[2024] JMSC Civ 114

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2018 HCV 03577

BETWEEN	**RUTAIR LIMITED**	**CLAIMANT**
AND	**JAMAICA CIVIL AVIATION AUTHORITY**	**1ST DEFENDANT**
AND	**MINISTER OF TRANSPORT AND MINING**	**2ND DEFENDANT**

IN OPEN COURT

Terri-Ann Guyah Tolan and Aisha Thomas instructed by Guyah Tolan & Associates, Attorneys-at-Law for the Claimant

Jonathan Morgan instructed by DunnCox, Attorneys-at-Law for the 1st Defendant

Taneisha Rowe-Coke instructed by the Director of State Proceedings for the 2nd Defendant

Heard: 16th July and 3rd October 2024

Judicial Review - Certiorari - Section 5C Civil Aviation Act - whether the Civil Aviation Authority and Minister acted reasonably and within the bounds of their discretion in appointing an Investigator-in-charge of an aviation occurrence when allegations of bias were made against the Investigator-in-charge by the affected airline operator - whether the appointment of the Investigator-in-charge was tainted by procedural impropriety on the ground that allegations of bias raised with the Civil Aviation Authority were not brought to the attention of Minister.

C. BARNABY, J

INTRODUCTION

[1] The Claimant airline operator is a limited liability company, and the 1st Defendant is a body corporate established by section 6 of the **Civil Aviation Act** (hereinafter

"the **CAA**"). The 1st Defendant has among its duties the provision of aviation safety and security oversight through aircraft accident investigation. Where it determines that it is necessary to have an investigation into the circumstances of an aviation occurrence it is required to appoint, in writing, an Investigator-in-charge (hereinafter called "IIC") to investigate the occurrence. Under the **CAA,** the 2nd Defendant may, in writing, confirm or for good cause revoke the appointment of the IIC and appoint another person.

[2] On 3rd May 2018 there was an aviation occurrence involving an aircraft operated by the Claimant. The 1st Defendant appointed Mr. Christopher Raleigh Bickford as the IIC to investigate the circumstances of the occurrence, an appointment which was confirmed by the 2nd Defendant. Mr. Bickford's appointment was published in the Jamaica Gazette Vol. CXLI No. 78C[I] on Wednesday 20th June 2018.

[3] The Claimant being aggrieved by the appointment applied on 20th September 2018 for leave to pursue judicial review. Leave was granted by and with the consent of the parties on 27th January 2022. On 11th February 2022, within the period limited by the court, the Claimant filed its Fixed Date Claim Form.

[4] The substantive judicial review application was heard on 16th July 2024 and a decision reserved to the instant date. The decision and reasons for it are set out below.

SUBSTANTIVE ISSUES AND SUMMARY DISPOSITION

[5] There are three well established grounds for judicial review: illegality, irrationality and procedural impropriety. On consideration of the grounds relied on by the Claimant in pursuit of its claim, and the competing contentions of the parties which I will reference later in these reasons for decision, resolution of the two broad issues identified below is regarded as dispositive of the claim for judicial review.

i. *Whether the Defendants acted reasonably and within the bounds of the discretion reserved to them by the CAA in appointing Mr. Bickford as the IIC of the aviation occurrence on 3rd May 2018 involving the Claimant's aircraft (hereinafter called "the 2018 Accident"), considering the Claimant's communication of allegations of his bias to the 1st Defendant.*

ii. *Whether the appointment of Mr. Bickford by the Defendants as the IIC of the 2018 Accident is tainted by procedural impropriety.*

[6] For reasons set out below I find that both issues are to be resolved in favour of the Defendants. In the result, the request for an order of certiorari to quash the decision of the Defendants' appointment of Mr. Christopher Raleigh Bickford as the IIC of the aviation occurrence on 3rd May 2018, which is published in the Jamaica Gazette Vol. CXLI No. 78C[I] on Wednesday 20th June 2018 should be refused.

THE CLAIM

[7] The Claimant seeks the following relief on its Fixed Date Claim Form.

1. *That the first hearing of the Fixed Date Claim Form be treated as the hearing of the claim;*
2. *An order of writ of certiorari to have the decision of the Minister of Transport and Mining, the Honourable Mr. Robert Montague upon a recommendation from the Chairman of the Jamaica Civil Aviation Authority Phillip Henriques, and which decision is published in the Jamaica Gazette Vol. CXLI No. 78C[I] on Wednesday, June 20, 2018, appointing Christopher Raleigh Bickford as duly qualified Investigator-in-Charge in keeping with Part IIA, Section 5C of the Civil Aviation Act, 1966 as amended, to investigate the circumstances of the aviation occurrence involving a Cessna U206F Aircraft, bearing Registration Markings N8281Q, operated by the Claimant*

herein, and which aircraft had an accident in Samuels Prospect, Trelawny on May 3, 2018; brought into this Honourable Court and quashed;

3. *A declaration that the appointment of Mr. Christopher Raleigh Bickford as duly qualified Investigator-in-Charge to conduct any investigation whatsoever which touch and concern Rutair Limited is prejudicial and unfair and the Defendants are to ensure that where such an investigation is deemed necessary, an alternate investigator is selected;*
4. *Any resultant report whether interim, preliminary or final, any recommendation, action or directive issued pursuant to any investigation conducted by Mr. Christopher Raleigh Bickford which touch and concern Rutair Limited is hereby declared null and void, and said reports are to be retracted and cancelled by the Defendants;*
5. *The injunction of March 22, 2019 issued by the Honourable Justice K. Laing, in these proceedings shall remain in force;*
6. *Costs and Attorney-at-Law fees to the Claimant herein;*
7. *Such further and/or other relief as this Honourable Court deems fit.*

[8] The claim for relief is grounded thus.

1. *This is a judicial review claim seeking an order of certiorari, declaratory orders and other reliefs and is being filed pursuant to leave having been granted by the Honourable Justice K. Anderson on the 27th day of January, 2022;*

2. *The Claimant entity is a licensed operator of an airline and makes this application pursuant to CPR 56.9 for Judicial Review and 56.16 for a writ of certiorari seeking to have the decision of the Jamaica Civil Aviation Authority and the Minister of Transport and Mining appointing Christopher Raleigh Bickford as duly qualified Investigator-in-Charge in keeping with Part IIA, Section 5C of the Civil Aviation Act, 1966 as amended, to investigate the circumstances of the aviation occurrence involving a Cessna U206F Aircraft, bearing Registration Markings N8281 Q, operated by the Claimant herein, which crashed in Samuels Prospect, Trelawny on May 3, 2018, brought into this Honourable Court and quashed;*

3. *The aircraft in question which was involved in the accident on May 3, 2018 was at all material times operated by the Claimant herein. On June 11, 2018, the Claimant through their Managing Director, Mr. Howard Levy objected to the appointment of Mr. Raleigh Bickford as investigator in the accident involving the subject aircraft;*

4. *The Claimant contends that this investigator, Mr. Christopher Raleigh Bickford should not be appointed or be in any way concerned with any investigation concerning Rutair Limited on the grounds that: -*

    a. *He was the investigator in charge of a previous incident involving a different aircraft operated by the Claimant, Rutair Limited, which resulted in him generating occurrence report number JA-2008-02 (sic) wherein he made findings which were biased, prejudicial and contrary to the findings of the Transport Canada Safety Board;*

    b. *Notwithstanding repeated requests by Rutair Limited for the report of Mr., Bickford to be withdrawn and amended for it to correspond with the findings of the said internationally recognized regulatory agency, the Transport Canada Safety Board, both himself and the Jamaica Civil Aviation Authority has failed to comply:*

    c. *The Claimant has the honest belief that Mr. Bickford will not and has not been fair and his history of open prejudice and bias to Rutair Limited makes him unfit to participate in any investigations involving the Claimant;*

    d. *[removed pursuant to order made in **Rutair Limited v Jamaica Civil Aviation Authority and Minister of Transport and Mining** [2024] JMSC Civ 44 (hereinafter called **"Rutair No. 1"**)]*

    e. *The findings, methodology, commentary and resultant conclusions made in the Aviation Accident Investigation Report # JA-2018-01 prepared by Mr. Bickford are skewed, littered with innuendos, irrelevant, biased and*

prejudicial material which are unreasonable, defy good sense and logic and shows a trenchant, desperate and cunning attempt to cause damage to the operations of the Claimant.

5. *The Claimant repeatedly registered their objection prior to, during and after the appointment of Mr. Christopher Raleigh Bickford as the Investigator to review the accident hereinbefore referenced, notwithstanding this objection, which was properly grounded, the Jamaica Civil Aviation Authority trenchantly proceeded to appoint Mr. Bickford wouldn't giving any due consideration to the concerns of bias raised by the Claimant;*

6. *On September 20, 2018, the Claimant was made aware that Mr. Christopher Raleigh Bickford was appointed as duly qualified Investigator-in-Charge upon a decision by the 2nd Defendant which was promulgated in Gazette Vol. CXLI No, 78C1 dated Wednesday, June 20, 2018, upon a recommendation from the 1st Defendant. Mr. Bickford proceeded with alacrity to finalize his report and then took steps to publish same, necessitating an application by the Claimant to the Supreme Court for an injunction to prevent the said publication, which injunction was granted by His Lordship, Laing, J. on March 22, 2019;*

7. *There is a good arguable case that the Claimant will suffer severe prejudice due to Mr. Bickford's participation in spearheading this investigation and he should not be allowed to have any dealings with any investigation concerning Rutair Limited (Applicant), and the said decision appointing him should be brought into this Honourable Court and quashed;*

8. *The decision of the 1st and 2nd Defendants concerning this appointment should be brought into this Honourable Court and quashed as they have acted irrationally, unreasonable and with gross prejudice in appointing Mr. Bickford and such a decision has defeated the constitutional right of the Claimant to a fair investigation and their right to due process. Any input from Mr.*

Bickford given his previous conduct would amount to an injustice to the Claimant and would have the resultant effect of causing detrimental consequences to their reputation and prejudice their license to continue their aviation operations;

9. *Should the appointment be deemed null and void then any resultant report whether interim, preliminary or final, and any recommendation, action or directive issued pursuant to any investigation conducted by Mr. Christopher Raleigh Bickford which touch and concern Rutair Limited should be declared null and void by this Honourable Court, and the said reports are to be retracted and cancelled by the Defendants;*

10. *In order to protect the Claimant's good name and operations, the injunction granted by the court in this matter should remain in force.*

11. *It is in the interests of justice and fairness that the orders herein be granted.*

[9] The first hearing was not treated as the hearing of the claim, and as observed at paragraph 11 of **Rutair No. 1**, which remained the case at the hearing of the substantive judicial review application, the Claimant had neither sought nor obtained leave to pursue the reliefs sought at orders 3 to 5 of the Fixed Date Claim Form. In consequence, the Claimant was limited to arguing the reliefs sought at paragraphs 2, 6 and 7 of its statement of case.

[10] In advancing and responding to the claim, several authorities were cited in argument by counsel. While each authority was duly considered, I have only found it necessary to refer to some of them to demonstrate the reasons for resolving the claim in the manner I have. The court is grateful for the assistance and understanding of counsel in these regards.

THE ROLE OF THE COURT

[11] Judicial review is concerned with the decision-making process and not the decision itself. The role of the court in this regard was aptly stated by Lord Hailsham in **Chief Constable of the North Wales Police v Evans** [1982] 1 WLR 1155, 1160 when he stated that:

> *… it is important to remember in every case that the purpose of the remedies [available on judicial revenue] is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law.*

DISCUSSION

Whether the Defendants acted reasonably and within the bounds of the discretion reserved to them by CAA in appointing Mr. Bickford as the IIC of the 2018 Accident, considering the Claimant's communication of allegations of his bias to the 1st Defendant.

[12] Mrs. Guyah Tolan submits on behalf of the Claimant that its objection to the appointment of Mr. Bickford as the IIC of the 2018 accident is not based on his qualifications but *"his ability to conduct a fair and impartial investigation in relation to the Claimant given the 2008 Report."* This is on account that the Claimant considers the findings in that report to be incorrect, unreasonable and prejudicial to it.

[13] The evidence before the court is that Mr. Bickford was appointed as IIC of an aviation occurrence on 24th January 2008 involving an aircraft operated by the Claimant (hereinafter referred to as "the 2008 Accident"). In discharge of that

appointment, he prepared a report numbered JA-2008-01 (hereinafter called "the 2008 Report"). Among other things, the report includes Mr. Bickford's findings and safety recommendations arising out of the investigation of the occurrence.

[14] I note from the evidence presented in the proceedings that ahead of the finalisation of the 2008 Report, the Claimant was given an opportunity by the 1st Defendant to comment. Each comment, allegation or objection by the Claimant was responded to and reasons given for changing or refusing to change aspects of the report which was then in draft. The comments and responses are reflected in the document titled *Rutair Involved Parties Comments* dated 12th September 2008. The Claimant has not presented any evidence to this court to demonstrate that matters relied on by the 1st Defendant in refusing to change aspects of the 2008 Report or to withdraw the report in its entirety were not grounded in fact.

[15] In any event, no leave was sought or granted to the Claimant to bring the 2008 Report into this court to be quashed by an order of certiorari. In the circumstances the allegations made by the Claimant in respect of that report appear to be an attempt to collaterally attack the discharge of responsibilities by the authority constituted and appointed by law to enquire into the 2008 Accident, where the court's supervisory jurisdiction by way of judicial review was not sought to be engaged. This is, in my view, an abuse of the process of the court which should not be allowed.

[16] In the event another view is to be taken of the Claimant's challenge in these proceedings, I will address whether the relief it was given leave to pursue should be granted, that is, an order of certiorari to quash the decision of the Defendants to appoint Mr. Bickford as the IIC of the 2018 Accident.

[17] A decision is challengeable by way of judicial review on the ground that it is "irrational", which Lord Diplock in **Council of Civil Service Unions and ors. v Minister for the Civil Service** [1984] 3 WLR 1174 (hereinafter called "**CCSU**"), at p. 1196 said

> *… can by now be succinctly referred to as "Wednesbury unreasonableness" … It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.*

[18] The Wednesbury unreasonableness test formulated in **Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation** [1948] 1 K.B. 223 at pp 233 to 234

> *… entitles [the court] to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account.*

[19] In other words, the court is permitted to enquire into the *"reasonableness"* of the exercise of the discretion by the relevant decision maker, of which Lord Greene M.R. said this at p 229.

> *Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. in Short v. Poole Corporation (1) gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might*

almost be described as being done in bad faith; and, in fact, all these things run into one another.

[20] In **Brind and others v Secretary of State for the Home Department** [1991] 1 All ER 720 at pages 737 to 738, Lord Lowry in reliance on the authoritative work of Sir William Wade in Administrative Law (6th edn, 1988) pp 388 to 462, said this.

> *The learned author, with the aid of examples covering more than a century, clearly demonstrates that what we are accustomed to call Wednesbury unreasonableness is a branch of the abuse, or misuse, of power: the court's duty is not to interfere with a discretion which Parliament has entrusted to a statutory body or an individual but to maintain a check on excesses in the exercise of discretion. That is why it is not enough if a judge feels able to say, like a juror or like a dissenting member of the Cabinet or fellow-councillor: 'I think that is unreasonable that is not what I would have done.' It also explains the emphatic language which judges have used in order to drive home the message and the necessity, as judges have seen it, for the act to be 'so unreasonable that no reasonable minister etc would have done it'. In that strong, and necessary, emphasis lies the danger. The seductive voice of counsel will suggest (I am not thinking specifically of the present case) that, for example, ministers, who are far from irrational and indeed are reasonable people, may occasionally be guilty of an abuse of power by going too far. And then the court is in danger of turning its back not only on the vigorous language but on the principles which it was intended to support. A less emotive, but, subject to one qualification, reliable test is to ask: 'Could a decision-maker acting reasonably have reached this decision?' The qualification is that the supervising court must bear in mind that it is not sitting on appeal, but satisfying itself whether the decision-maker has acted within the bounds of his discretion.*

[21] It is against this background that the allegations of bias against Mr. Bickford and the decision of the Defendants to appoint him as the IIC of the 2018 Accident must be considered.

[22] It is submitted by Mrs. Guyah Tolan that the issue for the court, to be determined on a balance of probabilities, is whether an informed and fair-minded observer would have concluded that there was *"a possibility of bias"* on the part of Mr. Bickford in conducting the investigation into the 2018 Accident.

[23] While that formulation of the issue accords with the test for bias which the court would apply in exercise of its *"ordinary jurisdiction"*, it ignores the fact that the role of the court in judicial review proceedings is supervisory in character and is circumscribed to satisfying itself that the decision maker has acted within the bounds of his discretion. In consideration of that supervisory role and the circumstances of the case, it is my view that the more appropriate question for the court is whether the Defendants acted reasonably and within the bounds of the discretion reserved to them by **CAA** in appointing Mr. Bickford as the IIC of the 2018 Accident, considering the allegations of bias which the Claimant communicated to the 1st Defendant. I will consider the conduct of each Defendant in turn.

The 1st Defendant

[24] It is the submission of Mr. Morgan for the 1st Defendant, that the Claimant's objections to Mr. Bickford's appointment as IIC of the 2018 Accident were assessed and found to be unmeritorious. The Claimant he said, had not advanced evidence to substantiate its allegations of bias to discredit Mr. Bickford who was ably qualified to be appointed as the IIC. In these circumstances it is submitted that it cannot be said that the 1st Defendant failed to take into consideration matters that it ought to have considered, nor has it been established that no reasonable decision maker could have come to the decision to appoint Mr. Bickford. I find merit in these submissions.

[25] Mr. Howard Levy, Managing Director of the Claimant in his affidavit in support of the Fixed Date Claim Form filed 11th February 2022 avers that after the accident

he sent a preliminary report to the 1st Defendant and specified that he did not wish Mr. Bickford to be involved with the investigation. He was put to proof of this allegation but had not sought to do so.

[26] He also states that he objected again on 11th June 2018, which was followed up by email of 21st June 2018 referencing his earlier correspondence on the issue. He said he received a response on the latter date from Mr. Nari Williams-Singh, Director General of the 1st Defendant which indicated that the 2nd Defendant had appointed Mr. Bickford as the IIC on the recommendation of the 1st Defendant. Save to say that it became apparent from Mr. Wiiliam-Singh's correspondence that the 1st Defendant had failed to advise the 2nd Defendant of his "*objection and of the reasons why Mr. Bickford would not be deemed a fit and proper person to conduct the investigation into the circumstances of this accident",* Mr. Levy does not particularise the grounds communicated for his objection or his conclusion that Mr. Bickford would not be a fit or proper appointee.

[27] Mr. Levy nevertheless goes on to say later in his affidavit, that his then Attorney-at-Law, Captain Beswick wrote to the 1st Defendant resubmitting his objections. A copy of the "email trail" is exhibited.

[28] It begins with an email from Mr. Levy dated Thursday 21st June which is addressed to Mr. Nari Williams-Singh and another. It is copied to two recipients including Ballentyne Beswick Law Co. It ends with an email from Captain Beswick to Mr. Williams-Singh in which Mr. Beswick says, among other things which are not immediately relevant, that

> *[i]t appears that both yourself and others involved in the selection and appointment of Mr. Bickford have failed to appreciate and advise the Minister that the issue in question has nothing to do with his qualifications. It is simply that Mr. Bickford has displayed open prejudice and bias to Mr. Levy and his company, the detail of which you are well aware of (sic). In these circumstances, we will not sit idly by and allow Mr. Bickford to once again vent his hostility and bias against our clients.*

…

Please treat this email as a formal follow up to our client's earlier objections to the appointment of Mr. Bickford, and as notification that if there is no formal withdrawal of this appointment within 14 days from today, litigation will follow.

[29] Mr. Williams-Singh had advised Mr. Levy by email dated 21st June 2018 that Mr. Bickford's vast qualifications and experience were considered, and that he had been appointed by the 2nd Defendant on the recommendation of the 1st Defendant. This was in response to Mr. Levy's email of the same date where he references a previous email and indicated that the objection still stood. Below that email was Mr. Levy's message dated 11th June 2018 which states as follows in entirety.

Sirs,

We object strongly to the appointment of Mr. Raleigh Bickford as investigator in the recent accident of aircraft registered N8281Q.

Our objection is based on an occurrence report number: JA-2008-02 (sic) that Mr. Bickford was the investigator in charge who did not follow the Canadian Transport Safety Board finding. Although he had in his report "A small civil aviation authority like that of Jamaica does not have the resources to evaluate such issues, and will follow the decision of larger civil aviation authorities like Transport Canada in cases such as this".

In that investigation Mr. Bickford did not state the Transport Canada Safety Board ruling as the cause of the engine failure. The Canadian Transport Safety Board (CTSB) report LP131/208 states "the cause off the engine failure was due to the failure of a CT (compressor turbine) blade, and that the cause of the CT blade was unknown".

To date the Cessna Aircraft Company, Transport Canada and the FAA have issued ADs and SBs on the failed component. In this case we have found Mr. Bickford report # JA-2008-01 to be biased and fictional.

We have written several letters for the withdrawal of the report since was published on March 08, 2010. Hence our objection to conduct any more investigation on Rutair Limited.

[30] While Mr. Levy seeks to introduce into evidence several matters which he says show bias on the part of Mr. Bickford, the objection communicated to the 1st Defendant is quite narrow in scope. It is premised on allegations of bias said to be demonstrated in the 2008 Report. It is my considered view that those are the relevant allegations of bias which the 1st Defendant was required to consider in exercise of the discretion to appoint Mr. Bickford as the IIC of the 2018 Accident. The objection is twofold and may be summarised in this way.

i. Mr. Bickford had not stated in the report that the cause of the engine failure was the failure of a compressor turbine blade, and that the cause of the blade failure was unknown as ruled by the Canadian Transport Safety Board; and

ii. that Cessna Aircraft Company, Transport Canada and the FAA had issued ADs and SBs on the failed component.

[31] I will address each objection.

[32] The 1st Defendant through the affidavit of Mr. Williams-Singh in response to that of Mr. Levy admits that Mr. Bickford was the IIC of the 2008 Accident, and that *Aviation Occurrence Report Number JA 2008-01* was generated in consequence. The Director goes on to say, which is not disputed, that the several engine components from that accident had been sent to Pratt and Whitney of Canada (hereinafter called "PWC"), the manufacturers of the engine of the aircraft involved in the 2008 Accident for laboratory examination, after the incident. Two technical reports, including the *Transportation Safety Board of Canada Engineering Report LPI 31/2008 (hereinafter referred to as "LPI 31/2008")* were generated. It is Mr. William-Singh's evidence that there is no contradiction between the 2008 Report prepared by Mr. Bickford and *LPI 31/2008.*

[33] Although Mr. Levy exhibits reports from the *Transportation Safety Board of Canada* (hereinafter called "TSBC"), none of them is the one implicated in the objection communicated to the 1st Defendant in his email of 11th June 2018. *LPI 31/2008* is exhibited in Mr. William-Singh's affidavit filed 30th October 2018, however. It has as its subject the *"Metallurgical Examination of Engine Components"* of Cessna 208B, 6Y-JRG. It was prepared by the TSBC Engineering Branch from whom assistance was sought by the 1st Defendant to review the Engine/Component Investigation Report and Materials Investigation Laboratory Report issued by PWC.

[34] *LPI 31/2008* shows that the engine from the aircraft was forwarded to PWC in West Virginia for examination in the presence of representatives from the 1st Defendant, International Airlink (the Claimant was doing business as International Airlink), Cessna Aircraft, Specialty Turbines and PWC. Subsequently selected parts were sent to PWC's laboratory in Quebec for materials investigations. It is expressly stated that the 1st Defendant requested the assistance of the TSBC to act as its representative during the materials investigations.

[35] The report shows that PWC conducted *"materials investigation of the CT disc, CT blades, CT vane ring and LED [that is, Large Exit Duct] comprised dimensional measurements, visual examination and destructive metallurgical testing.*

[36] PWC is said to have concluded as followings in respect of the CT blades.

> 2.2.5 … the *CT blade fracture was most probably caused by creep. It was not possible to determine which blade fractured first due to the damaged condition of the blade fracture faces. Likewise, the battered and impacted condition of the CT blade shroud segments precluded the observation of any evidence of blade tip rub. Therefore, there was insufficient evidence to propose a sequence of events leading to the CT blade failure.*

[37] Of the CT disc and CT vane ring respectively, the following determinations were attributed to PWC in the report.

> *2.3.1 … [T]he actual "K" diameter of the CT disc was within tolerance with a measured value of 6.2901 inches compared to the original value of 6.2880 inches. This confirmed that the CT disc was not subjected to an overspeed condition.*
>
> *2.4.2 Two of the inner wall cracks were opened in the laboratory and showed fatigue features on most of their fracture face. No metallurgical abnormalities were observed at the origins of these fatigue cracks. The oxidised condition of the fracture faces suggested that the cracks had been present for some time.*

[38] Broadly, PWC is said to have observed a heat distressed area with perforation of the parent metal relative to the LED, and two cracks in the vicinity of the perforation adjacent to a resistance weld. Based on observations of the perforation and the two cracks which were opened in the laboratory, PWC is said to have concluded that

> *2.5.3 … the perforation in the LED was caused by excessive heat exposure over time. This condition pre-dated the CT blade failure event… The cause for the excessive heat exposure over time was not determined… [T]here was no evidence to conclusively link the CT vane fracture to the perforation observed on the LED. … [T]he CT vane fracture was most likely secondary to the CT blade failure event.*

[39] *LP131/2008* is expressly stated as being limited to a review of PWC's Materials Investigation Laboratory Report M.E. No. 14359FS and section 3.0 of the Engine/Component Investigation Report No. 08AS024, S/O 151848 dealing with the Metallurgy observations. The report concludes:

> *3.1 TSB Engineering finds that the nature of the work performed and methodologies are consistent with good failure analysis practice. The observations and conclusions drawn are consistent with the information provided in the reports in the form of photographs and result data of the critical features. Failing further*

> *opportunity to examine the parts, TSB engineering is satisfied that the findings and suggested cause of failure are entirely acceptable.*

[40] In the final 2008 Report prepared by Mr. Bickford, he does say that "*a small civil aviation authority like that of Jamaica does not have the resources to evaluate such issues, and will follow the decision of larger civil aviation authorities like Transport Canada in cases such as this".* The statement made by the IIC was not reproduced in its entirety by Mr. Levy and it was not said in the context that the 1st Defendant or Mr. Bickford were incapable of conducting investigations and making decisions in respect of aviation occurrences as Mr. Levy seems to suggest in his email.

[41] The statement forms part of the narrative under the subheading *"Engine Maintenance History"* in the 2008 Report where Mr. Bickford begins with quotations from an *Enforcement Investigation Report* prepared on 29th November 2005 by the 1st Defendant's Principal Airworthiness Director for the Claimant. They speak to the failure of the Claimant to renew a subscription service which caused the currency of aircraft maintenance to be questioned, and the failure of the Claimant to comply with engine trend monitoring requirements as set out in the approved maintenance schedule for Cessna 208 aircraft.

[42] The report then refers to Service Bulletin SB 1703R3, Revision No.3, October 31, 2006 issued by PWC wherein it was recommended that operators submit a two-CT blade sample for metallurgical examination at an overhaul facility at the time of each Hot Section Inspection (hereinafter called "HSI"), which would provide an accurate evaluation of CT blade conditions and reveal premature deterioration of blade material, if any. Two HSIs were cited, the second of which is said to have taken place on 22nd November 2006. It was concluded that a two-CT blade sample had not been submitted to the overhaul facility at this second HSI as the engine was new. Mr. Bickford indicated that while the procedure was recommended by PWC, it was not mandatory, there being no Airworthiness Directive or regulations from Transport Canada to that effect. It is in this context that he says:

> *To the date of completion of this Investigation, there was no Transport Canada Airworthiness Directive in effect regarding the metallurgical evaluation of a two-CT blade sample at HSIs, as recommended in P&WC SB 1703R3. A small Civil Aviation Authority like that of Jamaica does not have the resources to evaluate such issues, and will follow the decisions of larger Civil Aviation Authorities like Transport Canada in cases such as this, thus this recommendation by P&WC had not been made mandatory by the JCAA.*

[43] Mr. Bickford concludes his report with this *"Safety Recommendation":*

> *[T]he recommendation in P&WC SB 1703R3, that operators of PT6A-114A engines submit at each HSI a two-CT blade sample for metallurgical evaluation at an overhaul facility, should be made mandatory by Transport Canada and the Jamaica Civil Aviation Authority.*

[44] It is clear from the foregoing that Mr. Levy and the Claimant took Mr. Bickford's comment on the capacity of the 1st Defendant entirely out of its proper context. Mr. Bickford was making the point that the recommendation of PWC for metallurgical evaluation of a two-CT blade sample had not been made mandatory by Transportation Canada, and that the 1st Defendant as a smaller civil aviation authority without the resources to make that sort of evaluation, would follow the decision of the larger authority not to make the recommendation mandatory in this jurisdiction.

[45] In respect of Mr. Levy's suggestion in the email to the 1st Defendant objecting to Mr. Bickford's appointment, that the TSBC had determined that the cause of the CT blade failure was unknown, that is not supported by the evidence in these proceedings. The finding at paragraph 2.2.5 of LPI 31/2008, which was earlier reproduced clearly states that the "*CT blade fracture was most probably caused by creep."* The fact that the condition of the blade fracture faces and the battered and impacted conditions of the blade shroud segments prevented the finding of

sufficient evidence to propose *"the sequence of events"* that led to the CT blade failure, does not negate that express finding.

[46] As it relates to the allegation that Mr. Bickford had not stated in the 2008 Report that the cause of the engine failure was due to the failure of a compressor turbine blade, I find it to be factually incorrect.

[47] In the 2008 Report Mr. Bickford lists eight factors, which are reproduced below, as *"Findings as to Causes and Contributing Factors"*:

> 1. *There was evidence that the company had serious managerial and organizational problems.*
> 2. *There was evidence of a loss of operational control in the company's maintenance department.*
> 3. *The evidence indicated that the aircraft's engine was not maintained, and trend monitoring was not conducted in accordance with the regulatory requirements.*
> 4. *There was evidence that the CT blades had been subject to elevated ITTs.*
> 5. ***There was evidence that the CT blades underwent creep, which resulted in at least one of them fracturing, and the others suffering impact damage.***
> 6. ***The damage to the CT blades resulted in the failure of the engine.***
> 7. *The evidence indicated that the P&WC recommendation in SB 1703R3 to submit a two-CT blade sample for metallurgical evaluation at HSIs had never been performed for this engine.*
> 8. *The P&WC recommendation in SB 1703R3 to submit a two-CT blade sample for metallurgical evaluation at HSIs was not made mandatory by Transport Canada, the Original Equipment Type Certificate Holder, and consequently not made mandatory by the JCAA.*
>
> *[Emphasis added]*

[48] In his *"Findings as to Risk",* the following are listed.

1. *The Certificate of Airworthiness was invalid, as the aircraft had been weighed by a person not qualified on the aircraft type.*
2. *The LED suffered pre-occurrence damage.*
3. *The pilot's training records were incomplete.*
4. *The company had no security programme.*

[49] Ahead of his findings and recommendations, Mr. Bickford referred to the two technical reports generated from the examination of engine components: the Engine/Component Investigation Report No. 08AS024, S/O 151848 generated by PWC and LPI 31/2008; and statements/findings made in them. Only the latter is in evidence in the proceedings.

[50] At items 5 and 6 of Mr. Bickford's *Findings as to Causes and Contributing Factors* it is clearly stated that the CT Blades underwent creep and that the damage to the CT blades resulted in the failure of the engine. I accept as averred by Mr. Willliams-Singh for the 1st Defendant, that the finding of the IIC was not inconsistent with the findings which appear in TSBC Engineering Branch report LPI 31/2008.

[51] The other limb of the objection communicated by Mr. Levy to the 1st Defendant is that the Claimant regards the 2008 Report prepared by Mr. Bickford as biased and fictional considering that Cessna Aircraft Company, Transport Canada and the FAA has issued Airworthiness Directives (ADs) and SBs on the failed component arising out of other reported incidents involving the engine model. The 1st Defendant cannot be said to have acted unreasonably in rejecting the issue of these directives and bulletins as probative of the allegation that the 2008 Report was fictional or biased. Mr. Bickford had expressly included engine failure among the list of causes and contributing factors for the 2008 Accident.

[52] While LPI 31/2008 shows that the 1st Defendant aviation authority sought assistance in the review of the metallurgical examination of engine components in relation to the 2008 Accident, which is entirely appropriate where the resources for such an exercise are not available to it, Mr. Bickford was the IIC of the 2008 Accident. As the IIC appointed pursuant to the **CAA**, it was his responsibility to investigate the accident and report on his findings including as to causes and contributing factors for the aviation occurrence, identify risks and make appropriate recommendations. In discharge of these functions, he was required to bring to bear his own mind to the investigative process. As observed in **Rutair No. 1**, the objective of an investigation into an aviation occurrence, whether at the domestic or international level, is the prevention of accidents and incidents, not the apportionment of blame or liability. To include factors which may have contributed to an occurrence, or risks which may have made the occurrence more likely is entirely consistent with this objective and is not indicative of bias on the part of the IIC.

[53] In all the foregoing circumstances it is my judgment that the 1st Defendant acted reasonably and within the bounds of its discretion in rejecting the allegations of bias raised by the Claimant against Mr. Bickford and in appointing him as the IIC of the 2018 Accident based on his qulaifations and expertise.

The 2nd Defendant

[54] Mrs. Rowe-Coke submits that when the Fixed Date Claim Form and the evidence in respect of challenges to the 2008 Report are considered, no allegations have in fact been made against the 2nd Defendant. Although the Claimant makes broad allegations of unreasonableness, irrationality and gross prejudice which it says defeat its constitutional right to a fair investigation and due process in relation to the appointment of Mr. Bickford as the IIC of the 2018 Accident, they are premised on, and follow the allegations made against the 1st Defendant. She goes further to argue that the 2nd Defendant exercised due consideration of the appointment of Mr.

Bickford based on information supplied to him, including Mr. Bickford's resume. Further, objections by the Claimant to the appointment had not been brought to the Minister's attention either by the Claimant or the 1st Defendant. In consequence it is submitted that the decision of the 2nd Defendant in appointing Mr. Bickford as the IIC of the 2018 Accident was rational, reasonable and entirely void of prejudice. Counsel goes further to argue that there is no evidence that the 2nd Defendant unlawfully exercised the discretion given to him by the **CAA** to appoint Mr. Bickford as the IIC of the 2018 Accident.

[55] The court itself makes the observations referenced by Mrs. Rowe-Coke, that the sweeping allegations of unreasonableness, irrationality and gross prejudice in defeat of its constitutional right to a fair investigation and due process which are made by the Claimant makes no distinction between the conduct of the 1st and 2nd Defendant. The court also finds favour with the submissions of Counsel.

[56] Section 5C of the **CAA** states, as relevant.

> *(1) Subject to subsections (4), (5) and (6) [which is not relevant to the instant enquiry], where the Authority determines that it is necessary to investigate the circumstances of an aviation occurrence, the Authority shall appoint by notification in writing an Investigator-in-charge, who shall have the duties set out in subsection (2).*
>
> *(2) …*
>
> *(3) …*
>
> *(4) The Minister may confirm or for good cause revoke, in writing, the appointment of an Investigator-in-charge.*
>
> *(5) Where the Minister revokes, in writing, the appointment of an Investigator-in-charge, he may appoint, in writing, another person to be the Investigator-in-charge.*
>
> (6) *…*

[57] While it is the responsibility of the 1st Defendant authority to appoint an IIC by notification in writing, the 2nd Defendant Minister is expressly given the discretion

by the statute to either confirm or revoke the appointment made by the 1st Defendant.

[58] There is no dispute that the 2nd Defendant exercised his discretion in favour of confirming the appointment made by the 1st Defendant. In doing so he had a duty to bring his own mind to the exercise of the discretion. To borrow the phraseology used by Mrs. Rowe-Coke during oral argument *"he is not to act as a rubberstamp of what is recommended by the [1st Defendant] JCAA."*

[59] The revocation of an appointment made by the 1st Defendant is not an arbitrary exercise however, as the Minister is permitted by the statute to do so only on good cause being shown. The unchallenged evidence led on behalf of the 2nd Defendant is that the Claimant's objection to Mr. Bickford's appointment as the IIC of the 2018 Accident had not been brought to the attention of the Minister or the Ministry.

[60] On receipt of communication from the 1st Defendant dated 8th and 15th June 2018 indicating that Mr. Bickford had been appointed, the Minister is said to have considered documentation provided to him, which included the resume for the appointee. Mr. Bickford was found to be suitable for the role of IIC of the 2018 Accident having regard to his qualifications and expertise. The Minister communicated his confirmation of Mr. Bickford's appointment to the 1st Defendant by letter dated 20th June 2018. The notification of the appointment was duly published in the Gazette on the said date.

[61] No cause, good or otherwise, having been shown to the Minister, there was no basis upon which the Minister could have lawfully or reasonably revoked the 1st Defendant's appointment of Mr. Bickford as the IIC of the 2018 Accident. I accordingly find that any complaint of unreasonableness against the Minister in the exercise of his discretion is without merit.

Whether the appoint Mr. Bickford by the Defendants as the IIC of the 2018 Accident is tainted by procedural impropriety.

[62] Mrs. Guyah Tolan submitted that the Claimant realises that no express right to be heard prior to the appointment of an IIC is given to a person affected by such an appointment. She argues however, that considering the power given to the Minister at section 5C of the **CAA** to revoke an appointment made by the civil aviation authority, a person affected by an appointment can show cause for revoking an appointment. I find favour with this submission.

[63] Counsel goes further to submit that the Minister had a right to be notified by the 1st Defendant of the objection which had been communicated to it relative to the appointment of Mr. Bickford as the IIC of 2018 Accident. She contends that this was demanded by honesty, fairness and natural justice.

[64] While I do not disagree that the Minister should be notified of objections to the appointment of an IIC to enable him to determine whether there is good cause for revoking an appointment, there is nothing in the **CAA** which requires notification from the 1st Defendant. It is my view that it is the responsibility of the party who contends that there is good cause for revocation to present the same to the Minister for consideration. There is no evidence before the court that the Claimant sought to avail itself of that opportunity or was prevented by either the 1st or 2nd Defendant from presenting his objections to the Minister for consideration, with a view to having the appointment of Mr. Bickford as the IIC of the 2018 Accident revoked.

[65] Mr. Morgan for the 1st Defendant submitted that the objection made by the Claimant to the appointment of Mr. Bickford as the IIC of the 2018 Accident were those which the Claimant had voiced repeatedly. The concerns were considered by the 1st Defendant and rejected as unmeritorious. I have already determined that the 1st Defendant cannot be said to have acted unreasonably in arriving at that conclusion.

[66] I find it unlikely that where the authority believes it has acted within the scope of its power to reject objections raised and proceed with the appointment of an IIC, that it would also submit the objection to the Minister.

[67] Further, if the notification of appointment is communicated to the Minister together with an objection to the said appointment, there are two possible conclusions to be drawn about the approach taken to it by the authority. They are that the objection was not considered at all in making the appointment or it was considered and found to be without merit. In either case the submission of both the notification of an appointment and objections to it may operate unwittingly or otherwise, as a fetter on the Minister's exercise of the discretion to either confirm or revoke an appointment. To avoid that possibility, the person wishing to show good cause why the appointment should be revoked ought to communicate the cause to the Minister. This responsibility is even more apparent where the party objecting suspects or knows that the objection has not been communicated to him by the 1st Defendant.

[68] For the 2nd Defendant Mrs. Rowe-Coke recalled the evidence in the proceedings that no objection to Mr. Bickford's appointment had been brought to the Minister's attention either by the 1st Defendant or the Claimant. Counsel goes further to submit that the Claimant having been made aware that the appointment had been confirmed, it could have brought the objection to the attention of the 2nd Defendant to enable consideration of it in exercise of the discretion to confirm or revoke the appointment. I agree with that observation.

[69] The Claimant's own evidence is that it was aware as early as 21st June 2018 that the appointment had been confirmed. It is also Mr. Levy's evidence that the Claimant had come to the view that its objection had not been brought to the attention of the Minister by the 1st Defendant.

[70] Section 5C of the **CAA** does not place a limitation on when good cause can be shown to the Minister to enable the exercise of the discretion to revoke an appointment. Additionally, pursuant to rule 56.3 (3) (e) of the CPR on applications

for leave for judicial review an applicant is required to state the details of any considerations which a respondent has given in response to the matters in question, on any complaint made by or on behalf of an applicant. It was therefore open to Claiamnt to notify the Minister of its objection to the appointment to enable his consideration of it even after Mr. Bickford's appointment had been confirmed. The Claiamnt failed to avail itself of the opportunity to present its objections to the 2nd Defendant.

[71] It is in all these circumstances that I find that there is no merit to the complaint of procedural impropriety in the appointment of Mr. Bickford as the IIC of the 2018 Accident.

COSTS

[72] Pursuant to rule 56.15 (4) of the CPR, the court on an application for administrative orders may make such orders as to costs as appears to it to be just. The general rule however is that no order for costs may be made against an applicant unless the applicant has acted unreasonably in making the application or in the conduct of the application: rule 56.15 (5).

[73] Although I have determined that the relief sought by the Claimant on its judicial review application should be refused on account that the complaints against the Defendants are unmeritorious, I am unable to say that the Claimant has acted unreasonably in making the application in circumstances where the application for leave to pursue judicial review was not contested and was in fact granted with the consent of the Defendants.

[74] A matter of concern for the court however is the conduct of the Claimant on the application. While leave was only granted to pursue the judicial review remedy of an order of certiorari in respect of the decisions of the 1st and 2nd Defendants in appointing Mr. Bickford as the IIC of the 2018 Accident, the Claimant

inappropriately sought other relief at paragraphs 3 to 6 of its Fixed Date Claim Form.

[75] It is the court's view that despite the phraseology used by the Claimant, it was effectively attempting to pursue judicial review remedies that it had not sought or received the permission of the court to pursue.

[76] Although couched as declaratory relief, the order sought at paragraph 3 of the Fixed Date Claim Form has the effect of prohibiting the exercise of the discretion given to the Defendants under section 5C of the **CAA** and compelling them to exercise the discretion by appointing a person other than Mr. Bickford as IIC of aviation occurrences involving the Claimant. These are in the nature of orders or writs of prohibition and mandamus, which leave of the court would be required to pursue.

[77] The order numbered 4 is also presented as a request for declaratory relief, but it requires reports and other products of the investigation conducted by Mr. Bickford, which touch and concern the Claimant, to be "retracted" or "cancelled". The appointment of an IIC is done pursuant to statute so that reports, recommendations, actions and directives issued in consequence of such an appointment concern the performance of a public duty. The appropriate remedy for cancelling or nullifying alleged unlawful acts of a public authority is an order or writ of certiorari to quash the acts. The leave of the court would have been required to pursue such a relief, but it was never sought or granted. The same is to be said of the relief the subject of order 5 of the Fixed Date Claim Form.

[78] By that order the Claimant asks that the injunction granted by Laing, J on 22nd March 2019 be made final. The order restrains the Defendants

> *… whether acting in concert or individually, by themselves, their servants and/or agents and/or employees or any person so connected to them from taking any steps whatsoever from writing, publishing or otherwise disclosing to any person or entity, the contents of final Aircraft Accident Investigation Report (Final report# JA-2018- 01) (sic) or any other report or findings of investigation regarding the aviation*

> *occurrence on May 3, 2018 involving a Cessna U206F Aircraft, bearing Registration Markings N8281Q belonging to the [Claimant] which crashed in Samuels Prospect, Trelawny except to the Applicant herein, until the hearing of the claim or further order of the Court is granted.*

[79] Though framed as a request for extension of injunctive relief, the effect of the order is that which would result from the grant of an order of prohibition in judicial review proceedings, being geared as it is towards preventing statutory functionaries from taking steps in respect of the contents of the 2018 Report on the allegation that these functionaries have acted unlawfully.

[80] While concerning for the court, the Defendants do not appear to have been affected by the Claimant's effort. The matter has been before the court on numerous occasions and there is no evidence that the inclusion of these additional relief was ever questioned by Defendants. In fact, the submissions filed by them do not suggest that they were detained by them. Further, on enquiry of Mr. Morgan at the commencement of the hearing as to whether the Claimant would be permitted to pursue them, having regard to the observation made by the court in **Rutair No. 1 -** that no leave had then been sought or obtained to pursue them - the Claimant was limited to making arguments in respect of the order for certiorari for which it had obtained leave for judicial review.

[81] In these premises, save for costs orders already made at specific stages of the proceedings in favour of one or other of the parties to the claim, I find that each party should be made to bear their own costs.

ORDER

[82] In all the foregoing premises it is ordered as follows:

1. The application for judicial review is refused.

2. Save for costs orders already made at specific stages of the proceedings in favour of one or other of the parties to the claim, each party is to bear their own costs.

3. The Claimant's Attorneys-at-Law are to prepare, file and serve this order.

……..
Carole Barnaby
Puisne Judge