[2020] JMSC Civ 26

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2016 HCV 00169

BETWEEN	**CHARTERMAGNATES LIMITED**	**CLAIMANT**
AND	**THE INDUSTRIAL DISPUTES TRIBUNAL**	**1ST DEFENDANT**
AND	**NORMA ROBERTS**	**2ND DEFENDANT**

IN OPEN COURT – HEARD ON PAPER

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

Susan Reid-Jones, instructed by the Director of State Proceedings, for the 1st Defendant.

Conrad George, instructed by Hart, Muirhead, Fatta, for the 2nd Defendant.

HEARD: July 10, 2017 and February 14, 2020

REDUNDANCY MATTER – JUDICIAL REVIEW – STATUTORY INTERPRETATION – GENERALIA SPECIALIBUS NON DEORGANT – LABOUR RELATIONS AND INDUSTRIAL DISPUTES ACT – EMPLOYMENT (TERMINATION AND REDUNDANCY PAYMENTS) ACT – WHETHER INDUSTRIAL DISPUTES TRIBUNAL HAS JURISDICTION OVER REDUNDANCY MATTERS

ANDERSON, K., J.

The Issue

[1] There is, in reality, only one issue in respect of this case.

[2] That issue is as to whether or not the Industrial Disputes Tribunal (IDT) has jurisdiction in respect of redundancy disputes. The grounds in support of the claimant's claim, ought to have been adumbrated in the affidavit evidence of Mr. Audley Gordon, in support of Fixed Date Claim Form and one of those grounds should have been stated as being, *'that the IDT has no jurisdiction over redundancy disputes,'* In any event though, the parties' counsel had, at all times, clearly understood that that was the central issue.

The Background

[3] The IDT exercised jurisdiction over a dispute which existed between Ms. Norma Roberts and Chartermagnates Limited, as regards whether Ms. Roberts should have been made redundant and paid redundancy pay by her former employer – Chartermagnates Limited in circumstances wherein Ms. Roberts employment with the claimant, came to an end, on August 31, 2013. Ms. Roberts was employed with the claimant, from May 14, 1987, until then.

[4] Around August, 2013, the auditing firm, Deloitte and Touche, transferred its business operations to Ernst and Young. Prior to that, Chartermagnates Limited was the service company for Deloitte. When Ernst and Young took over the operations and Deloitte, the Ernst and Young auditing firm, made offers of re-engagement to several employees of Chartermagnates Limited including Norma Roberts. Accordingly, Ms. Roberts was re-engaged, albeit then, by a new employer and not on the same terms and conditions of service as existed when she was employed by the claimant.

[5] Ms. Roberts later wrote to the Ministry of Labour, claiming that she was entitled to be paid a redundancy payment by the claimant. The Ministry of Labour organised conciliation meetings, which were unsuccessful.

[6] Thereafter, the Minister of Labour referred that which the Ministry which then considered, as being an, 'industrial dispute' as per **section 2 of the LRIDA**.

[7] **Sections 9, 10 and 11 of the Labour Relations and Industrial Disputes Act (LRIDA)**, allow for the Minister of Labour to refer an industrial dispute to the IDT for settlement. **Section 11A** permits the Minister of Labour to refer such a dispute, on his or her own initiative.

[8] **Section 2 of the LRIDA** defines the term, 'industrial dispute' and it can mean various things. One of those things is, *'any matter affecting the privileges, rights and duties of any employer or organization representing employers or of any worker or organization representing workers.'*

[9] The defendant and the interested party, have firmly contended that a dispute regarding redundancy, is an, 'industrial dispute' and that therefore, the IDT has jurisdiction over same.

[10] The claimant has, to the contrary, firmly contended that the IDT does not have jurisdiction over same, since there exists in Jamaica, the **Employment (Termination and Redundancy Payments) Act**, which specifically provides that a Parish Court shall have jurisdiction over such matters (redundancy payment disputes), up to a maximum of $3 million. The **Employment Termination and Redundancy Payments Act (ETRPA)** it should be noted, makes no reference at all, to the **LRIDA**.

[11] Furthermore, the **LRIDA** was enacted subsequent to the **ETRPA**, but the **LRIDA** has not been amended, to specifically provide for jurisdiction, in respect of redundancy disputes, to be vested either concurrently, or exclusively, with the IDT.

[12] Within that context, it is the claimant's contention that our nation's courts have exclusive jurisdiction over redundancy matters whereas, it is the defendant's contention that the courts' jurisdiction over same, in Jamaica, is now to be exercised concurrently with the IDT, since a matter concerning an alleged failure on the employer's part, to make a redundancy payment, is an, 'industrial dispute',

since it is a matter affecting the, *'rights and duties of a worker'* and also, of an employer.

[13] For my part, I accept that the general wording of **section 2 of the LRIDA**, does permit it to be, at first glance at least, considered that it applies in respect of a redundancy payment dispute and accordingly, that such a dispute can be referred, by the Minister of Labour, to the IDT for settlement, just as was done, in respect of Ms. Roberts' dispute over same, with the claimant.

[14] The terms of reference sent to the IDT by the Minister of Labour, in respect of the matter at hand, was as follows: *'To determine and settle the dispute between Chartermagnates Limited on the one hand and Ms. Norma Roberts on the other hand over her redundancy payment.'*

[15] Prior to the IDT having begun its hearings into this matter, lead attorney for the claimant wrote to the IDT and informed them, that it was the view of the claimant's counsel, that, this matter did not pertain to an, *'industrial dispute*.' Thereafter, the hearings began on February 16, 2015, at which time, Mr. Goffe, once again, raised objection, to the IDT's jurisdiction in respect of the matter, albeit that on that occasion, he did so, in oral submissions which he then made, before the tribunal.

[16] On both of those occasions when objection to jurisdiction was raised, the IDT informed the Ministry of Labour, of those objections and on each occasion, the Ministry of Labour informed the IDT that it was that Ministry's position that the matter was correctly referred to them. On the second occasion, the Ministry of Labour added that the referral would not be withdrawn. The dispute was thereafter heard and adjudicated on, by the IDT, which made its award, in respect thereof, on November 10, 2015.

[17] At page 5 of the IDT's written reason, underlying their award, the following has been stated*: 'Members of the Tribunal were clear in their minds that the Terms of Reference having been referred to the Ministry of Labour and Social Security on*

two (2) occasions, and the Tribunal having been informed that the matter was properly referred for settlement agreed that they had the authority to hear this matter.'

[18] The parties submitted briefs to the IDT and made submissions, via counsel for the claimant and union representatives of the University and Allied Workers Union, on behalf of Ms Roberts. Ms. Roberts gave evidence on her own behalf, whereas, on the other hand, no evidence was led, on the claimant's behalf, at any of the IDT hearings.

[19] Ultimately, the IDT concluded as follows:

i) Ms. Roberts' empowerment with the claimant came to an end on August 31, 2013; and

ii) Her employment with Ernst and Young, which commenced on September 1, 2013, was not a continuation of her employment with the claimant; and

iii) That Ms. Roberts was surreptitiously terminated from her job with the claimant, with effect from August 31, 2013, without the appropriate documentation; and

iv) Ms. Roberts' twenty-six years of service with the claimant should have been preserved and accordingly, payment in the form of a redundancy, should have been made to her; and

v) The claimants failure to recognize that service and '*compensate her accordingly'* was unreasonable; and

vi) Ms. Roberts is to be, *'compensated,'* by the payment of sixty-eight weeks' basic salary, calculated on the salary which she was receiving, as at August 31, 2013. (Italicized for emphasis)

[20] It seems clear to me therefore, that based on the referral to them, the IDT resolved the dispute by concluding that Ms. Roberts had been made redundant by the claimant and ought to have received from the claimant, redundancy pay, as 'compensation'. The IDT therefore awarded to the claimant, sixty-eight weeks of the basic salary which she had been receiving as at August 31, 2013.

The law as regards an inferior tribunal having acted without jurisdiction

[21] If the IDT had jurisdiction over the dispute, then to my mind, they were entitled to have made the award as they did. If though, they did not have jurisdiction over a redundancy dispute, then the award as made, is *ultra vires* the statutory provisions which govern the IDT's jurisdiction and is therefore, null and void.

[22] That would be and is so, because no tribunal can give itself jurisdiction which it does not possess. Equally too, in matters relating to industrial disputes which are referred to the IDT by the Minister of Labour, the IDT does not and cannot derive jurisdiction, from that referral. The jurisdiction of the IDT is derived from the statute which sets out such in detail, albeit in broad and general terms, as is to be expected, in respect of such a tribunal.

[23] In the case: **R v Shoreditch Assessment Committee, ex p Morgan** [1910] 2 KB 859, Farwell LJ, stated as follows, at p 880, *'No tribunal of inferior jurisdiction can by its own decision finally decide on the question of the existence or extent of such jurisdiction: such question is always subject to review by the High Court, which does not permit the inferior tribunal either to usurp a jurisdiction which it does not possess… or to refuse to exercise a jurisdiction which it has… Subjection in this respect to the High Court is a necessary and inseparable incident to all tribunals of limited jurisdiction; for it is a contradiction in terms to create a tribunal with limited jurisdiction and unlimited power to determine such limit at its own will and pleasure - such as a tribunal would be autocratic, not limited – and it is immaterial whether the decision of the inferior tribunal on the question of the existence or non-existence of its own jurisdiction is founded on law or fact.'*

[24] Thus, it has been stated in the text: Administrative Law, 10th ed. [2009], at p 222 – *'If administrative tribunals and authorities could trespass uncontrollably outside their proper fields, there would no longer be order in the legal system. Order can be preserved only if the jurisdictional demarcation disputes can always be carried to the regular courts of law, and so brought within, a unified hierarchy of authority.'*

[25] The case – **Anisminic v Foreign Compensation Commission** [1969] 2 AC 147, is now taken as being the leading example of jurisdictional error by a tribunal in the course of its proceedings. In that case, the Foreign Compensation Commission had rejected a claim for compensation for a property already sold to a foreign buyer, on the erroneous ground that the statutory order in council required that the successor in title should have been of British nationality at a certain date. The majority of the House of Lords held that this error destroyed the Commission's jurisdiction and rendered their decision a nullity, since on a true view of the law, they had no jurisdiction to take the successor in title's nationality into account. By asking themselves the wrong question, and by imposing a requirement which they had no authority to impose, they had overstepped their powers.

[26] In the case – **O'Reilly v Mackman** [1983] 2 AC 237, at 278, Ld Diplock stated, in reference to the **Anisminic** case *(op. cit.),* that, *'The breakthrough that the **Anisminic** case made was the recognition by the majority of this House that if a tribunal whose jurisdiction was limited by statute or subordinate legislation mistook the law applicable to the facts as it had found them, it must have asked itself the wrong question, i.e., one into which it was not empowered to inquire and so had no jurisdiction to determine. Its purported 'determination', not being 'a determination' within the meaning of the empowering legislation, was accordingly a nullity.'*

[27] It is no doubt, with all of that law in mind, as to the result of an inferior tribunal having acted in excess of jurisdiction, if that alleged jurisdictional error is challenged on a judicial review application which is made to a superior tribunal, that the claimant's counsel have rested the claimant's case, on the mantle that the IDT acted in excess of its jurisdiction in having adjudicated on a dispute as to redundancy and in having, arising from that dispute, made an award of, 'compensation' to be paid by the claimant to Ms. Roberts.

Did the IDT act in excess of jurisdiction?

[28] In answering this question, what must be considered and what in fact has been considered by this court and what has been submitted on, extensively, by the parties' counsel, is the interplay, if any, between the relevant provisions of the LRIDA as regards what is an, 'industrial dispute' – those being general provisions and the specific or special provisions as regards redundancy and redundancy payments, as set out in detail, in the **ETRPA** and the **Employment (Termination and Redundancy Payments) Regulations 1974**.

[29] I am of the considered opinion that in determining whether there is any such interplay and if so, what is the nature of same, as between those general provisions earlier referred to and the special provisions, earlier referred to, one must have regard to settled principles of statutory interpretation.

[30] 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, in respect of this particular matter, was made.

[31] 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.'*

[32] 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 legislature 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.

[33] 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.

[34] 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, even 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**.

[35] 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.

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

[37] 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.'*

[38] 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** and also, within the provisions of the **ETRPA**. That will then no doubt, require that either the **ETRPA** and the **LRIDA** be either amended, or, the **ETRPA** will have to be repeal with the former of those two (2) options, being the one which is most likely to be exercised.

[39] 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. The IDT does not have concurrent jurisdiction with the courts, in respect of redundancy matters.

[40] 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**.

[41] 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 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. (Italicized and highlighted in bold for emphasis)

[42] 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.

[43] 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.

[44] It is clear to me, that the IDT was of a different view, at the time when it was hearing the relevant dispute and when they made the award which they did, in respect thereof.

[45] The following extract from the award, I think, makes this clear: 'The Tribunal had proposed commencement of the hearing of this matter on July 8, 2014. Mr. Gavin Goffe, Attorney-at-law in the law firm Myers, Fletcher and Gordon, representing CML, by letter of the same date, advised the Tribunal that he was unable to attend due to a prior engagement. In his letter, he stated in part, as follows:

'We are of the view that the referral of this matter to the Industrial Disputes Tribunal is ultra vires of the Minister as it is not an 'industrial dispute' as defined in the labour Act.'

He ended his letter by stating –

'Chartermagnates does not therefore agree with the Terms of Reference as framed and requests that the matter be remitted to the Minister of Labour for further consideration.'

[46] Mr. Goffe subsequently wrote to the Honourable Minister of Labour and Social Security on August 13, 2014, enclosing a copy of his letter of July 8, 2013 addressed to the Tribunal.

[47] He inquired of the Minister whether this matter was referred to the IDT in error as there was a need to understand whether the IDT had jurisdiction and stated that CML was reluctant to attend the hearing before understanding the basis of the referral.

[48] The Tribunal communicated the objection raised by the attorney to the Ministry of Labour and Social Security and by letter dated January 2, 2015 the Ministry advised as follows:

'….It is the position of this Ministry that the matter was correctly referred to the Tribunal under whose jurisdiction the dispute now resides.'

[49] The tribunal convened a sitting on February 16, 2015. At the commencement the attorney stated that his client ML was maintaining its challenge to the jurisdiction on the basis that it was not an industrial dispute and therefore the Minister of Labour and Social Security has no authority to refer the matter to the IDT.

[50] *The Tribunal informed the Ministry of Labour and Social Security of this further objection and the Ministry replied reiterating that the dispute was properly referred and would therefore not be withdrawn.*

[51] Members of the Tribunal were clear in their minds that the Terms of Reference having been referred to the Ministry of Labour and Social Security on two (2) occasions, and the Tribunal having been informed that the matter was properly referred for settlement, agreed that they had the authority to hear the matter.

[52] To my mind therefore, the IDT was of the view that once the dispute had been referred to it, by the Ministry of Labour, they (the IDT) had jurisdiction to address and resolve said dispute. I disagree strongly with that expressed view of theirs, because legally, that view is not one which, to my mind, can properly be supported, based on the authorities earlier referred to, such as the **Anisminic** case and **O'Reilly v MacKman** *(op. cit.)*.

[53] What is, to my mind, also interesting about this particular matter, is that, whilst it may just be an unintended coincidence, it does appear to me as though the IDT, in calculating the redundancy pay which ought, in its view, to have been paid by the claimant to Ms. Roberts and therefore, in making the award in Ms. Roberts' favour, which is what it did, apparently utilized some of the applicable provisions of the **Employment(Termination and Redundancy Payments) Regulations**, in particular, paragraph 8 of those regulations, in order to do so.

[54] The same provides at 8 (1) (b) that*: '… the amount of the redundancy payment to which an employee other than an employee engaged in seasonal employment is entitled in respect of any period, ending with the relevant date, during which the employee has been continuously employed, shall be – in respect of a period of more than ten (10) years of employment –*

i. for the first ten (10) years reckoned, the sum arrived at by multiplying two (2) weeks' pay by that number of years; and

ii. for the years remaining, the sum arrived at by multiplying three (3) weeks pay by the number of such remaining years.'

[55] It is to be recalled that at the time when the claimant's business was taken over by another business, the claimant had been employed for 26 years and some months. Whilst the IDT seemingly did not take into account those months in calculating the redundancy payment which should be made to Ms. Roberts as, 'compensation' and it is regulation 8 (2) which specifies whether those months should be taken into account and if so, how; it strongly appears to me as though the IDT took into account the 26 years of Ms. Roberts' employment with the claimant and calculated the, 'compensation' to be made to her, by the claimant, for those years, in accordance with **regulation 8 (1) (b) of the Employment (Termination and Redundancy Payments) Regulations**.

[56] It is also of interest to note that **regulation 4 (3**) read along with **regulation 5 (1) (a)** of the said regulations, make it apparent that: If a business is transferred from one person to another, the period of employment of an employee in the business at the time of the transfer shall count as a period of employment with the transferee and that the continuity of an employee's period of employment is not broken by such a transfer.

[57] It is true that the IDT is not bound by the rigours of the common law, but it would be very surprising to me and perhaps even alarming, if the IDT could in exercise of its statutory provisions, expressly disregard the **ETRPA's** provisions, in circumstances wherein, their jurisdiction to so, has not been expressly set out, in either the **ETRPA** or the **LRIDA**. If that were so, it would then mean that the **LRIDA** would effectively have repealed the provisions of the **ETRPA**, as regards matters of redundancy. A general Act, with general provision, cannot be taken as repealing an earlier Act with special provisions pertaining to a special type of situation, for example redundancy, without express words making it clear that the legislature had so intended.

[58] Finally, I will state that the declaratory relief sought by the claimant, will be denied, in exercise of this court's discretion, as the scope of said declaratory relief, is far too broad. The declaratory relief sought, is that the term, 'dispute of rights' in

section 2 of the LRIDA does not confer upon the IDT, the jurisdiction to determine any dispute, including an alleged breach of statute.

[59] Rather than granting that relief, I have instead sought to make it clear, that I am of the considered opinion that the IDT does not presently have jurisdiction over redundancy disputes for present purposes, I need go no further.

[60] My judgment orders will therefore be as follows:

i. The IDT's award in Dispute No. IDT 21/2014 is brought into this court and quashed.

ii. The claimant's claim for declaratory relief, is denied.

iii. The costs of this claim are awarded to the claimant as against the 1st defendant and such costs shall be taxed, if not sooner agreed.

iv. The claimant shall file and serve this order.

……
Hon. K. Anderson, J.