

IN THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV2017/0456

BETWEEN:

INTERNATIONAL SCHOOL OF SAINT LUCIA

Claimant

and

THE LABOUR TRIBUNAL

Defendant

Appearances:

Ms. Ann-Alicia Fagan for the Claimant
Mr. Seryoza Cenac for the Defendant

2018: March 27;
May 4.

JUDGMENT

- [1] **SMITH J:** The International School of Saint Lucia ("ISSL") wants to set aside the Labour Tribunal's decision ("the tribunal") of 18th October 2016 that ISSL had wrongfully dismissed Jamie Stiede and, consequently, she was entitled to the balance of her contract in the amount of EC \$69,750.00.
- [2] The grounds of ISSL's judicial review application are that: (1) ISSL had not been served with a notice of dispute and the other documents pertinent to the hearing before the tribunal and therefore was not afforded an opportunity to be heard on the matter which proceeded in its absence; and (2) that the tribunal's decision is unreasonable and unfair as the dismissal was within sections 129 (c) and 146 (1) of the **Labour Act** ("the Act").

- [3] The tribunal maintains that ISSL was properly served with a notice of dispute and the other pertinent documents, that it satisfied itself that ISSL was properly served within the meaning of the Act and, accordingly, the tribunal was at liberty to proceed *ex parte* pursuant to S. 432 of the **Act** when ISSL failed to put in any witness statements or attend the scheduled hearing.

Relevant Background

- [4] On 29th August 2013, Ms. Jamie Stiede entered into a two-year contract of employment with ISSL. Things appear to have proceeded well enough until 25th June 2014 when ISSL wrote Ms. Stiede purporting to terminate her contract as of 24th July 2014 on grounds of restructuring caused by a new requirement to possess a New Brunswick teacher certification as determined by the New Brunswick Educational Committee. Because this application turns on the very narrow point of whether ISSL was properly served with notice of the hearing, it is not necessary to rehearse the details of the New Brunswick requirements and whether or not Ms. Stiede met them or attempted to meet them.
- [5] By letter dated 1st July 2014, Ms. Stiede challenged the purported termination. There was an exchange of letters. Then, on 10th October 2014, Ms. Stiede's attorney lodged a complaint against ISSL to the labour commissioner. By letter dated 11th February 2015, the labour commissioner upheld the decision of ISSL to terminate Ms. Stiede. Around 29th June 2015, Ms. Stiede requested that the labour tribunal review the decision of the labour commissioner. A copy of the notice of dispute and other documents relevant to the hearing were alleged to have been delivered by the secretary of the tribunal to ISSL's principal place of business at Rodney Bay, Gros Islet, as distinct from its registered office.
- [6] On 15th September 2015, the tribunal convened to consider the matter. Neither ISSL nor its counsel was present. The tribunal proceeded in their absence, noting that ISSL had failed to acknowledge any of the tribunal's notices and had not put

in any witness statements or evidence. On 18th October 2016 the tribunal delivered its decision. ISSL says it never received the notice of hearing and other documents, its right to natural justice was breached and consequently the matter should be remitted to the tribunal for rehearing.

Issue

- [7] The sole issue for the determination of this Court is whether ISSL was served or properly served with notice of the hearing. Framed more precisely, it is this: whether service on ISSL at its principal place of business and not at its registered office is proper service for the purposes of section 432 of the Act, in circumstances where ISSL claims it never received notice of the hearing.

Service under the Labour Act

- [8] Section 432 of the Act provides as follows:

432. Power of the tribunal to hear matters ex parte

The Tribunal shall have power to hear any complaint, dispute, industrial dispute or other matter referred to it for determination, on the Tribunal being satisfied that due notice of the hearing was served on a party to the dispute, notwithstanding that that party fails to appear before the Tribunal.

Was there any service?

- [9] Ms. Cornelia Jn. Baptiste is currently the deputy labour commissioner. At the time of the hearing, she was the secretary to the tribunal. This is what she deposed to in her affidavit filed on behalf of the tribunal.

- “5. I personally delivered said documents at their location in Rodney Bay, upstairs the Massy Stores supermarket, near Valmont, off the Gros Islet Highway. Copies of the documents evidencing service are attached hereto and marked collectively as” “CJ1”. For sensitivity purposes, all references not related to this matter have been obstructed, highlighting solely the references to the International School.
6. I am aware that the Labour Tribunal proceeded to hear the matter on September 15th 2015 as per the said notice for which I was the recording secretary. Neither before, nor on the date of hearing did I receive any communication from the claimant with respect to its

intended participation in the hearing. This was conveyed to the tribunal.”

[10] In her affidavit filed in response to that of Ms. Jn. Baptiste, Rachael Duboulay, chairperson of the board of directors of ISSL, said this:

“10. Further with reference to the exhibit marked “CJ1”, the signatures recorded therein, as far as is legible are inconsistent and appear to belong to that of the receptionist of the Claimant. I am informed by my Legal Practitioners and do verily believe that these documents should have been served on the Legal Practitioners for the Claimant given that the subject matter of the proceedings had already been dealt with by the Labour Commissioner. Further, the Legal Practitioners for Jamie Stiede were aware that the Claimant was being represented by Peter I Foster & Associates.

11. I am further informed by the Legal Practitioners for the Claimant and do verily believe that the Tribunal had to have satisfied itself that the party was properly served in accordance with the Labour Act and within generally accepted rules of procedure to ensure a party is served. There is no indication that there was any proof of service or any proof ascertained by the Defendant in the Transcript as “CJ2”.

[11] Ms. Fagan, counsel for ISSL, contends that although the tribunal could regulate its own procedure it was under a duty to satisfy itself that ISSL had been properly served with the notice of complaint and other documents and that the tribunal could not have satisfied itself of this since, on the day of the hearing, there was no affidavit of service or any evidence before the tribunal attesting to service on ISSL.

[12] She further contends that: (1) the tribunal’s deliveries book is “unauthenticated”; (2) it was not produced to the tribunal on the date of the hearing; (3) the transcript does not disclose that the tribunal satisfied itself that ISSL was served with the notice and documents or that Ms. Jn. Baptiste was even present at the hearing; (4) the transcript does not disclose that, as Ms. Jn. Baptiste deposed in her affidavit, the fact that the documents had been delivered to ISSL was “conveyed to the tribunal”; (5) the transcript of proceedings does not provide any information to suggest that the tribunal satisfied itself that there was service on ISSL; (6) the

deliveries book has no date and gives no indication of when and by whom it was prepared; it does not record time of deliveries or by whom documents were delivered or provide a signature of the person delivering; it does not record the person receiving the document or the title of the recipient of the document; and (7) ISSL was actively involved in and showed interest in the proceedings up to the time of labour commissioner's decision, so that the conclusion should be drawn that neither it nor its attorneys were served with any of the notices.

- [13] Mr. Cenac, in reply, submitted that: (1) to require of the tribunal that it satisfy itself of service by applying the rules of service required by a superior court of record would be to elevate the tribunal to a status not intended by the legislation; (2) to do so would be to alienate the parties who are meant to be served by an informal tribunal process; (3) the purpose of removing industrial and labour matters from strict legal process is to achieve a speedier and more informal proceeding stripped of customary legal procedures; (4) the Act at section 429 empowers the tribunal to regulate its own procedure; and (5) the tribunal's deliveries book show that the relevant documents were served on ISSL.

- [14] Section 431 of the Act provides as follows:

"431. Powers of tribunal

For the purpose of dealing with any matter referred to it, the Tribunal shall adhere to the principles of natural justice and may, without being bound by the rules of evidence in civil or criminal proceedings ..."

It then lists a number of powers of the tribunal.

- [15] I accept that tribunals are not expected to follow the strict rules of evidence and procedure as is followed by the high court. The Act contemplates this by allowing the tribunal to regulate its own procedure and by explicitly exempting it from the rules of evidence in civil and criminal proceedings so long as natural justice principles are adhered to. Was natural justice principles adhered to? Was ISSL given due notice of the hearing?

[16] Ms. Fagan says that the transcript does not disclose that any affidavit of service, the tribunal's delivery book, or other information was produced at the hearing to show that the documents had indeed been served on ISSL. This is true. But while it may not have appeared in the transcript, it does not mean that the tribunal did not in fact advert to the deliveries book to satisfy itself that ISSL had been served. In any event, as stated earlier in this judgment, the evidence of Rachael Duboulay is that ISSL's receptionist appears to have signed for the documents.

[17] Therefore even if the deliveries book was not produced at the hearing and there were no affidavits of service put before the tribunal, considering all the evidence, I am satisfied that the relevant documents were in fact served upon ISSL at that school's location in Rodney Bay. The fact that the deliveries book does not say who prepared it, or who delivered the documents, or did not note the time of delivery do not negate the fact that the documents were delivered and signed for by the receptionist of ISSL. Was this sufficient to constitute proper or due notice?

Service under Companies Act

[18] ISSL contends that even if there was service on its principal place of business, that that is not good and proper service since section 521 of the **Companies Act** of Saint Lucia states that a company may be served with a notice or document by leaving it at or sending it by telex, telefax, prepaid post addressed to the registered office of the company or by personally serving any director, officer, receiver, receiver-manager or liquidator of the company. Since there was no service on any of its officers or directors, nor were the documents sent to its registered office, ISSL submits that there was no proper service.

- [19] To prove that its registered office is not at the same address as its principal place of business, ISSL seeks to rely on an affidavit of Deborah Regis filed on 8th March 2018 exhibiting a Notice of Address filed under the **Companies Act** which shows that the registered office of ISSL is at corner Brazil & Mongiraud Streets, Castries and not at Rodney Bay where the principal place of business is located.
- [20] Mr. Cenac objected to ISSL's attempt to rely on the affidavit of Deborah Regis on the grounds that: (1) the court gave no direction to either of the parties permitting them to file additional evidence in the claim; (2) the order dated 23rd November 2017 allowed ISSL to file, on or before 18th December 2017, affidavits in reply to the tribunal's affidavit in response and no further direction was given since that time; (3) ISSL could only file additional evidence in the matter by leave of the court, which has not been sought; (4) ISSL had ample time to introduce this evidence in its affidavit in support of its claim as well as in its affidavits in reply to the tribunal's affidavit; it would be unfair to permit ISSL to rely on that affidavit now; and (5) the affidavit of Deborah Regis filed on 8th March 2018 is inadmissible and cannot be tendered as continuing disclosure, as asserted by Ms. Regis in her affidavit.
- [21] My order of 23rd November 2017 directed the tribunal to file and serve affidavits in response to the claim on or before 1st December 2017. ISSL was directed to file and serve affidavits in reply to the tribunal's affidavits on or before 18th December 2017. The parties were directed to file their respective submissions on or before 13th March 2018. ISSL has not, at any point in these proceedings, sought the leave of this Court to file any additional affidavit and instead seeks to bring the evidence of the address of its registered office to the attention of the Court by invoking the duty of continuing disclosure. The court might have been inclined to consider any such application but none was ever made. Can the information in the affidavit of Deborah Regis be relied upon under the continuous disclosure rule?

Duty of Continuous disclosure

- [22] The duty of disclosure continues until the proceedings are concluded. However, CPR 28.12 (2) and (3) provide that:

“(2) If documents to which that duty extends come to a party’s notice at any time during the proceedings, that party must immediately notify every other party and serve a supplemental list of those documents.

(3) The supplemental list must be served not more than 14 days after the documents to which that duty extends have come to the notice of the party required to serve it.”

- [23] ISSL must be taken to have always known where its registered office was located and therefore it cannot be heard to suggest that this information only came to its notice at that juncture in the proceedings. No supplemental list of documents was ever filed. While the filing of the Deborah Regis affidavit on 8th March 2018, some twelve days before the scheduled trial date, would not necessarily have affected the trial date, no leave of this Court was ever applied for. In those circumstances, I am constrained to accept Mr. Cenac’s submission that to allow ISSL to rely on this affidavit when it had every opportunity to adduce the Notice of Address in previous affidavits filed would be unfair to the tribunal. This is not a case where new information has just come to the attention of a party. This information was always known to and in the possession of ISSL. ISSL is therefore not permitted to rely on the affidavit of Deborah Regis filed on 8th March 2018.

- [24] That being the case, the Court is left with the affidavit of Rachael Duboulay, filed 15th December 2017, which states that the registered office of ISSL is in Rodney Bay (where ISSL was served). I am therefore constrained to conclude that since the documents were left at the office described by the chairperson of ISSL’s board of directors as its registered office, that there was proper service within the meaning of the **Companies Act**.

[25] This finding is enough to dispose of the matter. Nevertheless, because the Court received arguments on the proper interpretation to be given to section 23 2 (d) of the **Interpretation Act**, I will briefly address this issue.

[26] Section 23 of the **Interpretation Act** provides that:

“23. Service of documents

(1) Where an enactment authorizes or requires a document to be served by post, whether the word “serve” or any of the words “give”, “deliver”, or “send” or any other word is used, the service of the document may be effected by prepaying, registering and posting an envelope addressed to the person on whom the document is to be served at his or her usual or last known place of abode or business and containing such document; and unless the contrary is proved, the document shall be deemed to have been served at the time at which such envelope would have been delivered in the ordinary course of post.

(2) Where an enactment authorizes or requires a document to be served on any person without directing it to be served in a particular manner the service of that document may be effected—

- (a) by personal service;
- (b) by post in accordance with subsection (1);
- (c) by leaving it for him or her with some adult person at his or her usual or last known place of abode or business;
- (d) in the case of a corporate body or of any association of persons (whether incorporated or not) by delivering it to the secretary or clerk of the body or association or serving it by post on such secretary or clerk at such office; or
- (e) if it is not practicable after reasonable enquiry to ascertain the name or address of an owner, lessee, or occupier of premises on whom the document ought to be served, by addressing the document to him or her by the description of “owner” or “lessee” or “occupier” of the premises (naming them) to which the document relates, and by delivering it to some person on the premises to whom it can be delivered, or by affixing it, or a copy of it to some conspicuous part of the premises.”

[27] The **Labour Act** is clearly an enactment which requires that service of the tribunal's hearing be effected on a party to a dispute before it. The Act does not say how service is to be effected. It merely requires that the tribunal satisfy itself that due notice of the hearing was served on the litigant. But the **Interpretation Act**, a statute of general application in the interpretation of other statutes, requires that, when an act is silent on how service is to be effected, service on a corporate or incorporated body of persons ought to be effected by delivery to or posted to the secretary or clerk of the body or association. In this case, there is no evidence that the documents were delivered to the secretary or clerk of ISSL. Indeed it appears that the documents were left with ISSL's receptionist.

[28] The requirement in the **Interpretation Act** that service on a company be effected by service on the secretary or clerk (and not just "a" secretary or "a" clerk) is to ensure, I think, that important documents are in fact brought to the attention of the directing minds of a company by the secretary or the clerk which might not happen if such documents are left with just any employee of the company.

In this regard, I think the fact the **Interpretation Act** refers to the secretary or clerk and not "a" secretary or "a" clerk of the body is a material distinction. The "secretary" of a company refers to an officer of a company. Similarly I take "clerk" to be referring to someone who holds a position of substantial responsibility in an unincorporated association or body, for example, the clerk of the national assembly or a clerk of court. I do not think it was intended to refer to a receptionist or front desk employee.

Disposition

[29] The documents were served on ISSL at its principal of law of business at Rodney Bay. This, according to the evidence of Rachael Duboulay was the registered office of ISSL.

[30] In these circumstances, I am obliged to conclude that there was proper service on ISSL and it was not denied its right to be heard. I therefore make the following orders:

- (1) The Claimants claim for judicial review is dismissed.
- (2) There shall be no order as to costs.

JUSTICE GODFREY P. SMITH, SC
High Court Judge

BY THE COURT

REGISTRAR