[2022] JMSC Civ 132

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2019 CV00857

BETWEEN	**THE FIREARM LICENSING AUTHORITY**	**CLAIMANT**
AND	**THE MINISTER OF LABOUR AND SOCIAL SECURITY**	**1ST DEFENDANT**
AND	**THE INDUSTRIAL DISPUTES TRIBUNAL**	**2ND DEFENDANT**

IN OPEN COURT

Mr. Mikhail Jackson instructed by Messrs. Livingston, Alexander & Levy for the Claimant

Ms. Tamara Dickens instructed by the Director of State Proceedings for the Defendants

Ms. Tessa Simpson instructed by Messrs. Knight, Junor & Samuels for the Interested Party

Heard: November 8, 9 2021 and July 28, 2022

Judicial Review – Whether an industrial dispute existed at the time of the referral - Whether the Minister's decision to refer the dispute to the IDT is ultra vires — Separation agreement – Whether dismissal — The Labour Relations and Industrial Disputes Act, 1975, sections 2 and 11A(1)(a)(i)

WINT-BLAIR, J

INTRODUCTION

[1] The claimant, the Firearm Licensing Authority ("FLA") seeks judicial review of the decision of the first defendant, the Minister of Labour and Social Security ("the Minister") to refer the dispute concerning the separation agreement between the FLA and its former employee, Mr Milton Reid to the second defendant, the Industrial Dispute Tribunal ("IDT").

[2] By way of a Fixed Date Claim Form, which was filed on October 3, 2019, the claimant seeks the following relief:

i. A declaration that the 1st Respondent's Notice of Referral dated 6th December, 2018 referring the dispute between the Applicant and its former employee, Mr Milton Reid, over the termination of his employment to the 2nd Respondent is ultra vires as being a breach of section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act;

ii. A Declaration that the 1st Respondent's Notice of Referral dated 6th December, 2018 referring the dispute between the Applicant and its former employee, Mr Milton Reid, over the termination of his employment to the 2nd Respondent is unreasonable;

iii. An Order of Certiorari quashing the 1st Respondent's referral dated 6th December, 2018 referring the dispute between the Applicant and its former employee, Mr Milton Reid, over the termination of his employment to the 2nd Respondent;

iv. Costs; and

v. Such further and/or other relief as this Honourable Court deems fit.

SUBMISSIONS

The claimant's position

[3] The claimant submitted that the Minister erred in law when she referred the dispute concerning the Separation Agreement[1] between itself and its former employee, Mr Milton Reid to the IDT. Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act ("LRIDA"), provides that the Minister may, on his own initiative refer a dispute to the IDT for settlement if he is satisfied that an industrial dispute exists and after the conditions precedent have been satisfied. The Minister, in order to exercise his discretion to refer a dispute to the IDT, must be satisfied that an industrial dispute exists within the meaning of section 2 of the LRIDA.

[4] The IDT, as a creature of statute, is constrained to only hear and determine the disputes that fall within section 2 of LRIDA. It was submitted that there was no industrial dispute between the parties, therefore, the matter was incapable of being referred to the IDT. Consequently, the Minister's decision to refer the matter should be quashed.

a. Secondly, the claimant denied Mr. Reid's allegation that he was coerced and unduly influenced into signing the Separation Agreement. The claimant averred that Mr. Reid freely and voluntarily signed the Separation Agreement and is therefore estopped from asserting otherwise and is also bound by its terms. Accordingly, the FLA submitted that Mr Reid should not be permitted to now raise the terms of the Separation Agreement as a dispute before the IDT.

[5] Thirdly, the FLA submitted further and/or alternatively that, the Minister's decision to refer the matter to the IDT in circumstances where Mr. Reid had already been paid all salary and benefits due to him under the unexpired portion of his fixed term contract of employment by virtue of the Separation Agreement is so unreasonable that no other reasonable authority presented with the same set of facts would have made that decision.

[1] Dated 22 August 2017

[6] Finally, the FLA argued that, with respect to claims for unfair/ unjustifiable dismissal, the IDT has wide discretionary powers under the LRIDA to award such compensation as it sees fit. However, when exercising its discretion, the IDT is entitled to take into consideration a wide variety of factors including the fact that the dismissed employee's contract of employment was for a fixed term. Therefore, it is unlikely that Mr. Reid would have been compensated in excess of the amount he has already received under the Separation Agreement.

The defendants' position

[7] The defendants submitted that the Minister's decision to refer the dispute to the IDT was not ultra vires, unreasonable, irrational nor unlawful in the circumstances. They contended that the Minister is vested with the power and authority under section 11A(1)(a)(i) of the LRIDA to refer industrial disputes to the IDT. and did not lack the jurisdiction to refer what was an industrial dispute between the parties to the IDT.

[8] In interpreting the statutory provisions of LRIDA, 'dispute' should be given its ordinary and natural meaning. The defendants argued that the conflicting accounts by Mr Reid and the FLA concerning the conclusion of Mr. Reid's employment with the FLA is a source of dispute within the ambit of section 11A(1)(a)(i) of the LRIDA. Consequently, it cannot be said that it was not an 'industrial dispute' as defined by section 2 of the LRIDA and that the Minister acted ultra vires in referring the dispute to the IDT.

[9] Additionally, the defendants asserted that the IDT is not required to examine the Separation Agreement and to pronounce on its validity. Instead, the IDT is required to examine all the circumstances of the case and determine whether the manner in which the separation was precipitated was unfair and whether it amounts to an unfair or an unjustifiable dismissal.

[10] They also argued that by accepting the payment, Mr. Reid did not waive his statutory rights under LRIDA to have the dispute brought before the IDT. As a consequence, the Minister having examined the circumstances of the case and the competing contentions of the parties involved, cannot be said to have acted

ultra vires in making the referral to the IDT. They asserted that the claimant has failed to establish that the Minister acted ultra vires in the circumstances.

The interested party's position

[11] It was submitted on behalf of the interested party that section 2 of the LRIDA does not define 'dispute' and accordingly, the ordinary meaning of the word should apply. Mr. Reid argued that the Minister utilized section 11A(1)(a)(i) of the LRIDA as well as the evidence produced by both parties to determine that, a dispute within the meaning of section 2 of the LRIDA existed concerning the termination of his employment and this required resolution by the IDT. The Minister therefore complied with the procedure outlined by the LRIDA in referring the matter to the IDT and she had a legal basis to make the referral.

[12] Mr Reid asserted that he signed the Separation Agreement under duress as a result of an ultimatum issued by the Chief Executive Officer ("CEO") of the FLA, Mr Shane Dalling at a meeting in which he was threatened to either sign the Separation Agreement or be terminated. In the circumstances, Mr. Reid submitted that he was dismissed by the FLA and that under section 2 of the LRIDA which defines 'industrial dispute', the phrase 'termination of employment' includes a constructive dismissal. The IDT has the jurisdiction to determine constructive dismissal claims. Moreover, the decision as to the true circumstances existing at time of the signing of the Separation Agreement is for the IDT to determine.

[13] Mr. Reid asserted that his conduct did not indicate an intention to waive his rights under LRIDA. His termination took immediate effect. He was not given an opportunity to be make representations on his own behalf. Furthermore, the FLA was aware from as early as 20 September 2017 that he was protesting his termination by the correspondence from his attorneys. Mr. Reid protested his termination on 22 August 2017 when he was terminated and the length of time between the signing of the Separation Agreement and the communication from his attorneys, was just under a month, which cannot be regarded as long. In the circumstances, he asserted that the absence of a formal letter of complaint until weeks after the Separation Agreement was signed or the acceptance of the sum

paid to him under the separation agreement, does not create a waiver of his rights.

THE LAW

The role of the reviewing court

[14] The court adopts the following statement as correctly reflecting the law: "The power of judicial review may be defined as the jurisdiction of the superior courts to review laws, decisions, acts and omissions of the public authorities in order to ensure that they act within their given powers. Broadly speaking, it is the power of the courts to keep public authorities within proper bounds and legality."[2]

[15] It is incumbent upon the court in reviewing the decision to apply the principles of illegality, procedural impropriety, breach of natural justice or irrationality in the absence of reasons. This is so even if there is no statutory or common law basis to do so, such as in the case at bar on the part of the Minster. *(See* **R v Secretary of State for Trade and Industry, Ex parte Lonrho PLC***[3].)*

[16] The grounds for judicial review were explained by Lord Diplock in **Council of Civil ServiceUnions v Minister for the Civil Services**[4]: where the learned judge discussed the principle of judicial review in relation to decision making powers and spoke to three heads -- illegality, irrationality and procedural impropriety:

> *"By illegality as a ground for judicial review, I mean that the decision–maker must understand correctly the law that regulates his decision–making power and must give effect to it. Whether he has or not is par excellence a justifiable question to be decided, in the event of dispute, by*

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[2] Commonwealth Caribbean Public Law, Fiadjoe, Albert, 3rd ed. at p. 15.

[3] [1989] 1 WLR 525, at 539H–540A: "The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. **The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker, who has given no reasons, cannot complain if the court draws the inference that he had no rational reason for his decision**." (Emphasis added)

[4] [1985] AC 374, 410 F - H

those persons, the judges, by whom the judicial power of the state is exercisable.

By 'irrationality' I mean what can now be succinctly referred to as — Wednesbury unreasonableness (Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it...

I have described the third head as — procedural impropriety rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

[17] Furthermore, in **Chief Constable of The North Wales Police v Evans**[5], Lord Hailsham of St. Marylebone L.C opined as follows:

"But it is important to remember in every case that the purpose of the remedies 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."

Illegality

[18] An administrative decision is flawed if it is illegal. A decision is illegal if it:

[5] [1982] 1 WLR 1155, at page 1160 paragraphs F-G

(a) contravenes or exceeds the terms of the power which authorises the making of the decision;

(b) pursues an objective other than that for which the power to make the decision was conferred;

(c) is not authorised by any power; or

(d) contravenes or fails to implement a public duty.

[19] The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision-maker.[6]

Irrationality

[20] In **Associated Provincial Houses Ltd v Wednesbury Corporation**[7], at page 229, Lord Greene M.R. set out the well- trodden path :

> *"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."*

[6] DeSmith's, Judicial Review (6th edn), 5-002, 5-003

[7] [1948] 1 KB 223

[21] In examining the decision of the decision maker, the court is to consider whether the decision reached or remedy granted is within the ambit of the statute; whether it was procedurally correct; whether the principles of natural justice have been observed; that the decision cannot be said to be unreasonable in the Wednesbury sense; and that the decision maker did not take irrelevant considerations into account or fail to take into account relevant considerations.

[22] If the court finds that the power of the decision making body has been lawfully exercised and within its jurisdiction as conferred by statute, then the decision will be upheld by the reviewing court.

Procedural Impropriety

[23] Wade and Forsyth in their celebrated treatise on Administrative Law[8] say that in terms of natural justice, *there are both broad and narrow aspects to consider. The narrow aspect is that the rules of natural justice are merely a branch of the principle of ultra vires. Violation of natural justice is then to be classified as one of the varieties of wrong procedure, or abuse of power, which transgress the implied conditions which Parliament is presumed to have intended. Just as a power to act 'as he thinks fit' does not allow a public authority to act unreasonably or in bad faith, so it does not allow a public authority to act unreasonably or in bad faith, so it does not allow the disregard of the elementary doctrines of fair procedure. As Lord Selbourne once said:*

> "*There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice."*[9]

Quoting these words, the Privy Council has said that 'it has long been settled law' that a decision which offends against the principles of natural justice is

[8] 11th ed. Page. 374

[9] Spackman v Plumstead District Board of Works (1885) 10 App Cas 29 at 240

outside the jurisdiction of the decision-making authority.[10] *Likewise Lord Russell has said:*[11]

> *It is to be implied, unless the contrary appears, that Parliament does not authorise by the Act the exercise of powers in breach of the principles of natural justice, and that Parliament does by the Act require, in the particular procedures compliance with those principles.*

Thus violation of natural justice makes the decision void, as in any other case of ultra vires…the rules of natural justice thus operate as implied mandatory requirements, non-observance of which invalidates the exercise of the power."

ISSUES

Was there an industrial dispute in existence between the claimant and the interested party at the time of the referral by the Minister

The undisputed facts

[24] It is undisputed that:

i) By Contract Agreement dated November 13, 2015, the FLA engaged Mr. Reid as an Audit and Complaint Officer (GMG/SEG 2) for a fixed term of three (3) years. The contract period was from December 14, 2015 to December 13, 2018;

ii) Prior to the expiration of the fixed term, Mr. Reid signed a document known as a Separation Agreement with the claimant dated August 22, 2017;

iii) Mr. Reid was paid a sum of money relative to the unexpired portion of the fixed term contract;

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[10] A-G v Ryan {980} AC 718

[11] Fairmount Investments Ltd. v Secretary of State for the Environment [1976] 1 WLR 1255 at 1263. And see Ridge v Baldwin [1964] AC 40 at 80 ('a decision given without regard to the principles of natural justice is void' (Lord Reid)).

iv) On August 23, 2017, Mr. Reid contacted the Financial and Administration Director of the FLA, Mr. Haleem Anderson, to enquire as to further payments to be made pursuant to the Separation Agreement;

v) On September 13, 2017, Mr. Reid raised a dispute with the Ministry of Labour and Social Security ("the Ministry") asserting that he was coerced into signing the Separation Agreement;

vi) Attempts at conciliation by the Ministry failed; and

vii) By letter dated December 6, 2018, the Minster referred the matter to the IDT for determination.

[25] The remaining issues joined between the parties will be dealt with below.

Was there an industrial dispute

[26] Section 2 of the LRIDA was amended by an act to amend the Labour Relations and Industrial Disputes Act.[12] The relevant sections are set out below*:*

> *"2.— "'industrial dispute" means a dispute between one or more employers or organizations representing employers and one or more workers or organizations representing workers, and –*
>
> > *(a) in the case of workers who are members of any trade union having bargaining rights, being a dispute relating wholly or partly to –*
> >
> > *(i) …*
> >
> > *(ii) …*
> >
> > *(iii) …*
> >
> > *(iv)*
> >
> > *(v) …*

[12] Proclaimed in force on March 23, 2010

(b) in the case of workers who are not members of any trade union having bargaining rights, being a dispute relating wholly to one or more of the following:

(i) …

(ii) ***the termination or suspension of employment of any such worker; or***

(iii) …" (emphasis mine)

[27] In section 2, "*undertaking*" and "*worker*" are defined as follows:

"undertaking" includes a trade or business and any activity involving the employment of workers;

*"worker" means an individual who has entered into or works or normally works (****or where the employment has ceased, worked****) ****under a contract****, however described, in circumstances where that individual works under the direction, supervision and control of the employer regarding hours of work, nature of work, management of discipline and such other conditions as are similar to those which apply to an employee." (emphasis mine.)*

[28] The LRIDA clearly provides for the determination of issues related to the termination of non-unionised workers, including those on contract as prescribed within the definition of worker. However, the Minister first has to abide by the provisions of section 11A(1)(a)(i) as set out in the referral.

"11A.— (1) Notwithstanding the provisions of sections 9, 10 Minister and 11, where the Minister is satisfied that an industrial dispute exists in any undertaking, he may on his own initiative refer

(a) refer the dispute to the Tribunal for settlement-

(i) if he is satisfied that attempts were made, without success, to settle the dispute by such other means as were available to the parties;" (emphasis mine)

[29] There is no doubt that the termination of a non-unionised worker is within the definition of an industrial dispute. Mr. Jackson argued that that the definition does not include the enforceability, application or interpretation of a separation agreement between a worker and an employer. He relied on the case of **Branch Developments Ltd. T/A Iberostar Rose Hall Beach and Spa Resort Ltd v Industrial Disputes Tribunal and Marlon Mcleod**[13] for the definition of industrial dispute in respect of a suspended employee:

> *"[47] The definition of an industrial dispute is contained within section 2 of LRIDA. The Minister is empowered to refer an industrial dispute relating to disciplinary action against a worker (both unionised and non-unionised) to the IDT (sections 11A and 11B of the LRIDA). There are, however, some distinctions made between both categories of workers, in relation to the definition of an industrial dispute. Section 2 of LRIDA speaks to these categories. Category (a) sets out the definition for unionised workers and category (b), for non-unionised workers. However, both categories include the term "suspension of employment". In the case of Mr McLeod, being a non-unionised worker, the relevant category would be that set out at category (b). The LRIDA makes no distinction between administrative or disciplinary suspension as it relates to nonunionised workers."*

[30] He raised two issues within the main issue (a) whether under the LRIDA the IDT can make a determination on the validity of a separation agreement and (b) whether an industrial dispute can arise, without first having the separation agreement set aside or invalidated.

[31] On the first sub-issue, Mr. Jackson argued that the recent decisions of the Supreme Court suggest that the court will not find that the IDT has jurisdiction in a dispute unless the LRIDA expressly provides for it. This is the very argument which was made on behalf of the claimant in **Branch Developments**. There, the claimant argued that the IDT is an arbitral body and not a court, it has no inherent jurisdiction, and its power to grant remedies are limited to those prescribed by the LRIDA.

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[13] [2021] JMCA Civ 44, at paragraph [47], per Straw, JA

[32] I need not go further than the reasoning of Straw, JA in **Branch Developments** to find the answer to this question. Having set out the principles of statutory interpretation in relation to the LRIDA, this court relies on the extract set out below:

> *"[56] In relation to statutory interpretation, it is also useful to set out paragraphs [53] and [54] of the dictum of Brooks JA (as he then was) in* ***Jamaica Public Service Company Limited v Dennis Meadows and others*** *[2015] JMCA Civ 1 which summarise the major principles:*
>
> > *"[53] … The major principles of statutory interpretation, currently approved, include the use of the plain and ordinary meaning of words in the document, the application of the context of the document and the rejection of any interpretation that makes nonsense of the document.*
> >
> > *[54] The learned editors of Cross' Statutory Interpretation 3rd edition proffered a summary of the rules of statutory interpretation. They stressed the use of the natural or ordinary meaning of words and cautioned against "judicial legislation" by reading words into statutes. At page 49 of their work, they set out their summary thus:*
> >
> > > *'1. The judge must give effect to the grammatical and ordinary or, where appropriate, the technical meaning of words in the general context of the statute; he must also determine the extent of general words with reference to that context.*
> > >
> > > *2. If the judge considers that the application of the words in their grammatical and ordinary sense would produce a result which is contrary to the purpose of the statute, he may apply them in any secondary meaning which they are capable of bearing.*
> > >
> > > *3. The judge may read in words which he considers to be necessarily implied by words which are already in the*

statute; and ***he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute....****' (Emphasis supplied)*

This summary is an accurate reflection of the major principles governing statutory interpretation."

[57] Where the court is involved in the interpretation of a statute, it is permitted to vary or modify the language used therefore, if a literal adherence to such language would result in an absurdity or the legislation is ambiguous or obscure. This is often referred to as the golden rule of interpretation (see ***Becke v Smith*** *(1836) 2 M&W 191, 195 and the judgment of Lord Salmon, in* ***Eaton Baker and another v The Queen*** *[1975] AC 774, 790 in which the principle was reiterated). If necessary, in such cases reference can be made to Parliamentary material as an aid to statutory construction (see* ***Pepper v Hart****). The court should also give effect to the grammatical and ordinary meaning or any technical meaning of the words within the general context of the statute.*

[58] Also, the court must make a finding as to whether it is necessary to read in words which are already implied in the statute, or in a limited capacity, add, alter or ignore words to prevent a provision from being unreasonable or unworkable (see ***Jamaica Public Service Company Limited v Dennis Meadows and others****).*

[59] Having examined the LRIDA, in particular, the relevant sections set out above, I find that on the plain reading of the statute, there is no obfuscation, absurdity or ambiguity, as to what Parliament intended in relation to the types of industrial disputes the IDT is empowered to hear. The definition of an industrial dispute for non-unionised workers is clearly set out at section 2 of the LRIDA. It includes the suspension of a nonunionised worker (section 2 (b) (ii)).

[60] Is there any legal basis for the court to limit that term, as set out in section 2 (b)(ii) of the LRIDA, to what Mr Goffe describes as a disciplinary suspension (that is, a penalty imposed subsequent to a disciplinary process)? Certainly, the words in the statute itself put no such limit on the jurisdiction of the IDT. But bearing in mind Mr Goffe's submission on the technical use of the word suspension, further consideration will be given to this matter.

[61] In that regard, it is expedient to consider the plain dictionary meaning of the word. In the Concise Oxford Dictionary, (8 th edition) the word "suspension" speaks to (i) the act of suspending someone, or the condition of being suspended; and (ii) to suspend also implies a temporary stoppage, with an added suggestion of waiting until some condition is satisfied.

[62] The ordinary use of the word would, therefore, embrace both concepts of an administrative and a disciplinary suspension. This issue must also be considered within the context of Parliament's intention to give jurisdiction to the IDT to settle industrial disputes. That jurisdiction has been judicially recognised in ***Village Resorts Ltd, Kingston Wharves Limited****, and* ***R v The Industrial Disputes Tribunal, ex parte, Esso West Indies Limited*** *(1977) 16 JLR 73 (SC) among others. In the first instance case of ex parte Esso, Parnell J, at page 82, gave judicial expression to this intent of Parliament, albeit stated within the context of unionised workers:*

> *"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." Therefore, it is difficult to find any reasonable basis, based on the context of the statutory framework*

and the language used, to limit the interpretation of the IDT's jurisdiction as submitted by Mr Goffe.

[63] Parliament's intention is also reflected in the Code. The importance of the Code has been set out earlier in this judgement (see paragraphs [36] to [39]). In that regard, Phillips JA reinforced this court's view of its important role by reiterating Forte P's endorsement in ***Jamaica Flour Mills*** *at paragraph [99] of her recent judgment in* ***ATL Group Pension Fund Trustees Nominee Limited v The Industrial Disputes Tribunal and Catherine Barber*** *[2021] JMCA Civ 4:*

"…'[The Code] establishes the environment in which it envisages that the relationships and communications between [employers, workers and unions] should operate in peaceful solutions of conflicts, which are bound to develop.'"

[67] However, there can be no dispute concerning the clear words of the LRIDA. As stated previously, the statutory framework of LRIDA, as well as the Code, leave no interpretative difficulties. The IDT is to settle industrial disputes as defined by the statute and the definition of industrial dispute can embrace the circumstances of a suspension of a worker such as Mr McLeod.

[33] This court adopts the principles of statutory interpretation and its application to section 2 of LRIDA. The case at bar does not concern the suspension of a worker and the facts are therefore not on all fours with the **Branch Developments** case.

[34] In the case at bar, whether or not there has been a termination of the contract is the very issue to be resolved, given that the statute provides for the resolution of disputes involving termination, which may take many forms and encompass agreements of varying types, on the seminal authority of **Village Resorts**, it is difficult to understand the submission made by Mr. Jackson. However, this court does not find it necessary to determine the issue of the validity of the separation agreement given the disposition of the matter. It is the question of dismissal

which is before this court and it is a mixed question of fact and law based on the evidence.

THE EVIDENCE

The Claimant

[35] The CEO of FLA is Mr. Shane Dalling. His affidavit[14] states that the FLA is established pursuant to section 26A of the Firearms Act[15] and its constitution is set out in the Third Schedule to that Act. The CEO[16] under that Schedule has the power to appoint and employ member of staff at such remuneration and on such terms and conditions as the CEO thinks fit.

[36] The claimant in the person of its CEO, entered into a contract with Mr Reid to engage the latter's services in the post of Audit and Compliance Officer (GMG/SEG2) for a fixed term of three (3) years commencing December 14, 2015 to December 13, 2018. The effective date of this contract was November 13, 2015.

[37] Mr. Dalling says that Mr. Reid voluntarily entered into a separation agreement with the claimant on August 22, 2017. In consideration of the said agreement, Mr. Reid was paid sixteen (16) months of salary plus gratuity in full and final settlement of any and all claims and demands he may have had against the claimant. This consideration was equal to the unexpired portion of the contractual agreement between the parties.

[38] The separation agreement was signed at a meeting in which Mr. Reid insisted that he enter into the agreement. Mr. Reid was not coerced nor intimidated into signing the said separation agreement and it was freely and voluntarily signed in

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[14] Filed on October 3, 2019

[15] "26A.-(1) There is hereby established for the purposes of this Act, a body to be known as the Firearm Licensing Authority. (2) The provisions of the Third Schedule shall have effect as to the constitution of the Authority and otherwise in relation thereto."

[16] "Third Schedule: 12. For the due administration of the Authority, the Governor-General shall appoint- (a) a Secretary or Chief Executive Officer, as the case may be, who shall be responsible for the day-to-day administration of the Authority; and (b) such other officers and agents as may be necessary for the efficient operation of the Authority."

the presence of two witnesses. At the time of signing, Mr. Reid said that "he was a big man" and capable of making his own decisions and consequently did not need to consult with an attorney before signing. Mr. Reid did not take issue with or protest the terms of the separation agreement or the agreement itself.

[39] Further, the Director of Finance and Administration of the FLA, Mr. Haleem Anderson was contacted by Mr. Reid before the pay advice was issued on August 23, 2017. Mr Reid enquired as to whether further payments were to be made under the separation agreement.

[40] Mr. Dalling averred that Mr. Reid raised no dispute as to the separation agreement, instead he sought to enforce certain additional entitlements which he believed he had under the separation agreement. It was three (3) weeks later on September 13, 2017, that his attorneys, Knight, Junor & Samuels, raised an industrial dispute with the Conciliation Department of the Ministry stating that he had been unjustifiably dismissed.

[41] Mr. Reid contends that the separation agreement he entered into was done under duress. The affidavit goes on to state that Mr. Reid has failed or refused to challenge the validity of the said agreement by initiating court proceedings. Neither has Mr. Reid returned any of the money paid to him under the separation agreement up to the time of the affidavit.

[42] Lastly, that Mr. Reid has found employment as a Dean of Discipline at the Caribbean Maritime University. He has occupied this position since November, 2018 and would have been employed before the end of his contractual agreement with the claimant had expired had there been no voluntary separation.

The Interested Party

[43] The evidence of Mr. Reid was that he was employed as at September 2016 as a Senior Audit and Compliance Officer (GMG/SEG3) and not as an Audit and Compliance Officer (GMG/SE2) and that this change was reflected in his contract for the initial post.

[44] Mr. Reid asserts that at no time did he freely and voluntarily accept or sign a separation agreement. He was coerced to sign the separation agreement by Mr. Dalling.

[45] On August 22, 2017, Mr. Reid asserts that he was told by Michael Dixon, Director of Audit and Complaints, that Mr. Dalling wanted to see himself, Andrew Gordon, Kenesha Duff and Michael Dixon immediately. They were all members of the Audit and Complaints branch.

[46] Mr. Gordon was absent from work on that day, Ms. Duff, Mr. Dixon and Mr. Reid went to see Mr. Dalling. On the way to Mr. Dalling's office, two (2) armed security officers contracted to the FLA escorted them to the board room where a staff member from Mr. Dalling's office directed them. They waited for an extended period until Mr. Reid was called to report to the office of the CEO. Mr. Reid said that at that time, he noticed that all the entrances/exits to the floor of the CEO's office were guarded by armed security guards. Mr. Dalling's armed bodyguard was also sitting in the passage close to the office.

[47] Mr. Reid said in the CEO's office, he saw Mr. Gregg Gardner, Acting Finance Director and Camille Lennox, Human Resources Manager. Mr. Dalling handed Mr. Reid an envelope. It contained a letter captioned "Termination of Contract with Immediate Effect." Mr. Reid said he asked Mr. Dalling the reason for the termination to which Mr. Dalling responded, "*I don't have any reason. I am doing so in accordance to the status of my office.*"

[48] Mr. Reid said he took issue with the termination of his contract pointing out to Mr. Dalling that he had served the FLA for ten (10) years since it commenced operations. He said that Mr. Dalling said, *"Okay, there is another option that I will give to you. Mr. Dalling then gave me an ultimatum by way of another option which was the Separation Agreement. Mr. Dalling took the termination letter from me and handed me another document and when I read it, the caption of that document was: Separation Agreement and it was addressed to one, Mr. Andrew Gordon. I told Mr. Dalling that I was not Andrew Gordon, and that I am Milton Reid. It was at that point that Mr. Dalling replaced the document with another one that bore the name Milton Reid."*

[49] Mr. Reid averred that he told Mr. Dalling, he could not sign the document without first having sought legal advice. Mr. Dalling then pulled the document out of the hand of Mr. Reid and said he is sticking to option one (1) where Mr. Reid will get no more than three (3) month's salary in lieu of notice. Mr. Reid protested that having worked at the FLA for so long, Mr. Dalling did not even know his name and that he was being fired and would leave with nothing. Mr. Dalling asked Camille Lennox and Gregg Gardner who were present if they thought that he should go back to the separation agreement and they both said yes. Mr. Dalling handed the separation agreement addressed to Mr Reid and he signed it.

[50] Mr. Reid stated further, based on his calculations, money owed to him was not paid and he made enquiries of Mr. Haleem Anderson later that week. Based on the calculations of Mr. Reid, his family and friends, money was missing.

[51] Mr. Reid denies entering into the separation agreement after a meeting and further that he did not insist on entering into such an agreement during the meeting of August 22, 2017. He was forced to enter into the separation agreement by Mr. Dalling who denied his request to discuss the document with a "representative". He denies asserting that "I am a big man." Rather, he said he would need legal advice before signing the separation agreement. He did not sign the separation agreement freely and voluntarily and immediately took issue with it.

[52] Mr. Reid further stated that he was not issued with a pay advice on August 23, 2017 and did not visit the FLA between August 23 – 25, 2017, but he did make enquiries about the large sum of money which had been deposited to his account, particularly whether it was a payment based on the meeting in which Mr. Dalling ordered him to attend in order to coerce him into signing the separation agreement.

DISCUSSION

[53] It is clear to me that the separation agreement had been prepared ahead of the meeting. It was awaiting the arrival of Mr. Reid when he was summoned to the office of the CEO. The separation agreement was said by Mr. Dalling to have been insisted upon after a meeting between himself and Mr. Reid. The details of

this meeting have not been given to the court, nor that of any other meeting at any other time related to the negotiations for such an agreement. Those present at the meeting and details of the discussion which led up to Mr. Reid making the statement, that he was a "big man" capable of making his own decisions and needing no legal advice before signing the agreement is absent from the affidavit evidence of Mr. Dalling.

[54] There is no evidence that Mr. Reid had ever seen the separation agreement before or that he had been given a copy in the affidavit of Mr. Dalling. The use of the word, "voluntary" suggests that Mr. Reid was not pressured into signing, however, the failure to use language to indicate any mutuality or consent in the affidavit of Mr. Dalling is also noted.

[55] Mr. Reid avers that he was promoted to the position of Senior Audit and Compliance Officer (GMG/SEG3) and was no longer an Audit and Compliance Officer (GMG/SE2) in September 2016 and that this change would have been made to his contract of employment. This new contract is not before the court, nor is a pay advice or any documentary evidence of this elevation to a new position. There was also no request for specific disclosure of this new contract to be included in the documents presented to the court by Mr. Reid. Therefore, the position Mr. Reid occupied at time he was terminated is the one set out in the separation agreement before the court as there is nothing else before me to indicate otherwise.

[56] Mr. Dalling said that Mr. Reid was paid sixteen (16) months' salary plus gratuity no portion of which was returned to the FLA. This accords with the terms of the initial contract and not a new one. As Mr. Reid has not provided any documentary proof of a new position within the FLA to demonstrate that he was promoted to a higher post, any calculations that he said he made in respect of the payment he received cannot be related to any other post save the one for which he had contracted and for which a separation agreement had been signed.

[57] Mr. Reid does not challenge that he kept the sums which he was paid. He says that he was not paid what he should have been. There is no evidence from Mr.

Reid as to what he was paid or not paid and what he based his calculations upon which caused him to conclude that he should have been paid more.

[58] Mr. Reid's attorneys wrote a letter to the CEO, Mr. Dalling copied to the Ministry[17] indicating Mr. Reid's opposition to the validity of the separation agreement "due to coercion" without mentioning any of the above challenges told to the court regarding the sums received by Mr. Reid and retained or the promotion to the senior position which was not acknowledged in the separation agreement.

[59] The attorneys for Mr. Reid wrote to the Permanent Secretary of the Ministry reporting a dispute in the matter between the parties and requesting the Ministry's intervention.[18] Again, this letter did not mention any of the challenges raised by Mr. Reid beyond the issue of coercion.

[60] Mr. Dalling did not respond to the letter sent to him by Mr Reid's attorneys. He also failed to give the reasons for the mutual separation agreement having come into existence.

[61] Mr. Michael Kennedy, Chief Director in the Industrial Relations Department of the Ministry avers in his affidavit[19] to having received letters from counsel for Mr. Reid. Mr. Kennedy stated that the parties were invited to conciliation meetings held between September 2017 and January 2018. There was no settlement and as a consequence, Mr. Kennedy recommended to the Minister that the matter be referred to the IDT for the dispute to be determined. The Minister approved the recommendation and referred the dispute to the IDT. This referral was dated December 6, 2018.

[62] Counsel for Mr. Reid wrote to the CEO setting out the dispute and there was no response to that letter, therefore there was no denial that Mr. Reid had raised a dispute which required resolution. This inaction on the part of the FLA is what led to the complaint to the Ministry.

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[17] Dated September 13, 2017

[18] Dated September 20, 2017

[19] Dated January 28, 2020 and filed on January 29, 2020

[63] Counsel for the claimant also wrote to the Minister indicating that there was no industrial dispute based on the Separation Agreement dated August 22, 2017 and the payment of the unexpired portion of the contract. It seems that on the face of it there was a dispute which had arisen.

[64] The claimant further argues that Mr. Reid was not dismissed as there has been no act of dismissal. Therefore, an industrial dispute cannot be said to exist as there was a mutual termination of the contract.

[65] These letters from counsel for the parties are important as they demonstrate that there was a dispute. However, the evidence must demonstrate that there was an industrial dispute[20] at the date of **dismissal** and the issue in this case is whether or not there was a dismissal.

[66] The referral to the IDT is based on the conclusion that there was such a dismissal. The terms of reference were:

> *"To determine and settle the dispute between the Firearm Licensing Authority (FLA on the one hand and Mr. Milton Reid on the other hand over the **termination** of his Contract of Employment."* (Emphasis mine)

[67] In other words, the Minister determined that on August 22, 2017, there was a dismissal and based on that dismissal there was an industrial dispute. Whereas, the issue of whether or not Mr. Reid was dismissed has yet to be determined.

[68] In the case of **Noranda Bauxite Limited v Minister of Labour and Social Security**,[21] my learned sister, Lindo, J opined as follows:

> "*I note that the statue does not permit the Minister to make a referral in every instance where there is a dispute between an employer and an employee even if such a dispute occurs in relation to the termination of the employment. The power given to the Minister by section 11 of the LRIDA can only be properly invoked in circumstances which conform with*

[20] (see R v Industrial Disputes Tribunal & The Honourable Minister of Labour ex parte Wonards Radio Engineering.)

[21] [2017] JMSC Civ 117 at para 35

the overall scheme of the LRDA and after the conditions precedent have been satisfied."

[69] The dismissal of a worker, and if so found, whether that dismissal is unjustifiable are questions for the IDT and not for the Minister. This was the point made in **R v Minister of Labour and Employment, the Industrial Disputes Tribunal, Devon Barrett et al ex parte West Indies Yeast Co. Ltd.**[22] In that case, the headnote says the respondents were employees of the claimant company. They were dismissed by the company and received letters of termination and payments in lieu of notice in accordance with the provisions of the Employment (Termination and Redundancy Payments) Act without demur. Several days after their dismissal, they jointly wrote to the Ministry of Labour and Employment seeking the Ministry's intervention in what they alleged to be a "dispute" between them and their former employer. The Ministry was unable to resolve the matter and the Minister referred the matter to the IDT on February 29, 1984 under section 11A(1)(a) of the LRIDA.

[70] The Full Court held that in order for the Minister to invoke his discretion and make reference to the IDT under section 11A, it is essential that a dispute exists which threatens, inter alia industrial peace in the particular undertaking. The Ministry therefore had no authority to act since the dismissals of the three employees had not given rise to a dispute which threatened industrial peace.

[71] Moreover, Smith, CJ said that:

*"What section 11A clearly does is to give the Minister freedom to intervene and take action in respect of any **industrial dispute** in spite of the restrictive procedures which the other sections require. However, in my opinion, he is not authorised to act with complete freedom. His powers are governed by the scheme and policy of the Act and by the express provisions of that section."*

[72] It is to be noted that **West Indies Yeast** was decided before the LRIDA was amended to include an expanded definition of the term "industrial dispute".

[22] (1985) 22 JLR 407 at 410

Illegality

[73] The evidence before the court as indicated above leads me to conclude that the Minister proceeded on the assumption that on August 22, 2017, Mr. Reid had been dismissed. This assumption was based on a faulty premise that one of the parties to the dispute had correctly framed its parameters. It showed a failure to give due regard to the separation agreement and the correspondence of counsel for both sides which set out the ambit of the dispute. This assumption and the corresponding failure led to the flawed conclusion that an industrial dispute existed.

[74] There was therefore no industrial dispute within the meaning of section 2 of the LRIDA capable of being referred to the IDT. The evidence discloses that the prime condition precedent to the making of a referral, namely, the existence of an industrial dispute was not satisfied. The error of law in making the referral to the IDT engages the supervisory powers of the court and therefore the decision is held to be ultra vires.

Irrationality

[75] The Minister having failed to take relevant considerations into account as indicated on the evidence, and deciding that Mr. Reid had been dismissed tilted the bar in favour of one side over the other. The Minister failed to properly understand the law, and failed to inform herself of relevant considerations as outlined. For these reasons, the decision to make the referral was also irrational.

[76] The claimants have also raised the issue of estoppel, however, having regard to the findings of the court, there is no need to decide that issue. The disposition of the matter is as follows:

[77] **Orders**:

(1) The court declares that the referral to the Industrial Dispute Tribunal made by the Minister of Labour and Social Security dated December 6, 2018 between Milton Reid and the Firearm Licensing Authority is ultra vires and

in breach of section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act.

(2) The court declares that the referral to the Industrial Dispute Tribunal made by the Minister of Labour and Social Security dated December 6, 2018 between Milton Reid and the Firearm Licensing Authority is irrational.

(3) An order of certiorari quashing the decision of the Minister of Labour and Social Security to refer the matter to the Industrial Dispute Tribunal as set out herein is granted.

(4) No order as to costs, subject to the receipt of submissions within 14 days of the date herein.

S. Wint-Blair, J