

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2016 – 01605

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO
PART 56 OF THE CIVIL PROCEEDINGS RULES, 1998 (AMENDED) AND PURSUANT
TO SECTION 6 OF THE JUDICIAL REVIEW ACT CHAP. 7:08**

BETWEEN

NATIONAL TRADE UNION CENTRE OF TRINIDAD AND TOBAGO

Claimant

AND

**THE HONOURABLE JENNIFER BAPTISTE PRIMUS
MINISTER OF LABOUR AND SMALL ENTERPRISES DEVELOPMENT**

Defendant

JOINT TRADE UNION MOVEMENT

Intervener

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Irshaad Ali instructed by Ms Nalini Bansee for the Claimant

Ms Antoinette Alleyne instructed by Ms Nisa Simmons for the Defendant

Mr Kerwyn Garcia instructed by Ms Vishma Jaisingh for the Intervener

JUDGMENT

1. The Cipriani College of Labour and Co-operative Studies is established by an Act of Parliament. Its Board of Governors is appointed by the Minister of Labour. Section 4 (1) of the **Cipriani College of Labour and Co-operative Studies Act, Chapter 39:51** provides:

“4 (1) The affairs of the College shall be managed by a Board of Governors consisting of nine members appointed by the Minister as follows:

- (a) Four members nominated by the organisation of trade unions most representative of labour in Trinidad and Tobago;
- (b) The Permanent Secretary of the Ministry with responsibility for Labour, or his representative;
- (c) An educator nominated by the Minister with responsibility for Education;
- (d) The Commissioner for Co-operative Development or his representative; and
- (e) Two members from the general public.

2. The statute is clear. The Minister’s role is to appoint persons nominated under section 4 (1) (a) and (c), certain functionaries under (b) and (d), and two persons, at her discretion. The Minister is obliged to appoint the persons who are nominated under (a) and (c). This does not mean that she may not consult the nominating bodies on the suitability of their nominees, but ultimately, once they insist, she must appoint the persons nominated.
3. The second point is that the Minister under section 4 (1) (a) is to appoint four members nominated by **the organisation most representative of labour**. The term “**the organisation**” can only mean one. Also, “**most representative**” cannot mean two. To hold that the Minister can interpret this to mean more than one organisation would result in an absurd construction.
4. The third point is that the determination of the organisation of trade unions most representative must be for the Minister to determine. But such a determination cannot be arbitrary. It must be objectively or reasonably made.

5. It is in this context that this dispute arises. In 2014 the then Minister of Labour found that the National Trade Union Centre of Trinidad and Tobago (NATUC) to be most representative of labour and he invited nominations. He appointed the four persons nominated to the Board for a three year term. Mr Michael Annisette was one such person appointed on 15 August 2014. His term was to expire on 14 August 2017.
6. Under the Cipriani College Act, a member appointed may resign his office. If he misses three consecutive monthly meetings without leave or fails to attend a minimum of eight monthly meetings per year without leave, the position becomes vacant. If a member is prevented from illness or for any other cause from exercising his function as a member of the Board, the Minister may appoint some other person to act in his stead for such period of his illness or incapacity.
7. There is no evidence that Mr Annisette was ill or incapable or had missed the requisite number of meetings without leave. There is no evidence that NATUC had informed the Minister that Mr Annisette was no longer their nominee. Yet, on 15 February 2016 the Minister sent a letter terminating Mr Annisette's appointment from the Board.
8. There was no prior communication with NATUC or Mr Annisette indicating that such a course was being considered.
9. NATUC has challenged this decision by judicial review. The Minister has defended her position. In comes now the Joint Trade Union Movement (JTUM), as an intervener. They have intervened because they say they are the organisation most representative of trade unions and they should be the organisation from whom the Minister appoints.
10. The court's function is to examine the Minister's decision to determine if the decision met with the requirements of the Act and the relevant judicial review criteria.
11. There are a few other factual matters of importance. It is not disputed that at least since 2009 NATUC's representatives were appointed to the Board. Further, it is not disputed that JTUM is a new organisation which represents trade unions. Both contend they are most representative of trade unions.

12. The Honourable Minister filed an affidavit on 12 August 2016. She noted she had been a member of the labour movement since 1977. She was a past President of a trade union herself. She said the claimant was preceded as “the most representative body” by two organisations, namely the Trinidad and Tobago Labour Congress and the Council of Progressive Trade Unions. Historically there has always been two bodies “representative of the Labour movement”.
13. She noted that currently there are three bodies which represent trade unions. These are NATUC, JTUM and the Federation of Independent Trade Unions (FITUN).
14. She said since coming into office she has consulted with these organisations regarding her Ministry’s initiatives.
15. At paragraph 6 of her affidavit the Honourable Minister noted that NATUC has historically been recognised by her predecessors in office as the organisation of trade unions most representative of trade unions. This she said “is understandable as based on my knowledge the Claimant has existed as a representative body as far back as 1991 and was at that time a representative umbrella body for almost all the unions. Subsequently, JTUM was formed on April 21st 2010 and registered in March 31st 2016 with the Trade Union Division of the Ministry. Between the formation of the Claimant and JTUM, FITUN was formed in or around December 2004”.
16. Of note, the formal registration of JTUM as a trade union took place after the removal of Mr Annette. However, in my view, it was unnecessary for there to be registration as a trade union to represent trade unions.
17. At paragraph 8 she stated the labour movement is evolving. She said there is an overlap in the membership of the organisations. She noted she accepted that there are 13 organisations affiliated with NATUC and 14 with JTUM.
18. At paragraph 9 the Minister stated:

“Earlier this year, on February 16, 2016, I made appointments to the Board of Governors of the Cipriani Labour College and Co-operative Studies (sic), hereinafter referred to as “the Board”. The process of making appointments to

the Board necessitated me addressing my mind to the question: which organisation is most representative of labour in Trinidad and Tobago. I had the information that I referred to in the foregoing paragraphs regarding the trade unions that were affiliated with each organization. However, I was not aware of the precise number of members that were associated with each organization. That information would be difficult to obtain and verify especially since FITUN and JTUM were not registered as trade unions at the time. I verily believe that this was because at the time there was no registrar of trade unions. I took note of the fact that historically the Claimant has been recognised and accepted as the organization that is most representative of labour. I also considered that with the entrance of FITUN and JTUM and the situation of dual membership described earlier, the Claimant could not be taken to assume the same pre-eminence as it did in the earlier years of its existence.”

19. She further noted that under the International Labour Organisation (ILO) Convention the term most representative does not equate with the largest organization of workers and “they may all be considered as most representative organisations”. She considered that JTUM and NATUC both represented a “large enough component of the labour industry in terms of affiliated trade unions, in order to justify their representation on the Board”.
20. She said JTUM presented two nominees and she nominated Devindand Sinanan (sic) as a JTUM representative. She noted Trevor Johnson had been nominated by both JTUM and NATUC so she appointed him. She then appointed two nominees of NATUC.
21. It is therefore her explanation and rationale that has to be examined carefully. First, the Minister accepted that historically NATUC was considered the organisation most representative of trade unions. Second, she suggested that there could be two organisations “most representative” under the ILO convention. However, no support was presented for that conclusion. To the contrary, NATUC’s evidence tended to show that quite recently the ILO had considered NATUC as being the organisation most representative of labour in Trinidad and Tobago (See paragraph 99 of the ILO, International Labour Conference, Report on Credentials, 105th session, Geneva, May-June 2016 annexed as MA 5 to Mr Annisette’s affidavit filed 26 August 2016). Third, she noted that NATUC had lost its “pre-eminence” with the formation of FITUN and JTUM. Fourth, she concluded that JTUM and NATUC should each have two members.

22. The Minister gave no evidence that she told NATUC that they had lost their “pre-eminence”. She also gave no evidence that any process was followed to verify this factually. She noted that size is not the only factor to be considered. But she did not tell us what factors she did in fact consider other than the list of organisations that NATUC and JTUM had affiliated to them. The only clear reason advanced from the Minister’s affidavit was the list and number of organisations affiliated to NATUC and JTUM. It is based on this that she considered NATUC lost its “pre-eminence”. But by losing its “pre-eminence” it did not follow that NATUC had lost its “most representative” capacity.
23. What her explanation demonstrated was that the Minister fell into error on a number of matters. First, no occasion had arisen for the appointment of members of the Board. There had been no resignations. There had been no cause for removal of any members shown. The members had a statutory three year term. Appointments to the Cipriani Board are made under statute for a fixed term and such appointments are therefore unlike other appointments made to State enterprises.
24. In the absence of a process being followed to determine the “most representative” issue, the time for consideration of whether Mr Annisette’s appointment should be terminated on the basis of which organisation was most representative of trade unions would have been when that time naturally arose. This would have been when his fixed period of appointment had ended in August 2017. The Minister could not simply decide to end the three year term just like that.
25. Second, if NATUC had lost their “most representative” status then she was obliged to remove all of the members appointed from NATUC. As Mr Garcia quite correctly submitted, “the organisation” that was “most representative” could only mean one. The organisation must be singular in the sense used here. Section 16 (2) of the **Interpretation Act, Chap 3:01**, cannot override the clear terms of the statute in this instance. Section 16 (2) can only be applied where it is appropriate to do so. To accept Counsel for the Defendant’s explanation of the Interpretation Act would mean that any statute which provides for the appointment of one person or one body could be interpreted in the plural. Thus, the power to appoint a Chief Justice could include the power to appoint more than one. This would be untenable.
26. Third, having accepted that for a considerable time NATUC had been considered “most representative” she was obliged to advise NATUC of her changed thinking that they were no longer “most representative”. In that way they could have made representations to

show that they remained so. It is clear that by accepting nominees from JTUM that she must have indicated in some way to them that she was considering JTUM as the “most representative” organisation. This suggests she consulted with one interested party, JTUM, and not the other, NATUC.

27. Fourth, there is no evidence of any process used to determine that NATUC was no longer “most representative”. At its highest, the Minister asserted that because of the number of organisations affiliated with each they had lost their “pre-eminence”. This did not mean they were no longer “most representative”. It is to be noted that she considered the number of organisations affiliated with each. But that alone could not be determinative. NATUC had been a registered trade union in its own right for a number of years, and in February 2016, JTUM was not yet registered as a trade union.
28. It is not for this court in this matter to make any determination as to which organisation is the most representative one. The court is obliged to consider what the Minister has advanced in her determination of that. Much of the contest, therefore, in the evidence of NATUC and JTUM is not relevant to any decision the court has to make. However, there are some matters that bear reference.
29. I will begin with the claimant’s evidence. Mr James Lambert, the President of NATUC filed an affidavit on 3 June 2016. He noted that during, but not limited to, the period 2009 to 2015 the then Ministers of Labour had appointed persons based on NATUC’s nominations. These Ministers included Mr Rennie Dumas and Mr Errol Mc Leod. He also noted that the present Minister had appointed 3 persons on NATUC’s nomination, since it had submitted four names to her, which included Mr Trevor Johnson. Mr Michael Annisette also filed two affidavits. He is the General Secretary of NATUC. He said the Minister never discussed with NATUC’s representatives at any of the meetings held with her the composition of the Cipriani Board. She also never raised any issue with verifying their membership. He stated there had been no challenge to its status as the most representative body. He noted that the intervener, JTUM, had conceded in its 21 August 2016 affidavit that NATUC in February 2016 was the most representative organisation.
30. The defendant made certain objections to Mr Annisette’s affidavit. For the removal of doubt I note that I confined myself to factual assertions by Mr Annisette and what he

could reasonably be expected to know about having spent so many years involved in NATUC and the trade union movement.

31. I will now consider Mr Trevor Johnson's evidence. He filed affidavits on behalf of JTUM. He says he is the Assistant Secretary of JTUM. In support of the application to intervene, Mr Johnson on 3 October 2016 claimed JTUM's interest as "most representative" of trade unions since August or September of 2016. He said this because "In or around August or September 2016, several trade unions who were previously members of NATUC resigned from NATUC and became members of JTUM, namely: Amalgamated Workers Union, the Banking, Insurance and General Workers Union and Trinidad and Tobago Postal Workers Union".

32. On 21 October 2016 Mr Johnson filed another affidavit. He noted that JTUM had before the General Elections in Trinidad and Tobago entered into a Memorandum of Understanding with a political party, the Peoples National Movement (PNM). This provided for collaboration and partnering in decision making and policy formulation. After the PNM won the General Elections there were several meetings between JTUM and the government. On 23 November 2015 the issue of appointments to the Board of Cipriani was specifically discussed and in answer to the Minister's request, JTUM submitted two names. These were Mr Sinanan and Mr Johnson himself. This was even though Mr Johnson was already a member of the Board with his term to expire in August 2017 as NATUC's nominee.

33. At paragraph 6 he repeated that in August or September 2016 several unions, previously members of NATUC, became members of JTUM. In a pointed and clear statement at paragraph 8 a. he specifically agreed with Mr Annisette's affidavit that up to September 2016 NATUC was the labour organisation most representative of labour. He said, however, that by September 2016 that had changed.

34. After the date for evidence was closed, he filed a further affidavit. This was after Mr Annisette's 4 November 2016 affidavit where he had referred to Mr Johnson's concession. Here Mr Johnson did a remarkable about turn and retraction. He said since filing his two affidavits and making his categorical statements, one Oswald Warwick, the General Secretary and Ancel Roget, the President of JTUM, reviewed his affidavits. He said there were "certain errors" in his affidavits. He said Warwick told him that his records showed that even "as far back as September 2015", JTUM's membership comprised 15 trade unions in major sectors. JTUM's membership included three organisations that were also members of NATUC as of September 2015. He then

completely contradicted himself from his previous statements in asserting that as of September 2015 JTUM was already most representative of labour.

35. It goes without having to say much that Mr Johnson's flip-flopping did no good to his cause. He boldly stated that Mr Warwick did not review his affidavit for "factual accuracy" and he did not at that time have "access to Mr Warwick's records as General Secretary of JTUM." If he did not have access to the records, then what information did he use to file his affidavit? And why did he not avail himself of the records?

36. This showed he was at least careless and insufficiently diligent in verifying the required information before swearing his first two affidavits to the court. Neither Mr Warwick nor Mr Roget chose to put evidence before the court and Mr Johnson's assertion that they were in effect "busy" holds little water. On his own assertions Mr Johnson's credit has lost much of its shine.

37. What, however, is more important is that none of the information in Mr Johnson's affidavit about individual membership numbers or sectors represented was referred to by the Minister as reasons for her decision. Further, Mr Johnson asserts that pursuant to its MOU with the PNM, meetings were held between the Minister and JTUM and on 23 November 2015 the Minister had asked for nominees from JTUM (see paragraph 8 g. of the 21 October affidavit where Mr Johnson said "in answer to the Honourable Minister's request at that meeting, JTUM verbally submitted the names of its two (2) nominees to the Board"). Thus, the Minister, according to Mr Johnson, had from November 2015 entertained the idea that JTUM had somehow become most representative of labour. All of this was without the knowledge of NATUC.

38. The intervener, JTUM, seeks to suggest that even from February 2016 they had qualified to be the "most representative" organisation. JTUM, in these proceedings, has submitted that the Minister ought to have appointed four persons from their nominations. So they too assert the Minister was wrong to appoint two nominees of NATUC. However, as pointed out by the claimant in its reply submissions, if JTUM had any serious challenge to that course, they would have done so within 3 months of the Minister's decision by their own judicial review challenge. Mr Johnson's 'errors' in this context seem all the more suspicious. It is plain to me that he changed his position when he realised the injury this would do to his cause. The submission of evidence to the judicial review court is not a trifling matter.

39. Whatever the agreement or understanding there was between the PNM and JTUM, which as legitimate and established groups they were free to enter into, the Minister, in her capacity as Minister of Labour, was not entitled to treat with NATUC in the manner she apparently did. Fairness demanded that if she intended to remove their appointees or conclude that it had lost its “most representative” status she would have consulted with NATUC about it. This is also in the context that notwithstanding Mr Johnson’s three affidavits, nowhere in those affidavits did he say that JTUM had asserted to the Minister that NATUC had lost its most representative status and JTUM had replaced it. NATUC, therefore, would likely have been in the dark about these goings on. In fact, the evidence before the court is that NATUC found out about the plan of the Minister to appoint members of the Board in January 2016 and they wrote the Minister about it, but they got no response until Mr Annisette’s termination.

40. In **Permanent Secretary, Ministry of Foreign Affairs & Prime Minister Patrick Manning (Appellants) v Feroza Ramjohn (Respondent) [2011] UKPC 20 Lord Brown** stated:

39. As is trite law, the requirements of fairness in any given case depend crucially upon the particular circumstances – see, for example, *R v Secretary of State for the Home Department Ex p Doody* [1994] 1 AC 531, 560. Almost always, however, if a decision is to be taken against someone on the basis of an allegation such as that made here, fairness will demand that they be given an opportunity to meet it. A characteristically illuminating statement of the law appearing in Bingham LJ’s judgment in *R v Chief Constable of the Thames Valley Police Ex p Cotton* [1990] IR LR 344 (para 60) deserves to be more widely known:

"While cases may no doubt arise in which it can properly be held that denying the subject of a decision an adequate opportunity to put his case is not in all circumstances unfair, I would expect these cases to be of great rarity. There are a number of reasons for this:

1. Unless the subject of the decision has had an opportunity to put his case it may not be easy to know what case he could or would have put if he had had the chance.

2. As memorably pointed out by Megarry J in *John v Rees* [1970] Ch 345 at p402, experience shows that that which is confidently expected is by no means always that which happens.

3. It is generally desirable that decision-makers should be reasonably receptive to argument, and it would therefore be unfortunate if the

complainant's position became weaker as the decision-maker's mind became more closed.

4. In considering whether the complainant's representations would have made any difference to the outcome the court may unconsciously stray from its proper province of reviewing the propriety of the decision-making process into the forbidden territory of evaluating the substantial merits of a decision.

5. This is a field in which appearances are generally thought to matter.

6. Where a decision-maker is under a duty to act fairly the subject of the decision may properly be said to have a right to be heard, and rights are not to be lightly denied."

41. **Section 20** of the **Judicial Review Act, Chap. 7:08** also mandates fairness in the performance of a public duty or function. It states:

“20. An inferior Court, tribunal, public body, public authority or a person acting in the exercise of a public duty or function in accordance with any law shall exercise that duty or perform that function in accordance with the principles of natural justice or in a fair manner.”

42. In my view, the Minister was under a duty to act in accordance with the principles of natural justice or in a fair manner to the claimant, NATUC. In the past, NATUC's nominees were appointed. It therefore had the ability, through its nominees, to influence the plans and programmes of the Cipriani Labour College, an important institution to the labour movement. NATUC had gained an interest in these appointments being made over the time its nominees were appointed without challenge.

43. There was no indication by the Minister to NATUC that her thinking on which organisation was most representative had changed or was changing. There were also no circumstances arising that required a change to be made. As noted before the appointments were for a fixed period.

44. Fairness would have required, in these circumstances, for the Minister to inform NATUC that that its “most representative” status was being reviewed and as a result she was proposing to make changes to the Board. She ought then to have invited NATUC to make any representations which it wished for her consideration on this matter. This

determination would have to be evidence driven. The decision has also to be approached in the right spirit that is not actuated by bias, chance or pre-disposition: See **Fordham QC, Judicial Review Handbook, Sixth edition, Hart Publishing, 2012, paras 60.1.1 to 60.1.11.**

45. It is a different matter when there is no issue as to whether an organisation is the “most representative” as was the situation before the consultations with JTUM. Where there is an issue or challenge, a proper process has to be followed to make the determination. Giving effect to a MOU between a political party and a grouping would be an irrelevant consideration in this context where there is a statutory obligation to appoint on the basis of fixed criteria.
46. This duty to act in accordance with natural justice and fairly was in my view breached by the Minister. Further, given the statutory framework, no occasion had arisen for the termination of the appointment of Mr Annisette.
47. I now come, therefore, to the appropriate reliefs and orders. I conclude and therefore declare that the decision to terminate Mr Annisette’s appointment was contrary to law and therefore void. I do not conclude that the Minister was actuated by bad faith since there is insufficient evidence for me to arrive at that conclusion. I declare that the Minister acted in breach of principles of natural justice and fairness in relation to NATUC in failing to consult it about the changed status in which she viewed the organisation. It is not necessary to quash the decision to terminate Mr Annisette’s appointment since it was made unlawfully and was therefore void from the beginning. The position is as if the termination never happened. It follows therefore that Mr Devanand Sinanan was not properly appointed to the Board in that he purported to replace Mr Annisette. It is unnecessary to compel the Minister to appoint the Board in accordance with the provisions of the Act since the decision to terminate Mr Annisette’s appointment was void. It is unnecessary for Mr Johnson’s appointment to be reviewed at this stage since NATUC has accepted that he was their representative.
48. By way of guidance, if when the term of the present Board is to expire there is an intention by the Minister to review the status of NATUC as the organisation most representative of trade unions for the purposes of making appointments, then she must so inform NATUC. She must give it an opportunity to make representations and to respond to the representations made by any other interested organisation such as JTUM. The

decision must be made using objective criteria. It must also be made fairly and reasonably taking account of relevant considerations and staying clear of irrelevant ones. These are the requirements for the performance of a public duty under the statute.

49. The Honourable Minister may even have acted under a genuine desire to seek to give representation on the Cipriani Board to two significant organisations representative of trade unions, albeit that FITUN also appears to represent trade unions. However, the Act did not allow her to do so, as agreed by both NATUC and JTUM. One option for the future would be to amend the Act to provide for more than one organisation representative of trade unions to make nominations. But that is for the executive and Parliament to consider. The court's function is to give effect to the statute as it stands at present.

50. I thank the attorneys for their helpful submissions. The defendant must pay the claimant's costs to be assessed by a Registrar in default of agreement. JTUM will bear its own costs.

Ronnie Boodoosingh

Judge