

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2011-03448

BETWEEN

JOANNE SEMPER-CAPRIETTA

CLAIMANT

AND

THE PUBLIC SERVICES ASSOCIATION OF  
TRINIDAD AND TOBAGO

DEFENDANT

BEFORE THE HON. MADAME JUSTICE JOAN CHARLES

**Appearances:**

For the Claimant: Mr. Farid Scoon

For the Defendant: Mr. R. Persad, instructed by Mr. J. Heath

**Date of Delivery:** 28<sup>th</sup> August, 2012

**DECISION**

## **BACKGROUND HISTORY**

- [1] The Defendant in this action is the Public Services Association of Trinidad and Tobago, a trade union representing public servants within this jurisdiction. The Claimant is an elected officer of the Defendant by reason of the National Election which was held on November 25<sup>th</sup> 2009 where she was elected as one of five (5) Industrial Relation Officers.
- [2] On 20<sup>th</sup> July 2010 at a Special Meeting of the Defendant's General Council a resolution was passed authorizing the Executive Committee to fill vacancies created by the suspension of several of its officers for a period of three months or until disciplinary proceedings against the said officers were completed.

## **CHRONOLOGY OF EVENTS**

- [3] Accordingly, by letter dated 11<sup>th</sup> August 2010 signed by the President of the Defendant Mr. Duke, the Claimant was informed that she was appointed to act temporarily in the position of Deputy General Secretary from the 9<sup>th</sup> August 2010 "until the suspension of Mr. Rendy Bedaise is rectified and resolved by the General Council."
- [4] The decision to so appoint the Claimant was ratified by the General Council during its Ordinary Monthly Meeting held on August 19<sup>th</sup> 2010.
- [5] The Claimant proceeded on vacation leave from April 18<sup>th</sup> 2011 until June 8<sup>th</sup> 2011. Upon her return to work she was not allowed to resume duties as

Acting Deputy General Secretary; instead, one Mr. Desmond Cummings who had been appointed to act while the Claimant was on vacation was allowed to remain in the said post.

[6] She wrote several letters to the Defendant's President complaining about her effective dismissal without any response from the letter. From that time to now she has not been reinstated to the position.

[7] By letter dated 8<sup>th</sup> August 2011 (hereinafter referred to as 'the said letter'), the Claimant again wrote to Mr. Duke alleging irregularities in the conduct of the Defendant's business which she complained were instigated and condoned by him.

On 10<sup>th</sup> August 2011, by letter of even date, Mr. Duke demanded that the Claimant provide him with a copy of the said letter by noon of the same day.

[8] At 1:30 pm that said day another letter was sent to the Claimant, signed by one Christopher Joefield who, purportedly acting with express authority of the President informed the Claimant that she was suspended from the Defendant with immediate effect for failing to deliver the said letter at 1:30 pm, the time of writing said notice. The Claimant's failure to deliver the said letter was described by Mr. Joefield as "your blatant disregard and general defiance to the President's instructions". He also advised the Claimant therein that particulars would be supplied her within two weeks and that she would be "afforded a reasonable opportunity to defend herself."

- [9] Upon receipt of Mr. Joefield's letter aforesaid, the Claimant orally informed him that she intended to give a written response to the letters that she had received; however, in yet another letter to her on 10<sup>th</sup> August 2011 he indicated that he had conferred with the President on the matter and reported to him what her response was. He went on to indicate that "this response" is no longer required at the time. A demand was thereafter made for her to leave the Defendant's premises immediately.
- [10] The President Mr. Duke also sent the Claimant a letter on 10<sup>th</sup> August 2011 in which he referred to the earlier letter sent to her by Mr. Joefield advising of her suspension. He confirmed that she was suspended pursuant to Article 38 (1) of the Constitution of the Defendant.
- [11] The Claimant wrote Mr. Duke by letter of 10<sup>th</sup> August 2011 advising him that the said letter had been hand delivered to his secretary on 8<sup>th</sup> August 2011; further that she had previously told him that she could not furnish him with a copy of same that day since it was in her house in Manzanilla. She also challenged what she referred to as his 'illegal suspension' of her.
- [12] Mr. Duke, on the same day (the 10<sup>th</sup> August 2011), dispatched a letter to the Claimant's substantive place of work, the Ministry of Health, advising that with immediate effect the Claimant was no longer in the Defendant's employ and was therefore required to resume duties at her job in the Ministry. This action was communicated to the Claimant by letter of 18<sup>th</sup> August 2011.

[13] At a Special General Council Meeting held on 25<sup>th</sup> August 2011, a decision was taken to suspend the Claimant as an Ordinary Member of the Defendant.

[14] By letter dated 6<sup>th</sup> September 2011 signed by Nixon Callender, General Secretary of the Defendant, Particulars of the allegations which formed the basis of her suspension were outlined. It is to be noted that the Claimant denied ever receiving said Particulars. She was advised that she should submit any written defence to the allegations contained therein within fifteen days from the date of the said letter.

[15] She was also advised therein that the elected position which she held was declared vacant in accordance with Article 49 of the Constitution; there was also a revocation of any time off granted to her to conduct any business of the association. Lastly, she was advised by the terms of that letter to surrender to the General Secretary all books, papers, documents of the Association with immediate effect.

### **THE CLAIM**

[16] It is on the basis on these facts which I have summarized that the Claimant then filed an action before this Court in which she sought the following reliefs:

- (i) Damages for wrongful dismissal from her position as Acting Deputy General Secretary.

- (ii) A Declaration that the revocation of her full time employment with the Defendant and the direction that the Claimant resume duties at her substantive post is unlawful and illegal and in excess of jurisdiction and *ultra vires* the Constitution of the Defendant, null void and of no effect.
- (iii) A declaration that the suspension of the Claimant by the President of the Defendant whether acting by himself or by and under the authority of the Executive Committee of the Defendant from her elected National Office with the Defendant is illegal and unlawful and in breach of the Defendant's Constitution and null and void and of no effect and in breach of the principles of Natural Justice and is wholly unreasonable, illogical and is an unjustifiable and arbitrary exercise of executive power in all the circumstances of the case.
- (iv) A declaration that the suspension of the Claimant as an Ordinary Member of the Defendant by virtue of a resolution of a Special Meeting of the General Council of the Defendant held on August 25, 2011 and not yet formally communicated to the Claimant, is unlawful and illegal and in excess of jurisdiction of the General Council and *ultra vires* the Constitution of the Defendant and in breach of the rules of Natural Justice and presumably and expressly and in actuality biased and is null and void and of no effect.
- (v) An Order reinstating the Claimant to her position as Acting Deputy General Secretary of the Defendant with all entitlements and emoluments.

- (vi) An injunction restraining and prohibiting the Defendant whether by its President and/or its General Council and/or its Executive Committee and/or any of its officers and/or servants and/or agents or howsoever from dismissing the Claimant from her position as Acting Deputy General Secretary of the Defendant or from her position as an elected National Executive Officer of the Defendant.
- (vii) An Order prohibiting the Claimant from being dismissed as an Ordinary Member of the Defendant whether by its President and/or its General Council and/or its Executive Committee, save and except in accordance with the procedures with the procedures set out in Sections 82 of the Constitution of the Defendant.
- (viii) Damages including aggravated damages for assault and battery.

[17] The parties agreed that the facts are uncontested; there remaining only issues of law to be determined, they consented to the matter being decided on the basis of written submissions. Accordingly directions were given for the filing of written submissions by the Claimant and Defendant.

### **THE CLAIMANT'S SUBMISSIONS**

[18] The Claimant submitted firstly, that pursuant to Section 37 (a) of the Defendant's Constitution, as Industrial Elections Officer she is a National

Officer. Further, that a Deputy General Secretary is also a National Officer and both parties are fulltime paid officers of the Defendant. She submitted that they are all elected officers appointed under Section 99(i) of the said Constitution. Where a vacancy exists it can only be filled in accordance with Section 100 of the Constitution which provides that “where an office which is subject to election or appointment is made vacant, the Conference shall fill the vacancy or the General Council may in its discretion nominate a temporary holder of that office.”

[19] The Claimant went on to submit that the President has no function with regard to filling a vacancy for any National Office or even to an office within the Defendant. Consequently, the Defendant’s argument that it was the President that appointed the Claimant to her position is not sustainable.

[20] It was contended by the Claimant that the President’s power of suspension is circumscribed by Section 38(b) of the Defendant’s Constitution which provides that the President may only suspend until the next General Council meeting. Additionally, the President may only suspend for failure to carry out his instructions or the instructions of the General Council. Counsel submitted that where the suspended officer is full-time, the suspension shall be with full pay until the first meeting of the General Council following the suspension; if unresolved, the General Council shall determine whether or not the officer shall be on full pay or partial pay pending the resolution of the matter.

[21] She also argued that the Constitution provides that such suspension shall continue until the next General Meeting and that the said General Meeting



would automatically be deemed a tribunal for the purpose of dealing with the matter of the suspension. Consequently, compliance with the provision of the Constitution required that:

- (i) the suspension be placed on the Agenda,
- (ii) the officer to be suspended be notified of the date of hearing of such meeting and
- (iii) such officer be advised of the charges against her so that she may be afforded an opportunity to answer the allegations contained therein.

[22] Even if the matter of the Claimant's suspension was not on the Agenda, Counsel submitted that the meeting could still have been informed about it and adjourned to a short date and a new Agenda circulated.

[23] Further, the issue of whether the Claimant's suspension can be continued with or without pay is a matter solely for the General Council sitting as a tribunal, where the Claimant would have had the opportunity to make her representations on her own behalf if she so desired.

[24] It was further argued on behalf of the Claimant that her suspension was not reported at the next Meeting of the General Council and that this constitutes a breach for which the Claimant has redress. Further, the assertion by the Defendant that the Claimant was notified that she was suspended as an Ordinary Member by letter dated the 6<sup>th</sup> September, 2011 is inconsistent with paragraph 13 (b) of its Defence filed on 13<sup>th</sup> October 2011. It states that '*The Claimant has now been suspended by the General Council of the Defendant as an Ordinary Member after deliberation on her suspension and the General Council has*

*undertaken to inform the Claimant of the Particulars of her disciplinary charges in due course prior to any disciplinary hearing being held.'*

[25] It was also contended by the Claimant that the decision to dismiss her from the position of Acting Deputy General Secretary of the Defendant was wrongful, unfair and a Breach of the Rules of Natural Justice in that:

- (i) the President and/or the Executive Committee of the Defendant in excess of and in breach of his/their powers and *ultra vires* the Defendant's Constitution appointed Mr. Desmond Cummings as the Acting Deputy General Secretary of the Defendant in place of the Claimant who remained ready and willing to act.
- (ii) the President and/or Executive Committee have to date given no reason for their action even after the Claimant wrote to the President complaining that he had unilaterally removed her from her position. She also wrote to the Executive Committee complaining of her constructive dismissal from the post since Mr. Cummings refused to vacate her office upon her return from vacation. They also failed to respond.
- (iii) on August 10<sup>th</sup> 2011 the President of the Defendant wrote/caused to be written to the Claimant a letter informing her of her immediate suspension from the Defendant for failure to deliver letter to him by 12 noon that day which she had previously sent him and he had misplaced. No indication was

given her as to whether the suspension was with or without pay. However, she received no further remuneration after September 2011.

- (iv) the President refused to give the Claimant an opportunity to address his complaint against her before taking the decision to suspend her. Indeed upon informing Mr. Joefield that she intended to give a written response upon receipt of the letter of suspension, the latter wrote another letter to her advising that after conferring with the President her response was not required. The Claimant did write a letter to the President that said day explaining why she could not produce the letter but this was ignored.
- (v) no particulars of misconduct giving rise to this suspension was given the Claimant. The President and Mr. Joefield failed to advise the Claimant of her right to attend the next Ordinary Monthly Meeting of the General Council on 18<sup>th</sup> August 2011 where the matter of her suspension should have been discussed so as to make representations on her behalf. The matter of her suspension was not placed on the Agenda.
- (vi) no notice of this Meeting was given the Claimant so that she could prepare an answer to the allegations against her.

- (vii) the Claimant's attempt to attend the General Council Meeting of 18<sup>th</sup> August 2011 was frustrated by Security who refused her admission on the instruction of the President of the Defendant.

### **THE DEFENDANT'S SUBMISSIONS**

- [26] The Defendant contended that the Claimant filled a temporary position of Deputy Secretary General – one of several vacancies which existed due to the suspension of members for alleged misconduct. By letter dated the 11<sup>th</sup> August, 2010 the Claimant was informed that she was to act in the position “...until the suspension of Mr. Rendy Bedasie [was] rectified and resolved by the General Council”.
- [27] Section 37(f) provides that where an office falls vacant the position may be filled by a by-election, or the Conference may decide at its discretion whether such vacancy will be filled or not within three months of the post becoming vacant. Counsel submitted that the Section can only be triggered when there is a permanent position to be filled which was not the case here.
- [28] He argued further that Section 38(e) of the Defendant's Constitution provides that the President shall have full authority over the management of the Defendant's business and the direction of its affairs, subject to the directions given from time to time by the General Council. The President, in conjunction with the Chief Executive Officer, is responsible for the daily operations of the Defendant. Counsel submitted, therefore, that the President could have duly appointed the Claimant to temporarily act as the Deputy

General Secretary and exercise the same power to rescind the acting appointment subject to any further directions given by the General Council and the Conference.

[29] Counsel also argued that unless the Claimant can show a contrary decision to that taken by the President, either by the General Council or the Conference, her claim for unfair dismissal cannot succeed.

[30] With respect to the matter being included in the agenda, Counsel for the Defendant cited Section 12 of the Constitution and submitted that if an officer is suspended at a time when the notice has already been forwarded, then it would be impossible for an item to be contained in it. Since the Claimant was suspended on the 10<sup>th</sup> August, 2010 and the meeting of the General Council was carded for the 18<sup>th</sup> August, 2011 whilst the Notice was dated the 8<sup>th</sup> August, the matter could not possibly be included in the Agenda.

[31] It was argued on behalf of the Defendant that what was important was that the matter be reported to the Council rather than its inclusion on the Agenda.

[32] It was admitted by the Defendant that the matter of the Claimant's suspension had not been reported to the General Council. It was submitted that the reason therefor, was the fact of the premature end of the meeting brought about by the Claimant and other suspended members of the Defendant who disrupted the said meeting. In the circumstances, it was argued, the issue of the Claimant's suspension was raised at the Special General Council Meeting held on the 25<sup>th</sup> August, 2011 and a decision was

taken there to suspend the Claimant as an Ordinary Member having regard to the impasse that occurred at the last meeting on the 18<sup>th</sup> August, 2011. It was further submitted that the suspension by the President was not punitive in nature and was done in accordance with Section 82(ii) and (iii) of the Constitution.

[33] Section 82 (iii) provides that the General Council shall have power, either on the recommendation of the Executive Committee or acting in the first instance, to take disciplinary action against any Officer, Officers of a Section, or Ordinary Member. Subsection (iv) of Section 82 provides that the General Council shall have the authority to suspend any National Officer or Ordinary Member who it is alleged committed an act of misconduct or who is charged for any felony/misdemeanor and/or criminal act in the Courts of Trinidad and Tobago pending the outcome of the matter.

[34] The Defendant went on to argue that the suspension did not affect the Claimant's employment with the Public Service and a decision was taken to inform her employer that she was available to resume her substantive duties in the Public Service so that she would be able to mitigate any loss in salary as a full-time officer with the Defendant. The Defendant further explained that this procedure was adopted with respect to all the other suspended members in order to enable them to receive their full salaries from their substantive positions as opposed to a partial salary which the General Council could have ordered. The Defendant invited the Court to find that it was the Claimant's failure to resume her duties in the Public Service and not its action in suspending her was the cause of her loss of earnings.

- [35] With respect to the issue of a breach of the Claimant's Right to Natural Justice, the Defendant submitted there has been no breach of the Claimant's right to Natural Justice, as there has been no hearing of the allegations made against the Claimant nor had there been any punitive action taken by the Defendant against her. Further, the Claimant has not been dismissed from her substantive post of Industrial Relations Officer with the Defendant.
- [36] As regards the contention by the Claimant that the termination of her employment did not follow the disciplinary procedure set out in Sections 83, 86, 91 and 92 of the Constitution, Counsel for the Defendant argued that these Sections of the Constitution only apply where the suspension is punitive following the hearing and determination of the substantive allegations against an officer.
- [37] It was conceded on behalf of the Defendant that an inordinate amount of time has elapsed in convening a tribunal to hear the allegations against the Claimant. It was submitted that the discord among suspended members and the Defendant, as well as the subsisting case before the court between these two factions, were the main causes of this delay. In conclusion, the Defendant alluded to the other matters before the Court and invited the Court to take account of those matters in determining this matter.

## ANALYSIS

- (i) *Does the President of the Defendant have the power to appoint and/or remove any person to/from a National Office?*

- [38] Section 37 (a) of the Constitution provides that an Industrial Relations Officer as well as a Deputy General Secretary are National Officers. Section 37 (b) states that the President, the Vice President, General Secretary, Deputy General Secretary and the five Industrial Relations Officers shall be full time paid officers of the Association. Section 37 (d) also provides that an Ordinary Member of the Association who becomes a full time officer, shall continue to enjoy all the rights and privileges of an Ordinary Member of the Association during the whole of his/her period of full time employment with the Association. It should be noted at this stage that the Claimant who was elected as an Industrial Relations Officer is a National Officer.
- [39] Section 100 of the Constitution provides, *'Should an office to which election or appointment is made falls vacant the Conference shall fill the vacancy by election or appointment as the case may be at the next following meeting save that the General Council may in its discretion nominate a temporary holder of the office until an election or appointment is made by the Conference as the case may be.'*
- [40] Section 100 clearly contemplated that where the issue of a vacancy in an elected office arises, the General Council may temporarily appoint someone to act in said office until the Conference determines whether such vacancy will be filled by election or appointment. The President is given no such power under the Constitution. In any event, on the undisputed evidence before me, it was the General Council in accordance with Section 100 of the Constitution aforesaid which appointed the Claimant to the post of Acting Deputy General Secretary.



[41] It is clear that the Claimant was constructively dismissed as Acting Deputy General Secretary upon her return from vacation leave. No reason has been given her for her removal from her position to which she was appointed by the General Council. No allegation of a breach of any of the Rules of the Association was made against her such as to justify such action nor was the issue placed before the General Council for its determination in accordance with Section 38 (b). The President of the Defendant, by dismissing the Claimant from this position, acted *ultra vires* the provisions of the Constitution and in Breach of the Rules of Natural Justice. Accordingly this act was null, void and of no effect.

(ii) *Did the President have the power to suspend the Claimant, a National Officer.*

[42] **Section 38 (b)** of the **Constitution** provides:

*“The President... shall have the power to suspend until the following meeting of the General Council any Officer of the Association for failure to carry out his/her instructions or the instructions of the General Council. Where the Officer is full time, suspension shall be with full pay until the first meeting of the General Council following the suspension. If the matter is unresolved the General Council shall determine whether or not the Officer shall be on full pay or partial pay, pending the resolution of the matter.”*

[43] There is no dispute that the President can suspend an officer; however it is clearly not within his power to suspend an officer without pay, as was done in the case of the Claimant. Section 38 (b) of the Constitution clearly provides

that an officer is to be suspended with full pay until the first meeting of the General Council following the suspension. If the matter is unresolved the General Council will determine whether or not the officer will be on full or partial pay pending the resolution of the matter. The letter of suspension given to the Claimant did not clearly state whether her suspension was without pay; but the actions of the President and Secretary in writing to the Ministry of Health advising of her availability to resume duties there clearly evinced that intent. This issue is linked to the issue of the breach of the Claimant's right to Natural Justice and will be dealt with more fully under that rubric.

*(iii) Was the Claimant's suspension reported at the 'next following meeting' of the General Council?*

[44] The Defendant has admitted that the Claimant's suspension was not reported at the 'next following meeting of the General Council' which took place on the 18<sup>th</sup> August, 2011. The reason proffered was that this meeting ended prematurely due to the disruption caused by the Claimant and other members of the Defendant.

[45] Due to this disruption, a Special General Council Meeting was convened on the 25<sup>th</sup> August, 2011 where the issue of the Claimant's suspension as an officer was discussed. It was decided at this meeting that the suspension of the Claimant as an officer would continue and also the decision was taken to suspend her as an Ordinary Member for her participation in the impasse that occurred on the 18<sup>th</sup> August, 2011. The issue of the Claimant's remuneration during the course of either of these suspensions was never discussed.

*(iv) Was the Claimant's suspension on 25<sup>th</sup> August 2011 intra vires the Constitution?*

[46] Section 91 (a) of the Constitution provides that, *"The General Council shall have the power to take disciplinary action against any employee (including a full time/part time National Officer) for any act of misconduct, or of negligence or of inefficiency, or for any other act of omission which in its opinion justifies disciplinary action, provided that before any action of a disciplinary nature is taken, the person concerned shall be informed in writing of the exact nature of the allegation made against him or her and be afforded reasonable opportunity to defend himself or herself."*

[47] Clearly the provisions of Section 91 (a) of the Constitution were not adhered to in that before a decision was taken by the General Council to suspend the Claimant:

- (a) she had not been provided with the particulars of the allegations of misconduct that had been made against her,
- (b) she had been given no notice of the fact that the General Council was meeting on 25<sup>th</sup> August 2011 to hear and make a determination with respect to the allegations of misconduct made against her,
- (c) she was not given any opportunity to defend herself in relation to the said allegations.

[48] Section 82 as amended confers on the General Council the power *"either with the recommendation of the Executive Committee or acting in the first instance to*

*take disciplinary action against any National Officer, Officer of a section or Ordinary Member who in its opinion (a) has been guilty of misconduct, calculated or likely to bring the Association into disrepute, (b) has refused to comply with any ruling of the Conference and or (d) while being a member was guilty of any conduct prejudicial to the interest of the Association, (e) has been guilty of any other act or omission which merits disciplinary action. ”*

[49] Additionally, Section 83 provides that *“where an allegation has been made against a person under Rule 82 that person shall be informed in writing of the exact nature of the allegation and be afforded reasonable opportunity to defend himself/herself.”* I note that even in the case of disciplinary action taken against a National Officer or Member under this Section, provision is made for the officer or member to be able to adequately defend himself/herself against the allegation of misconduct. It is clear that the framers of the Defendant’s Constitution intended to provide a mechanism whereby any member, National Officer, employee, (whether full time or part time) when accused of any misconduct, inefficiency, indiscipline or any such misconduct would be given the fullest opportunity to answer any such case that was made against him or her. The Rules clearly outline that such a person must be given the particulars of the alleged misconduct, a reasonable opportunity to prepare his or her case, and as well the opportunity to present his or her case at any hearing setup to determine the matter.

[50] On the facts before me there was clearly no attempt by the General Council to comply with any of the Constitution’s provisions relating to:

- (a) the circumstances under which a member/officer/employee can be suspended

(b) the conduct of the hearing into an allegation of misconduct against a National Officer and full time employee

In the circumstances therefore I hold that on 25<sup>th</sup> August 2011 the General Council acted in breach of and *ultra vires* the Constitution in suspending the Claimant as an Ordinary Member of the Defendant.

[51] As previously noted, Section 82 of the Constitution provides for disciplinary action against a National Officer or an Ordinary Member. What Section 82 does not contemplate is that disciplinary action be taken against an officer in both capacities. This is borne out by an examination of Section 86 which provides that: *"Where the disciplinary action taken is in relation to an Officer of the Association that decision shall be submitted to the next following meeting of the Conference for ratification...where a Conference is already scheduled to be held within 60 days of the decision of the General Council that decision shall automatically become an item on the Agenda of that Conference and shall take precedence over all other matters on that Agenda. Where no such meeting has been scheduled the General Council shall summon a special Conference to be held within 60 days of the decision to deal with the matter."*

[52] However, it is to be noted that where the person against whom disciplinary action has been taken is not an Officer then they are entitled to appeal to the Conference by written notice to the President or Secretary within 14 days. No time frame within which the appeal must be heard is set out as in the case with of a National Officer. In my view, therefore, the General Council at that meeting on 25<sup>th</sup> August 2011 could only have determined the issue of her suspension as a National Officer or Member, not both.

[53] Finally, as regards Section 82 even if the General Council had properly treated with the matter of the allegations of misconduct against the Claimant, there are no facts before me which suggest that the Claimant's conduct was such as to bring it within the purview of Section 82. Indeed, the situation is the same with respect to Section 91 (a) of the Constitution.

Accordingly, I hold that the action in suspending the Claimant was wholly unreasonable, irrational and in all the circumstances unfair.

(v) *Was there a breach of the Claimant's right to Natural Justice?*

[54] In **Ridge v Baldwin 1964 AC 40 pages 113 to 114 Lord Morris of Borth-y-Gest** opined, "*It is well established that the essential requirements of Natural Justice at least include that before someone is condemned he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges of allegations or suggestions that he has to meet...here is something which is basic to our system: the importance of upholding it far transcends the significance of any particular case.*"

[55] The above constitutes a classic statement of the right of a party to be heard where an allegation has been made against him and a decision affecting his rights can be made pursuant to the allegation. It has been held that the *audi alteram partem* Rule must govern the conduct of every tribunal or body invested with authority to adjudicate upon matters involving civil consequences to individuals. (See **Wood v Woad 1874 LR 9 Ex. 190 at 196**). An individual who was expelled from membership from a trade union was

prima facie entitled to have the decision set aside by the courts unless he had been given adequate notice of the allegations made against him and a fair opportunity to reply to them. (**See Parr v Lancashire and Cheshire Miners' Federation 1913 1Ch 366**).

[56] As stated above, it is clear from the agreed facts that at no point in time was the Claimant notified of the General Council Meeting held to determine whether to continue the suspension or to keep her on full pay, nor was she provided with particulars of the allegations against her nor indeed given the opportunity to present a case in her defence. As already noted she was also dismissed from the position of Acting Deputy General Secretary by the President without any reasons being provided for such dismissal.

[57] When the General Council met on 25<sup>th</sup> August 2011 to decide upon the issue of the suspension of the Claimant, it sat as a tribunal carrying out quasi judicial functions. There was therefore an obligation on the part of the Council to ensure that the Claimant was given ample notice of the allegations against her so that she could properly prepare her case. The reason for imposing an obligation to give prior notice is usually to afford those who will be affected by the decision of the tribunal an opportunity to make representation. The notice must be served in sufficient time so as to enable such representation to be effective. (**See R v Thames Magistrates Courts 1997 1AC 49**). Failure to do so would always result and in fact did indeed result in substantial prejudice to the Claimant. She was deprived of her post together with the salary and emoluments attached thereto without ever having been given an opportunity to put her side of the case before the tribunal.

[58] The Defendant submitted that the Claimant's suspension was not punitive for the reasons stated above. I must disagree with the submission. If the effect of the suspension and or dismissal was to thereby deprive the Claimant of an office, a post of salary and emoluments, it is punitive in nature.

[59] The Defendant had also submitted that there was no real loss to the Claimant in that a letter was sent to the Permanent Secretary in the Ministry of Health where she held her substantive post advising that she was no longer employed in the trade union and therefore was available to take up her post; that that would have served to mitigate her loss. That argument cannot stand in the face of my finding that there was a breach of her right to Natural Justice. That being the case the decision is void *ab initio*. All the decisions taken, from the revocation of her appointment as Acting Deputy General Secretary to her suspension as an Ordinary Member and a National Officer were in Breach of the Rules of Natural Justice and are therefore null, void and of no effect, and I so hold.

## CONCLUSION

[60] In the circumstances I therefore Order that:

- (a) The decision to suspend the Claimant both as a National Officer and as an Ordinary Member is hereby revoked with immediate effect and the Claimant is hereby reinstated to these positions immediately;



- (b) The Claimant is to be reinstated to the position of Acting General Secretary effective 9 June 2011 and to continue in the said position until the resolution of the disciplinary cases against Rendy Bedaise;
- (c) The Claimant is to be paid all salary and emoluments attached to the position of Acting General Secretary from 9 June 2011 to present on or before 29<sup>th</sup> August 2012.
- (d) Interest is payable on the said sum from 9 June 2011 to 31 July 2012;
- (e) The Claimant is not to be harassed in the conduct of her duties as Acting Deputy General Secretary of the Defendant; and,
- (f) The costs of this matter are to be paid by the Defendant to the Claimant, to be assessed on the prescribed basis.

Joan Charles  
Judge