

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

ANGUILLA

Claim Number: **AXAHCV2015/0060**

Between

ANGUILLA ELECTRICITY COMPANY LIMITED

Claimant

And

THE ATTORNEY GENERAL OF ANGUILLA

Defendant

Appearances:

Mr. Damian Kelsick for the Claimant

Mr. Ivor Greene for the Defendant

2015: November 17th; 23rd
December 3rd

JUDGMENT

- [1] **MATHURIN, J;** The hearing of this Originating Motion was on the 17th November 2015 after which I requested further written ventilation of the issue as to whether the Claimant had alternative means of redress available instead of the filing of this Constitutional motion. The Parties filed additional submissions on the 30th November 2015, and the Court has considered those submissions.
- [2] The Claimant, Anguilla Electricity Company Limited (hereafter “Anglec”) has filed an Originating Motion challenging the constitutionality of sections 16(2), 18, 19, 20, 21 and 22 of the Fair Labour

Standards Act and section 15 of the Labour Department Act of Anguilla. Anglec states that the relevant provisions of the Acts mentioned are in breach of its right to determination of its civil rights or obligations before an independent and impartial court or other authority under section 9(2) of the Anguilla Constitution Order 1982. Section 16 (1) of the Anguilla Constitution states that;

"If any person alleges that any of the provisions of sections 2 to 12 (inclusive) of this Constitution has been, or is being, contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress."

[3] The motion alleges that Ms. Heather Ritchie was employed by Anglec as auditor and her employment was terminated on January 9th 2014. It further states that at some point prior to July 2nd 2014, the Minister of Labour established a Tribunal in relation to the dismissal of Ms. Ritchie pursuant to section 16 of the Labour Department Act.

[4] Section 15 of the said Labour Department Act states as follows;

"15. (1) Any dispute or complaint arising out of any matters covered by any law relating to labour or generally out of the relationship between the employer and the worker may be referred by either party concerned or their respective representative to the Commissioner for settlement.

*(2) Upon receipt of such reference, the Commissioner shall investigate the matter and make every effort to dispose of the issue raised therein by **voluntary settlement** in accordance with good industrial relations practice, and in pursuance thereof he may-*

(a) request the parties to meet him jointly or severally;

(b) request the parties to state the facts as they know them and their respective positions on the issue;

(c) request the parties to present witnesses to the facts and he may, of his own motion, examine any person in relation to the issue, either alone or in the presence of others, at his discretion; and

(d) utilise the process of conciliation or mediation or any other device designed to facilitate voluntary adjustment.

(3) Where the Commissioner fails to achieve a settlement on the basis of the provisions of sub section (2), he shall transmit the matter with a full report thereon to the Minister."

- [5] It is clear from this section that the referral of the matter by the Labour Commissioner to the Minister can only be done after the Commissioner's efforts at **voluntary settlement** have failed which obviously means that Anglec took some part in the process laid down by the Act. The language of the section clearly does not mandate that any matter in dispute **must** be referred to the Labour Commissioner nor does it deprive any party of their right to go to Court to have their matter determined. Rather, in my view, it adds to the legal rights provided by the Constitution. In any event, the legislation could not oust the jurisdiction of the court by implication.
- [6] The Tribunal which was established prior to July 2nd 2014 was done so pursuant to the section 16 of the Labour Department Act which permits the Minister, after himself attempting to achieve a voluntary settlement, to refer the matter to an arbitration tribunal for settlement of any dispute or complaint. The tribunal has power to summon persons to give evidence administer oaths and regulate their own proceedings.
- [7] Anglec states that on the 6th May 2015, the Attorney for Ms. Ritchie, Ms. Carter wrote to the Permanent Secretary asking for the Chairperson appointed to the Tribunal by the Minister, Ms. Benjamin, to be replaced as that Attorney had filed a complaint against her and that it may not be appropriate for her to sit on the Tribunal. Ms. Carter also wrote to Ms. Benjamin asking her to recuse herself from the matter. Ms. Benjamin did not recuse herself. On the 20th May 2015 the Minister considered the request of Ms. Carter and decided it was expedient to replace Ms. Benjamin.
- [8] The Minister replaced Ms. Benjamin with Ms. Carty on the 15th June 2015. This was done after some communication between the Permanent Secretary and Counsel for Anglec, Mr. Kelsick as to the procedure used by the Minister to appoint Ms. Carty. Apparently the aegis of Mr. Kelsick's

concerns were that if the Minister had the power to remove person he appoints, the Chairperson cannot be independent and impartial as required by Section 9(2) of the Constitution thereby rendering the relevant sections referring to the appointment of the Chairperson and the powers of the Tribunal unconstitutional.

- [9] Anglec relies on the following cases in support of the claim that the Tribunal under the Labour Department Act must be independent and impartial in accordance with section 9(2) of the Anguilla Constitution.

Hinds v The Queen (1977) AC 195

Suratt v Attorney General of Trinidad and Tobago (2008) 1 AC 655

Missick v The Queen (2015) 1 WLR 3215

These cases all refer to Courts or bodies which exercise the power of a Court and have the power to compel persons to obey determinations made. They do not in any way depend on the consent of the parties for authority to act and on that basis alone I would distinguish them from the current matter before the Court.

- [10] Anglec seems to be premising their argument on the fact that the tribunal established by the Labour Department Act is analogous to a court. It overlooks the fundamental difference in that the powers of the Labour Commissioner, the Minister responsible for labour and labour relations and the Arbitration Tribunal are all contingent upon the consent of all parties to the dispute. Nothing in the Labour Department Act or the Fair Labour Standards Act mandates that any dispute must be determined by the tribunal to the exclusion of any party's constitutional right to a hearing by an independent and impartial hearing. It is a matter for the parties to determine what avenue they prefer but it is not open to them having complied in the process under the Labour Department Act and the Fair Labour Standards Act to complain that the tribunal is not independent and impartial in accordance with the Constitution. That avenue is by way of choice and if chosen, the rules must be complied with. In any event, as long as there has been no hearing before the tribunal, it always remains the choice of either party to pursue the matter through the Courts.

[11] In the circumstances, the Court finds that there has been no breach of the Constitutional right of the Claimant to a determination of its dispute before an independent and impartial body and the Originating Motion herein is dismissed.

Cheryl Mathurin
High Court Judge