

THE REPUBLIC OF TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No. CV 2019-02385

BETWEEN

DIANNE RAMDHAR

Claimant

AND

TRINITY INDUSTRIES LIMITED

Defendants

Date of Delivery December 6, 2019

Before the Honourable Madam Justice Margaret Y Mohammed

Appearances:

Ms Nera Narine instructed by Chantal Samaroo-Paladee Attorneys at law for the Claimant.

Ms Leah Hector Attorney at law for the Defendant.

RULING-APPLICATION TO STRIKE OUT CLAIM

1. The Claimant was employed by the Defendant as an accountant administrative on the 16 June 2003. She worked in this position for approximately 15 years, 5 months and 25 days. On the 10 December 2018, the Claimant was handed a letter, captioned "Notice of Retrenchment" whereby she was informed that her employment was terminated effective immediately, as her position with the Defendant was deemed redundant.
2. The Claimant was not previously consulted or communicated about any redundancy with Defendant. The Claimant sought to inquire about the notice served on her and she was informed that there was an issue with her boyfriend Antonio Ali, who earlier

that morning had a verbal confrontation with the management of the Defendant. Antonio Ali was previously employed with the Defendant and he was fired on or around the 6 December 2018.

3. The Claimant also recognized that in the said letter the Defendant stated –
“I have also advised that Offshore Supply & Tow Ltd has been operating at a loss and changes would be also needed there, as it has not been generating the necessary revenue to sustain it in its current form.
Unfortunately, one of these measures the company must now reluctantly take is the reduction of the Group’s work force.”
4. Subsequent to the termination of employment on the basis that the position held by the Claimant was redundant, the Defendant later sought to hire Lleana Jaglal to fill the position of Administrative Accountant, the position formerly held by the Claimant.
5. By the said letter, the Claimant was also notified that a severance payment would be paid to her, and the sum was calculated. However to date that sum has not been paid and remains due and owing to the Claimant. The Claimant has brought the instant action for damages for wrongful dismissal/breach of contract against the Defendant for payment in the sum of \$197,429.66; interest; costs; and such further and/or other relief.
6. The Defendant entered an appearance on the 24 June, 2019. On the 8 July, 2019 the Defendant’s Attorney at Law requested an extension of time from the Claimant’s Attorney at Law for the filing of the Defence to the 19 September, 2019 which the Claimant’s Attorney at Law granted.
7. On the 19 July, 2019 the Defendant filed a Notice of Application (“the Defendant’s Application”) seeking an order pursuant to Rule 9.7(1)(a) of the Civil Proceedings Rules 1998 (as amended)(“the CPR”) to strike out the Claim on the basis that the Court has no jurisdiction to try this claim; costs; and any such further order as the Court may deem just.

8. The main ground in the Defendant's Application is that the issue between the parties in the instant matter is a trade dispute and under section 7 of the **Industrial Relations Act**¹ ("the IRA") the Industrial Court is the proper forum to deal with the issue. In support the Defendant relied on the Affidavit of Mr Krishendath Ramoutar which stated at paragraph 8 that the Claimant identified in paragraph 1 of the Statement of Case that she was an Accountant Administrative and as such she falls within the definition of a worker under section 3 of the IRA and that she was retrenched on 10 December 2018.
9. The Claimant position was that the issue is not a trade dispute since the Claimant's claim is not whether or not she is entitled to a severance benefit but rather the claim is for the non-payment of the severance benefit which remains due and owing. In support the Claimant relied on the Defendant letter dated 10 December, 2018, which stated that the Claimant would be paid a particular sum.

Nature of Claim- Trade Dispute?

10. Section 2 of the IRA defines a trade dispute as:-

“any dispute between an employer and workers of that employer or a trade union on behalf of such workers of that employer or a trade union on behalf of such workers, connected with the dismissal, employment, non-employment, suspension from employment, refusal to employ, re-employment or reinstatement of any such workers, including a dispute connected with the terms and conditions of the employment or labour of any such workers, and the expression also includes a dispute between workers and workers or trade unions on their behalf as to the representation of a worker (not being a question or difference as to certification of recognition under Part 3)”.

¹ Chapter 88:01

11. The IRA defines a “worker” in Section 2 as follows-, subject to subsection (3) means-
- (a) Any person who has entered into or works under a contract with an employer to do any skilled, unskilled, manual, technical, clerical or other work for hire or reward, whether the contract is expressed or implied, oral or in writing, or partly oral and partly in writing, and whether it is a contract of service or apprenticeship or a contract personally to execute any work or labour;
 - (b) Any person who by any trade usage or custom or as a result of any established pattern of employment or recruitment of labour in any business or industry is usually employed or usually offers himself for and accepts employment accordingly.
 - (c) Any person who provides services or performs duties for an employer under a labour only contract within the meaning of subsection (4) (b) and includes
 - (d) any such person who-
 - (i) has been dismissed, discharged, retrench, refused employment, or not employed, whether or not in connection with, or in consequence of, a dispute; or
 - (ii) whose dismissal, discharge, retrenchment or refusal or employment has lead to a dispute; or
 - (e) any such person who has ceased to work as a result of a lock out or of a strike, whether or not in contravention of Part 5
- as the case may be.”

12. The exemptions are set out in subsection 3 which states:

“(3) For the purposes of this Act, no person shall be regarded as a worker, if he is-

- (a) a public officer, as defined by section 3 of the Constitution;
- (b) a member of the Defence Force or any ancillary force or service thereof, or of the Police, Fire or Prison Service or of the Police Service of any Municipality, or a person who is employed as a rural constable or estate constable;

- (c) a member of the Teaching Service as defined in the Education Act, or is employed in a teaching capacity by a university or other institution of higher learning;
- (d) a member of the staff and an employee of the Central Bank established under the Central Bank Act;
- (e) a person who, in the opinion of the Board-
 - (i) is responsible for the formulation of policy in any undertaking or business or the effective control of the whole or any department of any undertaking or business; or
 - (ii) has an effective voice in the formulation of policy in any undertaking or business;
- (f) employed in any capacity of a domestic nature, including that of a chauffeur, gardener or handyman in or about a private dwelling house and paid by the householder;
- (g) an apprentice within the meaning of the Industrial Training Act.”

12. It was submitted on behalf of the Defendant that the Claimant is a worker under section 2 (a) and (d) of the IRA since it was not in dispute that the Claimant was employed as an “Accountant Administrative”.
13. The Claimant did not plead any matters in the Statement of Case to demonstrate that the duties she performed as an Accountant Administrative fell outside of the scope of section 2 (a) or within the exceptions under subsection (3). Therefore, on the face of the Claimant’s case she is a worker under the IRA.
14. The cases which the Claimant referred to in her submissions can all be distinguished from the facts in the instant case. In both **Joel Brown v VMCOTT**² and **Richard Calendar v Trinidad and Tobago National Petroleum Marketing Company Limited**³

² CV 2015-04037

³ Civ App P012/2014

the respective Claimants were the CEO of the respective companies and not a worker and fell under the exemption of section 2(3)(e) of the IRA; in **Rodney Phillip v GE Electronic International**⁴ the Claimant was an Area Manager and not a worker (section 2 (3) (e) of the IRA) in **Rowland Henry v Garry Andrews**⁵ the relief sought by the Claimant was breach of a fiduciary duty which was not available under the IRA; in **Roger Carrington v the University of Trinidad and Tobago**⁶, the Claimant was a lecturer in the University of Trinidad and Tobago who fell under the exemption in section 2 (3) (c) of the IRA and in **Angel Lawrence and another v Government Human Resources Services Company Limited**⁷ the Claimants were public officers who were not workers under the IRA by virtue of section 2(3) (e) of the IRA.

15. I now turn to the details of the claim. The Claimant pleaded at paragraphs 10, 11 and 15 in the Statement of Case that

“10. The Claimant states that deeming her position within the Defendant as redundant was not in keeping with an actual redundancy, but rather concerns the downsizing of Offshore Supply & Tow Ltd., as stated in the ‘notice’ served on her. The Claimant states this in itself is evident that the Claimant’s position of Administrative Accountant was not redundant.

...

11. Further, the Claimant states subsequent to the termination of employment on the basis that the position held by the Claimant is redundant, the Defendant later sought to hire Lleana Jaglal to fill the position of Administrative Accountant, the position formerly held by the Claimant....

15. On or around March 2019, the Claimant realised that the Notice of Retrenchment served on her calculated her severance benefit on the rate of pay as Thirteen Thousand Five Hundred Dollars (\$13,500.00). At

⁴ CV 2015-03699

⁵ CV 2016-00985

⁶ CV 2016-03483

⁷ CV 2017-01122

that point the Claimant immediately informed the Defendant that there is an error in the calculation of the severance package as her rate of pay is the sum of Eighteen Thousand Dollars (\$18,000.00). The Claimant reminded the Defendant of meeting dated 27th July, 2018 and the assurances given by the Managing Director that the measure taken by the company is not a reduction in salary of employees, but a temporary measure.”

16. In my opinion, the Claimant’s case is not only for moneys due and owing but a claim is made out for damages for wrongful dismissal and breach of contract. In particular at paragraph 11 of the Statement of Case specifically pleaded particulars of wrongful dismissal as:

Particulars of Wrongful Dismissal

- a. Failing and/or willfully neglecting have proper and/or consultation with the employee subsequent to retrenchment.
- b. Failing and/or willfully neglecting to give notice prior to the dismissal/retrenchment.
- c. Failing to give proper and/or reasons for dismissal.
- d. Deliberately and/or negligently misleading the employee reasons for dismissal.

17. The Claimant pleaded that it was not an ‘actual redundancy’ but instead, the Claimant’s position was filled by a newly hired employee. The Claimant has also pleaded in paragraph 11 b that the requisite notice was not given.

18. Section 6 of the **Retrenchment and Severance Benefits Act**⁸ (“the Retrenchment Act”) states:

“Subject to section 7, the minimum period of formal notice required by section 4 shall be forty five days before the proposed date of retrenchment.”

19. Section 7 of the Retrenchment Act also states:

⁸ Chapter 88:13

“Where, due to unforeseen circumstances it is not practicable for an employer to comply with the requirements of section 6 with respect to formal notice, he shall give the maximum notice that he can reasonably be expected to give in the circumstances and the onus shall be on him to prove that the circumstances which prevented him from complying with section 6 were indeed unforeseen”.

20. In my opinion the failure to give notice under the Retrenchment Act also constitutes a matter which will form the basis of a trade dispute.

Does the High Court have the jurisdiction to deal with a trade dispute?

21. Section 4 of the IRA establishes the Industrial Court and section 7 (1) empowers it to hear and determine trade disputes.

22. In **the matter of the Constitution of the Republic of Trinidad and Tobago enacted as the Schedule to the Constitution of the Republic of Trinidad and Tobago Act, Chapter 1:01 between Michael Boxhill and others v The Port Authority of Trinidad and Tobago**⁹ Mendonca J.A. stated at paragraph 8(iii):

“The right to pursue a trade dispute before the Industrial Court in respect of a breach of a worker’s terms and conditions is an effective alternative remedy available to the worker. The fact that it is to be pursued through a representative union in no way diminishes its effectiveness”.

23. At paragraph 58 Mendonca JA continued that:

“The right to pursue a trade dispute before the Industrial Court in respect of a breach of a worker’s terms and conditions is an important remedy available to the worker. It is part of the worker’s right to the protection of the law under section 4(b) of the Constitution (see *Alleyne & Ors. v The AG* Civil Appeal No. 52 of 2003). It is an effective alternative remedy by which a worker can

⁹ Civ App 11 of 2008

vindicate his rights before a court specifically equipped to address issues peculiar to its jurisdiction. The fact that such a right can only be pursued through the Union in no way diminishes its effectiveness”.

24. Having concluded that the issues raised in this claim fall with the definition of a trade dispute it follows that the High Court has no jurisdiction.

Order

25. The Claimant’s action is dismissed since the High Court has no jurisdiction to determine the action.
26. The Claimant to pay the Defendant’s costs of the Defendant’s Application and costs of the action. I will hear the parties on quantum.

Margaret Y Mohammed
Judge