

A consignee. One to whom a consignment is made. Person named in bill of lading to whom or to whose order the bill promises delivery.

B In a commercial use, 'consignee' means one to whom a consignment may be made, a person to whom goods are shipped for sale, or one to whom a carrier may lawfully make delivery in accordance with his contract of carriage, or one to whom goods are consigned, shipped or otherwise transmitted.

C The above definitions clearly do not exclude the owner of goods from being addressed as a consignee. It depends on facts of a particular case. In the case at hand the Applicant does not allege existence of any special contract between them and Mobil save that of transportation. However, other factors contradict this. For example, Applicant alleged that the fuel was sold to Mobil. It has sufficiently been demonstrated that Mobil could not have bought its own fuel. Therefore on this the applicant nets itself in pure lies. Again, as already stated it is not of less significance that the Gapco official is on record insisting that those to whom Mobil sold fuel as per loading order were addressed as consignees. All the above brings us to the following conclusion.

F Having carefully analysed the evidence before me I am satisfied that the Applicant has not sufficiently laid grounds entitling it to the prayers sought in its chamber summons. Apart from the obvious that it was the Applicant's duty to prove that it is not the owner of the fuel in question because it is trite law that he who alleges has to prove, the respondent's version, supported, among others, by the TRC receipt, the Export Delivery Note and Gapco official's testimony, that the said Applicant is the owner, remains unscratched. In the premises I hold that the prayers fronted and quoted at the beginning of this ruling have no base upon which to stand. The Application is dismissed accordingly.

I

FELIX MSELLE v. MINISTER FOR LABOUR AND YOUTH AND THREE OTHERS

HIGH COURT OF TANZANIA
AT DAR ES SALAAM
(Kyando, J.)

MISCELLANEOUS CIVIL CAUSE No. 84 OF 2000

Administrative Law - Judicial review of administrative action - Nature and Source of the jurisdiction of the High Court in judicial review of administrative action.

Judicial Review - Judicial review of administrative action - Application for judicial review of decisions made by respondents in a private contractual relationship - Whether judicial review is applicable.

Natural Justice - Right to be heard - Minister acts on additional information received ex-parte and decides appeal without first disclosing it to the other party - Breach of natural justice.

The applicant was an employee of the fourth respondent who then decided to terminate the employment. The applicant referred the matter to the Labour Conciliation Board which ordered his reinstatement. The fourth respondent appealed to the Minister, the first respondent, who reversed the decision of the Conciliation Board and confirmed the termination. The applicant then brought this application for judicial review of both the decision of the Minister and the decision of the fourth respondent on the grounds of breach of natural justice and unreasonableness.

Held: (i) Judicial review of administrative action is the power or process by which the High Court exercises its supervisory jurisdiction over proceedings and decisions of inferior tribunals or other authorities, bodies or persons charged with the performance of public acts and duties; this power is not statutory but inherent in the High Court;

(ii) The public law nature of the orders of *certiorari* and *mandamus* means that they will not issue for the enforcement of a merely private law right such as arising from the relationship between the applicant and the four respondents which was a

A purely private contractual relationship; those orders, therefore, cannot be issued against the third and fourth respondents in this case;

(iii) As the Minister received from the fourth respondent detailed additional information relating to the appeal before him, and that information was not disclosed to the applicant, and the Minister acted on this additional information in reaching his decision, the Minister's decision was made in breach of the applicant's right to be heard.

C (iv) The Minister's decision is rescinded and the Minister is directed to re-hear the appeal according to law.

Orders accordingly

Cases referred to:

- D 1) *Board of Education v. Rice* [1911] AC 179
- 2) *Errington v. Minister for Health* [1935] 1 KB 249
- E 3) *Assistant Registrar of Buildings v. Fredrick G Kibwana* [1987] T.L.R. 84.
- 4) *Hans Wolfgang Golcher v. General Manager of Morogoro Canvas Mill Ltd* [1987] T.L.R. 78
- F 5) *Republic v. British Broadcasting Corporation, ex parte Lavelle* [1983] 1 All ER 241
- 6) *Republic v. East Berkshire Health Authority, ex parte Walsh* [1985] QB 152
- G 7) *Republic v. Uxbridge Justices ex parte Howard Mills* [1983] 1 All ER 530

Mr Nshala, for the Applicant

H *Mr Ngwembe and Miss Otaru*, for the first and second Respondents

Mr Kariwa, for the third and fourth Respondents

I

RULING

(Delivered 23 February 2001)

Kyando, J.: This is an application for the prerogative orders of *certiorari* and *mandamus* in respect of decisions of the fourth and first respondents to respectively terminate the employment of the applicant as a Clerk with the fourth respondent and reverse the decision of the Conciliation Board which had directed the applicant's reinstatement in his said employment. The application is by Chamber Summons supported by an affidavit of the applicant and the respondents have filed counter affidavits. It, for example, the application, is accompanied by a Statement as well-as is usual. Both sides are represented and Counsel have filed written submissions on the application. In addition I had the opportunity to hear oral clarifications from the parties and their respective Counsel on some matters in respect of which I felt clarification was needed.

Briefly, the applicant was an employee of the fourth respondent, which, according to the filed papers, includes the third respondent as well. He was employed as a clerk as from 1 December 1994. He was confirmed in his position on 8 July 1995, and on 23 February 1996 he earned a promotion to section Head. Then between August and September 1998, there was a rather fast development of events which culminated into the applicant's loss of his employment. These were that on 27 August 1998 the applicant received an internal memorandum from his Branch Manager requiring him to take up, temporarily, cashier's responsibilities. The memorandum reads in part:

Sub: Assignment of Cashier's Duties:

As discussed this morning you are required to attend to cashiering duties to fill a vacancy left by two sick cashiers. This is a temporary arrangement to ensure that the bank continues to give satisfactory services to its customers. Please report to the Cash Office immediately. Otherwise, please let us have your reason for not taking up this assignment.

- A Clive Shonga
Branch Manager.
- To the above memorandum the applicant responded by sending an
B Internal Memorandum which is dated 27 August 1998, and reads:
- Trust Bank (Tanzania) Limited
Head Office
- C Internal Memorandum
To: Branch Manager,
Samora Avenue Branch,
- D Dar es Salaam.
From: Felix Mselle,
Samora Avenue Branch, Stamp
- E Dar Es Salaam.
Date: 27 August 1998
- SUBJECT: ASSIGNMENT OF CASHIER'S DUTIES**
- F I understand that cashiering duty is a must to everyone in the Bank at the same time it has to be handled smoothly and in a more organized manner.
- G Honestly, I am seriously suffering from diabetes and high blood pressure which rise from time to time due to tension, depressions, overworking and sometimes diets (medical report can testify if need be).
- H Cash handling needs a lot of concentrations which again lead to rise of blood level and high blood pressure simultaneously. My thinking capacity has been reduced due to long outstanding complications of the said cases.
- I All these problems can lead to not only a big loss to the Bank in case of cash handling but also distortion of blood levels (diabetes and hbp). To regain control is a big problem it may take two to three months, under very tense doctor consultations and medications. In order not cause cash shortages as a result of body complications which leads to frequent visits to hospitals, I kindly request you to release me from the said assignment.

Please accept this under medical and humanitarian grounds otherwise I
could do the job as I happened to do in the past. Also for the progress of
Bank as well as myself allow me to participate in any other duties.

Thanks in advance,

Yours faithfully,

Sgd.:

F Mselle

In response to the above memo, the fourth respondent served on the
applicant another Internal Memorandum which reads thus:

Trust Bank (Tanzania) Limited

Samora Branch

Internal Memorandum

TO: Mr Felix Mselle,

Samora Avenue Branch

From: Branch Manager,

Samora Avenue Branch

Date: 29 August 1998

Sub: Assignment of Cashier's Duties

With reference to your response of 27 August 1998 wherein you requested
to be released from cashiering assignment we wish to advise as follows:

1. Your employment terms were those of general banking clerk, which meant that your assignments were to be within clerical capacity inclusive of cashiering duties.
2. You had agreed to serve in any department and anywhere the Bank represented within the country.
3. You had agreed to carry out at all times during your employment with the Bank all proper orders and instructions of the Bank and obey and observe all the regulations applicable to an employee and

- A prescribed by competent Authority of the Bank. Contrary to the above, and inspite of instructions communicated verbally to you earlier on you have still not complied with my written directive later in the day requiring you to report to Cash Office, so that you may take up
- B the cash duty assignment. Instead you are asking management to release you from a task that you have not taken up in the first place. In order to substantiate your claims you advanced ill health as the main reason for refusal. However, it is clear that your limitations if
- C there are any had not been advised to management prior to the aforementioned assignment.

In view of the above therefore, management wishes to advise you that it views your non-observance of Rules and Regulations as constituting serious misconduct and insubordination on your part. Therefore, management wishes to inform you that it has rejected your request as such are required to give reasons within 3 days of the date of this memo letter as to why management should not take stern disciplinary action against you for not complying to a lawful order.

Please be guided accordingly.

Clive Shonga

F Branch Manager

CC: Manager,

Personnel and Administration

G CC: Deputy General Manager.

- H The applicant replied to the above letter by his letter of 31 August 1998. The letter is long but in it the applicant narrates his working history in the fourth respondent and his great contribution to its establishment and later operations. He also gives examples of losses he had incurred when working with his previous employer, apparently another financial institution, due to his health condition. He explains further that his health condition had been known well before the
- I exchange of letters under consideration started and that other members

of management decided, because of his ill health, to locate him in the section or department he was at the time working instead of the Cashiers Department. He ends up by stating:

The history of TBT (fourth respondent) will keep on remembering me for the great things I did from root to the peak from the mainland up to Island with the vision of the year 2000 a lot of ambitions and expectations.

Mr Branch Manager, to finish I didn't comply to your lawful order because of awareness of what could happen mainly unnecessary shortage which could be sustained due to inexperienced cashier.

To this letter the fourth respondent replied by giving the applicant a letter of termination of his employment with it. The letter is as follows:

Trust Bank (Tanzania) Limited

BM/hs/HO December 1998 4 September 1998 1 September 1998

Mr Felix Mselle,

PO Box 21451,

Dar es Salaam.

Mr Mselle,

Re: Termination

The management wishes to inform you that the explanation given by you vide your letter dated 31 August 1998 regarding your refusal to carry out lawful assignment of cashier's duties assigned to you by your immediate superior is not satisfactory.

Even after management had wanted to discuss the issue with you, still you were discovered to be absent from work without notice/permission from your superiors on 1 September 1998. In view of the aforesaid, the management has been left with no option but to terminate your services with effect from 1 September, 1998.

You will be paid one month salary in lieu of notice, and

A You will also be paid 26 days leave being 8 days 1997 f 1998 leave and prorata for 1998 of 1999 being 18 days.

B Your loan balance outstanding todate is TZS. 528 968-56 plus interest which will be deducted from your terminal benefits and balance you are required to make good immediately.

You are also required to surrender the following banks properties:

Identity Card

C Cheque book and all unused cheque leaves.

Kindly sign the duplicate of this letter as your acknowledgment for our records.

D Yours Sincerely,

Sgd

Sgd

B. Minja

Dr SK.Bose

E Manager, Personnel

By General Manager

and Admin

F The applicant was aggrieved by the termination and appealed to the Conciliation Board, Dar es Salaam. The Board allowed his appeal. It directed his reinstatement but the fourth respondent, aggrieved by the decision of the Board appealed also to the Minister for Labour and Youth, the first respondent herein. It succeeded in the appeal and the Minister reversed the decision of the Conciliation Board holding as follows:

G Mfanyakazi huyo aachishwe kazi kwa sababu hakuna uthibitisho kama alikuwa anatumwa. Hivyo mfanyakazi kakataa kazi kisheria hakuwa na sababu za msingi.

H The applicant then decided to bring this application challenging the decisions of the Minister and the fourth respondent.

I Three grounds for the application have been set out in the accompanying statement. Three are (a) failure of natural justice,

(b) bias and (c) unreasonableness Failure of natural justice has two subgrounds, the first one being that the decision by the fourth responded to terminate the services of the applicant was taken without affording the applicant the right to be heard and the second one being that, "The first respondent invited and considered additional information from the third (fourth) respondent which despite of the fact that the said additional information contradicted even the appeals preferred before him by the third (fourth) respondent he relied on the said (sic!) affording the applicant the chance to respond to the same and thus deciding his fate without affording him the right to be heard.

Concerning bias it is averred that while passing (sic!) the decision to terminate the services of the applicant, one member of the panel constituted acted as the prosecutor, the witness, and judge contrary to the cardinal principles of natural justice. And concerning unreasonableness it is averred as follows in the applicant's statement:

That the decision by the first respondent and third was unreasonable; that no reasonable authority can arrive at the same because:

- (i) The delicate state of health of the applicant was well known to the respondents but this fact was not even taken into account by them while deciding to terminate his services;
- (ii) The fact that the applicant had declined a high pay if he had agreed to work as Clerk was known to the third respondent because of his delicate state of health despite of that the third respondent out of spite and reasons known to itself decided to force him to undertake a risk job that could have caused a great loss of the third respondent.
- (iii) The punishment meted to the applicant by the third respondent was excessive and contrary to the law and hence unreasonable and unwarranted; the first respondent acting reasonably would have seen that glaring fact;
- (ii) That the Minister acted unreasonably when he accepted additional information from the third respondent while denying the same right to the applicant and since the said additional information

A contained contradictory information to the Appeal preferred to him by the third respondent, the Minister had he acted reasonably would have upheld the decision of the Labour Conciliation Board. That, unfortunately, was not the case.

B The respondents deny all the above averments and pray that the applicant's application be dismissed.

C The orders of *certiorari* and *mandamus* being sought in this application are public law remedies. They are remedies falling within the generic term "judicial review of administrative action." This, i.e., judicial review of administrative action, is the power or process by which the High Court exercises its supervisory jurisdiction over proceedings and decisions of inferior tribunals or other authorities, D bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties. This power is not statutory but inherent in the court and has taken many generations to evolve. *Certiorari* issues to quash a determination E or decision which has been made in excess or lack of jurisdiction, error on the face of the record, breach of the rules of natural justice or where a determination was procured by fraud, collusion or perjury. *Mandamus* lies to any person or body in respect of anything that F appertains to his or their office and is in the nature of a public duty also. It is a command issuing from the High Court directed to any person or corporation requiring him or them to do some particular thing therein specified which appertains to his or their office and is G in the nature of a public duty. *Mandamus*, in other words, is granted to command the performance of duties of a public nature.

H The public law nature of the orders of *certiorari* and *mandamus* means that they will not issue for a private purpose, i.e., for the enforcement of a merely private law right. Whether they can lie in this case against the decision of the third and fourth respondents to terminate the applicant's employment, therefore is a matter I propose to revert to presently in the course of this ruling. At the moment I I propose to move on to a brief examination of the elements constituting

A natural justice set out in one of grounds upon which this application is based. "Natural justice" falls under the following headings which are implicit in this concept: (a) that no man shall be a judge in his own case (*nemo iudex in causa sua*) and (b) that no man shall be condemned unheard (*audi alteram partem*). These two principles B are what are called the rules of natural justice and they must be observed by Courts, tribunals and all persons and bodies having the duty to carry out public duties which impinge on legally recognized interests. The *audi alteram partem* principle required *inter alia* that: C

1. Parties liable to be directly affected by the outcome of an adjudicated controversy should be given prior notification of the action proposed to be taken of the time and place of any hearing that is to be conducted, and of the charge or case they will be called upon to meet. The D particulars set out in the notice should be sufficiently explicit to enable the interested parties to understand the case they have to meet and to prepare their answer and their own cases.
2. A person or body determining a justiciable controversy between E parties must give each party a fair opportunity to put his own case and to correct or contradict any relevant statement prejudicial to his view: See e.g. *Board of Education v. Rice* (1).
3. Evidential material obtained from an outside source must be disclosed F for comment and in the absence of express authority and adjudicating person or authority must not receive evidence *ex-parte* and fail to disclose it to an interested party: *Board of Education v. Rice* (*supra*); *Errington v. Minister for Health* (2).

Having settled all the major principles governing the prerogative orders of *certiorari* and *mandamus* and the rules of natural justice of the right to a fair hearing, I revert now to the question I posed earlier on above, for example whether or not *certiorari* and *mandamus* can lie against the fourth (and third) respondent in this case. This question arises because, looking at the applicant's case as a whole the major thrust of the challenge it makes is against the decision of the fourth respondent of terminating his employment. So will *certiorari* I

A and *mandamus* lie against the fourth (and third) respondent? In the case of *The Assistant Registrar of Buildings v. Fredrick G Kibwana* (3), the Court of Appeal of Tanzania held:

B *Certiorari* being a discretionary remedy for the courts to issue, it cannot be issued in a case where there is already a contractual relationship between landlord and tenant – relationship of commercial or business nature. Recourse to a court of law to adjudicate on breaches of contract would be a better procedure.

C See also *Hans Wolfgang Golcher v. General Manager of Morogoro Canvas Mill Limited* (4), to the same effect in respect of both *certiorari* and *mandamus*).

D Also in *Halsbury's Laws of England*, (4 ed) Volume 1(1), basing on *Republic v. BBC exp Lavelle* (5) and *Republic v. Ease Berkshire Health Authority, ex parte Walsh* (6), it is stated:

E ... where the disciplinary appeal procedure set up by the British Broadcasting Corporation, it was a procedure of purely private or domestic character. Private employment is clearly outside the realms of judicial review, Employment by a public body does not per se inject an element of public law; nor does the fact that an employee is in higher grade or is an 'Officer.'

F To come now to the present case, as shown above already, the reliefs sought by the applicant are *inter alia* that by *certiorari* I quash the decision of the fourth (and third) respondent of terminating the applicant's employment and by *mandamus* I compel the third and fourth respondents to reinstate the applicant in his employment without any conditions.

G On the principles governing the grant of *certiorari* and *mandamus* set out hereinabove, I cannot possibly issue *certiorari* and *mandamus* against the third and fourth respondents. The relationship between the applicant and these respondents was a purely private contractual relationship. Judicial review is inapplicable to disciplinary decisions arising from that kind of relationship. I must, as I hereby do, refuse therefore to exercise the power of judicial review in respect of the decisions made by the fourth (and third) respondent in this case.

A This of course does not mean that the applicant has altogether no remedy against these respondents in respect of those decisions; as indicated, he can proceed by way of an ordinary action for, say a declaration that he was wrongfully dismissed from his employment, or for breach of the contract of employment and damages etc. In so far as the present application is concerned, however, I will concern myself only with the decision of the Minister on appeal to him. This is because, as noted, the Minister was performing a statutory or public duty when dealing with the appeal.

The main complaint concerning the decision of the Minister is that he (the Minister) considered additional information from the fourth respondent without affording the applicant the opportunity to be availed that information. According to the filed documents, the sequence of filing representations to the Minister was that the fourth respondent, who was the appellant, sent a letter of appeal to the Minister. A copy of the letter is annexed to ... the affidavit in support of the application (Annexure 'G' of 21 May 1999) and it reads:

Rufani Kwa Waziri Wa Kazi Na Maendeleo Ya Vijana

Baraza limeamua Ndugu Felix Mselle arudishwe kazini kwa sababu ati mfanyakazi/mrufaniwa hakupewa nafasi ya kujitetea.

Mheshimiwa Waziri, Baraza limeshindwa kuzingatia ushahidi uliotolewa mbele yake kwamba mrufaniwa alipatiwa nafasi ya kujieleza tena kwa maandishi kwa barua yako (*sic*) ya tarehe 31 August 1998.

Ukweli huu umesema wazi hata katika barua ya mrufani ya kumwachisha kazi mrufaniwa ya tarehe 1 September 1998. Nakala ya barua zote mbili zinaambatanishwa kama kielelezo. Aidha Baraza limejielekeza vibaya kwa kuzua kikao kisichokuwepo kwani hakuna kikao chochote kilichokaa bila mrufaniwa kuwepo. Kilichotokea ni kwamba baada ya kujieleza kwa maandishi, menejiment ilikata shauri juu ya hatima yake kwa misingi ya utetezi wa maandishi uliotolewa na mrufaniwa. Na kwa kufanya hivyo mrufani hakukiuka sheria yoyote.

A Tunakuomba Mh. Waziri utumie madaraka uliyopewa chini ya Sheria ya Usalama Kazini na utengue uamuzi wa Baraza la Usuluhishi ili hatua ya kumwachisha kazi mrufaniwa uithibitishe.

B B. Minja
Meneja Utumishi Na Utawala

C To the above letter or appeal the applicant sent a long response to the Minister dated 8 June 1999 (Annex 'H' to the affidavit in support) challenging the appeal and the letter was copied, amongst others, to the Managing Director of the fourth respondent. Following the applicant's letter responding to the appeal of the fourth respondents to the Minister, the fourth respondent sent the letter of additional information which D has brought about the tussle now being considered. The letter is dated 13 July 1999 (Annex 'I' to the affidavit in support) and reads, in part:

E We refer to our appeal Reference Number DAR/BLU/253 dated 24 (*sic*) May 1999 in respect of Mr Felix Mselle which we believe is receiving your consideration.

We now send herewith some additional information with intention that the same will facilitate you in taking a decision in the matter.

F The letter is signed by the Deputy General Manager and to it is annexed a detailed statement of the dispute between the appellant and the fourth respondent. It backgrounds the problem/dispute, comments on the fourth respondent's side of the case, the defence of the applicant, G the decision of the Conciliation Board and makes a conclusion which reads:

"Conclusion"

H From the above analysis the truth emerges that the action taken by the employer to remove Mr Mselle from his post (by terminating his services) was appropriate and legal. It is also transparently clear that the Board erred in believing the employee's testimony and ignores the clear truth I presented by the employer. Under such circumstances the action of the

A employer to seek justice by appealing to the Minister for Labour and Youth Development is highly commendable.

B Following the above letter the Minister made his decision which is now being impugned. It is the applicant's complaint that this letter, of "additional information" was never shown to him by the Minister and he was not afforded the opportunity to answer or contradict it. In reply the first respondent, the Minister, says that the letter (of "additional information") was only a submission in reply to the applicant's C submissions and the applicant had no right, apparently, to be supplied with a copy of it. It is contended by Mr Ngwembe, learned State Attorney, in his submissions on behalf of the first respondent, for example the Minister, on this point,

D ... the applicant ... has alleged that the first respondent failed to give time to the applicant to respond on the additional submissions by the third respondent. In reply we wish to submit that the argument is unmeritorious and contains no legal validity because it is a normal legal procedure that E the plaintiff or applicant presents his/her case, then the defendant/respondents responds on the allegations and thereafter the plaintiff or applicant is given another chance to conclude his case. This is normal Court practice. The same is not barred to be applied by either the Minister for Labour or F Conciliation Board for there is no hard rule of procedure provided in the Security of Employment Act 1964, which the Minister ought to follow. The Minister is bound by the principles of natural justice to give each party the right to be heard. Indeed both parties were given a chance to be heard ... G

H It is true that the Minister does not have any hard and fast rules of procedure to follow pertaining to the conduct of the hearing of an appeal in a matter such as the one from which this matter arises. He is not expected to adopt the rigorous rules of procedure followed I in judicial proceedings. Nonetheless, he is expected to adopt rules of procedure which ensure justice to both sides to the appeal before him. If a party to such an appeal has submitted a representation to him the other party has to know about this and be given an opportunity

A to respond to it. Even in normal judicial settings, a party is entitled to be supplied with all copies of written submissions filed by the other party. Thus he is entitled to receive a copy of submissions of even the final reply of the party if one has been filed.

B But was the document characterized by the first respondent as having been a mere reply by the third and fourth respondents to the applicant's submissions truly a mere reply? The fourth respondent itself does not say so in its forwarding letter of the said document.
C It says instead that it was "additional information,"—"with intention that the same will facilitate you (the Minister) in taking a decision in the matter." And looking at the said document what it contains is really the fuller statement of the third and fourth respondents' case
D to the Minister than the brief statement contained in the document reproduced above submitting the appeal. The applicant had all the entitlement in my view, to be availed of a copy of it therefore. The real case against him on appeal was stated there. By not supplying
E him with a copy of this document and by not affording him the opportunity to answer to it the Minister's decision was arrived at clearly in breach of the second and third requirement set out hereinabove for the *audi alteram partem* principle.

F What result for this breach? There are three alternative courses of action a court may take in proceedings for prerogative remedies. These are:

- G 1. To refuse to exercise its discretion to quash the impugned decision or action, prerogative remedies, being, as already shown only discretionary in nature.
2. To grant the remedies and quash the decision being impugned.
- H 3. To remit the matter back to the authority, body or person who made the impugned decision for a rehearing of it according to law. This latter approach is supported by decisions such as the one in *Republic v. Uxbridge Justices ex parte Howard - Mills* (7). Also in *Halsbury's Laws of England* (*supra*) at page 193 it is stated, "The effect of failure to accord an adequate hearing or opportunity to be heard
- I

prior to a decision may be repaired by rescission or suspension of the original decision followed by a full and fair hearing or rehearing.

In this matter I think the third alternative above would be the appropriate one. The Minister did not conduct a full hearing, he acted on additional information supplied by the fourth respondent which the applicant was not aware of and in respect of which he (the applicant) was given no opportunity to answer or comment on. This information was received *ex-parte* by the Minister and his decision could be characterized to have been an *ex-parte* decision. I hereby rescind that decision therefore
C and direct a rehearing of the appeal by the Minister. In particular, the Minister is to give a copy of the "additional written information" of the fourth respondent and give him an opportunity to respond to it. Then he should proceed to make his decision afresh in the appeal
D — on the basis of material supplied by all the parties to him, is the appeal by the fourth respondent, the defence of the applicant, "the additional information" and the response of the applicant to the additional information together with the decision, of course, of the Conciliation
E Board.

In view of this decision which I have made, there is no need to consider the ground of unreasonableness. I refrain from considering and making a determination on that ground lest I prejudice the Minister
F when he rehears the appeal as directed above.

Minister's decision rescinded. Rehearing of the appeal made to him directed.