ZNPF BOARD v A-G AND OTHERS AND IN THE MATTER OF INDUSTRIAL RELATION COURTS DECISION DATED 29TH OCTOBER ,1982 AND AN APPLICATION FOR CERTIORARI (1983) Z.R. 140 (H.C.)

HIGH COURT
SAKALA ,J.
27TH SEPTEMBER, 1983
(1983/HP/433)

Flynote
Administrative Law - Remedy - Certiorari - When available.
Courts - Hierarchy - Industrial Relations Court - Inferiority to High Court.
Statutes - Construction - Industrial Relations Act, Cap. 517 s. 101 (3). Administrative Law - Judicial review - Ouster Clause - Effect of Civil Procedure - Parties - Legal representation - Attorney-General cited - Effect of.

Headnote
The ZNPF Board, dissatisfied win the decision of the Industrial Relations Court commenced the present proceedings to hare the decision moved into the High Court and quashed. The legal argument centred upon the question whether the Industrial Relations Court was inferior to the High Court, and whether certiorari could issue despite the provisions of s.101 (3) of the Industrial Relations Act. During the course of the proceedings a question arose as to the proper place of the Attorney-General in the case.

Held:
(i) Certiorari is an order issued to an inferior court or a person or body exercising what the High Covert regards as a judicial or quasi-judicial function to have the record of proceedings removed into the High Court for review and if bad to be quashed
(ii) The Industrial Relations Court cannot be equated to the High Court and for purposes of an application for certiorari it is inferior to the latter.
(iii) Section 101 (3) of the Industrial Relations Act is an effective ouster clause.

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(iv) Section 101 (3) of the Industrial Relations Act-excludes the power of the High Court to issue orders of certiorari removing the proceedings or decisions of the Industrial Relations Court into the High Court for purposes of quashing the same.
(v) The Attorney-General was made a party to the proceedings because he was the only one who could snake arguments and submissions on behalf of the Industrial Relations Court.

Cases referred to:
(1) Rex v Chancellor of St. Edmundsbury and Ipswich Diocese ex parte White [1948] 1 K.B. 195.
(2) Pearlman v Keepers and Governors of Harrow School [1978] 3 W.L.R. 736.

(3) South East Asia Fire Bricks v Non - Metalic Union [1980] 2 All E.R. 689.

Legislation referred to:
Industrial Relations Act, Cap. 517, ss. 96 (2), (3), (4), 100, 101 (2) (3), Constitution of Zambia, Cap. 1, Arts. 31 (1), 109 (1), (4), (5).
High Court Act, Cap. 50, as. 3 (1), 9 (1) Malaya Industrial Relations Act, 1967, s. 29 (3) (a).

For the applicant: C. Banda, Lisulo and Co.
For the respondents: H. Mbaluku, Mbaluku, Sikazwe and Co. 20
For the Attorney-General: A.G. Kinariwala, Senior State Advocate.

Judgment
SAKALA, J.:
This is an application by the Zambia National Provident Fund Board (hereinafter referred to as the ZNPF Board) by way of certiorari for an order to remove the decision of the Industrial Relation Court dated 29th October, 1982, for purposes of quashing it. For convenience, I will refer to the Industrial Relations Court as the 'IRC' and to the Act as the 'IRA'.

At the outset, it is convenient to clarify the standing of the Attorney-General in these proceedings. Before the commencement of the hearing, Mr. Kinariwala submitted that the Attorney-General cannot be made partner to these proceedings because the State was not a party to the proceedings before the IRC. He pointed out that whether the IRC is an inferior court to the High Court or not is a question which did not affect the State or the Attorney-General. In my ruling at that stage, I pointed out that the application raised a significant constitutional issue which has not been before the High Court, namely, the relationship between the High Court and the IRC. Thus I held that the Attorney-General should be a party to these proceedings although he was not a party before the IRC. At the close of the arguments and submissions, it became evident that the only person who could have made arguments and submission on behalf of the IRC was the Attorney-General. I ordered in my ruling

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that the notice of motion be amended to make the Attorney-General the first respondent. It is for those reasons that the Attorney-General is a party in these proceedings.

The grounds on which the relief is sought are as follows:

"(1) That the Honourable Court misdirected itself in ordering that unqualified accountants be paid the same salary as qualified accountants contrary to the decisions of the applicant's Board of Directors. That the said decision is counter-productive. That it wants the Board to act against its own decision which is final.
(2) That according to Company law, the decision of the Board of Directors of a given concern is the final authority in the matter and therefore the Board of ZNPF having resolved that unqualified accountants cannot be converted to the salary scale applicable to the professionally qualified accountants, the court's decision was therefore wrong both law and in fact."

The application is supported by an affidavit. Paragraphs 4 to 10 of the affidavit read as follows:

"(4) That I had conduct of this case on behalf of the applicant and that following the decision of the Industrial Relations Court delivered on the 29th day of October, 1982, I obtained instructions from the applicant.

(5) That the applicants were totally dissatisfied with the decision of the Industrial Relations Court and in the premises, they instructed me to move this Honourable Court with a view of getting an order to remove the proceedings from the Industrial Relations Court to this Honourable Court for purposes of quashing the order.

(6) That the respondents were employed by the applicant as unqualified accountants and their salary scale was S. 8.

(7) That following the job evaluation exercise, the applicant's Board of Directors resolved that unqualified accountants whose salary scale was S. 8 should not be converted to S. 7 a salary; scale for professionally qualified accountants.

(8) That the said decision of the Board was reasonable in that it acts as an encouragement to the unqualified to study hard and obtain necessary qualifications.

(9) That this notwithstanding the Industrial Relations Court ordered that unqualified accountants be graded in the same salary as professionally qualified accountants holding professional certificates.

(10) That it is this decision of the Industrial Relations Court that we want the Honourable Court to quash."

The affidavit exhibits the decision of the IRC dated 29th October, 1982, and the minutes of the meeting of the ZNPF Board held on 20th December, 1978. I must observe in passing that the respondents did not file affidavit in opposition.

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The crux of this application is whether this court has jurisdiction to issue an order of certiorari to remove into it for the purposes of being quashed a decision of the IRC. On behalf of the applicant, Mr Banda advanced arguments in this court under four heads. These heads of arguments can be summarised as follows: (1) the IRC is an inferior court to the High Court; (2) the IRC is no part of the judicature of Zambia; (3) finality or ouster clause as combined in the IRA does :not take away from the High Court the supervisory jurisdiction over the IRC by way of a writ of certiorari (4) the decision of the IRC dated 29th October, 1982, is wrong both in law and in fact.

I propose to deal with the first and second heads of arguments together as the submissions on these overlap. On these two heads of arguments, Mr Banda submitted that the IRC is inferior to the High Court because it is not a creature of the Constitution but a creature of an Act of Parliament which is subordinate to the Constitution. Counsel in support of this submission referred the court to section 96 of the IRA that establishes the IRC. He further referred to Section 3 of the IRA which defines the word 'court' as a 'court of competed jurisdiction other than the IRC'. Counsel further referred the court to Section, 96(2) of the IRA which sets out the composition and membership of the IRC, namely, chairman., deputy-chairman and two other members or such a greater number as the President may prescribe. Counsel argued that the High Court on the other hand is constituted by a

single puisne judge. Drawing the attention of the court to section 96(3) and (4) relating to the qualifications of the chairman an the deputy chairman of the IRC, namely, to be persons who are or are qualified to be judges of the High Court, counsel submitted that the IRC does not necessarily have to be presided over by persons who are judges of the High Court although they have to be lawyers. Counsel further submitted that in the light of the foregoing, the IRC cannot be equated to High Court which has always to be presided over by a judge. Mr Banda also brought to the attention of the court the fact that the previous chairman of the IRC was not a High Court Judge. Counsel further made reference to article 31(1) of the Constitution which defines 'court' as 'a court of law having jurisdiction in Zambia other than a court established by a disciplinary law.' For the foregoing reasons, Mr. Banda submitted that this court being superior to the IRC has jurisdiction to issue an order of certiorari removing the proceedings and decision of the IRC into it for purposes of quashing it.

In reply to Mr Banda's submissions on the first and second arguments, Mr Kinariwala, on behalf of the Attorney-General, submitted that the IRC is a special court conferred with special jurisdiction as contained in Section 98 of the IRA Mr Kinariwala argued that whether a particular court is a superior court or not depends on the express provisions of a statute making the same. He submitted that the Supreme Court is supreme because the legislature says so and it has been expressly enacted. Equally, the High Court has been expressly stated to be a superior court of record. But Mr Kinariwala contended that whether the IRC is an inferior court

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or not should also depend on its composition under the IRA He submitted that under the IRA, the chairman and the deputy chairman have to be High Court Judges or persons qualified to be High Court judges. He also pointed out that from the inception of the IRA the chairman has always been High Court judge and the present chairman is a High Court judge. Drawing the court's attention to Rule 59 of the IRC Regulations of 1974, Mr Kinariwala submitted that the judgments of the IRC and the High Court are at par and have to be treated in similar manner. It was thus Mr Kinariwala's contention that the High Court and the IRC are at par although with different jurisdiction. For these reasons, he submitted that this court cannot grant the relief sought.

On behalf of the second respondents, Mr Mbaluku who made very brief submission and concurred with the submission by Mr Kinariwala on the question of whether the IRC is an inferior court to the High Court or not. His submissions are on record. On account of what I have just said, I find it unnecessary to make review of the same.

I have fully addressed my mind to the arguments and submissions by all learned counsel to the first two heads of arguments. It must be observed that under these heads no authorities were cited to support the submission apart from reference to statutes. The explanation appears to be that this is the first time that a decision of the IRC has been challenged before the High Court by way of an application for an order of certiorari.

Certiorari has been generally defined by a number of decided cases and text book writers as an order issued to an 'inferior court' or a person or body exercising what the High Court regards as a 'judicial' or 'quasi-judicial' function, to have the record of the proceedings removed into the High

Court for review (if bad) to be quashed (*see* Constitutional and Administrative Law by Hood Phillips, 5th ed. page 535). What is an 'inferior court' for this purpose, or whether a person or body exercises powers of a 'judicial' or 'quasi-judicial' nature is for the High Court to decide (*see* page 536 of the same book). I have no difficulty in my mind in arriving at the conclusion that the IRC is a court. The Act, Cap. 517, says so (*see* Section 96 (1)). I have also no difficult in holding that on 29th October, 1982, the IRC by its decision subject of the present application exercised its judicial powers. My greatest difficulty, however, is whether I can say without any doubt that the IRC is an 'inferior court' to the High Court for me to grant the order sought if I accept the arguments on merit. Generally speaking, any court or tribunal below the High Court is inferior to the High Court. But this simplicitic formulation begs the issue in the instant case. But the two institutions, namely, the High Court and the IRC have statutory origin. In my opinion, a determination of whether the IRC is inferior to the High Court must by and large depend on the statutory provisions as well as the rules governing the two courts. A comparison of these in my view must lead to a definite conclusion of the relationship of the two courts.

The statutory provisions establishing the High Court and governing its procedures are contained in the Constitution of Zambia and the High

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Court Act Cap. 50. Part VIII of the Constitution sets out the judicature of Zambia, namely, the Supreme Court and High Court. Article 109(1)(4)(5) of the Constitution read:

"109 (1) There shall be a High Court for the Republic which shall have (save as to the proceedings in which the Industrial Relations Court has exclusive jurisdiction under the Industrial Relations Act) unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and power as may be conferred on it by this Constitution or any other law.

(4) The High Court shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

(5) The High Court shall have jurisdiction to supervise any civil or criminal proceedings, before any subordinate court or any court-martial and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court."

Also sections 3(1) and 9(1) of the High Court Act, Cap. 50 read:

"3(1) The High Court, as constituted by the Constitution, Appendix 1 of the Revised Edition shall be the High Court of Judicature for Zambia.

9 (1) The Court shall be a Superior Court of Record, and, in addition to any other jurisdiction conferred by the Constitution and by this or any other written law, shall, within the limits and subject as in this Act mentioned, possess and exercise all the jurisdiction, powers and authorities vested in the High Court of Justice in England. " The statutory

provisions establishing the IRC are found in part X of the IRA Section 96 (1) of Cap 517 reads:

> "96. (1) There is hereby established for the Republic the Industrial Relations Court, hereinafter in this part referred to as 'the Court'".

An examination of these statutory provisions reveal that the High Court is a creature of the constitution while the IPC is a creature of an Act of Parliament. The High Court has been expressly stated to form part of the judicature. The IRC is not said to be part of the judicature. The High Court is superior court of record with unlimited jurisdiction in civil or criminal matters except where the IRC has exclusive jurisdiction. On the other hand, the IRC's jurisdiction is limited only to industrial matters. It is not said to be a superior court of record. The High Court has also supervisory jurisdiction in civil or criminal proceedings before any subordinate court. The IRC does not have this jurisdiction.

Another area of statutory comparison relates to the composition of each court. The High Court is and has always been presided over by a judge. The IRC does not necessarily need to be presided over by a judge although the chairman and his deputy have always to be lawyers (*see* section 96 (3) (4)). A judge of the High Court is appointed by the President

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on the advice of the Judicial Service Commission. Members of the IRC are appointed by the President but not on the advice of the Judicial Service Commission.

Turning to procedures, the High Court is bound by rules of evidence in civil or criminal proceedings. The IRC is not, its chief function being "to do substantial justice between the parties before it" (*see* section 101 (2) of Cap. 517). On certain decisions the IRC has to have regard to Government declared policy (*see* section 100 of Cap. 517). This is not the case with the High Court.

From the foregoing comparison of the statutory and procedural provisions governing the two courts one clear fact emerges, namely, the IRC cannot be equated to the High Court although it is a special court. Its jurisdiction is certainly very limited. But the question remains, namely, is the IRC an "inferior court" to the High Court for purposes of prerogative writs like the one being sought by the present applicant? In the case of *Rex v Chancellor of St Edmundsbury and Ipswich Diocese exparte White* (1) the Court of Appeal held that certiorari does not lie to an Ecclesiastical court on the ground of what was said to be long settled practice where certiorari did not lie to ecclesiastical courts on account that those courts administered different type of law from common law and statutory law. However, at pages 222 and 223 Wrotlesley L.J. had this to say:

> "Whenever, as a result of the establishment by Act of Parliament of some new jurisdiction or some new tribunal exercising judicial or quasi-judicial functions it is necessary to consider the application thereto of well-established forms of remedy, the court will not be afraid to extend the older principles to new circumstances."

D.M. Gordon in his article *Certiorari to an Ecclesiastical Court* seems to suggest that the decisions is contrary to principle and authority. The court in that case also considered the question of inferiority of a court which I consider very persuasive in the present application. At page 205, Wrotlesley L. J said:

> "One of the matters most in controversy, both in the Divisional Court and here, was the question of whether the ecclesiastical courts were and are inferior courts. And the more this matter was investigated the clearer it became that the word "inferior', as applied to courts of law in England had been used with at least two very different meanings. If, as some assert, the question of inferiority is determined by ascertaining whether the court in question can be stopped from exceeding its jurisdiction by a writ of prohibition issuing from the King's Bench, then not only the ecclesiastical courts but also Palatine courts and Admiralty courts are inferior courts. But there is another test, well recognised by lawyers, by which to distinguish a superior from an inferior court, namely, whether in its proceedings, and in particular in its judgment, it must appear that the court wan acting within its

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jurisdiction. This is the characteristic of an inferior court, whereas in the proceedings of a superior court it will be presumed that it acted within its jurisdiction unless the contrary should appear either on the face of the proceedings or aliunde."

I am inclined to accept both tests. It goes without saying that the IRC in its proceedings must act within its jurisdiction as provided by the Act. I am mindful that the present chairman of the IRC is a judge of the High Court. But she presides in the IRC not as judge of the High Court but as chairman of the IRC exercising limited jurisdiction of that court. Thus after considering all the statutory provisions governing the two courts, I have no doubt in concluding that the IRC is not a superior court of record and in my judgment it is inferior to the High Court for the purposes of this application.

The third head of argument related to whether the finality or ouster clause as contained in section 101 (3) of the IRA takes away the jurisdiction of the High Court to issue a writ of certiorari. Under this head both Mr Banda and Mr Kinariwala cited a number of English authorities. On behalf of the applicant, Mr Banda contended that the existence of a finality and ouster clause in Section 101 (3) of Cap 517 tends to suggest that the proceedings in the IRC must end there. Counsel asked whether that meant that a party aggrieved by the decision of the IRC cannot move the High Court; by way of an application for an order of certiorari Mr Banda submitted that since the order of certiorari is not an appeal, a court superior to the IRC can, on a proper application, remove the proceedings and the decision of the IRC to the superior court for purposes of quashing the same. Mr Banda submitted that on a consideration of various decided cases the finality and ouster clause as contained in section 101 (3) of the IRA does not take away the remedy of certiorari sought by the applicant in the present, application.

Mr Kinariwala submitted that the authorities cited by counsel for the applicant are judgments, by Lord Denning. He did not elaborate but submitted that all these cases should be distinguished from the present because those cases did not contain the ouster clause consisting of the words as in the

present case in that section 101 (3) uses the word "final and binding upon the parties and shall not be questioned in any proceedings or court." Mr Kinariwala pointed out that in the cases, cited by counsel for the applicant the finality and ouster clause did not contain the word "proceedings." He submitted that the word "proceedings includes an application by summons petition or by way of writ of certiorari. Counsel argued that it was not necessary that the legislature should have specifically excluded an application by way of certiorari as it was covered by the word "proceedings." He urged the court to construe an Act of Parliament according to the intention declared by the legislature in the act. He submitted that the language in Section 101 (3) is clear and explicit. Counsel submitted that the judgment or order of the IRC by virtue of Section 101 (3) cannot be challenged any proceedings whether commenced by writ, originating summons, notice of motion, petition or by any prerogative writs. Mr Kinariwala

contended that the findings of the IRC to the effect that the respondents were upgraded by the Board at its meeting of 25th July, 1978, was a finding of fact and hence cannot be challenged.

Section 101 (3) of Cap. 517 reads:

> "101 (3). An award or decision of the Court on any matter referred to it for its decision or on any matter otherwise falling within its sole jurisdiction shall be final and binding upon the parties thereto and on any parties affected thereby, and such award or decision shall not be questioned in any proceedings or courts."

The crucial phrase in this section is one that reads "shall be final and binding upon the parties thereto" and "shall not be questioned in any proceedings or court". In the Court of Appeal case of *Pearlman v Governors of Harrow School* (3) the court considered a provision in the English Housing Act of 1974 with the phrase "final and conclusive." At page 742 Lord Denning had this to say:

> "Those words "final and conclusive" have been considered by the courts a hundred times. It has been uniformly held that they preclude any appeal to a, higher court - in the sense of an appeal proper where the higher court reviews the decision of the lower tribunal and substitutes its own decision for that of the lower tribunal; *see Westminster Corporation v Gordon Hotels Ltd.* (1907) 1 K.B. 910; (1908) A.C. 142 and *Hall v Arnold,* (1950) 2K.B. 543. But those words do not preclude the High Court from correcting the errors of the lower tribunal by means of certiorari - now called judicial review. Notwithstanding that a decision is by a statute made "final and conclusive", certiorari can still issue for excess of jurisdiction, or for error of law on the face of the record (*see Reg v Medical Appeal Tribunal, Ex parte Gilmore* (1957) 1Q.B. 574, 583); or a declaration can be made by the High Court to determine the rights of the parties. It can declare the law by which they are found, irrespective of what the lower tribunal has done, *see Pyx Granite Co. Ltd v Ministry of Housing and Local Government* (1960) A.C. 260. It can even consider the point of law by means of a case stated: see *Tehrani v Restron* (1972) 1 Q.B. 182."

Further, on the same page under a sub-heading "The No (certiorari Clause" section 107 Lord

Denning said:

> "But it is said here that those decisions apply only to lower tribunals; and that they do not apply to courts. It is said that Parliament has taken away certiorari to county coverts. This argument is based on section 107 of the County Courts Act 1959, which says:
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> > 'Subject to the provisions of any other Act relating to County Courts, no judgment or order of any judge of County Courts nor any proceedings brought before him or pending in his court, shall be removed by appeal, motion, certiorari or
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> > otherwise into any other court whatever, except in the manner and according to the provisions in this Act mentioned.' "

To my mind that provision has no application to the present case. It applies only to proceedings under the Act of 1959, just as if the words "under this Act" were written into it. Certiorari is taken away in proceedings in which the Act of 1969 gives jurisdiction to County Courts, such as section 39 (actions of contracts and tort); section 48 (recovery of land); section 52 (Equity jurisdiction) and section 56 (Admiralty jurisdiction). In all such matters certiorari does not lie: but instead the statute gives a right of appeal on points of law: *see* section 108. In so interpreting section 107, I am following the lead of Cockburn C.J. in Ex parte Bradlaugh (1873) 3 Q.B.D. 509, 512, where there was a "no certiorari clause." He said:

> 'I entertain very serious doubts whether that provision does not apply only to matters in respect of which jurisdiction is given by that statute, and not to matters in which jurisdiction is given by subsequent statutes: . . .'
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> I am confirmed in this view by reference to section 108 of the Act, which gives an appeal to the Court of Appeal on points of law.
> It seems to me to be dealing with matters in respect of which the Act of 1959 gives jurisdiction to the County Court: and not to makers in respect of which jurisdiction is given by subsequent statutes.
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> Moreover, in subsequent Acts giving fresh jurisdiction to the County Court (additional to that in the Act of 1959), the Parliament has expressly said whether there is to be an appeal (as in the Building Societies Act 1962, section 72 (5)), or no appeal (as in the Industrial and Provident Societies Act, 1965, Section 42 (3) (b). In both those cases it uses the words "final and conclusive" leaving the remedy by certiorari or declaration unimpaired.
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> So I would hold that certiorari lies in the case of a decision by the county court judge under Schedule B to the Housing Act 1974 when he goes outside his jurisdiction or there is an error of law on the fact of the record. "

I am inclined to accept the dicta of Lord Denning on both the interpretation of the words "final and

conclusive" appearing in a statute and also the interpretation of "the no certiorari clause" in statute. The IRA does not contain provisions for appeal against the decisions of the IRC. What remedy is then available to a party aggrieved by the decision of the IRC on a point of law? The Act is silent. There is no provision of appeal.

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The question of ouster of jurisdiction by statute has been fully considered in a recent Privy Council case of *South East Asia Fire Bricks v Non - Metalic Union* (4). On account of the view I take of than case, I propose to set out the facts from the headnote. The brief facts of that case were that, employees of the appellants were called out on strike by their union. The appellants informed the employees that unless they rebury to work within 48 hours, their services would be deemed to be terminated. The dispute was referred to the Industrial Court of Malaysia. Meanwhile, the employees on the advice of their union sought to return to work but the appellants refused to allow them to do so and locked them out. The question whether the locking out was legal was, also referred to the Industrial Court. The Industrial Court made an award favour of the union and the employees on the ground that the employees had not terminated their contracts by striking and ordered the appellants to reinstate them. The appellants applied to the High Court of Malaya for certiorari on the grounds of an error of law on the face of the record. The High Court granted the application and quashed the award of the Industrial Relations Court. The Federal Court of Malaya held that there had been no error of law and reversed the decision and restored the award of the Industrial Court. On appeal by the appellants to the Privy Council, the question arose whether the High Court had jurisdiction to quash an award of the Industrial Court on the ground of error of law. The respondents contended that the power of the High Court to grant certiorari to quash awards of the Industrial Court for errors of law had been ousted by section 29 (3) (a) of the Malaya Industrial Relations Act, 1967, which provided that "an award of the court shall be final and conclusive and no award shall be challenged, appealed against, reviewed, quashed or called into question in any court of law." It was held in that case that section, 29 (3) (a) of the 1967 Act, was elective to exclude powers of the High Court of Malaya to review the decisions of the Industrial Court of Malaysia, by certiorari because the expression "quashed" or called into question in any court of law" in than paragraph was clearly directed to and was amply wide enough to include certiorari procedure. Lord Fraser of Tullybelton in the course of his speech had this to say are page 692:

> "In considering the effect of s. 29 (3)(a) two questions arise, and it is important to keep them separate. The first question is whether the paragraph has any application to certiorari, so as to oust it, or whether it merely prohibits appeals. If it does apply to certiorari, the second question is whether, notwithstanding the ouster, certiorari is still available to correct an error on the face of the record. Taking the first question first, the provision that an award shall be 'final' might exclude appeals but it would not be enough to exclude certiorari; see Re Gilmore's Application (1957) 1 All E.R. 796, (1957) 1 Q.B. 574 *Mohammed v Comr of Lands and Mines,* Trengganu (1968) 1 M.L.J 227. It is unnecessary to consider whether the addition of the Word 'conclusive' and of the provision that no award shall be 'challenged, appealed against or reviewed' would

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have that effect, because the final words 'quashed or called in question any Court of Law' seem to their Lordships to be clearly directed to certiorari. 'Quashed' is the word ordinarily used to describe the result of ant order of certiorari, and it is not commonly used connection with other forms of procedure (except in the quite different sense of quashing sentience after conviction on a criminal charge). If 'quashed' were for some reason not enough, the expression 'called in question in any Court of Law' is in their Lordship's option amply wide enough to include certiorari procedure. Accordingly they are of opinion that para. (a) does oust certiorari at least to some extent.

The second question then arises. The decision of blue House of Lords in *Anisminic Ltd v Foreign Compensation Commission* (1969) 1 All E.R. 208, (1969) 2 A.C. 147 shows that, when words in statute oust the power of the High Court to review decisions of an inferior tribunal by certiorari, they must be construed strictly, and that they will not have the effect of ousting that power if the inferior tribunal has acted without jurisdiction or if it has done or failed to do something in the course of the inquiry which is of such nature that its decision is a nullity' (1969) 1 All E.R. 208 at 213, (1965) 2A.C. 146at 171 per Lord Reid). But if the inferior tribunal has merely made an error of law which does not affect its jurisdiction, and if its decision is not nullity for some reason such as breach of the rules of natural justice then the ouster will be effective."

The crux of the matter on this point in the instant application is whether section 101 (3) Cap. 517, effectively and clearly ousts the jurisdiction of the High Court to review the decisions of the IRC by way of certiorari or merely prohibits appeals ? The Privy Council in the case cited relied very heavily on the presence of the word "quashed" in the ouster clause. But the court further indicated that if "quashed" were for borne reason not enough, the expression "called in question in any court of law. . . " Wilson their opinion "amply wide enough to include certiorari procedure. " The expression "called into question in any court of law" as used in the Malaysian Statute is in my opinion similar to the expression "shall not be questioned in any proceedings or court" used in section 101(3) of Cap. 517. The Privy Council decision is not binding on this court. But it is decision of court of highest esteem which decided a point which is on all fours with the point raised by the present application. I a mindful that the Malayan Statute deals only with "an award". But the wording of our sections is an "award or decision."

After very anxious moments following upon the Privy Council decision. I hold that section 101(3) of the Industrial Relations Act, Cap 517 excludes the power of the High Court to issue orders of certiorari removing the proceedings or decisions of the Industrial Relations Court into the High Court for purposes (if bad) of quashing the same. This conclusion makes consideration of the application on merit unnecessary.

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But before leaving the matter, I would like to draw the attention of the authorities concerned that in its present form the IRA may result in certain caves causing lot of injustice. I find it rather difficult to imagine that it was the intention of the legislature to deny a party aggrieved by the decision of the IRC both the right of appeal and the right to have the decision of the IRC reviewed by way of certiorari. Without touching on the merit of the application, this may be classic case where perhaps

the aggrieved party finds himself with no remedy assuming the IRC's decision is bad in law. I say no more on that but I hold serious views that there is an urgent need to have second look at the Act. Be that as it may, my ruling is that the application is misconceived and accordingly dismissed.

On account of the issues raised, I order that each party will bear its own costs.

Application dismissed

ZAMBIA BREWERIES *v*