IN THE SUPREME COURT OFJUDICATURE OF JAMAICA

IN COMMON LAW

CLAIM NO. M. 152/1995

BETWEEN	ANTHONY DALEY	APPLICANT
AND	THE INDUSTRIAL DISPUTES TRIBUNAL	RESPONDENT

Mr. Marcus Geoffe for Applicant.

Ms. Analesia Lindsay for Respondent instructed by the Director of State Proceedings.

Ms. Tanya Ralph, Legal Officer for the Industrial Disputes Tribunal.

Heard: 5th November, 2004

Coram: D. MCINTOSH J

This is an application for leave to extend time in which to apply for Judicial Review.

The applicant admitted that the order made by the Industrial Disputes Tribunal was made in December of 1995.

That he had been granted leave to apply for Judicial Review on December 19, 1996.

`That he did not apply for Judicial Review and indeed did nothing about this matter until he made this application earlier this year.

His reasons for not having sought Judicial Review are essentially that:

(a) His then attorney advised him that he could apply for the order of certiorari at any time and he was not aware of any time limit to do so.

(b) His attorney indicated a lack of competence or expertise in this particular area of law and left him without legal representation.

(c) He suffered from severe physical emotional and financial stress as he had lost his job.

(d) He visited the Supreme Court in 2001 when he was advised by staff members there that he could resurrect his case at any time.

(e) The Industrial Disputes Tribunal had wrongfully upheld the decision of the Caribbean Cement Company Limited to dismiss him by way of letter dated December 21, 1994.

The applicant now seeks to move this court to quash the decision made by the respondent on the 14th December, 1995 and to reinstate him in the job from he was dismissed.

Counsel for the applicant argued that time should be abridged because of applicant's ignorance of the law and other matters set out in his affidavit dated the 24th February, 2004.

Not surprisingly applicant had no authority to buttress his submissions.

The respondents submitted that this court has no jurisdiction to grant an extension of time for a remedy that had already been granted by the Court that is - leave to apply for Judicial Review which was granted on the 19th December, 1996 As such, the application for extension of time is mis-conceived.

Under part 11.12(4) of the Civil Procedure Rules 2002, the court when hearing an application for court orders may exercise any powers it may exercise at a Case Management Conference. One such power is to strike out a claim if it would be likely to:

(a) cause substantial hardships to/or
substantially prejudice the rights of any person or

(b) Be detrimental to good administration.

Lord Dipleck in Oreilly v Mackman (1983) 2 AC 237, stated that:

"The public in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision that the authority has reached in purported exercise of decision making powers for any longer period than is absolutely necessary in fairness to the persons affected by the decision".

This dicta of Lord Dipleck was approved by Justice L. Campbell in:

Tulloch Estate Limited v Industrial Disputes Tribunal (reported - suit Miscellaneous/2001).

It would be a detriment to good administration for the respondent to now subject them to a challenge of their decision made nine (9) years ago.

The inordinate and inexcusable delay of the applicant in pursuing his application amounts to an abuse of the process of the court. During the period of delay, the Cement Company would have reorganized their affairs as a result of respondent's confirmation of the termination of applicant's employment.

Applicant's delay would likely cause the Cement Company, an affected but unnamed party to these proceedings.

This court found that the reasons given for applicant's delay were inexcusable, spurious and even farcical.

If he was advised by his attorney that she lacked expertise then he needed to have had an attorney with the necessary expertise.

His lack of funds could have been addressed by the Legal Aid Clinic.

His illness would not prevent the presentation of his case in court. It would however, have been cause for the Cement Company to have terminated his employment as he would not have been unfit for work in any event.

It would be an exercise in futility to ask the Cement Company to reinstate a former employee who had been fired over nine (9) years ago and this court must do nothing in futility.

In all the circumstances this application would:

(a) Cause substantial hardships to the parties concerned and substantial prejudice to the parties concerned and

(b) Be detrimental to good administration.

It is the court's view that the application is wholly misconceived and must be an abuse of the process of the court.

Accordingly the application is refused.