

1973

Present: Wijayatilake, J.

L. HEWAVITHARANA, Appellant, and P. B. DE LANEROLLE,
Respondent

S. C. 274/71—Labour Tribunal, 4/M/937

Labour Tribunal—Ex parte inquiry in the absence of a party—Letter requesting postponement of the inquiry—Failure of the Secretary to the Tribunal to draw attention to the letter—Liability of the ex parte order to be set aside—Industrial Disputes Regulations, 1958, Regulation 28—Need for maintaining a journal in Labour Tribunal proceedings.

Where, in an industrial dispute, the inquiry was held by the Labour Tribunal *ex parte* on account of the failure of the Secretary to the Tribunal to draw the attention of the Tribunal to a letter sent by the absent party requesting a postponement of the proceedings on the ground that he was in hospital following an accident—

Held, that the *ex parte* order was liable to be set aside as it did not conform to Regulation 28 of the Industrial Disputes Regulations of 1958.

Observations on the need for maintaining a journal in Labour Tribunal proceedings.

APPEAL from an order of a Labour Tribunal.

L. W. Athulathmudali, with A. J. I. Tillekewardene, for the employer-appellant.

Applicant-respondent absent and unrepresented.

June 12, 1973. WIJAYATILAKE, J.—

The applicant-respondent is absent and unrepresented. Mr. Athulathmudali, learned counsel for the employer-appellant submits that the learned President has failed to conform to Regulation 28 of the Industrial Disputes Regulations of 1958. This Regulation reads as follows:—

“If without sufficient cause being shown any party to any proceedings before an Industrial Court or an arbitrator or a Labour Tribunal fails to attend or to be represented, the Court or arbitrator or Labour Tribunal, as the case may be, may proceed with the matter notwithstanding the absence of such party or any representative of such party.”

In the instant case it would appear that the Chief Clerk of the Mawarala Tea and Rubber Estate of which the applicant was an employee had addressed a letter dated 20.8.71 to the Secretary of the Labour Tribunal requesting a postponement of the inquiry on behalf of the employer as the Superintendent of the estate was not in a position to attend the inquiry, as he was in hospital following an accident. This inquiry had been

fixed for 27.8.71. It would appear from the face of this letter that it bears the date stamp of the Labour Tribunal bearing the date 23.8.71. However, when this matter came up for inquiry on the 27th August, the case had proceeded to *ex parte* inquiry and it is quite clear from the proceedings that the learned President's attention had not been drawn to this letter and he had accordingly made an *ex parte* order. Mr. Athulathmudali, very strenuously submits that in the light of this letter, it is quite clear that this Tribunal has not conformed to Regulation 28 referred to. I am inclined to agree with him. This letter having been received in the office of the Labour Tribunal I cannot understand why it had not been shown to the President at least on the date of inquiry. Perhaps a journal has not been maintained in this case and in consequence this has been overlooked by the office. This is a most unsatisfactory feature and in my opinion, the necessity for the maintaining of a journal in Labour Tribunal proceedings should be considered seriously by these Tribunals or else it could lead not only to a mal-administration of justice but to a waste of public time.

I would accordingly set aside the order of the learned President and direct that the case be sent back for inquiry *de novo* before another President. I make no order as to costs.

Case sent back for fresh inquiry.

