IDT 10/95

INDUSTRIAL DISPUTES TRIBUNAL

(I.D.T.)

SETTLEMENT OF DISPUTE

BETWEEN GRAND LIDO NEGRIL - "THE HOTEL"

AND GRAND LIDO NEGRIL STAFF ASSOCIATION - "THE ASSOCIATION"

REFERENCE:

By letter dated April 5, 1995 the Honourable Minister of Labour, Social Security and Sport pursuant to Section 11A(1)(a)(ii) of the Labour Relations and Industrial Disputes Act (hereinafter called "the Act") referred to the Industrial Disputes Tribunal for settlement in accordance with the following Terms of reference the industrial dispute described therein:-

Terms of Reference:

"To determine and settle the dispute between Grand Lido Negril on the one hand and the Grand Lido Negril Staff Association on the other hand over the termination of the employment of Woshey Brown, Gwendolyn Noble ..... and Gregory Miller".

Amendments to Terms of Reference:

By consent of parties, the names of the workers involved as cited in the Terms of Reference were amended to correct errors and omissions. The agreed list of Two Hundred and Twenty Five (225) workers dismissed and relevant to the dispute is appended hereto and headed Appendix No. 1.

ESSENCE OF DISPUTE:

The Hotel's case is that at the material times on March 29th and 30th 1995, certain employees disrupted the Hotel's operations by taking Industrial Action in the form of a stoppage of work. The action amounted to a Strike which constituted a repudiation of their contracts of Employment entitling the Hotel to dismiss them summarily.

The Association's case is that the stoppage of work was not a strike which could amount to a repudiation of contract and that in fact the Hotel "locked-out" several of the workers at material times.

The Hotel dismissed all the workers involved. The Association contends that the dismissals are "unjustifiable" under Section 12(5)(c) of the Act.

The Hotel disagrees.

REPRESENTATIVES OF PARTIES:

The Hotel was represented by:

Mr. Emil George, Q.C.
Mrs. Lois Edwards-Bourne - Attorney-at-Law
Mr. Noel Brown - Vice President Human and Resource

Representing the Association were:-

Lord Anthony Gifford, Q.C.
Mr. Wentworth Charles - Attorney-at-Law
Mr. Uton Green, Mr. Clive Hall and Mr. Leslie Haye

Several worker/delegates were in attendance.

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties and oral, other written and video-taped submissions made to the Tribunal during twenty-one (21) sittings - five (5) between April 10 and June 7 and sixteen (16) between September 9 and October 31, 1995.

EXTENSION OF TIME:

In exercise of the power conferred by Section 12(2)(b) of the Act, the Tribunal with the agreement of the parties extended the date by which to make its award to 30th November, 1995.

PRELIMINARY SUBMISSIONS:

(a) Jurisdiction

Mr. George submitted that there was no "Dispute"; the workers' contracts were no longer extant; they were therefore ex employees and there was no record of the Staff Association having Trade Union Status. In his view the Tribunal had no jurisdiction in the matter.

The Tribunal disagreed with the submission and in reply invited reference to the words "organizations representing workers", (not Trade Unions) and "termination of employment" in the definition of "industrial dispute" and "dismissal of a worker" in Section 12(5)(c) (See Appendix 1). The Tribunal considered the effect of these words, affirmed its jurisdiction and proceeded accordingly.

(b) Pre-requisite of Normalcy

Lord Gifford made application for an Order under Section 12(5)(a) of the Act that Industrial Action viz. the "Lock-out" of the

THE RELEVANT LAW:

(1) The issues herein are being settled at a time when Labour Market Reform and the Act are under serious scrutiny. We therefore consider it appropriate to discuss the legal principles by which we are guided in our decisions. For ease of reference we have appended hereto some relevant extracts from the Act and from the Labour Relations Code at Appendices 2 and 3 respectively.

(2) Largely out of deference for some early remarks of Mr. George, we requested Counsel to address us on the question :

"Can a dismissal be "lawful" i.e. "not wrongful" at Common Law and simultaneously "unjustifiable" under Section 12(5)(c) of the Act?

Mr. George's Reply

(i) Contrary to the view expressed by Mr. George this question has been previously canvassed (see the West Indies Yeast Company Limited case - Jamaica Supreme Court 1985 - pages 4-6) and indeed in two previous disputes, this Tribunal (similarly chaired) applied this case, decided the question in the affirmative and made its award accordingly.

(ii) Mr. George's answer to the question is in the negative. In his view, "Unjustifiable", undefined in the Act, means not justified accordingly to Law. It does not provide room for moral and ethical considerations which are outside the parameters of the Common Law. The Act merely affords the additional remedy of reinstatement but does not otherwise affect the relevant Common Law Principles. He relies heavily on the Hotel Four Seasons Limited Case of 1985 (Civil Appeal No 2 - Court of Appeal - Jamaica).

(iii) We understand, accept and are obviously bound by the Four Seasons decision that at Common Law -

(a) "the withdrawal of services which had been bargained for can and does constitute a repudiation of the Contract of employment" (Campbell J at page 39)

and (b) the fact that such withdrawal takes place within the context of a Strike does not affect the Common Law rights and obligations under such Contract. Such repudiation triggers an Employer's right to dismiss workers who so strike".

if persisted in long enough. Fact. for Trib.

(iv) But the statement at (iii)(a) above is not absolutely exhaustive of the issue. Campbell J himself qualified it by saying of such "withdrawal" -

"if persisted in long enough".

In this Four Seasons Judgment (page 36) Phillip J is quoted

(v) It would appear from (iv) above therefore that not every "strike" under any circumstances automatically and necessarily constitutes repudiation. It is a matter of fact (probably mixed law and fact) whether a particular work stoppage is such as amounts to repudiation. The relevant factors which could affect such a decision appear to be limited but would certainly not be confined to duration (Campbell, J.) and contributory breach by employer (Phillip, J.).

(vi) The difficulty which we experience with Mr. George's submission is that the Four Seasons Case is dominantly - indeed almost exclusively - concerned with the Common Law and not with the new thinking in the Act. Observe e.g. the Tribunal's finding at page 4.

> 'o) that the deemed dismissals were effective on 15th June, 1982, which the Hotel appeared to have been entitled to effect (see case of Simmond v. Hoover Limited, 1-AER(1977) at page 78 quoted below) -
>
> > "We are satisfied that at <u>common law</u> an employer is entitled to dismiss summarily an employee who refuses to do any of the work which he has engaged to do".

Observe also the reported endorsement on page 14 of this quotation by Smith C.J. who in the following year 1986 wrote the Judgment in the West Indies Yeast Company case which moves forward to the Act and to justifiability. We will expand on this later.

(vii) In fact the only express reference to the Tribunal's jurisdiction re unjustifiable dismissal is at page 15 line 2 where Carey, J. writes:-

> "The Act, it may be observed, has conferred on the Industrial Disputes Tribunal the power to order reinstatement of an employee where it finds dismissal unjustified. But such a power has not been extended to the Courts which can only apply well known principles of the common law".

(viii) We do not understand Carey, J. to be saying that re-instatement is the <u>only</u> variation of the Common Law. The relevant Section 12(5)(c) confers the power to award:-

> with re-instatement "so much wages, if any, as the Tribunal may determine" or
>
> if no re-instatement "such compensation or <u>such other relief</u> as the Tribunal may determine".

These provisions do appear to vary somewhat the remedies available for

The Tribunal's Position as to the Law

(a) The Tribunal continues to rely on the 1985 Judgment of the Supreme Court (Full Court Smith, C.J., Theobalds and Gordon J.J.) in the W.I. Yeast Company case from which we derive and repeat the principle that:-

> "the Common Law seeks to determine the LEGALITY of an action but Section 12(5)(c) of the Act goes further. By deliberately avoiding the well known and more familiar Common Law descriptions "wrongful" and "unlawful" and instead using the word "unjustifiable" the Act introduces a moral imperative whereby an employer has to justify his dismissal action on fair, just and reasonable grounds".

(b) For ease of reference we attach hereto as Appendix 4 the relevant well argued section of the unanimous judgment. We would however, emphasise the following statements adopted by the Court -

> "It is not enough that the Employer abides by the contract. If he terminates it in breach of the Act, even if it is a lawful termination at Common Law, the dismissal will be unfair. So the Act questions the exercise of managerial prerogative in a far more fundamental way than the Common Law could do".

"Unfair" is synonymous with "unjustifiable".

(c) The Supreme Court judgment of Smith C.J. in the Jamaica Broadcasting Company case (M10 of 1981) cited by Lord Gifford includes this interesting and instructive paragraph:-

"In Chappell and others v. The Times Newspapers ltd. and others",(1975) 2 All E.R. 233, Stephenson, L.J. said (at p. 241) :

> "Relations between employer and employed have indeed developed and are still developing; and their development invites continuous reconsideration by the court of rules worked out in different conditions. The workman now has statutory rights including a right of compensation for dismissal which though lawful is unfair".

(d) The Tribunal therefore re-affirms its position that regardless of what the decision would be at Common Law (i.e. lawful, unlawful or wrongful) our concern under the Act is with "justifiability" i.e. what is fair and just and reasonable.

(e) Lord Gifford contended that even at Common Law the stoppage of work and other circumstances were not of the degree and nature respectively

Guidelines

In the English case Lewis v. John Adamson and Company Limited (1982) IRLR 233 Neill, J. drew from several Court of Appeal decisions the "proper" approach to "unfair" dismissals. We have derived from these the following -

(a) It is for the Tribunal to find and decide the case on the facts.

(b) The Tribunal must seek to avoid errors of law but its task is not an exercise in elaborate legal classification.

(c) The Tribunal must have regard to the equity and substantial merits of each case and look at the matter broadly and in the round "in an employment and industrial relations context and not in the context of the Temple and Chancery Lane".

(d) Parliament has given the Tribunal a very wide discretion as to the application of "unfair". This discretion appears to be wider in the Jamaican Act where unlike "unfair" in the English Act the word "unjustifiable" is undefined and not subject to the restrictions of descriptive examples.

FACTS and COMMENTARY

1. The Hotel's employees since 1991 have been represented by the Association on the basis, in part, of a somewhat inadequate Collective Labour Agreement signed by both parties on June 30, 1991 and amended and renewed thereafter. The current Agreement expires in March, 1977.

2. Over the years the Employees lost confidence in the Association considering it as being unduly influenced by Management. The President himself testified as to his own and the Associations inability and in-effectiveness in advancing the interests of the employees. The workers went so far as to object to any more "behind doors meeting between the Management and their Executive".

3. On December 29; 1994 the Bustamante Industrial Trade Union, obviously with the consent and support of the Association, formally claimed Bargaining Rights on behalf of the Employees.

4. Relying on their strict legal rights under the existing Collective Agreement and the Regulations, the Hotel denied the Union's claim and refused to have any dialogue with them. It is interesting to note that apparently the question of voluntary determination did not arise. (See Section 14(1) of the Code - Appendix 3).

5. Between January and March 28, 1995 several employees were dismissed. The Hotel says 17-18; the Association 18-21. The Hotel admits that 15 of these were members of the Association. The Association was concerned about the justice, frequency and manner of dismissals - no charges

Indeed there was evidence that Management made efforts to ascertain the names of Employees "supporting" the Union. Regrettably this was not put to Mr. James in Lord Gifford's cross examination but was denied by implication in Mr. George's cross examination of Mr. Green.

Suffice it to say that the absence of proper written Disciplinary Procedures and compliance therewith by Management as envisaged by Section 5 and 22 of the Code (See Appendix 3) is a matter which we regard as serious and relevant.

6. Mr. Pearnel Charles is a very well known public figure and a highly placed officer (Vice president) of the powerful Bustamante Industrial Trade Union in which the Employees had come to rest their hopes. He was there on that fateful morning.

He is painted by the hotel as the "villain of the piece", the disruptive influence and mentor of the Association. This may be somewhat exaggerated but the essence of the characterisation is not without some merit.

The workers were obviously greatly impressed, excited and unduly influenced if not completely overwhelmed by such a visitation from the big city to assist them.

Mr. Charles was well aware of the legal position re Bargaining Rights.

Quite early on the morning of the 29th of March 1995, Mr. Charles visited the Hotel and asked the General Manager to have discussions with him concerning the matter. In exercise of his perceived Legal right, Mr. James refused to do so. Without the knowledge and consent of the Manager, Mr. Charles proceeded to address the Employees.

It cannot be said that the involvement of Mr. Charles as disclosed to us reflected the sagacity and the finesse which the circumstances demanded in the interest of the employees.

7. On the other hand, however, the Manager's reaction to Mr. Charles attracts critical scrutiny. Managers are trained and expected to deal with such situations while simultaneously promoting and maintaining "good labour relations".

The Association's submission is that Management was so annoyed with Mr. Charles and so obsessed with their desire and determination to avoid him that they jeopardized their interest in the continuing loyalty of their own workers in the process.

While it is true that the workers' wish was for the Bustamante Industrial Trade Union to eventually replace the Association as their Representative, the video-tape confirms that they would have been satisfied for

In view of the provocative nature of the denial to the workers, we must question the wisdom and reasonableness of the Management's stand in this matter. Mr. Charles could easily have been restricted to advise but not to speak directly in the meeting.

8. On the morning of March 29, 1995 the 7 o'clock shift workers changed into their uniforms, punched their time cards and assembled inside the entrance section awaiting a meeting with and an address by the General Manager, Mr. James.

They did so on the instruction and advice of Mr. Green, the President of the Association.

9. The evidence concerning the arrangements for the meeting is conflicting and instructive.

(a) The General Manager, Mr. James said that at home at around 9 p.m. on 28th November, 1995 he heard rumours of Industrial Action intended for the 29th. He sent for Uton Green but Green pleaded "Baby ill" and did not come to him. He spoke to Green the next morning after 6.30 a.m. and Green said "No such thing". He did not speak to any other Member of the Association.

Between 8.20 -8.30 he realised from a Security announcement that Industrial action was taking place. He spoke to Green within 2 minutes. Green asked him to address the workers. He did not say about what and he Mr. James did not ask him. Security had informed him about Mr. Pearnel Charles.

He went to the service area with Mr. Green and after rebuking Mr. Charles and refusing to meet him he addressed the workers. The substance of his address was - I do not know why the gathering, but go back to work and I will either address you (some doubt re this) or meet with the representatives of the Association.

(b) Mr. Uton Green on the other hand, testified that following a meeting on the 28th concerning the dismissal of Patrick Spence, he told Mr. James at around 3.00 p.m. that the staff was "itchy" about their job security and especially so consequent on the Patrick Spence dismissal and he wanted Mr. James to have a meeting with them on the following morning. Mr. James was quite accommodating, promised to think about it and then agreed. Mr. Green arranged for the staff to be informed accordingly.

He reminded Mr. james twice on the morning of the 29th but Mr. James did not live up to his promise.

10. It is our view that there was at the least some understanding

11. There is no question that the staff did not resume or commence work thereafter. We find that it is at this point of time - probably around 9.00 a.m. that the question of with-drawal of services and refusal to obey an instruction to work became relevant.

12. Between 10.30 and 11.00 a.m. Mr. James conveyed by letter his instructions for all staff to resume work immediately or face disciplinary action, adding that "the Company is prepared to meet a representative of your association as soon as resumption of work has been achieved". No reference is made to the address and previous instruction.

No resumption of work ensued.

13. Mr. Uton Green testifies to a meeting at apperoximately 1.20 p.m. where he informed the Manager of the workers' willingness to resume work if Mr. James would add a "no victimization clause" to the letter at 12 above. The Hotel's brief at paragraph 14 identifies a meeting "later that day" i.e. between 10.30 a.m. and 2.00 p.m. but Mr. James says that the request was made around 6.00 p.m. and that it was for "no more victimization".

After consultation with more senior management Mr. James denied the request on the ground that there had been no prior discrimination.

Based on paragraph 14 hereunder, we find that the no discrimination request was more probably before 2.00 p.m. It was a reasonable request and is still in keeping with Industrial Relations practice for work resumption agreements. We cannot help thinking that focussing on the word "more' in the less articulate Association's request borders on the sort of sophistry which ought not to characterise such negotiations.

Exchanged in good faith, the assurance of no victimization is not in our view as empty and meaningless as Counsel for the Hotel suggests. We find the denial of the request unreasonable.

14. The Association's case is that between 2.00 and 2.30 p.m. Mr. Green told Mr. James that the workers would resume with or without the no victimization clause at 4.00 p.m. Mr. James suggested 3.00 p.m. and insists that that was agreed. Mr. Green testifies that the agreement was for resumption "with the 3.00 p.m. shift" with a grace period to bring incoming staff up to date and with the latest resumption at 4.00 p.m. Obviously both sides were not ad idem as to what was agreed.

Many employees were due to commence work between 3.00 and 4.00 p.m. and it would not be unreasonable or out of line with practice for some time to be allowed to brief them on the day's events and the agreements reached.

Mr. Green repeated his understanding of the agreement for latest 4.00 p.m.

Messrs. Green, Hall and Cover corroborate each other in this evidence.

Mr. James had testified confirming his remark concerning no resumption activity at 2.50 p.m. but both Mr. Hudson and himself denied the "abandonment" and "dismissal" allegations.

It seems to us that some such conversation did take place. It is probable that the language was intended to be merely warning and not definitive but it did convey to the Association's representatives that all the "strikers" were dismissed as at 3.00 p.m., notwithstanding Mr. Green's entreaties to Mr. James to withdraw the decision. Mr. Green quoted Mr. james as saying "Uton there is nothing I can do. The Company has taken a stand".

Mr. Green says that he then told the employees that Mr. James said they were all fired and that there was no further meeting with the Management after that.

16. The Manager's evidence is that there were some four meetings after 3.00 p.m.

(i) 4.30 - advised that Staff would not return to work unless represented by the Bustamante Industrial Trade Union.

(ii) 6.00 - request for no victimization clause.

(iii) 6.45 - advised by President - no return to work. Repudiation advised and accepted by Management.

(iv) 8.30 - repudiation acceptance and terminations confirmed.

The Association denies any and all such meetings.

17. The Association's evidence is that the entrance gate was closed at 3.15 p.m. by the Security guards on instructions by Mr. James. Several workers testified to being denied admission.

The Hotel denies this. The check point was relocated to prevent Mr. Pearnel Charles entering the premises but workers who wished to work were not locked out.

Whatever were the Manager's instructions in this matter, the evidence is strong that in the execution not only Mr. Charles but several workers were denied entrance by the Security personnel at the gate.

18. The Manager prepared dismissal letters late into the night of

The hurried operations in this connection contributed to certain errors including the issue of dismissal letters to some employees who should not have received. We were assured and accept that the errors were remedied. The following quote from the Hotel's brief is instructive in this regard:-

> Paragraph 21. "Some who were on day-off on that day, 29th March and were due to return to work on the 30th March but did not work on the 30th March as scheduled were also given letters of termination".

These letters were dated 29th March, 1995 and were inappropriate for issue on the morning of the 30th to this latter category of workers.

Most of the letters were refused by the Employees and subsequently transmitted by Registered mail.

19. Even this foregoing lengthy recitation of and commentary on the evidence does not cover all the important aspects of relevance disclosed in the hearing. But we have given serious consideration and appropriate weight to all the documentary and oral evidence and arguments properly before us and re-visited the video-taped evidence, which confirmed inter alia that there was a cessation of work, no violence, no damage to property and no threat to life and/or personal comfort of those in the hotel.

CONCLUSIONS

(a) It is not in the national interest for workers to indulge in sudden and disruptive cessation of work and to refuse to resume work especially in sensitive areas of the economy without serious and sincere efforts to exhaust other avenues of dispute settlement.

(b) By the same token, it is not in the national interest (if such cessation unfortunately occurs) for Employers to indulge in mass dismissals in exercise of their perceived rights under the letter of the Law without sincere efforts to exhaust all other avenues of settlement.

(c) Both (a) and (b) are particularly relevant to the Tourist Industry especially in a relatively small resort area where the creation of cells of hostility could adversely affect the trade.

(d) Both (a) and (b) are also not reflective of the good industrial relations which the Labour Relations Code promotes and which should form the pattern for both Labour and Management. This pattern requires commitment, honest communication, patience, understanding, fairness, compromise and mutual respect.

(e) In the light of (a) to (d) above we find that the workers were misguided and in violation of their contract when they refused and failed to resume their contractual duties :

.... on learning that the General Manager would not be meeting and addressing them as they had been led to believe and assemble for and

.... on being instructed verbally at first and then in writing to return to work.

The expression of a willingness to so resume but only if conditions external to the contract were satisfied did not negate the effect of such cessation and refusal.

There were however, some mitigating factors e.g.

.... their concern and insecurity following dismissal of so many of their colleagues between January and March, 1995.

.... their perception that such dismissals were procedurally irregular and unjust and calculated to inhibit their efforts for Trade Union representation.

.... their complete loss of confidence in the Association which was self admittedly ineffective in pursuing their interests with the Management.

.... their disappointment and frustrations when the expected meeting with and address on the issues by the General Manager were aborted and

.... the fact that they were excited and unduly influenced by the presence of the Bustamante Industrial Trade Union representatives.

(f) In the light of (a) to (e) above we find that the Management did not demonstrate the understanding and compromise which the circumstances demanded ab initio and throughout.

We draw this reference from the following inter alia:-

.... failure to explain the abortion of the expected meeting with and meaningful address by the General Manager.

.... rejection of an advisor for the proposed meetings whoever that advisor was.

.... refusal of the no victimization clause.

The evidence suggests that the dismissals between January and March were not effected in accordance with the fundamental though not exhaustive provisions of the Code. Since these were a major concern we are compelled by the Act to have regard to the Code in this matter.

(h) Mr. James the General Manager testified that there had not been any strike in the 6 years of the Hotel's operation and this was the first cessation of work in his memory.

The Code contemplates that normally -

> "no worker should be dismissed for a first breach of discipline except in the case of gross misconduct". (Section 22(ii)(b) of Appendix 3).

There was no evidence of other breach or breaches by any of the dismissed workers.

FINDINGS AND DECISION

Viewing the whole matter in the round and broadly and applying principles of equity and fairness we find that all the guilt is not to be laid solely at the door of the workers. Some responsibility for what transpired on the 29th of March, 1995 and what ensued on the following day must be attributed to the attitude of Management. Therefore, even if at any time the Hotel had acquired a legal/contractual right of Summary Dismissal (and we make no such finding) it would be unreasonable and unfair to visit on the workers this severest of punishments.

We have accordingly assessed and taken into account the degree of blameworthiness attaching to the workers on the one hand and the reasonableness or otherwise of the employer's reactions to all the relevant circumstances.

Consequently, in accordance with and in exercise of the powers conferred by Section 12(5)(c) of the Act:-

A. The TRIBUNAL FINDS that:-

(i) the 225 persons listed on Appendix 1 were dismissed by the Hotel;

(ii) all of such dismissals are unjustifiable and

(iii) all 225 such persons wish to be reinstated

FINDINGS and DECISIONS (Cont'd)

(b) THE TRIBUNAL HEREBY ORDERS the Hotel to re-instate all of the 225 persons with effect from the date of their purported dismissals with Forty Percent (40%) of wages up to 30th November, 1995 and full wages thereafter.

For the purposes of this award, wages means "Wages" plus "Gratuity" as described in the Collective Agreement because and to the extent that the most recent amendment to the said Agreement provides for the payment of gratuity "to a minimum guaranteed earning".

Member Mr. K . D. Lewis disagrees with the settlement.

The Tribunal places on record its appreciation for the co-operation of counsel in this matter.

DATED THIS 22nd DAY OF NOVEMBER, 1995

.....
CLINTON DAVIS (MR.)
CHAIRMAN

WITNESS:

.....
DEZLIN A. CLARKE (MISS)
SECRETARY

.....
ALFRED CLARKE (MR.)
MEMBER

INDUSTRIAL DISPUTES TRIBUNAL

I.D.T. Dispute 10/95. Grand Lido Hotel, Negril

EXTRACTS FROM LABOUR RELATIONS CODE

PART 1 - Preliminary

1. Establishment

The Code is established in accordance with the provisions of Section 3 of the Labour Relations and Industrial Dusputes Act, 1975. Its purpose is to set our guidelines which in the opinion of the Minister will be helpful for the purpose of promoting good labour relations, having regard to the following:

Same as (a) (b) and (c) of Section 3(1) of the Act. (See Appendix 2.)

2. Purpose

The code recognizes the dynamic nature of industrial relations and interprets it in its widest sense. It is not confined to procedural matters but includes in its scope human relations and the greater responsibilities of all the parties in the society in general.

Recognition is given to the fact that management in the exercise of its function needs to use its resources (material and human) efficiently. Recognition is also given to the fact that work is a social right and obligation, it is not a commodity; it is to be respected and dignity must be accorded to those who perform it, ensuring continuity of employment, securing of earnings and job satisfaction.

The inevitable conflicts that arise in the realization of these goals must be resolved and it is the responsibility of all concerned, management to individual employees, trade unions and employer's associations to co-operate in its solution. The code is designed to encourage and assist that co-operation.

5. Employers

In keeping with the need for management to be productive and responsive to workers and the society in general, good management practices and industrial relations policies which have the confidence of all must be one of management's major objectives.

The development of such practices and policies are a joint responsibility of employers and all workers and trade unions representing them, but the primary responsibility for their initiation rest with employers.

Employers should therefore ensure that:

(i) in the implementation of these policies due regard is to be paid to their responsibilities to the society;

(ii) in addition to discharging their obligations to workers in respect of terms and conditions of employment, they adopt policies for the social and educational improvement of their workers;

(iii) they respect their workers' rights to belong to a trade union, and to take part in the union's activities, which include seeking recognition for negotiation purposes, and that they are not averse to negotiating in good faith with such

6. Individual Worker

(i) The worker has a responsibility, to his employer to perform his contract of service to the best of his ability, to his trade union to support it financially and to vest in it the necessary authority for the performance of its functions efficiently; to his fellow workers in ensuring that his actions do not prejudice their general well-being including their health and safety; to the nation by ensuring his dedication to the principle of productive work for the good of all.

14. Trade Union Recognition

(1) The Labour Relations and Industrial Disputes Act, and Regulations 1975, set out the conditions and procedures for the taking of ballots to determine bargaining rights on behalf of workers. This does not, however preclude employers and trade unions from voluntarily determining claims for bargaining rights where:

(a) there are no other trade unions representing or claiming to represent the workers in question;

(b) the employer is satisfied that the majority of workers in the proposed bargaining unit are members of the applicant union.

PART VI - Grievance, Dispute and Disciplinary Procedures

20. Disputes Procedures

Disputes are broadly of two kinds:

(a) disputes of right which involve the application and interpretation of existing agreement or rights, and

(b) disputes of interests which relates to claims by workers or proposal by management as to the terms and conditions of employment.

Management and workers representatives should adopt a procedure for the settlement of such disputes which:

(i) should be in writing;

(ii) states the level at which an issue should first be raised;

(iii) sets time limits for each stage of the procedure and provide for extension by agreement;

(iv) precludes industrial action until all stages of the procedure has been exhausted without success;

(v) provides for the Ministry of Labour and Employ-

21. Individual Grievance Procedure

All workers have a right to seek redress for grievances relating to their employment and management in consultation with workers or their representatives should establish and publicise arrangements for the settling of such grievances. The number of stages and the time allotted between stages will depend on the individual establishment. They should neither be too numerous nor too long if they are to avoid frustration. The procedure should be in writing and should indicate:

(i) that the grievance be normally discussed first by the worker and his immediate supervisor - commonly referred to as the "first stage";

(ii) that if unresolved at the first stage; the grievance be referred to the department head, and that the worker delegate may accompany the worker at this stage - the Second stage, if the worker so wishes;

(iii) that if the grievance remains unresolved at the second stage, it be referred to higher management at which stage it is advantageous that worker be represented by a union officer; this is the third stage;

(iv) that on failure to reach agreement at the third stage, the parties agreed to the reference of the dispute to conciliation by the Ministry of Labour and Employment.

(v) a time limit between the reference at all stages;

(vi) an agreement to avoid industrial action before the procedure is exhausted.

22. Disciplinary procedure

(i) Disciplinary Procedures should be agreed between management and worker representatives and should ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure should be in writing and should:

(a) specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;

(b) indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;

(c) give the worker the opportunity to state his case and the right to be accompanied by his representatives;

(d) provide for a right of appeal, wherever practicable to a level of management not previously involved;

(e) be simple and rapid in operation.

(ii) The disciplinary measures taken will depend on the nature of the misconduct. But normally the procedures should operate as follows:

APPENDIX "4"

IN THE SUPREME COURT

THE FULL COURT

Before: Smith, C.J., Theobalds and Gordon, JJ.

Suit No. M. 26 of 1984

R. v. The Minister of Labour and Employment,
The Industrial Disputes Tribunal,
Devon Barrett, Lionel Henry and Lloyd Dawkins
Ex parte West Indies Yeast Co. Ltd.

J. Leo-Rhynie, Q.C., and Angela Robertson for Applicant

R. G. Langrin and Wendell Wilkins for first and second Respondents.
Other Respondents did not appear and were not represented.

Heard: 5, 6, 7 and 8 November 1984, 26 July, 1985.

Smith, C. J. :

Dealing first with the second ground, s. 12(5)(c) of the Act empowers the Tribunal to grant certain relief, there stated, where an Industrial dispute relates to the dismissal of a worker. It was submitted that all this section does is to create an additional remedy and that no new right, additional to the common-law rights of an employee wrongfully dismissed, has been established. It was said that where an employee is dismissed for insufficient cause he has an action for wrongful dismissal but that no cause of action is available to him when his employment is terminated by adequate notice or by payment in lieu thereof. It was submitted, therefore, that the reference by the Minister was invalid as it referred to the Tribunal a matter on which it could not adjudicate. It was submitted, contra, that s. 12(5)(c) expressly gives a right to a worker to complain of an unjustifiable dismissal which is otherwise lawful.

In my judgment, the contention on behalf of the applicant company is misconceived. Mr. Leo-Rhynie contrasted the provisions of s. 12(5)(c) with the provisions of the corresponding United Kingdom legislation where "unfair" is used instead of "unjustifiable". I understood him to concede that if s. 12(5)(c) had used the word "unfair" a worker could compalin to the Tribunal in spite of a dismissal which was lawful. This concession is consistent with the views of the learned author of Harvey on Industrial Relations and Employment Law, cited by Mr. Leo-Rhynie. Dealing with the topic "Dismissal at common law - lawful and wrongful", the view is expressed in para. 11(28.01) that even if a dismissal "Is justifiable at common law,