

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

SAINT LUCIA

SLUHCVP2019/0002

BETWEEN:

THE LABOUR TRIBUNAL

Appellant

and

ST. LUCIA ELECTRICITY SERVICES LIMITED

Respondent

HEARD TOGETHER WITH

SLUHCVP2019/0003

BETWEEN:

[1] THE LABOUR TRIBUNAL

[2] SAINT LUCIA CIVIL SERVICE ASSOCIATION

Appellants

and

ST. LUCIA ELECTRICITY SERVICES LIMITED

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE

Chief Justice

The Hon. Mde. Louise Esther Blenman

Justice of Appeal

The Hon. Mr. Paul Webster

Justice of Appeal [Ag.]

Appearances:

Mr. Seryozha Cenac, Senior Crown Counsel for the First Appellant

Mr. Thaddeus Antoine for the Second Appellant (The Interested Party
in the court below)

Mr. Dexter Theodore, QC with Ms. Diana Thomas for the Respondent

2019: November 25;
2020: April 8.

Civil appeal - Statutory interpretation – Labour Act of Saint Lucia – Age of retirement – Section 159 of the Labour Act - Interpretation of section 22 of the Labour Act – Whether section 159 of the Labour Act increased retirement age from 60 in employees’ Private Pension Scheme to 65 as prescribed by the National Insurance Corporation Act - Whether learned judge erred in interpretation of section 22 of the Labour Act – Whether purposive construction should have been applied to section 22 of the Labour Act - Long title as aid to interpretation – Whether respondent contractually bound to increase age of retirement in the Private Pension Scheme to 65 on basis of harmonisation with the National Insurance Corporation Act

The respondent, Saint Lucia Electricity Services Limited (“LUCELEC”) by letter dated 2nd February 2016, wrote to Mr. David Rodgers (“Mr. Rodgers”) concerning his retirement under the company’s Private Pension Scheme (“PPS”). Mr. Rodgers challenged the calculation of his pension and appointed Mr. Barthelmy Fedee (“Mr. Fedee”) to represent his interests. LUCELEC was subsequently informed by the Labour Commissioner that their policy of retiring employees at age 60 violated the labour legislation. In response, LUCELEC requested that the matter be referred to the Labour Tribunal (“the Tribunal”). This referral was done by the Minister by letter dated 4th April 2017.

The Tribunal, having heard the matter, concluded that the Labour Act (“the Act”), which provides in section 159 that the pensionable age is deemed to be 65 in accordance with the National Insurance Corporation Act (“the NIC Act”), applied to all employees including those who were in LUCELEC’s employment before 1st August 2012, the day the Act came into force. Accordingly, LUCELEC was bound to retire those employees at 65 rather than the retirement age of 60 in their PPS.

LUCELEC, aggrieved by the Tribunal’s decision, filed a claim for judicial review seeking a number of orders on 10th October 2018. The learned judge, having heard the submissions of learned counsel for the parties found in favour of LUCELEC and quashed the decision of the Tribunal; granted a declaration that the retirement age for employees who entered service prior to 1st August 2012 who are subject to LUCELEC’s Grade 1 PPS is 60; and granted a declaration that LUCELEC had no obligation to make future contributions to the PPS on behalf of those said employees.

The Tribunal and the Saint Lucia Civil Service Association (“the Civil Association”) (or collectively, “the appellants”) are dissatisfied with the decision of the learned judge and have filed a number of grounds of appeal against the judge’s reasoning and conclusion. The issues that arise for this Court’s determination are: (i) whether

the learned judge erred in the construction of section 22 of the Act and consequently in concluding that section 159 does not increase the retirement age for the employees; and (ii) whether the learned judge erred in concluding that the PPS was not harmonised with the NIC Act.

Held: dismissing the appeal; and making no order as to costs:

1. It is settled law that Acts of Parliament should be construed according to the intention expressed by the words used. Parliament, the legislative branch of the government, is responsible for enacting, amending and repealing the laws of its respective states. It is this branch that reflects the collective voice of its people. Therefore, it is axiomatic that the statutes are seen as the citizens' collective expression. It follows then that the words actually used in the legislation are most critical and every effort must be made to give effect to them. The courts therefore cannot enquire into Parliamentary wisdom when interpreting any part of a legislation.
2. The fundamental principle of statutory interpretation is that where the words, in their natural and conventional sense, are clear and unambiguous then they must prevail. Section 22 creates two tiers. Section 22(1) provides that any valid contract that was in existence before the Act, continues to be valid and enforceable. Subsection (2) then goes on to provide that that same valid and enforceable contract shall, to the extent that it is not in conflict with the Act, be deemed to be made under the Act. The logical inference is that these pre-existing contracts continue to be valid under subsection (1). The legislature in drafting subsection (2) chose very careful words and deliberately crafted that subsection to protect and preserve the pre-existing contracts. The appellants' argument that where a contract is inconsistent with the Act, then it is deemed to be invalid and unenforceable cannot stand in the face of the pellucid and unambiguous wording of section 22. Accordingly, the retirement age of the employees continue to be 60 in accordance with the provisions of the employees' private pension scheme in their employment contracts. The learned judge did not err in so concluding.

Sussex Peerage Case (1884) 8 ER 1034 applied; **Duport Steels Ltd and others v Sirs and others** [1980] 1 All ER 529 applied; **Smith v Selby** [2017] CCJ 13 (AJ) applied; **Re Rizzo & Rizzo Shoes Ltd** [1998] 1 S.C.R. 27 not followed.

3. The interpretation of section 22 advanced by LUCELEC accords with the intent and spirit of the Act. Therefore, the argument that the learned judge directed his mind only to the literal approach which yielded an absurd result is moot. The learned judge could not have been expected to refer to all the principles of statutory interpretation. Instead, what he was required to do and which he had done was to address and apply the statute in the particular circumstances of the case. Contrary to the appellants' position,

the learned judge's reliance on the literal approach was not to say that the other rules were excluded; but, that having applied the literal rule and there being no absurdity as a consequence of that application, there was no need to consider the other rules in any detail. Accordingly, the learned judge cannot be faulted for so holding.

Rowell v Pratt [1938] AC 101 considered.

4. Though a long title can play a valuable interpretative role in resolving any ambiguity in the body of the Act, it is subsidiary to the plain meaning of enacting parts. In other words, where the section in question is clear and unequivocal, then where a contrary interpretation is reflected in the long title, the latter cannot prevail. In the circumstances of this case, the appellants' reliance on the long title does not take their case much further since it also acknowledged the "existing local standards" which include both the existing contracts which provide a private pension, and which section 22 has sought to protect and the existing Pensions Act which provides a public pension alternative to the NIC pension.

R v Galvin [1987] QB 862 considered.

5. There is no doubt that the learned judge quite properly analysed and evaluated the evidence before him in arriving at the conclusion that the PPS was not harmonised with the NIC Act so as to increase the retirement age to 65. This evidence included the actuarial report which advised how the NIC increases would impact the pension scheme and the witness statements of Mr. Rodgers and Mr. Fedee which contradicted the argument that LUCELEC, by its conduct, harmonised the PPS with the NIC Act. There was nothing before the judge on which he could have properly concluded that there was an inextricable link between the PPS and the NIC Act with corresponding legal implications. Accordingly, there is no basis on which the learned judge's reasoning and conclusion can be assailed.

JUDGMENT

Introduction

- [1] **BLENMAN JA:** This is an appeal against the judgment of the Honourable Justice Smith ("the learned judge") delivered on 18th December 2018, on a claim for judicial review by the Saint Lucia Electricity Services Limited ("LUCELEC") against the decision of the Labour Tribunal ("the Tribunal"). The Tribunal ruled that LUCELEC was bound to retire the Grade 1 employees who entered into

employment prior to 1st August 2012 (“the employees”) at age 65 contrary to the contractual provisions of their Private Pension Scheme (“PPS”) in which the retirement age is 60. The learned judge quashed the decision of the Tribunal and granted declarations that the Grade 1 employees are subject to the provisions of the PPS and further that LUCELEC is not obliged to make future contributions to the pension scheme on behalf of the said employees.

- [2] The Tribunal and the Saint Lucia Civil Service Association (“the Civil Association”) (or collectively, “the appellants”) are dissatisfied with the decision of the learned judge and have filed a number of grounds of appeal against the judge’s reasoning and conclusion. Essentially, the appellants seek to impugn the learned judge’s application of the law and his conclusions that: (i) section 22(2) of the **Labour Act** (“the Act”)¹ does not operate to change the retirement age of 60 in the PPS to 65 in accordance with the **National Insurance Corporation Act** (“the NIC Act”)² and that LUCELEC was not contractually bound to implement the NIC retirement age.

- [3] I will now address the factual background in order to provide the requisite context.

Background

- [4] LUCELEC, by letter dated 2nd February 2016 wrote to Mr. David Rodgers (“Mr. Rodgers”) concerning his retirement under the company’s Private Pension Scheme. Mr. Rodgers, by letter dated 30th March 2016 challenged the calculation of his pension and appointed Mr. Barthelmy Fedee (“Mr. Fedee”) to represent his interests.
- [5] LUCELEC was subsequently informed by the Labour Commissioner that their policy of retiring employees at age 60 violated the labour legislation. In response,

¹ Cap. 16.04 of the Revised Laws of Saint Lucia 2015.

² Cap. 16.01 of the Revised Laws of Saint Lucia 2015.

LUCELEC requested that the matter be referred to the Tribunal to have the Commissioner's decision reviewed. This referral was done by the Minister by letter dated 4th April 2017.

- [6] The Tribunal heard the matter and found in favour of the employees and concluded that the Act, which stated that the pensionable age is deemed to be 65 in accordance with the NIC Act, applied to all employees including those who were in LUCELEC's employment before 1st August 2012, the day the Act came into force.
- [7] LUCELEC, aggrieved by the Tribunal's decision, filed a claim for judicial review seeking a number of orders on 10th October 2018.

Issues in the lower court

- [8] At the heart of the parties' contention was whether the PPS was in conflict with the Act as it purported to have a different retirement age than that prescribed in section 159. Consequently, the question then became whether section 22, which addresses pre-existing contracts, had the effect of changing the retirement age to 65 in accordance with the NIC Act. Critically, LUCELEC argued that the employees are bound by the retirement age of 60 in the PPS. Conversely, the employees argued that the retirement age is 65 and that finding otherwise would mean a reduced pension which would significantly affect their livelihood.
- [9] The learned judge having considered the evidence and heard the submissions of counsel for the parties, considered that two issues arose for determination. Those were: (i) whether the Act was retroactive or retrospective so as to change the retirement age of 60 in employment contracts that predated the coming into force of the Act to bring it into conformity with the age fixed by the Act; and (ii) whether LUCELEC was required or otherwise bound to bring the PPS into conformity with the NIC Act by making additional contributions beyond that contemplated in the language of the PPS.

Judgment Below

[10] The learned judge in construing section 22 held that Parliament had clearly intended, based on the wording in subsection (1) that pre-existing contracts should continue to be valid after the Act came into force, subject to the condition stated in subsection (2). In relation to the retrospective issue, the learned judge held that section 159, to the extent that it is intended to be retrospective is limited by section 22(2) and does not operate to change the retirement age of 60 in the PPS to 65 in accordance with the NIC Act. The learned judge relied on the principles enunciated in the cases of **In Re Receivership of St. Clair Investments Limited and Others v David Holukoff and another**³ and **Young v Adams**.⁴

[11] Of particular relevance to this appeal are the learned judge's conclusions on the construction of section 22 at paragraphs 25 to 27. The learned judge held that:

[25] I agree...that “deemed” creates a legal fiction that such contracts were made after the Act came into force so that parties to them are subject to and benefit from its provisions, so long as clauses in the contracts do not conflict with the Act.

[26] Counsel for the interested party asked what then happens to contractual terms that conflict with the Act if they are not deemed to be invalid. He submitted that, if conflicting terms were not deemed to be invalid, it would lead to an absurd result. I do not agree. It involves neither the making of an inference nor straining the language of the Act to interpret subsection (2) as saying that, where there is a conflict, the contract continues in force unaffected by the Act.

[27] As contended by the claimant, if the drafters of the Act intended that any conflict between the contract and the Act should result in invalidity, all they would have to say is that “to the extent that existing contracts are in conflict with the Act, the existing contracts are invalid.”

... ”

³ SVGHCV2015/0162 (delivered 18th January 2017, unreported).

⁴ [1898] AC 469.

- [12] On the harmonisation issue, the learned judge found that LUCELEC's circulation of a notice of the NIC changes, educating its staff and participating in meetings on the issue do not amount to a representation to its staff that it intended to implement the NIC retirement age. Accordingly, he was of the considered view that there was no evidence that LUCELEC, by its conduct, treated or accepted the PPS as being harmonised with the NIC Act and was therefore contractually bound to implement the NIC retirement age or that it was legally bound, based on some equitable principle, to do so.

Issues on Appeal

- [13] Based on the several grounds of appeal that have been filed, written submissions and oral arguments canvassed at the hearing, the main issues arising for this Court's determination can be helpfully crystallised as follows:

- (i) Whether the learned judge erred in the construction of section 22 of the Act and consequently in concluding that section 159 does not increase the retirement age for the employees ("the construction of section 22"); and
- (ii) Whether the learned judge erred in concluding that the PPS was not harmonised with the NIC Act ("the harmonisation issue").

The Tribunal's Submissions

- [14] Learned Senior Crown Counsel Mr. Seroyzha Cenac submitted that to arrive at a proper construction of the Act, being a "social piece of legislation", the learned judge should have applied the purposive rule of construction. He contended that this modern approach to statutory interpretation involves the consideration of the textual, contextual and purposive analysis of the provision in question. Mr. Cenac argued that the learned judge erred when he directed his mind only to the literal approach, which yielded an absurd result. This absurdity, he contended, is that the reform agenda of the Act would be nullified for all persons whose contracts predate the Act, thereby depriving them of the benefits under the legislation. In

aid of his submissions, counsel cited the authorities of **Maxwell on the Interpretation of Statutes**,⁵ **The Attorney General of the Commonwealth of Dominica v Miriam Williams et al**,⁶ **Re Rizzo & Rizzo Shoes Ltd**⁷ and **Ayr Farmers Mutual Insurance Company v Scott Wright**.⁸

- [15] Mr. Cenac submitted that on a proper reading of section 22, it would be gleaned that subsection (1) is made subject to subsection (2). He contended that the latter is saying that a contract which is not in conflict with the Act is deemed to be made under the Act so that the parties can enjoy the benefits and for that purpose continue in force by virtue of subsection 1; that is validation. He submitted therefore, that the premise of section 22 was to validate contracts that are consistent with the Act and by logical consequence, invalidate those that were not. Accordingly, by necessary implication, those pre-existing and conflicting contracts would not be deemed valid and enforceable.
- [16] Mr. Cenac further submitted that a retirement below the NIC age would undoubtedly affect the pensioner's benefits and place a heavier burden on NIC to provide pension benefits for longer periods. In light of this, he submitted that the correct approach in resolving the direct conflict between section 159 and the PPS would be to find that the latter is unenforceable so that the employees cannot be forced to retire at 60. He submitted that the economics of law favour the appellants given their circumstances and the impact on their livelihoods.
- [17] Mr. Cenac accepted the general presumption against legislative retrospectivity which is only rebuttable by express words or implication but, argued that the invalidity of earlier contracts could be inferred by "necessary implication" since the contrary produces an absurd result.

⁵ (12th edn, 1969) Sweet & Maxwell, p. 228.

⁶ Commonwealth of Dominica Civil Appeal No. 13 of 2003 (delivered 18th February 2005, unreported).

⁷ [1998] 1 S.C.R. 27.

⁸ 2016 ONCA 789.

- [18] Mr. Cenac then argued that the learned judge erred in finding that the PPS was not harmonised with the National Insurance Scheme (NIS)⁹ as he failed to consider the import of the word “is” in the actuary’s report. Mr. Cenac contended that the use of the verb “is” in the following statement, “As the Grade 1 Scheme is harmonised with the NIS”, denotes a present condition of that state of harmony rather than a past one. He submitted that the evidence of Mr. Fedee¹⁰ and Mr. Rodgers combined with the actuarial report, when considered collectively, suggested that both the employees and the actuary were of the view that the two were harmonised. Accordingly, he submitted, there was no basis on which the judge could arrive at the conclusion that the PPS was not harmonised with the NIC Act. He therefore submitted that the learned judge erred in failing to so hold.

The Civil Association’s Submissions

- [19] Mr. Antoine submitted that section 159(1) applies to all employees without exception and that on a clear reading of subsections (1) and (2), the statutory intention was that no employee was compelled to retire at an age lower than the age of 65, as prescribed in the NIC Act. Mr. Antoine further contended that though the learned judge was correct in stating that invalidity cannot ordinarily be simply inferred, section 13(4) of the Act invalidates contractual provisions that provided for lower standards than those established under the Act; the argument essentially being that the provision for a lower pensionable age is a lower standard. In keeping with this, he submitted, the offending provision or provisions of the contract are invalid.
- [20] Mr. Antoine argued that the decision of the learned judge ought to be set aside based on the erroneous interpretation of section 22 as it could not have been Parliament’s intention to have contracts continue or exist outside the statutory regime provided for in the Act. In this connection, he urged this Court to invoke the concept of *per incuriam*. He relied on the explanation of this concept in

⁹ This is now the National Insurance Corporation.

¹⁰ See paragraphs 7 to 16 of his witness statement.

Morelle Ltd v Wakeling and Another.¹¹ He submitted that had the learned judge considered section 13(4), he would have invariably found that the provision in the PPS providing for a retirement age of 60 was null and void.

[21] Mr. Antoine submitted that the learned judge erred in concluding that though section 159 was retrospective, it was limited by section 22(2). He contended that the use of the words “shall be” in section 159 was to prescribe the retirement age after passage of the Act. Mr. Antoine submitted that the age of retirement in the PPS was an existing state of affairs that became inconsistent with section 159. He stated that in that sense, there is an extent to which the section may have retrospective effect by changing the terms of an existing relationship. However, he remained resolute in his position that section 159 did not have retrospective effect. He relied on the cases of **Robert William Hirst v The Director of the Social Security Board et al**,¹² **Odelola v Secretary of State for the Home Department**¹³ and **Hilroy Humphreys v The Attorney General of Antigua and Barbuda**¹⁴ in support of his position.

[22] The submissions of Mr. Antoine in relation to the purposive approach to statutory construction are very similar to that of the Tribunal’s and therefore need no extensive recitation. Suffice it to say that Mr. Antoine submitted that the Act itself provided some evidence of Parliament’s intention which would have assisted in the construction of the relevant provisions in the contextual scheme of the Act. He relied on the explanatory notes at the commencement of the Act and the authorities of **Smith v Selby**¹⁵ and **R (Quintavalle) v Secretary of State for Health**¹⁶ in support of this argument. He further contended that the combined effect of sections 4, 5 and 10 - 22 show that Parliament’s intention was that all

¹¹ [1955] 2 Q.B. 379.

¹² BV/HCV2013/0209 (delivered 8th December 2015, unreported).

¹³ [2009] UKHL 25.

¹⁴ [2008] UKPC 61.

¹⁵ [2017] CCJ 13 (AJ).

¹⁶ [2003] 2 WLR 692.

valid existing contracts could not just hover outside the Act when there was a conflict so that they remain unaffected.

- [23] Finally, Mr. Antoine submitted that the learned judge erred in concluding that the PPS was not harmonised with the Act. He contended that LUCELEC has impliedly changed parts of the rules of the PPS as a result of operation of law but has refused to amend the retirement age and the rest of the scheme, much to the detriment of the employees. Mr. Antoine, in his oral submissions, quite eloquently and clearly painted the picture of economic hardship that would befall these employees, the ones who are least able to cushion such losses. He submitted that it was always the intention of the PPS, which was harmonised with the NIS, that employees would retire with a 40% contribution from LUCELEC (the PPS) and 60% contribution from the NIC. He submitted that when the contributions came together, it would give the employees a pension that is, to a moderate extent, similar to their existing salaries so that they would be able to enjoy a similar standard of living. He contended that if the employees are forced to retire at 60, then they would only be entitled to the 40% from the PPS and wait 5 years until they attain the NIC retirement age of 65 to get the other 60%. He submitted that at that stage, they would have already lost 30% of their pension. In the circumstances, he urged this Court to allow the appeal and grant the orders prayed for.

LUCELEC's submissions

- [24] Mr. Theodore, QC urged this Court to uphold the judgment of the court below and he argued that the learned judge did not err in his reasoning and conclusion. Mr. Theodore submitted that the purport of section 22(1) is to address the validity of all existing contracts. He contended that the objective of section 22(2) is to address how the provisions of the Act apply to contracts that are deemed to be valid by section 22(1). Mr. Theodore contended that subsection (2), on an ordinary construction, has not changed the validity of subsection (1). Instead, pre-existing contracts are only deemed to be made under the Act to the extent that

they are not in conflict with the Act. He submitted that there are no ambiguities (or vagueness) in section 22 as the wording of the statute is unequivocally clear. He further submitted that for the appellants to infer invalidity of the existing contracts, this would change the meaning of section 22 and in so doing, rewriting the legislation.

[25] Mr. Theodore opined that the law is that existing contracts remain valid unless they are expressly or by necessary implication impliedly invalidated. He relied on section 27 of the **Interpretation Act**¹⁷ in support of this submission. In light of this, he submitted that the only purpose of section 22 is to reiterate the continued validity of existing contracts which were lawful prior to 1st August 2012 and to ensure that terms are implied into the existing contracts which are not expressly provided for in same.

[26] Mr. Theodore contended that the learned judge did not examine sections 159 and 22 in isolation as the appellants have suggested but, that the interpretation exercise undertaken by the judge was done by looking at the context in which both sections were made. This includes the existing local and international labour law standards.

[27] Mr. Theodore posited that there are two groups of employees in the Saint Lucian Government service – those who are liable to make national insurance contributions and so retire at the national insurance pensionable age, and those subject to the **Pensions Act**¹⁸ and therefore must retire at age 55 or 60 years old. By the same token, there are two groups of employees in the private sector - those who are subject to private pensions schemes with a normal retirement age of 60, and those who will retire at the National Insurance Corporation's pensionable age. He submitted that if the Government accepts that it can retire its employees at age 55 or 60 years, then there is no elevation of private

¹⁷ Cap. 1.06 of the Revised Laws of Saint Lucia 2017.

¹⁸ Cap. 15.26 of the Revised Laws of Saint Lucia 2017.

employment contracts above the Act. The framers of the Act simply considered, and accepted, those local conditions. There is nothing absurd about this result.

[28] In relation to the harmonisation of the PPS and the NIC Act, Mr. Theodore submitted that there were no facts upon which the Tribunal should have found or the learned judge could have found that the PPS was amended in consonance with the NIC Act. The **National Insurance Corporation (Pensionable Age) Order**¹⁹ ("the Order"), the statutory instrument fixing the pensionable age, was passed in 2002 allowing for a gradual change²⁰ up to 65 years in 2015. He contended that though it appeared that the PPS was harmonised with the NIS at the time, there was nothing in the evidence to show that when the Order changed the retirement age in 2002 that, LUCELEC was bound to make a commensurate change. Mr. Theodore, QC contended that to have been so bound, the appellants would have to show that it was a term of the contract that: (i) there was an inextricable link between the PPS and the NIC Act and (ii) it was a term of the contract that that link would never be severed. There is no such evidence and that has not been pleaded.

[29] He contended that the appellants are relying on the equitable doctrine of estoppel to advance the argument that there was some conduct on LUCELEC's part that would make it inequitable for them to sever the link which existed at the time the PPS was created. Mr. Theodore, QC submitted that the appellants have waited 14 years after the first increase without making any challenges to the retirement policy to which they agreed. In this regard, he noted the applicability of equitable maxim that delay defeats equity.

¹⁹ Statutory Instrument No. 102 of 2002.

²⁰ The pensionable age would be increased by 1 year every three (3) years until 2015 so that it was 61 in 2003, 62 in 2006, 63 in 2009, 64 in 2012 and fixed at 65 in 2015.

Discussion

The Construction of section 22

[30] The main crux of this appeal is whether the learned judge was correct in the interpretation of section 22 of the Act and consequently the applicability of section 159, and in his reasoning and conclusion. I propose to first outline the relevant provisions before addressing the issue.

[31] Section 22 of the Act provides:

“22. Existing contracts to continue in force

(1) Subject to subsection (2), a contract of employment valid and in force on the date of commencement of this Act shall continue to be in force after the date of commencement of this Act.

(2) *A contract of employment referred to in subsection (1), shall, to the extent that it is not in conflict with the provisions of this Act, be deemed to be made under this Act and the parties thereto shall be subject to and entitled to the benefit of the provisions of this Act.*” (emphasis mine)

[32] Section 159 which makes provision for the age of retirement states:

“(1) The age of retirement for all employees shall be the age deemed to be the pensionable age in accordance with the National Insurance Corporation Act.

(2) The parties to a contract of employment may, by agreement, agree to an age of retirement exceeding the pensionable age in force under the National Insurance Corporation Act.”

[33] I have given deliberate consideration to the submissions of all learned counsel in relation to the learned judge’s interpretation of section 22. I am more attracted to the submissions of Mr. Theodore in preference to those advanced by Mr. Antoine and Mr. Cenac.

[34] I am of the considered view that despite the forceful and respectful submissions of Mr. Antoine, the issue of whether or not the learned judge was correct in so far as the age of retirement for the employees being 60 as in the PPS rather than 65

in accordance with section 159 of the Act is a straightforward question of statutory interpretation.

[35] It is settled law that Acts of Parliament should be construed according to the intention expressed by the words used. Parliament, the legislative branch of the government, is responsible for enacting, amending and repealing the laws of its respective states. It is this branch that reflects the collective voice of its people. Therefore, it is axiomatic that the statutes are seen as the collective expression of the citizens. From my point of view at least, the words actually used in the legislation are most critical and every effort must be made to give effect to them. The courts therefore cannot enquire into Parliamentary wisdom when interpreting any part of a legislation.

[36] It is settled law that a useful starting point in the interpretation of statutes is to examine and interpret the words in their natural and ordinary sense. The courts can only depart from the literal rule where the outcome of its strict application is one of absurdity. Perhaps the most well-known formulation of this principle is the pronouncement of Lord Chief Justice Tindal in the **Sussex Peerage Case**²¹ where he stated:

“My Lords, the only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such a case, best declare the intention of the lawgiver.”

[37] Lord Diplock in the case of **Duport Steels Ltd and others v Sirs and others**²² enunciated the rule this way:

“...Parliament makes the laws, the judiciary interpret them. When Parliament legislates to remedy what the majority of its members at the time perceive to be a defect or a lacuna in the existing law...the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving

²¹ (1884) 8 ER 1034.

²² [1980] 1 All ER 529 at p.541.

effect to it. *Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral.*" (emphasis mine)

[38] In essence, both Lord Tindal and Lord Diplock affirmed the fundamental principle of statutory interpretation namely that where the words, in their natural and conventional sense, are clear then they must prevail. It is not for the judiciary to ignore the language of the legislature, attach and accept a meaning that the words simply do not have.

[39] The learned authors of **Bennion on Statutory Interpretation**²³ accord great respect to those pronouncements and state the literal rule or 'plain meaning rule' as it is termed in the text, thus:

"This section sets out the plain meaning rule, namely that where the legal meaning is plain it must be followed. The rule is one consequence of the principle that the text of the enactment is the primary indication of the legislative intention (and therefore the legal meaning) ... For the purposes of the plain meaning rule, a meaning is 'plain' only where no relevant interpretative criterion points away from that meaning. In other words, the plain meaning must be given, *but only where there is nothing to modify, alter or qualify it.*"

[40] The appellants' argument that where a contract is inconsistent with the Act, then it is deemed to be invalid and unenforceable cannot stand in face of the pellucid and unambiguous wording of section 22. In fact, the section says the opposite. It creates two tiers. Section 22(1) provides that any valid contract that was in existence before the Act continues to be valid and enforceable. Subsection (2) then goes on to provide that that same valid and enforceable contract shall, to the extent that it is not in conflict with the Act, be deemed to be made under the Act. The logical inference is that these pre-existing contracts continue to be valid under subsection (1). The legislature, in drafting subsection (2), in my view, chose very careful words and deliberately crafted that subsection to protect and

²³ (7th edn, 2019), Chap. 9.9.

preserve the pre-existing contracts. There was no cogent evidence before the lower court which demonstrated that this interpretation prevents the legislation from working in the way that it has been drafted and the judge was correct to so hold; his reasoning and conclusion cannot be faulted.

[41] It is clear that the legislature intended to prevent these pre-existing contracts from being invalid or unlawful. Parliament appreciated that there may be instances such as the appeal at bar and in its wisdom, drafted a 'savings' provision to protect those pre-existing contracts which are inconsistent with the Act. This is certainly not unusual in a transitional regime. Put another way, Parliament has carefully chosen words which preserve the old situation; one simply cannot read the inconsistency between the provisions of existing and valid contracts and the provisions of the Act as resulting in invalidity. The deliberate wording of the section, when the legislature could have easily worded it the way the appellants have proposed, is a powerful indicator of its intention. To my mind, the wording denotes that Parliament, in the best way possible, sought to achieve some uniformity in the labour force whilst simultaneously seeking not to render pre-existing contracts ineffective.

[42] Stripped of all its niceties, the appellants have contended that if the interpretation which the learned judge has given is accepted by this Court, then the employees would lose the benefits which the Act provides. However, if the interpretation accorded by the appellants were correct, it would mean that in the hypothetical reversed situation, where the Act provides a less attractive pension plan, the employee who had greater benefits under his pension plan but had to retire at age 60 would now have to accept the benefits under the Act and retire at 65 simply for the reason that his contract would be deemed invalid. With respect to learned counsel, the suggested departure from the natural construction of section 22 does no more than to strain the unequivocal terms in which the section is couched.

[43] Furthermore, the cases cited by the appellants do not lend support to any justification for adopting a purposive approach in the context of this appeal. Mr. Antoine has sought to rely on the Caribbean Court of Justice (“CCJ”) decision of **Smith v Selby** which examined the principles of statutory interpretation. These principles were aptly summarized by Sir Dennis Byron P in paragraphs 9 to 11 as follows:

“[9] The principles which the judges must apply include respect for the language of Parliament, the context of the legislation, the primacy of the obligation to give effect to the intention of Parliament, coupled with the restraint to avoid imposing changes to conform with the judge’s view of what is just and expedient. The courts must give effect to the intention of Parliament ...

[10] The social and historical context can be decisive in ensuring that the words are interpreted to give effect to the meaning and purpose of the Act. But that does not extend to distorting the language used by Parliament. It must be remembered that the court’s responsibility is to give effect to the intention of Parliament not to correct legislation to ensure that it is just and expedient. *If the court considers that there is a variance between the language used and its understanding of the special purpose of the Act it should be left to Parliament to amend the legislation. Where the words of the statute are not ambiguous there could be no justification for interpreting them in a manner that would alter their meaning, unless it may be necessary to resolve an inconsistency within the statute itself. So, the conjecture that Parliament may have intended a meaning that is different to the words used is not a sufficient reason for departing from their ordinary and natural meaning.*

[11] In giving effect to these principles the court, when interpreting any part of a statute, should review other parts of the Act which throw light upon the intention of the legislature and may show how the provision ought to be construed. The underlying principle is that the courts must use the available material to discover and give effect to the intention of Parliament. There can be no doubt that consideration of the purpose of an enactment is always a legitimate part of the process of interpretation.” (emphasis mine)

[44] In paragraph 12 of the judgment, Sir Dennis Byron, P acknowledged that discerning Parliament’s intention and the object and purpose of the legislation often requires consideration of the social and historical context and a review of the legislation as a whole. However, he went on to qualify this observation by

stating that, 'its intentions are also discerned from the words it uses'. He further observed that the underlying principle is that the court has a different function from that of Parliament and can neither correct legislative intent nor substitute its own views on what is a just and expedient application of the legislation. Critically though, Sir Dennis Byron. P noted that giving words their natural and ordinary meaning does not necessarily produce a different result than would be produced if a purposive approach were taken in the process of interpretation.

[45] Mr. Cenac urged this Court to consider the case of **Rizzo** which he contended dealt with a similar point on the construction of the Employment Standards Act ("ESA") in Canada. In that case, the court considered the question of whether termination of employment, caused by the employer's bankruptcy, gave rise to termination and severance pay in accordance with the ESA. The court found that the object of the ESA and the termination and severance pay provisions were to protect employees and so could not be inapplicable to bankruptcy situations. It arrived at its decision having examined the words of the provision in the context, scheme and object of the legislation together with Parliament's intention. To construe the provision otherwise would have produced absurd consequences.

[46] The position in the appeal at bar is totally different and in contradistinction with the situation in **Rizzo**. The interpretation of section 22 as advanced by LUCELEC and which I have accepted accords with the intent and spirit of the Act. Therefore, the argument that the learned judge directed his mind only to the literal approach which yielded an absurd result is moot. In my view, the learned judge could not have been expected to refer to all the principles of statutory interpretation. Instead, what he was required to do and which he had done is to address and apply the statute in the particular circumstances of the case. Contrary to the appellants' position, the learned judge's reliance on the literal approach was not to say that the other rules are excluded but that having applied the literal rule and there being no absurdity as a consequence of that application, there was no need

to consider in any detail the other rules. In this connection, I note the observations of Lord Wright in **Rowell v Pratt**:²⁴

“Now it is true that if the words of an enactment are fairly capable of two interpretations, one of which seems to be in harmony with what is just, reasonable and convenient, while the other is not, the Court will prefer the former. *But if the words properly construed admit of only one meaning, the Court is not entitled to deny to the words that meaning, merely because the Court feels that the result is not in accordance with the ordinary policy of the law or with what seems to be reasonable. The Court cannot mould or control the language...* A statute must be construed as a whole and with some regard to its apparent purpose and object. The language of one part may help to interpret the language of another.” (emphasis mine)

The Long Title

- [47] There is no doubt that the long title, which sets out the statute’s object and purpose, is part of the Act and may be used as an aid to interpretation. This much has been expressed by the learned authors in **Bennion**.²⁵ Though recourse need not only be had to the long title in the face of a genuine ambiguity, the proper judicial approach is that the court, in ascertaining the plain meaning of the words, is also entitled to consider the context of the legislation; this includes the enacting (e.g. sections and subsections) and non-enacting (e.g. the long title and headings) parts of the statute. Even though a long title can play a valuable interpretative role in resolving an ambiguity in the body of the Act, it is subsidiary to the plain meaning of the enacting parts. This much was borne out by Lord Lane CJ in **R v Galvin**²⁶ where it was enunciated that “One can have regard to the title of a statute to help solve an ambiguity in the body of it, but it is not, we consider, open to a court to use the title to restrict what is otherwise the plain meaning of the words of the statute simply because they seem to be unduly wide”. In other words, there is a hierarchy to be observed. Where the section(s) in question is clear and unequivocal, then where a contrary interpretation is reflected in the long title, the latter cannot prevail. In the circumstances of this case, there is no good reason to make much of the long title. Furthermore, the

²⁴ [1938] AC 101.

²⁵ Supra, n.21 at Chap. 16.3.

²⁶ [1987] QB 862 at 869.

appellants' reliance on the long title does not take their case any further for reasons that will become apparent.

- [48] The long title reads, 'An Act to consolidate and reform legislation applicable to labour and industrial relations in Saint Lucia taking into account existing local standards and international labour law standards and to provide for related matters'. Mr. Cenac has relied on it to aid his submission on the benefit-conferring nature of the legislation. Mr. Antoine has emphasized the latter part of the long title being the introduction of reforms in labour and industrial relations according to international standards. However, it also acknowledges the "existing local standards" which, as Mr. Theodore has rightly argued include both the existing contracts which provide a private pension and which section 22 has sought to protect and the existing **Pensions Act**²⁷ which provides a public pension alternative to the NIC pension. In light of these observations, it seems to me that Parliament had considered the existing state of affairs in the state for which it legislates and specifically crafted the legislation to protect same. I can do more than to apply the pure meaning of the statute.

Retrospectivity

- [49] Having accepted that the learned judge did not err in his interpretation of section 22 and therefore in his conclusion that section 159 does not operate to amend the age of retirement for the employees, it is not necessary to consider the retrospectivity point in detail. Suffice it to say that in the absence of the statute being expressly retrospective or if it is a necessary implication from the language employed that Parliament intended a particular provision or section to have retrospective operation, then the general position is that the legislation is presumed to be prospective. Neither exists in this appeal. Additionally, it has not been demonstrated, in the written or oral submissions, that to treat the Act as prospective, produces an absurdity.

²⁷ Cap. 15:26 Revised Laws of Saint Lucia 2017.

Section 13(4) of the Act

[50] For the sake of completeness, it is important to state that the Civil Association's reliance on section 13(4) of the Act is far too slender a thread upon which to hang the argument that the requirement to retire at age 60 is a lower standard than that provided in the Act, thereby invalidating the PPS. Section 13(4) provides that any provision in a written contract which provides a lesser standard than those in the Act shall be null and void. In my considered opinion, the simple role of this subsection is to nullify and invalidate a provision which contravenes the Act by giving a lower standard. To use this provision to say that an earlier retirement age is somehow a lower standard without any cogent evidence in support is untenable, especially given the very careful framing of section 22.

[51] Though Mr. Antoine's arguments were persuasive and comprehensive, particularly in highlighting the dire straits that the employees would face, this was not enough to neutralize the cogent arguments of Mr. Theodore, and to convince this Court that the learned judge erred in his analysis of the law.²⁸

[52] It is evident that I am of the view that the appeal in relation to this issue should be dismissed.

The Harmonisation Issue

[53] Out of deference for the fact that all learned counsel have advanced extensive submissions on the harmonisation issue, I will now briefly deal with it. Indeed, this is a short point. This ground interrogates the correctness of the learned judge's factual and legal finding that the PPS was not harmonised with the NIC Act. Essentially, the appellants have asked this Court to make a determination as to whether the evidence adduced was sufficient to permit the learned judge to

²⁸It is noteworthy that the result of this appeal is harsh on the employees since they would have to wait 5 years to get their full pension. However, there was simply no basis upon which to impugn the closely reasoned judgment of the learned judge and furthermore to undermine the efficacy of the Act. Perhaps, the best approach is for these issues to be revisited by Parliament and industrial relations as the courts can only apply the law as it stands.

conclude that the conduct of LUCELEC could not give rise to an estoppel, though the arguments were not framed on that equitable principle.

[54] Put simply, the appellants' position is that: (i) at the time the PPS was created, it was harmonised with the NIS (now the NIC) as they shared similar retirement ages and the contribution rate for the pension was related to the NIS ceiling of \$35,000; and (ii) as a result of the foregoing, when the Order was passed in 2002 fixing the pensionable age and allowing for a graduated change up to 65 in 2015, the PPS should continue to be harmonised thus changing the retirement age to 65 as well. They have also contended that based on LUCELEC's conduct (e.g. circulating notice of the NIC changes among employees, educating staff on the changes and inviting NIC officials to meet with them) which they say represented to the employees that the retirement age was now 65 in accordance with the NIC Act, it would be unfair for them to resile from that position.

[55] A review of the judgment indicates that it was closely reasoned and coherent. Indeed, the learned judge quite properly analysed and evaluated the evidence before him and gave deliberate consideration to the submissions of all learned counsel in coming to his conclusion. This included the actuarial report of Bacon Woodrow & de Souza and the witness statements of Mr. Fedee and Mr. Rodgers. I would go further to add that both Mr. Fedee's and Mr. Rodger's evidence actually support LUCELEC'S position. At paragraph 13 of Mr. Fedee's witness statement, he said: "In fact, the Defendant [LUCELEC], in compliance with the NIC new changes and the training and preparation they were doing with the staff, **they kept employees on contract** up until they reached the normal or national retirement age set by NIC". Mr. Rodgers at paragraph 5 of his witness statement said, "...After much dialogue **I was offered a contract on the basis that I must retire first in other** (sic) to qualify which I declined, since I was not accepting early retirement.". (emphasis mine)

[56] The above highlighted statements, to my mind, demonstrate that the practice was to retire employees at 60 and then issue post-retirement contracts which would

take them up to 65, the NIC pensionable age. This practice however ended in 2014.

[57] In light of the foregoing, I am attracted to and persuaded by Mr. Theodore's argument that quite apart from the fact that LUCELEC's conduct in educating its staff of the legislative changes could never amount to any form of estoppels. In passing and for what it is worth, the appellants have quite interestingly waited 14 years after the first increase in the pensionable age to challenge to the retirement policy even though nothing turns on this point.

[58] Having reviewed the evidence cumulatively, the submissions before the lower court and the learned judge's judgment, I am fortified in my conclusion that the learned judge quite properly came to the decision at which he arrived. Having reviewed the totality of the circumstances and the closely reasoned and coherent judgment of the learned judge, I am not persuaded that the PPS continued to be in harmonisation with the NIC and so LUCELEC was required to increase the retirement age to 65. Accordingly, I have reached the ineluctable conclusion that there is no basis upon which I can impugn the learned judge's reasoning and conclusion, that there was nothing on the evidence which created an inextricable link between the PPS and the NIC Act with corresponding legal implications.

Costs

[59] In so far as the court below made no order as to costs, in the exercise of this Court's discretion each party shall bear its own costs on this appeal.

Conclusion

[60] In view of the above reasons, I make the following orders:

(i) Both The Tribunal and The Civil Association's appeals against the judgment of the learned Smith J dated 12th December 2018 are dismissed.

(ii) The judgment and orders of the learned Smith J are affirmed.

(iii) Each party shall bear its own costs.

[61] I am indebted to all learned counsel for their very intellectually stimulating and helpful written and oral submissions.

I concur.
Paul Webster
Justice of Appeal [Ag.]

[62] **PEREIRA CJ:** I have read in draft the judgment of my learned sister Blenman JA. I am in agreement with her reasoning and conclusion that these appeals be dismissed. I wish however to make an observation in respect of the parties to these claims and these appeals and more specifically with reference to the fact that the Labour Tribunal, established under the **Labour Act**,²⁹ was made a party, in my view inappropriately, to the claims before the High Court. Following on that, the learned trial judge, having reached a contrary conclusion in respect of the question referred to the Labour Tribunal for its decision in essence reversed the decision of the Labour Tribunal. The Labour Tribunal 'being dissatisfied' with the High Court's ruling has found itself as an active appellant in the appeals.

[63] It may well be that the confusion of proper parties to the claim arose because of the language used in section 448 of the **Labour Act** which states that, "any party to an application ... before the Tribunal shall be entitled to apply to the High Court for judicial review in respect of any decision of the Tribunal..." on various grounds therein set out and other grounds. The High Court is then empowered under section 449 of the **Labour Act** to make various orders in respect of such an application including quashing the decision of the Tribunal, directing a new hearing on any question by the Tribunal or dismissing the application.

²⁹ Section 424 of the Labour Act.

[64] When sections 448 and 449 are construed in the context and scheme of the **Labour Act**, it becomes apparent that the term 'judicial review' is not intended in this context to engage the regime of public law proceedings which attracts judicial review of actions which may be said to be unlawful, unreasonable or procedurally improper. It is merely a venue for a rehearing or review of the decision arrived at by the Tribunal in the same way as, say the Court of Appeal may review a decision of a magistrate, a judge of the High Court or for example another court. The Industrial Court of the State of Antigua and Barbuda comes to mind. In nature, the process is more analogous to an appeal from a body such as the Tribunal tasked under the act with quasi-judicial functions or indeed any other body tasked with quasi-judicial functions where an enactment provides an avenue of appeal whether to the High Court or Court of Appeal in respect of decisions reached by them in deciding a dispute arising in matters regulated by a particular statutory regime such as labour relations.

[65] Here, there is no doubt that the proper parties to the dispute, as they were before the Labour Tribunal, were the St. Lucia Civil Service Association, representing the category of employees of LUCELEC who were challenging the retirement age under their PPS with their employer LUCELEC, on the one hand, and LUCELEC on the other. The Appeal SLUHCVP2019/0002, brought by the Labour Tribunal, is in my view akin to a magistrate appealing to the Court of Appeal because a High Court judge reversed a decision of a magistrate in say a decision on bail; or a high court judge appealing to the Judicial Committee of the Privy Council or the Caribbean Court of Justice, as the case may be because the Court of Appeal has reversed the High Court judge's decision. This is, in my view, is not the approach which is contemplated by the process of review envisaged under the **Labour Act** and is not one to be encouraged. Indeed, it places the Tribunal, which itself was being asked to adjudicate on an issue between parties holding differing views, as a protagonist in the dispute favouring one side over the other. This is not the position in which such a Tribunal should find itself nor be seen to be so doing. It is hoped that in the future such applications to the High

Court under section 448 of the **Labour Act** will not join the Labour Tribunal as a party to the proceedings.

By the Court

Chief Registrar