

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Claim No. 2025/CLE/gen/00457

IN THE MATTER OF s.280 of the Industrial Relations Act Chapter 321

IN THE MATTER OF s.280 of the Constitution of the Bahamas Nurses Union

IN THE MATTER OF Part 17.1 of the CPR

B E T W E E N

**BAHAMAS NURSES UNION (1)
SHENIQUA COX - 1ST VICE PRESIDENT (2)
SHAVONE BRENNEN – SECRETARY GENERAL (3)
MARIA SMITH – ASSISTANT TREASURER (4)
ALICIA FARQUHARSON - TRUSTEE (5)
JUDY JOHNSON - TRUSTEE (6)
(As members of The Bahamas Nurses Union)**

Claimants

AND

**MURIEL LIGHTBOURN – PRESIDENT (1)
SHERRAN ROLLE – TREASURER (2)
(As members of the Bahamas Nurses Union)**

Defendants

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr. Lessiah Rolle and Mr. Cyril Morris with him on behalf of the
Claimants
Mr Sidney Campbell and Mr. Cyril Ebong with him for the Defendants

Hearing Date: 17th June, 2025

Interim remedies – interim injunctions – interim declarations – the remedy and the jurisdiction – discretion of the Court – principles governing exercise of discretion – whether damages would be an adequate remedy – balance of justice- whether any special factors- whether an expedited trial is necessary

Introduction/Background

- [i.] The First Claimant is the Bahamas Nurses Union (“BNU”) and the second through sixth Claimants are members and officers of the said Union. The First and Second Defendants are the President and Treasurer. On 7th February, 2023 ten individuals were elected to serve as officers of the BNU for a three- year period. The Claimants allege that the officers were elected to serve from July, 2022 to July, 2025; the Defendants on the other hand, allege that the period runs from January, 2023 until January, 2026.
- [ii.] From the chronology in the Amended Statement of Claim filed on 11th June, 2025 it would appear that the BNU operations were free of major incident for about two years after the elections.
- [iii.] This would soon change.
- [iv.] In January, 2025 issues arose regarding amongst other things, the First Defendant’s dues being in arrears and the First Defendant not involving the Executive Committee in decision making. The issue regarding the First Defendant’s arrears of dues remained an issue at the Executive Committee of the BNU on 4th February, 2025 and the Second Defendant was to produce receipts for the same in accordance with the BNU constitution.
- [v.] There were additional concerns raised regarding the Treasurer’s Reports for 2023 and 2024 amongst other things. Matters would come to a boiling point on 23rd April, 2025 when the First Defendant advised the Second and Third Claimants of their immediate suspension by the Executive Committee. In the case of the Third Claimant the suspension was without pay.
- [vi.] In response, on the same date, viz., 23rd April, 2025 the members of the Executive Committee, viz., the Second through Sixth Claimants wrote to the First Defendant informing her that she was in breach of various Articles of the BNU including being in arrears of her dues for more than three (3) consecutive months and hence she was not a member of the BNU pursuant to Article IV rule 3. The said letter was served on the First Defendant on 29th April, 2025.
- [vii.] The Claimants have also alleged that the Second Defendant was in breach of various provisions of the Industrial Relations Act including failure to produce statements for 2024 and present the Annual Returns to the Registrar before the deadline.
- [viii.] The Claimants’ filed a Notice of Application and Certificate of Urgency on 11th June, 2025 and this matter was set down for an urgent hearing on 17th June, 2025 when I sat as the duty judge.
- [viv.] The Defendants have not yet filed a Defence in this action.

RULING

[1.] The Claimants commenced this action by filing a Standard Claim on 4th June, 2025 seeking the following reliefs:

- (i) An interim injunction restraining the 1st Defendant and 2nd Defendant from holding office as President and enjoying any benefits as President and Treasurer pursuant to Article IV of the Bahamas Nurses Union (“BNU”) [Constitution] until the trial of the matter herein;
- (ii) An interim declaration that:
 - a. The suspension of the 2nd Claimant and the 3rd Claimant is unlawful and that the 2nd Claimant and 3rd Claimant be immediately reinstated;
 - b. The 3rd Claimant is entitled to and be paid her salary for the months of December 2024, April 2025, and May 2025 in the sum of \$15,249.00 and to be reimbursed in the sum of \$15,269.02 plus \$160.00 plus \$195.00 plus \$72.04 totaling \$30,945.06;
- (iii) A Declaration that the 1st Defendant is in breach of Article IV of the BNU Constitution and as such not a member of the BNU and unlawfully holding the Office of President;
- (iv) A Declaration that all meetings presided over by the 1st Defendant since February is unconstitutional;
- (v) A Declaration that the suspensions of the 2nd Claimant and 3rd Claimant is unconstitutional hence void *ab initio*;
- (vi) A Declaration that the 2nd Defendant has breached Section 30(1) and 32(1) of the Industrial Relations Act Chapter 321 (IRA);
- (vii) A Declaration that the 2nd Defendant has breached Article VI of the BNU Constitution;
- (viii) Special Damages for the 3rd Claimant for:
 - a. Lost salary of \$15,249.00;
 - b. Loan for educational expenses \$15,269.02;
 - c. Cell phone reconnection and bill in the sum of \$160.00;
 - d. Licence of vehicle \$195.00;
 - e. BTC land line phone bill of \$72.04Total Special Damages.....\$30,945.06;
- (ix) General Damages;
- (x) Interest pursuant to section 3 of the Civil Procedure Award of Interest Act 1992;
- (xi) Further or other relief; and
- (xii) Cost.

[2.] On 4th June, 2025 the Claimants also filed the First Affidavit of the Third Claimant, Shavone Brennen.

[3.] By Notice of Application filed on 11th June, 2025 (the “Application”) the Claimants sought the following reliefs:

- (i) An interim injunction restraining the First Defendant from holding Office as President and enjoying any benefits as President pursuant to Article IV of the Bahamas Nurses Union (BNU) constitution until the trial of the Matter herein;
- (ii) An interim injunction restraining the Second Defendant from further expenditure of the BNU

- money without a resolution of the Executive Committee pursuant to Article VIII rule 7 of the BNU Constitution until the trial of the matter;
- (iii) An interim Declaration that the suspension of the Second and Third Claimant is unlawful and as such they should be immediately reinstated;
 - (iv) An interim Declaration that the Third Claimant is entitled to be paid her salary for the months of December 2024, April 2025 and May 2025 in the sum of \$15,249.00 and to be reimbursed in the sum of \$15,269.02 plus \$160.00 plus \$196.00 plus \$72.04 totaling \$30,946.06; and
 - (v) An Order that the Second Defendant produce the Financial Statement and Annual Return for the BNU for the years 2024 and 2025.

[4.] In addition to the Application the following documents were filed by the Claimants:

- (i) Certificate of Urgency filed on 11th June, 2025;
- (ii) Second Affidavit of Shavone Brennen and Judy Johnson filed on 11th June, 2025;
- (iii) Amended Statement of Claim filed on 11th June, 2025; and
- (iv) Third Affidavit of Shavone Brennen filed on 13th June, 2025.

[5.] The Defendants in response filed a First Affidavit of the First and Second Defendants, Muriel Lighbourn and Sherran Rolle on 17th June, 2025 and a Second Affidavit of the First and Second Defendants on the same date.

The Application

- [6.] This application is for an interim injunction and an interim declaration pending the trial of this action.
- [7.] The power of the court to grant interim remedies is contained in Part 17 of the Civil Procedure Rules, 2022 including interim declarations and interim injunctions.
- [8.] There is a substantial dispute of facts and this action is highly charged and contentious. There are allegations of locks on the BNU's premises located at No. 41 Tonique Williams Highway being changed and then unlawfully broke and replaced, as well as, destruction of the BNU property.
- [9.] It is obvious that any appreciable delay in determining this matter has the potential for a deleterious effect on the proper governance and functioning of the BNU and could cause further injustice to the members of the Union. For these reasons, I have set the matter down for trial at the earliest date mutually available to Counsel. Therefore, I invite the Claimants if they have not yet served the Defendants with the relevant documents that they do so now, having regard to the orders that have been made with respect to the further conduct of the action.

[10.] The seminal case on the grant of an injunction is **American Cyanamid Co v Ethicon Ltd (1975) 1 All ER 504** where the test was laid out as follows:

- (i) Whether there is a serious issue to be tried;
- (ii) Whether damages would be an adequate remedy;
- (iii) Whether the “balance of justice” favours the Claimants or the Defendants ; and
- (iv) Whether there are any special factors in the circumstances of the instant case.

Whether there is a serious issue to be tried

[11.] The question of whether there is a serious issue to be tried is often referred to as “the threshold test”. The applicant is not required to prove a strong case. They need only show that their claim is not frivolous or vexatious and so has some prospect of succeeding. I refer to the dicta of Lord Diplock in **American Cyanamid** where he stated:

“It is no part of the court’s function at this stage to try to resolve conflicts of evidence on affidavits as to fact on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.”

[12.] There are a miscellany of allegations against the Defendants including the status of the presidency of the BNU, whether the suspension of the Claimants was “*unlawful and unconstitutional*” and whether the alleged failures of the Treasurer to meet her obligations pursuant to the BNU constitution and the Industrial Relations Act 1970 were “*unconstitutional, adverse, detrimental and not in the interests of the BNU*”.

[13.] The Defendants contest these allegations, asserting that any breaches that occurred were on the part of the Second and Third Claimants evidenced by what the Defendants say is their lawful suspension by the First Defendant who was in her remit to do so at the material time because she has “*always been in good standing as the President and [a] member of the BNU.*”

[14.] The Claimants have supported their claim by reference to the BNU Constitution which they say the Defendants have breached and the Defendants have countered. The Court is mindful of the admonition to not attempt to *try to resolve conflicts of evidence on affidavits as to fact nor to decide difficult questions of law.*

[15.] I have considered the Claimants Amended Statement of Claim and am satisfied that the claim brought is neither frivolous or vexatious. Or, to use the phrase coined in **Mothercare Ltd v Robson Books Ltd. [1979] FSR 466** per Megarry V-C at 474 I find that the Claimants’ cause of action has “*substance and reality on its merits*”.

Whether damages would be an adequate remedy

- [16.] The issue of whether damages is an adequate remedy is multifaceted. If there is a serious issue to be tried, it must be shown that there is a risk of some sort of breach against which the claimant needs to be protected, otherwise there is no justification for an interim injunction. **Riley v Patel [2020] EWHC 3726**
- [17.] On the one hand, the Claimants are challenging the legitimacy of the First Defendant's presidency and have submitted that "*at the time the 1st Defendant suspended the 2nd Claimant and [...] the 3rd Claimant, the 1st Defendant was in arrears of her dues for more than three (3) consecutive months*" and therefore was "*not a member of the BNU*" pursuant to Article IV rule 3 of the BNU constitution. Therefore, the Claimants say that her actions were "*unconstitutional and unlawful*".
- [18.] It is settled law that damages will often be an adequate remedy for the claimant in claims for breach of contract, including contracts of employment (**Ali v Southwark London Borough Council [1988] ICR 567**) but the position regarding claims in respect of contracts of employment is not completely free from doubt (**Powell v Brent London Borough Council [1988] ICR 176**) and there are scenarios where damages would indeed be inadequate.
- [19.] In this instant action the Claimants have posited that damages would be an inadequate remedy because the BNU registration is at the risk of cancellation due to the First Defendant's failure as President to comply with Article IV of the BNU Constitution and the Treasurer's failure to comply with Article VII rule 7 of the BNU constitution as well as sections 30 and 32 of the Industrial Relations Act. The Claimant says that these failures "*will leave the members of the BNU unprotected in the workplace against the onslaught of management*".
- [20.] While I accept that it would not be desirable or in the best interests of the BNU to be placed at the risk of being cancelled, it would not be fatal because it could be reinstated. However, I do find that while damages may be an adequate remedy for some reliefs such as salary arrears possibly, it is not an adequate remedy for all of the reliefs sought. The suspension of the Second and Third Claimants in particular, may give rise to a potential or possible deprivation of due process. Further, the potential disenfranchisement of union members raise concerns that may extend beyond financial loss.

Whether the balance of convenience favours the Claimants or the Defendants

- [21.] There has been much criticism of the term "*balance of convenience*" that Sir John Donaldson MR in **Francome v Mirror Group Newspapers Ltd. [1984] 2 All ER 408 at 413** stated that the balance of convenience might more properly called 'the balance of justice'. The Honourable Justice Archie (as he then was), considered this in **Venture Production (Trinidad) Limited v Atlantic LNG Company of Trinidad and Tobago HC 1947 of 2003** and had this to say:

“The question, which must be posed, is where does the balance of justice lie? An assessment of the balance of justice requires a comparative assessment of (i) the quantum of the risk involved in granting or refusing injunction and (ii) the severity of the consequences that will flow from following either course.”

- [22.] According to the First and Second Defendants’ Affidavit, they were declared successful to serve as President and Treasurer respectively of the BNU on 7th February, 2023 from January 2023 to January 2026. However, the Claimants have alleged that on 7th February, 2023 they were declared successful to serve from July 2022 to July 2025.
- [23.] Even the term in office is being disputed by the parties. Though, it is common ground that elections are to be held every three (3) years. However, the dispute on actual term in office will have a knock-on effect of when elections ought to be held viz., in July, 2025 or January, 2026.
- [24.] Another common ground that the Court can assume based on the facts is that the Defendants have actually been in office for about two years having been elected in February, 2023.
- [25.] The Claimants have submitted that the First Defendant should be restrained from continuing in office as President, citing her alleged arrears in her payments of dues which disqualified her membership in the BNU pursuant to rule 3 Article IV of the Constitution. The Claimants have alleged that she was “*made aware of her non-financial status in meetings commencing 5th November 2024, 4th February 2025 and 22nd April 2025*” and “*an extensive discussion was held*” on the matter during the 4th February Executive Committee meeting. However, the First Defendant has held the position of President since early 2023 and the Claimants’ request for her to vacate the office was made for the first time, almost two years later in April 2025.
- [26.] The First Defendant has admitted that her alleged non-financial status was raised in these meetings, however, she has refuted the claim that she is in arrears in her dues and thus disqualified from membership in the BNU. She characterized this allegation by the Claimants as false and disingenuous and based purely on malice due to her suspension of the Third Claimant.
- [27.] The restraint exercised by the Claimants against each of the Defendants appears curious. The Defendants have been in office for almost two years. It is difficult to not form a jaundiced view of the Claimants’ inaction to move for the removal of the President in the first two years that she held office.
- [28.] The Defendants in their evidence addressed the issue of the various reports for the years 2023 and 2024 and have made allegations against the Third Claimant relative to a report of the banquet which remains outstanding to date. Additionally, the Defendants addressed the Statement of Financial Position as at 28 February, 2024 which they have exhibited and which they say was handed over to the Third Claimant for execution by her and the Trustee. The document would then be served on the Department of Labour. They say, that has not been done.

[29.] The Court is not attempting to conduct a mini-trial of the issues or even determine the veracity of the evidence at this stage, however, when assessing the balance of justice, these are some of the considerations.

[30.] Having assessed the quantum of the risk in granting or refusing the injunction and the severity of the consequences that may flow from either course. I find that to restrain the President and the Treasurer from holding office now after almost two years in office would be disproportionate and risk further disruption to the BNU at this stage.

[31.] Accordingly, it is my view that the balance of justice does not favour the grant of the injunction restraining neither the President nor the Treasurer from acting at this stage.

Whether there are any special factors in the circumstances of the instant case

[32.] The instant action has placed five (5) members of the Executive against the President and the Treasurer. This is in addition to the allegations of physical interference which had occurred prior to the action coming before this Court. This demonstrates an utter and complete breakdown in the governance of the BNU and as a consequence it is crystal clear that given the current state of the internal dynamics, a swift trial will likely be the only effective remedy to quell this escalating conflict.

[33.] I fear as I stated at the outset, that to delay the trial may have serious adverse consequences to the members of the BNU. Certainly, the Court has the power to expedite the trial if the nature of the case or the circumstances of the parties justify it. **Maloney v Robertson and Proverbs BB 2011 CA 21**. I am compelled to do so in the instant circumstances.

[34.] Parenthetically, while I have granted interim relief in terms of the reinstatement of the Second and Third Claimant as members of the BNU, I have not granted an interim declaration as they sought in their application. It is undisputed that the Court has the specific power to grant interim declarations per Part 17 of the CPR. However, I refer to **Atkin's Court Forms on Interim Remedies Volume 23(1)** where it stated:

“Before the introduction of the CPR, it had been held that an order declaring the rights of parties must, of its nature, be a final order and therefore the court could not grant an interim declaration. The CPR now provides a specific power to grant an interim declaration. However, as the rights of a party or parties are by their nature permanent, it is not easy to see how rights can be decided and declared on a temporary basis and thus liable to be decided in a different way at a subsequent hearing at first instance.

[my emphasis added]

Even if the court has the necessary jurisdiction to grant an interim declaration, it will in practice be reluctant to do so especially if the justice of the matter can be met, in an obvious case, by an application for summary judgment and, in any other case, by an interim injunction

and/or an early trial. Thus, the Court of Appeal has disapproved of the making of a declaration at an interim stage of proceedings where it would pre-empt one of the issues in the litigation and serve no useful case management purpose.

[my emphasis added]

[35.] The case of **British Airline Pilots' Association and another v British Airways CityFlyer Ltd [2018] EWHC 1889 (QB)** was insightful on this issue. In fact, I quote from Butcher J at paragraph 30 which is equally relevant and applicable to the instant action:

“I consider that the present issue is one of substantive law, which to use Hamblen LJ’s language in para. 88, only permits of a final rather than a temporary answer. I have real difficulties in seeing how it can be appropriate for this court to give an interim answer to the question of the construction, variation or implied terms of a contract between the parties. On that basis, I would refuse to grant an interim declaration because I am not satisfied with the high degree of assurance which would have permitted the grant of a mandatory injunction, and which is the test which Hamblen LJ considered would be applicable, assuming that an interim answer could be given. I should say that I consider that the test can hardly be different, or not markedly different, from the question of whether there should be summary judgment.”

[36.] The Court had originally intended to make an order for the production of the financial statement for 2024 which relief had been claimed in the application. However, upon further consideration the Court decided that there was no compelling reason that it could not await determination at the trial.

Conclusion

[37.] Accordingly, for the reasons set out above it is the order of this Court that:

- (i) The application to restrain the First Defendant from holding office as President is refused.
- (ii) The application to restrain the Second Defendant from further expending BNU funds without a resolution of the Executive Committee is refused.
- (iii) The Second and Third Claimant’s membership in the BNU is to be immediately reinstated.
- (iv) The Third Claimant is to be paid her salary for the months of April 2025 and May 2025 and the balance of her salary owed for December 2024. The Third Claimant is to continue to be paid her salary until the trial or further order of the Court.

- (v) The Defence is to be filed within 28 days and a reply, if any, within 14 days of delivery of the defence.
- (vi) If pleadings are closed on or before 30th July, 2025 the hearing scheduled for that date at 10am will be treated as a Case Management Conference. Otherwise, it will be treated as a mention date.
- (vii) All other dates will be agreed between the Court and the parties save for: (a) the Second Pre Trial Review which has been scheduled for 27th August, 2025 at 10 am and (b) the in-person trial scheduled for 15th and 16th September, 2025 at 10am.
- (viii) Costs of the application are reserved.

Dated the 30th day of June, 2025



Camille Darville Gomez
Justice