

1908 BLACKBALL MINERS' STRIKE - A LEGAL PERSPECTIVE

A paper written by Graeme Colgan, Chief Judge of the Employment Court¹ for the centenary commemoration of the Blackball miners' strike.

Background

As John E Martin notes in "Holding the Balance, The history of the Department of Labour", in 1898 Prime Minister Seddon and Secretary of Labour Tregear redrafted the Industrial Conciliation and Arbitration Act among other things to give the Arbitration Court, rather than the Supreme Court, enforcement powers under the legislation. In a trade-off, this was passed through Parliament on Seddon's agreement to drop provisions specifically allowing the Court to give preference to unionists.

By 1906 many unions were also increasingly dissatisfied with the operations of the Arbitration Court and the fact that there were only a few cases where wage rates increased when awards came up for renewal. Unions argued that wages were falling behind the rising cost of living. The option of deregistering from the compulsory arbitration regime became increasingly appealing if strike action might produce better outcomes than conciliation and arbitration.

For the first decade of the legislation's operation, its anti-strike provisions were both vague and untested in practice. In 1905 Seddon amended the Act in response to a threatened lockout to ensure that strikes and lockouts were in fact illegal during the currency of an award. These were deemed to be breaches of the award.

In the next two decades the Department of Labour was to take a large number of prosecutions against strikers. In late 1906 the first strike by a registered union took place involving Auckland tramwaymen. Although lasting only a few hours and

¹ The research assistance of my clerk, Andrea Walker, is gratefully acknowledged.

not serious in itself, this strike marked a turning point in New Zealand industrial relations. At the insistence of the Auckland Employers' Association, the Department of Labour prosecuted the strikers and fines of £1 were levied on two workers. The union also brought charges against the tramway company which was fined £5.

Other strikes followed in meat works with the Department of Labour even pursuing workers for payments of fines after they had returned from seasonal work in Australia. In 1909 the Department obtained orders of attachment on wages for striking workers whose whereabouts were known but many were untraceable and their fines were never paid.

In 1907, the arbitration system again came under attack when the Canterbury Agricultural and Pastoral Labourers Union applied for an award. The Farmers Union and thousands of farmers mobilised on one side with massed ranks of unionists on the other. In a controversial decision, Mr Justice Sim ruled in 1908 that an award could not be made in spite of favourable Conciliation Board recommendations because the union had not approved the existence of any substantial grievance or abuse. The decision caused uproar and finally discredited the arbitration system in the eyes of many unionists.

1908 brought Blackball. In January, a confrontation was avoided over working hours (the 8 hour "bank to bank" issue) that had arisen the previous year. A settlement was obtained outside the terms of the award but conservatives were outraged that political intervention had eroded the Court's authority as manifested in the award.

These events set the stage for the legal proceedings that arose out of the disputes and strike at Blackball.

The legislation

In 1905, Parliament amended the 1894 Industrial Conciliation and Arbitration Act. Section 15 of the 1905 Amendment Act provided, in summary, that a union (or employer) or any worker (irrespective of union membership) who struck or created a lockout or took part in a strike or lockout or proposed, aided or abetted a strike or lockout, or a movement intended to produce a strike or lockout, would be guilty

of an offence and liable to a fine in the same manner as if that offence were a breach of an award. The level of fine was limited to £100 in the case of any union or employer and £10 in the case of a worker. Subsection (2) created an exemption for workers who refused to work or announced their intention of refusing to do so at the rate of wages fixed by an award unless the Court of Arbitration was satisfied that such refusal was in pursuance of an intention to commit a breach of the Act.

Subsection (5) permitted a semi-formal procedure to enforce these provisions. All that was needed was an application made by any person empowered by law to enforce an award (a labour inspector) that a strike or lockout was taking place or impending. The President of the Court of Arbitration was empowered to appoint a special date for the hearing of evidence and to issue summonses to all persons or bodies suspected of having committed offences and was entitled to deal with such persons or bodies as if they were specifically charged with the offences alleged. The summonses could be served by registered letter.

The Court

Although the Court of Arbitration consisted of a Judge together with two members, one representing the views of workers, and one of employers, this part of the paper focuses on the Judge. Newspaper accounts of the time record that the workers' representative was Mr JA McCullough and the employer's representative was "Mr Brown". News reports of the time² record Mr McCullough's participation in attempts to both resolve the dispute and to persuade the union and workers to comply with the Arbitration Court's orders. Although I understand that some biographical research has been undertaken into the workers' representative on the Court at the time, this has not been available to me. Mr McCullough's papers will provide an interesting perspective to the legal elements of the strike.

Each of the judgments issued by the Court of Arbitration about the strike is a single judgment indicating unanimity between the three members of the Court. Had disagreement reached the level of formal dissent from the judgment of the majority, this would have been recorded. There is, in the expression of some parts of the judgments, criticism of the employer that may have been the *quid pro quo*

² The Otago Witness of 18 March 1908.

for unanimity of result and reasoning. This phenomenon is well-known in multi-member courts, especially where there is representation of interested parties.

The Judge was the Honourable Mr Justice William Alexander Sim, born in 1858 and who died in 1928. The Dictionary of New Zealand Biography from which this biographical information is derived says that he was the first full-time President of the Court of Arbitration. Until 1907 the Court of Arbitration was presided over by the most junior Judge of the Supreme Court. On each subsequent judicial appointment to the Supreme Court, the identity of the Judge changed.

Sim was born in Wanganui, the son of a miller, and attended Wanganui Collegiate School. He qualified in law in 1877 and moved to Dunedin where he became law clerk to Robert Stout. Sim was admitted to the Bar in 1879 and in 1887 joined Stout's firm as a partner. He is described as a legal scholar and his text book on superior court procedure, written in conjunction with Stout (*The Practice of the Supreme Court and the Court of Appeal of New Zealand* (1892)) remains as the elder of the two leading texts on court procedure in New Zealand. Sim and his wife Frances had six children and he chaired the first Otago and Southland Board of Conciliation set up in 1896 under the then novel Industrial Conciliation and Arbitration Act 1894. Sim was also a trustee of Dunedin's Art Gallery Society, founded that city's Cremation Society, chaired the Prisons Board, and supported the Patients' and Prisoners' Aid Society.

Appointed as Judge of the Court of Arbitration in 1907, his term of office, which lasted until 1911, is described as "*controversial, coinciding as it did with a growing mistrust of the arbitration system on the part of some unions*". Sim insisted that unions should comply with the terms of awards and was, on occasion, and as Blackball illustrates, prepared to fine those who took strike action while an award was in force. His biographer describes him as inclined to be tactless in some of his remarks and his reluctance to allow increases in profits and productivity to be reflected in increases in wages inevitably caused bitterness. Sim, nevertheless, greatly increased the number of awards that gave preference in employment to union members.

Unlike these days of long judicial tenure in the Employment Court and its immediate predecessors, Sim moved on to be a Judge of the Supreme Court in 1911 at which time it might be imagined that interest in him for the purpose of this

paper ceases. While that is strictly so, some elements of his later judicial life do tend to cast more light on the Judge who, by any account, had a very significant effect on events at Blackball in 1908.

Sim's biographer describes his judicial temperament as including a *"quick apprehension, his expeditiousness in getting to the bottom of a case, his fairness, candour and dislike of pomp and ceremony, his sharp rejection of slovenly work, and his refusal to suffer fools gladly"*.

Sim is otherwise best remembered for his role in chairing the 1927 Royal Commission of Inquiry into confiscated Maori lands. The Commission found that the Government's prosecution of war in Taranaki had been wrong and the confiscations unjustified, and recommended an annual payment of £5,000 to a board set up to represent Taranaki Maori. Confiscations in Waikato were judged to have been excessive and the payment of £3,000 was recommended. Those in Tauranga and elsewhere in the Bay of Plenty were found to be justified and fair, but the confiscation of Te Whakatohea land was deemed excessive. The Commission recommended an annual payment of £300, the Te Whakatohea and Taranaki tribes accepted the offers, the Waikato tribes initially wanted the land returned but, in 1947, were persuaded to accept an annual payment of £5,000. These awards resulted in the establishment of the Taranaki Maori, Tainui Maori and Whakatohea Trust Boards. Although the Commission's findings were a significant official admission of a need to redress injustices, they were later disputed. Even where wrong was admitted, the resolution fell short of Maori expectations and years later the issue would be reopened.

Sim chaired a Royal Commission into taxation in 1924 and was knighted the same year. He served as Acting Chief Justice for a period in 1928, dying in the same year. One son, Wilfred, and a grandson, Peter, succeeded him in prominent roles in the law in New Zealand and I understand that his descendants include lawyers now practising in Dunedin and Wellington, at least one of whom appeared as counsel before the full Employment Court in Dunedin in 2005 in the infamous case of *Gibbs v Crest Commercial Cleaning Ltd* [2005] ERNZ 399 that found ineffective Parliament's 2004 law protecting vulnerable workers in employment.

The Award

This was made by the Arbitration Court on 3 March 1902 and was due to expire on 31 March 1904. Although not renewed by the time of the events in 1908, the legislation provided then, as now, that the award remained in force in any event. Crib time was not set in the award but operated as a matter of custom and practice.

The Court hearings

The first important case consisted in fact of two hearings in the Arbitration Court, one brought by the Department of Labour's Inspector of Awards against the Blackball Miners' Union and the other, heard on the same days, a claim by the union against the employer, Blackball Mining Company Limited.

The judgment in the cases is known as *Inspector of Awards v Blackball Miners' Industrial Union of Workers*. The hearing was in Greymouth on 11 and 12 March 1908. Judgment was delivered orally on the following day, 13 March. Counsel for the Inspector were, as the reporting style of the time noted, "Mr Hannan" and (local practitioner) "Mr Guinness" for the union. The Court's decision is reported in (1908) Book of Awards (vol IX) at p55. The Court consisted of Mr Justice Sim and the two Members referred to earlier.

Their decision records that on 26 February 1908 140 men were employed at the Blackball mine, 107 of these underground. Seven underground employees were dismissed. The union requested their reinstatement and pay for time lost. This was refused by the company and a strike of workers began on 27 February and continued until the hearing.

The legal proceedings included an argument over the definition of "*strike*". The union's case was that the dismissal should have been dealt with by the employer as "*a dispute*". The Inspector of Awards argued that the strike was unlawful and, because it was pursuant to a resolution of the union, that a penalty should be imposed on it.

The Court's judgment outlined the background to the strike including the crib time dispute. This had originally been 30 minutes but, in 1901, had been reduced at the request of the miners to 15 minutes to reduce the time spent underground where crib was taken. The Court recorded that the employees and the union had not requested an increase in crib time although cribs longer than 15 minutes had often been taken without objection by the employer.

Two test cases about crib time had previously been brought in the Magistrates Court at Greymouth. The first was on 10 February 1908 that produced a decision on 2 March 1908. In the meantime, however, the union had discovered that its members employed as "truckers" were working in excess of the hours permitted by the union's rules. The court found that the seven dismissals were brought about by the truckers reducing their hours and a refusal by the miners to do trucking work resulting in an inability to truck out the coal mined. This resulted in what we would today term a redundancy, that is the employer considered that there were more miners than work to be done on the reduced trucking basis.

The case also concerned an argument about the politeness or offensiveness of the language used to dismiss the workers and the employer was criticised for the manner of the dismissals that occurred mid-shift underground. The Court also criticised the union, not only for the strike, but for what it described as a unilateral and peremptory increase in crib time taken. Although with that background, the Court found that the crib time issue precipitated the strike.

On the same day in the Arbitration Court but in separate proceedings, the union brought a case against the company. The union alleged breaches of the award being dismissals of workers without notice, wrongful dismissal on grounds of union membership, and an unlawful lockout (by their dismissals). The union argued that there was an expectation of at least three months' employment, equivalent to the three-monthly "*cavilling*" of a coal mine. The Court found, however, that it was established practice in the coal mining industry to end employment, either by abandonment or dismissal, even mid-shift so that there was no breach. On the challenge based on what we would now call unlawful discrimination (dismissal because of union membership), the Court also dismissed the union's claim, finding that only two of the seven workers dismissed were known to the employer to be union members.

The Court found that the dismissed employees were probably selected by the employer on the basis of their connection to the crib time dispute and the associated reduction of trucking time rather than for reasons of economy as the employer claimed. Even so, the Court found that this was within the employer's legal rights to select men for dismissal. Finally, the Court found that there was no lockout because only seven of some 80 miners then working were dismissed. It dismissed the union's claim against the company and awarded costs to the company of £3 and 3s.

The Inspector of Awards was awarded a fine against the union of £75. This was not paid and in proceedings for enforcement issued out of the Greymouth Magistrates Court, the bailiff found insufficient goods belonging to the union for sale to pay the fine. The Labour Inspectorate sought an alternative means of recovering the fine and of marking the Court's finding of illegal strike action. This hard line was no doubt contributed to by the continuation of the strike despite the judicial declaration of its illegality.

As is indeed not uncommon even these days, the Court of Arbitration, after setting out its decision and the reasoning for it, added a comment at the conclusion of the judgment. It should speak for itself and was as follows:

There is one aspect of the matter in connection with the present strike to which it seems desirable to refer. It appears from the evidence that several Trades and Labour Councils, and also some workers' unions, in the Dominion have passed resolutions expressing their approval of the present strike.

Now, the whole purpose of the Conciliation and Arbitration system is to prevent strikes, and it is clear that arbitration and strikes cannot exist together as remedies for the settlement of industrial disputes. The workers of the Dominion must make up their minds which of these remedies they desire to see retained. They cannot have both, and they must elect which they will support.

If they are satisfied that it would be better for them to have the arbitration system abolished and the right of striking restored in its former integrity, there would be little difficulty, we think, in persuading employers to concur with the workers in asking the Legislature to bring about the change, and the employers would assist, no doubt, with becoming cheerfulness in performing the obsequies of the system.

If, however, the workers desire to retain the present system of arbitration, either with or without modification, then they ought to realise that every strike which takes place, and every resolution which is passed approving of a strike, furnishes an argument for the abolition of the system. An arbitration system which does not prevent strikes is a failure, and cannot survive. If the workers, by striking and approving of strikes, bring about the

destruction of the arbitration system, they may have occasion in the future to deplore, when too late, the sad want of foresight shown by their leaders.

Although, of course, not reported in the official judgments of the case, the Otago Witness of 18 March 1908 contains a fascinating account of events that occurred on the evening between the two days of hearing, 11 and 12 March. The account is as follows:

After the court proceedings closed a meeting of the Blackball miners who were in town was held, when Mr McCullough [the union representative on the court] was present. The position was thoroughly fought out, with the result that Hickey and Fox were appointed a deputation to interview the manager, and ask him to come to some settlement. The deputation stated that they were prepared to work 10-hour shifts providing 20 minutes "crib" time was allowed, the dismissed men to be reinstated and a guarantee given that the men would not be victimised; the miners to come out and do two hours' trucking; the other conditions in dispute to be submitted to the Arbitration Court at a future sitting.

The management agreed to the terms.

The deputation stated that they would ask the Miners' Union to accept the terms.

A meeting of the union was called for at 10 o'clock this evening in Blackball, and after a long discussion the terms were accepted by the union.

In a short interview with Mr Fox, vice-president of the union, he stated that no man could have brought about the settlement but Mr McCullough, who put the case so clearly before the men.

The general manager (Mr Leitch) states that he is fully satisfied with the result, and is sure that the mine will work more smoothly.

It is likely that the outcome of the case could have been predicted, even as early as at the end of the first day of hearing. It is also likely that the members of the Court may have discussed the progress of the case as between themselves so that Mr McCullough may have considered it prudent to assist in obtaining a settlement without judgment having to be given against the union.

The Otago Witness's correspondent then referred, in a despatch dated the following day, 13 March, after the Court had delivered its judgment, as follows:

The Miners' Union at Blackball, after a prolonged meeting this afternoon, decided not to go to work till (sic) the manager gave a written undertaking that the dismissed men would not be victimised, and that half an hour would be allowed for "crib" time.

A deputation subsequently waited on the manager and requested this.

Mr Leitch refused, so that an absolute deadlock exists.

Matters are now therefore in as bad a way as ever.

It is explained that the miners allege that one of the terms of the settlement was that Mr Leitch should make an announcement in the court that the dismissed men should not be victimised and that this was not done.

When the miners interviewed Mr Leitch to-night they stated that the proceedings at last night's meeting, when a settlement was agreed to, were illegal after the delivery of the court's position.

Mr Fitzgerald harangued a crowd outside the courthouse, while Mr Goodall (president of the Grey Wharf Labourers' Union) defended the arbitration system.

Reports contained in the Otago Witness dated 15 March indicated no change from the position on the previous Friday afternoon (13 March), the union continuing the strike until 30 minutes crib time was granted and the manager gave a written guarantee that he would not victimise any of the men. It was reported that the union appointed Messrs Hickey (one of the dismissed men) and Pritchard as delegates to canvass the Dominion on behalf of the union. Mr Hickey promptly left for Westport *"where he held forth last evening"* while Mr Pritchard went to Christchurch. The newspaper reported that this indicated a long bitter fight.

One infers sympathy on the part of the newspapers towards those workers who had voted to settle the dispute. Although it appears that a settlement was agreed to during the case, a subsequent union meeting rejected that resoundingly and the newspaper continued:

... information received last night tends to throw a different light on the subject.

At Friday's meeting of the union the proceedings were very lively, and for those who advocated a return to work it was made very hot. When one miner got up and suggested abiding by the decision of the previous night, whereby a settlement was reached, he was greeted with cries: "Oh, he's a bosses' man", "Scab", "Blackleg," and other like epithets. This sort of thing soon silenced the opposition to the continuation of the strike.

The newspaper noted that there were nearly 70 absentees from the Friday meeting, assumed to be workers who were against strike action. The Otago Witness:

... They will not, however, attend the meetings and endeavour to get the strike ended on account of the lively reception they would be accorded by the younger members, who alone seem determined to carry on the strike.

The miners with families and homes are willing to return to work.

There is no doubt that Mr Fitzgerald and other Socialists have a great influence at Blackball.

The action of the Miners' Union has created a split in the ranks of the local Labour party. The section that supports its action is called the "ultra-Socialists" by the others, who desire to see the whole matter dealt with in a constitutional way by the Arbitration Court.

Unless something unexpected happens, there is not the least likelihood of miners in other parts of the Coast going out in sympathy.

On 16 March the Otago Witness reported that the Blackball Union was much encouraged by the decision of the Wellington Trades and Labour Council to vote £20 and a donation of £50 from Denniston to assist with the strike. Pat Hickey had previously been dismissed from the Denniston mine near Westport and had clearly struck a sympathetic seam with his former colleagues there.

Finally, on the subject of these extra-legal but vital ingredients, the nature of discussions between the workers' representative Mr McCullough and Blackball Mining Company management was an important sticking point to a resolution of the dispute. The Otago Witness reported, on 16 March, that the mine manager had telegraphed the company secretary in Christchurch as follows:

"It is imperative that you find Mr McCullough, of the Arbitration Court, and ask him if he informed the miners that the manager would make a public statement in court after the verdict had been read to the effect that he would not victimise the seven dismissed men, also to ask him his reasons for giving the information that the manger had given his word of honour, but would not make any public statement at the conference on Thursday afternoon. ..."

The telegram in reply was reported to have been as follows:

"Mr McCullough denies having informed the miners that you would make the statement in court. He has wired to the miners stating that his recollection of what happened at the conference, was that your having already made a promise in such a public manner, a statement made in court was agreed to be waived. - A.D. McKELLAR, Secretary Blackball Coal Company)"

The next case is known as *Isdell (Inspector of Awards) v Blackball Miners' Industrial Union of Workers and the Blackball Coal Company Limited* BA Vol IX 1908 371. The Court of Arbitration was then sitting in Auckland and the case was heard in that city. It was the Inspector's application to enforce the fine or penalty of £75 imposed on the union on 12 March 1908, against the individual union members. The Court considered evidence on affidavit. The Crown clearly considered the matter to be one of great importance: it was represented by the Honourable JA Tole KC. The Court of Arbitration ordered the enforcement of the fine through the Magistrates Court at Greymouth against some or all of 166 named union member workers although at no more than £10 per worker.

That judgment of the Court of Arbitration, given on the same date as the hearing on 12 May 1908, was challenged in the Court of Appeal. Its judgment is recorded

as *Blackball Miners v The Judge of the Court of Arbitration and Others* (1908) 27 NZLR 905. The Court consisted of Chief Justice Stout and Justices Williams, Denniston, Cooper and Edwards. The “appeal” was by what we would now know as an application for judicial review although then by the prerogative writs of certiorari and prohibition, the case having been removed to the Court of Appeal from the Supreme Court where it was commenced. The hearing took place on 14 July 1908 and the judgment of the Court of Appeal was delivered on 30 July 1908. Counsel appearing for the parties were Skerrett KC and Guinness (of the Greymouth firm Guinness and Kitchingham) for the union and Bell KC and DM Findlay (of the Crown Solicitor’s Office) for the defendants.

The issue in the Court of Appeal was whether the Court of Arbitration was empowered to order recovery of a penalty or fine imposed on a union against individual union members in default of its payment by the union. By a majority (Mr Justice Edwards dissenting), the Judges of the Court of Appeal³ decided that the Court of Arbitration was so empowered and did not disturb the orders made requiring the individual union members to meet the fine.

The Court records a finding that a warrant of distress was issued out of the Magistrates Court at Greymouth against the property and effects of the union after the Arbitration Court gave judgment on 12 March 1908 for a fine of £75 against the union. No sufficient property or effects of the union could be found against which the fine could be levied and it had not otherwise been paid. The 161 named workers were, on 12 March and 12 May 1908, members of the union and the judgment required them to pay the fine of £75 to the Inspector. The Inspector of Awards was permitted to take proceedings to enforce the order against the individual workers. Although there is no record of subsequent enforcement, it could, ultimately, have resulted in their imprisonment for non-payment.

Although the union conceded that the Court of Arbitration had the jurisdiction to impose the fine that it did on 12 March, counsel for the union argued that it lacked jurisdiction to make the order it did on 12 May requiring the union members to pay the fine. However, the Court found that the following parts of subs (15) of the 1905 Amendment Act were sufficiently broad to extend liability to workers, even where a fine had been imposed originally against only their union:

³ There was no permanent Court of Appeal as we know it, until 1958. The Court was constituted of Supreme Court judges as required.

Any industrial union or industrial association or employer, or any worker, whether a member of any such union or association or not, which or who shall strike or create a lock-out, or take part in a strike or lock-out, or propose, aid, or abet a strike or lock-out, or a movement intended to produce a strike or lock-out, shall be guilty of an offence, and shall be liable to a fine, and may be proceeded against in the same manner as if it or he were guilty of a breach of the award.

Section 101(f) and (g) were crucial to the Court of Appeal's judgment.

*All property belonging to the judgment debtor (including therein, in the case of a trade-union or an industrial union or an industrial association, all property held by trustees for the judgment debtor) shall be available in or towards satisfaction of the judgment debt, and if the judgment debtor is a trade-union or an industrial union or an industrial association, and its property is insufficient to fully satisfy the judgment debt, its members shall be liable for the deficiency:
Provided that no member shall be liable for more than £10 under this paragraph.*

And subs (g) provided:

For the purpose of giving full effect to the last preceding paragraph, the Court, or the President thereof may, on the application of the judgment creditor, make such order or give such directions as are deemed necessary, and the trustees, the judgment debtor, and all other persons concerned shall obey the same.

The union's argument was a narrow one: it contended that subs (f) and subs (g) applied only to proceedings to enforce a breach of an award, not to proceedings for enforcement of a fine under the legislation. This was not upheld by the majority of the Court of Appeal.

The Court also decided a fall-back argument advanced for the Inspector that resonates today in the legal debate about specialist courts and the appropriateness of generalist courts of appeal to determine how they operate. The Inspector relied on s96 of the Industrial Conciliation and Arbitration Act, the direct predecessor of a counterpart provision in today's legislation. It provided:

Proceedings in the Court [of Arbitration] shall not be impeached or held bad for want of form, nor shall the same be removable to any Court by certiorari or otherwise; and no award, order, or proceeding of the Court shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any Court of judicature on any account whatsoever.

Chief Justice Stout, delivering the judgment of the majority of the Court of Appeal, wrote:

... the order of the 12th of May was a proceeding in the Arbitration Court, and a proceeding in the Court purporting to be concerning a breach of the Industrial Conciliation and Arbitration Act dealing with an industrial matter, and ... it would be whittling away the plain words of section 96 of the Act to say that this Court had jurisdiction to remove or quash such a proceeding. The Arbitration Court has been granted really a greater jurisdiction than even this Court. It may proceed contrary to law or to fact in dealing with matters under its jurisdiction; and from its decisions, however erroneous, there is no right of appeal. If the Supreme Court gives a decision there is always a right of appeal to this Court and the decisions of this Court are in most instances reviewable by the Privy Council. The Arbitration Court may receive as evidence what no Court of ordinary jurisdiction would receive as evidence, and no Court is allowed to call in question its decisions. Its motto might very well be, Sic volo sic jubeo. It appears to me plain from the wording of the statute that the intention of the framers of the Act was that the ordinary rules of law and justice, which have been slowly evolved through the centuries, were not necessarily applicable to disputes in industrial matters. This may have been necessary for the exceptional work that the Court is called upon to perform. That it was the intention of the Act to prevent any interference with its proceedings by the Supreme Court is very apparent.

That appears to have been the last chapter in the legal proceedings between the parties. No doubt the outcome was political and practical, as indeed it is so often today. As now, legal proceedings are used to obtain a position of advantage or dominance but, ultimately, practicality prevails.

Newspapers reports of the time confirm that ill-fortune at another mine enabled settlement of the dispute at Blackball to be concluded.

The Tyneside mine beyond Ngahere, that was operating two shifts and employed large numbers, suffered sudden and extensive flooding that caused its immediate closure. The need to reallocate labour and for the production of replacement coal allowed operations at Blackball to both restart and expand. Blackball began to work two shifts obviating the necessity for truckers to work two hours overtime. All the "old hands" were re-employed as were a number of the Tyneside work force. On 12 May the mine manager, James Leitch, wrote to the union secretary setting out the terms of settlement in full. These included:

- ◆ the reinstatement of the seven men dismissed on 26 February and a promise by the manager that he would not victimise them;
- ◆ 30 minutes crib time would be allowed;
- ◆ Work began on Thursday 14 May.

A notable feature of the litigation was that although the union brought proceedings against the employer (and failed), all proceedings against the union were brought by the Crown through the Labour Inspectorate of the Department of Labour. That indicates that even in the legal proceedings, greater political forces than the Blackball Mining Company were seeking to establish positions that would affect more than the Blackball Mine.

Graeme Colgan

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