[2020] JMSC Civ 25

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2017 HCV 00659

BETWEEN CABLE & WIRELESS JAMAICA LIMITED CLAIMANT AND THE INDUSTRIAL DISPUTES TRIBUNAL DEFENDANT

AND WINSTON SEWELL INTERESTED PARTY

IN OPEN COURT

Gavin Goffe, Adrian Cotterell and Jahmar Clarke, instructed by Myers, Fletcher and Gordon, for the Claimant

Althea Jarrett, instructed by the Director of State Proceedings, for the Defendant

Patrick Foster, QC and Francois McKnight, instructed by Nunes, Scholefield, DeLeon & Company for the Interested Party

Tania Ralph appears as a representative of the Defendant

Theresa Bowen appears as a representative of the Interested Party

HEARD: March 19, 20 & 21, 2018 and February 14, 2020

REDUNDANCY DISPUTE – JUDICIAL REVIEW – WHETHER THE INDUSTRIAL DISPUTES TRIBUNAL HAS JURISDICTION OVER REDUNDANCY MATTERS – STATUTORY INTERPRETATION – GENERALIA SPECIALIBUS NON DEROGANT – LABOUR RELATIONS AND INDUSTRIAL DISPUTES ACT – EMPLOYMENT (TERMINATION AND REDUNDANCY PAYMENTS) ACT ANDERSON, K., J.

The Issues

[1] Did the Industrial Disputes Tribunal (IDT) err in law, in having implicitly concluded that it had jurisdiction over the matter which was referred to it, by the Minister of Labour and that therefore, unless that tribunal had been specifically prohibited, by means of a court order, from adjudicating on that matter, it was obliged to proceed to hear and resolve that matter, even though it had made no express ruling on the jurisdictional issue which had been expressly raised before it, by the claimant's counsel?

[2] Did the IDT have jurisdiction over the redundancy aspect of the matter which was referred to it, by the Minister, for adjudication? It will be recalled that the revised terms of reference, were as follows:

> *'To determine and settle the dispute between Mr. Winston Sewell on the one hand and Cable and Wireless Jamaica Limited (trading as LIME) on the other hand over.*
>
> *a. Mr. Sewell's claim that his contract of employment was terminated on the grounds of redundancy; or*
>
> *b. The company's claim that Mr. Winston Sewell was separated from his employment on the basic of retirement.'*

[3] If the IDT had jurisdiction to address the dispute between the parties, that being as to whether Mr. Winston Sewell was separated from his employment with Cable and Wireless, on the basis of retirement (Cable and Wireless' contention), or alternatively, on the basis that he had been made redundant (Winston Sewell's contention), does the **Employment (Termination and Redundancy Payments) Act's** provisions which set out a time limit within which a claim for redundancy must be instituted, that being **section 10**, apply to the dispute which was referred to the IDT?

[4] Did the IDT err in law by having compelled the claimant to present its case first and thereby having, as has been alleged by the claimant, placed a burden of proof, on the claimant?

[5] Did the IDT decide, without evidence, that Mr. Sewell was dismissed by reason of redundancy?

[6] Did the IDT err in law, in having, as the claimant has alleged, implicitly found that Mr. Sewell was constructively dismissed?

[7] Did the IDT err in law, in having, as has been alleged by the claimant, inferred, without there having been any evidence to support said inference, which is that the effective date of termination of Mr. Sewell, was on or about February 28, 2014?

[8] Did the IDT err in law, by having, as the claimant has alleged, asked itself the wrong questions, as instead of asking whether Mr. Sewell was dismissed, it asked itself what Mr. Sewell's employment status was, between the last day he worked at LIME and his scheduled retirement date?

[9] Was the IDT's award unreasonable, such that, no reasonable tribunal could have reached the conclusions which the IDT did, on the evidence before it?

[10] Did the IDT err in law, in so far as has been alleged by the claimant, that tribunal inferred that the effective date of termination of the contract of employment was, on or about February 28, 2014, which was before the date of May 1, 2014 – that having been the date when Mr. Sewell was slated to go on retirement?

Resolution of issues numbers 5 to 10

[11] I agree with the written submissions made, by the respective counsel, for the defendant and the interested party, as regards each of these issues, those in particular, being paragraphs 26 to 34, of the defence counsel's written submissions and paragraphs 47 to 63, of the written submissions, which were filed by counsel

for the interested party, with respect to the issues which I have set out, as issues numbers 5 to 10.

[12] The claimant therefore has not proven its case against the defendant, as far as those issues are concerned.

Resolution of issue number 4

[13] On this issue, I agree entirely with the defence counsel's written submissions, in particular, that which has been stated at paragraphs 21 to 25 thereof.

Resolution of issue number 1

[14] I accept *en toto,* that which has been set out in paragraph 21 of the submissions of the interested party, as regards the role of a judicial review court.

[15] The claimant's contention is that by not having expressly concluded upon the issue as to whether it had jurisdiction, the IDT's adjudication on the issues which were referred to it, by the Minister of Labour, constitutes a nullity.

[16] I accept the claimant's contention that the IDT ought to have made an express ruling as to its jurisdiction to resolve that which had been referred to it, by the Ministry of Labour, since the claimant raised it as an issue for the IDT to decide upon. See: **R v Camden LB Rent Officer, ex p. Ebiri** [1981] 1 WLR 881. I accept also though, the interested party's counsel's submission that it is implicit in the IDT's treatment of the issue as to jurisdiction, '*that they could deal with the issues and in so doing, acknowledged that they had jurisdiction*.' See paragraph 28 of the interested party's counsel's written submission.

[17] Accordingly, it would not, to my mind, be appropriate for a judicial review court to quash the IDT's decision, in respect of this matter, on the ground that the IDT refused to make any express determination, as to whether or not it had jurisdiction.

[18] The issues that have to be addressed are in reality, primarily as to whether the IDT in fact, had jurisdiction at all, with respect to the matter which was referred to it, by the Minister of Labour and if it did have jurisdiction, whether such ought to have been exercised in accordance with the express provisions of the **Employment (Termination and Redundancy Payments) Act**. If the first of those two (2) questions is answered by this court, in the negative, then it follows that the IDT's determination as regards this matter, was a nullity, whereas it is also so, if the answer to the second question, is in the affirmative, based upon the particular circumstances of this particular case.

[19] It is stated in the text authored by Wade – Administrative Law, 10th ed. (2009), that*:* *'The most active remedies of administrative law – declaration, injunction, the quashing order (certiorari), the prohibiting order (prohibition), the mandatory order (mandamus) – are discretionary and the court may therefore withhold them if it thinks fit. In other words, the court may find some act to be unlawful but may nevertheless decline to intervene.'*

Did the IDT have jurisdiction as regards the matter of redundancy

[20] I agree with the submissions respectively made by defence counsel and by counsel for the interested party, to the effect that the wording of the **Labour Relations and Industrial Disputes Act (LRIDA)**, particularly in terms, of the definition of the term, 'industrial dispute,' as set out in **section 2** thereof, appears to permit the IDT to be referred by the Minister of Labour, a dispute between an employer and an employee, as regards redundancy.

[21] Of course though, the **ETRPA** expressly sets out the law in Jamaica, as regards matters of redundancy and permits the courts of Jamaica to have jurisdiction over same.

[22] Neither the **LRIDA** nor the **ETRPA** make any reference to each other. Thus, what exists here, is a situation in which there is general and also, separate, special

legislation, which may be considered as pertaining to the same subject matter and yet, the general legislation makes no reference to the special and vice versa.

[23] It is the claimant's contention that the IDT erred in law, in having exercised jurisdiction in respect of the dispute which was referred to it, by the Minister of Labour.

[24] I am of the view that in order to properly address and resolve that contention, this court must carefully consider and apply the pertinent principles of statutory interpretation.

[25] Before doing so however, it ought to be noted that the **ETRPA** was enacted in 1974, whereas the **LRIDA** was enacted in 1975 and in particular, **section 11A** thereof, was enacted in 1978. That is the section of that Act, under which the referral to the IDT by the Minister of Labour was made.

[26] I can, I think, do no better for present purposes, than quote from the Earl of Selborne LC in **The Vera Cruz** [1884] 10 App. Cas. 59, at 68 – *'Now if anything be certain, it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so.'*

[27] In **Blackpool Corporation v Starr Estate Co. Ltd.** [1922] 1 AC 27, at 34, Viscount Haldane stated: *'We are bound… to apply a rule of construction which has been repeatedly laid down and is firmly established. It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the legislative lays down a general principle, that general principle is not to be taken as meant to rip up what the legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself,*

cover special cases, of the kind I have referred to.' See: **Attorney General of Jamaica v Exeter Corpn.** [1911] 1K B 1092; and **Harlow v Minister of Transport** [1951] 2 KB 98.

[28] In the **Vera Cruz** case *(op. cit.)*, **section 7 of the Admiralty Court Act 1861**, was under consideration, as that section of that Act, gave jurisdiction to that court, '*over any claim for damage done by any ship.'* It was held that that statutory provision, did not relate to an action for damages for loss of life under the **Fatal Accidents Act 1846**, actions under that Act being in respect of a special class of claims involving numerous and important considerations which the legislature could not be supposed to have had in mind in using words of so general a character.

[29] In the matter at hand therefore, I am firmly of the view that the IDT did not have and does not have, jurisdiction over redundancy matters, or that alternatively, if it does, it must do so, in accordance with the statutory provisions pertaining to redundancy as set out in significant detail, in the **ETRPA**.

[30] If it were otherwise, the **ETRPA** would be of little, if any relevance at all, as regards redundancy matters, since then, the IDT could exercise jurisdiction over such matters, without paying any regard to special statutory provisions, as regards same.

[31] The Privy Council has applied this principle of, '*generalia specialibus non derogant*,' in the case: **Barker v Edger and ors.** [1898] AC 748, at 754, per Ld. Hobhouse, delivering the judgment of the Privy Council.

[32] In **Garnett v Bradley** [1877] 2 Ex D 349, at pp 351, Ld. Justice Bramwell, summed it up perfectly, as follows: *'That rule [that posterior laws repeal prior ones to the contrary] is subject to qualification excellently, as it seems to me, expressed by Sir PB Maxwell in his book on the interpretation of statutes. He says, at p. 157, under the heading 'generalia specialibus non derogant,' 'It is but a particular application*

of the general presumption against an intention to alter the law beyond the immediate scope of the statute to say that a general Act is to be construed as not repealing a particular one by mere implication. A general law does not abrogate an earlier special one. It is presumed to have only general cases in view and not particular cases, which have already been provided for by a special or local Act, or, which is the same thing, by custom. Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment, unless it manifests that intention in explicit language.'

[33] It seems to me that if the legislative branch of government along with the executive branch, wish for the IDT to have jurisdiction over redundancy matters, then the legislature in particular, must expressly so provide for, within the provisions of the **LRIDA**. That will then no doubt, require that either the **ETRPA** and the **LRIDA** be either amended, or the **ETRPA** be repealed, with the former of those two (2) options, being the one which is most likely to be exercised.

[34] I agree with the claimant's counsel's submission that the IDT does not have jurisdiction over redundancy matters. If it were otherwise, the **ETRPA** would be rendered nugatory.

[35] I also, agree with the claimant's counsel's submission that the jurisdiction of the IDT is not derived from the Minister of Labour's referral to it, pursuant to the provisions of either **section 9, 10, or 11 of the LRIDA**.

[36] It appears to me as though, the IDT was mistakenly of a different view in that regard, which is why they stated as follows: *'Counsel for the company challenged the Tribunal's jurisdiction to hear this dispute and we find it appropriate to point out that it is important for parties who appear before the Tribunal to appreciate that the IDT's jurisdiction to hear, determine and settle industrial, disputes, is derived from the Minister's referral of the dispute under the relevant section of the* ***Labour***

***Relations and Industrial Disputes Act**.'* I agree with the claimant's counsel's submissions, in that specific respect. (Highlighted for emphasis)

[37] I would instead, prefer to state that the IDT's jurisdiction comes into play and is utilized, in circumstances wherein a referral to it has been made by the Minister of Labour, pursuant to the provisions of either **section 9, 10 or 11 of the LRIDA** but its jurisdiction arises from the provisions of the **LRIDA** and is therefore, derived from those provisions, rather than from the Minister's referral to it.

[38] Thus, if the Minister of Labour refers to the IDT, a matter which the IDT has no jurisdiction over, because the **LRIDA,** read along with the **ETRPA**, do not provide it with that jurisdiction and the IDT proceeds to hear and make a final ruling on that matter, then not only can the Minister's referral be successfully challenged for absence of jurisdiction but also, so can the IDT's award on same, on the very same ground – absence of jurisdiction.

[39] I will therefore end my reasoning, by echoing the words of Sir Alfred Wills, in delivering the Privy Council's judgment, in the case: **Esquimalt Waterworks Co. v City of Victoria Corporation** [1907] AC 499 at 507 – *'To hold that a subsequent general statute, the application of which might seriously interfere with the rights granted by special legislation to the appellants and might prevent them from fulfilling statutory obligations, can have been intended to override the special legislation, would be contrary to sound and well-established principles.'*

[40] Finally, I must state that the claimant's application for Order Number 3, which is an application for declaratory relief, is denied, as that application is too broad in scope.

Order

1. The award of the IDT which was published on November 30, 2016, is moved into this Honourable court and quashed.
2. It is declared that a claim for a redundancy payment and any labour dispute as regards a redundancy payment, does not constitute an, 'industrial

dispute' within the meaning attributed to that quoted term, in the Labour Relations and Industrial Disputes Act.

3. The claimant's application for declaratory relief as set out in order number 3 of their Fixed Date Claim Form, is denied.

4. The costs of this claim are awarded to the claimant, as against the defendant, with such costs to be taxed, if not sooner agreed.

5. The claimant shall file and serve this order.

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Hon. K. Anderson, J.