[2020] JMSC Civ 6

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISON

CLAIM NO. 2018HCV02519

BETWEEN	**YELLOW MEDIA (JAMAICA) LIMITED**	**APPLICANT**
AND	**THE INDUSTRIAL DISPUTES TRIBUNAL**	**DEFENDANT**
AND	**LADIANNE WADE**	**INTERESTED PARTY**

IN OPEN COURT

Mr Gavin Goffe instructed by Myers, Fletcher & Gordon for the Claim ant

Messrs Andre Moulton and Carson Hamilton, instructed by the Director of State Proceedings for the Defendant

Mrs. Angela Cousins-Robinson for the Interested Party

Application for Certiorari- Labour Relations and Industrial Disputes Act Sections 12(4)(C), 12(15)(c), 12(10) & 20- Scope and Function of The Industrial Disputes Tribunal- Function of the Court in reviewing awards of The Industrial Disputes Tribunal. - Whether The Industrial Disputes Tribunal acted Outside of the scope of its jurisdiction

Heard: October 24, 2019 & January 17, 2020

WOLFE-REECE, J

Introduction

[1] The Claimant brought a claim by way of a Fixed Date Claim Form filed on July 24, 2018 seeking an Order of certiorari in respect of the award of the Industrial Disputes Tribunal (IDT) in Dispute No. IDT 13/2017 published on April 10, 2018

for it to be remitted to the IDT for reconsideration in accordance with the findings of the Court.

Background

[2] Yellow Media (Jamaica) Limited (formerly called Global Directories (Jamaica) Limited and hereinafter referred to as the Claimant is a company duly registered under the laws of Jamaica with its registered office at 48 Constant Spring Road, Kingston 10. The Claimant operates a telephone directory and advertising company and is part of a multinational group of companies operating in several regions in the Caribbean and Central America.

[3] Mrs Ladianne Wade was employed to the Claimant Company as a Sales representative sometime in 2005 and was later promoted to Director of Sales and Customer Experience. As Director of Sales and Customer Experience, her functions involved the oversight of the sale of advertising spaces in the telephone directories in the Countries of Aruba, Bonaire, Belize, the Cayman Islands, Jamaica and the Turks & Caicos Islands.

[4] The incipient conflict between the parties that gave rise to the matter being referred to the Tribunal arose on or about the 8th July, 2016 when the Company terminated the employment of Mrs. Wade on the ground of redundancy. Both parties were at variance regarding the legality of Mrs. Wade's dismissal. The Claimant contends that Mrs. Wade's dismissal was fair and resulted from a restructuring exercise. On the other hand, Mrs. Wade contended that the redundancy was not genuine and was only a sham to "get rid of" her.

[5] As a result, Mrs. Wade caused a complaint to be made at the Ministry of Labour and by letter dated 17th March, 2017, the Honourable Minister of Labour and Social Security in accordance with Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act referred the matter to the Industrial Disputes Tribunal (hereinafter referred to as the 'Tribunal') for settlement.

[6] At the request of the Claimant, the Honourable Minister amended the Terms of Reference by letter dated 2nd June, 2017 to read as follows:

> ***"****To determine and settle the dispute between Global Directories (Jamaica) Limited on the one hand, and Mrs. Ladianne Wade on the other hand, over the termination of her employment on the grounds of redundancy."*

Case of the parties at the Industrial Disputes Tribunal

Applicant's case

[7] The Applicant contends that the duties carried out by Mrs. Wade were identical to the duties carried out by the Commercial Director, Mr. Colin Francis. Mrs. Wade was invited to a meeting in April, 2016 with one Mr. Ian Neita, the then Chief Executive Officer of the Claimant Company when she was advised that the company would be carrying out a restructuring exercise and that it would no longer be sustainable for the company to have two persons in the position of Director of Sales.

[8] The Applicant further argued that Mrs. Wade was given two options at the April, 2016 meeting. One option was to accept a transfer to a new business owned by the same company where "she would be no worse off financially." On the other hand, she was given the option that she would end her employment with the company by reason of redundancy and receive an augmented redundancy payment of $10,000,000.00.

[9] The Applicant's case at the tribunal was that Mrs. Wade refused both options and instead requested that she be paid a year's salary, which she said amounted to $37,000,000.00. The Applicant contended at the Tribunal that this sum was almost two times Mrs. Wade contractual salary and that as a result an investigation and disciplinary hearing was conducted against Mrs. Wade.

Interested Party's case

[10] Mrs. Wade proffered a different set of facts before the Tribunal when she argued that her duties were not identical to that of Mr. Colin Francis. She further contends that Mr. Francis was slated to report to her; however, Mrs. Wade alleged that Mr. Francis refused to do so.

[11] Mrs. Wade further submitted that at the aforementioned April, 2016 meeting she was asked to resign as her job was being given to Mr. Colin Francis. She contends that she was given no other opinion but instead was presented with a drafted resignation letter for her to sign and an offer to be compensated if she were to resign. She noted that it was only after she made enquiries as to whether there was any other way she could serve the organization that she was told of a possible transfer to another business owned by the said company at a lower pay with no lump sum pay out.

[12] The parties agree that Mrs. Wade rejected the remuneration that was originally offered by Mr. Neita and that upon her request for a higher salary an investigation was launched regarding her salary on the ground that she was being overpaid. It was also an undisputed fact that the disciplinary proceedings terminated in Mrs Wade's favour as the Company acceded to the fact that there was no evidence of dishonesty on the part of Mrs Wade.

Findings of the Tribunal

[13] The Tribunal found, inter alia, "that there was a genuine case of redundancy carried out by Global Directories (Jamaica) Limited and that proper consultation took place in accordance with the Labour Relations Code." The Tribunal accordingly made an award dated the 10th April, 2018 as follows:

> *"The Tribunal finds that the termination of the employment of Mrs. Ladianne Wade was on the grounds of redundancy, and as such, she should be compensated as per the provision of the Employment (Termination and Redundancy Payment) Act."*

THE CLAIM FOR JUDICIAL REVIEW

[14] ISSUES:

(i) Whether the Tribunal acted outside the scope of its jurisdiction when it stated in its award that Mrs Wade *"should be compensated as per the provision of the Employment (Termination and Redundancy Payment) Act."*

(ii) Whether the Court has jurisdiction to grant an order of certiorari in circumstances where it is wording/interpretation of the award that is in dispute.

(iii) Whether the granting of an order of certiorari would serve any useful purpose.

[15] The Applicant is dissatisfied with the award of the Tribunal and is seeking an order of certiorari to quash same. The Claimant is alleging that the award of the tribunal is ultra vires as the Tribunal acted outside of the jurisdiction conferred upon it by virtue of the Labour Relations and Industrial Disputes Act 1975 (hereinafter referred to as the LRIDA) when it heard or determined matters on redundancy payment in circumstances where the term of reference only required it to settle a dispute in relation to unjustifiable dismissal.

[16] The Fixed Date Claim form outlined 9 grounds on which the Claimant is seeking the order of certiorari. However, Mr. Goffe indicated that he would only pursue grounds 2, 3, 4, 5, & 6. They are highlighted as follows:

I. The IDT (the Tribunal) has no jurisdiction under the Employment (Termination and Redundancy Payments) Act (hereinafter called the ETRPA) to hear and determine a claim in respect of a redundancy payment.

II. The IDT's (the Tribunal's) award is ultra vires as it has no power under the Labour Relations and Industrial Disputes Act ("LRIDA") to make

an award that an aggrieved worker "be compensated as per the provision of the Employment (Termination and Redundancy Payments) Act

III. **The IDT's (the Tribunal's) power to grant compensation to a worker is limited to section 12(5)(c)(i)-(iii) of the LRIDA to cases where the Tribunal finds that the aggrieved worker was unjustifiably dismissed and there was no such finding in this case, the Award is illegal.**

IV. **The IDT (the Tribunal) took into account irrelevant material when it considered whether the aggrieved worker, Mrs. Ladianne Wade, ought to be compensated by way of a redundancy payment. The issue of Mrs Wade's redundancy payment was not relevant in an unjustifiable dismissal case.**

V. **The IDT (the Tribunal) having concluded that a genuine redundancy exercise had taken place and that Mrs. Wade was consulted in accordance with the Labour Relations Code, only had the jurisdiction to make an award that Mrs. Wade was justifiably dismissed by reason of redundancy.**

VI. **Even if the IDT (the Tribunal) has the jurisdiction to make such an Award, it failed to consider that Mrs. Wade did not make a claim or demand for her redundancy payment within the prescribed limitation period of 6 months under section 10 of the ETRPA.**

VII. Mrs. Wade through her attorneys, has for the first time, made a demand for a redundancy payment (incorrectly) calculated to be $12, 403,290.19 by way of letter dated April 19, 2018, on the basis of the IDT's (the Tribunal's) ultra vires award, almost 2 years after her termination by reason of redundancy.

VIII. The court has the power to remit the dispute to the IDT (the Tribunal) and direct that it reconsider it in accordance with the findings of the court under Rule 56.16(2)(b of the Civil Procedure Rules (2002)

IX. There are no alternative remedies available to the Applicant and this Fixed Date Claim Form is not out of time.

Defendant's response to ground 2, 3, 5 & 6

[17] Counsel Mr. Moulton addressed grounds 2, 3, 5 & 6 together and in so doing he noted that the crux of the Claimant's case is that by virtue of the fact that the Industrial Disputes Tribunal did not find that Mrs. Wade was unjustifiably dismissed there can be no remedy available to her under the LRIDA. He further submitted that the Claimant misconstrued the IDT's pronouncement that Mrs Wade "should be compensated in accordance with the provision of the Employment (Termination and Redundancy Payments) Act" as a remedy when the words were *"merely a statement of the law and a guide to the parties as to what is to happen next."*

[18] Counsel also noted that the pronouncement could not rightly be construed to be a remedy, because a remedy in the form of legal redress should be definite in nature and the tribunal failed to state the period that the award should cover or even attempt to calculate the amount of the award. Counsel found that on the true construction of the award, the words "*as per the provision of the ETRPA"* must be interpreted that should Mrs Wade fail to comply with the provisions of the ETRPA she would not be entitled to any compensation.

Defendant's response to ground 4

[19] Mr. Moulton highlighted the fact that the Claimant misquoted the Tribunal in this regard as the Tribunal did not use the words "ought to be compensated". He submitted that even so the award of the IDT did not award Mrs. Wade a remedy.

LAW

Judicial Review- Supervisory not Appellate

[20] Judicial review is the process by which this Court exercises its inherent supervisory jurisdiction over inferior courts, tribunals and other bodies or persons performing public law functions to ensure that their decisions do not offend the core principles underpinning administrative law. It is now a well-established principle of law that the core principles pertain to illegality, irrationality or procedural impropriety in the award.

[21] The House of Lords in the case of **Council of Civil Service Unions v Minister for The Civil Service [1984] 3 All ER 935** Lord Diplock opines as follows: *"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety"*

[22] I find the words of Roskill LJ in the case of **Council of Civil Service Unions v Minister for The Civil Service [1984] 3 All ER 935** to be instructive in understanding the principles of illegality, irrationality and procedural impropriety. Roskill LJ noted as follows, "thus far this evolution has established that 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. The third is where it has acted contrary to what are often called 'principles of natural justice'." The words of Roskill LJ was recently cited with approval in the Court of Appeal in the case of **Industrial Disputes Tribunal v University of Technology and University and Allied Workers Union [2012] JMCA Civ.**

[23] Based on the foregoing, it is clear that the starting point to any claim for judicial review is that one of these three grounds of illegality, irrationality and/or procedural impropriety must be satisfied in order to invoke the supervisory jurisdiction of this court.

SCOPE AND FUNCTION OF THE INDUSTRIAL DISPUTES TRIBUNAL (I.D.T.)

[24] In assessing whether the Tribunal acted outside of the scope of its jurisdiction, we must first evaluate the very source from which it derives its powers. The Tribunal is a creature of statue, Part 3 of the LRIDA outlines the establishment and function of the Tribunal. The case of **University of Technology, Jamaica v Industrial Disputes Tribunal and others (Jamaica) [2017] UKPC 22** is instrumental in outlining the scope and function of the Industrial Disputes Tribunal, at paragraph 18 of the said judgment the Privy Council made the following observation:

> *"Three points about this statutory framework are noteworthy. First, the emphasis throughout is on the settlement of disputes, whether by negotiation or conciliation or a decision of the IDT, rather than upon the determination of claims. Second, where the dispute relates to the dismissal of a worker, the IDT has a range of remedies, where "it finds that the dismissal was unjustifiable". Third, its award is "final and conclusive" and no proceedings can be brought to impeach it in a court of law "except on a point of law". This is the sum total of the guidance given by the LRIDA in relation to the dismissal of workers."*

[25] Section 12 of LRIDA empowers the Tribunal to make awards in industrial dispute cases that have been referred to the Tribunal pursuant to section 11 of the LRIDA. Section 12(1) of the Act stipulates that the Tribunal has a duty to make an award within 21 days after a dispute has been referred to it or as soon thereafter as is reasonable practicable. As the Privy Council pointed out in the case of **University of Technology, Jamaica v Industrial Disputes Tribunal and others (Jamaica), supra,** pursuant to section 12(4)(c) of the Act the award of the tribunal *"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."*

[26] Of particular importance to this case is section 12(5)(c) of the LRIDA. This section lists remedies that the Tribunal ought to award in cases where it finds that the dismissal of a worker was unjustified, I find it useful to quote this section for completeness:

"*If the dispute relates to the dismissal of a worker the Tribunal, in making its decision or award-*

(i) may, if it finds that the dismissal was unjustifiable and that the worker wishes to be reinstated, then subject to subparagraph (iv), order the employer to reinstate him, with payment of so much wages, if any, as the Tribunal may determine;

(ii) shall, if it finds that the dismissal was unjustifiable and that the worker does not wish to be reinstated, order the employer to pay the worker such compensation or to grant him such other relief as the Tribunal may determine;

(iii) may in any other case, if it considers the circumstances appropriate, order that unless the worker is reinstated by the employer within such period as the Tribunal may specify the employer shall, at the end of that period, pay the worker such compensation or grant him such other relief as the Tribunal may determine;

(iv) shall, if in the case of a worker employed under a contract for personal service, whether oral or in writing, it finds that a dismissal was unjustifiable, order the employer to pay the worker such compensation or to grant him such other relief as the Tribunal may determine, other than reinstatement….

[27] It is worthy to note that the Act only empowers the tribunal to make a compensatory award in circumstances where the aggrieved worker was found to be unjustifiable dismissed.

[28] There is another unique feature of the Tribunal which is critical in analysing this claim. Section 12 (10) of the LRIDA allows the Minister, any Employer, trade union or any worker who has sufficient interest to an award that was made pursuant to

section 12 (1), to apply to the Chairman to clarify any question or ambiguity relating to an award made by the said Tribunal. Section 12(10) provides as follows:

"If any question arises as to the interpretation of any award of the Tribunal the Minister or any employer, trade union or worker to whom the award relates may apply to the chairman of the Tribunal for a decision on such question, and the division of the Tribunal bv which such award was made shall decide the matter and give its decision in writing to the Minister and to the employer and trade union to whom the award relates, and to the worker (if any) who applied for the decision. Any person who applies for a decision under this subsection and any employer and trade union to whom the award in respect of which the application is made relates shall be entitled to be heard by the Tribunal before its decision is given."

[29] This additional safeguard further reinforces the fact that Parliament clearly intended that an award of the Tribunal ought not to be disturbed lightly. Therefore, where the sole issue to be resolved simply surrounds some form of ambiguity in the wording of an award the procedure to be followed is to apply to the Chairman to answer any question regarding the award.

[30] In assessing the scope and function of Tribunal it is important to acknowledge that the Tribunal is a specialist body designed to settle disputes that invariably arise as a result of the complicacies involved in labour relations. Batts J, expressed similar sentiments in the case of **Director of States Proceedings v The Industrial Dispute Tribunal exp Juci Beef** [2014] JMSC Civ 125 when he cited with approval the words of Parnell J in the case of **R v Industrial Disputes Tribunal, Ex Parte Esso West Indies Ltd** (1977-1979) 16 JLR 73:

> *"**When Parliament set up the Industrial Disputes Tribunal, it indicated that the settlement of disputes should be removed as far as possible from the procedure of the Courts of the land. The judges are not trained in the fine art of trade union activities, in the intricacies of collective bargaining, in the soothing of the moods and aspirations of the industrial workers and in the complex operation of a huge corporation**. As a result, Section 12 (4) (c) states clearly that an award of the Tribunal "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."*

Role of the Supreme Court in supervising the I.D.T.

[31] As I noted earlier, section 12 (4) (c) renders the awards of the Tribunal *"final and conclusive"* and only impeachable on a point of law. The meaning of the term "point of law" was explained in the Privy Council case of **Technology, Jamaica v Industrial Disputes Tribunal and others (Jamaica), supra,** where the board expressed as follows: *"there is, however, no reason to suppose that "a point of law" within the meaning of section 12(4)(c) of LRIDA is any different from a point of law, error as to which will found a claim for certiorari. This of course includes the well-known grounds on which the decision of an inferior tribunal may be impeached, that is, illegality, procedural impropriety or unfairness, and irrationality or Wednesbury unreasonableness (see Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223)"*

[32] The wording of the Act makes it clear that an award of the Tribunal is by no means immune from judicial review. Rather, the clear inference to be drawn is that it was parliament's intention to preserve the Court's inherent jurisdiction to supervise the decision making process of public bodies to ensure that they function within the ambit of the law.

[33] In the case **Branch Developments Limited v Industrial Disputes Tribunal and The University of the West and Allied Workers' Union** [2015] JMCA Civ 48 Morrison JA at paragraph 30 of the judgment addressed the interpretation of section12 (4) (c) of the LRIDA and the function of the court when reviewing awards of the tribunal. He noted as follows with reference to s 12(4)(c) of the Act:

"the section preserves the long-established principle of administrative law that any error of law made by a public body as the ground for its decision makes that decision susceptible to intervention by the courts."

[34] Morrison J.A. went further to fully explore this inherent supervisory jurisdiction of the Court by citing with approval the dicta of Denning LJ (as he then was) in **R v Northumberland Compensation Appeal Tribunal, Ex parte Shaw 31,** where

Denning LJ expressed as follows: *"…the Court of King's Bench has an inherent jurisdiction to control all inferior tribunals, not in an appellate capacity, but in a supervisory capacity. This control extends not only to seeing that the inferior tribunals keep within their jurisdiction, but also to seeing that they observe the law. The control is exercised by means of a power to quash any determination by the tribunal which, on the face of it, offends against the law. The King's Bench does not substitute its own views for those of the tribunal, as a Court of Appeal would do. It leaves it to the tribunal to hear the case again, and in a proper case may command it to do so. When the King's Bench exercises its control over tribunals in this way, it is not usurping a jurisdiction which does not* belong to it. It is only exercising a jurisdiction which it has always had.…"

[35] It is also now a well-established principle, that in Judicial Review proceedings, the court ought not to entangle itself in a re-hearing of the merits of the case, rather, the court should focus its attention on the manner in which the decision was made. Simply put, the court has a supervisory jurisdiction in hearing matters of judicial review of decisions of the Tribunal and that function is never to be construed as an appellate function. The words of Carey JA in **Hotel Four Seasons Ltd v The National Workers' Union** [1985] **22 JLR 201** are often cited as the authority on this point. He noted that "questions of fact are thus for the [IDT] and the Full Court is constrained to accept those findings of fact unless there is no basis for them".

APPLICATION OF THE LAW TO THE FACTS

Grounds 2,3 4 & 5- Whether the Tribunal acted in excess of its jurisdiction when it make an award which stated, inter alia, that "*should be compensated as per the provision of the Employment (Termination and Redundancy Payment) Act."*

[36] In determining whether to grant the orders in grounds 2-5 a recurrent issue appears for consideration, that is, whether the Tribunal acted in excess of its jurisdiction thereby rendering its award illegal. Marsh J in the case of **R v The Industrial Tribunal Ex parte Reynolds Jamaica Mines Ltd (1980) 17 JLR 16**

noted that in the exercise of its supervisory function, the court is tasked with consideration, inter alia, whether the Tribunal acted in excess of its jurisdiction. His Lordship noted as follows: *"our task is to examine the transcript of the proceedings (paying, of course, due regard to the fact that the [IDT] is constituted of laymen) but with a view to satisfying ourselves whether there has been any breach of natural justice or* ***whether the [IDT] has acted in excess of its jurisdiction****, or in any other way, contrary to law."*

[37] The main contention of Mr. Goffe, Counsel for the Claimant is that the Tribunal acted outside the scope of its jurisdiction when it made an award that Mrs Wade "*should be compensated as per the provision of the Employment (Termination and Redundancy Payment) Act."* It is Counsel's submission that section 12(5)(c) empowers the Tribunal to make a remedial award only in circumstances where the aggrieved worker was found to be unjustifiably dismissed and the fact that the Tribunal found that Mrs. Wade's dismissal was justified and that a genuine redundancy exercise took place within the ambit of the Labour Relations Code the award ought not to have made mention to any compensatory relief. It is also the Claimant's position that the Tribunal does not have the jurisdiction to so act whether it be under the LRIDA or the ETRPA.

[38] It is my view that the seminal issue is in determining whether the words "*should be compensated as per the provision of the* ***Employment (Termination and Redundancy Payment) Act"*** was intended by the Tribunal to be a compensatory award; or whether the tribunal's pronouncement was simply a statement of the general legal consequence which naturally flows from a genuine redundancy exercise.

[39] It is my view that the award is not compensatory in nature and was merely a statement of the law. In any event, it would appear as if Counsel for the Claimant would want this Court to embark on an anatomization of the words of the award to ensure compliance with the niceties to be expected of legal drafting with no due regard for the fact that IDT is made up of laymen. I wish to reiterate the point that

was expressed by Marsh J in the case of **R v The Industrial Tribunal Ex parte Reynolds Jamaica Mines Ltd** [1980] **17 JLR 16** where it was said that "our task is to examine the transcript of the proceedings (paying, of course, due regard to the fact that the [IDT] is constituted of laymen) but with a view to satisfying ourselves whether there has been any breach of natural justice or whether the [IDT] has acted in excess of its jurisdiction, or in any other way, contrary to law."

I find that grounds 2-5 ought to be dismissed as there is nothing to suggest that there was any illegally, irrationally or procedural impropriety on the part of the Tribunal. The mere fact that the words of the award may give rise to a contrary interpretation is not sufficient to invoke the jurisdiction of the court to grant an order of certiorari. This is especially in light of the fact that Parliament provided a remedy for such situations by virtue of section 12(10) of the LRIDA which states:

> ***"if any question arises as to the interpretation of any award of the Tribunal the Minister or any employer, trade union or worker whom the award relates may apply to the Chairman of the Tribunal for decision on such question and……"***

Ground 6

[40] It is trite law that questions of fact are for the tribunal and the jurisdiction of this court is merely a supervisory function. The issue before this court is whether the Tribunal stepped outside the scope of its jurisdiction, it is not the function of the Court to determine whether Mrs Wade's case was statute barred as that issue is not the subject matter of this review. Furthermore, the fact that the Tribunal made no mention of the fact that Mrs. Wade's claim would be statute barred supports the stance that the Tribunal did not direct its mind to questions surrounding redundancy payments as these matters were not the concern of those proceedings nor are they the concern of these proceedings.

[41] Rule 56.16(2) of the Civil Procedure Rules provides as follows:
"Where the claim is for an order or writ of certiorari, the court may if satisfied that there are reasons for quashing the decision to which the claim relates –

(a) direct that the proceedings be quashed on their removal to the court; and

(b) may in addition remit the matter to the court, tribunal or authority concerned with a direction to reconsider it in accordance with the findings of the court"

[42] The next issue for this court to determine is what useful purpose would a writ of certiorari serve? It is trite law that in matters of Judicial Review, the court will not make an order in vain or strictly for academic purposes. The Defendant cited the case **Board of Management Bethlehem Moravian College v Dr Thompson (Paul) and Anor** [2015] JMCA Civ. 41 to express this point. At paragraph 210 of the said judgment Phillips JA opined as follows:

> *"It should appear from the above that there are many factors to be considered by the court in exercising its discretion whether to grant the relief sought. These include whether the grant of the remedy would be detrimental to good administration; whether there was an alternative remedy available, or whether the grant of the remedy appears futile, academic or otherwise unnecessary. One of the most difficult issues in judicial review is how to treat with the consequences of an unlawful decision."*

[43] I also take into consideration that the Claimant has an alternate remedy, under the Act, that is the Claimant has the remedy of approaching the tribunal for clarity. Mr. Goffe, however is not off the view that there is any ambiguity, but rather an error of law. As noted earlier, s 12(10) of the Act allows the Minister, any Employer, trade union or any worker who has sufficient interest to an award that was made pursuant to section 12 (1), to apply to the Chairman to clarify any question or ambiguity relating to an award made by the said Tribunal. It is my view that this entire claim is based on the interpretation to be placed on the latter words of the Tribunal's award. To my mind, it goes without saying, who better to interpret the words of the Tribunal than the Tribunal itself. Furthermore, this approach is more in keeping with the spirit of the statute and the intent of Parliament. The Privy Council observed in **University of Technology, Jamaica v Industrial Disputes Tribunal and others (Jamaica)** that the spirit of the statute focuses on "*the settlement of disputes, whether by negotiation or conciliation or a decision of the IDT, rather than upon the determination of claims."*

[44] Mr. Goffe submitted that the LRIDA provides that disobedience of the award or decision of the IDT is a criminal offence. He opined that the Tribunal had failed to be cautious in the use of their language in making the award and had made an award that compelled the Claimant to make compensation without taking into consideration the issue of limitation. Section 12(9) of the LRIDA which states:

"***Any person who fails to comply with any order or requirement of the Tribunal made pursuant to subsection (5) or with any other decision or any award of the Tribunal shall be guilty of an offence and-***

(a) In the case of an employer to whom that order requirement, decision or award relates shall be liable on summary conviction before a Resident Magistrate to fine not exceeding five hundred thousand dollars, and in the case of a continuing offence to a further fine not exceeding twenty thousand dollars for each day on which the offence continues after conviction.

(b) …..

[45] It is my view that the IDT having determined that the termination of Miss Wade was justifiable and was on the basis of a redundancy, results in an automatic inference that she would be entitled to compensation. That compensation must be in accordance with the provisions of the Employment (Termination and Redundancy Payment) Act. Both Yellow Media Jamaica limited and Mrs. Wade would be subject to all the provisions of the legislation. I therefore cannot agree that the award is compelling Yellow Media Jamaica Limited to calculate and make compensation to Mrs. Wade. I find that there is no evidence that the IDT went outside of their jurisdiction in making the award.

DISPOSITION

1. The Claim for the Order of Certiorari in respect of the award of the Industrial Disputes Tribunal in Dispute No IDT 13/2017 is refused.