IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV1742/2003

BETWEEN	JAMAICA PUBLIC SERVICE COMPANY LIMITED	APPLICANT
AND	THE INDUSTRIAL DISPUTES TRIBUNAL	1ST RESPONDENT
AND	NATIONAL WORKERS UNION	2ND RESPONDENT
AND	BUSTAMANTE INDUSTRIAL TRADE UNION	3RD RESPONDENT

Mr. Dennis Morrison, Q.C. with Mr. Lawrence Jones instructed by Dunn Cox for Applicant

Mr. Curtis Cockrane with Ms. Tania Ralph instructed by the Director of State Proceedings for the 1st Respondent.

Lord Gifford with Ms. Candis Hamilton instructed by Gifford, Thompson and Bright for the 2nd and 3rd Respondents.

HEARD: March 30, 2005 and April 22, 2005

Coran: D. McIntosh J.

This is an application for Judicial Review with consequential orders from a decision of the Industrial Disputes Tribunal made on August 29, 2003 following arbitration into an industrial dispute between the applicant and the second and third Respondents to this action.

On November 3, 2000 the applicant and the 2nd and 3rd Respondents signed two Heads of Agreement, one between the applicant and the NWU (clerical workers) and one between the applicant and the NWU/BITU (hourly paid

workers) for the contract period January 1, 2000 to December 31, 2001. The following item was common to both agreements:

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

At the time of the signing of the November 2000 contracts, the Government of Jamaica owned the applicant. As of April 1, 2001 the majority of its shares were acquired by Mirant, a global energy company based in Atlanta, Georgia. Following upon this a Memorandum of Understanding was signed between Mirant and the unions (including the Managers' Association and the Union of Technical Administrative and Supervisory Personnel, which represent two other bargaining units not involved in the instant dispute) on April 5, 2001. Clause 2 of that Memorandum recorded the agreement of the parties that:

> *"Mirant Corporation agrees that in good faith and in furtherance of the above it will seek to encourage and influence the operations of JPS in a manner that is consistent with existing contractual obligations including all its obligation pursuant to the Collective Labour Agreement between JPS and Bustamante Industrial Trade Union, National Workers Union, Managers Association and the Union of Technical, Administrative and Supervisory Personnel dated November 3, 2000; December 6, 2000 and December 7, 2000".*

a) Clause 5 of that Memorandum recorded the agreement of the parties that:

> *"in good faith amicable discussions will continue in relation to the issues, agreed between the parties as outstanding from the last negotiations".*

b) The job reclassification/evaluation exercise was conducted by the consultants (Trevor Hamilton & Associates), with the full

involvement of management and the union, over the period October 2000 to February 2002. The consultants initial "Proposal for review of the Job Evaluation System" was followed by as "Competency Based Job Evaluation Manual for pre-supervisory positions at JPSCo" and by the final "Job Evaluation and Classification Report" dated February 8, 2002. The work of the consultants' was guided and facilitated by the Oversight Committee comprising representatives of the company's management, the unions and consultants, thus providing effective participation in the process of all stakeholders.

c) Thereafter the applicant sought to review the compensation philosophy with a view to aligning it to Mirant's global trends. The basic tenets of this philosophy are that employee's compensation should include basic pay, allowances, performance incentives and benefits. Performance incentives are linked to the applicant's performance and allows for employees to share in its profits. These are payable in addition to the employees' basic pay, allowances and benefits and, in some instances, would allow employees to earn at the top of their salary range in any given year. The Oversight Committee was briefed on the compensation philosophy by Mirant's management on October 24, 2001 and, upon completion of the job evaluation exercise, the applicant completed the articulation of its

new compensation philosophy, which was provided to the unions for discussion and agreement.

d) Once the consultants' final report was completed, the next step was to develop related salary structures to complement the job reclassification/evaluation exercise. KPMG Peat Marwick & Partners Management Consultants ("KPMG") was contracted, following a tender process involving three firms, to complete this exercise. KPMG benchmarked the company's salaries against seventeen local companies, selected for this purpose by the Oversight Committee on the basis of their size of operations, involvement in manufacturing, mining and service business and perceived market position. In the end, eleven of those seventeen companies participated in the survey. KPMG presented a draft report dated February 19, 2002 and a final report dated March 22, 2002.

The KPMG reports confirmed that in terms of basic pay and allowances, the applicant fell within the top four companies in the survey, with all four bargaining units being compensated at or above market. In relation to specific benchmark jobs (some 500 in total) that were found to be below market, the applicant has committed to bring those employees up to the market minimum, as established by the survey. In relation to those jobs presently being remunerated above the maximum salaries established for the relevant grade by

the survey, the applicant has also committed that there should be no loss of pay for incumbents in those jobs.

Despite several meetings in 2002, the applicant and the unions were not able to reach an agreement on the implementation of the job reclassification/evaluation exercise. On February 11, 2003, the Honourable Minister of Labour referred to the 1st Respondent for settlement of the dispute between the applicant and the 2nd and 3rd Respondents, in accordance with section 9(3) of the Labour Relations and Industrial Disputes Act, with the following terms of reference: (5/8)

> *"To determine and settle the dispute between the Jamaica Public Service Company Limited on the one hand and workers employed by the Company and represented by the National Workers Union and the Bustamante Industrial Trade Union on the other hand, over:*
>
> 1. *the salary structure which should be implemented consequent on the Job Evaluation and Compensation Review Exercise; and*
> 2. *the effective date of payment of the new rates as a result of the above."*

On the 29th August 2003 the 1st Respondent made the following award with respect to the said dispute:

1. *"The Salary Structure that 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 1990/1991 Heads*

of Agreement which is based on a formula of the top 5 – 10 percentile of the benchmarked market.

2. *The effective date of the payment of the new rates as a result of the above shall be 1st January 2001."*

The applicant now applies to the court for Writ of Certiorari on the following grounds:

1. That there is an error of law on the face of the Respondents' Award dated August 29, 2003.
2. That the said award calls for the implemental of the established compensation policy/philosophy agreed by the parties in the (1990-1991 Heads of Agreement) when there was in fact no such agreement embodied in any Heads of Agreement.
3. That 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 benchmarked market."

The applicant did not pursue ground number 3 and in reality used ground 2 as the basis for asking this court to find that there is an Error of Law on the face of the Respondents' Award.

Many authorities were cited with a view to establish the Courts Review Jurisdiction of any award made by the Industrial Disputes Tribunal (IDT) once it is alleged that there is an "error in law on the face of the Respondents' Award".

What usually pertains is that the court is required to go through all the evidence presented at the hearing before the tribunal while the party who feels they have not benefited or favoured by the decision of the tribunal seeks to set it aside. Ultimately the aggrieved party uses the judicial review process as an appellate jurisdiction.

In this matter, eminent Queen's Counsel represented the applicant at the hearing before the tribunal. The Respondents had no legal representation. At all relevant times, counsel has indicated that the tribunal was a "Quality One" of 'International Standards'. He praised their competence, expertise and integrity.

Throughout the hearing before this court the evidence adduced at the tribunal was referred to and indeed that evidence was perused by this court.

It is clear that the tribunal did what their terms of reference required i.e. "to determine and settle the dispute". They were entitled to take into consideration clause 2 of the Memorandum of Understanding which was signed between Mirant and the unions on April 5, 2001.

They put their reasons in writing in a careful and cogent manner. While they did not arrive at either of the salary structure or effective payment date suggested by the parties, they did use their own formula to arbitrate.

The fact that they choose to adhere to a "philosophy/policy" agreed on by the parties in the 1990/1991 Heads of Agreement was well within the terms and scope of their reference.

This court is firmly of the view that there is no Error of Law on the face of the Respondents' Award dated the August 29, 2003. Accordingly this application is refused with costs to the Respondents to be taxed if not agreed.