[2018] **JMSC Civ. 59**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2017HCV03975

IN THE MATTER OF a dispute between Manor Court Limited and Barbara Rigbye regarding the termination of her employment.

IN THE MATTER OF the **Labour Relations Industrial Disputes Act**

BETWEEN	**MANOR COURT LIMITED**	**APPLICANT**
AND	**THE MINISTER OF LABOUR & SOCIAL SECURITY**	**1ST RESPONDENT**
AND	**THE INDUSTRIAL DISPUTES TRIBUNAL**	**2ND RESPONDENT**

IN CHAMBERS

Mr Emile Leiba and Mr Andre Marriott-Blake instructed by DunnCox for the Applicant

Ms Althea Jarrett instructed by the Director of State Proceedings for the Respondents

Ms Tanya Ralph watching proceedings on behalf of the 2nd Respondent

Mr Ransford Braham QC intervening on behalf of Mrs. Barbara Rigbye

Heard: 5 and 25 April 2018

Civil Procedure Rules – Rule 56.3(1) – Application for leave to apply for judicial review – Threshold for granting leave – Arguable ground with a realistic prospect of success

STRAW J

Background

[1] The applicant, Manor Court Ltd, is the former employer of Mrs. Barbara Rigbye. Mrs. Rigbye was employed as a Property Manager in January 2010. She was over 60 years old at the time of her employment. Despite attaining the applicant's age of retirement in 2013, Mrs. Rigbye agreed to continue her employment with the applicant on a year to year basis.

[2] Following a letter dated 2 August 2016, wherein the applicant conveyed its decision to 'retire' Mrs. Rigbye with immediate effect, a dispute arose between the parties. Mrs. Rigbye alleged that she was unjustifiably dismissed by the applicant. The applicant denied this allegation.

[3] Mrs. Rigbye sought recourse to the Ministry of Labour and Social Security (the 'Ministry'). Three conciliatory meetings were held at the Ministry. The first took place on 14 December 2016, the second on 16 January 2017 and the third on 29 June 2017. Despite these three conciliatory meetings, the parties were unable to negotiate a resolution. A fourth meeting was scheduled tentatively for 20 July 2017. It was hoped by both sides that they could resolve their dispute without having to return to the Ministry. They agreed that they would continue discussions and, in that regard, the meeting scheduled for 20 July 2017 would become unnecessary if they had reached an agreement.

[4] The parties did not resolve their dispute as hoped. Notwithstanding their stalemate, the parties failed to return to the Ministry on the 20 July 2017. As such, the fourth meeting did not take place.

[5] The parties' matter was referred by the Conciliation Officer, Mr Michael Kennedy, to the Minister of Labour and Social Security, the 1st respondent, between 10 and 30 August 2017. The 1st respondent in turn gave directions to refer the matter to the Industrial Disputes Tribunal ('IDT'), the 2nd respondent, for determination. This referral was conveyed by letter dated 30 August 2017 which was written by Mr Kennedy to the Chairman of the 2nd respondent. A copy of the said letter was sent

by email, to the applicant's Attorney-at-Law on 1 September 2017. The applicant's Attorney-at-Law, Mr Emile Leiba, responded by email on the same date indicating his confusion and his view that conciliation was still ongoing at the Ministry before Mr Kennedy and that the parties were to return in September.

[6] The applicant is now seeking to challenge the decision of the 1st respondent to refer the matter to the 2nd respondent.

The Application

[7] In order to challenge the 1st respondent's decision by way of judicial review, the applicant has duly sought to obtain leave (see: **CPR 56.3(1)**). Prima facie, there are no issues of standing or delay, although, counsel for the respondents, Ms Althea Jarrett, has submitted that the application for judicial review made on 17 November 2017 is indicative of delay since the referral was made from 30 August 2017. It is to be noted however that the **CPR** allow up to three months for such applications to be made and I see no valid reason for refusing this application solely on this basis (see: **CPR 56.2 and 56.6(1)**).

[8] By way of its Notice of Application filed 17 November 2017, the applicant seeks the following orders:

1. *That Leave be granted to the Applicant to apply for Judicial Review by way of:*

    a. *A Declaration that the 1st Respondent, by its Notice of Referral dated August 30, 2017, referring the dispute between the Applicant and Barbara Rigbye, acted ultra vires and/or unreasonably as the statutory conditions precedent required for her to invoke her own initiative to refer the dispute had not been satisfied, rendering the decision null and void and of no effect.*

b. An Order of Certiorari to quash the 1st Respondent's Referral of the dispute to the 2nd Respondent dated August 30, 2017.

c. An order of Prohibition, prohibiting the 2nd Respondent from acting on the 1st Respondent's Referral of the dispute to the said 2nd Respondent dated August 30, 2017.

2. That any proceeding before the 2nd Respondent, in respect of the dispute to the Applicant and Mrs. Barbara Rigbye be stayed, pending the outcome of the Judicial Review proceedings to be commenced pursuant to Order 1 above.

The Grounds

[9] The grounds on which the applicant relies can be summarised as follows: that the 1st respondent, in exercising her discretion pursuant to section 11A(1)(a)(i) of the **Labour Relations and Industrial Disputes Act** ('**LRIDA**'):

1. acted unlawfully/erred in law;

2. acted unreasonably;

3. failed to take into account relevant considerations and took into account irrelevant matters; and

4. failed to give reasons for her decision.

[10] With respect to the failure to give reasons, it should be noted that this was not included in the grounds contained in the applicant's Notice of Application. Counsel for the applicant made an oral application seeking the permission of this court to include and rely on this ground. He submitted that there was evidence which supported this ground and that it would be in the interest of justice for the court to consider this ground. Permission to amend was granted (see**: CPR 56.4(6)**) and the court heard submissions based on this ground.

Ground 1: The 1st Respondent acted unlawfully/erred in law

[11] In support of this ground, it was submitted by Mr Leiba, counsel for the applicant, that there was an error of law on the face of the 1st respondent's referral dated 30 August 2017. His contention is threefold, firstly, he argues that the conciliatory process had not been completed, secondly, the applicant was still minded to settle the matter and thirdly that the statutory preconditions (pursuant to section 11A(1)(a)(i)) of the **LRIDA**) were not met.

[12] In respect of the first contention, Mr Leiba submitted that the 1st respondent's referral was premature and as a result she acted *ultra vires* her statutory authority. It was submitted that the 1st respondent could not have been 'satisfied that attempts were made without success to settle the dispute' (per section 11A(1)(a)(i)), since the attempt was ongoing. Further, he contends that since a future conciliatory meeting was scheduled, there remained a sufficient prospect of resolution between the parties. He asserts that this renders any decision of the 1st respondent to the contrary to be unreasonably premature.

[13] It is critical to note however, that there is a factual dispute regarding whether a September meeting was ever scheduled. The applicant contends that its Attorney-at-Law, Mr Leiba, spoke with Mr Kennedy who proposed another meeting in September 2017. It is also contended that the intended resumption is consistent with the records of the applicants' Attorneys. However, there is no documentary evidence or paper trail placed before the court in support of this contention and it is stoutly denied by Mr Kennedy.

[14] Counsel for the respondents, Ms Jarrett, submitted that evidence on this point was not properly placed before the court by the applicant. She submitted that this evidence could not properly come from Mr André Marriott-Blake, one of the applicants' Attorneys. Mr Marriott-Blake swore to an affidavit, filed on 29 March 2018, on which the applicant relies. She submitted that Mr Marriott-Blake does not indicate who advised him concerning the date in September or what records he

relied on, when giving information concerning that which was outside of his knowledge.

[15] Ms Jarrett submitted that, while the court ought not to make a determination as to a dispute of fact without cross-examination, the applicant has not put itself in a proper position to address the inconsistency.

[16] Additionally, Mr Leiba submitted that there were other statutory preconditions that were not satisfied. He contends that it is arguable whether Mrs Rigbye's termination by retirement amounts to an industrial dispute in the context of an undertaking (per section 11A(1)(a)(i)).

[17] Reference was also made to what Mr Leiba terms the 'unilateral communication' between Mr Kennedy and Mrs Rigbye's Attorney, Ms Robinson. This was contained in the email sent on 4 September 2017 from Mr Kennedy to Mr Leiba, wherein Mr Kennedy states that Ms Robinson called the Ministry in early August and stated that talks had broken down due to affordability issues. She stated also that she wished to proceed to the Tribunal, the 2nd respondent, as further talks would be a waste of time. This, in Mr Leiba's submission, would be insufficient to satisfy the statutory precondition that 'attempts were made without success'. Reference was made to the dicta of my brother, Campbell J, in ***United Management Services Ltd. v Industrial Disputes Tribunal and the Minister of Labour and Social Security***[1], at paragraph [18] wherein he opined that "other means" under section 11A(1)(a)(i), in respect of a non-unionised employee contemplate the holding of a conciliatory meeting among other things.

[18] On the point of unilateral communication, the dicta of Smith CJ from ***R. v Minister of Labour and Employment, the Industrial Disputes Tribunal, Devon Barrett et al, ex parte West Indies Yeast Co. Ltd.***[2], was also commended to the court.

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[1] [2016] JMSC Civ 56
[2] (1985) 22 JLR 407

Smith CJ found that the prerequisites of which the Minister must be satisfied before referring the matter to the IDT seemed to be lacking. In particular, Smith CJ was of the view that the attempts made could not be satisfied only by the meetings which took place at the Ministry.[3]

[19] Smith CJ also commented on the power conferred on the Minister by section 11A of the **LRIDA**. He stated as follows:[4]:

> *"What s. 11A clearly does is to give the Minister freedom to intervene and take action with respect of any industrial dispute in spite of the restrictive procedures which the other sections require. However, in my opinion, he is not authorised to act with complete freedom. His powers are governed by the scheme and policy of the Act and by the express provisions of the section."*

[20] Mr Leiba submitted that the scheme and policy of the **LRIDA** and section 11A in particular support the view that Ministerial referral to the 2nd respondent is an option of last resort and should be exercised in circumstances where parties are unable to settle the matter through the means available to them. As such, the 1st respondent had a minimum statutory duty not to exercise her discretion to refer until the conciliatory period was complete and she was satisfied that all 'other means' available to the parties were exhausted without success.

[21] Ms Jarrett submitted that there can be no doubt that the law has moved on since ***ex parte West Indies Yeast Co. Ltd.*** She stated that the definition of industrial dispute has been amended since 2010 to include non-unionised workers such as Mrs Rigbye and that it now contemplates situations of termination or suspension. As such, there could be no contention that there was no dispute, as was the case in ***ex parte West Indies Yeast Co. Ltd***.

[22] Counsel for Mrs Rigbye, Mr Ransford Braham QC, responded to this point by submitting that the expression by one party that there can be no settlement after

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[3] At page 413, paragraph B
[4] At page 412, paragraph H

going to conciliatory meetings demonstrates conclusively that the attempts to settle had not borne any success. He then asked, in those circumstances, what more would the Minister need? Further, he submitted that there is nothing before the court to show that the matter could have been settled as the applicant contends. By way of example, he submitted that there is no evidence that the parties had reached as far as an offer and counter-offer.

Ground 2: The 1st Respondent acted unreasonably

[23] There is some overlap between this ground and the first ground. Mr Leiba contended that the decision of the 1st respondent was unreasonably premature, having regard to the incomplete settlement attempts and the prospect of resolution.

Ground 3: The 1st Respondent failed to take into account relevant considerations and took into account irrelevant matters

[24] In respect of this ground, Mr Leiba submitted that the 1st respondent failed to address her mind to the fact that the conciliation was 'part-heard' and that the applicant laboured under a legitimate expectation that another meeting would have occurred in September 2017, with a view of arriving at a settlement.

[25] Mr Leiba also submitted that even if unilateral discussions took place between Mrs Rigbye's Attorney and Mr Kennedy, this could not erode the 1st respondent's statutory duty to exclude from her consideration matters which are irrelevant to the statutory preconditions.

[26] He also submitted that, while it was not for the 1st respondent to determine the issue of Mrs Rigbye's retirement, she should have determined whether there was a dispute for the purpose of **LRIDA**.

Ground 4: The 1st Respondent failed to give reasons for her decision

[27] Mr Leiba contended that the absence of reasons for the 1st respondent's referral supports the applicant's position that the 1st respondent's discretion was not exercised property. Reliance was placed on a letter dated 27 October 2017 from AnnMarie Dobson, the Director of Documentation, Information and Access Services in the Ministry of Labour and Social Security, to Mr Marriott-Blake. This was in response to an application made under the **Access to Information Act**. In addition to stating that access had been granted to the copy of the referral issued by the 1st respondent, it was stated, *'It should however, be borne in mind that the Minister is not obliged to state a reason for referring the matter.'*

[28] Counsel submitted that, while the 1st respondent was not required to give reasons, she had chosen not to do so and as such, the applicant had an arguable case with a realistic prospect of success. Reliance was placed on the case of ***Ghandi Nawaf Mallak v The Minister for Justice, Equality and Law Reform***[5], a decision of the Irish Supreme Court.

[29] Ms Jarrett submitted that the **LRIDA** is an entirely different statutory regime from the one in which **Mallak** was concerned. Ms Jarrett contends that the situation is different in the context of **LRIDA** and submitted that, if the 1st respondent makes a referral under section 11A(1)(a)(i), it is clear that she is satisfied that the circumstances exist. She submitted that the argument that there has been a failure to give reasons is not one that can therefore be made in the present case.

[30] Further, Ms Jarrett submitted that, under the **Access to Information Act**, one is only obliged to provide documentation that exists and if there is no documentation then there is nothing to disclose.

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[5] [2012] IESC 59, paragraphs [42] – [43] and [45]

The Threshold for Leave

[31] The court's task[6] is to decide whether the applicant has an arguable case having a realistic prospect of success in a judicial review of the 1st respondent's decision. This test was approved in ***Sharma v Browne-Antoine et al***.[7] Morrison JA, as he then was, noted at paragraph [19] of his judgment in ***Minister of Finance and Planning and Public Service and Others v Viralee Bailey-Latibeaudiere***[8] that the applicable standard was set out at para. [14] (4) of **Sharma**. He said that the judgment described as the "ordinary rule" that:

> *"…the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy."*

[32] In support of her submission that none of the applicants' grounds meet the threshold test, Ms Jarrett commended to the court paragraph [58] of the judgment of Sykes J, (as he then was), from ***R. v Industrial Disputes Tribunal (ex parte J. Wray and Nephew Ltd)***[9]:

> *'The point then is that leave for application for judicial review is no longer a perfunctory exercise which turns back hopeless cases alone. Cases without a realistic prospect of success are also turned away. The judges, regardless of the opinion of the litigants, are required to make an assessment of whether leave should be granted in light of the now stated approach* (arguable ground for judicial review having a realistic prospect of success) *… It also means that* ***an application cannot be simply dressed up in the correct formulation and hope to get by. An applicant cannot cast about expressions such as "ultra vires", "null and void", "erroneous in law", "wrong in law", "unreasonable" without adducing in the required affidavit evidence making these conclusions arguable with a realistic prospect of success. These expressions are really conclusions.*** (emphasis supplied)

[33] The court bears in mind also, that the requirement of permission for leave to apply for judicial review is imposed primarily to protect public bodies against weak and

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[6] Adopted from paragraph [13] of the dicta of Brooks JA from ***Hubert Smith v The Board of Management of the Queen's School and The Appeals Tribunal*** [2016] JMCA App 4

[7] [2006] UKPC 57, (2006) 69 WIR 379

[8] [2014] JMCA Civ 22

[9] (unreported) Supreme Court, Jamaica, Claim No. 2009 HCV 04798, judgment delivered 23 October 2009

vexatious claims (per Lord Bingham of Cornhill in **Regina v Secretary of State for Trade and Industry, ex parte Eastaway**[10]). However, while it is necessary for the court to act as gatekeeper and to decide whether the applicant's case has met the threshold, it is not determining the substantive issues raised by the applicant (per Mangatal J in **Tyndall & others v Carey & others**[11]).

[34] The function of this court therefore is to determine whether any of the complaints raised by the applicant have a realistic prospect of success.

Is there a realistic prospect of success?

[35] Section 11A(1)(a)(i) of the **LRIDA** provides as follows:

> *Notwithstanding the provisions of sections 9, 10 and 11, where the Minister is satisfied that an industrial dispute exists in any undertaking, he may on his own initiative –*
>
> *(a) refer the dispute to the Tribunal for settlement –*
>
> *(i) if he is satisfied that attempts were made, without success, to settle the dispute by such other means as were available to the parties; or*

[36] This section therefore gives a discretion to the Minister to refer an industrial dispute to the IDT, if the Minister is satisfied that *'attempts were made without success'* to settle the matter. No issue can be raised that an industrial dispute did not exist. Section 2 of the **LRIDA** which provide the definition of 'industrial dispute' includes, as submitted by Ms Jarrett, a non- unionised worker who has been terminated or suspended from employment. Mrs Rigbye falls into this category.

[37] Mr Leiba has complained that the prerequisite conditions were not satisfied at the time the Minister exercised the discretion to refer the matter. In examining the factual evidence, which is for the most part agreed, the court considers that the parties would have met over a period of six months (from December 2016 to June

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[10] [2000] 1 WLR 2222, 2227H

[11] (unreported) Supreme Court, Jamaica, Claim No. 2010 HCV 00474, judgment delivered 12 February 2010, paragraph [4]

2017) with the conciliation officer, Mr Kennedy. The evidence from Mr Kennedy, which is not challenged, is that the parties informed him on 29 June 2017 they had also continued discussions between themselves since 16 January 2017. They did not appear on the tentative date set by him for 20 July 2017. It would clearly be open to Mr Kennedy to infer therefore that they had settled the matter as neither party contacted him up to that point to indicate otherwise.

[38] Ms Robinson's complaint to him on 10 August 2017, that she had heard nothing from the applicant since 29 June 2017, although a unilateral communication, would have to be assessed against the background described above. Mr Kennedy's referral to the Minister took place after this communication with Ms Robinson. The court considers also that the applicant has not submitted any affidavit contradicting the position communicated by Ms Robinson. Mr Marriot-Blake merely indicates that the internal dialogue between the Board of Directors of the applicant company had not been completed at the time of the tentative date for resumption of conciliation.[12] It would therefore have been important to communicate this information to Mr Kennedy or at least, to attend the conciliation session arranged for 20 July 2017. The parties would have therefore been involved in an unresolved dispute for about eight months, although they had engaged in discussions between themselves between January and June 2017 and also attended three conciliation sessions with Mr Kennedy.

[39] There is a material dispute of fact that exists between the parties as to whether the applicant's Attorney, Mr Leiba, had communicated with Mr Kennedy at some point and both agreed on a date in September 2017 to continue the conciliation sessions. This has been denied by Mr Kennedy and, it would in fact be a crucial factor for the court in determining whether the Minister failed to take relevant issues into consideration. While it is not my function to decide disputed facts, I am of the

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[12] It may be noted that Ms Jarrett objected to this evidence, she submitted that this could not properly come from Mr Marriott-Blake.

opinion that the submissions of Ms Jarrett have great merit on this point as the applicant has not put any credible evidence before this court. There is no documentary proof in relation to this conversation that Mr Leiba is supposed to have had with Mr Kennedy. This is in stark contrast to the letters and email trail in relation to previous communication between the parties. In fact, a letter dated 27 September 2017, written by the applicant's attorney to the Ministry of Labour and Social Security[13], is somewhat contradictory as to this fact. It states as follows:

> *"... it is our understanding that the process of conciliation had not been completed. The matter was last in conciliation on June 29, 2017. At that time, it was adjourned for a new date to be fixed for the conciliation, and we received communication from the conciliation department in respect of the fixing of a date."*

[40] The question which arises is 'where is the documented proof of this communication?' Was it before or after Ms Robinson contacted Mr Kennedy on 10 August 2017? The applicant has not sought to advance a particular date that this took place. Secondly, both parties agree that after 29 June 2017, a tentative date had been set for 20 July 2017 and not as suggested in the above letter 'for a new date to be fixed.' There is some discordance therefore in the evidence being presented by the applicant on this point.

[41] There is also no affidavit submitted by Mr Leiba in support of this conversation that allegedly took place between himself and Mr Kennedy in relation to this future date. Similarly, there is no indication from Mr Marriott-Blake as to the date and mode of communication between both men. I bear in mind that the applicant is the one requesting the leave of the court and as stated by Sykes J in ***ex parte J.* Wray *and Nephew Ltd***, the applicant should adduce the required affidavit evidence to support the conclusions that are arguable with a realistic prospect of success. In this regard, they have failed to do so in relation to a crucial fact. The court also bears in mind that it is not obliged to accept everything which a party places before it without analysis, although a mini-trial is not to be conducted (per Brooks JA in

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[13] Exhibited to the affidavit of Mr Malcom McDonald as 'MM7'

ASE Metals NV v Exclusive Holiday of Elegance Limited[14] at paragraph [19], where he quoted Potter LJ at paragraph [10] of his judgment in **ED & F Man Liquid Products Ltd v Patel and another**[15]).

[42] In light of the above, this court is of the opinion that a sufficient matrix of fact existed to allow the Minister to consider whether she was satisfied that *'attempts were made without success by such other means'* to settle the dispute. There is no arguable case having a realistic prospect of success that the referral was unreasonable. Also, there is no arguable case with a realistic prospect of success that she failed to take relevant matters into consideration and/or took irrelevant matters into consideration.

[43] Similarly, there is no arguable case that she acted unlawfully or erred in law in concluding that an industrial dispute existed. Mr Leiba's argument that she failed to consider whether it was a matter for referral on the basis that Mrs Rigbye had been retired due to her age is without merit.

[44] On the facts before the court, Mrs Rigbye had reached retirement age three years earlier and by mutual agreement, she had retained her employment on a yearly basis. She was now alleging that she was unjustifiable terminated by a letter which conveyed that a decision had been made 'to retire' her with immediate effect. Mr Braham also referred the court to the letter written to the Permanent Secretary of the Ministry of Labour on 13 October 2016 by Mrs Rigbye's Attorney. This letter, in requesting their intervention, complained that Mrs Rigbye was never aware that the applicants' directors were contemplating terminating her contract by way of retirement or at all and alleges that she was terminated contrary to the principles of natural justice and the provisions of section 22 of the **Labour Relations Code**. These would be matters for the IDT, the 2nd respondent, to consider and certainly

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[14] [2013] JMCA Civ 37
[15] [2003] EWCA Civ 472

not for the Minister to assess the legal merits of the issue. I am of the opinion therefore that there is no arguable case with a realistic prospect of success to mount any submissions that the 1st respondent acted unlawfully or erred in law.

Lack of Reasons

[45] There is no statutory duty placed on the 1st respondent to give reasons for the exercise of her decision. Nevertheless, this does not mean that the court will not consider this issue in determining whether leave should be granted to the applicant. This consideration is tied fundamentally to the issue of fairness. In **Mallak**,[16] Fennelly J referred to *'the underlying fundamental presumption being that those to whom discretionary powers are entrusted will exercise them fairly insofar as they may affect individuals.'* He went on further to say:

> *Where fairness can be shown to be lacking, the law provides a remedy. The right of access to the courts is an indispensable cornerstone of a state governed by the rule of law.*

And continued:

> *While our courts have extensively considered the adequacy of reasons when they have actually been given, there has been no principled consideration of the question whether a general obligation to furnish reasons exists at all or, if it does not, in what cases reasons should be given and why.*

[46] Is there sufficient cause in the present case to permit the application for leave based on the lack of reasons given for the exercise of the 1st respondent's discretion? Whether such a duty becomes necessary could only be on the basis of a requirement that the parties ought to know the issues to which she addressed her mind and that she acted lawfully. In other words, where it may be necessary to demonstrate whether the exercise of discretion was illegal or irrational. Based on the factual circumstances, this court has already determined that there is no basis for a finding that the Minister acted unlawfully or unreasonably.

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[16] At paragraph [1]

[47] Sedley J in ***R. v Higher Education Funding Council, ex parte Institute of Dental Surgery***[17] spoke of the dividing line in considering this issue of requirement for reasons:

> *"… each case will come to rest between two poles, or possibly at one of them: the decision which cries out for reasons, and the decision for which reasons are entirely inapposite. Somewhere between the two poles comes the dividing line separating those cases in which the balance of factors calls for reasons from those where it does not…At present, however, this court cannot go beyond the proposition that, there being no general obligation to give reasons, there will be decisions for which fairness does not demand reasons."*

[48] **Mallak** is essentially consonant with the above expressed principles. **Mallak**, as counsel for the respondents has submitted, is distinguishable on the facts as the applicant, a non-national of Ireland, had been refused a certificate of naturalization although his wife had received the same. The statutory scheme that existed included various provisions that allowed the Minister an absolute discretion whether to grant or refuse the certificate. The appellant had been informed of no reasons and had been told that he could reapply for such a grant of the certificate at any time. Fennelly J concluded that, in all the circumstances, including the provisions of the relevant Act under which the Minister exercised his discretion, the Minister was under a duty to provide the appellant with reasons for his decisions. He found that his failure to do so deprived the appellant of any meaningful opportunity either to make a new application or to challenge the decision on substantive grounds.

[49] In the facts under consideration, the applicant has not been left mystified as to the factual basis that would have been put before the Minister - the parties had failed to settle the issues after attempting to do so for eight months, both with the intervention of the Ministry and at the local level (between themselves). Also at least one party was of the view that further attempts would be useless.

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[17] [1994] 1 WLR 242, 257

[50] It is therefore difficult to conclude that the failure to give reasons is sufficiently compelling to argue that the exercise of the discretion was reached in a manner which betrayed substantial and procedural fairness.

Disposal

[51] The application for leave to apply for judicial review is therefore refused.

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