



[2023] JMSC Civ.145

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. SU2022CV03210**

<b>BETWEEN</b>	<b>NATIONAL COMMERCIAL BANK JAMAICA LIMITED</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>MINISTER OF LABOUR AND SOCIAL SECURITY</b>	<b>DEFENDANT</b>

**IN OPEN COURT**

**Mr. Gavin Goffe & Mr. Jovan Bowes instructed by Myers Fletcher and Gordon for the Claimant**

**Mr. Louis Jean Hacker instructed by the Director of State Proceedings for the Defendant**

**Mrs. Ingrid Bryan instructed by Donald A. Bryan & Associates (allowed to make submissions on behalf of Makeda Ramgeet-Baugh)**

**June 8, 2023 & July 27, 2023**

**JUDICIAL REVIEW –Certiorari- Redundancy-Effect of waiver-considerations of the Minister under Labour Relations and Industrial Disputes Act- what is a dispute-withdrawal of the referral by the Minister –Sections 11A(1)(a)(i) & 11A(3) Labour Relations and Industrial Disputes Act.**

**SIMONE WOLFE-REECE, J**

**INTRODUCTION**

**[1] On the 8<sup>th</sup> November 2022 S. Orr, J (Ag.) granted leave to the Claimant to apply for an order of Certiorari to quash the Defendant’s decision to refer the alleged**

dispute between the Claimant and its former employee, Mrs. Makeda Ramgeet-Baugh to the Industrial Disputes Tribunal on the condition that the Applicant file a Fixed Date Claim and supporting affidavit form within fourteen (14) days of the order.

**[2]** The Claimant filed a fixed date Claim form and the affidavit of Javier Burke in support of same on November 22, 2022 seeking the following orders and relief:

1. Certiorari to quash the Defendant's referral to the Industrial Disputes Tribunal of the alleged industrial dispute between the Claimant and its former employee, Makeda Ramgeet Baugh

**[3]** On the 19<sup>th</sup> January 2023 the Court granted leave to Mrs. Ramgeet-Baugh to file an affidavit on or before February 20, 2023 and permitted her to participate in the proceedings by filing submissions and making an appearance. Mrs Baugh filed an affidavit on February 17, 2023. To date no submissions have been filed. At the hearing of the claim the Court permitted Counsel, Mrs. Ingrid Bryan to orally submit on the issues raised on behalf of Mrs. Ramgeet-Baugh.

**[4]** It is the Claimant's contention that at the time the Minister of Labour and Social Security referred the matter to the Industrial Disputes Tribunal there was no industrial dispute and the Minister failed to consider this was an error in law that vitiated the referral.

**[5]** In the affidavit of Javier Burke<sup>1</sup> in support of the fixed date claim form , he outlined that around January 2021, the Claimant commenced a consultation process with Mrs. Ramgeet-Baugh as the position was slated to be removed from the organizational structure. They sent job descriptions for 5 other roles in the Marketing Department and Mrs. Ramgeet- Baugh applied for 4 of those positions.

---

<sup>1</sup> Filed November 22, 2022

He admits that she was unsuccessful in obtaining any offers for these posts and the posts were filled by other candidates who had been assessed as more suitable.

- [6] In paragraph 5 and 6 of his affidavit. He states that the Human Resource Department in the Bank also shared Mrs. Ramgeet-Baugh's profile with other divisional heads and even though she was shortlisted she was never selected for any position. As a result of this the bank decided to move forward with the redundancy exercise which was intended to be completed by February 2021.
- [7] By way of a letter dated March 22, 2021 the Bank advised the NCB Staff Association of redundancy exercise in relation to the post held by Mrs. Ramgeet-Baugh. They assert they received no expressed objection and they proceeded with the reorganization exercise. Further, a letter dated April 6, 2021 under the hand Hopelin Hines was sent to Mrs. Ramgeet-Baugh which outlined what is best described as the terms of termination and a separation statement which sets out the calculation and amount to be paid.
- [8] Mr Burke's evidence is that it is not until the 6<sup>th</sup> July 2021 that the Bank received a letter from Senator Lambert Brown, CD, dated June 5, 2021 alleging that the termination of Mrs. Ramgeet-Baugh was unjustifiable. The matter was subsequently reported to the Ministry of Labour and Social Security, the parties attended conciliatory meetings but there was no resolution.
- [9] By Memorandum dated July 1, 2022 exhibited to the affidavit of Andrea Marshall,<sup>2</sup> Mr. Michael Kennedy, Chief Director Industrial Relations recommended to Minister Karl Samuda, that the matter be considered for referral to the Industrial Disputes Tribunal under Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act.

---

<sup>2</sup> Affidavit filed April 26, 2023

- [10] On July 26, 2022 Attorneys at law for the Claimant wrote to the Ministry of Labour & Social Security indicating that Mrs Ramgeet-Baugh did not raise any protest objection or dispute to the redundancy exercise and that she had accepted severance payment. It is their contention ground of this application that such acceptance amounted to a waiver to initiate an industrial dispute or seek such redress. An extract from the letter is reproduced below:

*“There being no protest, objection or dispute raised in connection with the redundancy exercise from the time it was first mentioned to Mrs. Ramgeet-Baugh on March 22, 2021, NCB concluded the exercise in the honest and reasonable belief that there was no industrial dispute. It removed the position of Corporate Communications Officer from its organizational structure.*

*In light if the foregoing, it is our considered opinion that Mrs. Ramgeet-Baugh waived any right to raise an industrial dispute concerning her dismissal by reason of redundancy. This view is supported by recent Court decisions in **Jamaica Police Co-Operative Credit Union Society v The Minister of Labour and Social Security** [2019] JMSC Civ 67 and **Desnoes & Geddes Limited (t/A Red Stripe) v The Minister of Labour and Social Security** (Claim No. SU 2021 CV 04511).”*

- [11] Despite this letter, on September 12, 2022 the Minister referred to the Industrial Disputes Tribunal a dispute between the National Commercial Bank Jamaica Limited and Makeda Ramgeet-Baugh with the following terms of reference:

*“To determine and settle the dispute between the National Commercial Bank Jamaica Limited on the one hand and Makeda Ramgeet-Baugh on the other hand over the termination of her employment by reason of redundancy.”*

- [12] On 19<sup>th</sup> January 2023 a stay of proceedings of the hearing before the IDT was granted pending the outcome of this claim. The Defendant’s position was not to challenge the Order being sought. However, based on the previous Orders of the Court Mrs. Ramgeet- Baugh’s objections were fully heard and considered.

## ISSUE

**Whether the Minister was correct when he concluded there was a dispute between the parties and referred the matter to the Industrial Disputes Tribunal**

## ANALYSIS

[13] The Civil Procedure Rules Part 56 provides procedural guidance in relation to cases where administrative orders are being sought. Before addressing the substantive application before me the Court must bear in mind the parameters in which it operates in applications for judicial review proceedings. The Court's function is not clothed in appellate responsibility and should not exercise functions of re-hearing issues. The question before this Court is one purely of a legal nature which seeks the Court's intervention as to whether the Minister of Labour & Social Security has complied with the requisite provisions of the Labour Relations and Industrial Disputes Act.

[14] The proceedings in this matter carry its own peculiarity as the Defendant orally submitted that they were not opposed to the Order to quash the Minister's referral being granted. Mrs Makeda Ramgeet-Baugh who is the party who would be affected by the decision of the Court, though not named an Interested Party was permitted by orders of the Court to file affidavit evidence, submissions and make an appearance. (per order of Shelly-Williams, J on January 19, 2023). Even in light of the Defendant's concession this Court is of the view it is still its responsibility to assess and make a determination on an issue of law.

[15] The Minister pursuant to Section 11A of LRIDA where he is satisfied that that there is a dispute in any undertaking, may refer the matter to the IDT for settlement. The section specifically provides:

11A (1) "... **where the Minister is satisfied (emphasis mine)** 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...”

[16] The legislative framework clearly places on the Minister a responsibility to be satisfied that there is a dispute. An industrial dispute is defined by the legislation as “a dispute between one or more employers or organizations representing employers and one or more workers or organizations representing workers.” It is not contested that Mrs. Ramgeet-Baugh is a worker, however any referral is hinged on a determination that there was an industrial dispute subsisting at the requisite time.

[17] Whilst I acknowledge that there are distinguishable differences between the case at bar and **Spur Tree Spices Jamaica Limited v The Minister of Labour & Social Security**<sup>3</sup>, the issue in the latter case was whether the acceptance of payment of the termination benefits and other payment by former employees amounted to an waiver. Fraser, J (as he then was) gave consideration to **R v Minister of Labour and Employment, the IDT et Anor ex parte West Indies Yeast**<sup>4</sup> and **Jamaica Flour Mills Limited v. The Industrial Disputes Tribunal**<sup>5</sup>. It is apparent that the law is evolving, and this is evident based on the dicta of Gordon J, in the former case, who expressed that, once you accepted payment it was an indication that you were accepting the terms on which the payment was made and the contract of employment comes to an end. In the **Jamaica Flour Mills case**, the courts discussed waiver as ‘a species of estoppel by conduct’. The Court was of the view that there must be an objective assessment of the conduct in the context and circumstances of the case.

---

<sup>3</sup> [2018] JMSC Civ 103

<sup>4</sup> [1985] 22 JLR 407

<sup>5</sup> [2005] UKPC 16

[18] The evidence of Mrs. Ramgeet- Baugh is that she did not express any objection to the redundancy exercise and her termination at the meeting of April 13, 2021. Her affidavit explains that she was taken off guard and felt like her employer had ambushed her. It is her evidence that she had no reason to believe monies would be paid to her since she had refused to sign the requisite forms provided to her. In her affidavit sworn to on the 16<sup>th</sup> February 2023 she further says at paragraph 13 and 14 respectively:

*13 "That in response to paragraph 9 of the Affidavit in support, I state categorically that I was never informed or made aware by the Applicant at any time that payment was made to my account on the 22<sup>nd</sup> of April 2021 and therefore exhibit "JB4" can never be considered as proof of payment."*

*14 "That in response to paragraph 10, I put the Applicant to proof as to when the payments were made to my account and if and when I utilized the monies they said they forwarded to my account on 22<sup>nd</sup> April, 2021."*

[19] In her supplemental affidavit dated the 27<sup>th</sup> May 2023<sup>6</sup> at paragraph 4 she gave evidence she was not aware of the payment was made to her account up to the first meeting which was held with the Claimant's representatives and her representative Senator Lambert Brown CD in July 2021. At paragraph 5 she states:

*"That the **redundancy payments were not utilized by me until nine (9) months after**, due to the death subsequent burial of my mother. By this time my representative and I were already having meetings with the Claimants representatives to settle the dispute. **(emphasis mine)**"*

[20] In my assessment of the evidence of Mrs Ramgeet-Baugh, she has clearly stated that for approximately three (3) months she was unaware of a transfer or deposit of over One Million Dollars to her account by her former employer. Even though it is unclear from when the nine months began to run, this Court concludes that the latest she would have spent that money would have been in April of 2022. This is at least four months before the Minister referred same to the IDT.

---

<sup>6</sup> Supplemental Affidavit of Makeda Ramgeet Baugh filed June 8, 2023

[21] The actions of Mrs. Ramgeet-Baugh are that she held onto this money after becoming aware of same and spent it prior to the referral by the Minister (see letter of September 12, 2022). I find that coupled with letter from Counsel to the Minister dated July 26, 2022, it required the Minister to consider the issue of waiver and satisfy himself that there was in fact an industrial dispute. There is no indication that the Minister considered this at all before he referred the matter to the Tribunal. Mrs. Ramgeet-Baugh contends that the Minister did not err in law and that waiver was not an issue for his consideration. I do not agree with that submission. I therefore conclude that there was an error in law on the part of the Minister and the referral cannot stand.

### ***Withdrawal of the Referral***

[22] The Defendant raised the issue as well that there is no provision for the Minister of his own volition to withdraw his referral. The Court recognizes that this issue is not strictly pertinent to the determination of the claim, however since it was raised the Court addresses same for completeness.

[23] On perusal of the LRIDA the only provision for withdrawal of a referral is to be found in Section 11(3) of the Act which provides:

11(3) ***“If all the parties which have requested the Minister to refer a dispute to the Tribunal under this section inform the Minister in writing, before the Tribunal begins to deal with the dispute, that they no longer wish such dispute to be settled by the Tribunal, the Minister shall not refer the dispute to the Tribunal or, if he has already done so, he shall withdraw the reference.” (emphasis mine)***

[24] Counsel referred the Court to the case of **Sutherland Global Services Jamaica Plc Limited v. The Minister of Labour & Social Security**<sup>7</sup>. In the instant case the Minister referred the matter to the IDT pursuant to Section 11A(1)(a)(i), similar to the facts in the cited case. I find the reasoning of Wiltshire J, to be sound in law

---

<sup>7</sup> [2022] JMSC Civ 44



and I adopt same and apply it in this case, and conclude that the provisions of Section 11(3) would not be open to the Minister, under Section 11A(1)(a)(i) which makes no provision for a request of all the parties and for same to be in writing. Therefore, the Minister who obtains this power by the statutory provisions could not withdraw the referral in the absence of statutory authority.

## **DISPOSITION**

**[25]** The Court makes the following order:

- (i) Certiorari is granted to quash the Defendant's referral to the Industrial Disputes Tribunal of the alleged Industrial dispute between the National Commercial Bank Jamaica Limited and Makeda Ramgeet-Baugh.
- (ii) No Order as to Costs

.....  
**Hon. S. Wolfe-Reece**  
**Puisne Judge**