



[2026] JMSC Civ 38

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2024CV04363

BETWEEN THE BANK OF NOVA SCOTIA JAMAICA LIMITED CLAIMANT

**AND THE MINISTRY OF LABOUR AND SOCIAL DEFENDANT
SECURITY**

**AND CYNTHIA WADE PARTY DIRECTLY
AFFECTED**

**Mr. Gavin Goffe, Mr. Jamaïque Charles & Ms Nicole Taylor instructed by Myers,
Fletcher & Gordon, Attorneys-at-Law for the Claimant**

**Mr. Matthew Gabbidon instructed by the Director of State Proceedings for the
Defendant**

Heard: November 6, 2025, December 12, 2025 & March 19, 2026

IN OPEN COURT

**JUDICIAL REVIEW – Industrial Dispute- -Unjustifiable dismissal/Termination on
basis of redundancy- discretion of the Minister to refer a dispute to IDT as per
Section 11(1)(a)- whether the Minister’s decision to refer the Affected Party’s
dispute to IDT was irrational based on the information before him- Whether the
dispute is barred from litigation by virtue of a signed waiver to waive future claims
arising from the said termination/dismissal.**

SIMONE WOLFE-REECE J,

INTRODUCTION

[1] The Bank of Nova Scotia Jamaica Limited (Claimant), a limited liability company, seeks judicial review of the Minister of Labours' decision dated September 29, 2024, to refer an alleged industrial dispute between the Claimant and its former employee Ms. Cynthia Wade, to the Industrial Dispute Tribunal (IDT). The Claimant contends that the referral was irrational and unlawful and seeks a declaration from this Court and an order of Certiorari to quash the referral.

THE CLAIM

[2] The Claimant was granted leave to apply for judicial review by Wint-Blair, J on June 10 2025. The Claimant filed its Fixed Date Claim Form along with an Affidavit in Support on June 20, 2025, seeking that the following orders be made by the Court:

1. Declaration that the Defendant's decision dated September 29, 2024, to refer the alleged dispute between the Claimant and the Party directly affected, Ms. Cynthia Wade, to the Industrial Disputes Tribunal was irrational.
2. Certiorari to quash the Defendant's referral to the Industrial Disputes Tribunal of the alleged industrial dispute between the Claimant and the Party Directly Affected, Ms. Cynthia Wade, dated September 29, 2024.
3. Costs to the Claimant to be taxed if not agreed.
4. Such further and/or other relief as this Honourable Court deems just.

CLAIMANTS CASE

[3] The Claimant relies on the affidavit of Mr. Adrian Cotterell, who sets out what can be the factual circumstances that form the foundation of this Claim. Mr Cotterell is the Regional Senior Manager, Legal & Labour Relations at the Bank of Nova Scotia, Jamaica Limited. He stated that Ms. Wade was employed by the Claimant

from February 12, 1996, to November 6, 2020. Her final position with the Claimant was that of the post of a Business Banking Manager. That role was made redundant following an executive decision that it was no longer required within the organisational structure. Ms. Wade was so informed by a letter dated October 29, 2020, and a consultation meeting was held with her on October 30, 2020, regarding same.

- [4] According to Mr. Cotterell, Ms. Wade raised no objection at the consultation. The Claimant thereafter proceeded with the redundancy exercise and offered Ms. Wade a redundancy payment of \$11,785,515.58, less statutory deductions, conditional upon execution of the relevant company documentation by November 4, 2020.
- [5] On November 4, 2020, by way of email Ms. Wade acknowledged receipt of the redundancy letter and enquired whether an ex gratia payment would be considered. That request was declined. The Claimant, however, offered what the affiant describes as post separation support, (i.e. extended credit facilities at employee rates and continued health insurance coverage for nine months. Ms. Wade executed the company documents acknowledging receipt of the redundancy payment, which contained a waiver of further claims arising from the redundancy exercise.
- [6] The Claimant's evidence is that, by signing those documents, Ms. Wade accepted the redundancy payment in full and final settlement of all claims arising from her termination and waived any further right to challenge the redundancy.
- [7] Mr. Cotterell further states that the Claimant first became aware of an alleged dispute by letter dated January 13, 2021, from Mr. Garfield Harvey, Industrial Relations Consultant, asserting that Ms. Wade had been unjustifiably dismissed. Mr. Harvey subsequently notified the Minister of Labour on February 3, 2021. By letter dated February 11, 2021, the Claimant denied any breach of the Labour Relations Code or the Employment (Termination and Redundancy Payments) Act.

- [8] The Claimant nonetheless participated in three conciliation meetings convened by the Ministry of Labour. At those meetings, it maintained its position that Ms. Wade had accepted the redundancy payment and benefits without protest. Mr. Cotterell noted that it was long after Ms. Wade had signed the declaration and collected the redundancy payment, that she alleged that she was unjustifiably dismissed without particularising any basis to support this claim.
- [9] In his affidavit Mr. Cotterell also stated that since Ms. Wade's dismissal she has not returned her redundancy payment, she has been a full-time realtor at Keller Williams Jamaica since September 2021, and that more than three years has passed since the Claimant was informed of the alleged dispute when the Claimant was informed on September 9, 2024, that the Minister had referred the matter to the Industrial Dispute Tribunal. The Claimant opines and submits that there exist no reasonable grounds for the Minister to have referred the matter to the Industrial Dispute Tribunal as no dispute existed at the time of the referral, and even if such a dispute had existed it would have been waived by Ms. Wade both by her signing the declaration (company document) and by her conduct.

DEFENDANT'S CASE

- [10] The Defendant's case is supported by the affidavit of Ms. Shaneka Rose, Director of Industrial Relations within the Ministry of Labour and Social Security. She states that the matter was first brought to the Minister's attention by letter dated February 3, 2021, from Mr. Garfield Harvey, Industrial Relations Consultant, acting on behalf of Ms. Wade. Mr. Harvey asserted that Ms. Wade had been unjustifiably dismissed under the guise of a redundancy exercise, and it was on this basis that they sought settlement discussions. A copy of Ms. Wade's termination letter was subsequently provided to the Ministry, and three conciliation meetings were held between June and July 2021, all of which failed to resolve the dispute.
- [11] Ms. Rose disputes the Claimant's assertion that Ms. Wade accepted the redundancy without objection. She states that Ms. Wade expressed dissatisfaction

with the redundancy package and concerns regarding the timing of the exercise during the COVID-19 pandemic. Ms. Rose further states that, notwithstanding Ms. Wade's execution of the redundancy documents and acceptance of payment, such acceptance does not, of itself, constitute a waiver of statutory rights under the Labour Relations and Industrial Disputes Act. She maintains that the Minister is required to consider all relevant aspects of a dispute and that, in this case, the dispute concerning Ms. Wade's termination by redundancy remained unresolved both at the time of dismissal and at the time of referral. On that basis, the Minister exercised his power under section 11A(1)(a) of the Act.

[12] Ms. Rose states that, as the officer responsible for handling the matter, she concluded that the dispute was unlikely to be resolved through further conciliation. Having reviewed the documentation provided by both parties, she prepared a recommendation to the Minister that the matter be referred to the Industrial Disputes Tribunal for determination.

[13] By letter dated September 9, 2024, the Chief Director of the Industrial Relations Department, acting on behalf of the Minister, referred the dispute to the Industrial Disputes Tribunal pursuant to section 11A(1)(a) of the Labour Relations and Industrial Disputes Act. The Defendant contends that the referral was lawfully made in accordance with the Act and submits that there exist no valid grounds for the grant of the relief being sought by the Claimant.

ISSUES

[14] The main issues for determination are as follows:

(a) Whether an industrial dispute, within the meaning of the Labour Relations and Industrial Dispute Act (LRIDA), existed between the Party Directly Affected and the Claimant surrounding the termination of the Party Directly Affected on the basis of redundancy?

(b) Whether the Minister acted irrationally and/or unreasonably when he decided to refer the dispute between the Claimant and the Party Directly Affected to the IDT for its determination on the dispute:

- ii) Whether at the time of the Minister's decision to refer the dispute to the Industrial Dispute Tribunal, a dispute was evidentially present between the Party Directly Affected, Ms. Wade, and the Claimant surrounding her termination on the basis of redundancy that took effect on November 6, 2020
- iii) Whether the release/waiver document signed by the Party Directly Affected, acknowledging receipt of her redundancy payment and waiving her right to any future claims surrounding her termination on the basis of redundancy, acted as a bar to any future actions being taken against the Claimant as a bar for a claim for being unjustifiably dismissed.

SUBMISSIONS

CLAIMANTS SUBMISSIONS

[15] The Claimant submits that Ms. Wade's employment was terminated by reason of a genuine redundancy following an organisational restructuring, of which she was duly notified and in respect of which she raised no contemporaneous objection. Although she expressed dissatisfaction and sought an ex gratia payment, she ultimately accepted the redundancy payment and executed a written declaration acknowledging full and final settlement and waiving any future claims. The Claimant contends that, having accepted the payment and enjoyed additional separation benefits, Ms. Wade cannot now dispute the termination.

[16] The Claimant argues that, notwithstanding the Minister's statutory power under section 11A(1)(a) of the LRIDA, no industrial dispute existed that was capable of referral because the waiver extinguished any such dispute. It is submitted that the

Minister acted unreasonably by failing to consider the waiver, a material factor, and that the memorandum placed before the Minister did not adequately draw attention to it.

- [17] Relying on authorities including ***Jamaica Police Co-Operative Credit Union Society v Minister of Labour and Social Security*** [2019] JMSC Civ 67, ***National Commercial Bank Jamaica Ltd v Minister of Labour and Social Security*** [2023] JMSC Civ 145 and ***Desnoes & Geddes v Minister of Labour and Social Security***, the Claimant submits that acceptance of redundancy benefits without protest, particularly where it is accompanied by an express waiver, constitutes waiver by estoppel and bars further proceedings. On that basis, the Claimant contends that the Minister's decision to refer the matter to the IDT was irrational and should be quashed.

DEFENDANTS SUBMISSIONS

- [18] Mr Gabbadon submits that an industrial dispute existed within the meaning of section 2 of the *Labour Relations and Industrial Disputes Act* ("LRIDA"). While Ms. Wade was made redundant on November 6, 2020, the dispute concerns not the existence of redundancy, but the circumstances and manner in which the redundancy was carried out.
- [19] The Defendant contends that Ms. Wade expressed dissatisfaction with the redundancy package and the timing of the exercise during the COVID-19 pandemic, thereby evidencing a disagreement at the time of termination. That dissatisfaction, coupled with the failure of conciliation, demonstrated a live dispute between the parties.
- [20] Counsel submitted that sections 11 and 19 of the Labour Relations Code require consultation in redundancy situations and that consultation entails a genuine exchange of views aimed at fairness. Whether consultation was required or adequate depends on the facts of each case, and even where redundancy is substantively justified, the process may nevertheless render a dismissal unfair or

unjustifiable. Relying on authorities including *Jamaica Flour Mills Ltd v Industrial Disputes Tribunal and Village Resorts Ltd v Industrial Disputes Tribunal* [2005] UKPC 16, the Defendant posited that a redundancy may be rendered unjustifiable if conducted in a manner that is unfair, unreasonable, or unconscionable, including where consultation is lacking.

- [21] The Defendant maintains that Ms. Wade's complaint was that she was not properly consulted prior to the decision to make her redundant. That issue falls squarely within the remit of the LRIDA as a dispute concerning termination of employment.
- [22] In addressing the effect of the waiver, Counsel Mr Gabbadon submitted that acceptance of a redundancy payment and execution of a release do not automatically extinguish statutory rights or bar an industrial dispute. Waiver requires a clear and objective intention to abandon rights, together with the reliance by the employer on same.
- [23] Counsel stated that in this case, there was no such waiver that could extinguish Ms. Wade's statutory rights, as Ms. Wade had expressed dissatisfaction prior to signing the release. Counsel further pointed out that the release addressed payment entitlements rather than the fairness or justification of the dismissal. Accordingly, the jurisdiction of the Industrial Disputes Tribunal was not ousted.
- [24] The Defendant further submits that the relevant time for determining the existence of a dispute is at the time of dismissal. Ms. Wade's dissatisfaction was communicated before the termination took effect, thereby establishing the existence of a dispute at the material time. The Defendant contends that once the Minister was satisfied that an industrial dispute existed and that conciliation had failed, he lawfully exercised his discretion under section 11A(1)(a) of the LRIDA in referring the matter to the Industrial Disputes Tribunal.
- [25] Counsel, therefore, asked the Court to conclude that the Minister's decision was neither irrational nor unreasonable, and that the Claimant has failed to establish

any basis upon which the Court should interfere with the referral made by the Minister to the IDT.

DISCUSSION & ANALYSIS

ISSUE # 1

- [26]** The first issue for determination is whether, within the meaning of the (“LRIDA”), an industrial dispute existed between the Claimant and the Party Directly Affected arising from the termination of her employment on the basis of redundancy. An industrial dispute under the LRIDA is not limited to disputes that are well-founded or likely to succeed on their merits. It encompasses a genuine disagreement between an employer and a worker concerning the termination of employment, including whether a dismissal said to be by reason of redundancy was justified. At the referral stage, the statutory inquiry is whether a dispute exists.
- [27]** In the present case, the evidence discloses that the material before the Minister showed that the Party Directly Affected, through her industrial relations consultant, alleged that her termination was unjustifiable notwithstanding its characterisation as a redundancy. That complaint was formally brought to the attention of the Ministry, was the subject of correspondence between the parties, and proceeded to conciliation.
- [28]** Three conciliation meetings were convened by the Ministry, in which the Claimant and Ms. Wade engaged without a settlement being reached. Ms. Wade also expressed dissatisfaction with the redundancy exercise and its timing, thereby maintaining a position adverse to that of the Claimant.
- [29]** There is no dispute that the redundancy documents were executed by Ms. Wade, on which the Claimant relies on, and also the acceptance of payment as demonstrating finality. I am of the view that those assertions go to the foundation of the determination of the dispute rather than to its existence of the dispute. The continued assertion of unjustifiable dismissal, coupled with the failure of

conciliation, demonstrates that the disagreement between the parties remained unresolved. It is therefore safe to conclude that the issue of whether a dispute exists is fact-sensitive and requires a careful analysis of the factual circumstances of each case.

- [30]** In this case, having carefully assessed the evidence, the Court is satisfied that, at the time of the Minister's referral, there was a live and unresolved disagreement concerning the termination of Ms. Wades employment. This Court finds that there is a distinction between determining whether a dispute exists and determining the merits of an argument. I accept that an industrial dispute, within the meaning of the LRIDA, existed between the parties in relation to the termination of Ms. Wade on the basis of redundancy.

ISSUE #2

- [31]** In addressing the second issue of whether the Minister acted irrationally and/or unreasonably in deciding to refer the dispute between the Claimant and the Party Directly Affected to the IDT for determination. I am guided by the well-settled principle that the Court is not concerned with whether it would have made the same decision as the Minister, but whether the decision to refer was one that no reasonable decision-maker, properly directing himself in law and on the facts, could have made. The Minister's function under section 11A(1)(a) of the LRIDA is administrative in nature.

- [32]** The Court has already found, in determining Issue # 1, that an industrial dispute existed between the parties concerning the termination of Ms. Wade's employment by reason of redundancy. The question under this sub-issue is whether such a dispute was evidentially present at the time the Minister made the referral.

- [33]** The material before the Minister included correspondence asserting unjustifiable dismissal, the redundancy documentation, the email correspondence which the Defendant submitted is evidence of expressed dissatisfaction with the redundancy exercise, and the failure of conciliation following three meetings convened by the

Ministry. That material was plainly capable of evidencing a live and unresolved disagreement between the parties.

- [34] The Court has carefully considered the Claimant's challenge to the Minister's decision to refer the dispute to the Industrial Disputes Tribunal ("IDT"), including the reliance placed on the execution of a release and waiver by the Party Directly Affected and the authorities cited in support of same.
- [35] The Court accepts that the execution of a waiver and acceptance of redundancy benefits are relevant considerations at the referral stage. However, the Minister's function under section 11A(1)(a) of the LRIDA is a threshold and administrative one, concerned with whether an industrial dispute exists, and not with the ultimate merits of the dispute or the enforceability of contractual or equitable defences.
- [36] The Claimant relies on the findings set out by the Court in *National Commercial Bank Jamaica Ltd v Minister of Labour and Social Security* [2023] JMSC Civ 145 in support of the contention that the Minister was required to treat the waiver as extinguishing any dispute. In that case, the Court quashed the referral where the employee had accepted her redundancy payment without protest, executed documentation acknowledging full and final settlement, and conducted herself in a manner objectively consistent with finality. On those facts, there was no contemporaneous objection to the redundancy or its manner, and the Minister's failure to consider waiver was held to be a failure to take into account a material consideration.
- [37] The present case is materially distinguishable. Unlike the employee in *NCB*, the Party Directly Affected here expressed dissatisfaction with the redundancy exercise prior to its effective date, raising concerns about the redundancy package and the timing of the exercise during the COVID-19 pandemic. That expression of dissatisfaction occurred before the termination took effect and was communicated to the Claimant.

- [38] Further, the dispute in this case was not confined to the quantum of the redundancy payment but extended to the fairness and process of the redundancy, including whether adequate consultation took place. In **NCB** case, there was no evidence of any protest or complaint concerning the manner of termination at the material time.
- [39] While the execution of a release and acceptance of redundancy benefits are relevant, **NCB** case does not establish a rule that a signed waiver conclusively extinguishes an industrial dispute in every case. The question of waiver is fact-sensitive and turns on whether the employee's conduct objectively demonstrates an intention to abandon statutory remedies. On the evidence before the Minister, that conclusion was not inevitable in the present case.
- [40] Importantly, the Minister in this case had before him evidence of an unresolved disagreement, competing positions taken by the parties, and the failure of conciliation. Even if waiver was a matter requiring consideration, the Minister was not obliged at the referral stage to determine its ultimate legal effect. That determination falls within the adjudicative function of the IDT.
- [41] The Court is therefore not satisfied that the Minister failed to take the waiver into account or that he acted irrationally or unreasonably in deciding that a dispute remained unresolved and appropriate for referral. The Claimant's submissions, in substance, invite the Court to engage in a premature determination of the merits and the enforceability of the waiver, which lies outside the scope of judicial review.
- [42] Properly applied, **NCB v Minister of Labour** does not support the conclusion that the referral in the present case was unlawful. Rather, it underscores that waiver must be assessed in its factual context. On the facts of this case, the Minister's decision fell within the range of decisions reasonably open to him under section 11A(1)(a) of the LRIDA. In those circumstances, it cannot be said that the Minister acted without evidential foundation or proceeded on a mistaken factual basis. The existence of conflicting positions between the parties, coupled with the breakdown

of conciliation, provided a rational basis for the Minister to conclude that a dispute remained unresolved and was appropriate for referral to the IDT.

THE WAIVER

[43] The Claimant places significant reliance on the release and waiver document executed by the Party Directly Affected, contending that it operated as a complete bar to any further action and rendered the Minister's decision to refer the matter irrational. The Court does not accept that submission. While the existence of a waiver and acceptance of redundancy payment were relevant considerations for the Minister, they were not determinative of whether a dispute existed or whether referral was permissible. The legal effect, scope, and enforceability of such a waiver particularly in relation to statutory rights are matters that go to the **merits** of the dispute.

[44] It must be noted and emphasized that Section 11A of the LRIDA does not require the Minister to adjudicate upon contractual defences or to determine conclusively whether a waiver extinguishes a worker's right to pursue statutory remedies. To impose such a requirement would be to conflate the Minister's administrative referral function with the adjudicative role reserved to the IDT.

[45] The Minister was, therefore, entitled to treat the waiver as one factor among others, without regarding it as conclusively barring the existence of a dispute or foreclosing referral. The presence of a waiver did not render the Minister's decision irrational or unreasonable.

[46] **In this Court's assessment of the evidence before it and having** regard to the material before the Minister, this Court concludes that there existed an evidential unresolved dispute, and assessing the limited scope of the Minister's function under section 11A(1)(a), the Court is satisfied that the decision to refer the dispute to the IDT was one that was reasonably open to the Minister.

[47] The Court therefore concluded that the Claimant has failed to show that the Minister acted irrationally or unreasonably in referring the dispute between the Claimant and the Party Directly Affected to the Industrial Disputes Tribunal for its determination.

COSTS

Whether the circumstances warrant an award for costs against the Claimant for the application filed on October 3, 2025, and the application to set aside Witness Summons filed on November 5, 2025

[48] Having carefully considered the submissions of counsel, the applicable provisions of the Civil Procedure Rules, and the relevant authorities, I make the following findings.

[49] In respect of the costs associated the Application for Specified Disclosure and Application to Strike out Affidavit, of Cynthia Wade it is accepted that the Defendant expended time and effort in preparing responses to the Claimant's applications. I am not satisfied that the Claimant acted unreasonably in bringing those applications before the Court. The evidence before this Court suggests that the applications were filed in an effort to advance the Claimant's case, particularly in relation to documents referenced in the Defendant's affidavit and the procedural propriety of the affidavit of the Party Directly Affected. These were not applications that can be properly characterised as frivolous, vexatious, or wholly without merit. In administrative proceedings, the Court must exercise caution in awarding costs against an applicant, in keeping with rule 56.15(5), so as not to discourage access to judicial review. The threshold of unreasonableness has not been met in respect of these applications warranting an order for cost.

[50] Similarly, the same consideration is applied to the Application to set aside the Witness Summons. In administrative proceedings, the governing principle under rule 56.15(5) of the CPR is that no order for costs should be made against an applicant unless the Court finds that the applicant acted unreasonably. This

establishes a high threshold, designed to preserve access to judicial review and prevent a chilling effect on litigants seeking to challenge administrative action. While the Witness Summons may have been short served does not automatically amount to unreasonable conduct. Procedural irregularities, particularly those arising close to trial, are not uncommon and must be assessed in context. I do not find that conduct that is t unreasonable or abusive, which I do not find arose in this case.

DISPOSITION

- 1. The Orders sought in the Fixed Date Claim Form are refused.**
- 2. Judgment for the Defendant**
- 3. No Order as to costs on the Claim**
- 4. On the Notices of Applications filed October 3, 2025 and November 5, 2025 each party to bear their own costs.**