assessment or compensation be fixed by Court Office.
4. Cost to the Employee in the sum of $1,000.00 to be paid on or before 4th September, 2015.
5. The Employer do file the draft of this Order."

These orders are referred to collectively in the remainder of this judgment as "**the Unless Order**".

[7] The Employer filed its bundle of trial exhibits on 10th September 2015 and its witness statements on 11th September 2015 but did not serve these documents on the Employees until 16th September 2015 which is outside of the time ordered by the Industrial Court. The Employer did not file or serve pre-trial questionnaires and it did not satisfy the outstanding costs order until the day of the final hearing on 2nd October 2015.

[8] On 14th September 2015 the Employees filed an application in the Industrial Court for an order that the Employer be fined for contempt of court in accordance with section 7(2)(b) of the Act "…because of its blatant and deliberate failure to comply with the Order of the Court made on August 28th, 2015" and that judgment in default of defence be entered against the Employer and the Court proceed to assess and award compensation for the unfair dismissal of the Employees.

[9] The contested application was heard by the Industrial Court on 2nd October 2015. The Court granted the application and made the following orders in each Reference:

"(1) Judgement on liability be entered for the Employee by reason of the Employer's failure to comply with the Unless Order made on August 28th, 2015;

(2) A date for the assessment of the Award of Compensation to the Employee for Unfair Dismissal to be fixed by the Court;

(3) The Employee's application, for leave to withdraw contempt proceedings against the Employer, is granted;

(4) Costs to the Employee in the sum of $1,000.00 to be paid by the Employer on or before October 9th, 2015;

(5) The Employee is to have carriage of this Order."

These orders are referred to collectively in the remainder of this judgment as "**the Default Judgment**".

The Appeal

[9] The Employer appealed against the Default Judgment. The three appeals are identical and, though not consolidated, were heard together.

[10] The right of appeal against decisions of the Industrial Court is set out in section 17 of the Act which reads:

> "**Appeal on point of law.**
> **17.** (1) Subject to this Act, any party to a matter before the Court shall be entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no others –
> (a) that the Court had no jurisdiction in the matter, but so however, that it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the matter before the making of the order or award;
> (b) that the Court has exceeded its jurisdiction in the matter;
> (c) that the order or award has been obtained by fraud;
> (d) that any finding or decision of the Court in any matter is erroneous in point of law; or
> (e) that some other specific illegality, not hereinbefore mentioned, and substantially affecting the merits of the matter, has been committed in the course of the proceedings."

[11] The Employer relied on sub-sections (b), (d) and (e) of section 17 in support of the grounds of appeal set out in its notice of appeal. There are five grounds of appeal:

(1) The Industrial Court exceeded its jurisdiction in this matter in that the court has no jurisdiction to enter a judgment on a trade dispute referred to it under the Act without a hearing of the substantive matter.

(2) The Industrial Court committed a specific illegality by applying procedures and rules not established in the existing **Industrial Court (Procedure) Rules** ("**1980 Rules**")[2] made under section 12 of the Act in that the said Rules do not require any party to file a pretrial questionnaire and do not provide for default judgments on liability.

(3) The Industrial Court exceeded its jurisdiction in ordering costs where there are no exceptional circumstances as required by section 10(2) of the Act.

(4) The Court exceeded its jurisdiction in ordering that judgment on liability be entered on the employer defaulting in the filing of a pretrial memorandum and other documents.

(5) A further specific illegality occurred in that the draft Industrial Court (Procedure) Rules, 2015 are not lawful in that they are not in keeping with the purpose and object of the Act.

[12] The first four grounds of appeal relate to different aspects of the Industrial Court's jurisdiction to deal with disputes. Before analysing the grounds of appeal I will make general observations on the Industrial Court's jurisdiction.

[2] Cap. 214, Laws of Antigua and Barbuda.

The Industrial Court's jurisdiction generally

[13] The Industrial Court was created by the Act and is a creature of statute. Its jurisdiction is strictly regulated by the terms of the Act and rules made under the Act. The court's jurisdiction is set out in section 7 which states:

> "**Jurisdiction of Court.**
> (1) 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 from time to time be referred to it under this Act."

[14] The Act also gives the court certain powers in exercising its jurisdiction. The court's statutory powers are set out in section 7(2), 10 and 11. Section 7(2) states that-

> "The Court shall have power –
> (a) [Not relevant to this appeal]
> (b) to impose fines for a contempt consisting of failure to comply with its orders or awards but such fines shall not exceed ten thousand dollars and shall be payable within a definite time being not less than twenty-one days from the imposition thereof."

[15] The court's additional statutory powers are set in sections 10 and 11 of the Act. These powers are generally important when considering how the court operates but I do not need to set them out in detail in this judgment. The only two additional powers that are material are in paragraph (a) of section 11 which gives the court the power to proceed to hear and determine trade disputes in the absence of a party who has been duly summoned to appear and fails to do so, and paragraph (d) of the same section which is a general power for the court to "…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".

[16] Section 12 of the Act states that "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". Learned counsel for the Employer, Mr. Marshall, submitted that the only rules made under section 12 that are applicable to the References are the

1980 Rules. These are the rules that were in place when the References were heard by the Industrial Court in 2015. The new rules that were published in the Official Gazette on 1st December 2015 and came into operation on 1st February 2016 ("**the 2015 Rules**") have no application to this matter. This is obviously correct and I accept this submission.

[18] The Industrial Court's jurisdiction was recently considered by this Court in **Theodore Francis T/A Theo's Tug & Barge v Damon Francis**.[3] The Court's unanimous judgment was delivered by Blenman JA who compared the Industrial Court's jurisdiction with the jurisdiction of the Civil Division of the High Court and stated:

> "It is noteworthy that the Industrial Court is a creature of statute and accordingly it obtains its jurisdiction from the statute which creates it, namely, the **Industrial Court Act**. Unlike the High Court which also was created by a separate and distinct Act, the **Supreme Court Order**,[6] *[Cap. 422A, Revised Laws of Antigua and Barbuda 1992]* the Industrial Court's jurisdiction is not as wide and all-encompassing as that of the High Court. In this regard, the Industrial Court does not have the wide discretion that the High Court is clothed with to strike out claims. Further, the **Civil Procedure Rules 2000** ("CPR") as amended do not govern the procedure in the Industrial Court. Section 7 of the **Industrial Court Act** clearly stipulates the jurisdiction of the Industrial Court. Its jurisdiction is confined to the hearing of trade disputes referred to it under the **Industrial Court Act**. This in no way negates the fact that in the exercise of its inherent jurisdiction in circumstances where there has been an abuse of its process, the Industrial Court can strike out the reference."[4]

This is an accurate summary of the Industrial Court's jurisdiction and is helpful in analysing how the Court exercised its jurisdiction and powers in this case.

Ground 1 – The Industrial Court's jurisdiction to hear and determine disputes

[19] The essence of Mr. Marshall's complaint under Ground 1 was that the Industrial Court is a creature of statute and its jurisdiction is strictly regulated by the terms of the Act and any rules made under the Act. Further, that the provisions of the Act oblige the court to hear disputes referred to it and then make a determination. The

[3] ANUHCVAP2015/0009 (delivered 8th March 2017, unreported).
[4] At para. 26.

court cannot decide a dispute by a default judgment procedure as there are no procedures in the Act nor in the 1980 Rules for entering judgment by default. Mr. Marshall supported his position under this ground by reference to the provisions in the Act set out above. There is much force in Mr. Marshall's submissions.

[20] The Industrial Court is authorised under section 7 of the Act to hear and determine disputes. The phrase "hear and determine" also appears in paragraphs (a) and (d) of section 11 which are referred to above. While the phrase "hear and determine" might normally be merely indicative of jurisdiction, section 16 of the Act strongly suggests that the intention of the Act is that disputes are to be determined after a hearing. Section 16 under the heading "Scope of hearing by the Court" provides that:

> "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..."

[21] The combined effect of sections 7, 11 and 16, and in particular the directive under section 16 for the court to hear, inquire into and investigate all matters affecting the merits of a dispute, suggest that the Industrial Court is obliged to hold a hearing in order to determine any dispute that is referred to it. The hearing may be very brief and could include, for example, the situation contemplated by paragraph (a) of section 11 where a party who is properly served fails to attend the hearing. In this situation the Court can proceed to hear and determine the dispute in the absence of the party who was served and give judgment on liability.

[22] The respondent in appeal No. 6 of 2015, Mr. Anderson Carty, made written and oral submissions opposing the appeal. His submissions were adopted by the other two respondents. His submissions in relation to Ground 1 do not dispute that a hearing is necessary but he said that there was in fact a hearing of the References on 2nd October 2015 when the Employees and the representative of the Employer and his attorney appeared before the Industrial Court and the court entered the Default Judgment against the Employer. However, the order containing the Default

Judgment shows *ex facie* that there was no hearing of the substantive dispute between the parties. The order recites the presence of the parties before the court, the Employees' application for judgment filed on 14th September 2015 and the evidence in support of the application, and that the Employees and the Employer's representative were heard. There is nothing in the written judgment that contradicts what is set in the order containing the Default Judgment. The court then ordered that judgment on liability be entered for the Employee "…by reason of the Employer's failure to comply with the Unless Order made on August 28th, 2015". This was a judgment based on the Employer's failure to comply with the Industrial Court's previous order and I reject Mr. Carty's submission that there was a hearing of the References and, by extension, that there was a hearing and determination of the References by the Industrial Court.

[23] Mr. Carty also submitted that the Employer did not object to the Industrial Court's jurisdiction at any time during the progress of the References before the Court and, by virtue of section 17(1) of the Act,[5] it cannot object to the Industrial Court's jurisdiction on the hearing of the appeal. However, the Employer stated in Ground 1 of the notice of appeal that the Industrial Court exceeded its jurisdiction in that it had no jurisdiction to enter judgment without a hearing of the substantive matter. Mr. Marshall submitted that this brings Ground 1 under sub-paragraph (b) of section 17(1) of the Act.

[24] It is not always easy to draw the line between a court not having jurisdiction and a court exceeding its jurisdiction. It is beyond argument that the Industrial Court has jurisdiction to hear and determine disputes that are referred to it. The argument in this case is whether it can exercise that jurisdiction by disposing of the References by entering default judgments without a hearing. I agree with Mr. Marshall that the Industrial Court does not have this additional jurisdiction to determine a dispute without a hearing and in that respect the Court exceeded its jurisdiction and this

[5] Section 17 is set out in full in para. 10 above.

aspect of the appeal therefore falls under sub-paragraph (b) of section 17(1) of the Act.

[25] Alternatively, the procedure adopted by the Industrial Court in entering the Default Judgment was erroneous in point of law and therefore falls under sub-paragraph (d) of section 17(2) of the Act and is therefore an alternative basis for appealing against the Industrial Court's decision.

[26] In the circumstances I accept all of Mr. Marshall's submissions on Ground 1 and I find that the Industrial Court does not have jurisdiction to hear and determine a dispute without a hearing and that the Court exceeded its jurisdiction by entering the Default Judgment. This ground of appeal therefore falls under section 17 of the Act and the Court of Appeal is competent to deal with the issues raised by the ground. I would allow Ground 1.

Ground 2 – The Industrial Court applied wrong procedures

[27] The employer's complaint on the Ground 2 is that the Industrial Court committed a specific illegality and erred in applying rules that were not contained in the 1980 Rules, specifically, that the Court erred by ordering the Employer to file a pre-trial questionnaire and by entering the Default Judgment.

[29] There are no provisions in the 1980 Rules for ordering pretrial questionnaires nor for entering judgment in default for failing to comply with the court's orders. Although not expressly stated in the judgment it appears that the Industrial Court was relying on provisions contained in the 2015 Rules that were not effective when the References were being considered by the Industrial Court, and, as I stated above, could not have been applied by the Industrial Court in adjudicating the References. The Industrial Court's reliance on these procedures, whether as a part of the 2015 Rules or otherwise, is significant because the Court relied heavily on the Employer's failure to file a pre-trial questionnaire to make the Unless Order, and thereafter relied on the Employer's failure to comply with the Unless Order to enter the Default Judgment.

[30] The Employees attempted to justify the steps taken by the Industrial Court leading to the Default Judgment by submitting that pursuant to section 8(1) of the Act the Court has all the powers, rights, and privileges as are vested in the High Court. Section 8(1) reads –

> "**Procedure.**
> The Court, as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its jurisdiction, shall have all such powers, rights, and privileges as are vested in the High Court on the occasion of an action."

[31] They continued that since the High Court has the power to order pre-trial questionnaires and to enter default judgments it follows that the Industrial Court has these powers by virtue of section 8(1). However, I think this is an over-simplification of the Industrial Court's jurisdiction and powers. The High Court's jurisdiction to enter default judgment is not a part of its inherent jurisdiction. It is derived from Part 12 of the **Civil Procedure Rules 2000** ("**CPR**") and the procedure can only be used in accordance with the detailed provisions of Part 12. The Court of Appeal confirmed in the **Theodore Francis** case that the CPR does not apply to the Industrial Court.[6] It follows that section 8 cannot be used to import the High Court's substantive jurisdiction under Part 12 of the CPR into the Industrial Court's jurisdiction.

[32] The Court of Appeal also confirmed in the **Theodore Francis** case that the Industrial Court has an inherent jurisdiction to regulate its procedures by striking out a reference for abuse of its processes. This is because the High Court has this power as a part of its inherent jurisdiction (as well as by Part 26.3(1)(c) of the CPR) and it can therefore be imported into the Industrial Court's inherent jurisdiction by section 8(1) of the Act . This would be a proper use of section 8. But the same is not true when dealing with the High Court's jurisdiction in Part 12 of the CPR to enter a

[6] See para. 16 above.

default judgment. This is a part of the High Court's substantive jurisdiction and it cannot be imported into the Industrial Court's inherent jurisdiction using section 8. The Industrial Court's power to strike out a reference for abuse of process does not include the power to enter a default judgment and it is of no assistance to the Employees in this case.

[33] There are two other reasons why I think the Employees cannot use section 8 to import the power to enter a default judgment into the Industrial Court's jurisdiction and powers. Firstly, the Employees used the default procedure to deal with the Employer's failure to comply with the court's Unless Order made on 28th August 2015. The difficulty with using the default judgment procedure in this way is that the Act makes provision for what is to happen when a party does not comply with an order of the court. The procedure is set out in subsections (2)(b) and (3) of section 7 of the Act. Sub-section (2)(b) is set out in paragraph 12 above. The sub-section sets out the court's power to impose a fine on any party who disobeys its orders or awards. Sub-section (3) then provides that:

> "Proceedings for contempt for failing to comply with an order or award of the Court shall be commenced by an application by the person or organisation for whose benefit the order or award was made, and shall be in such form as may be prescribed. The application shall be served on the person who will be affected thereby not less than three clear days before the hearing thereof."

[34] Where, as in this case, a statute provides a specific remedy for a breach of its orders the party seeking to enforce the breach cannot resort to other remedies not specifically provided in the statute. In this case the Employees followed the correct procedure on 14th September 2015 when they applied to the Industrial Court for an order that the Employer be fined for its contempt of court by its blatant and deliberate failure to comply with the Unless Order made on 28th August 2015. However, the application also sought the additional remedy of a judgment in default of defence on the ground of the Employer's failure to comply with the court's orders. When the Employees' application came on for hearing on 2nd October 2015 the Industrial Court erred firstly by giving the Employees leave to withdraw the contempt

application which was properly before the court, and secondly by entering judgment on liability for the Employees by reason of the Employer's failure to comply with the Unless Order. The Industrial Court should have dealt with the Employer's failure to comply with its orders by proceeding with the Employees' contempt application. Instead the court erred as a matter of law and exceeded its jurisdiction by granting the remedy of a default judgment.

[35] The other reason why I think the power to enter a default judgment is not a part of the Industrial Court's inherent jurisdiction and cannot be used by the Employees is that the entry of a default judgment necessarily means that there is no hearing on the merits of the reference. This Court has found that the Industrial Court is obliged to hold a hearing on the merits of a reference before determining the reference.[7] This finding precludes the possibility of a default judgment under the Industrial Court's inherent jurisdiction.

[36] It is interesting to note that the 2015 Rules contain a provision in Rule 34 for entering judgment in default. I observe in passing that this rule would not have assisted the Employees. It provides for judgment in default of filing a memorandum of defence and it is not disputed that the Employer filed an employer's memorandum before the default judgment was entered. The Employer's memorandum is described in the new Rules as a memorandum of defence. On these facts the Employees would not have been entitled to a default judgment because the Employer had filed a memorandum of defence and there is no provision in the 2015 Rules for default judgment to be entered for breach of a court order. The remedy for breaching the court's orders is still to apply to the court to impose a fine on the defaulting party for its contempt of the court's orders.

[37] In all the circumstances I find that the Industrial Court committed a specific illegality by applying procedures for breaches of its orders that are not contained in the Act or the 1980 Rules, and instead applied procedures from the 2015 Rules which were not

[7] See para. 24 above.

effective when the matter was heard by the Industrial Court and could not be relied on by the Employees. Ground 2 of the notice of appeal also succeeds.

Ground 4

[38] Ground 4 overlaps with Ground 2 and has been dealt with in the analysis in the preceding paragraphs. I find that the Industrial Court exceeded its jurisdiction by entering judgment on liability against the Employer on account of the latter's failure to comply with the Unless Order. This ground of appeal also succeeds.

Ground 3

[39] The Employer complained in Ground 3 that the Industrial Court exceeded its jurisdiction by ordering costs against the Employer when there were no exceptional circumstances in the case. Having found that Grounds 1, 2 and 4 should succeed I would also allow this ground of appeal and set aside the costs orders against the Employer in the Unless Order and the Default Judgment.

Ground 5

[40] The Employer invited this Court in Ground 5 to issue a declaration that the 2015 Rules are not lawful in that they are not in keeping with the purpose and object of the Act. Mr. Marshall made only passing reference to this ground in his written submissions and did not raise it in his oral presentation to this Court. This is not surprising. As stated above the 2015 Rules do not apply to the References and therefore do not require consideration in this appeal. Further, this issue should be tested in the High Court before it comes on appeal so that this Court can have the benefit of the High Court's consideration of the matter.

Conclusion

[41] In all the circumstances I would make the following orders:

(1) The appeal is allowed and the Unless Order made by the Industrial Court on 28th August 2015 and the Default Judgment made on 2nd October 2015 are set aside.

(2) The References are remitted to the Industrial Court for hearing and determination.

(3) No order as to costs.

I concur.
Louise Esther Blenman
Justice of Appeal

I concur.
Anthony Gonsalves, QC
Justice of Appeal [Ag.]

By the Court

Chief Registrar