Neutral Citation No. 2005 IEHC 330

THE HIGH COURT
JUDICIAL REVIEW

[2005 No 166 J.R.]

BETWEEN

RYANAIR LIMITED

APPLICANT

AND
THE LABOUR COURT

RESPONDENT

AND
IRISH MUNICIPAL PUBLIC AND CIVIL TRADE UNION (IMPACT)

NOTICE PARTY

Judgment of Mr. Justice Hanna delivered on the 14th day of October, 2005

1. The applicant, Ryanair Ltd, seeks, as its primary relief, an order quashing a decision of the respondent of 25th January, 2005, which was handed down by the Labour Court following upon a preliminary investigation conducted by it pursuant to s. 3 of the Industrial Relations (Amendment) Act, 2001. On that date, the respondent determined that a trade dispute existed between the applicant and the notice party for the purposes of the said Act. The respondent did not appear before me and the running, as it were, against the applicant's case was made by the notice party.

2. Briefly, the factual background to this dispute is as follows. The applicant, a well known international airline, has traditionally operated upon a system of negotiation with its employees which, it argues, corresponds to a collective bargaining agreement and avoids the necessity of recognising a trade union. Within the company, there are a number of different categories of employees, ranging from pilots and in-flight employees to ground staff. Whilst we are dealing here specifically with pilots, each category of employee has its own what is termed "Employee Relation Committee" (ERC) and in the case of pilots, these committees are usually made up of three pilots chosen internally amongst the pilots themselves. Where problems surface or contracts need to be re-negotiated, the intended function of these committees is to act on behalf of the category or categories of persons employed by the company and, in this way, the applicant deals with its employees directly. The company will not negotiate directly with trade unions although a number of its employees, and in the instant case, an unquantified number of pilots are members of the Irish Airline Pilots Association (IALPA) which is a branch of the notice party. Ryanair does not object to such membership but will have no truck with the union.

3. Between the years 1994 to 2005 three separate agreements were entered into by the applicant with each ERC, known as the 1994 agreement, the 1997 agreement (otherwise referred to as the "canteen agreement") and the 2000 agreement. This last agreement covers a five year period from 2000 to 2005. The applicant argues that this agreement was the result of a collective bargaining process as it was voted on and accepted by all pilots by ballot. This document deals with a plethora of issues relevant to the terms and conditions of employment including pay, ratings and rostering.

4. During the summer of 2004, the applicant commenced the conversion of its fleet of planes from 737, 200s to 747, 800s. It was hoped that by March, 2006 the entire fleet of 737, 200s would be replaced by 747, 800s. In order to implement this conversion scheme the applicant also had to implement a scheme whereby all pilots currently in its employment would be trained to fly 747, 800s. In order to fly a particular aircraft, a pilot must be "rated" for the craft in question. Thus, in order to fly a 747, 800, each pilot must undergo training and attend a course approved by the Irish Aviation Authority. Unless a pilot undergoes this training, they cannot fly that particular aircraft. Therefore, it was clearly necessary for Ryanair, in order to implement the intended development of its' fleet, to ensure its' pilots were suitably qualified to fly the new aircraft. The cost to each pilot, according to the applicant, of the appropriate training programme was the sterling equivalent of €15,000. The applicant proposed a scheme for meeting this circumstance and wrote accordingly to its pilots. While pointing out to them that paying for such retraining was well within their means given the level of their salary, Ryanair proposed deferring the cost of training for five years. However, payment was to fall due immediately if the pilot concerned left Ryanair's employment within five years of commencement of the conversion training or should Ryanair be compelled to engage in collective bargaining with a pilot association or trade union within five years of commencement of the conversion training. In either of the foregoing circumstances, the pilot or pilots as the case may be would have to repay the €15,000 forthwith.

5. On 3rd November, 2004, Mr. Evan Cullen, President of the Irish Airline Pilots Association (IALPA), wrote a letter to the applicant indicating that that body wished to debate a number of issues with it, including terms and conditions of employment of its members as well as the issue of conversion training. This letter purported to speak for Ryanair pilots who were members of IALPA. The letter does not set out which pilots are members of IALPA. The letter concludes with the following paragraph:

> "We are available to meet with you or your representatives to discuss these matters. We are also available to utilise any internal Ryanair dispute resolution procedures that may be in place. However, we wish to give you notice that should you not reply to this letter within seven days from the date hereof it is our intention to refer the matter to the Labour Relations Commission in accordance with the Industrial Relations (Amendment) Act, 2001 as amended by the Industrial Relations (Miscellaneous Provisions) Act, 2004."

6. On 11th November, 2004, the applicant replied to this letter stating that it would not "negotiate with trade unions" but rather would "negotiate directly with our pilots". A letter in the form of a circular bearing date 12th November, 2004, was then sent out by Ryanair to its Dublin pilots. This set out the terms whereby Ryanair pilots were to be retrained and contained the following paragraph:

> "If you decline this offer of conversion then you will continue to operate on the B737-200 fleet. However, it is envisaged that the 200 fleet will be fazed out over the next number of years, and if there is no suitable alternative work available at that time such as 737-800 series flying at one of our other bases then you will be given notice of redundancy."

7. After receiving that letter, IALPA decided to refer the matter to the Labour Court for determination. On 12th November, 2004, the Irish Municipal Public and Civil Trade Union (IMPACT), a body of which the IALPA is a branch, made an application to the Labour Court to determine whether in fact a trade dispute existed for the purposes of the Industrial Relations (Amendment) Act, 2001, as amended by the Industrial Relations (Miscellaneous Provisions) Act, 2004.

8. On 14th December, 2004, the parties attended before the Labour Court. Since an issue arose as to whether the provisions of the Act of 2001 applied, it was agreed between the parties that the respondent should hold a preliminary hearing pursuant to s.3 of the

said Act to determine whether the requirements specified in s. 2(1) of the Act of 2001 had been met

9. The preliminary hearing did not conclude on 14th December, 2004, and there was a further hearing on the 20th December, 2004. During both of these hearings, oral evidence was given by witnesses on behalf of the applicant but at no stage did any employee attend to give evidence on behalf of the notice party, a matter much complained of by the applicant before both the Labour Court and this court. An issue also arose as to who was actually making the complaint that a trade dispute existed. On 25th January, 2005, it handed down its decision. It held that a "trade dispute" existed, that no collective bargaining had been engaged in and that the internal dispute resolution procedures referred to in s. 2 of the Act of 2001 did not exist in the instant case. It is the totality of this decision in respect of which the applicant seeks judicial review.

The Applicant's Submissions

10. The applicant argues that in conducting the hearing the respondent failed to comply with the principles of natural and constitutional justice or fair procedures. It points to the fact that no witnesses were called on behalf of the notice party to support its assertions nor were they requested to do so by the respondent. As a result, the applicant had no opportunity to cross-examine any witnesses which in turn deprived it of the opportunity to challenge the assertions made by the notice party. It was unfair that the respondent did not direct the attendance of witnesses so that the assertions put forward by the notice party could be tested. In reaching the conclusion that it did in the absence of such evidence, the respondent breached fair procedures. It was unfair, the applicant contends, to conclude that the majority of Dublin pilots did not wish to engage in collective bargaining with the applicant in the absence of any testimony to this effect.

11. In support of these assertions, the applicant places particular reliance on the decision of the Supreme Court in *Kiely v. Minister for Social Welfare* [1977] I.R. 267. It argues that in that case it was held that it is an infringement of the requirements of natural justice to require one party to a dispute to attend the hearing of proceedings and to adduce oral evidence in support of his claim and to permit the other party to controvert that evidence by furnishing a written statement made by a witness who does not attend the hearing. The applicant also relies upon the Supreme Court's decision in *The State (Williams) v. Army Pensions Board* [1983] I.R. 308 where it was held that fair procedures required disclosure of the materials being relied upon by the decision maker.

12. Fair procedures were not followed by the respondent in that the applicant was not afforded any opportunity to cross-examine and thereby to challenge the assertions advanced by the notice party. In this regard reliance was placed on the decisions of the Supreme Court in the cases of *Maguire v. Ardagh* [2002] 1 I.R. 385 and *O'Callaghan v. Judge Mahon*, Unreported, Supreme Court, 9th March, 2005.

13. The applicant submits that the respondent erred in law in deciding that it had jurisdiction to investigate the notice party's complaints pursuant to s. 2(1) of the Act of 2001. The applicant argues that none of the prerequisites to jurisdiction outlined in that provision have been satisfied. In the first instance, the applicant submits that the respondent could not have been satisfied that a "trade dispute" existed as it gave insufficient consideration to the question of whether the dispute was genuine or not. The applicant also argues that the respondent erred in law in concluding that it was not the applicant's practice to engage in collective bargaining negotiations with its staff. The applicant asserts that the respondent's decision goes against the evidence placed before it including the existing pilot group agreement of the 30th November, 2000, (governing the years 2000 to 2005).

14. The applicant argues that the respondent also erred in law and acted in excess of jurisdiction in reaching the conclusion that it did where all of the evidence before it pointed to the fact that the internal dispute resolution procedures normally used had not failed to resolve the dispute but were ongoing.

15. The applicant submits that the respondent erred in law in interpreting s. 6 of the Trade Union Act, 1941 in a manner which resulted in the finding that the Dublin based pilots group was not an excepted body within the meaning of that section. The applicant also submits that, in the event that the pilots were not found to be an exempted body, this would not necessarily be determinative of the question as to whether as a matter of fact they were engaged in a practice of collective bargaining with the applicant.

Submissions of the Notice Party

16. The notice party accepts that it did not present any witness in the employ of the applicant to the respondent in support of its assertions. However, it also points out that the applicant has never disputed the fact that the notice party presented documentary evidence to the respondent. Rather, it is the opinion of the notice party that the applicant seeks to dispute the inferences to be drawn by the respondent from that documentary evidence. However, the notice party submits that in order to succeed in this claim the applicant must establish that the respondent's determination was irrational. The notice party goes on to point out that in order to satisfy this standard the applicant must show that the respondent had before it no relevant material which would support its decision.

17. The notice party argues that this is not the case as it is clear from the respondent's determination that it relied upon extensive documentary evidence and that that evidence supported its decision. Furthermore, the notice party argues that the respondent was perfectly entitled to rely solely on such evidence and did not have to require the attendance of witnesses in support of the notice party. The notice party submits that as the respondent is not a court of law, it is thus entitled to prescribe its own procedures and that these may be relatively informal. It submits that although the respondent may require formal evidence to be given on oath, this is the exception rather than the rule. In this regard, the notice party relies upon the decision of O'Hanlon J. in *The State (Casey) v. Labour Court* [1984] 3 J.I.S.L.L. 135 as authority for the proposition that the respondent cannot be criticised for the manner in which it conducts proceedings once it exercises its powers in accordance with the Statute from which it derives authority.

18. The notice party also submits that the respondent cannot be criticised for relying on documentary evidence in circumstances where the applicant was aware that such evidence was before the respondent and thus had full opportunity to address the respondent regarding that evidence. In making this submission, the notice party relied on the decision of Keane J. (as he then was) in *Harte v. Labour Court* [1996] 2 I.L.R.M. 450.

19. The notice party also argues that the respondent did not err in law in finding it had jurisdiction to investigate the notice party's complaint pursuant to s. 2 of the Act of 2001.

20. The notice party argues that the effect of the Supreme Court's decision in *Iarnrod Eireann v. Holbrooke* [2001] 1 I.R. 237 is that if a body is to come within the definition of an "excepted body", that body must carry on negotiations with the consent of both sides.

Conclusions

21. It seems to me that this case boils down to three fundamental issues. Firstly, did the Labour Court have jurisdiction to intervene under the material legislation in the circumstances and did it err in law in so doing? Secondly, were the procedures of the Labour Court so flawed or inadequate and the proceedings conducted before and by it so defective as to amount to an injustice and a

breach of the applicant's legal and constitutional rights? Thirdly, was the decision so flawed as a consequence of the foregoing as to require that it be set aside?

Jurisdiction

22. Section 2(1) of the said act, as amended by the Industrial Relations (Miscellaneous Provisions) Act, 2004, provides as follows:

> "Notwithstanding anything contained in the Industrial Relations Acts, 1946 to 1990, at the request of a trade union or excepted body, the [Labour] Court may investigate a trade dispute where the Court is satisfied that-
>
> (a) it is not the practice of the employer to engage in collective bargaining negotiations in respect of the grade, group or category of workers who are party to the trade dispute and the internal dispute resolution procedures (if any) normally used by the parties concerned have failed to resolve the dispute,
>
> (b) either –
>
> (i) the employer has failed to observe –
>
> (I) a provision of the Code of Practice on Voluntary Dispute Resolution under section 42 of the Industrial Relations Act 1990 specifying the period of time for the doing of any thing (or such a provision of any code of practice amending or replacing that code), or
>
> (II) any agreement by the parties extending that period of time, or (ii) the dispute having been referred to the Commission for resolution in accordance with the provisions of such code, no further efforts on the part of the Commission will, in the opinion of the Commission, advance the resolution of the dispute and the Court has received a report from the Commission to that effect,
>
> (c) the trade union or the excepted body or the employees, as the case may be, have not acted in a manner which, in the opinion of the Court, has frustrated the employer in observing a provision of such code of practice, and
>
> (d) the trade union or the excepted body or the employees, as the case my be, have not had recourse to industrial action after the dispute in question was referred to the Commission in accordance with the provisions of such code of practice. "

23. Section 3 of the Industrial Relations Act, 1946 defines the expression "trade dispute" as:

> "Any dispute or difference between employers and workers or between workers and workers connected with the employment or non-employment, or the terms of the employment, or with the conditions of employment, of any person."

24. Thus, three matters fell to be determined at the preliminary hearing. They were:

> a) Whether a trade dispute within the meaning of section 2 of the Act of 2001 existed;
>
> b) Whether it was the practice of the applicant to engage in collective bargaining negotiations in respect of the grade, group or category of workers who are a party to the trade dispute, if any;
>
> c) Whether the internal dispute resolution procedures had failed to resolve the dispute.

25. The jurisdiction to conduct the preliminary inquiry in which the Labour Court engaged derives from the fact that a trade union has invited the court to investigate a trade dispute. In the first instance, there can be no doubt but that a number, albeit unidentified, of pilots employed by Ryanair are members of the IALPA, the notice party herein. This is not disputed. It is, therefore, clear that upon being requested by a trade union, as was the case here, the Labour Court was entitled to conduct an investigation. It would have to be satisfied that a trade dispute existed and thereafter it would have to turn its attention to those material parts of subs. 1 of s. 2, being subparas. (a) to (d) inclusive of the Industrial Relations (Amendment) Act, 2001, as amended. These are questions of fact to be resolved by the Labour Court. It is important to note that they are couched in the present tense and whereas the Labour Court must have regard, *inter alia*, to the history of relations between the parties before it, its primary focus is the actuality on the "shop floor" as it were. Of course, if the labour court is not satisfied that a trade dispute exists it cannot proceed to determine the issues of fact posed by subs. 2. It did so satisfy itself and gives its reasons for coming to the conclusion it did. In my view, the respondent was entitled to come to the view which it did and this court, were it to take an alternative view, is not entitled to substitute that view for that of the Labour Court.

26. Whether or not the procedures engaged in by the respondent were fair and whether the evidential material relied upon by it in making its findings of fact and coming to its conclusions and the manner in which it relied upon such materials was lawful I shall shortly address. The applicant also complains that the respondent erred in law in concluding that the group of pilots who wished to be represented by IALPA did not constitute an "excepted body" that could carry on negotiations with their employer and thereby engage in collective bargaining. Section 6(3)(h) of the Act of 1941, as amended by s. 2 of the Trade Union Act, 1942, states that:

> "The expression 'excepted body' shall include a body all the members of which are employed by the same employer and which carries on negotiations for the fixing of the wages or other conditions of employment of its own members (but of no other employees)."

27. In interpreting this provision, the respondent concluded that:

> "….a body of persons can only be an excepted body if the employer consents to negotiate with the body. By parity of reasoning, if an employer wishes to negotiate with a group of its own staff rather than through a trade union, but the employees are unwilling to negotiate on that basis, they cannot be regarded as an excepted body."

28. The applicant argues that an excepted body is an organised group of people with a common function and that the pilots with whom we are concerned constitute such a body. The applicant relies upon the Supreme Court's decision in Iarnrod Eireann v. Holbrooke [2001] 1 I.R. 237 in support of this latter assertion. In that case, Fennelly J., delivering judgment of the court, noted that (at p. 245):

> "The learned trial judge was undoubtedly correct, however, in stating that the object of the section was to relieve the hardship that would arise if employees of small firms were deprived of the benefit of trade union representation in carrying on negotiations. I would go further. Trade union membership is not compulsory and, although the court was not addressed on the constitutional implications of the interpretation of the section, it can hardly be doubted that it cannot be made so by law. Even at a practical level, if an employer and its workers agreed to exclude union representation, it would be extraordinary if it were illegal for a staff committee to enter consensual negotiations with the employer."

29. In relying upon that passage from the learned judgment of Fennelly J. the applicant does not, in my opinion, lay sufficient moment upon the consensual aspect of the negotiations to which he refers. In my view, in the light of this decision where a body no longer carries on negotiations because of the lack of consent of either side it is no longer an excepted body. If a body does not hold a negotiation licence and is not an excepted body, an employer cannot engage in collective bargaining with that body.

30. At page 246 of the report, Fennelly J. goes on to say as follows:

> "The 1941 version had omitted to provide for the employee counterpart of the employer conducting negotiations in-house. It was obviously desirable that employee bodies be not left exposed while employers were covered by an exception.
>
> In each case the activity is implicitly consensual, which explains the use of the present tense. This does not, of course, mean that the exception was intended to cover only bodies existing at the passing of the Act. It can apply to any bodies which 'carries on negotiations' whenever in the future by the consent of both sides negotiations actually take place."

31. If one party insists on being represented by a trade union and the other refuses to talk to that union because it is a union that is the antithesis of consensus and, in my view, in reaching the conclusion it did on this issue the respondent did not err in law.

32. The applicant also complains that the respondent could not have been satisfied as to the existence of a trade dispute because it didn't give sufficient consideration as to whether or not the dispute was genuine. This is not, it argues, a genuine dispute at all but was a confrontation driven by a trade union's desire to involve itself in Ryanair's relationships with its employees with the ultimate ambition of compelling the applicant to engage with trade unions. Counsel for Ryanair placed reliance on the decision of O'Dalaigh J. in *Silver Tassie v. Cleary* (1956) 92 I.L.T.R. 27 in this regard, where the learned judge said that a trade dispute must be "genuine not merely colourable" and that the genuineness of the dispute "depends upon the *bona fides* of the parties". Further relied upon is the case of *Nolan Transport v. Halligan* [1999] 1 I.R. 128, where Murphy J. stated that an "outside party or meddler who had no legitimate interest of his own to protect…..could not claim to be engaged in a bona fide trade dispute". Thus, argues the applicant, as the respondent made no meaningful attempt to address whether a bona fide trade dispute existed, it was acting in excess of jurisdiction from that point onwards. In response, counsel for the notice party asserts that in it's decision in Nolan Transport v. Halligan the Supreme Court did not consider it appropriate to determine the motivation or ultimate ambitions of those engaged in industrial action in order to establish whether the trade dispute was bona fide. Therefore, the alleged "ultimate motivation" of the notice party is irrelevant to the issue of whether a trade dispute exists between the parties.

33. At page 152 of the report in *Nolan v. Halligan*, Murphy J. cites O'Dalaigh J. in *Silver Tassie v.Cleary*:

> " 'It is quite clear that the genuineness of a dispute does not depend upon what are the true facts of the dispute but rather it depends on the *bona fides* of the parties.'
>
> That sentence read independently of the facts under consideration can be misleading and perhaps misled the learned trial judge. Taken in context it does not authorise a review of the conduct of those engaged in industrial action to determine their motivation or ultimate ambitions. "

34. I do not feel that the alleged ambitions of any trade union are material matters to take into account in determining whether there was a trade dispute here. The Labour Court was perfectly entitled to come to the conclusion it did.

Procedural Issues

35. The Labour Court was established by the Industrial Relations Act, 1946. The long title of that Act articulates the scope and intent, *inter alia*, of the work upon which the Labour Court was thereafter to embark:

> "An Act to make further and better provision for promoting harmonious relations between workers and their employers and for this purpose to establish machinery for regulating rates of remuneration and conditions of employment and for the prevention and settlement of trade disputes and to provide for certain other matters connected with the matters aforesaid."

36. Section 21 of the 1946 Act, as amended by s. 4 of the 2001 Act, in connection with an investigation under the latter Act, empowers the Labour Court to summon witnesses, examine such witnesses under oath and require the production by such witness of any document within his power or control.

37. The Labour Court is very much in charge of its own procedures. It has provided over many years a vital and invaluable service to the State in the often fraught area of industrial relations. It is not a court of law and the practice and procedure which it has evolved over the years, understandably, necessarily involved pursuing a less ritualistic and formalistic path than might be the case before these courts. Although the respondent was not represented before the court no serious factual dispute arose between the applicant and the notice party as to the manner in which the Labour Court tended to conduct its proceedings and, more particularly, did so in this case. For example, matters are dealt with less formally than might otherwise be the case. Witnesses are not usually sworn and were not in this case. Lawyers rarely attend sittings of the Labour Court although such did occur here. Written submissions are and were received together with the material documentation upon which the parties would seek to rely. The parties made verbal submissions, the evidence was teased out by way of questions and answers from the court to the participants. There was no cross-examination as such and the Labour Court did not summons any witness on behalf of the notice party or, indeed, the applicant. This latter failure is one of the points of complaint raised by the applicant. There was no suggestion that the notice party did anything other than conduct itself according to its own practice and procedure.

38. In my view, the Labour Court is entitled to manage its own affairs and to conduct proceedings before it as it sees fit provided it so conducts itself within the limits of the statutory provision for which it derives its authority and subject to the strictures well demonstrated by the decision of O'Hanlon J. in *The State (Mary Casey) v. The Labour Court* [1984] 3 J.I.S.L.L. 135. That case was concerned with an attempt by the applicant to quash a decision of the Labour Court reversing an earlier decision by an Equality Officer in proceedings brought by the applicant under the Employment Quality Act, 1977. The officer had made an award of

compensation on the grounds that the applicant had been discriminated against when an appointment had been made to the staff of a national school. There were four grounds of complaint. Firstly, the Labour Court failed to exercise its power to hear sworn evidence and received unsworn evidence. Secondly, the applicant's husband, whose evidence was challenged, swore an affidavit to verify his oral testimony and the Labour Court declined to accept his affidavit as part of the evidence. Thirdly, it was alleged that the Labour Court reversed the recommendation of the Equality Officer without referring to, considering or taking into account express findings of the Equality Officer. Fourthly, it was alleged that the Labour Court drew inferences which were wholly unsupported by the facts and which did not have regard to the findings of fact made by the Equality Officer. Noting that under the 1977 Act there appeared to be no right of appeal to the High Court other than on a point of law, O'Hanlon J. said as follows:

> "Consequently, the High Court should not, in my opinion, embark on a re-hearing of any case which has already been heard and determined by an Equality Officer and by the Labour Court, but should, on an application for relief by way of certiorari, confine itself to an examination of the issue as to whether the Labour Court in making its determination, acted without jurisdiction, or in excess of jurisdiction, or without regard to the principles of natural and constitutional justice, or was induced to make its determination by fraud or perjured evidence, or has made a determination which contains an error of law apparent on the face of the record.
>
> With regard to the complaint made that the Labour Court failed to require evidence to be given on oath, it appears to me that s. 21 of the Industrial Relations Act 1946, as applied by s. 21(3) (c) of the Employment Equality Act 1977, confers a discretion on the Court to regulate its own procedures in this respect, and to allow testimony to be given before it on oath or as unsworn testimony as the Court thinks fit. Neither the parties nor the High Court can dictate to the Labour Court as to the manner in which it will control its own procedures, once it exercises its powers in accordance with the Statute from which it derives its authority to act. Accordingly, I am of opinion that the Court acted within its proper jurisdiction in declining to receive in evidence an affidavit sworn by her husband. I do not think the Court should allow itself to be deterred by considerations of difficulty or inconvenience from taking evidence on oath where it would otherwise be proper or desirable to do so, but I do not regard the matters alleged in Paragraph 16 of the prosecutor's affidavit as being sufficient to indicate an abdication by the Court of its jurisdiction in this respect.
>
> I think this is the high watermark of the prosecutor's case in her application for relief by way of certiorari. It appears to me that the other grounds relied on are in reality an effort to re-open findings of fact made by the Labour Court after a three-day hearing of the prosecutor's case. It is contended that the Court failed to give due weight to findings of fact which had already been made by the Equality Officer, and failed to indicate the grounds upon which it diverged from the conclusions which he had reached, but in all these respects the Court must be presumed to have acted conscientiously in the exercise of its proper jurisdiction and I have no reason to believe that the Court had no evidence or no sufficient evidence on which it could have based its decision. All matters concerning the credibility of witnesses and the weight to be attached to their evidence were essentially within the province of the Court itself and the scope for challenging its findings by application for certiorari is strictly limited in the manner referred to previously in this judgment.
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> For these reasons I am unable to accede to the present application for a conditional order of certiorari."

39. Following, as I do, the approach adopted by O'Hanlon J. in *The State (Mary Casey) v. The Labour Court*, it seems to me that this court must be very slow to intervene in the evolved procedures engaged in by the Labour Court except, or course, where those procedures in their application fall outside the ambit of the powers conferred upon the Labour Court under the Industrial Relations Act, 1946, as amended, or where a party's legal or constitutional rights have thereby been infringed or there is legal error. I must have regard to the fact that the Labour Court is not a court of law. The function in which it is engaged in this and other similar cases billets it in the front line of the complex interface of industrial relations. The protagonists that come before it are rarely lawyers and more often employers and employees or members of the representatives of organisations. Of course, the respondent's procedures, functioning as they do with less formality than might otherwise be the case in a law court and in the absence of lawyers cannot be immune from interference by these courts by way of judicial review. However, in such matters procedural circumspection must be the watchword.

40. Undoubtedly both the applicant and the notice party put their respective cases with considerable force to the Labour Court. Both sides furnished written submissions to which were appended documentation. Both parties answered questions asked of them by the panel of the Labour Court which was hearing this matter. The applicant's representative gave unsworn evidence that the applicant did engage in collective bargaining with its pilots and that this was the practice of the applicant and also that the internal dispute resolution procedures normally used have not failed to resolve the dispute but were indeed ongoing. They contended that the Union had unilaterally broken off negotiations. From the affidavits of Mr. Wilson on behalf of the applicant and Mr. Landers on behalf of the notice party it is clear that opposing positions were taken. However, there is not available to this court a transcript or note of the evidence such as was offered to the Labour Court. The affidavits of Mr. Eddie Wilson, the Director of Personnel of Ryanair, sets out the case that was made by Mr. Wilson and Mr. David O'Brien, Director of Flight and Ground Operations on behalf of the applicant and complains about the absence of any Ryanair pilot to give evidence and to be subjected to cross-examination. Mr. Landers, on behalf of the notice party, in his replying affidavit confirms that both parties made the views known to the Labour Court in both oral submission and by documentation and this much does not appear to be disputed by Mr. Wilson in his subsequent affidavit of 22nd April, 2005.

41. It seems to me that a court should be extremely slow to put it at its mildest to interfere in a decision making process where it does not have a comprehensive statement by way of transcript, note or affidavit of the actual evidence entertained before the decision making body. The fact that Mr. Wilson and Mr. O'Brien no doubt trenchantly repeated their views with regard to collective bargaining in Ryanair and the efficacy of the internal dispute resolution mechanism does not render those views sacrosanct. Their no doubt strongly held opinion as to the state of affairs with which the Labour Court was concerned does not and cannot mean that the court necessarily must accept such views as being established fact. It is the function of that body to assess all of the material before it in whatever form it is offered.

42. It is clear that the Labour Court's procedures encompass reliance on documentation which is not necessarily formally proved. This is the procedure adopted in the instant case and it is a procedure of which the applicant complains. However it is clear that the bulk of the documentation to which the Labour Court referred in its decision emanated not from some absent third party but from Ryanair itself. Its authenticity was not and could not be challenged. This contrasts with the position which obtained in the cases of Kylie v. Minister for Social Welfare and The State (Williams) v. Army Pensions Board where, in each of those cases, the document which was relied upon in arriving at the decision sought to be impugned was provided by absent third parties. In the present case, not only was the applicant the author of the essential documentation relied upon by the respondent in coming to its conclusion but, furthermore, it was fully aware that such documents were before the respondent and the applicant had every opportunity (and for all I know took that opportunity) of addressing the Labour Court on them. I do not think that the respondent can be criticised, therefore, for placing

reliance upon such documents in coming to its conclusion in the circumstances of the case. In *Harte v. Labour Court* the court had to determine, inter alia, whether the Labour Court had acted in breach of natural justice, constitutional justice and fair procedures in deciding an appeal from an Equality Officer under the Anti-Discrimination (Pay) Act, 1974 on a ground that had not been the subject of argument. The Labour Court in that case had relied upon a document relating to the rates of pay of part-time male home helps a matter which was material to the issue before it. Keane J., as he then was, said at p. 455:-

> "The Labour Court had before it a statement, apparently uncontroverted, that there were in the employment of the health board a number of part-time male home helps who were paid at the same rate as the applicants. That material had also been before the equality officer. This is not, accordingly, a case in which the Labour Court in arriving at a conclusion took into account materials which were not before the parties and with which they had no opportunity of dealing. It is distinguishable from the circumstances considered by Blaney J in State (*Polymark (Ireland) Ltd.) v. Labour Court* [1987] ILRM 357 where the court had available to it legal advice of which the parties, it would seem, were not apprised. It is clear from the judgment of Blayney J that, while he did not consider an order of certiorari appropriate in the circumstances of that case, he was at least doubtful as to whether such a procedure was consonant with natural justice. In contrast, as I have indicated, there is no question of the Labour Court having taken into account in the present case any materials which were not also available to the parties and in respect of which they could urge upon the court whatever arguments they considered appropriate."

43. Since the applicant's representatives had every opportunity to describe and debate the documents upon which the Labour Court founded its decision in my view, in the circumstances of this case, there was no want of fairness as such to be found in the procedures adopted and employed by the Labour Court as far as its treatment of the documentation went.

44. Neither do I see any fundamental unfairness in the absence of any Ryanair pilot to give evidence in support of the case being advanced by the notice party. Whether or not oral evidence is to be offered is a call made on a daily basis before courts by advocates. In a more formal setting parties are free to offer viva voce evidence or not as the case may be. Whether or not a witness or witnesses should be offered or dispensed with in the conduct of a court action is, indeed, one of the more challenging tasks facing counsel in the conduct of civil and criminal litigation in these courts. Once the decision is made the party whom the advocate represents must bear the consequences of that decision. Failure to call oral evidence can and sometimes does backfire seriously. As far as the notice party was concerned, it was, in my view, entitled to adopt the stance that it did carrying with it, as it did, the risk that the Labour Court might take a view contrary to its interests. Further, in my opinion, the Labour Court was under no obligation to summons witnesses. As I have noted before, the parties here were fully and professionally represented. The applicant was legally represented as well as having in attendance two senior executives. The notice party, too, was professionally represented. In the circumstances presenting themselves, it was not, in my opinion, incumbent upon the Labour Court of its own volition to seek the attendance by way of summons of a witness the calling of which might advantage or disadvantage one party or the other. One could imagine, of course, circumstances in which the Labour Court might take a more activist role in determining what oral evidence it might wish to hear where, for example, there is a marked imbalance of "fire power" and resources in the representation of the parties before it. However, in circumstances in which both parties are equally capably and, no doubt, forcefully represented, I do not think the Labour Court could be criticised for remaining passive on the issue of summonsing witnesses.

45. The applicant complains as to the unfairness of the procedures resulting in it not being made aware of the identity or number of pilots whom the notice party represented. In my view, given the fact that it is accepted by Ryanair that certain of its pilots were and are members of IALPA , I fail to see how such procedures were unfair insofar as they prevented the applicant from acquainting itself with such information. It could not have any real bearing on how the applicant's case was presented. If Ryanair were made known which of their pilots were members of IALPA it would have the effect that the company would not deal with them as trade unionists but, presumably, carry on dealing with them as pilots. In any event, in my view the provisions of the Act of 2001, as amended, neither contemplate nor compel such disclosure.

46. The applicant has not satisfied me that there has been any injustice or want of fairness or compromise of the applicant's legal and constitutional rights in the manner in which the Labour Court conducted its enquiries from a procedural view point and, to that extent, I am satisfied that the Labour Court was entitled to conduct the hearing in the manner in which it did. After all, this was a hearing of a preliminary issue. The decision of the Labour Court means that the Court will proceed to investigate the substantive dispute. This investigation may or may not result in findings which are agreeable to the applicant. The same can be said of the notice party. The Labour Court may well take the view that there is no validity to the dispute. It might take a contrary view. Consequences might or might not flow for the applicant from such an investigation. We do not know. However, the consequence which it flows from the decision of the Labour Court with which we are concerned is a substantive investigation under s. 5 of the 2001 Act and no more or less than that.

Reviewing the decision

47. Having concluded that the procedures adopted by the respondent were not legally or constitutionally tainted or flawed the next matter to which I turn is whether or not the decision of the Labour Court should be quashed. The function of this court when engaged in judicial review of a decision making process such as was involved in this case is well established. The decision of Finlay C.J. in *O'Keeffe v. An Bord Pleanála* [1993] 1I.R. 39 must rank as one of the most extensively cited and quoted judgments of recent years. Nevertheless, so central is that case to the function in which this court is currently engaged it spurs yet another citation.

48. Having cited the decision of Lord Greene MR in *Associated Provincial Picture Houses Limited v. Wednesbury Corporation* [1948] 1K.B. 223 and the decisions of Henchy and Griffin J.J. in The State (Keegan) v. Stardust Compensation Tribunal [1986] I.R. 642, Finlay CJ says at pp. 71 and 72:

> "It is clear from these quotations that the circumstances under which the court can intervene on the basis of irrationality with the decision-maker involved in an administrative function are limited and rare. It is of importance and, I would think, of assistance to consider not only as was done by Henchy J. in *The State (Keegan) v. Stardust Compensation Tribunal* [1986] I.R. 642 the circumstances under which the court can and should intervene, but also in brief terms and not necessarily comprehensively, to consider the circumstances under which the court cannot intervene.
>
> The court cannot interfere with the decision of an administrative decision-making authority merely on the grounds that (a) it is satisfied that on the facts as found it would have raised different inferences and conclusions, or (b) it is satisfied that the case against the decision made by the authority was much stronger than the case for it.....
>
> I am satisfied that in order for an applicant for judicial review to satisfy a court that the decision-making authority has acted irrationally in the sense which I have outlined above so that the court can intervene and quash its decision, it is necessary that the applicant should establish to the satisfaction of the court that the decision-making authority had

> before it no relevant material which would support its decision.
>
> As was indicated by this Court in *P. & F. Sharpe Ltd v. Dublin City and County Manager* [1989] I.R. 701, the onus of establishing all that material is on the applicant for judicial review, and if he fails in that onus he must fail in his claim for review."

49. Accordingly, if the applicant fails to establish that a decision of the Labour Court was irrational in the sense that there was no relevant material upon which it could ground such a decision or that such material could not properly be relied on or that the material and evidence offered by the applicant so conclusively and overwhelmingly trumped such case as was offered by the notice party to such an extent as to render a decision in its favour perverse then, in such circumstances, this aspect of the applicant's case would have to fail.

50. At the risk of reciting trite law, I am concerned here not with the decision of the Labour Court but with the process in which the Labour Court engaged in coming to that decision. It is immaterial, even had I full access to the oral evidence that was presented to the Labour Court (which I don't) and the documentary evidence (which I do), that I might come to a different conclusion. The question is whether or not I am satisfied that there was no or no sufficient material or evidence before the Labour Court which would enable it to come to the conclusion which it did.

51. I can only approach the decision bearing firmly in mind the deficiencies in the evidence before me as far as the spoken aspect of the hearing went. As far as the documentary evidence goes the Labour Court in its decision refers to or cites it liberally and draws conclusions that are, on their face, rational. This is not a case involving a threat to life, limb or liberty such as would compel anxious scrutiny of the minutiae upon which the respondent founded its decision. The applicant argued that there were serious legal and financial implications for it as a result of this decision. This was a preliminary enquiry which will now, as a result of the determination of the Labour Court, lead on to a full investigation of the trade dispute. It cannot be right that this Court should attempt to crystal-ball gaze and anticipate the outcome of such enquiry. It may well resolve to Ryanair's satisfaction or it may not. Even if I could properly speculate as to the outcome, I can see no basis on the evidence presented before me that could lead me properly to conclude that the would be serious consequences for the applicant.

52. I repeat that there is no sufficient record of the oral evidence such as was presented to the Labour Court. In the absence of this, given the nature of the complaints made by the applicant, it is difficult to see how a court could intervene to the extent of quashing a decision. In the circumstances of this case, I do not propose to do so. I would dismiss this application.