

THE REPUBLIC OF TRINIDAD & TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2019-04047

BETWEEN

BRENDA MARK

Claimant

AND

TELECOMMUNICATIONS SERVICES OF TRINIDAD AND TOBAGO LIMITED

Defendant

Before the Honourable Mr Justice Frank Seepersad

Date: March 18, 2021

Appearances:

1. Mr. Martin George and Ms. Sara Martinez, Attorneys-at-law for the Claimant.
2. Ms. Sashi Indarsingh, Attorney-at-law for the Defendant

ORAL DECISION REDUCED INTO WRITING:

1. Before the Court for its determination is the Claimant's Claim Form and Statement of Case filed on 8 October 2019 by which the Claimant sought the following reliefs:
 - a. Damages for breach of contract in the sum of \$974,289.04 which said sum represents the VEERP lump sum, the pension lump sum and the reduced monthly pension in the sum of \$5,440.96 from April 2015 to 8 October 2019 plus interest.
 - b. Statutory interest.
 - c. Costs.
 - d. Any further and/or other relief as the Honourable Court deems just.

The Claimant's facts:

2. The Claimant's case is that in April 2014 as an employee of the Defendant ("TSTT") since 1984, she received a Circular dated 17 April 2014 which was signed by the Executive Vice President- Human Resources. This document contained an offer from TSTT to eligible employees in respect of Voluntary Separation Packages ("VSEP") and Voluntary Enhanced Early Retirement Plans ("VEERP"). Details of these plans were also outlined in a booklet.
3. The Claimant accepted the said offer on 25 April 2014 and submitted a completed Application Form. When the Claimant submitted the acceptance of the offer there was an on the spot calculation by TSTT up to March 2015 and based on the said calculation she was entitled to VEERP lump sum in the sum of \$417,907.20, a pension lump sum of \$261,165.88 and a reduced monthly pension in the sum of \$5,440.96.
4. TSTT thereafter invited the Claimant to attend financial counselling sessions which were set up for employees who accepted the offer.
5. In May 2014 she was informed by TSTT that the Communications Workers' Union ("the Union") had filed an industrial relations matter claiming an offence against TSTT in relation to the VSEP and VEERP offers.
6. The Claimant pleaded that she was not a member of the Union nor did she engage the Union which meant that the filing of the Industrial Court matter had nothing to do with her and her binding acceptance of the VEERP offer from TSTT.
7. The Claimant was notified by letter dated 13 October 2015 that TSTT had withdrawn the offer.
8. The Claimant also pleaded that in another High Court matter CV2017-04089 Jason Cowie and others v TSTT instituted by employees against TSTT, the employees claimed that TSTT was in breach of contract in relation to the same VSEP and VEERP agreements. As

a result of this action, a consent order was entered whereby the claimants were to be paid a lump sum reflecting the number of years they were permanently employed with TSTT multiplied by either 2 ½ or 3 ½ times their salaries depending on whether they were Junior Staff or Senior Staff.

9. A pre action letter was issued to TSTT on 27 June 2019 but no response was received.

The Defendant's facts:

10. The Defendant's case is that it is not indebted to the Claimant in the sum of \$974,289.04. The Defendant pleaded that the Claimant is a member of the Union. With respect to the Circular of April 2014, the Defendant outlined that the Circular stated, *inter alia*, that the company reserved the right not to grant or defer an application if it found it necessary to do so. Consequently, the Claimant did not accept any offer by making the application.
11. The calculations which the Company provided to the Claimant were not indicative of an acceptance of her application but only a mathematical calculation of what she would be entitled to if her application was accepted.
12. The Defendant stated that the reason for not proceeding with the VSEP and VEERP was the result of an Industrial Court action which was filed by Union members, including the Claimant, against the Company and it was alleged *inter alia* that the failure to meet with the Union ahead of issuing the Circular amounted to a violation of section 40(1) of the Industrial Relations Act Ch. 88:01. The Industrial Court issued a judgment on 30 July 2014 and this caused the Defendant to halt from offering further invitations to other workers to the VSEP and VEERP while the parties engage in negotiations on the terms of the voluntary separation plans, in compliance with the court order. As a result, the Union was notified on 2 October 2015 that plans would be withdrawn and the Defendant would not proceed any further.

13. In addition the Defendant pleaded that there was no valid contract between the parties which rendered it liable to pay to the Claimant the sums under the VEERP.

14. In relation to the CV2017-04089 matter the Defendant outlined that the consent order which was entered was negotiated as *ex gratia* payments of the employees named in that action and asserted that the said court matter does not affect the Claimant's case and noted that she was not a party to those proceedings.

The Evidence:

15. At the trial, the Claimant was cross examined. No witness on behalf of the Defendant gave evidence.

Resolution of the issue:

16. The primary issue which the Court had to determine in this case was whether the application for voluntary early retirement dated April 24, 2014 submitted by the Claimant to the Defendant created a binding and enforceable contractual agreement as between the parties.

17. The Claimant maintained that a contract did in fact subsist between her and TSTT for her to proceed on VSEP and that she is entitled to a lump sum payment of \$417,907.20, a pension lump sum of \$261,165.88 and a reduced monthly pension of \$5,440.96.

18. The evidence established that the Defendant issued a Circular dated 17 April 2014 and invited eligible Junior and Senior Staff Employees to apply to participate in the Company's VSEP or VEERP.

19. The Circular dated 17 April 2014 was analyzed and the Court was referred to an aspect of the documentation which is stated as follows, “as is common in voluntary separation programs the company reserves the right not to grant or to defer an application of the company’s current requirements, render it imprudent to proceed with the separation of any applicant particularly but not exclusively having regard to his or her core competencies and/or departmental requirements”.
20. The Circular was accompanied by a booklet and the Court considered Item 4 of the booklet under the heading “Voluntary Separation Procedure” and noted that that procedure spoke of steps that had to be taken after the application had been submitted up to the end of the employee's employment. Some 12 steps were outlined and there is no evidence before the Court that beyond Step 1 the parties took any further step in the matter. Step 1 was the receipt of the employee’s application.
21. The Defendant asserted that the Claimant must have understood that her application was not approved having not heard from the Company in respect of her application for VEERP. The Claimant never exited the employ of the Defendant and to date remains an employee of the Company.
22. The Court also noted that Page 8 of the booklet indicated that in addition to the compensation packages being offered the Company was offering outplacement services including counseling and assistance programs to smooth the transition for considering the program.
23. The Claimant suggested that the wording at Page 8 of the booklet demonstrated that the Company had in fact made an offer to selected employees which the Company was hoping that the selected employees would in fact accept.
24. The Court in its resolution of the legal question considered the dicta of Lord Denning in the **Storer v Manchester City Council [1974] 3 All ER 824** and the Court also had regard

to the decision of the Industrial Court in **Application No. 11 of 2006 Aviation Communication and Allied Workers' Union v BWI West Indies Airway Limited** .

25. When the Court reviewed the documentation and the law, the Court recognized that the Circular memorandum expressly notified all the employees, including the Claimant, of the Company's reservation of its right not to grant or defer an application if the Company's current requirements rendered it imprudent to proceed with the separation of any applicant particularly but not exclusively having regard to his or her core competencies and departmental requirements.
26. Having regard to the wording of the particular provision the Court had difficulty accepting that the Company's engagement of the Claimant amounted, in law, to an offer which the Claimant subsequently accepted.
27. The Court also noted the procedural history in the matter and formed the view that the Company seemed to have acted in compliance with an undertaking and consistent with the approach suggested by the Industrial Court in **IRO No. 9 of 2003 All Trinidad Sugar and General Workers' Trade Union v Caroni (1975) Ltd** which essentially prohibited individual contracts and private treaties as between workers and the employer as the Court expressed the view that such a contract would amount to a nullity.
28. It seems that in deference to the Court and in furtherance of its obligation to engage in good industrial relations practices, the Company altered its plans and ceased the processing of voluntary separation applications.
29. The Court also formed the view having read the Claimant's submission, that the Claimant's reliance on **HC 3603 of 2003 Trinidad and Tobago Civil Rights Association v Manning and the Minister of Finance and Corporation Sole** was not applicable to the circumstances of the case as outlined before this Court.

30. The Court formed the view that the Claimant's reliance on the case of the CV2017-04089 matter was misplaced since the Claimant was not a named party to that consent order and could avail herself of any rights in relation to same as that matter operated strictly as between the parties named therein.

31. Ultimately, the Court formed the view that no binding contract was formed as between the Claimant and the Defendant when she submitted her application. In the circumstances no breach of contract occurred and the Claimant's claim is without merit and is hereby dismissed.

32. The Court hereby orders that the Claimant shall pay to the Defendant costs adjusted by Court on a prescribed cost basis in the sum of \$63,290.62. There will be a stay on the payment of cost of 28 days.

.....
FRANK SEEPERSAD
JUDGE