

II—Police vs. Gerard Caruana

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The legal nature of Wages Councils was examined in some detail by H.M. Court of Criminal Appeal presided over by the Hon. Mr. Justice W. Harding, B.Litt., LL.D., on the 19th September, 1953, where the invalidity of an order made by the Minister on the advice of a Wages Council was being pleaded. It was alleged that the Council had not considered the representations made to it by interested parties (2) and that the advice given to the Minister was in fact not that of the whole Council but of two members only who were not sitting as a Council at the time the decision was reached.

After an examination of the comparable issues in English Administrative Law, the Court stated that the nature of a Wages Council is not only administrative but also quasi-judicial insofar as it has the duty to *consider* the representations made before giving advice to the Minister. In terms of local case-law the Court's authority to review the discharge of such quasi-judicial functions is strictly limited. In general it cannot do anything but see: i) whether the Wages Council has exceeded its statutory powers; ii) whether the decision is bad on its face; and iii) whether the rules of Natural Justice have been complied with. The Court cannot examine the decision of the Council to see whether it is a fit and proper decision, though exceptions can arise such as where the decision is manifestly oppressive.

In the case in question the Court found that the Council *had* considered the representations made since the term "to consider" should not be interpreted in the ordinary sense of "to deliberate on" and does not imply any special procedures. It also found that in fact the decision to give advice had been arrived at by a majority of the council even though no formal vote had been taken. As no special regulations had been prescribed to the Council, it should follow such procedures as it found convenient for the transaction of business (3).

1. H.M. Court of Appeal: 19. 9. 1953.

2. S. 7 (2), Act XI, 1952.

3. But vide G.N. 386, 1953.

This shows that Wages Councils, like other quasi-judicial bodies, have a wide field of unappealable decision. In practice, however, their authority may be a little less wide than it appears to be *prima facie*. Indeed the learned judge observed that local case-law on the subject is still to be developed and his references to English Administrative case-law point out that in appropriate cases the Malta Courts may be prepared to extend the grounds for review in the same way as English Judges, jealous for their slipping authority, gradually extended their limited powers. Thus, for example, though English Judges too have stated that they cannot substitute their own discretion for that of such bodies (4), they have nonetheless established that administrative discretion must be exercised according to law (5) and that they will review for improper purpose (6), extraneous considerations (7) and unreasonableness (8).

This case had its sequel on the 3rd October 1953 (9) when the plea of justification for not complying with a Wages Council Order was that the employee (an assistant projectionist) was not a "projectionist" but belonged to the category of "other classes" specified in the order. It was alleged that even the Wages Council had decided that an assistant projectionist formed part of the general category "other classes". The Court, however, thought otherwise and Harding J. said that even if the Wages Council had given such a definition this was not binding on the Court since, to be operative, the definitions of the Wages Council must be based on law and in the Court's opinion the expression "other classes" indicated a distinct group of people not otherwise mentioned in the schedule. This restated the point, which had never been in doubt, that the Court can review Wages Council decisions based on wrong legal definitions.

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4. *Smith v. Chorley R.C.*, (1879) 1 Q.B. 678; *Fraser (D. R.) & Co. Ltd. v. Minister of National Revenue*, (1949) A.C. 24
 5. *Sharp v. Wakefield*, (1891) A.C. 173.
 6. *Leeds Corporation v. Ryder*, (1907) A.C. 420; *Local Govt. Board v. Arlidge*, (1915) A.C. 120; *Roberts v. Hopgood*, (1925) A.C. 578.
 7. *Associated Provincial Picture Theatres Ltd. v. Wedensbury Corporation*, (1948) 1 K.B. 223; *Roberts v. Hopgood*.
 8. *R. v. Cotham* (1898) 1 Q.B. 802.
 9. *Police v. Gerald Caruana*, H.M. Court of Criminal Appeal.