

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
PORT OF SPAIN (VIRTUAL HEARING)**

BETWEEN

Claim Nos:

CV2021-00106

CAROLYN NEIL

CV2021-00103

ANTHONY PHILLIP

CV2021-00104

CAROLYN NEIL

CV2021-00107

CHERRY ANN MILLARD

CV2021-00108

GAIL GUY

CV2021-00111

GYTREE RAMKISSOON

CV2021-00116

INGRID HENRY CLARKE

CV2021-00151

TARAMATIE MAHABIR

CV2021-00120

JENNIFER MARCHAND

CV2021-00122

KEITH KERWOOD

CV2021-00124

VALERIE SAMUEL

CV2021-00125

CV2021-00130	INGRID DEAN ROBINSON
CV2021-00134	IRMA LEWIS BANNISTER
CV2021-00133	JASON HARDING
CV2021-00135	WENDY ANN AUSTIN
CV2021-00140	VILMA DES VIGNES
CV2021-00142	MERLYNE ALEXANDER
CV2021-00144	MONICA BOUSIGARD
CV2021-00147	PHYLLIS DAVID
CV2021-00153	PHYLLIS ST BERNARD
CV2021-00156	CYNTHIA DANIEL-SOBION
CV2021-00132	DESMOND CODRINGTON
CV2021-00155	JACQUELINE BRITTO
CV2021-00149	DALE GORMANDY-GRAY
CV2021-00161	STEPHEN HAYES
CV2021-00682	ERIC BRANFORD
CV2021-00102	DEBORAH HAYNES-COLLINS

CARL JEFFERS

Claimants

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Madam Justice Eleanor J. Donaldson-Honeywell

Delivered on: 22 April 2024

Appearances:

Mr. Keith Scotland, Ms. Asha A. Watkins-Montserin and Ms. Adriana Marine, Attorneys-at-Law for the Claimants

Ms. Vanessa Gopaul, Ms. Nicole Yee Fung, Ms. Janique Mitchell, Ms. Jayanti Teeluckdharry, Ms. Zara Smith, Mr. Sharad Raghunath, Ms. Victoria Armorer, Ms. Michelle Benjamin, Ms. Radha Sookdeo, Ms. Sara Muslim, Ms. Fazana Ali and Ms Abigail Bristo, Attorneys-at-Law for the Defendant

RULING

A. Introduction

1. This ruling determines the Defendant’s application filed on 27 July 2023 seeking to have extensive portions of the two affidavits filed by the Claimants on 6 July 2023 struck out. The application was filed pursuant to rules 31.3, 56.13 and 26.1(w) of the Civil Proceedings Rules 1998 as amended [“CPR”].

2. The said rules are as follows:

Contents of affidavit

31.3

(1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his own knowledge.

(2) However, an affidavit may contain statements of information and belief—

(a) where any of these Rules so allows; and

(b) where it is for use in any procedural or interlocutory application or in an application for summary judgment, provided that the source of such information and the ground of such belief is stated in the affidavit.

(3) The court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit.

(4) No affidavit containing any alteration may be used in evidence unless all such alterations have been initialled by the person before whom the affidavit was sworn.

Applications

56.13

Any application during a claim for an administrative order must be made to the judge who heard the case management conference unless that judge otherwise directs.

Court's general powers of management

26.1 (1) (w)

The court (including where appropriate the court of Appeal) may—

take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective.

3. The issues to be determined are whether the challenged content of the Claimants' affidavits is scandalous, irrelevant or otherwise oppressive matter. If so, the Court must decide whether to exercise its discretion to strike out those parts of the Affidavits.

B. Analysis of the Procedural History

4. By numerous Claim forms, Fixed Date Claims, Statements of Case and Affidavits filed, commencing around 13 January 2021, Foreign Service personnel of the Ministry of Foreign and CARICOM Affairs seek special damages in the respective amounts set out in each claim. In addition to special damages, they seek general damages that remain unassessed, namely monetary compensation and damages, for breach of their constitutional rights.
5. Persons included in the group of personnel making the claim are expressly “not limited to foreign service diplomatic and non-diplomatic officers.” The specific subject matter for which they make the claim for special damages is the arrears of travel allowance payments for certain periods, dating back decades in some instances.
6. Reference will be made, henceforth, to the Claim filed by Carolyn Neil in addressing this application, the determination of which affects all of the Claimants. At paragraphs 14, 15 and 17 of Carolyn Neil’s Statement of Case in CV 2021-00104, the pleading is clearly set out that, in pre-trial collective bargaining negotiations to recover the said allowances, the Claimants had rejected any differentiation in the travel allowance rate payable to diplomatic as opposed to non-diplomatic officers.
7. The Defendant filed no Defence from the inception of the Claim in 2021 to the present time in 2024. Instead, there were applications for an extension of time, including one filed on 19 November 2021. In the affidavit in support of that request for more time, the Defendant’s deponent admitted at paragraph 5;
“I have been informed by the Office of the Chief Personnel Officer, that **the relevant rates have been approved**. Following this I was then informed by the Ministry of Foreign Affairs that **they require additional time to now do the necessary calculations**. Once this information is received, I have been informed by Counsel and verily believe that the Defendant may be minded to adopt a certain course of action, subject to necessary approvals.” [Emphasis added]

8. The Defendant was then on course to an agreed position on the Claims. This was reasonable as even prior to the filing of the Claims, the Defendant had, by letter dated 19 March 2019 of Permanent Secretary Reita Toussaint, conceded an intention to settle the outstanding debt to the Claimants as quickly as possible. The letter is attached as "F" to the Statement of Case. However, there was a subsequent detour by application to strike out the Claims. After that application failed, in 2023, the Defendant resumed the conciliatory stance towards settlement of the Claims.
9. This conciliatory approach was discussed in Case Management Conference status hearings on the understanding that, with no Defence filed, the issue of liability to pay the allowances could not be contested. Although no Defence had been filed challenging the rate of the allowance claimed, the Defendant sought permission to file Affidavits on quantum. On 14 April 2023, an order granting permission was made.
10. At the outset, it is underscored that the Court's grant of such permission could only have been in relation to the double checking of calculations since there was no Defence to the rate of the allowance claimed by the Claimants. In other words, there was no defence to the pleaded position of the Claimants on the applicable rate based on which special damages were calculated. Moreover, the Defendant had admitted the rate in the 19 November 2021 Affidavit.
11. There have been many changes in the advocates appearing for the Defendant at different stages of case management herein. Current Counsel was not on record when the order was made on 14 April 2023. The written submission made a year later, on 15 April 2024, appears to be based on the misunderstanding that the Court and the Parties accept that the Defendant has not admitted the quantum of special damages or, at least, the rate based on which it is to be calculated.
12. In any event, whilst the Defendant may now be contending they are only admitting liability, there has, in fact, been no filed defence to the quantum of special

damages. The order, made on 14 April 2023, was therefore clearly not intended to open an avenue for defending claims that had been admitted and where no defence was filed. All that was contemplated was the request by the Defendant's Counsel for the Defendant to have an opportunity to review the mathematical calculations based on the un-defended rates and periods pleaded by the Claimants.

13. The Defendant filed two Affidavits pursuant to the Order made on 14 April 2023. In the Affidavit of Reita Toussaint, Permanent Secretary, Ministry of Foreign and CARICOM Affairs filed on 1 June 2023, the Defendant raised points challenging the rates for the allowance and also the periods in relation to which it was to be paid.
14. Firstly, the points at paragraphs 5 and 6, the Defendant was disputing that one rate applies to both diplomatic and non-diplomatic officers. This point is also expressed in the 1 June 2023 Affidavit of Daryl Dindial, Chief Personnel Officer. Secondly, at paragraph 9, the Defendant is contending that the periods of being overseas pleaded by some officers, including Carolyn Neil are incorrect.
15. Based on these two points, the Defendant, despite filing no Defence, now contends that many of the Claimants are not entitled to the full amount of the special damages claimed. Regarding Carolyn Neil, for example, the contention of the Defendant is that instead of the \$140,714.74 which she claimed, she is only entitled to \$12,417.75.
16. In Affidavits in Response filed on 6 July 2023 by Jason Harding, retired Foreign Service Officer/Accountant and Stephen Hayes, retired Foreign Service Officer/Financial Attache, the Claimants reiterated that the idea of different rates for diplomatic and non-diplomatic officers was rejected. This was pleaded in the initial Claims, which were not defended.
17. Furthermore, according to the Claimant's said deponents, the provisional rates stated in the Defendant's affidavits were never, during any pre-trial negotiations

over the years, communicated to or agreed upon by the Claimants. These deponents also explained how the Claimants', previously un-defended, special damages Claim as to the quantum of allowance they were entitled to was calculated.

18. The Defendant, by application filed on 27 July 2023, now seeks to have parts of the Claimant's affidavits struck out. The application treats with the affidavits of Mr. Harding and Mr. Haynes as though they are affidavits in the substantive Fixed Date Claims filed by the Claimants. This is not so, as the substantive Claims were never defended. The only reason the Claimants filed Affidavits in July 2023 was in response to the Affidavits the Defendant was permitted to file in the context of the expressed intention to settle the un-defended claims.
19. The Defendant's affidavits ought only to have addressed issues of mathematical calculation. Instead, the Defendant's Affidavits set out points, challenging rates and periods, that would be more relevant to a full substantive Defence of the Claims. In those circumstances, it would have been an appropriate consideration for the Claimants to have applied to strike out the Defendant's affidavits. However, they instead treated with them in good faith by responding to the substantive points raised but reminding the Defendant that there had been no Defence to the rates and periods claimed.
20. The Defendant is now challenging the Claimants' responses to substantive points which the Defendant raised in their own Affidavits. In particular, the Defendant contends that "Matters regarding the amount of the rate and how it is calculated is not an issue in the present matter." Thus, they contend it is a new matter that ought not to be raised in the Claimant's affidavits. There are other general grounds for the striking out application, namely, relevance, repeated facts and hearsay.
21. On 5 March 2024, the parties submitted a Draft Order with an agreed timetable of directions for the progress of the matter. These included directions for the filing

of submissions on the instant application as well as other directions towards the assessment of damages that remained to be determined. The Order was approved by the Court.

22. Although not clearly addressed in the parties' Order, the pending assessment of damages could only be in relation to general damages. This does not include the new issues challenging rate and period of assessment of travel allowance raised belatedly in the Defendant's 1 June 2023 affidavits. There has been no timely Defence to those matters, and the Defendant's insertion of such pleadings in the Affidavits of 1 June 2023 was neither contemplated nor permissible. It is to those impermissible pleadings in the affidavits that the Claimants responded. The Defendant now seeks to strike out the response.

C. Determination

23. The overall view taken of the Defendant's application is that it is misconceived in addressing the Claimants' affidavits as though the matter is now at the substantive stage of a case that the Defendant disputed by the filing of a Defence. Rather, the said Affidavits were part of the conciliatory process and were expected to result in a conclusion of the matter where liability had been admitted, and the quantum of special damages remained undefended. All that was contemplated was that the Defendant would review the mathematical calculations for the special damages. Thereafter, only the assessment of general damages, if still pursued by the Claimants, would remain for the Court's determination.

24. In addition to the foregoing, the Court finds merit in the submissions of the Claimants, which underscore that the proposed striking out of extensive parts of their affidavits would not be justified. The points made by the Claimants, with which the Court agrees, include the following:

- a. New Matters- the Claimants are correct in contending that matters regarding the amount of the rate of the claimed allowance was a pleaded

matter. There was no contest to the pleaded rate. However, the Defendant used the opportunity of the affidavit filed in June 2023, long after a Defence was due, to raise the issue with the applicability of the claimed rate and how it is calculated. The Claimants were entitled to respond to that new challenge raised by the Defendant.

- b. Irrelevance - The Claimants' evidence set out in the Affidavits mirrors the pleaded case and is relevant to the remaining issues for determination, namely the assessment of general, exemplary and aggravated damages where pleaded. Thus, as stated at paragraph 11 of the submission, "even if one were to take the Defendant's position at its highest, which is that the rate of the travelling allowance remains to be determined, (a position in respect of which we reiterate that we do not agree as the Defendant accepted liability which we say is inclusive of the quantum for the travelling allowance) all of the facts and matters set out in the affidavits as complained of are wholly relevant."
- c. Hearsay – The facts, stated in the affidavits to which the Defendant objects, are matters of human resource records that ought to be within the knowledge of the Defendant's servants or agents at the Ministry of Foreign and CARICOM Affairs. The Defendant seeks to have the Court place an unduly heavy burden on the Claimants to present first hand evidence of the Defendant's own records in circumstances where the Defendant filed no defence. It is my finding that the overriding objective set out in the CPR at Rule 1 would not be served by striking out this evidence by which the Claimants address late challenges to their claim.
- d. Opinion – **Hibbert Civil Evidence for Practitioners** was cited by Justice Margaret Mohammed in **CV 2017-01989 Zaneshir Poliah, John Poliah v Ziyaad Amin** at para 15. The extract explains when the court can admit a "non-expert witness opinion on facts" as follows:

*“Therefore, one can conclude by saying that an expression of an opinion by a witness **based on facts which he or she has observed, and which have been narrated by the witness, is relevant evidence and is admissible** as a means of conveying an impression of events which have been observed. The real issue here relates to the weight to be given to this particular witness’s evidence, having regard to the background facts, rather than one of inadmissibility.”* [Emphasis added]

In the context where both of the Claimants’ Witnesses have given testimony about matters within the sphere of knowledge in their role as former officers of the Foreign Service, justice will not be served by striking out any viewpoint included in their affidavits. The evidence is relevant and admissible for consideration by the Court as to its weight.

D. Conclusion

25. There is no justification for the exercise of the Court’s discretion to strike out parts of the Claimants’ affidavits.

26. IT IS HEREBY ORDERED that:

- a. The Defendant’s application filed on 28 July 2023 is dismissed.
- b. The Defendant is to pay the Claimants’ costs of the application.

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Eleanor Joye Donaldson-Honeywell

Judge