

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANULTAP2018/0005

BETWEEN: -

ST. JAMES CLUB ANTIGUA LIMITED

Appellant

and

SUNDRY WORKERS

Respondents

Before:

The Hon. Mde Louise Esther Blenman
The Hon. Mde. Gertel Thom
The Hon. Mr. Mario Michel

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Hugh Marshall for the Appellant
Ms. Asheen Joseph for the Respondents

2019: June 19;
2020: June 26.

Collective bargaining agreement — Abuse of process — Law of agency — Scope of authority of a sole bargaining agent under the Antigua and Barbuda Labour Code — Whether the Industrial Court failed to properly consider and apply the provisions of the Antigua and Barbuda Labour Code, the Collective Bargaining Agreement and the law of agency — Whether the Industrial Court erred in law in finding that the Antigua and Barbuda Workers' Union needed to consult with the respondents — Striking out — Implied agency — Agent's authority to bind the principal — Whether a settlement is a bar to future litigation

The appellant owns a hotel which employed the respondents. The respondents were part of a larger group of employees of the appellant who were all represented by the Antigua and Barbuda Workers Union ("the ABWU") as their sole bargaining agent pursuant to the Antigua and Barbuda Labour Code (the Labour Code"). A Collective Bargaining Agreement ("the Collective Agreement"), which outlined the terms and conditions of employment of the

employees and contained provisions on settlement of disputes, was entered into by ABWU and the appellant.

Following a dispute between some employees and the appellant, several employees, including the respondents were terminated by letters dated 15th April 2016. The ABWU and the appellant then entered into discussions for the resolution of the matter as the employees felt aggrieved by the termination. Following the discussions, the ABWU wrote to the appellant and indicated that the respondents had accepted a proposal made by the appellant for the full and final settlement of the matter.

The appellant, on the basis of that indication, remitted cheques for the amounts which the ABWU indicated were accepted by the respondents, along with release and discharge forms for the respondents' signatures. The respondents collected the cheques and signed the releases but inserted the phrase "without prejudice" along with their signatures. However, unbeknownst to the appellant, the respondents were not in agreement that the sums were to be accepted as full and final settlement of the matter and as such they enlisted another trade union, the Antigua and Barbuda Free Trade Union (ABFTU), who filed a reference in the Industrial Court of Antigua and Barbuda ("the Industrial Court") claiming compensation for unfair dismissal.

The appellant filed an application to strike out the reference on the main basis that the matters were settled and the respondents had released and discharged them from liability. They also argued that the inclusion of the phrase "without prejudice" was of no moment or legal effect. The Industrial Court dismissed the application, holding that there were good and reasonable grounds for commencing the proceedings, there was no prima facie evidence on which to conclude that there was no prospect of success and there should be a trial to fully ventilate the pertinent issues which arose on the reference.

The appellant, dissatisfied with the ruling on the application to strike out the reference, appealed. At the time of the appeal, a stay of the order of the Industrial Court was in effect. Two issues arose for determination on appeal: (i) whether the ABWU could bind the respondents as the sole bargaining agent even where there is evidence that they did not agree with the position adopted by the ABWU; or alternatively whether there was an implied agency between the ABWU and the respondents, binding the respondents to the purported settlement and (ii) if the respondents are so bound, whether the purported settlement amounts to a bar of the proceedings before the Industrial Court.

Held: dismissing the appeal; discharging the stay of proceedings in the Industrial Court granted on the 31st July 2018; remitting the matter to the Industrial Court; and making no order as to costs, that:

1. The authority of a sole bargaining agent under the Labour Code is generally limited to those powers stipulated therein as the Labour Code creates a statutory agency. The ABWU acted outside of its statutory powers, in excess of its authority as a sole bargaining agent and outside of its mandate contained in the Collective Agreement. The ABWU had no authority to purport to bind the

respondents to terms of a settlement procured by the ABWU, to which the respondents have not agreed.

Antigua and Barbuda Labour Code Cap 27, Laws of Antigua and Barbuda, 1975 applied.

2. In order for the Industrial Court to find that there was an implied agency between the respondents and the ABWU in addition to, or apart from the statutory agency, there would have needed to have been evidence before the court for it to make such a finding. It would not be appropriate, in a striking out application, for the Industrial Court to consider the evidence concerning whether or not there was an implied agency, as that exercise should be done at a trial. There is therefore no basis to interfere with the exercise of discretion of the trial judge to dismiss the application to strike out the respondent's reference as the ABWU acted outside of the scope of its statutory agency and there was no evidential basis to make a finding as to an implied agency.

Combulk Pty Limited v TNT Management Pty Limited [1993] 41 FCR 59 considered; **Armagas Limited v Mundogas S.A.** [1987] LRC (Comm) 311 considered; **CRJ Services Limited v Lanstar Limited (trading as CSG Lanstar)** [2011] EWHC 972 (TCC) considered; **Bowstead and Reynolds on Agency, 21st Edn., (Sweet & Maxwell, 2018)** applied.

3. While a settlement and release, in proper form, would be a bar to future litigation, this Court need not consider whether the purported settlement contained in the letter dated 26th April 2016, from the ABWU to the appellant, was a bar to future litigation as the Industrial Court made no findings on that issue. Furthermore, in light of the Courts disposition in relation to the question of whether the ABWU could bind the respondents to an agreement which was made without their input, the consideration of whether the proceedings in the Industrial Court are barred is now moot.

JUDGMENT

- [1] **THOM JA:** This is an appeal against the decision of the Industrial Court of Antigua and Barbuda ("the Industrial Court") in which the Industrial Court dismissed the appellant's application to strike out the respondents' reference filed in the Industrial Court, seeking compensation for unfair dismissal.

Background

- [2] The background to this appeal is that the respondents were all employees of the appellant. They were part of a larger group of employees ("the employees") that were

represented by the Antigua and Barbuda Workers Union (“the ABWU”) pursuant to **the Antigua and Barbuda Labour Code**¹ (“the Labour Code”). A Collective Bargaining Agreement (“the Collective Agreement”) was entered into by the ABWU and the appellant. This Collective Agreement outlined the terms and conditions of employment of the employees. It also contained provisions relating to the settlement of disputes between the appellant and the employees.

- [3] A dispute arose between the employees and the appellant resulting in several employees including the respondents, not reporting for duty on 14th April 2016. They were dismissed by the appellant by letter dated 15th April 2016.
- [4] The ABWU held discussions with the appellant who was represented by Dr. Austin Josiah, a consultant to the appellant. The respondents contended that the employees’ position was that all the employees were to be reinstated, while the appellant’s position was that the employees be severed.
- [5] By letter dated 26th April 2016, the Industrial Relation Officer of the ABWU, Mr. Kem Riley (“Mr. Riley”), wrote to the Personnel Officer of the appellant and copied that correspondence to the General Manager of the appellant Mr. Antonio Brown, the appellant’s consultant Dr. Austin Josiah, the Acting Labour Commissioner Mrs. Eltonia Rojas and to Mr. David Massiah the General Secretary of the ABWU.
- [6] The appellant places much emphasis on this letter, as such I will set it out in full. It reads:

“ Ms. Melissa Farley
Personnel Officer
St. James Club
Mamora Bay
St. John’s
Antigua

Dear Ms. Farley
Re Sundry Workers v St. James Club Antigua

¹ Cap. 27, Laws of Antigua and Barbuda, 1975.

We write with reference to our meeting on Monday 25th April 2016.

The following employees have accepted the Company's proposal and willing to accept severance pay and outstanding vacation as full and final payment to bring the matter to a close:

Ms. Suzette King, Ms Natitlea Johnson, Ms. Kaliah Hunte, Ms. Natasha Panteen, Ms. Michelle Prentice, Ms. Tyesha Walters, Mr. Bruce Simon, Ms. Sophine Thomas, Ms. Sharon France, Ms. Mayleen Williams, Mr. Enrico Hunte, Ms. Maurica Wiltshire, Ms. Neysa Whyte, Ms. Shakkia Gregory, Mr. Elvin Barthley.

Ms. Julianne Peters did not accept the Company's proposal and has decided to pursue the matter at the Labour Department.

We look forward to hearing from you so that we can arrange for the employees to return any property belonging to the Company.

Further, the employees have requested that the cheques and releases be sent to the Union for ease of collection.

Yours truly

ANTIGUA & BARBUDA WORKERS UNION

Signed

Kem Riley

Industrial Relations Officer

Cc: Mr. Antonio Brown – General Manager

Dr. Austin Josiah – Consultant

Mrs. Eltonia Rojas – Acting Labour Commissioner

Mr. David Massiah – General Secretary”

- [7] In accordance with this letter, cheques and release forms were prepared by the appellant for the employees to sign. The Release Agreement reads:

“Release Agreement

ACKNOWLEDGEMENT

I have read and understood the terms and conditions set forth in this Release, and am voluntarily and knowingly signing this agreement to grant an unqualified general release to St. James' Club and Spa in consideration of the compensation agreed to be paid to me in full as final settlement of all matters arising out of and in connection with my employment. In the circumstances,

AGREEMENT

I _____ of _____ St..... Antigua, hereby accept the sum of EC\$...... as full and final payment and compensation for the period of employment covering to..... with St. James' Club. I further proclaim that this payment is accepted as full and final compensation and settlement

of any and all claims I have, and may have against St. James' Club or any of its affiliates for my services as an employee as outlined above.

CONFIDENTIALITY OF AGREEMENT

Except as authorized or required by order of a court in Antigua you shall keep confidential and shall not use or disclose, and shall use your best endeavours to prevent the use or disclosure of confidential Agreement before 5 years would have past after the effective date of the agreement. This Release is enforceable and supersedes all correspondence and agreement between St. James' Club and myself on this matter.

Sincerely,

Signature.....

Employee

Date.....".

- [8] The respondents signed the Release Agreement and inserted next to their signature the words "without prejudice".
- [9] The ABWU subsequently by letter dated 20th July 2016, under the hand of the General Secretary Mr. David Massiah and addressed to the Chairman of the appellant, informed the appellant as follows:

"Mr. Robert Barrett
Chairman
Antigua Resorts Ltd.
St. James' Club
Mamora Bay

Re: Sundry Workers v St. James' Club

Dear Mr. Barrett,
Further to our letter of 26th April 2016 to the above reference. We wish to inform you that this matter was amicably settled and the listed employees agreed to the settlement proposed.

Yours truly,
Antigua and Barbuda Workers Union

.....
David Massiah
General Secretary."

The Industrial Court

[10] The respondents thereafter utilised a different union to represent them, namely the Antigua and Barbuda Free Trade Union (ABFTU), and instituted proceedings in the Industrial Court by filing a reference. In the reference, filed on 21st October 2016 pursuant to section 7(1) of the **Industrial Court Act**,² the respondents identified the following as issues in dispute between the respondent and the appellant:

- (1) Whether the employer is obligated to pay the employee severance for his entire period of employment.
- (2) Whether the employer violated the employee's constitutional rights when it terminated them as a consequence of them taking industrial action.
- (3) Whether the employer breached the Antigua and Barbuda Labour Code and the employees' right to participate in industrial action.
- (4) Whether the employees were unfairly dismissed and are entitled to compensation for unfair dismissal and in what quantum.

The respondents also filed their employees' memorandum and witness statements on the said date of 21st October 2016.

[11] On 15th November 2016, the appellant filed an application in which it sought the following orders:

- “(1) Pursuant to Rule 36(1) (a) and (b) of the Industrial Court (Procedure) Rules 2015³ (the Procedure Rules 2015), the Employees' Memorandum of claim filed on the 21st October 2016 be struck out.
- (1) The Employer be granted an extension of time to file its Memorandum of Defence or the requirement for the Employer to file its Memorandum of Defence be stayed until after the Employer's application to strike out is determined by this Honourable Court.

² Cap. 214, Laws of Antigua and Barbuda, 1976.

³ S.I. No. 16 of 2015.

(2) The costs of this application be provided for by the Employees.”

[12] The appellant contended before the Industrial Court that the employees’ memorandum should be struck out since the matter was settled by the ABWU and the appellant. They further contended that the respondents each signed a release agreement which resulted in full and final settlement of the matter and that the respondents’ insertion of the words “without prejudice” by their signatures did not in any way affect the legally binding nature of the Release Agreement.

[13] The application was opposed by the respondents.

[14] The Industrial Court, on hearing the application, dismissed it with costs to the respondents agreed in the sum of \$1000.00 and granted the appellant an extension of time to file its memorandum of defence. The Industrial Court was of the view that it could not be satisfied that the respondent had no prospect of success on any of the issues raised in the memorandum and there was no abuse of the Industrial Court’s process. The Industrial Court concluded that the issues raised could only be determined by a trial.

[15] In arriving at its conclusion, the court took into account its discretionary powers as outlined in section 36 of the Procedure Rules 2015; the mandate of the Industrial Court as set out in section 10 (3) of the **Industrial Court Act**; and relied on the principles relating to striking out of a statement of case as outlined in the decisions of this Court in the cases of **Saint Lucia Furnishing Limited v Saint Lucia Cooperative Bank Ltd et al**⁴ and **Ian Peters v Robert George Spencer**.⁵

The Appeal

[16] The appellant appealed the decision of the Industrial Court on several grounds. However, at the hearing of the appeal, these were consolidated into two issues

⁴ [2003] ECSCJ No. 82.

⁵ [2009] ECSCJ No. 212.

being (i) whether the ABWU could bind the respondents as the sole bargaining agent even where there is evidence that they did not agree with the position adopted by the ABWU; or alternatively whether there was an implied agency between the ABWU and the respondents, binding the respondents to the purported settlement and (ii) if the respondents are so bound, whether the purported settlement amounts to a bar of the proceedings before the Industrial Court.

- [17] The provisions governing the striking out of a reference in the Industrial Court are contained in section 36 of the Procedure Rules 2015. The section reads as follows:

“(1) The Court may, on the application of any party or on its own initiative, strike out a Memorandum or Claim or a Memorandum of Defence or any part thereof if:

- (a) It discloses no reasonable ground for commencing the proceedings;
- (b) It constitutes an abuse of the process of the court’
- (c) There has been a failure to comply with any of these Rules or any direction or Order of the Court.”

- [18] This provision is in similar terms to rule 26.3 (1) of the **Civil Procedure Rules (2000)**. Therefore, the principles applied by this Court in relation to civil matters are applicable to references to the Industrial Court. This Court has on numerous occasions stated that the jurisdiction to strike out should be exercised sparingly. It is a measure of last resort. Furthermore, the provisions of the Procedure Rules 2015 give the Industrial Court a discretion on the question of whether or not to strike out a reference. Once such discretion is exercised by an inferior court, it is very difficult for this Court to interfere with it. This Court has regularly applied the well-known principles of **Michel Dufour et al v Helen Air Corporation Ltd.**,⁶ to say that the exercise of discretion will not be disturbed unless it can be shown that the judge exercised its discretion upon wrong principles and was plainly wrong.

- [19] The appellant sought to have the reference set aside pursuant to paragraph (1) (b) of section 36 of the Procedure Rules 2015 as, in their view, it constituted an abuse

⁶ (1996) 52 WIR 188.

of the process of the Industrial Court. What constitutes an abuse of the process within this context has been addressed in a number of decisions of this Court including **Myrna Norde v Jacqueline Mannix (As personal representative of Henry Alfred Mannix)**,⁷ where the court referred to the case of **Attorney General v Paul Evan John Barker**⁸ in which Lord Bingham described an abuse of the process of the court as “a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.” In **Myrna Norde**, the court stated that an abuse of the process of the court could occur in several ways, including:

“[W]here a party seeks to re-litigate a matter that is res judicata or where he seeks to mount a collateral attack on a previous decision of the court, or where two or more proceedings are brought in respect of the same subject matter which can amount to harassment of the defendant or the claim is one which no reasonable person could properly treat as bona fide and contend that he had a grievance which he was entitled to bring before the court or where there is a clear limitation defence to the claim.”

Learned counsel for the appellant, Mr. Marshall, contends that the reference amounts to an abuse of the process of the Industrial Court since the dispute between the respondent and the appellant was settled and this is evidenced by the letter of 26th April 2016 signed by the ABWU and the Release Agreements, each individually signed by each respondent. The respondents, Mr. Marshall says, are therefore barred from pursuing all future litigation on the issue.

ABWU as agent of the employees

[20] Mr. Marshall submitted that the Labour Code, at division J, made provisions for employees to be represented by a sole bargaining agent and it is not disputed that the ABWU was the sole bargaining agent of the respondents. Mr. Marshall submitted that the respondents are bound by the decisions of the ABWU, their agent, and more so where no representation to the contrary was made by the respondents to the appellant. Mr. Marshall argued that any remedy which the respondents may have must be against the ABWU and not against the appellant,

⁷ ANUHCVP2015/0034 (delivered 16th February 2017, unreported).

⁸ [2000] EWHC 453.

the employer. Mr. Marshall further referred to clauses 1.2, 1.3, 2, and 9 of the Collective Agreement and submitted that the ABWU as the agent of the employees had extensive authority, and their authority covered all issues relating to the employment of the employees.

- [21] Mr. Marshall submitted, in the alternative, that the general principles of agency apply in this case and thus, where the agent acted in excess of his authority, the employees are still bound to the agreements but it is the agent who is liable to the employees for acting in excess of its authority. Mr. Marshall relied on the cases of **Combulk Pty Limited v TNT Management Pty Limited**;⁹ **Armagas Limited v Mundogas S.A.**;¹⁰ **CRJ Services Limited v Lanstar Limited (trading as CSG Lanstar)**;¹¹ and on two passages from the text **Bowstead and Reynolds on Agency**.¹² Paragraphs 8-013 and 8-050 of **Bowstead** are set out below, respectively:

“Apparent (or Ostensible) Authority – Where a person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf, he is bound by the acts of that other person with respect to anyone dealing with him as an agent on the faith of any such representation, to the same extent as if such other person had the authority that he was represented to have even though he had no such actual authority.”

...

“No Unauthorised Act Binding with Respect to Persons With Notice – No act done by an agent in excess of his actual authority is binding on the principal with respect to persons having notice that in doing the act the agent is exceeding his authority.”

- [22] Learned counsel for the respondents, Ms. Joseph in response, submitted that the Industrial Court had before it the evidence on the issue of the settlement including evidence from two of the Union Officers who were involved in the negotiations with the appellant. This evidence was analysed by the Industrial Court before it came

⁹ [1993] 41 FCR 59.

¹⁰ [1987] LRC (Comm) 311.

¹¹ [2011] EWHC 972 (TCC).

¹² **Bowstead and Reynolds on Agency**, 18th ed., (Sweet & Maxwell, 2006), at para.8-013 and at para 8-050.

to its decision to dismiss the application. This Court should therefore not interfere with the exercise of discretion of the Industrial Court.

- [23] The agency between the ABWU and the respondents in this case is in the nature of a statutory agency created by operation of the provisions of division J of the Labour Code. The provisions outline the method by which a sole bargaining agent is selected to represent a unit of employees. The sole bargaining agent is elected by the majority of the employees in the unit. This is not akin to the situation where an individual selects a person to be his/her agent. Section J 13 sets out the role of the sole bargaining agent as follows:

“(1) As provided by section J4 the certified trade union shall be the sole bargaining agent for all the employees in the involved bargaining unit; and, as indicated in section K4(2) (c), it shall have the duty to represent all such employees in negotiating collective agreements.”

The role therefore of a statutory agent such as the ABWU is, according to the Labour Code, to negotiate collective agreements. Indeed, a collective agreement was negotiated and entered into by the ABWU and the appellant.

- [24] The provisions in the Collective Agreement referred to by Mr. Marshall in my view, however, do not assist the appellant. Clause 1.2 deals with the duration of the Collective Agreement. There is no contention that, at the time of the dispute between the appellant and the respondent, the Collective Agreement was in force. Clause 1.3 deals with the purpose of the Collective Agreement, which is to (a) ensure orderly industrial relations between the parties and the union and (b) record the agreement of wages and terms and conditions of employment of the employees. Clause 2 outlines the employees to whom the Agreement is applicable which includes the respondents. Clause 9 makes provisions for the avoidance of strikes and lockdowns. It reads:

“9.1 All grievances and disputes shall be dealt with in accordance with the provisions of this agreement and settled as soon as possible.

9.2 No party to this agreement shall take any action in the nature of a strike or lock-out until everything possible has been done to resolve the dispute.

9.3 In the event of an unofficial strike or walk out, the ABWU will use its best endeavor to persuade the employees to return to work.”

[25] The provisions for settlement of disputes referred to in clause 9.1 are outlined in Appendix 1 clause 27. Clause 27.2 states –

“Settlement of Disputes - If an employee or group of employees has a grievance the following procedure shall be taken and each step shall be taken at the earliest opportunity, until the matter is satisfactorily settled.

Clause 27.2.1 The employee or group refers the matter to the appropriate representative of management (viz, the immediate supervisor where the matter can be disposed by him; in the case of dismissal the representative of Management responsible for the decision) and/or the employee or group refers the matter to the ABWU representative at the hotel, and the ABWU representative at the hotel, and the ABWU representative meets the Management. Clause 27.2.2 The Works Committee discusses the matter. Clause 27.3 The ABWU meets Management. Clause 27.2.4 The matter is referred to the Labour Commissioner for conciliation.”

The Collective Agreement therefore outlines the manner in which disputes between the appellant and the employees are to be settled.

[26] The Industrial Court took into consideration that there was a dispute as to whether the respondents agreed to the terms of the settlement contained in the ABWU letter of 26th April 2016. The Industrial Court heard evidence on this issue from the parties with the respondents contending that their position was reinstatement since in their view they were unfairly dismissed and that they had rejected the proposal of the appellant for severance pay and vacation pay and that they understood that the payment contained in the settlement was only part of the payment they were to receive and wrote without prejudice on the release settlement. The Industrial Court also heard evidence from two representatives of the ABWU including the author of the April 26th letter, Mr. Riley. Mr. Riley testified that the respondents were not aware of the contents of the letter. Further the letter was not copied to

them. The releases were prepared by the appellant and the employees were seeing the releases and settlement for the first time on the date of signature.

[27] Having considered the evidence before the Industrial Court, it was open to the court to find as they did that the employees did not agree to the terms of the settlement, and that the ABWU formed the erroneous view that they had accepted the counter proposal of the appellant to accept severance payment as full and final settlement of the matter. It is my firm view that, as stated earlier, the agency being an agency created by statute, the effect of the agency and the powers of the agent are generally limited to those delineated in the statute. When the provisions of division J, which sets out the role of the sole bargaining agent, are considered conjointly with the provisions of the Collective Agreement referred to by Mr. Marshall in particular clause 27 which outlines the procedure for settlement of disputes, nothing in those provisions suggest that the employees are bound by terms of a settlement procured by the sole bargaining agent to which they have not agreed. The respondents are therefore not bound by the terms of an agreement reached by the ABWU of which they were not aware.

[28] On the question of whether there was implied agency, the learned authors of **Bowstead and Reynolds on Agency**¹³ explained that there would be an implied agency as follows:

“Where a principal, by words or conduct, represents or permits it to be represented that an agent is authorized to act on his behalf, he is bound by the acts of the agent, notwithstanding the termination of authority (unless perhaps by the death or insolvency of the principal), to the same extent as he would have been if the authority had not been terminated, when it was reasonable for the third party to deal with the agent on the faith of any such representation, without notice of the termination of his authority.”

An evidential basis would be necessary to establish that there was an implied agency in addition to, or apart from, the statutory agency. In my view, this is a

¹³ Bowstead and Reynolds on Agency, 21st Edn., (Sweet & Maxwell, 2018), at para.10-030.

matter which necessarily would have to be ventilated at a trial and not on a striking out application.

[29] At the hearing, Mr. Marshall indicated that if this Court did not find for the appellant on the issue of whether the ABWU could bind the employees then the appeal would have to be allowed. I agree. Mr. Marshall also brought to this Court's attention to the fact that the Industrial Court did not determine whether the settlement and release amounted to a bar to the proceedings. Submissions were made by both parties on the issue and I am of the view that a settlement and release, in proper form, would be a bar to future litigation. However, it is not necessary for this Court to make a finding on this issue as the Industrial Court did not make a determination thereon and, in any event, in view of this Court's finding on the issue of agency, this issue is now moot. There is therefore no basis to interfere with the discretion exercised by the Industrial Court to dismiss the application to strike out the reference.

[30] Consequently, I will dismiss the appeal and make no order as to cost, no exceptional circumstances having been shown in accordance with section 27 of the Industrial Court Act. The stay of proceedings in the Industrial Court granted on the 31st July 2018 is discharged and the matter is remitted to the Industrial Court. The appellant has leave to file its memorandum of defence within 14 days of the date of this judgment .

I concur.
Louise Esther Blenman
Justice of Appeal

I concur.
Mario Michel
Justice of Appeal

By the Court

Chief Registrar