

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No. CV2018-04783

Between

KENDAL DOLLY

Claimant

And

**PERMANENT SECRETARY
MINISTRY OF ENERGY AND ENERGY INDUSTRIES**

Defendant

Before the Honourable Madam Justice Eleanor Joye Donaldson-Honeywell

Delivered on: January 06, 2020

Appearances:

Mr. Arif A. Rahaman, Attorney-at-Law for the Claimant

Ms. Tenuke Gibbons-Glen, Rachel Theophilus and Svetlana Dass Attorneys-at-Law for the Defendant

JUDGEMENT

A. Introduction

1. By Fixed Date Claim Form filed on February 7, 2019, the Claimant, Mr. Kendall Dolly, challenges certain Decisions of the Defendant in relation to the Claimant's travelling claims. Further, the Claimant challenges the refusal by the Defendant to compensate

the Claimant for legal costs incurred in attempting to resolve the matter of his outstanding travelling allowance claims from March 2016 to July 2016 and from November 2016 to January 2017 and for other expenses he incurred due to his lack of access to such payments during the relevant periods.

2. The reliefs sought on the Fixed Date Claim Form are as follows:

- i. A Declaration that the Defendant had failed to make decisions with respect to the Claimant's travelling allowance claims for March 2016 to July 2016 and because of such failure the Defendant denied the Claimant access to payments for his travelling allowances for those periods;
- ii. A Declaration that the titles of 'immediate supervisor' and 'Head of Department' were undefined as it related to the Claimant's assignments from March 2016 to July 2016 and from November 2016 to February 2017;
- iii. A Declaration that the continued existence or re-instatement of the 'abolished' post of Chief Technical Officer beyond March 11, 2014 was not previously confirmed or communicated to the Claimant by the Defendant at any time during the period from March 2016 to February 2017;
- iv. A Declaration that the position, duties, responsibilities and authority of the post of Chief Technical Officer was not defined on any valid Organizational Structure at the material time between March 2016 and January 2017 and that the legitimacy, validity, authority and identity of any holders of the post of Chief Technical Officer could not have been known during the period from March 2016 to February 2017;

- v. A Declaration that the Defendant's instructions in 2016 for the submission of my travelling allowances were therefore unspecific, defective and impossible to legally, logically or practically follow;
- vi. A Declaration that the Defendant's decision to initially return the Claimant's travelling allowance claims for March 2016 to November 2016 on the basis of such instruction was unreasonable, an abuse of power and an improper exercise of discretion;
- vii. A Declaration that the actions of the Defendant were in conflict with the principles of Regulation 2(a) of the Travelling Allowance Regulations and represented an omission to perform a duty;
- viii. A Declaration that the Defendant's refusal to identify the Claimant's immediate supervisor from March 2016 to July 2016 was a deprivation of a legitimate expectation and that such fundamental information ought to be given to employees;
- ix. A Declaration that the Defendant's failure to resolve the issues of (1) the identity of the Claimant's immediate supervisor and Head of Department, (2) the legitimacy, authority and identity of the Chief Technical Officer and (3) the proper recipient for the Claimant's travelling allowance claims, in a timely manner during the period March 2016 to January 2017 has resulted in the Claimant incurring substantial legal, financial and other expenses;
- x. A Declaration that because of the expenses incurred in attempting to resolve the issues of outstanding travelling allowances from March 2016 to January 2017, owing to the failure of the Defendant, the Claimant is entitled to compensation;

- xi. Any special and general damages;
- xii. Compensation for legal costs incurred between March 2016 and September 2018;
- xiii. Exemplary or punitive damages or any other damages;
- xiv. Costs of the judicial review application;
- xv. Such further other orders, directions or writs as the court considers just and as the circumstances of this case warrant pursuant to section 8(1)(d) of the Judicial Review Act 2000.

B. Evidence

- 3. The Claimant filed an Affidavit in support of his Fixed Date Claim Form on February 7, 2019 as well as an affidavit in Reply to the Defendant's Defence on June 6, 2019.
- 4. The Defendant filed four Affidavits in Response on March 22, 2019. These are the Affidavits of Richard Jeremie - Senior Energy Advisor, Shahazad Mohammed - Senior Petroleum Engineer, Louise Poy Wing - Senior State Counsel and Menawatie Singh - Director Human Resources at the Ministry of Energy and Energy Industries, as well as a supplemental affidavit by Menawatie Singh on May 15, 2019.
- 5. There was no material dispute as to facts on the evidence. As such, neither party requested permission to cross-examine witnesses.

C. Factual Background

6. The Claimant is employed by the Ministry of Energy and Energy Industries (“MEEI”), holding the position of Petroleum Engineer II in the Contract Management Division. This position is a travelling position and the Claimant is entitled to claim allowances for travel expenses through a standard template.
7. Up to December 2012, allowances claimed by the Claimant were signed and approved by Mr. Shahazad Mohammed, Senior Petroleum Engineer, the Claimant’s then direct supervisor and Head of Department. The Claimant was informed in January 2013 by Mr. Mohammed that he no longer had the authority to approve the Claimant’s travelling claims and that they must now be forwarded to Mr. Richard Jeremie, the Chief Technical Officer (“CTO”).
8. In January 2013 therefore, the Claimant submitted a claim to Mr. Jeremie who he claims refused to give his approval. Mr. Jeremie avers that, after consultation with Mr. Mohammed on the verification of the claims, he did sign off on the claim.
9. Mr. Jeremie avers that he could not verify the claim made at this point and therefore met with both the Claimant and Mr. Mohammed to assist him in verifying it. After this conversation, the claim was verified. Mr. Jeremie also states that other travelling officers continued to forward their claims to him during this period.
10. The Claimant states that after this incident he “chose to forward” his travelling claims directly to the Permanent Secretary (“PS”) from January 2014 and payment of his travelling allowance resumed. A memo produced by Mr. Jeremie from the Claimant to the PS in relation to this shows that Mr. Jeremie made a notation on the memo to the Claimant requesting that they discuss the matter. Two further memos produced by Mr. Jeremie show attempts to discuss the matter of travelling claims with the Claimant. A meeting was held in April 2014 and the outcome was that the Claimant’s

issue surrounding travelling claims were considered a grievance matter and forwarded to the PS. Thereafter, the Claimant continued the practice of sending his claims directly to the PS.

11. In April 2016, the Deputy Permanent Secretary wrote to the Claimant informing him that his travelling claim for March 2016 was to be submitted through the relevant Head of Department or immediate supervisor. The Claimant claims he attempted to comply with such direction by forwarding the claim to Mr. Mohammed who orally informed him that he had no documentation to indicate that he was the Claimant's immediate supervisor.
12. At this juncture, the Claimant purportedly made verbal requests of Mr. Mohammed, Mr. Denison Dwarkah, Senior Petroleum Engineer in the Contract Management Division, Ms. Heidi Wong and the Senior Human Resource Officer to be informed as to who was his immediate supervisor. He claims that none of these individuals had an answer to that question. The matter appeared to lay dormant for some months after these conversations.
13. The Claimant also, at this point, admits that he disputed the propriety of submitting his claims to Mr. Jeremie as "no official document was ever issued by the MEEI to instruct the Petroleum Engineers that they were to report to Mr. Richard Jeremie in any such capacity or otherwise". The Claimant claims that since some restructuring in 2005, the post of CTO was removed from the reporting line of Petroleum Engineers.
14. The Claimant claims that, in May 2015, he became aware that the post of CTO was abolished with effect from March 11, 2014 based on the contents of a memo from the Service Commissions Department. The Claimant also cites a public document entitled "Draft Estimates of Expenditure for the Financial Year 2015" in which there was a note

that stated that the post of CTO was abolished with effect from March 11, 2013 (sic) via Cabinet Minute No. 3148.

15. The Claimant, therefore, claims that he considered the holder of the CTO post to be illegitimate and “did not allow [him]self to follow any ‘illegitimate’ procedure” such as submitting his travelling claims to Mr. Richard Jeremie in his capacity as CTO. The Defendant claims, however, that the decision to abolish the post was rescinded and the post was reinstated by Cabinet Minute No. 2258 dated August 14, 2014. The Defendant also states that the all other officers under the supervision of the CTO submitted their travelling forms to Mr. Jeremie during this period.
16. Thereafter, in December 2016, the Claimant wrote to Mr. Mohammed requesting an update on his travelling claims for the period March to July 2016. In January 2017, Mr. Mohammed responded that these claims were being returned to the Claimant due to the uncertainty of his line of supervision. This uncertainty, indeed, is reflected in the letter of the PS to the Claimant’s Attorney on December 12, 2016 as it states that when the Claimant is performing his substantive role, he is to report to the Senior Petroleum Engineer (who was Mr. Mohammed at the time).
17. The Claimant took up an acting post in another division from August to September 2016, reporting and submitting travelling claims to the head of that department and receiving his benefit without issue. Then the Claimant began to act in the post of Senior Petroleum Engineer in the Contract Management Division in September 2016. He assumed duty and included in his letter of assumption that he had not yet been updated by Human Resources (“HR”) that there was a “valid or officially-renewed” appointment of CTO, reviving the issue of his line of reporting. The Defendant denies receiving this memo, averring through Ms. Menawatie Singh that their records do not contain such memo.

18. The Claimant submitted his first travelling claim for this period to the Senior Human Resource Officer (Ag.), Ms. Menawatie Singh, on October 31, 2016 for forwarding to the appropriate officer. Some days after on November 3, 2016, Ms. Singh replied stating that the claims were to be submitted through the Claimant's immediate supervisor or Head of Department and that the claim had been forwarded to Mr. Richard Jeremie, CTO for verification and approval. Despite this indication, the Claimant responded querying the identity of his immediate supervisor. In the meantime, his travelling allowance claim for the period submitted was processed.
19. The Claimant then submitted his second claim in December to Ms. Singh. In response, Ms. Singh indicated that the travelling expense vouchers should be forwarded to his "immediate supervisor, that is, the holder of the office of Chief Technical Officer". The Claimant points out that this person is not named in the letter (Mr. Jeremie was, however, named as CTO in the November 3, 2016 memo). Ms. Singh, in her affidavit points out that this memo was in fact carbon copied to Mr. Jeremie and that she did forward the claim to him as well.
20. The Claimant responded to Ms. Singh stating that in order for him to forward his voucher, the validity and authority of that post would have to firstly be determined and a legitimate office holder be identified. Ms. Singh claims in her affidavit that Mr. Jeremie's office had a sign on his door indicating that it was the office of the CTO and that the Claimant had submitted his vacation leave through Mr. Jeremie.
21. No further response was received by the Claimant, causing him to write again on January 16, 2017 to Ms. Singh that he had not yet had confirmation that the post of Chief Technical Officer was legitimate or authorized. Having received no response, he wrote again on February 3, 2017 indicating that "due to the failure of the MEEI to identify my immediate supervisor, there remains no avenue for the submission of my travelling allowance claim for January 2017, now due".

22. A reply to this letter was received by the Claimant on February 17, 2017 informing him that Mr. Jeremie, CTO, manages three Divisions including the Contract Management Division. Both the Claimant's substantive and acting posts were stated to be part of that division and it was advised that the Claimant submit his travelling allowance claim to his immediate supervisor.
23. The Claimant avers that he considers this chain of events to be a failure of the MEEI to identify his Head of Department, immediate supervisor or legitimate holder of the post of CTO. He therefore did not submit travelling claims for the period December 2016 to February 2017.
24. The Claimant claims to still have been unsure who to submit his claims to, who his immediate supervisor was, whether there was a CTO post and if so who held it. However, it is pointed out by the Defendant that the Claimant submitted his Application for Leave form to Mr. Jeremie in July 2016 demonstrating his acknowledgement of Mr. Jeremie being his immediate supervisor. Mr. Jeremie also produced a travelling register allegedly created by him which was signed by the Claimant in 2014 and 2015. Further, Mr. Jeremie produces a notice sent by him to the Claimant and other travelling officers reminding them to submit claims in a timely manner.
25. The Claimant began to engage the services of Attorneys-at-Law and had been writing since November 2016 through these attorneys seeking clarification. A response was received from the Permanent Secretary on December 12, 2016 indicating that he was to submit claims to the Senior Petroleum Engineer when he held the post of Petroleum Engineer II or to the CTO when holding the acting post of Senior Petroleum Engineer.

26. The Claimant's attorneys then requested official correspondence informing staff of supervision by the CTO. The PS responded indicating that they were unable to locate such a memorandum but that the officers of the three Divisions are fully aware of the arrangement. The Claimant is clear that his dispute of such arrangement lies in his becoming aware of the abolition of the CTO post in 2014.
27. A Freedom of Information Application was made by the Claimant on February 21, 2016 requesting certain information surrounding the post of Chief Technical Officer. In response on March 31, 2017, the Director of Personnel Administration ("DPA"), Service Commissions Department provided documents which showed the last approved period for Mr. Jeremie to act as CTO was January 1, 2015 to June 30, 2015.
28. The Claimant sought further information on any other officer appointed to act from the period thereafter and was informed that no officer was approved or recommended to act in that period. He further requested information on the communication of the promotion of Mr. Jeremie by the DPA to the MEEI and was provided with a copy of a memorandum from the DPA to Mr. Jeremie dated January 9, 2017 communicating that he had been promoted to CTO effective March 11, 2014.
29. The Claimant states that since there was no record or confirmation that Mr. Jeremie was the valid holder of the post of CTO between June 30, 2015 and January 9, 2017 it would have been impossible for him to confirm same and that instructions to submit claims to him would have been illegitimate and impossible to follow.
30. Mr. Jeremie in his affidavit in the present matter, however, now produced letters from the DPA confirming his appointments in the years 2012 to 2016, as well as the January 2017 letter confirming his appointment with effect from March 11, 2014.

31. Attempts were then made to resolve this issue with the MEEI. A meeting was held to determine, among other things, the MEEI's liability for breaches that occurred in failing to resolve this issue earlier. The MEEI representatives reiterated the information obtained about Mr. Jeremie's retroactive appointment in 2017. The meeting was adjourned to determine further information about the Claimant's immediate supervisor from March to July 2016. At the second meeting, the Claimant claims it was admitted by Ms. Penelope Bradshaw-Niles, Acting PS that it would have been unclear who his direct supervisor was during this period.
32. Ms. Bradshaw-Niles assured the Claimant that the outstanding claims would be processed. However, the Claimant maintained that there were outstanding issues of compensation for legal costs and interest to be resolved.
33. A proposal was made by the Claimant's Attorneys in the form of a Draft Memorandum of Agreement with attached Assessment of Damages and Costs. It set out admissions by the MEEI that there was no identified supervisor for the period in question and an agreement to compensate the Claimant for expenses incurred in seeking the attempted settlement. The annexure of Assessments of Damages and Costs was not produced in the Claimant's affidavit but was included in the affidavit of Ms. Louise Poy Wing and shows an amount claimed in the sum of \$160,489.
34. The response by Senior State Counsel for the MEEI rejected many of the terms of the Agreement containing admissions about the identity of the Claimant's supervisor and cited the Cabinet Minute No. 2258. The MEEI through this letter also declined to compensate the Claimant for expenses incurred as they were of the view that the matter could have been resolved internally.
35. Settlement negotiations failed but after the Claimant's institution of this Judicial Review claim, the Claimant's travelling expenses for the period were submitted and

are being processed. This has not satisfied the Claimant who further claims that he was out of pocket during the period when the travelling claims were not submitted and that he was forced to secure alternative financing in the form of a loan.

36. The Claimant alleges that several other employees had written requesting an update on the status of the CTO post after its abolition, including the current Permanent Secretary, Ms. Penelope Bradshaw-Niles. The Claimant also avers that there was an Equal Opportunities complaint made by another employee that he was not given the opportunity to act as CTO. The response received from the Equal Opportunities Commission stated, among other things, that HR of the MEEI were unable to obtain documentary evidence of the status of the post of CTO.

D. Issues

37. The main issue to be determined is clarified by the Claimant in his Reply submissions as being:

Whether the Claimant is entitled to compensation for expenses and liabilities he incurred arising from delays amid his queries following instructions from the MEEI regarding the submission of his travelling claims.

38. The compensation sought by the Claimant is in relation to expenses incurred out of pocket due to failure to receive his travelling allowances, a loan taken out as a result and legal costs incurred in seeking to identify the legitimacy of the office of the CTO. Therefore, based on the factual background, the following sub-issues arise:

- i. Whether there was delay by the Defendant in communicating with the Claimant regarding his queries;
- ii. Whether it was due to a failure to communicate that the Claimant was prevented from submitting his travelling claims, and consequently receiving his travelling allowances;

- iii. Whether the Claimant's lack of certainty regarding the documentation behind his identified supervisor's position reasonably prevented him from submitting his travelling claims, and consequently receiving his travelling allowances.

E. Law and Analysis

39. Regulation 11 of the **Travelling Allowances Regulations, Travelling Allowances Act, Chap. 23:50** cited by the Defendant provides for the Head of Department to issue a certificate on claims for travelling allowance indicating that they have satisfied themselves that the claim was reasonable and the person claiming did in fact travel on duty in the time specified. The Claimant contends that (i) he was not made aware of his direct supervisor/Head of Department and did not know where to forward his claim; and (ii) although he was informed that Mr. Jeremie, CTO was his direct supervisor/Head of Department, the legitimacy of this office was not proven to him following his queries and therefore it was impossible for him to submit his claims to this person/office.
40. The Claimant is alleging that the Defendant failed to make decisions regarding the Claimant's travelling allowances for the period March 2016 to July 2016 and he was therefore denied access to payments for those periods. The Claimant also submits that he had a legitimate expectation that the identity of his immediate supervisor would be communicated to him and/or that the relevant information surrounding the legitimacy of this office should have been provided to him, and that that expectation was breached.
41. However, it is submitted by the Defendant that the Claimant did not follow the proper procedure in submitting his travelling allowance claims and if not for that he could

have been compensated for the claims. To determine which of these is true, an examination of the facts surrounding the Claimant's travelling claims must be done.

42. The correspondence on record in this case in relation to whether the Claimant's direct supervisor/Head of Department was identified to him demonstrates the following:
- i. Prior to 2014, the Claimant had no query with the legitimacy of the office of the CTO and acknowledged Mr. Jeremie as his supervisor. However, he still sought to submit his claims through the PS after queries had been made of his claims by Mr. Jeremie.
 - ii. The Claimant first made a written query about his line of supervision in March 2016 following which there was a verbal indication by Mr. Mohammed that he was unaware of being the Claimant's supervisor. Only in September 2016 when he began acting as Senior Petroleum Engineer, did the Claimant write to the PS and it was not about who his immediate supervisor was but whether there was a valid or officially renewed appointment of Acting CTO. He claims this query was due to his information that the office of the CTO had been abolished by a Cabinet note in 2014. A memo was sent to him by the Senior Human Resource Officer dated November 3, 2016 clarifying that his claims were forwarded to Mr. Jeremie, CTO.
 - iii. Ms. Singh, from this department, reminded the Claimant to submit his claim to his immediate supervisor but the Claimant's claim for October 2016 was processed. The Claimant responded on November 7, 2016 stating that the identity of his immediate supervisor/Head of Department had not been confirmed. This is despite the indication that his claims had been forwarded to Mr. Jeremie for approval. The Claimant again submitted a claim to HR on December 6, 2017 and was informed on December 12, 2016 that he was to forward his claims to his immediate supervisor, that is, the holder of the office of CTO.

- iv. This letter did convey some uncertainty as it states that when the Claimant is performing his substantive role (which would apply to the period March 2016 to July 2017), he is to report to the Senior Petroleum Engineer (who was Mr. Mohammed at the time). However, this uncertainty would not have reasonably occurred to the Claimant prior to receipt of this letter as he had been told, since January 2013, that he should submit his claims to the CTO. He did begin to follow that procedure, thereby implicitly indicating his acceptance of it.
- v. On January 10, 2017, the Claimant responded stating that for him to forward his claims, the validity and authority of the post needed to be determined and a legitimate office holder identified. Again, this query is despite the indication that Mr. Jeremie held the post in the November 3, 2016 memo. Reminder letters were sent by the Claimant to HR on 16 January and February 3, 2017. On the February 17, 2017 HR responded indicating that Mr. Richard Jeremie was the CTO and managed the Claimant's division.
- vi. Therefore, from the Claimant's November 7 query as to whom his claims should be submitted, the HR department responded after just over a month advising on the office to which he should submit same. From this date the Claimant had unambiguous confirmation from the representatives of the Defendant that he reports to the holder of the office of the CTO and the holder of that office was indicated previously as Mr. Jeremie in the memo of November 3, 2016.
- vii. When he sought further clarification as to the identity of the officeholder, the HR department again responded in just over one month. This repeated query appears to be spurious and improperly motivated.
- viii. Even further, it is stated by Ms. Singh in her affidavit that Mr. Jeremie, in fact, had a sign on the door to his office entitled "Chief Technical Officer". This is emblematic of the broad acceptance by the Defendant and

acknowledgement by the persons sharing the entire office space that Mr. Jeremie held the position of CTO.

- ix. At this stage, the only remaining query of the Claimant that remained unanswered by the Defendant was the proof of the legitimacy of the office.
43. These aforementioned facts do not show any inordinate delay on the part of the Defendant in identifying the Claimant's supervisor from September 2016 when the Claimant began acting as Senior Petroleum Engineer. It should be emphasized here that the Claimant's first claim submitted to HR was processed while his query was pending.
 44. With regard to the Claimant's claims submitted and returned to Mr. Mohammed during the period March 2016 to July 2016, when he held his substantive post of Petroleum Engineer II, Mr. Mohammed's refusal to accept the Claimant's claim followed by the indication by the PS that the Claimant was to report to the Senior Petroleum Engineer during this period, does highlight a contradiction which could have resulted in uncertainty on the part of the Claimant. However, on the pleadings there is not so much of a concern about this uncertainty. Instead there is the Claimant's assertion that he considered the holder of the post to be illegitimate. He says he "did not allow [him]self to follow any 'illegitimate' procedure" such as submitting his travelling claims to Mr. Richard Jeremie in his capacity as CTO. This suggests that the Claimant's reason for not submitting the travel claims to Mr. Jeremie was not due to any uncertainty as to reporting lines, but only due to his challenge to the legitimacy of the post.
 45. The Claimant has displayed a pattern of choosing/selecting what process to follow in the submission of his claims, beginning in January 2014 when the Claimant opted to forward claims to the PS after his first claim was queried by Mr. Jeremie. At this juncture, there was no dispute by the Claimant as to who he reported to or to the legitimacy of Mr. Jeremie's position.

46. From a review of all the evidence, it is clear that the Claimant's query was never about the identity of the CTO; it was an attempt to verify the legitimacy of the position, in spite of the apparent conduct of the MEEI in accepting the CTO post. That this was the main concern is borne out in the Claimant's Reply submissions where his Attorney, in setting out what his main contention was, focuses on the illegitimacy issue.
47. The second aspect of the Claimant's claim concerns an alleged duty on the part of the Defendant to prove the legitimacy of the office of the CTO, having been challenged by the Claimant. The Claimant's main contention is that as a result of a breach of this duty he suffered losses (legal costs, out of pocket expenses and being forced to take out a loan).
48. The main challenge to this contention by the Defendant is to the causality. They argue that it is the Claimant who made a choice not to submit his claims through the correct, identified procedure.
49. It is noteworthy:
- i. that the Claimant had stopped submitting his claims to Mr. Jeremie even prior to becoming aware of the Cabinet Note. In his words, he "chose to forward" his travelling claims directly to the Permanent Secretary from January 2014.
 - ii. that the Claimant has continued to submit leave application forms to Mr. Jeremie during this period and which were approved. The Defendant has disclosed evidence of leave applications for the Claimant dated 9th May 2014, 14th May 2014, 22nd July 2016, 17th March 2017, 3rd April 2017 and 26th April 2017 which were all signed off by Mr. Jeremie as the Head of Department. The Claimant claims he was unaware of who signed off on these forms. However on a balance of probabilities, it seems likely that he was aware, even if he did not submit them directly to Mr. Jeremie.

iii. That other officers continued to submit their travelling forms to Mr. Jeremie. It is unlikely that the Claimant would have been unaware of a general practice by other officers, particularly as he admits to being in communication with colleagues and receiving information from them concerning the office of the CTO.

50. The Claimant submits that the Defendant's instructions for the Claimant's submission of travelling forms was unspecific, defective, illegal, illogical or impractical to follow. It is clear that the instructions were not unspecific. The office of the CTO was identified to him as being the office to which he should submit, and Mr. Jeremie was identified as the holder of the office from November 3, 2016. It is the Claimant who appears to have been dissatisfied with the response and sought to investigate the legitimacy behind the Defendant's representations.
51. The instructions also do not appear to have been impossible to follow logically or practically, as other travelling officers in the department did so. Further, there was, in fact, nothing preventing him from submitting the claims, other than his own suspicions about the post.
52. There is no proof by the Claimant that if he did submit the claims, he would not have received his allowance benefits. Accordingly, whether the instructions were defective or illegal appears to be of no consequence to the relief sought by the Claimant in this Judicial Review Claim. Moreover, the instructions cannot be considered to be defective or illegal as the position of Mr. Jeremie as CTO has been ratified by the DPA, belatedly but retroactively. There is no submission by the Claimant that this retroactive confirmation is illegal or that the acts of the officeholder prior to such confirmation would have been invalid.

53. The Claimant submits that it was unreasonable, an abuse of power and an improper exercise of discretion to return the Claimant's travelling claim to be forwarded to his supervisor. However, as cited by the Defendant, in the local decision of **Felix James v AG, CV 00513** of 2008, it was stated:

"The definition of the unreasonable decision continues to be the classic Wednesbury definition that an unreasonable decision is one which no reasonable decision-maker would make."

54. It cannot be considered unreasonable that the Defendant would have required the Claimant to go through the process identified by its representatives in the HR Department in line with the Regulations.

55. The Claimant, in Reply submissions, cites the **South Africa Labour Guide: Labour Law Manual: Insubordination:**

"Is questioning an instruction the same as refusing to obey it?"

"The employee is probably trying to clarify what is required before he does it, or perhaps he even has a better idea – lend your ear to the query..."

56. This is not authoritative in the present case. However, the citation is useful as it highlights the idea that an employee's queries to clarify what is required before he does it ought to be entertained. This is indeed so but in the instant case the decision to second guess the MEEI representatives when they told the Claimant to whom to submit the claims, was in my view the cause of the delay in having the claims processed. As such, the main issue of the Claim now identified in Reply submissions as delay is resolved by my finding that the Claimant was responsible for the delay. He caused the delay by insisting on the clarification as to who was the CTO. I do not agree that there was basis or need for such a query but in any event the Defendant responded in a timely manner and repeatedly indicated that Mr. Jeremie was the person through whom the claims were to be submitted.

57. In the Claimant's own Reply submissions, he submits that he always maintained that once he received evidence of the post's existence, he would be willing to submit to the legitimate office holder.
58. In relation to this, the Claimant claims that he was deprived of a legitimate expectation to have the information and clarifications he requested provided to him. This appears to be the crux of the Claimant's objection to the Defendant's actions. The Claimant cites the decision of **Carlton Dennie v Minister of National Security CV2016-04139** in support of his contention that he was within his right to question the legitimacy of the office of CTO.
59. In **Dennie**, however, there was in fact no valid appointment of the officeholder during the period challenged and therefore his acts during that period were invalid. The potential for this type of situation could reasonably have been the basis for concern where the Claimant had a suspicion about the validity of the CTO post. However, despite that concern, the Claimant's own resolute decision not to submit his travelling claims was the cause of the losses he suffered.
60. There was no reasonable basis for this stance by the Claimant. This is so because had the Claimant complied with the directed submission of claims through the CTO and then, if a situation arose where allowances granted by the CTO turned out to be invalid, the Claimant could have reasonably relied on the representations of the Defendant in their many letters and memos to him.
61. The Claimant also fails entirely to outline any settled practice or unambiguous representation by the Defendant of furnishing proof of the legitimacy of any office to him/other officers. This is a requirement in proving the existence of a legitimate expectation – **Council of Civil Service Unions v. Minister for the Civil Service [1984] 3 All ER 935**.

Relief sought:

- *Declarations*

62. As highlighted above, the Claimant has failed to show that the title of his immediate supervisor/Head of Department was undefined/unknown to him for the periods March 2016 to July 2016; and November 2016 to February 2017.
63. The Claimant also seeks a declaration that the continued existence or re-instatement of the 'abolished' post of Chief Technical Officer beyond 11 March 2014 was not previously confirmed or communicated to the Claimant by the Defendant at any time during the period from March 2016 to February 2017. However, the Claimant fails to demonstrate that there is any requirement in law that the acting appointments from Service Commission or Cabinet approval of the post of Chief Technical Officer had to be shown to the Claimant. Therefore this declaration will not be made.
64. Similarly, the Claimant has failed to prove that the Defendant had a duty to define the position, duties, responsibilities and authority of the post of Chief Technical Officer on a valid Organizational Structure.
65. The Defendant's decision to return the Claimant's travelling benefits application for the period March 2016 to July 2016 was not unreasonable given the Claimant's continuous rejection of the office of the CTO. It is clear that the Claimant was aware of his responsibility to submit claims to the CTO since January 2013.
66. The Claimant has not shown that the actions of the Defendant were in conflict with the principles of Regulation 2(a) of the Travelling Allowance Regulations as the instructions to make claims to the CTO while he acted as Senior Petroleum Engineer were, in fact, in line with the obligations under the Regulations to have claims approved by the Head of Department.

- *Damages*

67. As highlighted by the Defendant there has been a failure by the Claimant to plead and prove his damages. Further, the Claimant has failed to prove that his losses and out of pocket expenses were due to any breach by the Defendant. Rather, it appears on the facts of this case that the losses, if any, were due to the Claimant's stance/choice not to make his claims. The Claimant admits that his travel claims from March 2016 to July 2016 were not submitted through the CTO because of his challenge to the legitimacy of that post. The Claimant cannot feign ignorance of what was required having accepted, since 2013 in his substantive post, his duty to submit travelling claims to the CTO.

68. All the legal costs being claimed by the Claimant were alleged to have been incurred from November 2016. This was after the clear representation made by the HR department that Mr. Jeremie was the Chief Technical Officer who would be approving his claims. These legal costs were therefore unnecessarily expended as I find as a fact that there was nothing preventing the Claimant from making his claims through the avenue directed.

69. The loan allegedly taken out in the amount of \$60,000 was also taken out on the day the Claimant received the clear representation in the said memo.

70. There is no evidence of these losses filed by Claimant. The Claimant's Counsel states in Reply submissions that his failure to attach this evidence was due to inadvertence. Further there is no evidence of the link between said loan and the returned travelling claims. The total sum in unpaid travelling claims outlined in the letter by the Claimant to the Permanent Secretary in October 2016 was \$28,418.50. This does not correlate to the loan amount purportedly taken out.

71. In relation to the other general damages set out in that costs schedule, the Claimant has not proven any damage to reputation, degradation of his vehicle, loss of earning

potential or even loss of mobility as he has not stated in evidence that he was unable to travel. Rather, his case is that he was unable to submit travel claims.

72. Exemplary damages do not arise as the Claimant has failed to prove his case against the Defendant.

F. Conclusion

73. In conclusion, all relief claimed on the basis of delay or breach of legitimate expectation by the Defendant must fail.

74. It is therefore ordered as follows:

- i. The Claimant's claim for Judicial Review is dismissed;
- ii. Costs are awarded to be paid by the Claimant to the Defendant in an amount to be assessed by the Registrar if not agreed.

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Eleanor Joye Donaldson-Honeywell

Judge

Assisted by: Christie Borely JRC 1