**IN THE COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Public Law Division**

**Claim No. 2024/PUB/con/FP/0001**

**B E T W E E N:**

**(1) ALBURYS FREEPORT LIMITED**

**(2) STEPHEN ALBURY**

**Claimants**

**and**

**(1) THE MINISTER OF LABOR**

**(2) THE VICE PRESIDENT OF THE INDUSTRIAL TRIBUNAL**

**(3) THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS**

**Defendants**

BEFORE: The Honourable Mr. Justice Andrew Forbes

APPEARANCES: Jaccy Wittaker for the Claimants

Sophia P. Thompson – Williams for the Defendant

HEARING DATE: Heard on the papers

## DECISION

**FORBES, J**

## INTRODUCTION

[1.] This action begun by way of Originating Notice of Motion filed on the 30 May, 2024. The Claimants sought reliefs in the form of a declaration that the Tribunal's procedural conduct violated the constitutional protections of the claimant; specific court orders mandating the Tribunal to comply with the procedural norms and Costs. The Claimants rely only on the Affidavit of Stephen Albury filed on the 14 July, 2024.

[2.] The Claimants filed an Affidavit of Service on the 6 June, 2024. In which it states that on Monday the 3 June, 2024 at 4:07 pm Michi Thompson, the deponent, while appointed by the Attorneys for the Claimants served on the Office of the Attorney General the Originating Motion and that Ms. Shadavia Robinson accepted the service of the document.

[3.] A Notice of Application along with a Certificate of Urgency was filed on the 12 June, 2022. The application sought to stay the proceedings in the Industrial Tribunal against the First Defendant until determination in the Originating Notice. The Affidavit of Stephen Albury in support of the application was filed on the 14 June, 2024.

[4.] An Acknowledgement of Service was filed on the 20 June, 2024. On the 24 June, 2024, an Order dated the 21 June, 2024 was filed. The Order made by this Court granted the stay of pending proceedings in the Industrial Tribunal.

[5.] A Notice of Trial was filed on the 24 June, 2024. Skeleton Arguments/Submissions were laid over. An Affidavit of service with respect to the same was filed on the 8 July, 2024. On the 24 July the Defendants' Counsel filed Skeleton Arguments and on the same date Claimants' Counsel submitted Reply submissions. Finally, the Affidavit of Helen Jones was filed on the 26 July, 2024.

## EVIDENCE

### Claimants Evidence

[6.] The evidence of the Claimants is contained within the Affidavit of Stephen Albury. In brief, he states that he is the Second Claimant and majority shareholder of the First Claimant; That on or about March of 2024, three cases were launched against the First Claimant before the Industrial Tribunal by 1) Siyyd Campbell, Garinique Williams and Patrick Adderley for unfair dismissal, wrongful dismissal, wages owed, notice pay, severance pay, unlawful suspension and wrongful/unlawful salary deduction. Further, in the Affidavit he relays the timeline of each individual action, nonetheless, the basic timeline as stated is an action commenced, the Applicant filed seeking further and better particulars, further particulars were provided (unfiled or filed), the Claimants once more sought further and better particulars, the Tribunal determined that the particulars provided were sufficient, the time to enter a Defence expired and the Industrial Tribunal moved to a "case management hearing." Exhibited were the correspondence and various filings in relation to the matter.

[7.] Moreover, the Affidavit of Stephen Albury states that the Industrial Tribunal proceeded with the hearing of the three matters as mentioned above and did not refer the matter to the

Supreme Court in accordance with the Constitution of The Bahamas. That the Tribunal explicitly stated that it proceeded with the Case Management hearing in the "Absence of an Order from the Supreme Court stating the proceedings" and that this behaviour demonstrates a potential bias and apparent disregard for the ongoing constitutional matters.

[8.] That the "procedural irregularities" exhibited by the Industrial Tribunal have impacted the fairness of the proceedings against the Claimants. Specifically, the utilization of Form J (Notice of Hearing) beyond the intended use prescribed by Rule 8(2), misapplication of Rule 15(1) by the Tribunal setting down Case Management hearings without clear statutory authority, the use of Form J in the manner the Industrial Tribunal had done contradicted the established procedural framework and leads to significant confusion and potential unfairness and that the Industrial Tribunal's reliance on past practices and certain judicial decisions should not extend beyond their explicit boundaries. That the deviations from the Industrial Relations (Tribunal Procedure) Rules, 2010 compromise procedural fairness.

[9.] That the Claimants request the Court to make a declaration that the actions of the Industrial Tribunal have contravened the constitutional rights of the Claimants and issue specific orders mandating the Industrial Tribunal to adhere strictly to established procedural norms.

**Defendant's Evidence:**

[10.] The evidence of the Defendant is contained within the Affidavit of Helen J. Amorales-Jones, filed on the 26 July 2024. In brief, she states that she is appointed as the Vice President of The Bahamas Industrial Tribunal pursuant to section 45 of the Industrial Relations Act, Chapter 321. That on the 21 May 2024 she was sworn in as Acting President of The Bahamas Industrial Tribunal.

[11.] That the Defendant opposes the Application for Constitutional redress and sets out the facts in the following 3 trade disputes pending before the Tribunal that are the subject matter of this Application; namely, **Siyyid Campbell v. Albury's Freeport limited T/A Carquest** IT/NR/NES/008/2024, **Garinque Williams v. Albury's Freeport limited T/A Carquest** IT/NR/NES/027/2024 and **Patrick Adderley v. Albury's Freeport limited T/A Carquest** IT/NR/NES/030/2024.

[12.] That three Applicants filed a Report of a Trade Dispute against the, then Respondent, on the 27 September, 2023 (Siyyid Campbell); and 25 October, 2023 (Garinique Williams and Patrick Adderley).

[13.] That all matters referred to concerned the following issues:- unfair dismissal, wrongful dismissal, wages owed, notice pay, severance pay, unlawful suspension, and wrongful/unlawful salary deduction. Further regarding the latter two applicants, their reports included claims for vacation pay. That these three matters were referred to the Tribunal on the 27 November, 2023 (Siyyid Campbell) and by the Minister of Labour and The Public Service. That the three Applicants are represented by a Labour Advocate named Justin Palacious and the then Respondent is represented by Counsel Jacy Wittaker, Esq.

[14.] That The Rules required the, then Respondent, to file a Defence within 14 days after the filing of Form D.

[15.] The Chronology seems to be accepted by the Affiant, however, with regard to the Campbell matter, she stresses the following: that the then Respondent's Counsel filed this

Constitutional Motion on the 20 May 2024 after that, he filed Form F on the 22 March, 2024, that the time for filing his Defence expired on the 3 April, 2024, that the Applicant's Representative filed the Further and Better Particulars on the 8 April, 2024, that the tribunal denied the then Respondent's request to redo the Particulars and that the Tribunal issued and served a Form J on the Parties' Representatives setting the matter for case management on the

[16.] That with regard to Williams and Adderley's matters, the Constitutional Motion filed on the 30 May, 2024 was after the following: that the then Respondent filed Form F on the 15 April, 2024, the Applicants' Representative filed further and better particulars on the the 22 April, 2024, that the then Respondent only had until the 26th of April to file its Defence, that between the 2nd and 3rd May, 2024 the then Respondent's Counsel exchanged emails after there was an objection by the Applicants' Representative in relation to service of certain documents while trade disputes were pending before the Tribunal, that on the 10 May 2024 the then Respondent filed Form L (Notice of Application For Extension of time) in the two matters with relation to its Defence, that on the 13 May, 2024 the Tribunal issued and served the then Respondent's Counsel with a Notice of Hearing Setting the Matter for Case Management at 10:00 am on the 30 May, 2024 and on the 15 May, 2024 the Tribunal informed Counsel that its Application for an extension of Time would be heard at the Case Management hearing.

[17.] Moreover, that on the 28 May, 2024 and the 30 May 2024, Claimants' Counsel the Tribunal received emails requesting that the aforementioned proceedings be stayed. That the Tribunal is empowered to hear matters in the absence of any party who has been duly summoned to appear before the Tribunal pursuant to section 59 (1)(a) of the Industrial Relations Act.

[18.] That on the 30 May 2024, in fairness to the parties and despite the Claimant's non-attendance, the Tribunal ordered that the respective Representatives exchange Submissions pertaining to the Applications. That on the 10 June, 2024 the Tribunal served all parties involved with a Notice of Hearing setting the matters for trial.

[19.] That she believes the Tribunal is a creature of statute and must follow the statute and rules that empower and govern it. That the Industrial Relations Act mandates that in the hearing and determination of any matter before it is conducted in an informal matter without regard to technicalities and legal form.

[20.] That the Industrial Relations Rules empowers the Tribunal to hear matters pursuant to Form L even if the time so appointed had expired. That no party has the right to compel the Tribunal to hear a Form L application *ex parte* without giving the opposing party an opportunity to be heard on the application. That she usually determines a Form L application filed before the time to do the act *ex parte*. However, if an application is filed after the time to do an act has expired, she hears the application *inter partes*.

[21.] That Rule 15 of the Industrial Relations Rules empowers the Tribunal to, at any time, and of its own motion, to give directions in any manner arising in connection with the proceedings. That section 59(1) of the Industrial Relations Act states empowers the tribunal to give directions and do all things that are necessary or expedient to for the just hearing and determination of a dispute.

[22.] That Rule 8 (1) of the Industrial Relations Rules empowers the Tribunal Judge or Secretary to fix the date, time and place of "the Hearing [of] the Originating Application" and the Secretary shall send Notice in the form of Form J in the Schedule. Further, that The

Bahamas Court of Appeal ruled in the case of **Harborside Resort At Atlantis v. Valene Winters** Ind.Trib.App. No. 140 of 2022 that the tribunal must comply with Rule 8(1) of The Industrial Tribunal Rules whenever it is convening a hearing.

[23.] That no provision of the Industrial Relations Act empowers the Tribunal to stay a trade dispute pending the outcome of the Constitutional Motion nor an Application for Judicial Review and that the filing of any such application does not automatically amount to a stay and that a Court of Superior jurisdiction can stay proceedings before the Tribunal.

[24.] The Court notes that the Affiant further relayed the factual background surrounding each of the matters before it. Much of which mirrors that of the Claimant's pleadings. Nonetheless, the Affiant deposes that the application before this Court is premature and misconceived and that there was no breach of the Industrial Relations Act nor Rules. That the insertion of the words "Case Management" on Form J does not amount to an irregularity nor leads to a breach of the Claimant's Constitutional right to a fair hearing.

[25.] That on the 25 June, 2024 that Claimant's Counsel served the Tribunal with an order by this Court staying the proceedings before it until the substantive application was heard on the 29 July, 2024.

[26.] That she believes that the Tribunal's refusal to direct the Applicants in those matters to re-amend the written Response to Form F and to hear and determine the application *inter partes* spurred this challenge before the Court.

## SUBMISSIONS

[27.] The Court is grateful for the submissions by both Counsel for the Claimants and the Defendants. Though not all points of law will be discussed, brief summaries of the Submissions are below.

**Claimants' Submissions**

[28.] Claimant has handed over to this Court, Submissions and a Reply to the Defendants' submissions all of which were considered by this Court. In brief, the submissions were as follows:

a. That the Industrial Tribunal is not a Supreme Court and does not have the same powers as the Supreme Court and is not afforded the discretionary powers. (see **Neil Wells v The Attorney General** 791 of 1991 (Bahamas Supreme Court, Common Law Action No. 1791 of 1991, unreported) and **The Commissioner of Police v Steve Bethel** (Bahamas Supreme Court, Common Law Action No. 14 of 1990, unreported));
b. That the Tribunal refused to consider representations in writing and purported to fix hearing dates as it relates to the Extension of Time application. That by the Tribunal attempting to fix a hearing for the application, it is acting as a mimic to the Supreme Court and attempting to utilize powers it does not hold;
c. That the Tribunal has misapplied judicial decisions and rules and inflated the provisions on flexibility to suit their alleged powers;
d. That the words of statute must be applied based on the ordinary meaning regardless of the result (see **Sussex Peerage Claim** (1844) 11 Cl & Fin 85, 143; **R v The Judge of the City of London Court** [1892] 1 QB 273 CA; and **Vacher & Sons Ltd v London Society of Compositors** [1913] AC 107).

e. That there have been a number of procedural irregularities that are significant and result in constitutional breaches;
f. That the Tribunal did not comply with Rule 12 which mandates that motions be heard on the papers. The Court would like to note that the Rules states that "The Tribunal may - " and not shall. That the Tribunal failed to render a decision on the extension of time, used form J incorrectly and
g. That the relief sought and intervention required from this Court is necessary to address the issues as presented, uphold the rule of law and ensure that the Tribunal operates within the confines of its statutory and constitutional framework.
h. That the breaches would have deprived the clients of a fundamental right to a fair hearing. Namely, the non-compliance with the Tribunal's established framework. Improper use of form J and neglecting of Rule 3(3) requirements and not considering written representations under Rule 12 have undermined the integrity and fairness of the proceedings. Moreover, the same has lead to some procedural uncertainty, delay and compromised the Claimant's ability to prepare an adequate defence.
i. That it is not a matter of simply appealing that the systemic flaws are so deep-rooted that the Tribunal has compromised the foundation of justice itself.

[29.] The Court notes that there was much discourse and reference as to what is considered 'sufficient particulars' with a wealth of case law; however, the Court is of the view that the pleadings in question are not the basis of this application, rather the decision to hear the application on the papers or not, is the actual issue at heart.

**Defendants' Submissions**

[30.] The Defendant made Submissions in Reply to the Claimants. In part, submits the following:

a. The Plaintiff's must prove their factual allegations of constitutional abuse. (see Coalition to **Protect Clifton Bay an Zachary Hampton Bacon 111 v The Hon. Frederick A. Mitchell MP and the AG** 2016/PUB/con/00016).
b. That it is trite law that Article 2 of the Constitution of The Bahamas is the Supreme law of the Commonwealth of The Bahamas and that Article 28 provides that the Supreme Court has the original jurisdiction to adjudicate and supervise branches of government.
c. That Article 28 (1) empowers the Supreme Court with the jurisdiction to hear matters relating to the breaches of any of the rights mentioned in article 17-27 provided that there is no adequate means of redress available to the person. That the Article 28(1) application is to be used in exceptional cases (see. **Harrikisoon v AG of Trinidad and Tobago** [1980] AC 265, **AG of Trinidad and Tobago v Ramonpoop** [2025] UKPC and **The Queen v David Shane Gibson** No. 233/10/2017).
d. That in the alternative, there has been no breach of the Claimants rights or potential rights to a fair hearing and this action amounts to an abuse of process

of the Court (see. **Jamile Ferguson v The Comissioner of Police and Attorney General** 2019/PUB/Con/0002).

e. That taking Rule 8 (1) into consideration with the Industrial Relations Act and Rules it is empowered to hold hearings on its own motions and on the application of the parties. (see **Anthony Bethel v The Director of Public Prosecution**, CRI/VBI/287/10/2015; **Valentino Yastare v Regina** SCCr.App No.23 of 2015).

f. That no Court in applying the purposive approach would interpret the Tribunal informing the Claimants that they would hear and determine their application for leave to extend time to file its defence would amount to an infringement of their rights.

**LAW**

[31.] As this is a constitutional motion, it is necessary to refer to Article 28 (1) which provides:

> 28. (1) **If any person alleges that any of the provisions of Articles 16 to 27** (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice **to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress**.

[32.] However, Article 28(2) gives a proviso to the Court's originating jurisdiction and provides:

> (2) The **Supreme Court shall have original jurisdiction** —
>
> (a) to hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and
>
> (b) to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled:
>
> **Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.**
>
> [Emphasis mine]

[33.] Therefore, if an adequate means of redress is available to a person concerned the Court is restrained from using its powers pursuant to this article.

[34.] As this dispute arises from an employment dispute in the Industrial Tribunal and the procedure of the Industrial Tribunal itself it is necessary to assess the laws with relation to the

tribunal. Specifically, section 94 of the Third Schedule of the Industrial Relations Act, Chapter 321 states:

> 94. **All employees have a right to seek redress for grievances relating to their employment. Each employee must be told how he can do so.**

[35.] Further, section 70 of the Fourth Schedule of the Industrial Relations Act states:

> 70. (1) Subject to subsection, (2) **a decision of the Board in any matter before it under this Act —**
>
> (a) **shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever**; and
>
> (b) **shall not be subject to prohibition, mandamus or injunction in any court on any account whatever, and as respects any trade dispute referred to it under this Act** shall be binding on the employers and employees to whom the award relates.
>
> (2) **Any party to a matter brought before the Board shall be entitled, as of right, to appeal to the Court of Appeal on a point of law from any decision**, order or award of the Board, and the decision of **the Court of Appeal on any such appeal shall be final.**

[Emphasis mine]

**ANALYSIS**

[36.] The Defendants seemingly does not dispute the notion that the Company is entitled to the constitutional rights as afforded to natural persons in law. Therefore, this point of law will not be explored.

[37.] However, at its very core the question is whether an "**adequate means of redress**" is or was afforded to the Applicants at the time of making this motion before the Supreme Court. There are two requirements that the Applicant are to meet and it is evident to this Court that they have failed to meet either.

[38.] The Court notes Article 28 (3) which provides:

> (3) If, **in any proceedings in any court established for The Bahamas other than the Supreme Court or the Court of Appeal, any question arises as to the contravention of any of the provisions of the said Articles 16 to 27 (inclusive), the court in which the question has arisen shall refer the question to the Supreme Court.**

It is the Court's view that the basis of this issue is a procedural disagreement based on the rules/law provided for in the Industrial Relations Rules, Chapter 321. This is an issue of law based on a decision would ordinarily fall at the feet of the Supreme Court if there was no adequate means of redress. However, it is the view of the Court that there is.

[39.] Though the Court has the jurisdiction to hear constitutional matters pursuant to Article 28, there is a proviso that states if there is an "adequate means of redress" the Court is prohibited in hearing the constitutional motion. It is the view of this Court, that an adequate means of redress is available in appealing to the Court of Appeal. Judicial Review is not an adequate remedy in that section 70 of the Fourth Schedule blatantly disallows for the challenging of, appealing of, reviewing of, quashing of, or any calling into question of any decision of the Tribunal. However, section 70 (2) of the Fourth Schedule of the Act, makes it

clear that "as of right" any party to a matter before the Board may appeal on a point of law from **any decision** made in the Tribunal.

[40.] The Court is in agreeance with the Defendant's Counsel in that, the Tribunal is intended to be an informal forum to settle disputes between the parties before it. Further, it is evident to the Court that section 70 of the Fourth Schedule of the Industrial Relations Act is clear. That the Court is not supposed to interfere in the procedures of the Industrial Tribunal "on any account whatsoever".

[Emphasis added]

[41.] Therefore, for this Court to make a determination in regard to the procedural affairs of the Court below would be a clear breach in section 70 of Schedule 4 due to the fact that it is clearly based on the wording of the Act that the decisions of the Tribunal below are not to be reviewed by this and any Court along with the fact that the proviso states that the court "shall not" exercise its powers under Article 28 if there is an adequate means of redress.

[42.] I echo the sentiments of the *Isaacs, JA* in the case of **Adrian Gibson et al v Director of Public Prosecution** SCCriApp No. 46 of 2024:

> ... although this appeal was found to be incompetent for the reasons articulated by my brother Evans, JA, I reiterate in part, paragraph 20 of my judgment in the earlier appeals of Adrian Paul Gibson et. al. v The Director of Public Prosecutions SCCon/CrApp No. 97 of 2023 and Elwood Donaldson v The Director of Public Prosecutions SCCon/CrApp. No. 100 of 2023: "**20. I sound a word of caution that the fundamental rights provisions of the Constitution must not become the first refuge of disgruntled litigants lest those provisions lose their importance as safeguards of societal rights...**"

**DISPOSITION**

[43.] This Court is of the view that the Claimants seemingly framed the argument as a constitutional claim as an effort to circumvent the statutory framework clearly stated in the Act in an effort for the Court to review the matter, which it cannot. Moreover, had the court have the jurisdiction to do so, there is an adequate remedy in the form of an appeal to the Court of Appeal at the conclusion of the matters in the Tribunal. Should the conclusion of the matters in the Tribunal not be favourable, parties are to appeal to the Court of Appeal per the Industrial Relations Act and not abuse the process of the Court by creating a constitutional claim that does not meet the Article 28 proviso requirements. The Court therefore dismisses this application.

[44.] As costs follow the event, Costs are awarded to the Defendant.

Dated the 25th October, 2024

**Andrew Forbes**
**Justice of the Supreme Court**