

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2023/0661

BETWEEN:

SONIA RODEN

Claimant

and

GRENADA INVESTMENT DEVELOPMENT CORPORATION

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Deborah Mitchell for the Claimant

Ms. Karen Samuel for the Defendant

2024: July 16th, 29th

JUDGMENT

[1] **ACTIE, J.:** This claim seeks judicial review of the defendant's decision to resile from an agreement to arbitration in an action for unfair dismissal on the basis of Wednesbury reasonableness or irrationality.

Background

[2] The parties to the claim are the same parties involved in a claim **Sonia Roden v Grenada Investment Development Corporation**¹ for damages for the alleged breach of an employment contract with the claimant.

[3] The claimant was the Chief Executive Officer of the defendant until she was dismissed with effect from 8th September 2014.

¹ Claim No. GDAHCV2022/0552

- [4] The claimant engaged the unlawful dismissal complaint process under the Employment Act and the Labour Relations Act. The claimant ultimately requested of the Labour Minister, as provided by the Employment Act, for the matter to be referred to arbitration. The parties engaged in the dispute settlement process to the point of finalising the terms of an arbitration.
- [5] The defendant by letter dated 30th June 2023 informed the Minister of Labour of its decision to withdraw its willingness to continue to participate in actions toward the conclusion of the agreement to arbitrate.
- [6] By fixed date claim form filed on 21st December 2023, the claimant seeks judicial review in the form of a declaration that the decision of the defendant withdrawing its willingness to arbitrate is unlawful and irrational; and an order quashing the decision of the defendant.

Legal Analysis

- [7] At trial, the parties conceded that the defendant is a public body and its decisions are susceptible to judicial review.

Whether the defendant's decision to withdraw its consent to arbitrate was irrational

- [8] **Section 82 of the Employment Act CAP 89** sets out the rights of an employee to complain to the Labour Commissioner. If the Labour Commissioner fails to settle the matter, it is referred to the Minister for Labour. Where the Minister fails to settle the matter, it may be referred to an Arbitration Tribunal.
- [9] **Section 45 (1), (2), (3) and (4) of the Labour Relations Act CAP 157A** state the following:

“(1) A trade dispute as defined by this Act, whether existing or apprehended, may be reported to the Minister by or on behalf of either of the parties to the dispute, or by the Labour Commissioner in his or her own discretion and the Minister shall thereupon take the matter into his or her consideration and take such steps as seem to him or her expedient for promoting settlement of such dispute.

(2) Pursuant to subsection (1), a trade dispute shall be dealt with by the following manner—

- (a) by referring the trade dispute to the Labour Commissioner at the conciliation meeting, and, if this fails to resolve the dispute;
- (b) by referring the trade dispute to the Minister at a mediation meeting;
- (c) The Labour Commissioner and the Minister shall endeavour as far as is reasonably practicable to do so, to hold the conciliation and mediation meetings respectively within thirty (30) days of referrals.

(3) If there is a trade dispute in respect of an essential service and the parties fail to comply with subsection (2), or the steps undertaken under subsection (2) fail to resolve the dispute—

- (a) the Minister shall first seek the consent of the parties to the dispute for referral of the dispute, within a time specified by him, to an Arbitration Tribunal and for its composition and terms of reference; but,
- (b) if the consent of the parties cannot be obtained within the time specified, the Minister may decide to establish an Arbitration Tribunal and determine its composition and terms of reference in his own discretion.

(4) If there is a trade dispute in respect of a service other than an essential service and the parties to the dispute fail to comply with subsection (2) or the steps taken under subsection (2) fail to resolve the dispute, the Minister may invite both parties to reach mutual agreement on the establishment of an Arbitration Tribunal, its composition and terms of reference, but no party is compelled to agree on same.”

[10] By the definitions provided in **Section 2** and the **Second Schedule** of the **Labour Relations Act**, the “trade dispute” between the parties is not one that involves an essential service, and so the applicable section is **Section 45(4)**.

[11] **Section 45(4)** of the **Labour Relations Act** is clear that the establishment of an Arbitration Tribunal in a dispute for non-essential service as in the extant matter is not mandatory. The section gives the parties the option not consent to arbitration proceedings.

[12] The Board in the Privy Council decision in **Williams v Casepak Company (Grenada) Ltd. (t/a Calabash Hotel)**² lamented on the distinction in the statutory

² [2022] UKPC 9

provisions with regard to essential and non-essential services. Lord Lloyd-Jones stated:

“It is regrettable that, under the legislation in force in Grenada, it is open to an obstructive employer to frustrate any claim for unfair dismissal in a non-essential employment by simply refusing to accept a settlement proposed by the Commissioner or the Minister and refusing to agree on the establishment of an arbitration tribunal. This is what appears to have occurred in the present case. This, however, is a consequence of the limited remedies which the legislature has conferred on employees complaining of unfair dismissal. In such cases, employees are left to their common law rights for wrongful dismissal which are enforceable in proceedings in the High Court. It is for the legislature to determine whether different or more generous procedures should be made available to those complaining of unfair dismissal.”

- [13] At the hearing, counsel for the defendant argued that the defendant had not consented to the arbitration. However, the evidence supports the claimant's contention that the defendant submitted to the arbitration process. It is the evidence that in December 2016, the defendant maintained a disposition amicable to arbitration by its involvement in the finalisation of the agreement and terms of reference.
- [14] Despite the parties being ad idem on the agreement to arbitrate however, on 30th June 2023, the claimant's attorneys received a letter addressed from counsel for the defendant to the Minister of Labour notifying that the defendant was withdrawing its willingness to participate in the process of concluding the agreement to arbitrate.
- [15] The claimant's challenge is the supposed irrationality of the defendant in withdrawing its willingness to participate in the former agreement to arbitrate.

The issue is whether the defendant's decision to resile from the agreement to arbitration is irrational

[16] In **Council of Civil Service Unions and others v Minister for the Civil Service**³

Lord Diplock stated the following relative to irrationality as a ground for judicial review:

“By ‘irrationality’ I mean what can by now be succinctly referred to as ‘Wednesbury unreasonableness’. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system.”

[17] In **Braganza v BP Shipping Ltd et al**⁴, Lady Hale, making reference to Rix LJ in

*Socimer International Bank Ltd v Standard Bank London Ltd*⁵ stated the following:

“It is plain from these authorities that a decision-maker’s discretion will be limited, as a matter of necessary implication, by concepts of honesty, good faith, and genuineness, and the need for the absence of arbitrariness, capriciousness, perversity and irrationality. The concern is that the discretion should not be abused. Reasonableness and unreasonableness are also concepts deployed in this context, but only in a sense analogous to Wednesbury unreasonableness, not in the sense in which that expression is used when speaking of the duty to take reasonable care, or when otherwise deploying entirely objective criteria... Laws LJ in the course of argument put the matter accurately, if I may respectfully agree, when he said that pursuant to the Wednesbury rationality test, the decision remains that of the decision-maker, whereas on entirely objective criteria of reasonableness the decision-maker becomes the court itself.”

[18] Lady Hale then made reference to Lord Greene **MR in Associated Provincial Pictures Houses Ltd. v Wednesbury Corporation**⁶:

“His test has two limbs:

‘The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or conversely, have refused to take

³ [1984] 3 All ER 935

⁴ [2015] UKSC 17

⁵ [2008] EWCA Civ 116

⁶ [1948] 1 KB 223

into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it.’

The first limb focusses on the decision-making process – whether the right matters have been taken into account in reaching the decision. The second focusses upon its outcome – whether even though the right things have been taken into account, the result is so outrageous that no reasonable decisionmaker could have reached it. The latter is often used as a shorthand for the Wednesbury principle, but without necessarily excluding the former.” [emphasis added]

[19] The defendant argues that the history of the dispute resolution concerning the parties has been ongoing for nine years, through the exercise of the provisions of the Labour Code, and litigation in the High Court. The defendant states that the non-prosecution by the claimant of her request for reference to arbitration and her failure to take such steps available to her against the Minister for Labour justify its decision to withdraw its previously consenting position.

[20] It is undisputable that there has been a protracted delay in pursuing the only recourse available to the claimant for the alleged case of unfair dismissal. The following outlines a brief summary of the matter from the filed documents since the claimant’s dismissal:

- i. The claimant was dismissed on 11th November 2014, and on the even date acting pursuant to the Employment Act through the Labour Commissioner laid a complaint of unfair dismissal against the defendant and requested a meeting pursuant to **Section 82(1)** of the **Employment Act**.
- ii. The hearing of the claimant’s complaint by the Labour Commissioner took place on 27th January 2015 and on 15th June 2015 it was concluded that the claimant was adequately compensated.
- iii. By letter dated 23rd June 2015, counsel Henry, Henry & Bristol for the claimant requested that the matter be referred to the Minister of Labour.

- iv. On 15th June 2016, the Minister of Labour also concluded that the claimant was adequately compensated and that her dismissal was not unfair.
- v. On 26th July 2016, Henry, Henry & Bristol wrote to the Minister of Labour requesting that the matter be referred to an Arbitration Tribunal. There was no progress with this request. On 27th September 2016, counsel for the claimant reminded the Minister of the request. The minister responded on 14th November 2016, and a draft Terms of Reference was circulated for comments.
- vi. On 25th November 2016, Henry, Henry & Bristol suggested amendments to the Terms of Reference for the inclusion of issues related to termination allowance, vacation leave, and non-payment of benefits for the arbitrator's determination.
- vii. On 8th December 2016, Samuel Phillip & Associates for the defendant wrote a letter with suggested amendments. The letter ended by stating "we stand ready to notify our client's choice of nominee immediately upon the execution of this agreement by the parties".
- viii. On 1st February 2017, the Minister for Labour sent the settled Terms of Reference and invited the parties to submit the names of persons to sit on the tribunal.
- ix. On 8th February 2017, Samuel Phillip & Associates wrote to the Permanent Secretary, Ministry of Labour seeking information about the time, place of anticipated execution of the agreement by the parties.
- x. On 15th February 2017, Henry, Henry & Bristol responded and recommended Rita Joseph-Olivetti as arbitrator and also requested further amendments for the removal of the reference to a "trade dispute".
- xi. On 18th May 2017, Henry, Henry & Bristol submitted further amendments to the Ministry of Labour.
- xii. On 5th July 2017, Henry, Henry & Bristol wrote to the Minister of Labour requesting further amendments.
- xiii. On 31st October 2017, Samuel Phillip & Associates enquired of the Minister, whether the request for arbitration was abandoned by the claimant.

- xiv. On 6th December 2017 – Henry, Henry & Bristol responded stating the claim had not been abandoned but was awaiting a date from the minister.
- xv. In the year 2020, the claimant retained new counsel, Deborah Mitchell, and filed a civil claim in the High Court for alleged breach of her employment contract.
- xvi. On 8th June 2022, Deborah Mitchell was appointed as new counsel for the claimant's representation of the matter before the Ministry of Labour.
- xvii. On 5th July 2022, Deborah Mitchell wrote to the Minister of Labour requesting the status of the arbitration.
- xviii. On 30th October 2022, the defendant filed a notice of application seeking an order to stay all parallel proceedings pending the arbitration. The application was dismissed.
- xix. On 30th June 2023, Samuel Phillip & Associates wrote to the Ministry of Labour informing of its unwillingness to participate in the arbitration process.

[21] It can be gleaned that the lethargy in pursuing the claim for unfair dismissal has been contributed by all the parties. The history reflects delays by reason of the failure of the claimant to adhere to deadlines set by the Ministry of Labour, as well as by initiating multiple requests for amendments of the Terms of Reference. It is the evidence that by letter dated 25th November 2016, the claimant responded beyond the deadline set by the Ministry of Labour for comments on the Terms of Reference. In addition, in the letters dated 18th May 2017 and 5th July 2017, the claimant sought further amendments of the Terms of Reference.

[22] There is also evidence of years of blatant disregard with which the Ministry of Labour has been treating with the claimant's complaint. The Ministry of Labour failed to respond to correspondence of the claimant dated 26th July 2016, 27th September 2016, 25th November 2016, 15th February 2017, 18th May 2017, 5th July 2017, 4th March 2020 and 5th July 2022. The last correspondence from the Ministry of Labour on record is dated 1st February 2017 - seven years ago.

[23] Moreover, there is evidence of delay on the part of the defendant, by its own acknowledgement, in correspondence dated 8th December 2016.

[24] In **Roland Browne v The Public Service Commission**⁷, Edwards JA cited Lord Bridge in **R v Dairy Produce Quota Tribunal for England and Wales Ex p Caswell**⁸ as follows:

“Lord Diplock pointed out in *O’Reilly v Mackman*: ‘The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision...’”

[25] Whether the action of the defendant to withdraw its willingness to arbitrate is irrational requires this court to first determine whether the defendant took the right matters into account in reaching its decision and whether its decision is beyond the range of responses open to a reasonable decision maker.

[26] It is the evidence that counsel Deborah Mitchell for the claimant sent a letter dated 5th July 2022 to Senator Claudette Joseph, Minister of Labour on the outstanding arbitration. In the letter, counsel informed the Minister that her client was interested in having the matter concluded and asked for the minister’s intervention to have the matter concluded in the shortest possible time. Counsel also proposed that a status conference be summoned. The letter was copied to Samuel Phillip & Associates.

[27] Samuel Phillip & Associates in an amended notice application filed on 10th October 2022 requested an order of the court that all further proceedings in the action be stayed pending the parallel arbitration. In support of the application, the defendant averred that the claimant had invoked the labour dispute process on 27th July 2016 and acknowledged that the claimant had by letter in July 2022 to the Minister signalled her renewed or continued interest in having her post termination dispute determined via arbitration. The defendant’s application stated

⁷ HCVAP2010/0023

⁸ [1990] 2 A.C. 738 at page 749

that a draft agreement to arbitrate already settled awaited the parties' execution. The defendant admitted having elected to dispose itself in favour of the post termination dispute resolved via arbitration in accordance with the Employment Act. The court dismissed the application for stay.

- [28] The letter to the Minister withdrawing its willingness to arbitrate and copied to Ms. Mitchell reads "having considered the history, status and respective positions of the parties, as well as its own obligations in the management of GIDC as a statutory body..." as the reasons for withdrawing its willingness to participate in the arbitration.
- [29] The claimant in the extant claim states that the defendant failed to provide reasons for its unwillingness to continue the arbitration process. Counsel, Ms. Samuel for the defendant states that the reasons were succinctly stated in the said letter to the Minister.
- [30] The defendant is not under any obligation to give reasons for a decision unless where the decision appears aberrant. In **R v Home Secretary, ex parte Doody**⁹, Lord Mustill said the law does not at present recognise a general duty to give reasons for an administrative decision. Nevertheless, it is equally beyond question that such a duty may in appropriate circumstances be implied. Fairness based on the well-established principles would very often require that a person that would be adversely affected by a decision should have an opportunity to make representations.
- [31] The court is of the view that the fairness of this case especially in light of the fact that the claimant has engaged the only option for a claim for unfair dismissal, and the defendant having taken an active role in ensuring the arbitration process is completed, was under to give reasons for the sudden withdrawal. However, the court is of the view that the defendant's letter to the Minister which was copied to the claimant provided sufficient reasons for its withdrawal.

⁹ [1994] 1 AC 531

- [32] At the hearing, the parties were directed to address the court on the issue of prejudice. Counsel for the claimant argued that the claimant would be severely prejudiced since she would be denied the opportunity to have her unfair dismissal claim heard.
- [33] Counsel for the defendant stated that a dangerous precedent would be set in allowing persons in non-essential services to compel their employers to sit at a table for arbitration to which, legislatively, they are not obliged to agree to. The defendant also challenged the legal costs that have been incurred due to the inordinate delays caused by the claimant.
- [34] The court is of the view that the defendant's letter withdrawing its willingness to arbitrate has not highlighted any significant changes to the status quo since the claimant's letter to the Minister of Labour. The defendant's application to the court, as recent as October 2022, for a stay of the parallel proceedings arose from the same facts filed for the claimant. The defendant's application to the court requested that the arbitration being first in time be allowed to proceed. The defendant's application for the stay of all proceedings was made with the full knowledge of the history and present status of the proceedings. The application was dismissed by the High Court and further by the Court of Appeal. It is also the evidence that the defendant made an application for leave to appeal to the Privy Council, which was eventually withdrawn.
- [35] From all accounts the defendant, although not obligated by statute to consent to arbitration, took all the necessary steps to facilitate the process. As outlined above, the lethargy to prosecute the arbitration was caused by all three parties with the claimant contributing most to the delays either through her absence, suggested amendments to the terms of reference and change of legal practitioner. However, all those issues preceded the defendant's application in 2022 seeking a stay of all parallel proceedings to facilitate the arbitration. The only outstanding issue rests with the Minister of Labour who under the legislation has the obligation to set up the tribunal for the arbitration.

- [36] Judicial review is concerned, not with the decision, but with the decision-making process¹⁰. The defendant has failed to establish that the delay has prejudiced its ability to present its case. On the contrary it is the defendant who has persistently pursued the arbitration process so as to ventilate all issues. The defendant's sudden retraction at this point brings the arbitration agreement to an end. The defendant has not provided any justifiable reasons to establish that it is no longer viable to continue the arbitration.
- [37] The court is further of the view that if it can be established as alleged by the defendant that the overall costs of the arbitration may have been substantially increased by the claimant's delays, this is an issue that can be considered by the arbitration tribunal as the tribunal can take measures such as depriving the claimant costs or payment of the defendant's costs. Also, the tribunal may exercise its discretion against allowing interest that could have otherwise been awarded if the claimant is successful at the arbitration, given the delay.
- [38] As it stands, the current delay lies with the Ministry of Labour. The claimant's letter from counsel to Senator Claudette Joseph, Ministry of Labour dated 5th July 2022, informing that her client is still interested in pursuing the arbitration and requesting the Minister to take the necessary steps with a view to achieving a conclusion within the shortest possible time.
- [39] It is now the responsibility of the Minister of Labour to act with alacrity to assist the parties in putting an end to this long-protracted process which commenced since her dismissal in 2014.

Conclusion

- [40] The court finds that the defendant willingly submitted to the arbitration process and has been actively involved in ensuring the completion of the arbitration which is the only recourse available for the claimant's claim for unfair dismissal. Applying the law to the facts the court finds that the defendant's decision to resile

¹⁰ Chief Constable v Evans (1982) 3 A.E.R. 141 at 154

from its willingness to participate in the arbitration without giving any justifiable reasons is unreasonable and irrational and is accordingly quashed.

Whether the claimant had a legitimate expectation for the finalisation of the arbitration agreement

[41] Counsel for the claimant, for the first time in submissions and again at trial, argues that the claimant legitimately expected the finalisation of the process of the arbitration agreement, with which counsel for the defendant unsurprisingly takes issue.

[42] It is trite that parties to a case are bound by their pleadings. The Court of Appeal in **George W. Bennett Bryson's & Co. Ltd. v George Purcell**¹¹ where Blenman JA at paragraph 30 stated:

“[30] ... It is a rule of pleadings that a party is bound by his pleadings unless he is allowed to amend them, and he is therefore bound by his particulars, which represent part of the pleading under which they are served. In the case of *Spedding v Fitzpatrick*, Cotton LJ held that ‘[t]he object of particulars is to enable the party asking for them to know what case he has to meet at the trial, and so to save unnecessary expense, and avoid allowing parties to be taken by surprise.’

[43] Moreover, Rule **56.3** of the **Civil Procedure Rules 2023** prescribes that a claimant must state the nature and grounds of any relief sought. Accordingly, the court refuses to rule on the issue of legitimate expectation.

ORDER

[44] Given the above circumstances, the court orders and directs as follows:

- (1) That the claimant's claim is granted as prayed.

¹¹ [2018] ECSCJ No. 39

- (2) It is declared that the defendant's decision in the letter dated 30th June 2023 to the Minister of Labour withdrawing its willingness to participate in the conclusion of the agreement to arbitrate after having engaged in the process close to seven years is unreasonable and irrational and is accordingly quashed.
- (3) There having been delays by all parties and accordingly there is no order as to costs.

Agnes Actie
High Court Judge

By the Court

Registrar