

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV 2013-00330**

**BETWEEN**

**ROSANNA P. ROBINSON**

**RENDY BEDASIE**

**PAULA PRESCOTT**

**YVONNE DE PEIZA**

**DEMETRIUS HARRISON**

**RAYMOND BUTLER**

**CLAIMANTS**

**AND**

**THE PUBLIC SERVICES ASSOCIATION**

**OF TRINIDAD AND TOBAGO**

**DEFENDANT**

**BEFORE THE HONOURABLE MR. JUSTICE FRANK SEEPERSAD**

Appearances:

1. Mr. Saunders for the Claimants.
2. Mr. Rajcoomar and Mr. Heath instructed by Mr. Morgan for the Defendant.

Dated the 26<sup>th</sup> April, 2013

## DECISION

### Procedural History

1. This matter was commenced by way of a Claim Form and a Statement of Case filed on the 25<sup>th</sup> day of January, 2013. A Notice of Application seeking injunctive relief together with Affidavits in support was also filed on the 25<sup>th</sup> day of January, 2013.
2. On the 30<sup>th</sup> day of January, 2013 interim injunctive relief was granted by the Court and at subsequent hearings the Interim Injunction was continued. Affidavits were filed by both sides and then directions were given for the management of this matter.
3. On the 19<sup>th</sup> day of March, 2013 the parties decided and the Court directed, *inter alia*:
  - i) That the parties were to file and serve their statement of facts on or before the 25<sup>th</sup> day of March, 2013.
  - ii) That the parties were to file and serve a list of issues for determination by the Court as well as written submission.
  - iii) The parties agreed that a determination of substantive issues in this matter related to points of law and that there was no need for cross-examination.
4. On the 25<sup>th</sup> day of March, 2013 a list of issues was filed and an amended list of issues was filed on the 11<sup>th</sup> day of April, 2013.

### Issues

5. The issues for determination are as follows:
  - i. Whether the General Council can suspend the Claimants pursuant to Article/Rule 82 (ii) or Article/Rule 82 (iii) of its Constitution pending the determination of a disciplinary tribunal into allegations of misconduct, without first giving them an opportunity to be heard.

- ii. Whether the General Council can suspend the Claimants pursuant to Article/Rule 82 (ii) or Article/Rule 82 (iii) of its Constitution without first informing them in writing of the exact nature of allegations pursuant to Article/Rule 83 of the Constitution.
- iii. Whether the suspension of the Claimants is in breach of the rules of Natural Justice.

### Agreed Facts

6. The Defendant is a duly registered Trade Union with its registered office situate at No. 89 Abercromby Street, Port of Spain and a copy of its Constitution is annexed as “**R.B.1**” to the Affidavit of the Second Claimant filed on the 25<sup>th</sup> day of January, 2013.
7. The First Claimant is the First Vice President of the Defendant while the Second Claimant is the Deputy General Secretary. The Third Claimant and the Fourth Claimant are Industrial Relations Officers of the Defendant while the Fifth Claimant and the Sixth Claimant are its Trustees.
8. Mr. Watson Duke is the President of the Defendant while Mr. Nixon Callendar is the General Secretary.
9. At the last General Elections of the Defendant in 2009, the Claimants were elected to the positions mentioned in paragraph 2.
10. Mr. Watson Duke suspended the First Claimant, the Second Claimant, the Fifth Claimant and the Sixth Claimant on the 16<sup>th</sup> day of July, 2010.
11. On the 20<sup>th</sup> day of July, 2010, the General Council of the Defendant suspended the Claimants mentioned in paragraph 5 from Ordinary Membership of the Defendant.

Joanne Semper Capretta was suspended on the 10<sup>th</sup> day of August, 2011 from office by the President, Mr. Watson Duke, and subsequently suspended by the General Council. The Fourth Claimant was suspended on the 18<sup>th</sup> day of August, 2011, while the Third Claimant was suspended on the 25<sup>th</sup> day of August, 2011.

12. All of the people mentioned in paragraphs 5 and 6 hereof were or are still involved in legal action with the Defendant. Some matters have been resolved while some are still pending.
13. Mr. Watson Duke did appoint Nixon Callendar to the post of General Secretary to fill the void after the suspension of the Second Claimant and the resignation of Oral Saunders. The appointment of Nixon Callendar was later ratified by the Conference of Delegates.
14. On the 28<sup>th</sup> day of August, 2012 the Court ordered the re-instatement of Ms. Joanne Semper-Caprietta while the Court found in the Second Claimant's favour in his claim CV No. 2010-05283 against the Defendant and on the 28th day of November, 2012 also ordered his re-instatement. On the 28th day of August, 2012 the Court ordered the re-instatement of the Third Claimant and the Fourth Claimant.
15. After the Court ordered the re-instatement of the Second Claimant, Mr. Nixon Callendar continued to act as General Secretary and is in fact described as General Secretary on the Defendant's letterhead.
16. Mr. Watson Duke called an Executive Committee meeting on the 5<sup>th</sup> day of December, 2012. Mr. Duke was not present at the commencement of the meeting and the same was presided over by the First Claimant. All of the other Claimants were present at the meeting together with one Alim Abdul-Hakim. The following other Executive Committee members were absent from the meeting: the President, Mr. Watson Duke, the

General Secretary, Mr. Nixon Callendar, the Second Vice President, Mr. Christopher Joefield and Ms. Joanne Semper Caprietta.

17. Instead of proceeding with the Agenda prepared by Mr. Nixon Callendar a decision was taken by the Claimants not to recognize the Notice and Agenda prepared by Nixon Callendar. The meeting decided to follow an Agenda prepared by the Second Claimant a copy of which is annexed to the Affidavit of the Second Claimant filed on the 25<sup>th</sup> day of January, 2013 as **“R.B.3”**.
18. Several decisions were made at the meeting on the 5<sup>th</sup> day of December, 2012 and are contained in the Minutes of the meeting which is annexed to the Affidavit of the Second Claimant filed on the 25<sup>th</sup> day of January, 2013 as **“R.B.4”**.
19. Another Executive Committee Meeting was called by Mr. Watson Duke on the 8<sup>th</sup> day of January, 2013. Mr. Watson Duke was not present at the commencement of the Meeting at 9:30 am and the meeting was chaired by the first Claimant. The only people at this meeting were the Claimants. The letter from Mr. Duke calling the meeting and the Minutes of the Meeting held on the 8<sup>th</sup> day of January, 2013 are annexed to the Affidavit of the Second Claimant filed on the 25<sup>th</sup> day of January, 2013 as **“R.B.5”** and **“R.B.6”** respectively.
20. At a General Council Meeting held on the 17<sup>th</sup> day of January, 2013, Mr. Watson Duke read a letter written to him by the Executive Committee requesting that he proceed on Vacation Leave. After reading the letter, Mr. Watson Duke asked the Second Claimant to go to the microphone and indicate where in the Defendant’s Constitution the Executive Committee had the authority to make such a decision.
21. At the General Council Meeting on the 17<sup>th</sup> day of January, 2013, Mr. Watson Duke read the Minutes of the Executive Committee Meeting held on the 5<sup>th</sup> day of December, 2012

(not the 5<sup>th</sup> January 2013 as stated in the agreed facts) and voiced his concerns over the decisions taken at the meeting to write letters to Financial Institutions. Mr. Watson Duke claimed that the Claimants' action in taking that decision amounted to misconduct.

22. There was a suggestion at the General Council Meeting on the 17<sup>th</sup> day of January, 2013 that the Claimants be suspended and Mr. Nixon Callendar informed the Meeting that he would proceed on 92 days of Vacation Leave if the matter involving the Claimants was not dealt with.
23. Mr. Watson Duke asked if there were any movers for the motions to suspend the Claimants.
24. A motion to suspend the Claimants and Mr. Alim Abdul-Hakim was moved by Mr. Anthony Guerra of the WASA Section and seconded by Mr. Melvin Hosein of the Presbyterian Schools Section. The motion was passed.
25. The motion to suspend the Claimants was passed and the General Council fixed the 31<sup>st</sup> day of January, 2013 for the Claimants to appear before it to answer allegations of violation of the Defendant's Constitution.
26. The letters containing the charges were sent by registered mail to the Claimants after their suspension by the General Council on the 17<sup>th</sup> day of January, 2013.
27. The Defendant issued a Media Release dated the 18<sup>th</sup> day of January, 2013 confirming the suspension of the Claimants. A copy of the Media Release is annexed to the Affidavit of the Second Claimant filed on the 25<sup>th</sup> day of January, 2013 as "**R.B.7**".

Law

28. The relevant provisions of the Defendant's Constitution that have to be considered in this matter are as follows:

***“82(ii) The General Council shall have power, wither on the recommendation of the Executive Committee or acting in the first instance, to take disciplinary action against any National Officer, Officers 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 Rules of the Association after receiving due notice so to do.*

*(c) has refused to comply with any ruling of the Conference and/or while being a member was guilty of conduct prejudicial to the interest of the Association.*

*(d) has been guilty of any other act or omission which merits Disciplinary action.”*

***“82(iii) The General Council shall have the authority to suspend any national Officer, Section 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.”***

***“83. 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.”***

***“85(i) Disciplinary Action to be taken by the General Council in accordance with the provisions of Article 82 shall, in respect to each Officer be able***

- a) a warning or reprimand or caution or***
- b) supervision of membership or***
- c) expulsion from membership or***
- d) suspension from any office held or in the Association or in any section of the Association or***
- e) removal from any office held in the Association or in any section of the Association or***
- f) a ban from holding any office in the Association or in any section of the association***

***(ii)...***

***“85(iii) Any disciplinary action taken against a member or Officer shall be conveyed to him/her in writing by either the President or the General Secretary.”***

29. Article/Rule 83 of the Constitution specifically mandates that once an allegation is made under Article/Rule 82, the person against whom the allegation is made **SHALL** be informed of the exact nature of the allegation and be afforded reasonable opportunity to defend himself/herself. No distinction is made as to what part of Article/Rule 82, Article/Rule 83 applies, nor is there any provision inserted in Article/Rule 82 that exempts any provision contained in the said Article/Rule from being subject to Article/Rule 83.

30. In **Joanne Semper-Caprietta v The Public Association of Trinidad and Tobago** CV No. 2011-03488 Charles J at paragraph 49 at page 20 referred to Article/Rule 82 and said at line 7:

***“...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 present his or her case at any hearing setup to determine the matter.”*

31. If the framers of the Defendant’s Constitution intended that Rule 82(iii) was not to be governed by the procedure laid down in Article/Rule 83 an express statement to that effect ought to have been inserted.
32. Article/Rule 82(iii) was inserted into the Defendant’s Constitution following amendments which were made at a Special Conference of Delegates held on the 26<sup>th</sup> day of June, 2008. The amendment did not create a new Article/Rule but sought to include the provision as part of Article/Rule 82 by inserting Article/Rule 82(iii).
33. The Defendant contends that the wording of Article/Rule 82(iii) is in no way ambiguous and that it refers to a situation where an allegation has been made but not yet heard and that in such a circumstance the General Council has the power to suspend pending the hearing of the allegation. Further, that such a suspension is not punitive and that the General Council powers to suspend persons punitively can only be exercised under Article 85(i) after such persons have been found guilty in accordance with Article/Rule 84, the provisions of Article/Rule 83 having been complied with.
34. Suspension as an interim measure is not a new concept. Regulation 88(1) of the Public Service Regulations permits the Commission to direct an officer to cease to report for duty until further notice where the Commission becomes aware of any act of indiscipline or misconduct and the Commission is of the opinion that the public interest or the repute of the public services requires it.

35. In **Nathaniel Douglas v Public Services Commission & Others (1993)** 3TTLB at 117, Warner J held that Regulations 88 and 90 of the Public Service Regulations must be construed together and that the applicants could be suspended pending the determination of charges against them in accordance with the procedure in Regulation 90 which gives effect to the rules of Natural Justice. The Court also held that the scheme of the Public Service Regulations Part VIII conferred no right to be heard prior to the Commission taking action under Regulation 88(1).
36. Regulation 88(1) and Regulation 90 of the Public Service Commission Regulations are worded very differently from Article/Rule 82 and 83 in the instant case. Regulation 88(1) vests a discretion in the Commission to decide whether or not to direct an officer to cease reporting for duty having regard to whether it is in the public interest to do so or if the repute of the public service requires it. If such a course of action is adopted the officer continues to draw full salary in accordance with Regulation 88(2) unless a notice is served under Regulation 89. Regulation 90 makes no specific reference to Regulation 88(1) and Regulation 90 does not have to be followed prior to the exercise of the discretion referred to at Regulation 88(1).
37. Article/Rule 82(ii) provides for the taking of disciplinary actions against a National Officer, Officer of a section or Ordinary Member. The matters referred to in the said Article/Rule covers misconduct calculated or likely to bring the association into disrepute or that is prejudicial to the interest of the Association as well as a circumstance where there has been a refusal to comply with Rules of the Association having received notice to do so or the refusal to comply with a ruling of the Conference or where there has been the commission of any other act or omission which merits disciplinary action.
38. Article/Rule 82(ii) (e) is very general and can capture a wide range of acts or omissions. Article/Rule 82(iii) purports to authorize the suspension of a National Officer, Section Officer or Ordinary Member in two situations:

- i) Where the National Officer, Section Officer or Ordinary Member is charged for any felony, misdemeanor and/or criminal act in the Court of Trinidad and Tobago; and
- ii) Where the said National Officer, Section Officer or Ordinary Member is alleged to have committed an act of misconduct

39. There is no definition as to what amounts to ‘misconduct’ and it is not stated whether the ‘misconduct’ referred to must be calculated to bringing the Association into disrepute or whether it is prejudicial to the interest of the Association nor is there any specific indication as to whether the misconduct refers to the failure to comply with a rule of the Association or with a ruling of the Conference.

40. It is therefore not clear what is the nature, type, extent or gravity of misconduct that would vest the General Council with the authority to suspend. The uncertainty and lack of clarity in Article/Rule 82(iii) as to what constitutes misconduct may lead to an unfair result. If for example a National Officer, Section Officer or an Ordinary Member is alleged to have committed misconduct in his or her personal life then the said officer/member may be subjected to suspension.

41. Such a construction of section 82(iii) would be manifestly unfair. In **Walter Annamunthodo v. OWTU (1961)** 4 WIR at 118, their Lordships agreed with the view of the Court of Appeal that the words “or members” at Rule 25 must have been inserted in error, for they could not be reconciled with the second part of the rule and the offending words were treated as deleted.

42. While it is clear that the Defendant intended to provide for suspension where criminal charges are preferred in local courts, pending the outcome of those proceedings and for misconduct pending the determination of disciplinary proceedings, the drafting and

insertion of Article/Rule 82 (iii) did not give effect to this intention. Article/Rule 82(iii) is subject to Article/Rule 83 and unlike the situation that operates with respect to Section 88 and 90 of the Public Service Regulations; the Defendant's Constitution does in fact confer by virtue of Article/Rule 83 the right to be heard prior to any suspension being effected under Article/Rule 82(iii). This position therefore, negates the intention that the framers of the constitution purported to effect by the insertion of Article/Rule 82(iii).

43. The reality is that the amendment was poorly drafted and while an isolated reading of Article/Rule 82 (iii) does empower suspension that power is subject to the provision of Article/Rule 83. Consequently, the desired objective cannot be achieved, in that, there can be no suspension unless the person is afforded an opportunity to be heard.
44. Accordingly, this Court is of the view that the General Council had no authority to suspend the Claimants pursuant to Article/Rule 82(iii) when they acted in the manner that they did.
45. The Court is also of the view that the motion to suspend the claimants at the General Council Meeting on the 17<sup>th</sup> day of January, 2013 did not clearly identify the misconduct and/or behaviour allegedly undertaken by the Claimants for which they were to be subject to disciplinary action.
46. If therefore, the Court's position as to the effect and interpretation of Article/Rule 82(iii) as outlined above is wrong and the Defendant was duly empowered to suspend the Claimants pending the outcome of a disciplinary matter, such action could only be implemented if the General Council clearly identified in its own mind the nature of the misconduct that gave rise to the motion to suspend.
47. The parties agreed that at the General Council Meeting on the 17<sup>th</sup> day of January, 2013 Mr. Watson Duke read the Minutes of the Executive Committee Meeting held on the 5<sup>th</sup>

day of December, 2012 and voiced his concerns over the decision taken at the meeting to write letters to Financial Institutions. Mr. Watson Duke indicated that the Claimants' action in taking that decision amounted to misconduct.

48. Mr. Callendar suggested that the Claimants be suspended and he indicated that he would proceed on 92 days of Vacation Leave if the matter involving the Claimants was not dealt with. Mr. Duke asked if there were any movers for the motion to suspend the Claimants. The motion was moved and seconded and then the motion was passed.

49. The Court notes that the 'misconduct' relied on by the Defendant was not clearly identified in the motion, however, Mr. Duke's concern according to him, was with respect to the 'decision taken at the meeting on the 5<sup>th</sup> day of December, 2012 to write letters to Financial Institutions.'

50. There was a meeting on the 5<sup>th</sup> day of December, 2012 and the Minutes of same formed part of the agreed facts and was annexed as '**RB 4**' to the Affidavit of Rendy Bedasie filed 25<sup>th</sup> day of January, 2013. The Minutes of this meeting does not reveal any decision being taken to write Financial Institutions, in fact at #5, the decision recorded is that a written request should be made to the Treasurer to provide an update on the current financial status of the Association.

51. A motion was also moved to make it mandatory for either of the Trustees to be a signatory to all cheques. At the said meeting on the 5<sup>th</sup> day of December, 2012 a motion was also moved to accept the Notice and Agenda written by Rendy Bedasie.

52. In his Affidavit filed on the 19<sup>th</sup> day of February, 2013 Mr. Watson Duke at paragraph 46 listed several decisions allegedly taken by the Claimants to benefit themselves and which he contends were contrary to proper instructions issued by him. Annexed to Mr. Duke's Affidavit as exhibit '**WD3**' were the letters of suspension allegedly issued to the Claimants. This letters contain Particulars of Allegations which are as follows:

*“That you knowingly and willfully participated in a meeting of the Executive of the PSA on 5<sup>th</sup> December 2012, the constitutional validity of which has been called into question.*

*Further it has been alleged that at the said meeting held on 5<sup>th</sup> December 2012 you together with other persons purportedly made certain decisions meant to be blinding on the PSA.*

*Further the matters in regard to which the said decisions were made were calculated to bring the office of the President and by extension the PSA into disrepute.*

*For ease of reference please find attached the purported minutes of the meeting on the 5<sup>th</sup> December, 2012 and the decisions taken at that meeting.*

*I look forward to your attendance before the General Council so that this matter can be resolved expeditiously and we can return to the service of our members.”*

53. The Particulars of Allegations set out in the letters allegedly sent to the Claimants make no specific reference to any decision to write to Financial Institutions. The letters included, *inter alia*, allegations that the Claimants attended and participated in a meeting, the constitutional validity of which was being challenged and that the decisions made at the said meeting on the 5<sup>th</sup> day of December, 2012 were meant to blind the PSA and bring the Office of the President and by extension the PSA into disrepute.

54. These letters therefore, informed the Claimants of alleged misconduct that was substantially different from the misconduct pointed out by Mr. Watson Duke at the meeting and which gave rise to the motion.

55. In the view of this court there was a significant evolution and development of the 'misconduct' after the decision was taken to suspend the Claimants.
56. It cannot therefore, be said that the misconduct alleged at the meeting on the 17<sup>th</sup> day of January, 2013 was clearly identified and that the General Council was clear as to the nature of the misconduct for which the Defendant was invoking Article/Rule 82(iii).
57. The position adopted by the Defendant was arbitrary and did not accord with the principles of Natural Justice.
58. Natural Justice requires that the Defendant/General Council must have known the exact nature of the misconduct alleged before any action was taken. If the Defendant felt that it was entitled to suspend the Claimants under Article/Rule 82 (iii), the Defendant must have clearly determined and identified in its own mind the alleged misconduct.
59. In the instant case there was no clear determination or identification by the General Council of the Defendant of the alleged misconduct prior its decision to suspend the Claimants.
60. The Court wishes to point out that several provisions of the Defendant's Constitution are poorly drafted, for example, on the simplest level, the terms "Rule" and "Article" are used interchangeably. This court finds that for the reasons outlined earlier the intended effect of Article/Rule 82(iii) was not achieved by virtue of the operation of Article/Rule 83.
61. The Court recognizes that the Defendant has the right to clearly determine and outline its regulations, process and procedures and that members and officers agree to be bound by, serve under and respect the conditions and regulations.

62. In this case it is suggested that the Defendant ought to seriously consider the issue of effecting Amendments to its Constitution to give clear effect to its intention and the proper construction of any further Amendment ought not to lead to a situation which is unfair to persons against whom allegations have been made.

**63. The Court also feels constrained to point out that the members of the instant Executive have had significant differences in working together for the benefit of the persons who elected them and as a result several legal proceedings have been instituted during their tenure. As a result, the Court's limited resources have been significantly taxed by the series of matters and the resources of the membership of the PSA have also been used to fund these matters. If this trend of continuous litigation continues, the Judiciary may have to take a collective stand and mandate the imposition of conditions such as an Order that requires the payment of cost into court by the parties in their individual capacity.**

**64. All persons elected to positions must never forget that their office imposes upon them a duty to serve the persons who elected them in accordance with the relevant Constitutional Provisions and the law. This mandate to serve cannot be discharged if personal differences and views constantly impede, distract and derail. Ultimately the electorate will assess the tenure in office and determine whether their needs and concerns were adequately addressed.**

**65. For the reasons that I have outlined the Court has found as follows:**

- 1. Article/Rule 82(iii) of the Defendant's Constitution does not permit the General Council to suspend any National Officer, Officer of a section or Ordinary Member pending the determination of the matter.**
- 2. Further and in the alternative, if the Court is wrong with respect to its interpretation of the purport and effect of Article 82(iii), the facts of the**



case clearly demonstrate that the principles of Natural Justice were not adhered to. Prior to its decision to suspend the Claimants, the General Council of the Defendant was not clear as to what the alleged act(s) of misconduct was. No decision ought to have been taken by the Defendant's General Council unless it was certain as to the nature of the alleged misconduct for which disciplinary proceedings ought to have been adopted.

66. Accordingly the Court grants the following reliefs:

- i. A declaration that the suspension of the Claimants by the General Council of the Defendant on the 17<sup>th</sup> day of January, 2013 is null, void and of no effect.
- ii. A declaration that the decision of the General Council on the 17<sup>th</sup> day of January, 2013 to suspend the Claimants is *ultra vires* the Defendant's Constitution and was in breach of the rules of Natural Justice.
- iii. The Defendant shall pay to the Claimants the cost of this matter, which in default of agreement is to be assessed in accordance with the relevant provisions of the Civil Proceedings Rules (as amended).

.....  
**FRANK SEEPERSAD**

**JUDGE**