IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. HCV 5486 OF 2010

BETWEEN	**JAMAICA INFRASTRUCTURE OPERATORS LIMITED**	**APPLICANT**
A N D	**THE HONOURABLE PEARNEL CHARLES MINISTER OF LABOUR AND SOCIAL SECURITY**	**RESPONDENT**

Mr. P. Foster and Ms. I. Thomas instructed by Nunes, Scholefied, DeLeon & Co. for the applicant.

Mr. L. Robinson instructed by Director of State Proceedings for the defendant.

Heard: 18th and 19th May 2011

G Brown, J.

THE FACTS

The Applicant, Jamaica Infrastructure Operators Limited (JIO) is responsible for the management and collection of toll fees for Highway 2000. In April 2008 JIO took the decision to outsource certain aspects of its business; as a result, some employees were made redundant. This would allow the company to concentrate more efficiently on its core mandate of the operation and maintenance of Highway 2000.

The workers made redundant included members of the United and Allied Workers Union (UAWU). However objections were raised by the UAWU about the redundancy exercise, as the workers and the union were not consulted with regards to the redundancy process. The UAWU is not a party in the matter presently before the court.

The Applicant and the UAWU had meetings and corresponded with each other between April 2008 and May 2008 with regards to addressing the concerns as to the redundancy exercise to

be undertaken. This redundancy exercise commenced on the 8th June 2008 and concluded in October 2008. All monies due were paid to the affected staff members.

The UAWU contends that the Applicant did not communicate or correspond with it between June 2008 when the redundancy exercise had commenced and October 2008 when the redundancy exercise had ended. A second redundancy exercise was undertaken by the applicant between June 2009 and July 2009.

The UAWU began representing the workers of JIO around June 2004. In April 2008 the union wrote to the Ministry of Labour and Social Security (the Ministry) bringing to the Ministry's attention their concerns with regards to the applicant's intention of outsourcing some of its operations. There were several correspondences between the Ministry, JIO and UAWU with regards to the outsourcing of JIO's operations and the subsequent redundancy exercise. There was also a meeting with the UAWU and JIO at the Ministry. This meeting ended with no meaningful results between the parties. The redundancy exercise which began in June 2008 resulted in one hundred and twenty (120) UAWU members been dismissed.

In June 2009 JIO wrote to the Ministry outlining that it would make more positions redundant as it was implementing an organisational structure. Again, there were several exchanges between the applicant and the union with regard to the new redundancy process. The latter complained that the consultation process was once again circumvented and this was in contravention to the Labour Relations Code, (the Code), which is made pursuant to Section 3 of The Labour Relations and Industrial Disputes Act 1975.

In September 2009 the UAWU wrote to the Ministry requesting its intervention in the resolution of the dispute between itself and JIO.

ISSUES ARISING

The issues arising in this matter are:

(1) Whether there is an industrial dispute within the meaning of section 11A of the Labour Relations and Industrial Dispute Act and

(2) Whether the Minister's decision to refer the matter to the Industrial Disputes Tribunal is ultra vires.

LAW

The Labour Relations and Industrial Disputes Act (LRIDA), Section 11A (1)(a)(i) states;

> "….. where the minister is satisfied that an industrial dispute exists in any undertaking, he may on his own initiative-refer the dispute to the Tribunal for settlement-
>
> if he is satisfied that attempts were made, without success, to settle the dispute by such other means as were available to the parties"

The Minister has referred the matter to the IDT as he believes there is an industrial dispute between the Applicant and the UAWU that needs resolving.

Section 2 of the LRIDA defines the term 'Industrial Dispute' as:

> "a dispute between one or more employers or organisations representing employers or organisations representing employers and one or more workers or organisations representing workers, where such dispute relates wholly or partly to-terms and conditions of employment, or the physical conditions in which any workers are required to work; or engagement or non-engagement or termination or suspension of employment, of one or more workers; or allocation of work as between workers or groups of workers; or any matter affecting the privileges, rights and duties of any employer or organisation representing employers or of any worker or organisation representing workers. Any matter relating to bargaining rights on behalf of any worker;"

The dispute in the instant matter was between the UAWU (the organisation representing workers) the JIO being (the employer). The dispute was in relation to the redundancy exercise that JIO the Applicant was undertaking which would affect UAWU members who were employees of the Applicant. Under **Section 2(b)** matters which the dispute may relate to

are the "engagement or non-engagement, or termination or suspension of employment, of one or more workers."

The Labour Relations Code 1976 ("The Code") is important as employers should consult it when making decisions which would affect employees. In particular **Section 3(4)** of the Code, provides for there to be consultation by employers with employees or their union but non- consultation of its own will not render an employer liable.

Section 11 of the Code deals with Security of Workers, which has to do with workers' continued employment and which allows for workers or their representatives should be to be consulted in order to avoid redundancies. This it is alleged was not done by JIO.

Section 15 of the Code deals with the issue of union representation at the workplace and that delegates at the workplace should be consulted with regards to any changes by the employers that may affect workers. There were UAWU delegates at JIO however they are adamant they were not consulted prior to the redundancy exercise.

Section 19 (a) and (b); deals with communication and consultation respectively between the employer and employee.

SUBMISSIONS

Applicant

The Applicant is contending that the reference by the Respondent almost two years later of a dispute between the Applicant and the UAWU when no dispute existed is not in contravention of Section 11A (1)(a)(i) of the Labour Relations and Industrial Disputes Act (LRIDA), since the redundancy exercise which is the subject of the alleged dispute concluded in October 2008.

The Applicant also submits that the UAWU did not represent any of the workers on the list of employees at the time of the Minister's reference. The Minister has acted ultra vires and in excess of his statutory powers under LRIDA.

Respondent

The Respondent contends that the decision to refer the industrial dispute to the IDT was correct and there was merit for doing so. The Respondent made the decision to refer the matter to the IDT as the Respondent believes there is an industrial dispute between the Union and JIO. The Respondent referred the matter to the IDT basing such reference on the power given to the Minister under Section 11 of LRIDA.

The Minister believes JIO did not adhere to the provisions of the Act or the Labour Code in carrying out the two redundancy exercises in 2008 and 2009. The Minister in making his submissions relied on the authority of **J Wray and Nephew Limited and the Union of Clerical, Administrative and Supervisory Employees (dispute No. IDT 23/2008) -** where the Tribunal decided that the provisions of the Labour Code were not followed by the company then, in undertaking its redundancy exercise. The IDT went as far as stating that the provisions of the Act and Code are mandatory in the carrying out of redundancy exercises. **The Jamaica Flour Mills Limited v the Industrial Disputes Tribunal**- was also relied on as authority to support the point that consultation with employees by a company is mandatory in implementing redundancy exercises.

The Minister further stated in his submissions that there are issues in this industrial dispute that need answering and such questions are, within the IDT's jurisdiction.

OPINION

The courts are allowed to review the decision of a Minister. This is clearly provided for by Part 56 of the Civil Procedure Rules 2002. Rule 56.2 allows for an application for judicial review to be made by any person, group or body which has sufficient interest in the subject matter of the application. JIO has sufficient interest as they are adversely affected by the decision of the Minister. JIO for this purpose is a body.

The first redundancy exercise commenced on June 8, 2008. Prior to this redundancy exercise there were meeting and correspondence between the UAWU and JIO. The first of such correspondence was a letter from the UAWU to JIO informing them that it had been brought to their attention that JIO would be engaging in the outsourcing of some of its activities which would result in members of staff of JIO who are represented by the UAWU being affected. The last of such correspondence was on May 8, 2008, exactly a month before the redundancy exercise commenced. There was a further letter dated 28th of October 2008 from JIO to UAWU. This was when the redundancy exercise for 2008 had ended. The letter detailed the names of employees who were due retroactive salaries and the steps that JIO would be taking with regards to them being paid.

While there were several correspondences between JIO and UAWU and the Ministry being made aware of the dispute that existed between the parties, the Ministry did not adequately address the matter, and neither did the Honourable Minister of Labour refer the matter to the IDT.

It is my view that the Act is quite clear in that it allows the Minister to refer a matter to the IDT where there is an industrial dispute. The first hurdle to cross is that there needs to be an industrial dispute. There was no industrial dispute in September 2010 in respect of the 2008 redundancy exercise because for all intents and purposes that industrial dispute had ended

from the year 2008 and there were no steps taken by the Ministry or the UAWU when the redundancy exercise had commenced at the time to refer the matter to IDT. The redundancy exercise took place and ended without any attempts by the Minister to refer the matter to IDT.

It would be prudent to note that while the dispute had not being settled by the parties prior to the 2008 redundancy exercise, or thereafter, the court cannot however find that there existed an industrial dispute in relation to the 2008 exercise at the time of the Minister's reference in September 2010.

In Cremo Limited v Minister of Labour, Social Security and Sport[1] - the Judicial Review Court found that there had not existed any dispute when the Honourable Minister had referred the matter to the IDT some two and a half years later. The court, at the time, regarded the incident as a "one and one" dispute between the company and the ex-employee. The court did not find there was an industrial dispute at this time. The ex-employee had been dismissed some two and a half years earlier and as such there was at the time not a dispute as per the LRIDA. In R v The Industrial Disputes Tribunal ex-parte Gayle's Supermarket and Hardware Limited[2] in this matter, the court stated that the dispute should not be a mere dispute but an **industrial dispute**.

However, in relation to the second redundancy exercise undertaken by the applicant, I am of the view that the Minister had correctly referred the matter to the IDT for that body to rule on the industrial dispute in accordance with the Act. The UAWU had sought the Minister's intervention who was satisfied there existed an industrial dispute at the time of his reference. The unfortunate delay on the Minister's part may be a contributory factor as to why the

[1] Suit no. M.122 of 1998
[2] Suit No. M. 036/90

redundancy exercise was not addressed earlier by the IDT. It is also my view that despite the delay on the Minister's part in referring the matter, an industrial dispute nevertheless existed. The Minister acted under the powers vested in him by Section 11(A) (1) LRIDA. In **R v The Industrial Disputes Tribunal Alcan Jamaica Company, Alumina Partners of Jamaica, Alcoa Minerals Of Jamaica Incorporated, Kaiser Bauxite Company, Reynolds Jamaica Mines Ltd, Exparte The National Workers Union Ltd**[3] the court found that there existed an industrial dispute when the Minister referred the matter to the IDT after several meetings between the employer and the Union representing the employees commencing from the previous year, in which there was no conclusion reached regarding the matter. The Minister's subsequent reference was correct in law.

The Labour Relations Code, 1976 (the Code) was not adhered to by the JIO being an employer its decision to carry out the redundancy exercise. Section 3(4) of the Code states:

> "a failure on the part of any person to observe any provision of a Labour Relations Code which is for the time being in operation shall not of itself render him liable to any proceedings but in any proceedings before the tribunal or a Board any provision of such Code which appears to the Tribunal or a Board to be relevant to any question arising in the proceedings shall be taken into account by the Tribunal or Board in determining that question."

The Section, while it does not provide for any penalty if JIO does not adhere to the Code, it does allow for the provisions of the Code to be taken into consideration in this court arriving at its decision. Section 11 (ii) of the Code provides that the employer should consult with workers or their representatives to avoid redundancy. Here again it is evident that this consultation process was not adhered to in the June 2009 redundancy exercise. JIO in a letter to the ministry dated June 18, 2009, made reference to the impending redundancy exercise. This letter spoke to several attempts by JIO to have a consultation process with UAWU regarding the redundancy exercise, this was to no avail. There was no evidence presented to

[3] 1981, 18 JLR

the court in this regard to substantiate that attempts were made to contact UAWU. **Section 15** of the Code which refers to consultation by employers with union delegates and **Section 19** which deals with communication and consultation were not conformed with by JIO. In **Jamaica Flour Mills Limited v The Industrial Disputes Tribunal**[4] in this case the Privy Council was of the view that the provisions of the Labour Relations Code are important and must be followed. Accordingly, JIO was in breach of the Labour Code as they did not follow the provisions laid down by the Code.

CONCLUSION

The Minister erred in his decision to refer the alleged dispute regarding the 2008 redundancy exercise to the IDT. There was no industrial dispute as per section 11 of LRIDA and as such the reference to IDT was incorrect.

The Minister was correct in referring to the IDT the matter of the 2009 redundancy exercise as there was an industrial dispute at the time of the Minister referring the matter in September 2010. Therefore the IDT should be allowed to rule on the matter with regards to the 2009 redundancy exercise undertaken by JIO.

The application is dismissed. There is no Order as to cost.

[4] (Privy Council Appeal No. 69 of 2003)