[2024] JMSC Civ 85

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU 2022 CV 00957

BETWEEN	**SPECTRUM INSURANCE BROKERS LIMITED**	**CLAIMANT**
AND	**THE INDUSTRIAL DISPUTES TRIBUNAL**	**DEFENDANT**
AND	**MR. LAUREL SMITH**	**INTERESTED PARTY**

IN OPEN COURT

Messrs. Gregory Reid and William Reid, instructed by Reid Legal Solutions for the Claimant

Ms. Taniesha Rowe- Coke and Ms. Nicola Richards, instructed by the Director of State Proceedings for the Defendant

Mr. Lenroy Stewart, instructed by Wilkinson Law for the Interested Party

HEARD: December 11, 2023 and July 19, 2024

Judicial Review – Redundancy – Whether the Industrial Disputes Tribunal has jurisdiction over an industrial dispute concerning termination by way of redundancy when referral by the Minister of Labour uncontested

Labour Relations and Industrial Disputes Act, Employment (Termination And Redundancy Payments) Act

Civil Procedure Rules, 56.2(1), 56.2(2)(a)

WINT-BLAIR, J

[1] This matter concerns the judicial review of a decision by the IDT that it has jurisdiction to hear redundancy matters. The claimant, by way of Fixed Date Claim Form,[1] had challenged that decision and seeks the following orders from this court:

1. *"An order of certiorari quashing the decision of the Respondent made on or about the 26th of January 2022 to hear the dispute between Laurel Smith and the Applicant with respect to the decision of the Applicant to terminate his employment by means of redundancy.*
2. *A declaration that the Respondent does not have the jurisdiction to hear matters involving redundancy.*
3. a. *An order prohibiting the Respondent from hearing the matter.*

Or in the alternative:

b. *An order that proceedings be stood down until the resolution of the appeal against the Chartermagnates Limited v the Industrial Disputes Tribunal and Norma Roberts case.*

c. *Costs*

d. *Any such further order, relief and/or directions as this Honourable Court deems fit in the circumstances of this case."*

[2] The claimant applies under rules 56.2(1) and 56.2(2)(a) of the Civil Procedure Rules("CPR") that it has a sufficient interest in the subject matter of the application and as a consequence may apply for judicial review. The claimant has been directly and adversely affected by the decision which is the subject of this application.

[3] The claimant argues that the decision of the defendant is ultra vires and irrational as recent decisions of this court in the cases of **Chartermagnates Limited v the**

[1] Filed on April 20, 2022

Industrial Disputes Tribunal and Norma Roberts[2] as well as **Cable and Wireless v Industrial Disputes Tribunal and Cable and Wireless v Industrial Disputes and Winston Sewell**[3] have decided that the Industrial Disputes Tribunal ("IDT") does not have the jurisdiction to hear matters involving termination by way of redundancy. The claimant has no alternative means of redress and a realistic prospect of success. The application has been made within the prescribed time and the defendant will suffer no prejudice or hardship by the grant of this application.

Background

[4] The claimant is an insurance broker providing insurance and risk management services to a variety of sectors. In the months of July to August 2019, it engaged in a restructuring exercise. Mr Laurel Smith, an employee and the interested party in this claim, was advised that the position of claims manager, which he occupied, would be made redundant effective September 6, 2019.

[5] On or about the 5th of November 2020, the parties attended a conciliation meeting at the Ministry of Labour at which the claimant's attorneys cited and relied on the lack of jurisdiction of the IDT as indicated in the cases of **Cable and Wireless** and **Chartermagnates.**

[6] By letter dated October 29, 2021, the Minister referred the matter to the IDT which convened a hearing for January 26, 2022. The parties attended that hearing at which the claimant's attorneys again took the jurisdictional point.

[7] The IDT ruled that they had jurisdiction to hear the matter as the Minister would have been well aware of the arguments made at conciliation as well as the correspondence between the parties and in addition, having referred the matter to the tribunal, he must have decided that he had the power to do so.

[8] The IDT indicated that the Ministry of Labour was appealing the aforementioned cases on the basis of a conflict with the cases of **Advanced Farm Technologies**

[2] [2020] JMSC Civ 26
[3] [2020] JMSC Civ. 26

Jamaica Limited v the Minister of Labour and Social Security[6] and Yellow Media (Jamaica)Limited v the Industrial Disputes Tribunal and Ladianne Wade.[7]

[9] On March 18, 2022, the claimant filed an application for leave to apply for judicial review. On March 21, 2022, the parties attended the hearing at the IDT and the claimant's attorneys requested that the matter be stood down pending the outcome of the application for leave. The IDT ruled that the matter would be stood down as requested. On April 6, 2022, an order was made by Palmer, J granting the application for leave.

Evidence

The Affidavit of Laurel Smith

[10] On the 15th day of July 2019, Mr Smith was called to a meeting with the claimant's managing director and human resources manager. He was informed by the managing director that there would be a restructuring at Spectrum. He was told that they would be employing an operations manager with responsibility for personal lines, commercial lines, and claims. All these areas were areas with managers. He was told that they would change his position to a claims resolution specialist. He asked that whatever was being contemplated be sent to him formally in writing so that he could properly consider it.

[11] Mr Smith deposed that he received no formal correspondence. He only received notes from the meeting held on the 15th day of July, 2019 which did not detail what was his employer's contemplation. He emailed the human resources department about the failure to provide him with exactly what was being considered in the restructuring exercise.

[12] On August 29, 2019, Mr Smith received a letter from the claimant informing him that his position as claims manager would be made redundant effective the 6th day

[6] [2019] JMSC Civ 192
[7] [2020] JMSC Civ 6

of September, 2019. He later learnt that none of the other three managers whose positions were supposed to have been subsumed under operations were made redundant and that he was the only employee made redundant. He learnt that a new individual who occupied his former office and discharged his former duties, with only a change in job title, had been employed by the claimant.

[13] He sought legal advice and wanted his case to be heard by the IDT as the claimant had not withdrawn the redundancy letter or otherwise amicably resolved the matter. Mr Smith maintained that he was unfairly dismissed from the onset of the matter.

[14] Mr Smith wrote seeking the intervention of the Ministry of Labour and Social Security ("MLSS") referring to his employment as being unfairly terminated. After an exchange of correspondence, the MLSS requested that his lawyers outline the specific areas of the Labour Relations Code purportedly breached by the claimant. By letter dated the 15th day of June, 2020, Mr Smith's attorneys extensively responded setting out the grounds of unfair dismissal and citing the breaches of the Labour Code as requested.

[15] On the 5th day of November, 2020, a conciliation meeting was held, at the office of the MLSS which failed. During the conciliation meeting, the ministry's conciliation Director expressed doubts as to whether the matter could be referred to the IDT on the basis of recent Supreme Court decisions which she said removed "redundancy matters" from the jurisdiction of the IDT. It was outlined that this matter was not a "redundancy matter" as the challenge was not to the redundancy payment nor was there a claim for a redundancy payment, the challenge was to the dismissal as unfair.

[16] Shortly after the conciliation meeting, the MLSS wrote to Mr Smith's attorneys stating that on the basis of recent Supreme Court decisions he should seek other "available avenues of redress". In response, Mr Smith's attorneys set out the inapplicability of those decisions and also wrote to the then Minister of Labour and Social Security directly.

[17] After much correspondence flowing back and forth, on the 29th day of October, 2021, a representative of the ministry wrote to Mr Smith's attorneys indicating that his matter was being referred to the IDT. The tribunal fixed hearings in the matter for the 26th day of January, 2021 and the 21st day of March, 2021.

[18] At both hearings, the claimant's attorneys objected to the IDT hearing the matter for want of jurisdiction. At the hearing on the 26th day of January, 2021, the panel hearing the matter ("the panel") decided that they had no competence to rule on the question of their jurisdiction and as the Minister had already considered that same objection, they would not refer the matter back to him but would continue with the hearing on a date convenient to both parties.

[19] On the 21st day of March, 2021, the hearing, continued, the claimant's lawyers informed the panel that they had filed an application for leave to apply for judicial review and requested that the hearing be adjourned pending the outcome of their application in the Supreme Court. The IDT granted an adjournment.

Submissions

Claimant

[20] Mr Reid, relied on the cases of **Chartermagnates** and **Cable and Wireless** to submit that the issue before the court is whether the IDT has jurisdiction in respect of redundancy disputes. In **Chartermagnates**, Anderson J referred to "redundancy disputes" which would cover all disputes regarding redundancy matters, to include disputes as to whether the redundancy is genuine, as well as disputes regarding redundancy payments. Anderson J did not create an exemption for the IDT to examine whether a redundancy was an unfair dismissal or not.

[21] The principle of stare decisis as laid down by the Privy Council in **Chandler v State of Trinidad and Tobago**[9] applies in this trial and more so to an inferior tribunal such as the IDT which would be is bound by the decisions of Anderson J.

[22] In the instant case, the IDT implicitly concluded that it had jurisdiction to hear a

[9] [2022] UKPC 19

redundancy matter based on the fact of the Minister's referral as that was given as the reason the panel decided to hear the matter and accepted jurisdiction. Counsel relied on the case of **Council of Civil Service Unions (CCSU) v Minister of State for the Civil Service**[10] to submit that this is irrational in the Wednesbury sense. This assumption that the Minister's referral can grant the IDT jurisdiction over a matter was declared incorrect and unlawful in the **Cable and Wireless** judgment.

[23] The claimant contends that the defendant and interested party argue that the cases relied on by the claimant deal specifically with redundancy calculations, not the broader issue of redundancy itself. If that argument were valid, then it would mean that both the courts and the tribunal would have jurisdiction over redundancy matters which contradicts Justice Anderson's stance in the judgments. In **Chartermagnates** the opening paragraphs clarify what is meant by a redundancy dispute, and both cases affirm that there is no concurrent jurisdiction. The effect of such an approach would be manifestly irrational and prejudicial to all parties involved.

[24] The Minister's discretion to refer a dispute related to whether he chose to refer a particular dispute or not. He is incapable of rendering a judicial determination about the dispute or the merits of any particular case before him. In the present case it is being submitted by the other parties that the Minister can determine that the matter is an unfair dismissal notwithstanding that the claimant's position is that it is a case of redundancy.

[25] It is submitted that a purported redundancy can only be examined as a wrongful dismissal by the Supreme Court and as an unjustifiable dismissal by the IDT if the Supreme Court has previously determined that the redundancy was not genuine. If the Minister refers a redundancy matter to the IDT in the absence of a judicial determination by the Supreme Court, the Minister is (a) making a judicial determination which he has neither the competence nor the jurisdiction to make under the law and (b) is in effect usurping the authority of the Supreme Court in so doing. If the Minister is allowed to refer redundancy matters to the tribunal in the

[10] [1985] AC 374

absence of jurisdiction, then this constitutes a clear case of irrationality.

[26] In both circumstances the defence would be that the redundancy was a genuine redundancy and this would have to be evidenced by documents and testimony. However, if the Minister is in effect, determining at the outset that a purported redundancy is really an unjustifiable dismissal, and if the tribunal maintains that it is obliged to defer to the judgment of the Minister, then there is no defence left to the defendant. Both the Minister and the IDT would have prejudged the matter as not being a genuine redundancy and the defendant would be highly prejudiced and unable to present a defence.

[27] Historically, the ministry abstained from intervening if a dispute was before the court, and the court refrained from taking over matters already referred to the tribunal. These positions prevented conflict between the two bodies. However, if the defendant and interested party maintain that there is to be a separation between 'redundancy' and 'redundancy payments' then the lines are now blurred.

[28] Counsel submits that a finding be made that the IDT lacks jurisdiction and cannot continue to hear this matter. The claimant opposes the application as to costs made by the interested party and submits that if any order as to costs be made it ought to be to made in favour of the claimant.

Defendant

[29] What is being sought is a quashing of the decision of the IDT in regard to its ruling that it had jurisdiction to hear the matter referred to it and a declaration that the IDT does not have jurisdiction to hear redundancy disputes.

[30] The narrow issue is set out in the affidavit of Mr Laurel Smith, who sought not to challenge the redundancy matter but whether he was unfairly dismissed. He does not dispute the matter of a redundancy payment, he asserts that the manner of his dismissal was unfair.

[31] Mrs Rowe-Coke submits that the claimant's counsel relied on the notes from the

first hearing with the IDT[11] to submit that a number of cases were cited before the IDT, i.e., **Chartermagnates, Cable and Wireless, Yellow Media** and **Advanced Farm Technologies** and the IDT found that all these cases had been decided by courts of concurrent jurisdiction.

[32] There is a clear distinction between the **Chartermagnates** and **Cable and Wireless** on one hand, and **Yellow Media** and **Advanced Farm Technologies** on the other. The latter were concerned with issues regarding redundancy payments. It is clear that the IDT made its decision on the basis that the cases of **Yellow Media** and **Advanced Farm Technologies** were far different from the matter of Laurel Smith and decided that it had the jurisdiction. It is settled law that courts of concurrent jurisdiction do not bind each other and while the judgments relied on by the claimant may be persuasive, it is for the court to have regard to the issues in this claim as a judge might make a ruling quite different from a ruling in another court.

[33] Counsel relied on the cases of **Kingston Wharves Ltd v Industrial Disputes Tribunal**[14] and **Branch Development Limited T/A Iberostar Rose Hall Beach and Spa Resort Limited v The Industrial Disputes Tribunal & Marlon McLeod**[15] to submit that the judicial review court exercises a supervisory role and that the way to challenge a decision of the IDT is by way of certiorari.

[34] Further, the cases of **Branch Development Limited, Advanced Farm Technologies** and **Village Resorts Ltd v Industrial Disputes Tribunal**[16] were cited to submit that the IDT is a creature of statute established by section 7 of the LRIDA and conferred with power to hear industrial disputes referred to it for settlement. The IDT has wide powers to hear industrial disputes and that certainly includes matters of redundancy. There is nothing in the framework of the LRIDA, the Regulations or the Labour Code that prohibits the IDT from hearing redundancy matters as the definition of industrial disputes embraces termination by way of

[11] Notes from the 1st sitting of the Industrial Disputes Tribunal on January 26, 2022- Tab F of Claimant's Bundle
[14] 2020 JMCA CIV 66
[15] [2021] JMCA Civ 44
[16] [1998] 35 JLR 292

redundancy. The word termination is to be given a literal meaning. The word "unjustifiable" in the context of the LRIDA means "unfair" as set out in **Village Resorts Ltd**.

[35] Parliament's intention is patently clear as regards the IDT's jurisdiction as to dismissal by way of redundancy as this is neither expressly nor impliedly excluded from the legislation. Therefore, termination by way of redundancy can give rise to an industrial dispute within the meaning of the LRIDA and the IDT has jurisdiction to hear same.

[36] In the cases of **Advanced Farm Technologies, Yellow Media** and **Branch Developments Limited**, the definition of industrial dispute clearly included termination by way of redundancy. It is to be noted that in these cases, the Courts relied heavily on the ordinary meaning/interpretation of the statutory framework and the intention of Parliament as evinced therein.

[37] The authorities that have addressed decisions of the IDT in matters of redundancy show that the IDT had jurisdiction in all those cases. Similarly, in the present case, the ordinary use of the phrase 'termination of employment' at section 2(b)(ii) of the LRIDA embraces redundancy matters and leaves no interpretative difficulties in this regard. Given the mandate of the IDT, and its wide power, it would be a fetter on the mandate of the IDT today to argue that the IDT does not have jurisdiction over redundancy matters because that is clearly not what is borne out in the statutory framework.

[38] In **Chartermagnates** and **Cable and Wireless** which are on appeal, Anderson J reasoned that the definition of industrial disputes in the LRIDA appears to permit the IDT to hear matters of redundancy. He further opined, however, that this conflicts with the Employment (Termination and Redundancy Payments) Act ("ETRPA") which gives sole jurisdiction to the courts for matters of redundancy.

[39] Justice Anderson's alternative view, which is supported by the fact that the LRIDA at section 12(7) does provide that avenue for the IDT to conduct matters of redundancy in accordance with the ETRPA, is to be preferred over his finding that the IDT does not have jurisdiction. This alternative view is buttressed in **Advanced**

Farm Technologies, **Chartermagnates, Cable and Wireless, Yellow Media** and **Advanced Farm Technologies** which were all heard within months of each other. There is no indication that the latter two decisions were brought to the attention of Justice Anderson at the time of the trial in **Chartermagnates** and **Cable and Wireless.**

[40] From all indications in the authorities, there can be concurrent jurisdiction in respect of the IDT, LRIDA and ETRPA. Due to the new regime that has been brought about by the LRIDA to include the Labour Relations Code, the IDT is obliged to look at all the surrounding circumstances of the termination of the worker. In the circumstances of Mr Smith, the IDT had to look at all the circumstances, whether the claimant did all they could, whether proper communication was had with Mr. Smith, whether a contingency plan with respect to the redundancy was put in place to ensure Mr Smith did not face undue hardship and whether any communication was made to the Minister.

[41] Counsel submitted that the proceedings should not be stood down pending the appeals as in the case of **Spectrum Insurance Brokers v IDT and Laurel Smith**[17] it was held that there is no basis for the proceedings to be stood down pending the appeal.

Interested Party

[42] It was submitted by counsel for the interested party that the claimant has not sought leave to challenge the decision of the Minister to refer the dispute to the IDT. Rather, the challenge is to the decision of the IDT to hear the dispute for want of jurisdiction.

[43] The claimant alleges that the decision to hear the dispute was irrational, Wednesbury unreasonable and illegal. The claimant in correspondence to the Minister sought to advance the position that the dispute ought not to be referred to the IDT. The interested party took the opposite view. The Minister accepted the claimant's position at first blush, however, having considered the various

[17] [2023] JMSC Civ 193

contentions, the Minister concluded that the dispute could be referred to the IDT. The interested party argued that it is really this decision made by the Minister which the claimant seeks indirectly to impugn. Having not challenged the decision of the Minister, the narrow issue is all that remains the focus of the court in this matter.

[44] At the hearing, the claimant challenged the jurisdiction of the tribunal to hear the dispute on the basis of the cases of **Cable and Wireless** and **Chartermagnates** which the interested party submitted are inapplicable to the instant case.

[45] The IDT ruled that the claimant sought to have the matter ventilated before the tribunal as conciliation had failed. The Minister heard the objection as to jurisdiction and by the referral, disagreed that he was restricted from making the referral for a hearing regarding dismissal. The IDT ruled that it had no competence to decide jurisdictional issues. The interested party argues that in all the circumstances, the claimant was asking the IDT to refuse to hear a matter duly referred to it by the Minister. In declining to accede to the claimant's request, there was no procedural irregularity in the IDT's approach.

[46] The decision of the IDT to hear the dispute was not based on irrelevant considerations, irrelevant material, a procedural irregularity or any unfair procedure.

[47] The declaration sought that the IDT does not have jurisdiction to hear matters involving redundancy is based on the assertion that the cases of **Chartermagnates** and **Cable and Wireless** have been misread and misunderstood by the claimant. In addition, the decision in **Advanced Farm Technologies** is in conflict with those cases and runs counter to the claimant's contention in this case. Both **Chartermagnates** and **Cable and Wireless** did not consider **Advanced Farm Technologies** or other authorities which state that a dismissal by way of redundancy can be heard by the IDT whose role is to decide whether the dismissal was fair or unfair.

[48] In **Yellow Media** the dispute was referred to the IDT over the terms of the termination of employment on the grounds of redundancy. The learned judge found that the termination was on grounds of redundancy and that she could be

compensated under the ETRPA. The jurisdictional position advanced by the claimant was also rejected in **Guardian Life Limited v The Minister of Labour and Social Security.**[18] It is trite that the Court of Appeal and the Privy Council have already decided that the fairness of a dismissal by way of redundancy can be determined by the IDT.

[49] The interested party's claim before the defendant is not a claim for a redundancy payment or a dispute regarding a redundancy payment. A plain reading of **Chartermagnates** demonstrated that the term "redundancy matters", as used by the court, refers to "redundancy payment disputes" (see paragraph ten (10) of **Chartermagnates**) and would not affect the defendant's jurisdiction over the interested party's dispute which is not a claim for a redundancy payment pursuant to the ETRPA but a claim that he was unfairly dismissed by reason of redundancy. No part of the holding of **Cable and Wireless** and **Chartermagnates** in any way restricts an aggrieved worker from maintaining that he was unfairly or unjustifiably dismissed by way of redundancy, which is what the interested party is arguing.

[50] The pending appeals have no bearing on the instant case. Counsel referred to paragraphs ten, twelve, and thirteen of **Chartermagnates** to argue that although the learned Judge used the terms "redundancy disputes" and "redundancy matters", his judgments also make it clear that when he used the term redundancy matters/disputes he was speaking about redundancy payment disputes/matters.

Discussion

[51] There is one issue to be determined and that is whether the IDT should decline to hear an industrial dispute properly referred to it by the Minister of Labour for want of jurisdiction in a dispute concerning redundancy.

[52] There is no question that the claimant was terminated and no issue that at the time of the referral by the Minister, a dispute existed between the parties relating to this termination. It is unquestionable that Mr Smith was made redundant and that there is no issue regarding a redundancy payment.

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[18] [2021] JMSC Civ. 114

[53] It is the claimant's contention that Mr Smith was made redundant via the prescribed redundancy process. He was paid, and accepted redundancy payments. The claimant has maintained that the dispute concerns a redundancy matter. The claimant takes the position that neither Mr Smith nor the Minister can cause the dispute to be referred to the IDT by framing it as an unfair dismissal if the claimant views it as a redundancy matter. They both have a frame of reference within which they each view the dispute; much as a person inside a bus views things differently than a person outside of a bus looking at it going by. They have different perspectives. To my mind, that is why it is called a dispute. Both sides are in conflict.

[54] The cases of **Village Resorts Ltd** and **University of Technology, Jamaica v Industrial Disputes Tribunal and others,**[19] indicate the wide role and function of the IDT related to the settlement of disputes. The statutory framework which exists is in place to do just that. The settlement of disputes should be by way of negotiation, conciliation or determination by the IDT, rather than by way of trial in the courts.

[55] This can only mean that the claimant's submission that the court retains exclusive jurisdiction over redundancy disputes is to misinterpret section 17 of the ETRPA. The section does not confer jurisdiction on the Parish court to the exclusion of the IDT. It literally means that there is a monetary limit on claims brought in the Parish court. The section is to be viewed as permissive. The issue of concurrent jurisdiction does not arise in this case and need not be determined.

[56] The fact that the claim at bar does not challenge the referral made by the Minister means that the submission that the Minister made a judicial determination about the dispute or the merits of this particular case cannot be placed before this court.

[57] The **Chartermagnates** and **Cable and Wireless** cases similarly do not affect the dispute referred to the IDT in the present case. I accept the submissions of the defendant and interested party on whether the cases of **Chartermagnates** and

[19] [2017] UKPC 22

Cable and Wireless are relevant to the present case. Any award of the IDT is only impeachable on a point of law. There is no award before this court.

Judicial Review and the role of this Court

[58] The merits of the decision made by the IDT are not before this court; it is the decision-making process that is. In the case of **University of Technology**, the Privy Council said:

> *"29. Section 12(4)(c) of LRIDA provides that an award of the IDT "shall be final and conclusive and no proceedings shall be brought in any court to impeach the validity thereof, except on a point of law". However, the statute does not provide, as is sometimes the case, for a statutory right of appeal on a point of law. Instead, as was pointed out by Carey JA, in The Jamaica Public Service Co v Bancroft Smikle (1985) 22 JLR 244, the procedure for challenge has been by way of certiorari."*

[59] The court is not engaged in a re-hearing. Rather, in the exercise of its supervisory jurisdiction, it is to review the decision on the basis of illegality, procedural unfairness and irrationality or Wednesbury unreasonableness. There was a clear opportunity to be heard on the objection raised, and an adjournment was granted to allow the claimant to take the steps it thought prudent. The IDT is a body endowed with the powers set out by the Board as was affirmed in the decision of Brooks, JA below:

> *"27. …The Court of Appeal was also correct to hold that "the IDT was not restricted to examining the evidence that was before UTech's disciplinary tribunal. The IDT was carrying out its own enquiry. It was not an appellate body, it was not a review body, but had its own original jurisdiction where it was a finder of fact" (para 34). Furthermore, the Court of Appeal was correct to hold that "the IDT is entitled to take a fully objective view of the entire circumstances of the case before it, rather than concentrate on the reasons*

given by the employer. It is to consider matters that existed at the time of dismissal, even if those matters were not considered by, or even known to, the employer at that time" (para 40)."

[60] I acknowledge that an error of law on the face of the record or want of jurisdiction would trigger intervention by this court and in so doing adopt the words of Edwards, J (as she then was) in the case of **Alcoa Minerals Of Jamaica Applicant v The Industrial Dispute Tribunal and Union Of Technical Administrative and Supervisory Personnel**:[21]

"[15] It is also important to consider the role of the court in conducting the review. The procedure is by way of certiorari and is not an appeal. The grounds for judicial review have been broadly based upon illegality, irrationality or impropriety of the procedure and the decision of the inferior tribunal. These grounds were explained in the case of ***Council of Civil Service Unions v Minister for the Civil Service*** *[1984] 3 All ER 935, where Roskill LJ said:*

> *"...executive action will be the subject of judicial review on three separate grounds. The first is where the authority concerned has been guilty of an error of law in its action, as for example purporting to exercise a power which in law it does not possess. The second is where it exercises a power in so unreasonable a manner that the exercise becomes open to review on what are called, in lawyers' shorthand, Wednesbury principles (see Associated Provincial Picture Houses Ltd v Wednesbury Corp [1947] 2 All ER 680, [1948] 1 KB 223). The third is where it has acted contrary to what are often called 'principles of natural justice'."*

[16] Therefore, in reviewing the approach of the tribunal, the court adopts a supervisory role and is only concerned with the manner in which the decision of the IDT had been made. In exercise of this function, the

[21] [2014] JMSC Civ. 59

court does not rehear or reconsider the disputed evidence led by the respective parties at the IDT's hearings to determine which aspects of that evidence it accepts and which it does not. The role of the court is to examine the transcript of proceedings to ensure that no error of law was made. It must accept the findings of fact made by the IDT, unless there was some illegality, irrationality and procedural impropriety in making such findings of fact. In that regard, even if this court may very well have come to a different conclusion if faced with the same evidence and legal issues as the IDT, it is not for a court of judicial review to substitute its judgment for that of the IDT and quash the Tribunal's decision or make any award, unless there was an error in law. (See the judgment of Carey JA, in Hotel Four Seasons Ltd v The National Workers' Union [1985] 22 JLR 201).

[17] At this point, it is vital to note that the court is not here entitled to retry the case and it is not for the court to say how it would have decided the case at trial. What the court can properly do is to examine the IDT's findings with a view to satisfying itself as to whether there has been any breach of natural justice; or whether the IDT has acted in excess of its jurisdiction, and whether the IDT was justified in its findings. The error of law which invokes the review proceedings is not only an error on the face of the record or want of jurisdiction but can result from several other situations where, quoting from Lord Reid in the seminal case of ***Anisminic Ltd v The Foreign Compensation Commission and Another*** *[1969] 1 All ER 208:*

> *"...although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith*

> *have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had had no right to take into account. I do not intend the list to be exhaustive."*
>
> *[18] The court's supervisory role is therefore limited to reviewing whether there was an error of law either on the face of the record or in the conduct of the IDT in exercising its jurisdiction or powers. (See Carey JA in J.P.S. Co. Ltd. v Bankcroft Smikle (1985), 22 JLR 244 at p. 249).*

[61] The decision of the IDT under review is therefore further narrowed beyond the question of want of jurisdiction, as the IDT said it did not have the competence to decide whether it had jurisdiction or not. This means that the IDT made no decision to accept jurisdiction on the basis of the referral. It also did not commence to hear the dispute referred to it on the merits. What was decided was a preliminary point based on the objection raised by the claimant's counsel. The IDT decided it would continue with the hearing and set a date for that purpose. What is before this court is that ruling.

[62] It would seem to me that this question of jurisdiction was settled in the **Alcoa** case as termination by way of redundancy can be both lawful and unfair at the same time:

> *"[32] The meaning of the word "unjustifiable" in LRIDA was long settled to mean "unfair" rather than "wrongful", "illegal" or "unlawful". So a dismissal could be perfectly legal as in the case of a redundancy where all the employees were properly paid their monetary compensation but may still be unjustifiable in the sense of unfair by virtue of the manner in which it was carried out. Or an employee may be dismissed according to the contractual*

terms but the manner of the dismissal was such as to be objectively viewed as unjustified or unfair in all the circumstances. Unjustifiable means therefore that it is somehow unjust and not that it is wrongful or unlawful or illegal."

[63] This would mean that the dispute referred to the IDT as framed by each side falls within the remit of that body and is capable of being heard by it. The two positions can simultaneously hold in order to allow the IDT to engage in what it has been set up to do, which is to settle the dispute before it currently.

[64] The well-known Privy Council and Court of Appeal decisions in the **Jamaica Flour Mills v The Industrial Disputes Tribunal and the National Workers Union**[22] case also point to the capacity of the IDT to hear decisions concerning redundancy matters. Though in that case, the IDT did not definitively decide the genuineness or otherwise of the employers' claim of termination on the ground of redundancy. The statement made in the ruling of the IDT was held by the Court of Appeal to have amounted to an acceptance that a case of redundancy existed. The IDT was found not to have decided the point as there was no evidence before it to refute the bona fides of the employers claim that the positions of the three employees was being made redundant.

[65] At all levels of the Court it was accepted that the IDT was clothed with the requisite jurisdiction to hear the issue which is presently before the IDT. In the decision of the Court of Appeal[23], Forte, JA said at page 7 that:

"It is obvious that the Tribunal approached the question of the dismissal on the assumption that the declaration of redundancy was fair. In other words, assuming that the redundancy was fair, was the dismissal or the manner of dismissal nevertheless justifiable. In my view there was nothing irregular or incorrect with this approach. Had the Tribunal in those circumstances considered that the dismissal was not unjustifiable, then it would of necessity have had to resolve definitively the question of the fairness of the

[22] [2005] UKPC 16 and Appeal No.7/2002 respectively
[23] SCCA No. 7/2002; delivered June 11, 2003

redundancy decision. On the other hand, even if it had concluded firstly that the redundancy decision was fair, it would nevertheless have had to consider the circumstances of the dismissal and determine whether the manner of the dismissal was justified."

[66] In light of the finding by this court that the cases of **Chartermagnates** and **Cable and Wireless** are inapplicable to the present case, there is no basis for granting the orders sought. In my view, there is nothing on the face of the record or in the approach of the IDT that demonstrates reviewable error. Consequently, the orders sought are refused.

[67] **Orders**:

1. Orders sought in the Fixed Date Claim Form filed on April 20, 2022, are refused.
2. Judgment for the defendants.
3. No order as to costs.

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Wint-Blair, J