Vine v National Dock Labour Board

Overview | **[1957] AC 488**, | [1956] 3 All ER 939, | [1957] 2 WLR 106, | [1956] 2 Lloyd's Rep 567, | 101 Sol Jo 86

VINE APPELLANT; AND NATIONAL DOCK LABOUR BOARD RESPONDENT. [1957] A.C. 488

[HOUSE OF LORDS.]

VISCOUNT KILMUIR L.C., LORD MORTON OF HENRYTON, LORD COHEN, LORD KEITH OF AVONHOLM and LORD SOMERVELL OF HARROW.

1956 Oct. 9, 10, 11, 15; Dec. 5.

Tribunal — Statutory — Control by courts — Declaration — Labour board — Delegation of disciplinary powers by national board to local board — Unauthorized delegation by local board to committee of local board — Wrongful dismissal — Whether damages sufficient remedy — Whether declaration should be granted — Dock Workers (Regulation of Employment) Order, 1947 (S.R. & O. 1947, No. 1189), cll. 16, 17.

Dock — Dock workers — Labour board. Contract — Repudiation.

The plaintiff, a dock labourer employed in the reserve pool by the defendants, the National Dock Labour Board, under the scheme set up by the Dock Workers (Regulation of Employment) Order, 1947, was allocated work with a stevedoring company but failed to report to them. A complaint lodged with the defendants was heard by a disciplinary committee appointed by the local dock labour board, who upheld the complaint and, purporting to act under cl. 16 (2) (*c*) of the Order gave the plaintiff notice to terminate his employment with the defendants. His appeal to a tribunal set up under the scheme was dismissed. He started proceedings against the defendants claiming damages for wrongful dismissal and a declaration that his purported dismissal was illegal, ultra vires and void. Ormerod J. awarded him damages and granted a declaration. The Court of Appeal held that damages were a sufficient remedy and that a declaration should not be granted. On appeal to the House of Lords:-

Held, that the plaintiff's dismissal was invalid, since the local dock labour board had no power under the scheme to delegate to a disciplinary committee their disciplinary powers given by clause 16 of the Order, under which a man might be entirely excluded from the employment of a dock worker.

In considering whether a quasi-judicial function can be delegated, the court must take into account the importance of the duty and the persons who would delegate.

Barnard v. National Dock Labour Board [1953] 2 Q.B. 18; [1953] 1 All E.R. 1113 applied.

Held, further, that, although it might be that the discretion to give a declaratory judgment should be exercised sparingly, in the present case, having regard to the background of the scheme, it was proper that, in addition to awarding damages, the court should declare the plaintiff's rights.

Decision of the Court of Appeal [1956] 1 Q.B. 658; [1956] 1 All E.R. 1 varied.

---------- *[1957] A.C. 488 at 489*

APPEAL from the Court of Appeal (Singleton and Parker L.JJ., Jenkins L.J. dissenting).

The appeal and cross-appeal in this matter were brought by leave of the House of Lords and were from a judgment of the Court of Appeal given and entered on November 30, 1955, whereby the court dismissed the appeal of the National Dock Labour Board, the defendants in the action, the respondents on the appeal and the appellants on the cross-appeal, but varied the judgment of Ormerod J. in the action tried by him without a jury on July 14, 15 and 28, 1955, at the Hampshire Summer Assizes. Ormerod J. granted a declaration that the purported dismissal by the respondent board of Walter Charles Vine, the plaintiff in the action, the appellant on the appeal and respondent on the cross-appeal, was illegal, ultra vires and invalid, and awarded him £250 damages for wrongful dismissal. The Court of Appeal struck out the declaration.

The facts stated by Viscount Kilmuir L.C. were as follows: The plaintiff was at the material time a dock labourer in the Port of Southampton and had been so employed for many years and was in fact a "registered dock worker available for work" and "in the reserve pool" within the scheme hereafter described. He was therefore deemed to be in the employment of the National Board. All dock workers are employed and controlled under a scheme embodied in the Schedule to the Dock Workers (Regulation of Employment) Order, 1947, which was made under section 2 of the Dock Workers (Regulation of Employment) Act, 1946.

The relevant portions of the scheme were:-

A. Clause 1, which sets out its objects of ensuring regularity of employment and availability of workers.

B. Clause 3, which establishes the National Board and sets out its functions, including keeping the register or records of dock workers.

C. Clause 3 (3), by which it is the duty of the National Board to delegate as many as possible of their functions to local boards.

D. Clause 5 (2), which deals with the composition of local boards and imports the principle of equal numbers of employers and workers.

E. Clause 6, which (inter alia) includes within the matters for which the local board is responsible to the National Board removal from the register of the name of any dockworker, in accordance with the provisions of the scheme.

---------- *[1957] A.C. 488 at 490*

F. Clause 8, by which a registered dockworker available for work is required to carry out the directions of the local board.

G. Clause 14, which contains the conditions of payment under the scheme for unemployment or under-employment.

H. Clause 15, which provides for disentitlement to such payment and also for a procedure which has a special relevance; paragraph (4) provides: "The local board shall consider any written report received under paragraphs (2) or (3) hereof, and if, after investigating the matter, the board notifies the registered dock worker that it is satisfied that there has been such failure or behaviour as aforesaid, the registered dock worker shall not be entitled to any payment, or to such part of any payment as the board thinks fit, under clause 14 hereof in respect of the pay week in which such failure or behaviour occurred or continues."

I. Clause 16 (2), which provides: "Where a registered dock worker available for work fails to comply with any of the provisions of the scheme, then without prejudice to and in addition to the powers conferred by clause 15 hereof, the local board may take any of the following steps as regards that dock worker - it may (*a*) determine that for such period as it thinks proper he shall not be entitled to any payment under clause 14 hereof; (*b*) suspend him without pay for a period not exceeding seven days; (*c*) give him seven days' notice of termination of employment; (*d*) dismiss him summarily."

J. Clause 17, which provides: "(1) The employment of a registered dock worker in the reserve pool who is available for work shall not be terminated except - … (*b*) by the giving of seven days' notice in writing … (2) A registered dock worker in the reserve pool who is available for work shall not leave his employment with the National Board except by giving seven days' notice in writing to the local board or so as to be employed in accordance with the provisions of the Scheme. (3) [That where the employment of a registered dock worker by the National Board has been determined as aforesaid] his name shall forthwith be removed from the register or record.

K. Clause 18, which contains the provisions for certain appeals to an appeal tribunal appointed by the local board.

On November 6, 1947, the South Coast Local Dock Labour Board adopted standing orders under which the local board (A) should be responsible for administering the scheme and such

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matters as were assigned to the local board by the scheme or by the defendants (the National Board), subject only to such limitations as might be imposed from time to time by the National Board; (B) might delegate to a committee such of its functions and powers as it might deem appropriate provided such delegated committee conformed to the regulations and restrictions imposed by the National Board, or the local board; (C) determined its own quorum, to consist of seven persons.

The local board set up disciplinary committees consisting of two members (one from the

employers and one from the dock workers); such duties were to be undertaken by the members of the local board in turn.

On February 3, 1948, the National Board, in accordance with clause 3 (3) of the scheme, approved the delegation of functions to committees of local boards, including the delegation of powers to disciplinary committees in the manner previously resolved by the local board.

On October 29, 1952, the plaintiff was detailed for work with a company of stevedores, J. Rose & Co., Ltd. (who were in fact registered employers within the scheme) and was required to start shift work at 8 p.m. on that day. The plaintiff did not attend for the work and was reported to the local manager of the National Board by the stevedores by letter dated October 30, 1952. On the same day one E. W. Chapman, the local manager on behalf of the National Board, reported this complaint to the plaintiff and invited his explanation. By letter dated November 1, 1952, the plaintiff gave the following explanation in writing: "Had requested to port officer to be given work so that I could finish at 5 o'clock and was refused."

By letter dated November 6, 1952, Chapman, on behalf of the National Board, gave notice to the plaintiff that a disciplinary committee would consider his case on November 13 and requested him to be in attendance. On November 13 a disciplinary committee (consisting of two members of the local board, one representing the employers and one representing the dock workers) was convened in accordance with the rules and standing orders of the local board, already referred to, and heard the complaint made against the plaintiff and his explanation.

The minutes of the meeting of the disciplinary committee show that, after a careful consideration of all the facts and circumstances of the case, including the plaintiff's previous record, the committee agreed that he should be given seven days' notice to terminate his employment with the National Board

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on grounds which they stated as follows: "Failure to report for work at 8 p.m. on October 29, 1952, after being allocated at the 12.45 p.m. call that day, in addition to failure from time to time to comply with terms of local agreements."

In accordance with the decision of the committee, notice in writing was on the next day given to the plaintiff to terminate his employment with the National Board on Saturday, November 22. By letter dated November 16, 1952, the plaintiff gave notice of appeal against this decision and was given a statement of the case against him.

On November 29, 1952, the plaintiff's appeal was heard and disallowed without variation; he was consequently informed that the notice terminating his services remained operative and he ceased to work for the National Board from November 22, 1952.

Dingle Foot Q.C. and ***Thomas Kellock*** for the appellant. The issues are (1) whether the appellant was lawfully dismissed by the respondents; (2) whether the judge rightly exercised his discretion in granting a declaration; (3) whether the appellant elected at any time to treat his contract of employment as repudiated; (4) whether the award of £250 was adequate; (5) whether the appellant's claim was barred by the Limitation Act, 1939. The House is mainly

concerned with the first two issues and *Barnard v. National Dock Labour Board*1 must be considered.

Under the Order of 1947 it does not matter whether the precise relationship is that of master and servant. What does matter is whether a man is on the register. In return for the obligations imposed on the dock worker by the scheme he is given a degree of security from unemployment so that, apart from redundancy, he can only be dismissed for some default on his part. The local board, who consider such matters, have no power to delegate their functions to a disciplinary committee. Magistrates cannot delegate their powers to some of their number, nor can a jury. The Court of Appeal were right, both in this case and in *Barnard's case*,1 in holding that the functions of the board are judicial or quasi-judicial and cannot be delegated. The appellant was entitled to have his case considered by the tribunal prescribed. man may be dismissed (1) for disciplinary reasons under clause 16, and (2) for the purpose of reducing the register in the event of redundancy. The latter case would be a ministerial act which could be carried out by the servants of the National Dock Labour

1 [1953] 2 Q.B. 18; [1953] 1 All E.R. 1.

Board: clause 3. But in the former case there is no power to delegate. As to "judicial" and "quasi-judicial," see *Cooper v. Wilson*.2 Here one is dealing, not merely with a statutory scheme or with a contract of master and servant, but with something which determines a man's status. As to the distinction between administrative and judicial decisions, see the Report of the Committee on Ministers' Powers (1932, Cmd. 4060), p. 81. Here the local board was charged to perform a quasi-judicial act and could not delegate it. If it could do so, it would be in its power to delegate its functions to a body on which employers and employed were not equally represented and which was not a microcosm of itself. Whether action is taken under clause 16 or clause 17 in a disciplinary matter the proceeding is judicial or quasi-judicial. Clause 17, which is a limitation on clause 16, by itself confers no power to terminate. Even if, contrary to the appellant's contention, the clauses are to be read disjunctively and separately, on the true construction of clause 17 it still imposes a judicial or quasi-judicial function, because, on any view, there is a right of appeal: see clause 18. Under clause 16 there is clearly a judicial or quasi-judicial function and it would be strange if the position were not the same under clause 17. On the face of it, one would suppose that the words used mean the same thing in each clause.

As to the appropriate remedy, a declaration is the only way in which the legal rights of the parties can be established. The appellant's argument on this point is perfectly set out by Jenkins L.J. in the Court of Appeal.3 A variety of cases where the court has granted relief by declaration or injunction were referred to by Denning L.J. in *Barnard's case*.4 The question of election is really the same point. If the appellant were left to his remedy in damages, £250 would be inadequate. The limitation point may be left till after the cross-appeal has been argued.

Harold Brown Q.C. and ***Guy Willett*** for the respondents. The respondents' submissions are:

(1) The dismissal of the appellant was an administrative act rightly carried out on behalf of the respondent board by its delegate, the disciplinary committee. (2) If the act of dismissal could be carried out only by the local board, it was in fact so carried out. Alternatively, it was the respondents' own administrative act which could be and was properly delegated by the local board. (3) If the act of dismissal

2 [1937] 2 K.B. 309, 340-341; 53 T.L.R. 623; [1937] 2 All E.R. 726.

3 [1956] 1 Q.B. 658, 675-676; [1956] 1 All E.R. 1.

4 [1953] 2 Q.B. 18, 41-42.

was wrongful, the appellant's only remedy is in damages; it was a repudiation of the employment and the appellant elected to accept the repudiation, so that an award of damages was the only relief open to him. In any event no declaration should be granted. (4) The award of damages was excessive, whether calculated to the date of trial or for all time.

The real objects of the scheme are to ensure that there are enough men to do the work and that the workers have adequate work and a guaranteed wage, and to arrange for men to attend regularly at the docks. The guaranteed wage is to be paid only to regular attenders; hence the necessity of the register. The scheme presupposes the old common law relationship of master and servant with the private employer, save that a man in the reserve pool is in the employment of the board.

The scheme must be construed in the light of the history of dock work and against the background of the employers' needs of labour and inducements to dock workers. The outstanding features of this background were the employers' uncertainty of getting labour and the casual nature of work for dock workers, particularly as men from other trades would attend for work at the docks when their own trade was slack. The objects of the scheme are set out in section 1 of the Dock Workers (Regulation of Employment) Act, 1946, and clause 1 (2) of the scheme. These do not show any intention to give security of employment in the sense that the Rent Restriction Acts and the Landlord and Tenant Act, 1954, give security of tenure: see the long title of the Act of 1946. The respondent board have no monopoly. It is not a nationalized industry or a trading concern. It is the co-ordinating link between employers and men. The employers pay the wages due from them to the respondent board, who in turn pay the dock workers (clauses 6 (*f*) and 9 (6)), and they also pay contributions towards the cost of operating the scheme (clauses 3 (1) (*h*) and 21). The board run the industry, in the sense of administering the scheme in the interests of the community and not for the benefit of employers or dock workers. There is no magic in registers kept under the scheme. They are merely necessary machinery to keep a check on men who attend regularly, to see that they alone have a right to a guaranteed wage and so to keep out casuals. In every reference in the scheme to the register of dock workers the description is register or record: see clauses 2, 3 (1) (*c*) (*e*), 6 (1) (*b*), 11 (1) and many others except clauses 5 (7) (*a*) and 18 (1), (2).

The scheme is a statutory contract of service. The men are allocated employment, whether for shift, day or week, and are then in the employment of the registered employer. See clause 2 (1) for the definition of "dock employer" and clauses 6 (1) (*f*), 9 (5), 10 (1) and 12. When not allocated, dock workers are in the employment of the respondent board and in the reserve pool. When during a week a dock worker is partly employed and partly in the reserve pool, his wages are made up, if necessary, to the guaranteed minimum (clause 14 (1)). This is not a case of an overall employer (the respondent board) hiring out men to employers. The position of master and servant alternates between the respondent board and the dock worker and the registered employer and the dock worker.

As to clause 16 (2), the first line is wide enough to cover both types of employment; (*a*) can only refer to the reserve pool; (*b*) can refer to the reserve pool and private employment; (*c*) and (*d*) must refer to allocated employment. There is no appeal in the case of (*c*) and (*d*). There is no provision for striking off the register. Clause 17 deals with dock workers in the reserve pool. The proper construction of clause 17 must exclude the reserve pool from (*c*) and (*d*). Although in an ordinary contract of service the master alone can dismiss, here the local board is given special power. Clause 16 (2), though expressed to be in addition to, and without prejudice to, clause 15, generally speaking, gathers up the ends of clause 15. Otherwise (*c*) and (*d*) are quite unnecessary, since there is similar power under clause 15 (3), and clause 17 can be relied on alone for the reserve pool. Further, clause 15 (3) provides for report to the local board and (*c*) and (*d*) enable the local board to terminate, or dismiss from, allocated employment in cases where the private employer refuses, or does not wish, or neglects, to do so. The construction contended for by the appellant means that clause 16 (2) (*c*) and (*d*) can only refer to the reserve pool. If that were so they would be unnecessary, as clause 17 provides for it. In the statement of claim the appellant relies on the act of dismissal being under clause 16, and if the act was not under clause 16 the basis of the complaint goes.

Clause 17 is to be read alone and not with clause 16. The marginal note "termination of employment" is different from the marginal note of clause 16. If the clauses are read together, the respondent board can never dismiss for "serious misconduct" unless it is a breach of the scheme: see the opening words of clause 16 (2). Pilfering, incitement to unofficial strikes, the

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commission of crime generally, are not breaches of the scheme, and so there would be no remedy against the dock workers. Further, in the case of old age or infirmity, if a dock worker reported at call stands he would have to be paid a guaranteed wage for life as there would be no way of discharging him save by agreement, which in fact is the case in this port. If it had been intended that clause 17 should be read with clause 16, then clause 16 (2) would have had suitable words added to cover men in the reserve pool, e.g., at the end of the clause: "save that in the case of dock workers in the reserve pool such dismissal shall be only in the case of serious misconduct." It is noteworthy that in clause 17 (1) (*b*) the notice is required to be in writing, whereas this is not so under clause 16 (2) (*c*). Again. suitable words could have been added to cover the case of men in the reserve pool, if it had been required to be read with it. Most of clause 17 has nothing to do with clause 16 and it is unlikely that the draftsmen would have added matters of a purely administrative character. Clause 16 (2) specifically says "without

prejudice to and in addition to the powers conferred by clause 15." If clause 17 was to be read with clause 16, one would expect similar words of reference or, for example, after the word "terminated" in clause 17 (1) the words "under clause 16 (2) (*c*) and (*d*) hereof."

Clause 18 did not confer any right of appeal on a workman aggrieved by the termination of his contract under clause 16 (2) (*c*).

The dismissal was an act of the respondents under clause 17 (1) (*b*) which was quite independent of the power conferred on the local board by clause 16 (2).

It would be wrong to deprive the respondents of their common law rights. They are responsible for a scheme extending to all parts of the country. It would be intolerable if they could not act as an ordinary reasonable employer can act. There must of necessity be delegation, since the board cannot meet to decide all questions of dismissal. There is a wide range of disciplinary activities involving hundreds of cases a year. Clause 17 was never in question in *Barnard's case*.4 But, in any event, that case was wrongly decided.

As a matter of practice it was the rule that a man should have written notice of any complaint and be given an opportunity to be present when the committee was considering the matter, but there was no compulsion either on the respondents or on the local

4 [1953] 2 Q.B. 18.

board to hold any inquiry. Either a procedure is judicial or it is not. "Quasi-judicial" just means that one must act reasonably in all the circumstances. Here the action taken was purely administrative and there was no duty fixed on the local board or on whoever had the power of dismissal of holding any inquiry. The position was not at all like that in *General Medical Council v. Spackman*.5 As to judicial and quasi-judicial proceedings, see *Local Government Board v. Arlidge*6 and *B. Johnson & Co. (Builders) Ltd. v. Minister of Health*.7 See also *Nakkuda Ali v. Jayaratne*.8 No injustice was done here: see *Osgood v. Nelson*.9 This was not a tyrannical act against a man with a good record. The appellant had not a good record.

Declarations should only be granted cautiously and sparingly: *Russian Commercial and Industrial Bank v. British Bank for Foreign Trade Ltd*.10 The view against the respondents' contentions is put with most force in *Hanson v. Radcliffe Urban District Council*.11

[VISCOUNT KILMUIR L.C. intimated that their Lordships required to hear argument in reply only on the question of the right to delegate to a disciplinary committee.]

Dingle Foot Q.C. in reply. The powers are judicial or quasi-judicial and there can be no question of delegation: see *Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson*,12 where no distinction arose between deciding cases and acting administratively. In

the departmental authorities the acts of officials are regarded as being those of the Minister and there is no question of delegation. A judicial act implies that the matter must be decided hv a body sitting in something like a court of justice. It is of the essence of the conception that a tribunal sitting judicially must decide the matter itself. Here the functions are imposed directly on the local board and cannot be discharged by anyone else. The matter must be decided by the local board's own judicial mind and not by that of anyone else. The scheme imposes obligations as well as privileges on dock workers. A man cannot be dismissed save for a breach of the scheme, and that involves a judicial inquiry. *Johnson's*

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5 [1943] A.C. 627; 59 T.L.R. 412; [1943] 2 All E.R. 337.

6 [1915] A.C. 120; 30 T.L.R. 672.

7 (1947) 177 L.T. 455, 458; [1947] 2 All E.R. 395.

8 [1951] A.C. 66, 77-78; 66 T.L.R. (Pt. 2) 214.

9 (1872) L.R. 5 H.L. 634, 646.

10 [1921] 2 A.C. 438, 445, 448; 37 T.L.R. 919.

11 [1922] 2 Ch. 490, 508; 38 T.L.R. 667.

12 [1892] 1 Q.B. 431, 452; 8 T.L.R. 352.

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case,13 relied on by the respondents, was an example of a purely administrative decision: see *per* Cohen L.J. In *Nakkuda Ali's case*14 the matter was held to be administrative.

Here under clause 16 the question whether or not a man has committed a breach of the scheme is purely a question of right and wrong equivalent to a lis between the board and the man himself. The board must distinguish between its judicial and its prosecuting capacity. Here there are all the characteristics of a judicial proceeding.

Their Lordships took time for consideration.

December 5. VISCOUNT KILMUIR L.C. My Lords, the appeal and cross-appeal in this matter are brought by leave of your Lordships' House from a judgment of the Court of Appeal dismissing an appeal from, but varying the judgment of, Ormerod J. The judge had granted a declaration that the purported dismissal by the National Dock Labour Board (whom I shall call "the National Board") of Mr. Vine (whom I shall call "the plaintiff") was illegal, ultra vires and invalid and had awarded him £250 damages. The Court of Appeal, by a majority, struck out the declaration.

As a result of the appeal and cross-appeal your Lordships have now to decide whether that purported dismissal was invalid, whether the majority of the Court of Appeal were right in striking out the declaration and whether the award of £250 damages should stand.

[His Lordship stated the facts and continued:] On these facts and provisions of the scheme Mr. Harold Brown submitted that the National Board had an independent power, under clause 17 of the scheme, which they could and did exercise through the disciplinary committee, who acted on their behalf. I do not think that it is necessary to decide whether they could exercise a power independent of that of the local board under clause 16, because I am quite certain that they did no such thing. The happenings that I have set out above occurred as the result of the procedure laid down by clauses 15 (4) and 16 (2) being put into operation by the disciplinary committee on behalf of the local board. Mr. Brown's first submission is as unreal as it is ingenious and therefore fails.

I now turn to the contention that the local board could delegate its functions to the disciplinary committee. I have had

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13 177 L.T. 455, 463.

14 [1951] A.C. 66.

[1957] A.C. 488 at 499

the advantage of seeing in print the opinion which my noble and learned friend, Lord Somervell of Harrow, is about to express and, on this part of the case, I find myself in complete agreement with it. It was urged that the very idea was negatived by the fact that this was a quasi-judicial act. I am not prepared to lay down that no quasi-judicial function can be delegated, because the presence of the qualifying word "quasi" means that the functions so described can vary from those which are almost entirely judicial to those in which the judicial constituent is small indeed (see *Cooper v. Wilson*,1 *per* Scott L.J.). As so much has been said on this point I think it is right to say that there is a judicial element here in the sense discussed by Donovan J. in *Rex v. Metropolitan Police Commissioner*, *Ex parte Parker*.2

Nevertheless, that is not the end of the matter. It is necessary to consider the importance of the duty which is delegated and the people who delegate. In this case the duty is to consider whether a man will be outlawed from the occupation of a lifetime. The scheme will not work unless discipline is maintained by the wise use of that power. I do not make any reflection on the ability or sense of justice of the pairs of gentlemen who from time to time form the committee. I notice that the pair would always consist of one representative of the employers and one of the workers, but my view is that this duty in this scheme is too important to delegate unless there is an express power.

I reach the same conclusion when I consider this from the aspect of who may delegate. The duty is placed on the local board. It is obviously possible that cases may occur in which not only the man but his trade union and employers may want a decision of the whole board. Again, I think that they are entitled to have it unless the scheme says otherwise. Further, as was mentioned in the argument, if one allows the principle of delegation, it would then be possible,

although neither probable nor practicable, for the board to delegate its functions to a committee which was not a microcosm of itself but a body on which employers and employed were no longer equally represented.

For all these reasons, I do not think that delegation was possible. The decision of the disciplinary committee was therefore a nullity which, it is conceded, cannot be cured by appeal.

I now turn to the striking out of the declaration made by

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1 [1937] 2 K.B. 309, 341; 53 T.L.R. 623; [1937] 2 All E.R. 726.

2 [1953] 1 W.L.R. 1150, 1157; [1953] 2 All E.R. 717.

[1957] A.C. 488 at 500

Ormerod J. The granting of a declaration is a matter of discretion, and, in view of the opinions expressed by the majority of the Court of Appeal, I have considered what was said on this subject in your Lordships' House in *Russian Commercial and Industrial Bank v. British Bank for Foreign Trade Ltd*.3 In that case Lord Finlay said,4 in the course of his dissenting opinion: "The question in what cases the jurisdiction to give a declaratory judgment should be exercised has been considered in a number of cases which were called to our attention by Mr. Hogg." Lord Finlay then cited the expressions used in those earlier cases: "sparingly," "with great care and jealousy," "with extreme caution." I agree that the discretion should not be exercised save for good reason. On the other hand, I find helpful the Scottish tests set out in that case by Lord Dunedin, who said5: "The question must be a real and not a theoretical question; the person raising it must have a real interest to raise it; he must be able to secure a proper contradictor, that is to say, someone presently existing who has a true interest to oppose the declaration sought." It seems to me that, however "cautiously" or "sparingly" the discretion is to be exercised, this is a case in which the judge was right to grant a declaration.

I should, on this point, be content to leave the matter as stated by Jenkins L.J., with whose judgment I am in entire agreement, but as I am differing from the majority of the Court of Appeal I think it right to summarize my reasons. First, it follows from the fact that the plaintiff's dismissal was invalid that his name was never validly removed from the register and he continued in the employ of the National Board. This is an entirely different situation from the ordinary master and servant case; there, if the master wrongfully dismisses the servant, either summarily or by giving insufficient notice, the employment is effectively terminated, albeit in breach of contract. Here, the removal of the plaintiff's name from the register being, in law, a nullity, he continued to have the right to be treated as a registered dock worker with all the benefits which, by statute. that status conferred on him. It is therefore right that, with the background of this scheme, the court should declare his rights.

Secondly, it was said that the grant of a declaration would lead to further litigation; I cannot believe that the National Board would do other than comply with the declaration, and, in

3 [1921] 2 A.C. 438; 37 T.L.R. 919.

4 [1921] 2 A.C. 438, 445.

5 Ibid. 448.

that case, I do not see why there should be further litigation. Thirdly, for the reasons given by Jenkins L.J., I find it difficult to see that damages would be an adequate remedy. Nor can I see that the conduct of the plaintiff as a result of the board's action, or the form of his pleadings, should be a bar to his obtaining the remedy he asks for.

Although doubts have been expressed on the quantum of the damages, I cannot see such an error of principle as calls for the interference of your Lordships' House.

I would, therefore, allow the plaintiff's appeal and dismiss the cross-appeal.

LORD MORTON OF HENRYTON. My Lords, as there is a cross-appeal in this case, I find it convenient to refer to Mr. Vine as "the plaintiff" and to the respondents as "the National Board."

Three questions arise for determination: (1) Was the purported dismissal of the plaintiff, as from November 22, 1952, effective or invalid'? (2) If it was invalid, was the Court of Appeal right in reversing, by a majority, the decision of Ormerod J. to make a declaration to that effect? (3) Should the learned judge's award of £250 damages to the plaintiff be altered?

As to the first question, Mr. Brown, for the National Board, submitted that the dismissal was an act of that board under clause 17 (1) (*b*) of the Dock Workers (Regulation of Employment) Order, 1947. That clause and the other relevant clauses have already been read, and I need not repeat them. Mr. Brown submits that this sub-clause conferred a power upon the National Board which was quite independent of the power conferred on the local board by clause 16 (2) of the scheme; and that the giving of notice to the plaintiff was an administrative act rightly carried out on behalf of the National Board by its delegate the disciplinary committee. Alternatively, he submits that if the act of dismissal could be carried out only by the local board, it was in fact carried out by the local board.

My Lords, I am prepared to assume, without expressing any opinion on the point, that clause 17 (1) (*b*) of the scheme confers an independent power upon the National Board, but in my view it is plain from the course of events, as set out in the judgment of Ormerod J., that the whole matter was dealt with by the disciplinary committee, purporting to act as the delegate of the local board and following the procedure laid down in clauses 15 (4) and 16 (2) of the scheme. Neither the local board nor the National Board at any time considered the written report given by

Messrs. J. Rose & Co. Ltd. or investigated the matter; nor did either of them at any time arrive at any decision on the penalty which should be imposed on the plaintiff. Thus the question arises whether the giving of notice to the plaintiff was an administrative act which could be delegated and was properly delegated by the local board.

I do not find it surprising, my Lords, that the local board thought they could delegate their duties under clauses 15 (4) and 16 (2) of the scheme to a disciplinary committee, especially as they were careful to provide that the committee was to consist of "one member representing the dock workers and one member representing the employers." The question whether these duties could or could not be delegated has been argued at length in this House, and I have found it difficult to arrive at a conclusion upon it. I add that if delegation was permissible at all, the selected delegate, the disciplinary committee, appears to me to have acted with perfect propriety throughout; but if delegation was not permissible, the dismissal of the plaintiff was a nullity and this House must so hold, however unfortunate may be the result to the National Board in the discharge of its heavy and important duties. The learned judge and the Court of Appeal, following the case of *Barnard v. National Dock Labour Board*,6 unanimously took the view that the duties and powers assigned to the local board by clauses 15 (4) and 16 (2) of the scheme could not be delegated, and I have arrived at the conclusion that they were right.

Action under these clauses arises when a written report is made to the local board that a worker has been guilty of the conduct described in sub-clause (2) or sub-clause (3) of clause 15 of the scheme. The sequence of events is, then, as follows, under clause 15 (4):- First, "the local board shall consider" the written report. Then it must "investigate the matter" and form an opinion as to whether the worker has committed the offence alleged in the employer's report. If the local board is "satisfied" that he has, it must then consider (*a*) whether the worker has any valid excuse for his conduct and (*b*) which, if any, of the penalties mentioned in clause 16 (2) of the scheme should be imposed upon him.

These duties, viewed as a whole, are, in my opinion, duties of a judicial character, and the decision of the local board may be of vital importance to the worker, as it may involve dismissal.

6 [1953] 2 Q.B. 18; [1953] 1 All E.R. 1113.

If, in an ordinary contract of service, a man is dismissed by his employer, it is open to him to seek and obtain employment in the same or another line of work with another employer; but the result of dismissal from employment under this scheme is wholly to remove the man from employment as a dock worker. Further, it must be borne in mind that if the local board could delegate these duties at all, they could be delegated to any person or body of persons. In my opinion, the true meaning and intent of the scheme is that these duties shall only be carried out by the carefully balanced body to which they are directly entrusted under the scheme, the local board. I do not doubt that many of the numerous duties imposed upon the local board by the

scheme can be delegated, and an express power of delegating certain duties to a registration committee is given by clause 5 (7) (*a*); but the duties imposed by clauses 15 (4) and 16 (2) are on a special footing, for the reasons I have given. I add that much of the argument centred round clauses 17 and 18 of the scheme, and I think that it is by no means clear what is the precise relationship between clause 17 and clause 16 and what exactly are the rights of appeal conferred by clause 18. I have not found it necessary to form an opinion on these matters, but I think that these clauses might well be reconsidered and clarified by amendment.

Next, Mr. Brown submitted that if the act of dismissal was wrongful, the plaintiff elected to accept the act of the board as a repudiation of the contract, so that an award of damages was the only relief open to him. On this point I need only say that, in agreement with Ormerod J. and the Court of Appeal, I cannot find any such election by the plaintiff, either in his conduct after November 22, 1952, when the notice of dismissal took effect, or in the statement of claim delivered on January 12, 1954, or in any subsequent pleading.

My Lords, I now come to the question whether the Court of Appeal was right in reversing, by a majority, the decision of the learned judge to make a declaration that the purported dismissal was invalid. Mr. Brown submitted that the only remedy open to the plainitiff was an award of damages and, alternatively, that if the court had power to grant a declaration, no declaration should have been made in the circumstances of the present case.

My Lords, I hope I shall not be thought wanting in respect to the judgments of the majority of the Court of Appeal, with which I have so far agreed, if I say that on this point I find

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myself entirely in agreement with the judgment of Jenkins L.J. I am content to adopt, without qualification, everything that he said on the point, and I would only add this. If your Lordships agree with the views which I have stated, the result is that the purported dismissal of the plaintiff is a nullity. To give him an award of money, as the learned judge did, for the damage he suffered up to the date of the judgment is only to give him part of the relief which he ought to have. The declaration granted by the learned judge was properly made, in my view, so as to make it clear to all the world what was the plaintiff's position in the eyes of the law.

Lastly comes the question whether the learned judge's award of £250 damages should be altered. It is, I think, clear that the learned judge assessed damages only up to the date of his judgment, and I do not see any sufficient ground for interfering with his award.

For these reasons I would allow the plaintiff's appeal and dismiss the cross-appeal of the National Board.

LORD COHEN. My Lords, I need not repeat the citations your Lordships have made from the scheme scheduled to the Dock Workers (Regulation of Employment) Order, 1947. The proper construction of that scheme is a matter of considerable difficulty. Thus it is far from clear whether the provisions of clause 17 (1) are intended to confer a power of terminating the contract established between the National Dock Labour Board and a registered dock worker in the reserve pool by clause 8 (2) of the scheme and to prescribe how and in what cases that power is to be exercised or whether, at any rate, so far as sub-paragraphs (*a*) and (*b*) are

concerned, they are intended merely to qualify the exercise of powers conferred on the local board by clause 16 (2) (*c*) and (*d*).

I do not find it necessary to reach a conclusion on this point since it is, I think, reasonably clear from the terms of the notice given to the appellant that in dismissing him the local board, acting by its disciplinary committee, purported to act under the powers conferred upon the local board by clause 16 (2) in any case where a registered dock worker fails to comply with a provision of the scheme.

Mr. Brown submitted that the dismissal was merely an administrative act taken in pursuance of the power which he said the respondents, like any other employer, had to dismiss a workman on seven days' notice. I do not think that the respondents are in the position of an ordinary employer. The objects of the

scheme are stated in clause 1 (2) as being to ensure greater regularity of employment for dock workers and to secure that an adequate number of dock workers is available for the efficient performance of dock work. The scheme contains elaborate provisions for its operation, and it seems to me clear that it would defeat the object of the scheme if the respondents could remove a dock worker from the register except for reasons recognized expressly or impliedly as valid by the scheme. The language of clause 18, which confers a right of appeal to an appeal tribunal constituted under the scheme on a registered dock worker aggrieved by action taken under certain paragraphs of clauses 15, 16 and 17, is, I think, inconsistent with the existence of any such wide power as that for which Mr. Brown contends.

He also submitted that clause 18 did not confer any right of appeal on a workman aggrieved by the termination of his contract under clause 16 (2) (*c*). It would be strange indeed if this argument were well founded. I think, however, the answer to it is that the right of appeal arises either because the effect of the termination is to disentitle the worker to payment under clause 14 and, therefore, clause 18 (1) (*a*) applies, or because, the notice of determination having been given in writing, the case falls within clause 18 (1) (*e*). It is not, I think, material to decide under which of these subclauses the case falls.

These matters are merely subsidiary to the real issue, which is whether the decision to determine the contract, having been taken not by the local board but by a disciplinary committee appointed pursuant to the resolution of the local board passed on October 2, 1947, was valid or was, as Ormerod J. declared, illegal, ultra vires and invalid.

Mr. Brown says that it was an administrative act and, like any other such act, could be delegated by the board. I doubt whether the mere fact that it was an administrative act would be conclusive of the matter, but I need not go further into this since I am satisfied that in exercising their powers under clause 16 (2) the local board were acting in a judicial capacity. I reach this conclusion from the language of clauses 15, 16, 17 and 18 read together. The significant language is, I think, as follows:

> (*a*) In clause 15 (1) and (2) the words "without adequate cause." The determination of whether there is adequate cause seems essentially a proper matter for decision judicially.

(*b*) A worker who "without adequate cause" fails to comply with certain provisions of the scheme is to be reported in writing to the local board (see clause 15 (2)).

---------- *[1957] A.C. 488 at 506*

(*c*) Similarly, a worker whose engagement is terminated by an employer and who is returned to the reserve pool is also to be reported in writing to the local board.

(*d*) Under clause 15 (4) the local board are to consider any such written report and to investigate the matter and are empowered, if they are satisfied that the worker is at fault in the respect alleged, to disentitle him, in whole or in part, to payment under clause 14 for the week in which the fault was committed.

(*e*) Clause 16 (2) enables action to be taken "in addition and without prejudice to the powers conferred by clause 15" in case of failure to comply with any of the provisions of the scheme. The reference to clause 15 satisfies me that the local board, if it acts under clause 16, must investigate the matter and be satisfied that the default is proved in the same way as it must under clause 15.

(*f*) The provisions of clause 18 requiring, as I think, that if there is an appeal the local board must state the grounds on which they acted, reinforces my view that in all the decisions taken under clauses 15, 16 and 17 (1) the local board must act in a judicial manner. If this be so, it was not, I think, disputed that the local board as such must exercise the power and cannot delegate it to a committee.

I would add that the constitution of the local board which was so devised as to secure equal representation for employer and employed seems to support the view that the power conferred by clause 16 cannot be delegated. For if delegation were permissible there is nothing to control the selection of the persons to whom the power is to be delegated.

For these reasons I agree with the unanimous decision of the Court of Appeal and with your Lordships that the delegation to the disciplinary committee of the power to terminate the employment of a registered dock worker was invalid. In reaching this conclusion I am assisted by the decision of the Court of Appeal in *Barnard v. National Dock Labour Board*.6 The correctness of that decision was challenged by Mr. Brown, but in my opinion his criticism is not valid.

The question next arises whether the majority of the Court of Appeal were right in refusing to the appellant the declaration that had been made by the order of Ormerod J. The appellant's right to this declaration was challenged on two grounds. First,

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6 [1953] 2 Q.B. 18.

[1957] A.C. 488 at 507

it was said that he had elected to treat himself as wrongfully dismissed and to sue for damages and was thus debarred from claiming to be still in the employment of the respondents. Secondly, it was said that the power to make such a declaration should be sparingly used and that this was not an appropriate case for its exercise.

I am unable to accept either of these arguments. I cannot attach importance to the fact that the appellant sought other employment. As Ormerod J. said, he was prevented from following his employment by the act of the respondents and was left with no alternative but to try and find other employment in order to earn a living, at least until the dispute between the parties could be decided one way or the other. Mr. Brown relied also on the form of the original statement of claim in this action. On this point I agree with Jenkins L.J. that no fair reading of the pleading could be read as an election not to ask for reinstatement.

I also agree with Ormerod J. and Jenkins L.J. that this is not a case in which damages would be an adequate remedy, and I cannot usefully add anything to the reasons given by them and by your Lordships for reaching this conclusion.

Finally, Mr. Brown by way of cross-appeal urged that, if a declaration were made, the damages awarded were excessive. My Lords, I am unable to see that the trial judge erred in principle in assessing the damage, nor can I say that the amount he awarded is so excessive that an appellate tribunal would be justified in interfering with his assessment.

For these reasons I would allow the appeal and restore the judgment of the trial judge, and would dismiss the cross-appeal.

LORD KEITH OF AVONHOLM. My Lords, agreeing as I do with the conclusions reached by your Lordships, I have little to add to what has been said.

This is not a straightforward relationship of master and servant. Normally, and apart from the intervention of statute, there would never be a nullity in terminating an ordinary contract of master and servant. Dismissal might be in breach of contract and so unlawful but could only sound in damages.

Here we are concerned with a statutory scheme of employment. One of its objects was to do away with the evils of casual employment at the docks. Another was to secure a regular supply of labour for the shipping and unshipping of merchandise. These objects are concisely stated in the scheme, echoing the

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[1957] A.C. 488 at 508

words of the statute, to be "to ensure greater regularity of employment for dock workers and to secure that an adequate number of dock workers is available for the efficient performance of dock work." No employer can engage labour at the docks unless he is registered under the scheme and no dock worker can be employed at the docks unless he also is registered under

the scheme. To be registered as a dock worker is, therefore, the first step to getting employment. Further, having been registered the worker comes on to the pay roll of the National Dock Labour Board, unless he is in the employ of a registered dock employer on a contract by the week or longer, whether there is work for him or not. He is in what the scheme calls the reserve pool and while in the reserve pool is in the employment of the National Dock Labour Board. While in the reserve pool a man has to be at call unless he is excused for illness or otherwise. When allocated for work at the docks he comes for the time being into the employment of the particular registered employer requiring his services, and when this employment is finished he falls back again into the reserve pool. The worker employed by a registered employer on a week's notice or longer does not properly come within the scheme apart from the fact that he must be registered. He is paid by his particular employer and is subject to his orders and control. But if he were dismissed by his employer it would seem that, as a registered dock worker, he would fall into the reserve pool and be in the employment of the National Board and subject to the directions of the local board. It is impossible, in my opinion, to equate the position of a registered dock worker in relation to the National Dock Labour Board with that of an employee under an ordinary contract of service. It is being in the scheme with all the advantages that pertain thereto that is important to the dock worker, and it is significant that the scheme places the dock worker and the employer on the same plane in this matter. Clause 11 provides: "(1) The scheme shall cease to apply to a registered dock worker when his name has been removed from the register or record in accordance with the provisions of the scheme. (2) The scheme shall cease to apply to a registered employer when his name has been removed from the employers' register in accordance with the provisions of the scheme." The scheme gives the dock worker a status. Unless registered he is deprived of the opportunity of carrying on what may have been his lifelong employment as a dock worker, and he has a right and interest to challenge any unlawful act that interferes with this status. If the actings here complained of were

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a nullity, the plaintiff, in my opinion, has a clear right to have that fact declared by the court.

I find it difficult to correlate the provisions of clauses 15, 16, 17 and 18 and to be satisfied in my mind on how they are intended to interact as between one another. But that does not, in my view, affect the fundamental question with which this appeal is concerned. It is, in my opinion, plain that the disciplinary committee acted under clause 16. I agree that such a committee had no authority to exercise the whole powers of disciplinary action conferred by that clause. The scheme committed these powers to the local board, and the local board at no stage took any part in investigating, or considering any report on, the conduct of the plaintiff, or in terminating his employment. It had no power to commit all its functions under clause 16 to any committee of its own number, or to anyone else. I do not find it necessary to consider in what respects, or to what extent, the local board would have to act in a judicial manner or to pay regard to judicial models of procedure in operating the powers of this clause. In this matter I would associate myself with the observations to be made by my noble and learned friend, Lord Somervell of Harrow, whose speech I have had the advantage of reading.

I agree that in the circumstances of this case the purported termination of the plaintiff's employment was a nullity.

LORD SOMERVELL OF HARROW. My Lords, in *Barnard v. National Dock Labour Board*6 the plaintiffs claimed that notices of suspension given under clause 16 of the scheme were invalid in that they had not been given by the local board and that the local board had no power to delegate as it purported to do. The plaintiffs claimed a declaration. The board submitted, as a preliminary point, that the claim for a declaration was incompetent; that the only remedy was by certiorari. The Court of Appeal held it was a proper case for a declaration, relying on a decision of its own in *Cooper v. Wilson*7 and referring to a decision of this House in *Andrews v. Mitchell*.8 The remedy there sought was not a declaration but a writ of prohibition.

The principle laid down in *Cooper v. Wilson*9 is, I think, accurately stated in the headnote: "Where a statutory body is alleged to have acted without jurisdiction its decision can

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6 [1953] 2 Q.B. 18.

7 [1937] 2 K.B. 309.

8 [1905] A.C. 78.

9 [1937] 2 K.B. 309.

properly be questioned in an action for a declaration that the decision is null and void." In *Andrews v. Mitchell*10 the remedy sought was not a declaration but a writ of prohibition. It concerned a dispute between a member and a friendly society. Under the Friendly Societies Act, 1896, such disputes were to be determined in a manner directed by the rules of the society and such decisions were to be final. Lord Halsbury referred to the inconvenience of having such disputes reinvestigated in a court of law. The courts, he said,11 "must not insist upon a too minute observance of the regularity of forms …; on the other hand, there are some principles of justice which it is impossible to disregard." In that case the man expelled had never received a charge as provided by the rules. This went, as Lord Davey expressed it,12 "to the root of the jurisdiction."

The Court of Appeal held, I think rightly, that action taken by a delegated authority when there was no power to delegate went to the root of the jurisdiction and the circumstances entitled the court, in its discretion, to grant a declaration. I agree, for the reasons that have been given by my noble and learned friend, Lord Morton of Henryton, that the disciplinary committee in the present case were purporting to act as the delegate of the local board under clauses 15 and 16 of the scheme.

In *Barnard's case*,13 as in the present case, the functions of a local board under these provisions have been said to be judicial or quasi-judicial and this has been regarded as conclusive on the question whether the functions could be delegated.

I would like, in the first place, to associate myself with the critical observations made by Lord

Greene M.R. on the expression "quasi-judicial" in *B. Johnson & Co. (Builders) Ltd. v. Minister of Health*.14 It is not to be found in the statements made in this House and normally cited on this topic. I will not set them out, but I have in mind the Earl of Selborne L.C.'s opinion in *Spackman v. Plumstead District Board of Works*,15 Lord Loreburn L.C.'s opinion in *Board of Education v. Rice*,16 and that of Viscount Haldane L.C.

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10 [1905] A.C. 78.

11 Ibid. 80.

12 Ibid. 83.

13 [1953] 2 Q.B. 18.

14 (1947) 177 L.T. 455, 458-459; [1947] 2 All E.R. 395.

15 (1885) 10 App.Cas. 229, 240; 1 T.L.R. 313.

16 [1911] A.C. 179, 182; 27 T.L.R. 378.

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in *Local Government Board v. Arlidge*.17 The phrase "quasi-judicial" suggests that there is a well-marked category of activities to which certain judicial requirements attach. An examination of the cases shows, I think, that this is not so. The court has to consider whether a Minister, tribunal or board has to act "judicially" in some respect and has failed to do so. The respect in which he has to observe judicial procedure will depend on the statutory or other provisions under which the matter arises. In *Rice's case*18 the question was whether the board had determined "questions" which, on the decision, it was their duty to determine. In *Arlidge's case*19 one question was whether the board was entitled to withhold from the appellant the report made by its inspector after the local inquiry. Although the case was one in which it was the duty of the board to act judicially - in some respects - the proceedings were not vitiated by the fact that the official who decided the appeal saw and considered a report which was not available to the appellant. In *Errington v. Minister of Health*20 the subject-matter was a clearance order made by a local authority. The owners had objected and the Minister had to hold a public inquiry and confirm or not confirm the order. This was done and the order was confirmed. The officials of the Minister had, after the inquiry, received statements from and viewed the property with representatives of the local authority in the absence of and without communicating with the owners. This vitiated the proceedings and the order was quashed.

As Lord Greene M.R. pointed out in the passage to which I have referred, the administrative and quasi-judicial functions are closely intermingled. The last two examples I have given show that in one case a document may properly be withheld from the "other side," while in another, withholding a document or conversation or its purport may vitiate the whole proceedings. The expression is "sadly lacking in precision," as Hamilton L.J. (as he then was) said of the expression "natural justice" (*Rex v. Local Government Board*, *Ex parte Arlidge*21.

The question in the present case is not whether the board failed to act judicially in some respect in which the rules of

17 [1915] A.C. 120, 132; 30 T.L.R. 672.

18 [1911] A.C. 179.

19 [1915] A.C. 120.

20 [1935] 1 K.B. 249; 51 T.L.R. 44.

21 [1914] 1 K.B. 160, 199; 30 T.L.R. 6.

judicial procedure would apply to them. They failed to act at all unless they had power to delegate.

In deciding whether a "person" has power to delegate one has to consider the nature of the duty and the character of the person. Judicial authority normally cannot, of course, be delegated, though no one doubted in *Arlidge's case*22 that the Local Government Board, which consisted of the President, the Lord President of the Council, the Secretaries of State, the Lord Privy Seal and the Chancellor of the Exchequer (Local Government Board Act, 1871), could act by officials duly deputed for the purpose, whether or not the act to be done had judicial ingredients. There are, on the other hand, many administrative duties which cannot be delegated. Appointment to an office or position is plainly an administrative act. If under a statute a duty to appoint is placed on the holder of an office, whether under the Crown or not, he would, normally, have no authority to delegate. He could take advice, of course, but he could not by a minute authorize someone else to make the appointment without further reference to him. I do not, therefore, find it necessary to consider what judicial requirements might be held implicit in the local board's proceedings under clause 16. I am, however, clear that the disciplinary powers, whether "judicial" or not, cannot be delegated. The non-entitlement to pay, the suspension, the notice or the dismissal must be a step taken by the board and not by a delegate. The penalties, in some cases, may be slight but, in some cases, very great. A man who has worked all his life in the docks may find himself precluded altogether from doing so. Today it may be easy for him to get other work, but that has not always been so. The constitution of the board also supports the conclusion. It is clearly constituted so as to inspire confidence and weigh fairly the interests of employers and employed. The purported delegation in the present case was to a representative of each side, but it is impossible to imply a limited right of delegation. *Osgood v. Nelson*23 decides that in somewhat similar circumstances the appointment of a committee to take evidence and report is not in itself a delegation of authority. If there are administrative difficulties, this may be an answer to them.

On the questions whether the plaintiff had elected, whether the majority of the Court of Appeal were right in refusing a

22 [1915] A.C. 120.

23 (1872) L.R. 5 H.L. 636.

declaration, and whether the damages should be interfered with, I have nothing I wish to add to the opinion just delivered by my noble and learned friend, Lord Morton of Henryton.

Appeal dismissed. Order varied.

Solicitors: *White & Leonard for Wells, Woodford & Ackroyd, Southampton; Bell, Brodrick & Gray*.

F. C.

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