REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(PORT OF SPAIN)

CLAIM NO. CV2023-02520

In the matter of the Judicial Review Act, 2000

AND

In the matter of an application by **PUBLIC SERVICES ASSOCIATION**

OF TRINIDAD AND TOBAGO for permission to apply for judicial review

AND

In the matter of the decision of the Special Tribunal, made on 21 June 2023, in ST No. 43 of 2022 - Chief Personnel Officer v Public Services Association (a dispute referred to the Special Tribunal by the Honourable Minister of Finance pursuant to Section 20(1) of the Civil Service Act) that pursuant to Section 22 of the Civil Service Act, it will make two awards covering two separate periods: 2014, 2015, 2016, 2017 and 2018, the first period; and, 2019, 2020, 2021, 2022 and 2023, the second period, instead of one award of at least five years

BETWEEN

PUBLIC SERVICES ASSOCIATION OF TRINIDAD AND TOBAGO

CLAIMANT

AND

THE SPECIAL TRIBUNAL

DEFENDANT

AND

THE CHIEF PERSONNEL OFFICER

INTERESTED PARTY

Before the Honourable Mr. Justice K. Ramcharan

Date of Delivery: 20th April, 2024

Appearances: Douglas Mendes SC and Anthony Bullock ***i****nstructed by* Imran Ali for the Claimant.

Seenath Jairam SC and Raphael Ajodhia *instructed by* Sara Muslim and Janine Joseph Interested Party

JUDGMENT

CONTENTS

BACKGROUND FACTS

1. This is a claim arising out of the decision by the Defendant with respect to a matter before it **ST42 of 2022** between the Interested Party and the Claimant in which the Defendant proposed to make two (2) awards of five (5) years each: 2014 – 2018 and 2019 – 2023 pursuant to Section 22 of the Civil Service Act, Chapter 23:01.

2. By fixed date claim dated the 8th day of August, 2023, the Claimant seeks the following relief with respect to the said decision:
    a. An order of certiorari to remove into the High Court of Justice and quash the decision.
    b. A declaration that the decision is unlawful, null and void since it was the result of a misconstruction of Section 22(1) of the Civil Service Act.
    c. A declaration that the decision is unfair and/or irrational and/or unreasonable.
    d. Costs.

3. The issues which arise in this matter are as follows:
    a. Whether the Defendant is the subject to the jurisdiction of the High Court.
    b. A sub-issue of the first issue is whether the Defendant is a Superior Court of Record.
    c. Whether the Defendant was correct in determining that it was bound to make two (2) awards with respect to the matter before it.
    d. Arising out the second question is whether the Defendant can make awards with respect to periods of time for which no referral has been made to it.

SUMMARY OF DECISION

4. The summary of the Court's decision is as follows:
    a. The Court has jurisdiction to hear this claim.

b. The Special Tribunal is not a Superior Court of Record and even if it were, it would be subject to judicial review proceedings before the Supreme Court.
c. The First Defendant erred when it held (a) that there were two (2) disputes before it, and (b) that it was obliged to make two (2) orders of no less than five (5) years for each dispute. There was one (1) dispute before the Special Tribunal.
d. In any event, the First Defendant has no jurisdiction to make an award for a period of time for which no dispute has been referred to it under the Civil Service Act.

FACTUAL BACKGROUND

5. The Claimant is the recognized majority union for civil servants in Trinidad and Tobago. As such, pursuant to Section 16 of the Civil Service Act, the Personnel Department, headed by the Interested Party, is required to consult with them for the determination of the terms and conditions for workers falling under the remit of the Claimant.

6. The Claimant and the Interested Party had been in negotiations for the remuneration of several officers for the periods 2014 – 2016 and 2017 – 2019. It is apparent that there was a breakdown in the negotiations for both periods and the Minister referred the dispute to the Special Tribunal pursuant to Section 20(1) of the Act by letter dated the 17th day of October, 2022. The paragraph of the letter is reproduced below:

> **"In accordance with the provisions of the Civil Service Act, Chapter 23:01, I hereby refer for settlement by the Special Tribunal, a dispute between the Chief Personnel Officer and the Public Services Association of Trinidad and Tobago on the matter of revised salaries, cost of living allowance and other allowances to be applicable to officers in the Civil Service, Tobago House of Assembly and Statutory Authorities subject to the Statutory Authorities Act, Chapter 24:01 in respect of the periods January 1, 2014 to December 31, 2016 and January 1, 2017 to December 31, 2019."**

7. Upon receipt of the letter, there was a challenge by the Claimant of the jurisdiction of the First Defendant to deal with certain officers and the Defendant held that it had jurisdiction to exclude the Tobago House of Assembly and the Statutory Authorities from the dispute.

8. Evidence and arguments and witness statements were filed by the parties. The contents of these are essentially irrelevant to these proceedings and there is no need to lay them out here. During the cross-examination of Ms. Suzette Lee Chee, the witness for the Interested Party, it was revealed that the Defendant had indicated in other proceedings before it that it was bound to make two (2) awards of five (5) years each with respect to the matters referred to it. On the request of the Claimant, the Claimant and Second Defendant made oral submissions to the Special Tribunal following which, the First Defendant indicated that it would make two (2) awards for the periods 2014 – 2018 and 2019 – 2023 respectively.

9. In the affidavit in response, the Interested Party noted that the same issue which is before the Court came up in proceedings between the Interested Party and the Prisons Officers Association and on the 4th day of May, 2023, the Defendant, comprised in an identical manner as in the proceedings out of which this claim is filed, ruled that there were two (2) disputes, so that two (2) awards each for a period of five (5) years would be made.

LEGISLATIVE FRAMEWORK

10. Part III of the Civil Service Act provides for the establishment of the Personnel Department, including the Interested Party and the negotiation of terms and conditions of civil servants. Section 17 states:

> **Where the Personnel Department consults and negotiates with representatives of the appropriate recognised association with respect to matters specified in Section 14 at the request of such representatives and the Personnel Department and the appropriate recognised association are, within twenty-one (21) days of the commencement of such consultation and negotiation or within such further**

period as may be agreed upon, unable to reach agreement on any matters, the Personnel Department or the appropriate recognised association shall report the matter on which no agreement has been reached to the Minister of Finance and on such report being made a dispute shall be deemed to exist as to such matter.

11. Section 20 states:

20. (1) Where a dispute is deemed to exist under Section 17 or 18, the Minister shall refer the dispute for settlement to the Special Tribunal established under Section 21 within twenty-one (21) days from the date on which the dispute was reported to him.

(2) Where the Minister fails to refer the dispute to the Special Tribunal within the time specified in Sub-section (1) the appropriate recognised association that is a party to the dispute shall do so within twenty-one (21) days from the date of the expiration of the time specified in the said Sub-section.

(3) For the purposes of this Act the parties to a dispute shall be the Chief Personnel Officer and the appropriate recognised association of civil servants.

12. Part IV of the Civil Service Act establishes the First Defendant it comprises Sections 21 and 22 of the Act:

21. (1) There shall established a Special Tribunal which shall consist of the Chairman of the Essential Services Division of the Industrial Court and two (2) other members of that Division selected by him.

(2) In this section the expression "the Industrial Court" means the Court established under the Industrial Relations Act.

(3) The Special Tribunal shall hear and determine any dispute referred to it under Section 20 and shall make an award on the dispute.

(4) An award made by the Special Tribunal shall be final.

(5) The Special Tribunal may provide its own procedure for the hearing and determination of any dispute referred to it.

(6) In addition to taking into account any submissions, arguments and evidence presented or tendered by or on behalf of the appropriate recognised association and the Chief Personnel Officer, the Special Tribunal in its judgment shall be guided by the considerations set out in Section 20(2)(a) to (f) of the Industrial Relations Act.

22. (1) An award made by the Special Tribunal under Section 21 shall be binding on the parties to the dispute and on all civil servants to whom the award relates and shall continue to be binding for a period to be specified in the award, not less than five (5) years from the date upon which the award takes effect.

(2) The Special Tribunal may with the agreement of the parties to an award review at any time after the expiry of the third year".

13. The Industrial Relations Act states at Section 4(2C):

4(2C) The Special Tribunal established by the Civil Service Act and referred to in the Police Service Act, the Fire Service Act, the Prison Service Act, the Education Act, the Supplemental Police Act and the Central Bank Act, shall consist of the Chairman of the Essential Services Division and two (2) other members of that Division selected by him and shall hear and determine disputes arising in the Civil Service, the Police Service, the Fire Service, the Prison Service, the Teaching Service, the Supplemental Police and the Central Bank as if those disputes arose in essential services.

JURISDICTION TO HEAR THE CLAIM

14. The submissions of the Interested Party with respect to jurisdiction seem to be based on the fact that the Special Tribunal is a Superior Court of Record and therefore, not amenable to judicial review. In that regard, even though substantial oral submissions were made by the Interested Party on the point, it seems to recognise in its written

submissions that this Court is bound by the decision of the Court of Appeal in ***The Special Tribunal v The Estate Police Association***[1], which held conclusively that the Defendant was amendable to judicial review. The issue is dealt with at paragraphs 17 – 39 inclusive. In summary, the Court states that in order for the Defendant to have been a Superior Court of Record, Parliament would have had to clothe it with that status and it has not. Further, nothing in the relevant sections of the Supplemental Police Act, the Civil Service Act or the Industrial Relations Act, create the necessary implication that the Defendant is a Superior Court of Record.

15. The Court notes that in the ***Estate Police Association*** case, Section 42(1) of the Supplemental Police Act, Chapter 15:02 stated that, **"The Special Tribunal shall hear and determine all disputes referred to it under the provisions of the Industrial Relations Act as incorporated in Section 40 of this Act and for that purpose shall have the powers of the Industrial Court that are vested therein by the Industrial Relations Act."** The Court of Appeal noted that this section limited the applicability of power to those powers for the purpose of determining disputes. This Court would add further that power and status are two (2) separate issues. The fact that the Industrial Court is a Superior Court of Record is not a power it wields, but rather a status it enjoys. Further, it is to be noted that the Civil Service Act has no parallel provision. This is the Act which establishes the Defendant and therefore, it is this Act which ought to clothe the Defendant with any status it enjoys. The Supplemental Police Act, likely has this wider section as the disputes which the Special Tribunal will deliberate upon under that Act are not limited to disputes on remuneration, but any dispute between the Employer and Estate Constables or among Estate Constables.[2]

[1] Civ App. P258 of 2019
[2] Section 40 Supplemental Police Act Chapter 15:02

16. The Interested Party also submitted that the Court should take cognizance of the fact that the Special Tribunal comprised the Chairman of the Essential Services Division and two (2) other Judges from that Division. In the mind of the Court that is neither here nor there. A disciplinary tribunal established by the Judicial and Legal Services Commission would likely comprise a Judge of the Supreme Court, but such a body would still be amenable to Judicial Review. It is the function and status of the body which makes it amenable to judicial review, not the composition of the body itself.

17. The Court of Appeal went on further to hold that even if the Special Tribunal was a Superior Court of Record, it would still be amenable to judicial review as its jurisdiction was limited. It quoted extensively from the decisions of the UK Supreme Court in ***R (on the Application of Cart v Upper Tribunal***[3] and the Australian High Court in ***Kirk v Industrial Relations Commission of New South Wales***[4]***.***

18. As noted earlier, this Court is bound by the decision in ***Estate Police Association***, until such time as that decision is reversed (an appeal is pending before the Privy Council) or overturned, this Court has jurisdiction over the decision of the Defendant.

THERE IS ONE (1) DISPUTE BEFORE THE DEFENDANT

19. Before delving into the issue of whether there is one (1) dispute or two (2), which goes to the heart of the issues between the parties, the Court will deal with a submission which the Interested Party proffered and spent quite some time developing in its submissions. That is the question of deference.

20. In essence, the Interested Party's submission in this regard is that the Defendant is a specialized Court with special knowledge and skill and which is vested with wide powers in order to make a determination. Heavy reliance was placed on the decision of Kokaram,

[3] [2011] 4 All ER 127
[4] [2010] HCA 1

J (as he then was) in ***TTUTA & Anor v The AGTT***[5]. In that case, the Court was dealing with a claim in the High Court to determine whether the marking of SBAs by teachers in the Teaching Service formed part of their contract of employment or whether they ought to be paid separately for that by the Caribbean Examination Council. The AGTT had argued *inter alia* that this was a matter best suited for the Special Tribunal and not the High Court.

21. The Court noted early on in the proceedings that it was <u>not</u> a case of **"interpretation of an agreed contractual text which will form the basis for the declaratory reliefs sought under Part 56 of the Civil Proceeding Rules 1998 (CPR), loosely referred to as an interpretation or construction summons under the former rules of Court"** [6]. He clarified that it was, **"in essence a labour dispute on the applicable terms and conditions of employment of teachers that is best resolved in its entirety in the statutory framework designed to deal with those issues."**[7] It appears to the Court that what Kokaram, J (as he then was) was saying that it is because it is a labour dispute and not a construction or interpretation case that the deference to which he refers later on in his judgment is paid.

22. In any event, that is the view of this Court. A specialized tribunal or body or agency should always be given the deference they are due when they are dealing with their area of expertise. This Court would not presume to second guess the Defendant in its determination on what an award in relation to a dispute should be. The Defendant however, is not an expert either in the interpretation of statute or general documents. The true construction of documents and legislation is the milieu of the High Court. There is no specialized area of expertise which the Defendant has in those matters.

23. The Interested Party has argued that there are two (2) disputes essentially on the basis that there are two (2) periods of time which have been reported to it, that is to say 2014 – 2016 and 2017 – 2019. So, it follows that there are two (2) disputes, one (1) for the

[5] CV2019-00338
[6] Paragraph 3 at p. 2 of the judgment
[7] ibid

period 2014 – 2016 and one (1) for the period 2017 – 2019. The Claimant's submission is that there is one (1) dispute. The dispute is for salaries and other benefits for the period 2014 – 2019.

24. In reaching a determination, the Court rejects the Interested Party's assertion that a high level of deference ought to be given to the interpretation of the Defendant. As noted above, interpretation is not the area of the Defendant's expertise. And while the Defendant is not necessarily hamstrung by technicalities, the proper construction of documents and statute is not a technicality, but rather matters which limit the scope of what the Defendant can make an award upon. As will be set out further in this judgment, it is also limiting the jurisdiction of the Defendant in terms of the awards it can make.

25. When one looks at the referral, the Minister refers to a dispute. The Interested Party referred to the Interpretation Act which provides that the singular includes the plural, to submit that there were in fact two (2) disputes before it. However, the actual facts do not support this contention. While there were two (2) periods under negotiation (2014 – 2016 and 2017 – 2019), the counterproposals sent by the Interested party in 2022 dealt with the two (2) bargaining periods together.

26. Paragraph 8 of the affidavit of the Interested Party reads **"In particular, the Appendices as annexed to the CPO's Evidence and Arguments are as follows:**

    a. **'Appendix I' is the PSA's initial proposal to the CPO dated the 6th day of October, 2015, for the bargaining period 1st July (sic), 2014 to 31st December, 2016;**
    b. **'Appendix II' is the PSA's proposal to the CPO dated the 5th day of July, 2022, which the PSA states is a 'counter proposal' to the counter proposals received from the CPO for 'January 1, 2014 to December 31, 2016 <u>and</u> January 1, 2017 to December 31, 2019.'**
    c. **'Appendix III' is the CPO's current proposal, that is to say, <u>the proposal</u> it wishes the Special Tribunal to endorse, for the periods January 1, 2014 to December 31, 2016 <u>and</u> January 1, 2017 to December 31, 2019."**

27. The Interested Party's Proposals to which the Claimant was responding in the document marked as ***Appendix II*** is not before the Court, nor, unfortunately, is the letter referring the matter to the Minister, but, from the language in paragraph 8 of the affidavit and the fact that the Interested Party sent the proposals for 2014 – 2016 and 2017 – 2019 in the same document, it is clear that the parties were treating the negotiations for the two (2) periods as one (1) negotiation. There being one (1) negotiation, there was one (1) dispute.

28. Further, when one looks at the other surrounding factors, the weight of the evidence is in favour of there being one (1) dispute. The "bargaining units" are the same, the matters in dispute are the same, the periods of time under negotiation are contiguous. Further, taking the Interested Party's argument to its logical conclusion would lead to an absurd result. The matter which had been referred by the Minister was a dispute between the Claimant and the Interested Party for the period 2014 – 2019 broken up into two (2) periods, 2014 – 2016 and 2017 – 2019.

29. Using the Interested Party's argument that there were two (2) disputes, then the Defendant would issue an award for the first dispute which covered the majority of the second dispute and then an award for one third ($\frac{1}{3}$) of the second dispute and four (4) years, which are not only not in dispute, but for which there has been no negotiations. It could hardly be the case that it was intended that the Special Tribunal would be fixing awards, that is to say salaries and other benefits for periods of time which the parties themselves had not had the chance to negotiate. That would be a perverse and absurd result.

JURISDICTION OF THE SPECIAL TRIBUNAL

30. The Special Tribunal is a creature of Statute. It is established by Statute (the Civil Service Act) and its jurisdiction and remit are set out and limited by Statute (e.g. the Civil Service Act, the Supplemental Police Act). It is trite law that a creature of statute is bound by the statute which clothes it with power. It cannot act outside that legislation when purporting

to exercise the jurisdiction which the statute bestows upon it. In the instant case therefore, the jurisdiction of the Defendant is limited to the powers given to it in the Civil Service Act and any general powers given to it in the Industrial Relations Act.

31. Under the Civil Service Act, the Defendant is empowered to hear and determine disputes referred to it under Section 20 of the Civil Service Act[8]. Under the Industrial Relations Act, the only reference to the Special Tribunal is that disputes referred to it are treated as though they are essential services. All this means is that the procedure with respect to the essential services must be followed. That is to say that the Special Tribunal ought to sit on the matter from day to day and render its decision within thirty (30) days of the end of the hearing.

32. In light of those provisions, it follows therefore, that the Defendant cannot make an award for any disputes which have not been referred to it and further, it certainly cannot make any award for matters which are not in dispute. Yet, that is what the Defendant is purporting to do by virtue of its ruling on the 21st day of July, 2023. This is further support for the conclusion that there was only one (1) dispute between the Claimant and the Interested Party. But it also means that when dealing with disputes which are brought before it, the Defendant must ensure that any period for which it is making an order relates to a dispute before it.

33. This raises the question as to how this is reconciled with Section 22(1) which provides that an award must be for a period of at least five (5) years. When asked by the Court on this provision, the Claimant suggested that it meant that the award for whatever period was binding for five (5) years. This is not a satisfactory interpretation in the Court's view. At the same time, it is also unsatisfactory and in fact outside the Defendant's jurisdiction to make an award for any period of time which is longer than the dispute before it.

[8] Section 21(3) Civil Service Act Chapter 23:01

34. How then is this resolved? It appears to the Court that the only rational resolution to this state of affairs is to limit the matters that can be referred to the Defendant to disputes that cover a period of at least five (5) years. It seems from the evidence of the Interested Party that this is indeed the practice, whether by chance or design, as there are four (4) other matters before the Defendant in which the dispute related to two (2) continuous three (3) year periods[9]. This of course is not ideal as it means that negotiating periods will be protracted. However, in light on the limits of the Defendant's jurisdiction, it seems that this is the only rational interpretation. It may be that this provision needs to be revisited to give the Defendant more leeway when making orders with respect to their length.

35. With respect to the claim that the decision of the Defendant was unfair or irrational or unreasonable, at the hearing, the Claimant conceded that it would be possible for the parties to file new evidence to deal with the time frame which was not covered by the evidence and arguments filed in the matter, if it reached to that. In the circumstances, no order or declaration can be made with respect to that.

DISPOSITION

36. In light of the Court's findings, the order of the Court is as follows:
    a. An order of certiorari is hereby granted to remove into the High Court of Justice and quash the decision of the Defendant to make two (2) awards for the periods 2014 – 2018 and 2019 – 2023;
    b. a declaration that the said Decision is unlawful, null and void since it was the result of a misconstruction of Section 22(1) of the Civil Service Act and out with the jurisdiction of the Defendant; and

[9] Paragraphs 11 and 12 of the affidavit of Dr. Dindial which lists the Prisons Service, the Police Service, the Fire Service and the Teaching Service

c. the Defendant and the Interested Party will pay the Claimant's costs of the claim certified fit for Senior Counsel. The costs are to be assessed by a Registrar if not agreed.

KEVIN RAMCHARAN
JUDGE