IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT No. 2003/HCV 01742

BETWEEN	**JAMAICA PUBLIC SERVICE CO. LTD.**	**APPLICANT**
AND	**THE INDUSTRIAL DISPUTE TRIBUNAL**	**RESPONDENT**

Heard on: October 23 & 27, 2003

Mr. D. Morrison Q.C. and Miss Tricia McNeil instructed by Dunn Cox & Orrett for the Applicant

Mr. Patrick Foster instructed by the Attorney General on behalf of the Respondent

Sinclair-Haynes, J. (Ag.)

This is an action by way of notice of application for Court Orders by Jamaica Public Service Company (JPS Co.) seeking leave to apply for a writ of Certiorari to quash the following award of the Industrial Dispute Tribunal dated 29th August, 2003.

(a) *"The tribunal awards that the salary structure shall be implemented, consequent on the job evaluation and compensation Review Exercise is one which conforms with and maintains the established compensation policy/philosophy agreed on by the parties in the 1990-91 Heads of Agreement which is based on a formula of the top 5-10 percentile of the bench marked market.*

(b) *The effective date of payment of the new rates as a result of the above shall be January 2001.*

The ground on which the said award is being challenged is that there was an error on the face of the respondent's said award in that the said award "calls for the implementation of the established compensation policy/philosophy agreed by the parties in the 1990/91 Heads of Agreement when there was in fact no such agreement embodied in the Heads of Agreement or any subsequent Heads of Agreement.

The respondent had no jurisdiction pursuant to the terms of reference to direct the establishment of a policy structure based on a formula of the top 5-10 percentile of the bench marked market."

Background

In April 2001 Mirant, a global energy company based in Atlanta, Georgia acquired the majority shares in J P S Co., which was formerly owned by the Government of Jamaica. Prior to their acquisition and on November 3, 2000, J P S Co., and the Unions that is, National Workers Union (N W U) (for clerical workers) and National Workers Union/Bustamante Industrial Trade Union (NWU/BITU) (for hourly paid workers) signed to Heads of Agreement for the contract period January 1, 2000 to December 31, 2001.

The following was a term of both agreements:

> *"The company and the Unions have agreed that a job reclassification/evaluation exercise will be conducted by Trevor Hamilton and Associates. This exercise is to be concluded by March 31, 2001."*

The exercise was conducted by the said consultant and a final report was presented on March 22, 2002. J P S Co. sought to review its compensation philosophy and presented its new philosophy to the unions.

It is significant to note that the Collective Labour Agreements between JPS Co. and the Unions expired on December 31, 2001.

J P S Co. and the said Unions failed to arrive at any agreement as to the salary structure that should be implemented consequent on the job reclassification evaluation exercise and the effective date of payment of the new rates.

Consequently, in accordance with section 9 (4) the Labour Relations and Industrial Disputes Act, the matter was referred to the I D T by the Honourable Minister for settlement. The terms of reference were as follows:

> *"To determine and settle the dispute between the J.P.S. Co., on the one hand and the workers employed by the same company and represented by the N.W.U and the B.I.T.U on the other hand, over:*
>
> *a. Salary structure which should be implemented consequent on job evaluation and compensation review exercise;*
>
> *b. The effective date of payments of the new rates as a result of the above".*

Section 12 of the Labour Relations and Industrial Disputes Act states:

> *An award in respect of any industrial dispute referred to the tribunal for settlement.*
>
> *c. Shall be final and conclusive and no proceedings shall be sought in any court to impeach the validity thereof except on a point of law.*

Errors of law are therefore susceptible to Judicial Review. Richard Gordon, Q. C., in his text on Judicial Review Law and Procedure (2nd Edition) is of the view that the modern position is as enunciated by Lord Denning in Pearlman V Governors of Harrow School (1979) Q.B. 56) in the following dictum:

> *"No Court, or tribunal has any jurisdiction to make an error of law on which the decision of the case depends, if it makes such an error it goes outside its jurisdiction."*

Applications for leave are considered in the following circumstances:

1. The Applicant has an arguable case on its merits.
2. There has been no undue delay.
3. The Applicant has *Locus Standi.*

In my view numbers 2 and 3 have been satisfied. The pertinent question is whether there is an arguable case, as opposed to a futile one, that the finding of the IDT is an error of law. (See R v Monopolies and Mergers Commission Exparte Argyll group (1986) 2 All ER 257 and R v Secretary of State for Social Services Exparte Association of Metropolitan Authorities (1986) 1 WLR)

The Memorandum of Understanding dated 5th April 2001 between Mirant Corporation and the unions is revealing. Part (iv)of the preamble states:

> *"The Legal Status of J.P.S. operational issues and obligations including the Collective Labour Agreement between: (a) J.P.S. and the BITU dated November 3, 2000; (b) J.P.S and the N.W.U. dated November 3, 2000; (c)*

Mergers Association dated December 6,2000; and (d) J.P.S. and Union of Technical Administration and Supervisory Personnel remain unaffected by the change in the ownership of majority share holding."

Paragraph 2 of the said Memorandum of Understanding states:

> *Mirant Corporation agrees that in good faith and in furtherance of the above it will seek to encourage and influence the operations of J.P.S. in a manner that is consistent with existing contractual obligations including all its obligations pursuant to the Collective Labour Agreements between J.P.S and BITU and NWU Mergers Association and the Union of Technical Administration and Supervisory Personnel dated November 3, 2000, December 6, 2000 and December 7, 2000 respectively.*

Paragraph 5 states:

> *"The parties agree in good faith that amicable discussions will continue in relations to the issues agreed between the parties as outstanding from the last negotiations."*

On the face of it is it arguable that the only reasonable construction to be applied to the section is that the parties were referring to the negotiations mentioned in part (iv) of the said preamble to the Memorandum of Understanding and paragraph 2 of the said Memorandum of Understanding. It is therefore arguable that the tribunal erred in law when it purported to bind the applicant to the 1990/91 Heads of Agreement, compensation philosophy since on the face of it there was no such agreement between the parties and on the face of it there was no indication that such an agreement was carried forward.

By virtue of the Memorandum of Understanding between the parties, the only agreements which remained unaffected by the change in ownership were the

2000 agreements. The IDT's reliance on the1990 Heads of Agreement as the basis of their decision raises an arguable issue as to whether they might have fallen into error.

In R v Hull University Visitors Ex Parte Page (1993) A C 682, Lord Browne-Wilkinson made a significant clarification of the law when he expressed the following view:

> *"The mere existence of a mistake of law made at some earlier stage does not vitiate the actual decision made; what must be shown is a relevant error of law, i.e. an error in the actual making of the decision which affected the decision itself.*

It is therefore arguable that there was no evidence to support the conclusion of the Tribunal that the 1990/91 Heads of Agreement was relevant. Consequently, there was an error of law in the decision arrived at.

Assuming the error is a factual one, the reliance upon an erroneous factual conclusion may itself offend the principles of legality and rationality thus rendering the decision Ultra Vires .

I find there is a merit in this application. Leave is therefore granted to the applicant to apply for a Writ of Certiorari to quash the Respondent's award dated August 29, 2003. A stay of the Respondent's said award is also granted.

Matter adjourned to the 11th November, 2003 for first hearing.

Leave conditional an applicant making a claim for judicial review within 14 days of this order.