

STATE (FERRIS)

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THE HIGH COURT

STATE SIDE

1984 No. 219 SS

THE STATE (JAMES FERRIS)

PROSECUTOR

-v-

EMPLOYMENT APPEALS TRIBUNAL

RESPONDENT

AND

ROYAL LIVER FRIENDLY SOCIETY

ADDED RESPONDENT

Judgment of Mr. Justice Gannon delivered on the 30th day of July 1984

This application to make absolute conditional orders of certiorari and mandamus relates to a determination of the Employment Appeals Tribunal under the Unfair Dismissals Act 1977 (to which I will refer as "the Act"). The prosecutor was employed prior to the 10th of August, 1983 as an industrial branch inspector by the added respondents, the Royal Liver Friendly Society (to whom I shall refer to as "the Employer"). Having been dismissed then from that employment he applied on the 8th September, 1983 for redress under the Act to the respondent, the Employment Appeals Tribunal (to whom I shall

refer as "the Tribunal"). After a hearing on the 13th of March, 1984 the Tribunal issued its determination on the 26th of March, 1984 declaring that by virtue of section 15 (3) of the Act the prosecutor is not entitled to redress under the Act. In the document of its determination the Tribunal recited that the prosecutor had issued High Court proceedings seeking, inter alia, "damages for breach of contract, wrongful dismissal, and breach of the claimant's constitutional rights to natural justice". The proceedings there referred to had been instituted by the issue of a plenary summons 1983/4377P on the 23rd June, 1983 in which the prosecutor is plaintiff and the employer is defendant. The prosecutor's employment had been suspended on full pay on the 23rd of March, 1983 for stated reasons pending investigation. A statement of claim was delivered on behalf of the prosecutor on the 8th of July, 1983 in which no claim for damages for wrongful dismissal was made, but a claim was made, inter alia, for damages for wrongful suspension in addition to claims for injunctions and declarations.

On the 7th May, 1984 the prosecutor obtained from O'Hanlon J. a conditional order of certiorari directed to the Tribunal to send before the court for the purpose of being quashed their determination

unless cause be shown to the contrary. In conjunction with that order O'Hanlon J. ordered the Tribunal to proceed to consider the claim of the prosecutor against the employer unless cause be shown to the contrary. The grounds for such orders are stated to be those set out in paragraphs 7, 8, and 9 of the affidavit of the prosecutor filed on the 7th May, 1984. In paragraph 7 the prosecutor swears that the employer was aware from a letter of 24th September, 1983 that the inclusion in the plenary summons of the words "wrongful dismissal" was a typeographical error and that he could not have made a claim of that nature at the time the plenary summons was issued or at any time prior to 10th August, 1983 and that such claim was not made in the statement of claim. In paragraph 8 the prosecutor deposes to the facts that the Tribunal hearing was held on the 13th March, 1984 and that the Tribunal decided that as he had issued High Court proceedings seeking damages for breach of contract, wrongful dismissal and breach of his constitutional right to natural justice he was not entitled by virtue of section 15 (3) of the Unfair Dismissals Act 1977 to redress under that Act. In paragraph 9 the prosecutor deposes to the fact that on the 3rd of

April, 1984 the plenary summons was amended upon application to the Master of the High Court by the substitution of the word "suspension" for the word "dismissal" in the general endorsement of claim. These three paragraphs of the prosecutor's affidavit are confined to averments of facts and do not set out any grounds for the making of an order of certiorari or of an order of mandamus. Following, and consequent upon, the service of the conditional order the Tribunal show cause to the contrary by notice dated the 1st of June, 1984 on two grounds, namely: their decision was made in accordance with law, and it was not made in excess of jurisdiction. The manner in which the decision accords with law, as alleged, is stated in the notice to be that the Tribunal was not entitled to entertain the claim for redress having regard to section 15 (3) of the Act as the appellant, the prosecutor, had initiated proceedings in the High Court claiming damages. The conditional order made by O'Hanlon J. on the 7th of May, 1984 makes no provision for service upon the employers who were parties to the hearing before the Tribunal, but the employers have submitted evidence on affidavit. By what authority the employers were made

additional respondents and these additional affidavits filed has not been disclosed. The nature of the matter is such that they should have been parties as respondents to these proceedings from the outset. From the Tribunal's notice showing cause and the affidavits filed on behalf of the employer the issues for determination on this application are clear to all concerned notwithstanding the absence of any expressed grounds for the conditional orders.

On this motion on behalf of the prosecutor to make absolute notwithstanding cause shown the conditional orders of certiorari and mandamus the grounds advanced in argument in support of the motion were:

- (a) that the Tribunal was wrong in law in determining that the proceedings which had been instituted by the prosecutor in June, 1983 were such, having regard to sub-section (3) of section 15 of the Act, as would disqualify the prosecutor for redress pursuant to the Act; and
- (b) that by making such determination the Tribunal wrongfully disclaimed and deprived itself of jurisdiction.

By way of showing cause it was submitted on behalf of the employer and of the Tribunal that the determination of the Tribunal was correct in law,

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that it was a determination made within jurisdiction, and was not a declining of jurisdiction, and was a determination which if wrong in law is appealable.

The argument advanced in support of the prosecutor's application on this motion was exclusively directed to the inferences to be drawn from the facts put before the Tribunal at its hearing as to the events which had occurred, the time of institution of the common law proceedings for damages, and the nature of the relief capable of being obtained therein. The submissions of the prosecutor in this application are that the Tribunal made a mistaken interpretation of the provisions of sub-section (3) of section 15 of the Act. In this court the prosecutor seeks and has argued for an interpretation of sub-section (3) of section 15 which would demonstrate that the determination of the Tribunal on the 26th March, 1984 was wrong in law. It was the contention of the prosecutor that the purpose of section 15 of the Act is to ensure that an employee while retaining his right of recourse to the courts for damages at common law for wrongful dismissal may not be compensated in two different proceedings for the same wrong, namely by damages in a common law action and by redress under section 7 of the Act in respect of a

wrongful dismissal. It was further submitted that sub-section (3) of section 15 applies only when the proceedings for damages are in respect of the same wrongful dismissal to which the claim for redress under the Act relates. It was also contended for the prosecutor that the Tribunal made an incorrect assessment of the facts put before it and upon a correct interpretation of the facts their determination was wrong in law. It was not contended for the prosecutor that section 15 of the Act excludes from the jurisdiction conferred by the Act on the Tribunal a claim by an employee who had to make his election under sub-section (2) or sub-section (3) of section 15. Neither was it contended that if the facts were such as would have brought the prosecutor within the terms of sub-section (3) of section 15 the determination made by the Tribunal would have been wrong or would have amounted to a declining of their jurisdiction.

The Act confers on the Tribunal the function upon claim being made of enquiring, inter alia, into the facts relative to a dismissal and such enquiry necessarily includes a determination of whether or not a dismissal was unfair and what form of redress should be afforded. Clearly it is also a function of the Tribunal and within its jurisdiction to determine whether or not a claimant whose claim may be well founded

so entitled to redress under the Act has made the election as to the exercise of his rights required by section 15 of the Act. Because section 15 requires findings of facts the function in that respect is vested in the Tribunal and is part of the jurisdiction conferred upon it. A correct determination by the Tribunal in a proper case that a claimant whose entitlement otherwise to redress under the Act has been established is disqualified by section 15 (3) of the Act from obtaining redress under the Act would not be a disclaimer of jurisdiction by the Tribunal. A determination by the Tribunal whether correct or not that a claimant is or is not entitled by virtue of section 15 to redress under the Act is within the jurisdiction conferred on the Tribunal by the Act even though it involves a ruling of law. In the instant case the determination of the Tribunal brought before this court for the purpose of being quashed on the application of the prosecutor is not a disclaimer of nor a refusal to exercise jurisdiction nor is it in excess of the jurisdiction of the Tribunal.

Without enquiring into the facts put before the Tribunal at the hearing on the 13th of March, 1984 it is not possible to find any fault with the determination as set out in the certificate dated the 26th of

March, 1984. Upon the case made for the prosecutor it is possible to say the determination of the Tribunal is wrong in law, but it is not possible to say it is bad on its face. The conduct of the hearing and the manner in which the determination of the Tribunal was reached have not been challenged and no suggestion has been made of irregularity nor misconduct. Because the only purpose and effect of this application to this court is, as it was submitted in argument, to obtain a ruling in law of the correct interpretation of section 15 (3) of the Act so as to show that on the true facts the determination on the 26th of March, 1984 of the Tribunal is wrong in law these proceedings are misconceived. The jurisdiction of this court to call upon an inferior Tribunal whose decision is appealable to send up to be quashed its order and records relating thereto should not be invoked in any case where such Tribunal has acted within its jurisdiction with justice and propriety and issued its determination in a regular manner unless the jurisdiction itself can be challenged.

Cause shown must be allowed and the conditional orders discharged.

S.G.
16 July 1984