WHITE AND OTHERS V KUZYCH – (1951) 2 ALL. E. R. 435
Trade Union-Domestic tribunal – Adjudication on member's conduct– Provision for appeal to executive of federation–

The Privy Council in June, 1951, considered one of its final judgements respecting Canadian cases in their decision in this case. It deserves strict attention because of its assured future prominence in the field of internal labour relations. The writer however wishes only to comment on certain aspects and certain reasoning in the case itself.

The plaintiff (respondent), a member of a Canadian trade union, was charged before a domestic tribunal set up under the by-laws of the union with conduct unbecoming a member of the union and of committing acts discreditable to it; deemed serious offences by the by-laws. He was found guilty and at a general meeting a resolution was passed expelling him from the union.

Article 26 of the by-laws provided: "If a member has been found guilty..... and feels that the decision is unfair, or the penalty too severe, he may, within sixty days file an appeal in writing with the executive of the Shipyard General Worker's Federation...." Article 22 of the by-laws provided that every member should be deemed to have entered into a contract with the union and at all times to abide by the following oath obligation; "I promise that I will not become a party to any suit at law or in equity against this union or the federation, until I have exhausted all remedies allowed to me by said constitution and by-laws."

After expulsion the plaintiff brought an action in the British Columbia High court for having been invalidly expelled from the union and for a declaration that he was still a member and for consequential relief. Whittaker J. at the trial, held that the plaintiff was entitled to the declaration that he had not been validly expelled from the union and was still a member in good standing and awarded him damages in the amount of five thousand dollars. On appeal the British Columbia Court of Appeal, by a majority affirmed the trial judgement.

On further appeal to the Privy Council, it was held that the conclusion reached at the general meeting to expel the respondent was a "decision" within the meaning of article 26, even though it was tainted by bias or prejudice or arrived at in defiance of natural justice. Accordingly the conclusion reached by the general meeting was subject to an appeal to the federation which the plaintiff was by contract bound to pursue before he issued his writ and therefore he was not entitled to the declaration which he sought.

The case might have been considered from various perspectives but the aspect which intrigued the writer was the basis of the decision of Whittaker J. at the trial and that of O'Halloran J. in the Appeal Court. They based their decisions on the much discussed and equally confused principle of "natural justice." A few words on the origin and significance of the doctrine is necessary.

The theory of natural justice was first propounded by the Greek philosophers Plato and Aristotle. They applied this concept to the legal relationship existing between man, the state and immutable nature. The Greeks traditionally regarded laws as being related to both justice and ethics. From there the theory was adopted in a diluted form by the Romans and such diluted aspects were applied to the Roman Law. Then the principle achieved its zenith in the works of the medieval Scholastics and their theory of rationalism – the principal exponent being Saint Thomas Aquinas who in his Summa Theologica traced the relationship of all forms of law to the Eternal Being.

From that time down to the present day the principle of natural justice has lost much of its former significance; but it must not be forgotten that in a technical sense equity is considered as a portion of the natural law which the common law courts omitted to recognize and it's still administered in its original forms. Moreover in sporadic cases and as the basis of Lord Mansfield's conception of the governing principles in quasi-contract this theory of natural justice is to-day applied in the courts.

Thus, is it not interesting that when in a case of labour relations, judges in two courts based their decisions clearly and boldly on the principle of "natural justice"? Whittaker J. at the trial concluded his judgement with this statement; "It cannot by any stretch of the imagination be said that the trial within the union was one that was free from prejudice and bias....." and the learned judge added, "It is almost inconceivable that so determined an effort should have been made to influence the members against the plaintiff while the charges were pending and before the plaintiff had been tried.....In the light of the facts, I am of the opinion that the purported expulsion of the plaintiff was contrary to natural justice."

In the Court of Appeal O'Halloran J. went even further; "In such circumstances it was obviously impossible for the respondent to receive a fair trial....There could be in that trial committee as constituted no opportunity for judicial consideration of the question on its merits. The verdict for expulsion was inevitably prejudiced and virtually decided before the trial was held..... A man has a right to work at his trade. Moreover, the civil liberties of the subject cannot be decided by a trial committee set up by a labour union. That is the prerogative of the constitutional courts of the country. In my judgement, the question the union trial committee sought to deal with in the circumstances here was beyond the competence of any union to decide."

The Privy Council practically disregarded the principle of natural justice, applying a strict ruling on the union's by-laws. It would have been interesting if the plaintiff had filed an appeal to the federation within the stipulated period contracted for so that the Privy council would have had to face the question squarely.

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