

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

2022/COM/lab/00062

B E T W E E N

DERON ADDERLEY

Claimant

AND

THE BAHAMAS ELECTRICAL WORKERS UNION

1st Defendant

AND

KYLE WILSON

(President of The Bahamas Electrical Workers Union)

2nd Defendant

AND

DONOVAN WOOD

(Trustee of The Bahamas Electrical Workers Union)

3rd Defendant

AND

JOHN CULMER

(Trustee of The Bahamas Electrical Workers Union)

4th Defendant

AND

JEROME ROLLE

(Trustee of The Bahamas Electrical Workers Union)

5th Defendant

Before: The Honourable Madam Justice Simone I Fitzcharles

Appearing: Mr Sidney Campbell with Mr Cyril Ebong for the Claimant
Mr Obie Ferguson Jr KC with Mr Keod Smith and Ms Annette Cash for the Defendants

12 March 2024; 23 April 2024; 06 May 2024.

JUDGMENT

FITZCHARLES, J.

Introduction

1. This claim arises out of the suspension and expulsion of the Claimant as Secretary General and as a member of The Bahamas Electrical Workers Union (“the Union”) by the Executive Board of the Union during May and June 2020.

2. By his Standard Claim Form filed on 17 August 2023, the Claimant, Mr Deron Adderley, avers that his suspension and expulsion from the Union were unlawful and in contravention of the Union’s constitution, its Governance Policies and Procedures Manual and the Industrial Relations Act Chapter 321, Statute Laws of The Bahamas. He claims the sum of \$26,350.00 which he alleges represents his loss of a stipend as Secretary General of the Union, from the date of his suspension to the date of the next election of the Union in January 2023. He also claims interest and costs.

3. The Defendants, who are: (1) the Union, (2) its President, Mr Kyle Wilson and (3) three trustees of the Union, namely Mr Donovan Wood, Mr John Culmer and Mr Jerome Rolle, defend the claim on the basis that there was sufficient justification for the decisions the Executive Board made in relation to the Claimant. In particular, the Defendants assert that the Claimant breached the constitution of the Union in that he withheld a policy document which required each staff member to sign. They argue that this alleged retention of the policy document was not in the best interests of the Union. The Defendants also contend that post suspension and expulsion of the Claimant, he failed to appeal the decisions of the Executive Board and the Appeals Committee to the General Convention. The Defendants further do not admit to depriving the Claimant of an opportunity to be heard in relation to charges made against him by the Union, or to any bias or wrongdoing for which they would owe the Claimant compensation.

Procedural Matters in Brief

4. The Claimant initially brought this action by Originating Summons filed on 23 November 2022 by which he sought declaratory relief. The application was supported by the Affidavits of Deron Adderley filed on 23 November 2022 and 29 September 2023, and a Supplemental Affidavit filed on 29 March 2023, all of which set out the facts upon which the Claimant wished to rely.

5. Additionally, the Claimant sought to obtain rapid relief by Ex Parte Summons filed on 23 November 2022 along with a Certificate of Urgency and Affidavit of Deron Adderley also filed on 23 November 2022 to, amongst other things, prevent the Union from holding an election of executive officers, until such time as the Claimant is reinstated as Secretary General and member of the Union. No urgent relief was granted. The substantive dispute was subsequently assigned to this Court.

6. Along with their Defence filed on 4 September 2023, the Defendants rely upon the Affidavit of Kyle Wilson filed on 26 July 2023 and the Supplemental Affidavit of Kyle Wilson filed on 8 December 2023.

7. These Affidavits held exhibits of the Union's constitution, some key letters and various minutes of meetings, amongst other documents, which pertain to the issues between the Claimant and the Defendants. The Minutes of meetings were prepared by certain officers of the Union's Executive Board and/or appointees of the Executive Board (the Appeals Committee). The Minutes are comprised of the following: (i) the Minutes of the Executive Board Meeting with the Claimant on 5 May 2020 ("the 5 May Minutes"), (ii) Minutes of the Appeals Committee Meeting on 27 May 2020 ("the 27 May Minutes"), (iii) Minutes of the Executive Board and Appeals Committee Joint Meeting of 29 May 2020 ("the 29 May Minutes"), and (iv) Minutes of the Executive Board and Appeals Committee Joint Meeting on 20 July 2022 ("the 20 July Minutes").

8. It is important to note briefly that the evidence adduced by President Wilson traversed the facts rather generally. I found that the evidence adduced by the Claimant dealt more in depth with the facts. The evidence relied upon by the Defendants also contained hearsay of conversations the President purportedly had with the Director of Human Resources, Training and

Information Technology of Bahamas Power and Light Company Ltd. The Director of Human Resources, Training and Information Technology was not called by the Defendants to give evidence as to any statements she purportedly made which are relevant to the claim before the Court. This affected the weight, if any, which the Court placed upon any representations made in affidavits and/or within the collective Minutes of purported statements made by anyone who had not given evidence. Additionally, of course, the 5 May Minutes, and the 29 May Minutes were prepared and kept by the 1st Defendant on behalf of the 1st Defendant and its Executive Board. It is also recognized that the 5 May Minutes, the 27 May Minutes, the 29 May Minutes and the 22 July Minutes are not necessarily a full and complete account of everything that was said at the meetings.

9. In light of apparent conflicting factual positions presented by the parties, the Court on 28 July 2023 gave a direction, amongst others, that the claim be continued as if begun by Standard Claim Form pursuant to Rule 8.19(1) of the Supreme Civil Procedure Rules, 2022 (as amended) (the “CPR”). The Court allowed the presentation of evidence to remain in affidavit form, but ordered that the parties plead their respective cases. It was decided this method would best facilitate the just disposal of the claim. As such, the Claimant filed a Standard Claim Form on 17 August 2023 and by way of answer, the Defendants filed a Defence on 04 September 2023. At the trial of this matter, the parties opted not to cross-examine witnesses, but to rely upon their affidavits as their full evidence.

10. For completeness, I also note that the Claimant, in his earlier pleadings, alleged that the constitution of the Union was invalid and lacked binding effect by reason of non-compliance with the Industrial Relations Act. Later in the proceedings, this allegation was withdrawn by the Claimant.

Issues

11. The issues to be determined are as set out below.

- (1) Whether the Union’s Executive Board unlawfully suspended and expelled the Claimant as Secretary General and a member of the Union by reason that such suspension and expulsion, or the procedures which culminated in the same, were:

- (i) in contravention of the Industrial Relations Act, and/or the constitution or Governing Policies and Procedures of the Union; and/or
- (ii) in breach of the principles of natural justice.

(2) If so, whether the Claimant is entitled to compensation by way of receiving from the Defendants an amount equal to the monetary stipend he would have earned as Secretary General of the Union, calculated from the date of his suspension until the date of the election of new executive officers of the Union in January 2023.

The Package, the Suspension and the Expulsion

12. It is agreed amongst the parties that on 29 January 2020, the Claimant was elected by the Union's membership as Secretary General of the Union for a period of 3 years. It is also accepted that as Secretary General, the Claimant's duties were outlined in the constitution of the Union at Article 8, Section III, namely:

"Article 8 OFFICERS' DUTIES

...

"Section III The Secretary General

- (a) The Secretary General shall receive the correspondence of the Union and shall attend to take Minutes of ALL meetings.
- (b) He/she shall prepare and sign ALL Minutes along with the President when approved.
- (c) He/she shall keep proper books of (*sic*) records and shall make them available to Financial Members.
- (d) The Secretary General shall summons (*sic*) ALL Union Members to Meetings when so directed by the Executive Board ensuring that proper notification is given." (Emphasis added).

13. Further facts which the Court accepts are set out below.

(1) On 27 March 2020, Mr Wilson, President of the Union, instructed the Claimant to collect a package from Ms Evis Missick, Director of Human Resources, Training and Information Technology of the Bahamas Power and Light Company Ltd. ("BPL").

- (2) In late March 2020, President Wilson was contacted by members of the Union about *“an email the company [BPL] sent with regard to employees owning their own business that could be viewed as a conflict of interest”* (in the President’s words). The President further stated about the email that *“employees were asked to disclose personal information and sign a document.”* The communique from BPL was circulated to staff members of BPL. This was verified by a letter dated 1 April 2020 which was sent by the President to the Claimant, albeit the circulation date appeared to have been erroneously stated as 28 April 2020.
- (3) The Claimant collected the package as instructed by the President. He then telephoned President Wilson and informed him that he had collected the package. The Claimant thereafter placed a copy of the document on the Secretary’s correspondence file, which is the usual course of action he took in relation to all incoming documents since he was elected to the position of Secretary General of the Union. In the Claimant’s view, all of the Union’s executive officers had access to the file, and this was the normal course of dealing with incoming correspondence. Sometime after collection of the package from BPL, the Claimant found the original of that letter in his vehicle. The Claimant’s placement of the copy of the document was not immediate upon his collection of the same from BPL on 27 March 2020, and did not occur within the week.
- (4) The correspondence the Claimant collected at the behest of the President was from Ms Missick, the Director of Human Resources of BPL, the company which is the employer of members of the Union. It was comprised of a cover letter dated 27 March 2020 addressed to the Claimant as Secretary General of the Union and an attached Policy document on ‘Business Ethics and Conflicts of Interest’. In the letter BPL stated that the policy had been approved by BPL’s Board of Directors, but it was being sent to the Union *“for the Union’s review and information prior to implementation and roll out to employees on April 7, 2020”* of the Policy. BPL invited the Union to direct questions or feedback to Ms Missick.

- (5) A copy of the letter produced in evidence simply shows the Claimant's signature at the foot of the letter without any notation as to the purpose of his signature. The Court prefers the view that the Claimant signed at the foot of the cover letter on 27 March 2020 to acknowledge receipt of the correspondence and Policy document on behalf of the Union. Without specific words to that effect, the presence of the signature of the Claimant at the foot of the letter seems far less likely to denote agreement with its terms. In that letter BPL expressed the following:

"March 27 2020

"Mr Deron Adderley

Secretary General

Bahamas Electrical Workers Union

Nassau, Bahamas

"Dear Mr Adderley,

Re: Policy – Business Ethics & Conflicts of Interest

"The attached Policy which has been approved by the Board of Directors is submitted for the Union's review and information prior to implementation and roll out to employees on April 7, 2020.

"It is important to note that the policy is not designed to prohibit the company from conducting business with entities owned by employees or their family members, but rather to ensure that:

1. Employees conducting business on BPL's behalf do so with the highest standards of integrity, fairness and ethics;
2. Employees as private business owners wishing to conduct business with BPL provide full and timely disclosure of their interest in that business so that steps can be taken to avoid the appearance of a conflict of interest.

"Should you have questions or feedback regarding the policy, please feel free to contact me.

Sincerely yours,

Evis Missick, Director

Human Resources, Training and IC"

(6) By letter of 01 April 2020, the President wrote to the Claimant and alleged that he committed breaches of the constitution of the Union. The President summoned the Claimant to attend an emergency Executive Board Meeting on Tuesday 05 May 2020 to answer to charges. The letter was set out in the following terms:

“Dear Mr Adderley,

“Re: Alleged Breach of the Bahamas Electrical Workers Union (“the Unions”) (sic) Constitution by withholding important correspondence obtained from Bahamas Power and Light (“BPL”)

“Reference is made to the above captioned. On or about April 28th, 2020 BPL circulated a policy document for each staff member to sign, which many members of The Union and staff at BPL felt was prejudicial and not in the best intent of the Union and its members.

“Upon initial investigation, it has been brought to the Union’s attention that on or about March 27th, 2020 you received the policy document from BPL and allegedly concealed it from the other members of the Union (and returned it to BPL representing the Union was in agreement with all the provision of the policy). This action is not only unacceptable, but it placed the livelihood of each member in jeopardy but is also illegal and directly contravenes the Union’s constitution. (Article IX, Section V and VI); as you do not have the authority to withhold information that is intended for the President of the Union in the manner that you allegedly did.

“Taking into account all that has improved in accordance with the Unions (sic) constitution and rules of natural justice you are hereby requested to attend an Emergency Executive Board Meeting on Tuesday, May 5th, 2020 at 5pm at the Union’s office (as this matter is very serious and we are in a state of emergency) where you will answer to the charges:

1. That you, Deron Adderley on or about the 27th of March knowingly to the detriments (sic) or breach of the Union’s constitution concealed from the Executive Board a letter obtained from BPL.
2. That your actions on or around the 27th March 2020 was conduct prejudicial to the best interest of the Union.

“Please note that any decision made by the Executive Board will be binding on all parties until changed in accordance with the Union’s constitution.”

- (7) The policy document from BPL had already been circulated by email to BPL staff members before the Claimant collected it. Therefore the issue was not one of circulating the document to the National Secretariat or the wider membership. It was in relation to circulation amongst the Claimant and the President and/or the remainder of the Executive Board. On 24 April 2020, BPL sent out the policy again after implementing the same. The President on that day called the Claimant and asked him about the letter. The Claimant reminded the President that he informed him by telephone on 27 March 2020 that he (the Claimant) had collected the letter from BPL. The Claimant recalled that the response of the President to this remark was that he “vaguely remembered the conversation”. In the Claimant’s view, the President began attacking him on the Executive Board’s WhatsApp Chat Group. The President asked the Claimant to bring the document to him before 9:30 am the following day, which the Claimant did. At some point before the President received the physical copy of the document the Claimant collected from BPL, the Claimant also circulated the same to the Executive Board via Whatsapp messaging.
- (8) On 30 April 2020, the President wrote 2 letters. The first letter was to Ms Missick of BPL requesting an extension to 30 May to provide feedback to BPL. The President wrote that the extension was required because the Union had to seek advice from a 3rd party, and due to the Covid-19 Pandemic, it was anticipated the information would not be ready to be submitted to BPL until end of May 2020. The President also asked that any future correspondence which may affect multiple members of the bargaining unit be copied to him to avoid any delay in providing feedback. The second letter from the President was to the Claimant by which he set out the same content as the earlier letter to the Claimant of 01 April 2020, except it was now dated 30 April 2020. The Claimant stated he was surprised to have received the letter.
- (9) It appears from the 5 May Minutes that during the 5 May 2020 meeting between the Claimant and the Executive Board, the Claimant was allowed to respond to some questions, namely (1) whether he knowingly and to the detriment of the Union concealed from the Executive Board a letter obtained from BPL; and (2) whether he

engaged in conduct prejudicial to the best interests of the Union. He denied both charges. However, several other questions and/or accusations were made by members of the Executive Board which were followed directly by further questions from Executive Board members. It appears that the Claimant did not get a word in to answer some of those questions. There is no specific notation in the 5 May Minutes that the Claimant refused to answer or remained silent. Moreover, it is clear that apart from the President, several Executive Board members accused the Claimant. Those accusers voted in relation to the fate of the Claimant. The President stated to the Claimant that he would not vote, but did not leave the room for the vote, which was taken in the absence of the Claimant. The result of this meeting was a decision by the Executive Board of the Union to suspend the Claimant for two years.

- (10) Following the decision of the Executive Board, on 8 May 2020, the Claimant was informed in writing by the President that the Executive Board suspended him from the office of Secretary General for 2 years in accordance with Article XV, Section II of the constitution. The Court notes that his charges, as notified to him in the letter of 1 April 2020, irregularly concerned different sections of the constitution of the Union, that is, Article IX, Section V and VI (which do not set out any infraction). According to Article XV, Section II of the constitution of the Union, the Executive Board may suspend or expel a member from the Union “***who is proved to the satisfaction of the Board to have been guilty of conduct prejudicial to the best interests of the Union.***” The section further sets out that the suspended or expelled member “***shall have the right to appeal to (a) The Appeals Committee, (b) The Annual General Convention whose decision shall be final for the parties involved.***”
- (11) The Claimant was also advised by the President of his entitlement to appeal against the Executive Board’s decision to the Chairman of the Appeals Committee. Thereafter, the Claimant appealed his 2-year suspension and the Appeals Committee made their decision. The President then wrote a letter dated 17 June 2020 to the Claimant to advise him that the Appeals Committee decided to uphold his suspension. There is no indication that the Claimant was informed by the Executive Board or any other adjudicating committee of a purported further right of appeal as they had done

in relation to the original suspension decision. There is no evidence before the Court that the Appeals Committee met with the Claimant to hear his side of the dispute, but rather, only evidence of the Appeals Committee meeting with the Claimant's accusers and other members of the Executive Board to hear their complaints about the Claimant.

(12) Before the next election cycle (to take place at the Triennial General Conference in January 2023) the Executive Board, without reference to the membership of the Union, removed the Claimant as a member and as Secretary General of the Union purportedly in accordance with Sections I and II of Article XV, Section I of Article 6 and Section I of Article 16 of the constitution of the Union. The Claimant was informed in writing of this decision of the Executive Board on 19 April 2022 and advised that he had a right to appeal this decision to the Appeals Committee. The Claimant appealed his expulsion by the Executive Board, and on 20 July 2022, the Appeals Committee communicated to the Executive Board that they upheld the expulsion of the Claimant. There is no evidence that the Claimant was given an opportunity to answer either before the Executive Board or before the Appeals Committee as to why he should not be expelled. Nor is there evidence he was informed in advance that his charges concerned Article 6, Section I and Article XVI, Section I. This, too, is irregular. What chance had he to address any issues as to the applicability of these sections of the Union's constitution? The Court sees none.

(13) Article XV, Section I of the constitution of the Union states that the Executive Board may send any officer or member a letter of warning concerning their behavior at meetings or convention. Article XV, Section II is as set out above (at subparagraph 10). Article 6, Section I provides that “***no member shall become entitled to Union Benefits until he/she has been a financial member for at least six (6) months and is not under disciplinary action by the Union.***” Article 16, Section I provides in material part that expulsion from the Union may result from “***(a) disloyalty to the Union, (b) breaches of the Union's Constitution, Practices, Contracts or other Rules after being warned in writing...***”. (Emphasis added). The Court observes that

in relation to the Claimant's suspension, he was never specifically directed to Article XVI, Section I by the Executive Board before or during his hearing, such as it was.

Discussion

Expulsion of the Claimant

14. The Claimant argues that his expulsion is void and of no effect because the procedure adopted was contrary to the constitution of the Union and the Industrial Relations Act.

15. According to its preamble, the **Industrial Relations Act** (the 'Act') exists for the purpose, amongst others, of providing for the registration and control of trade unions. The Act contains the following material provisions:

"9. The constitution of every trade union which is registered under this Act, shall contain provisions in respect of all the matters prescribed in Part II ... of the First Schedule."

"FIRST SCHEDULE...

"PART II (Section 9)

"MATTERS TO BE PROVIDED FOR IN THE CONSTITUTION OF A TRADE UNION OF EMPLOYEES

"3. ...(2) The circumstances and manner in which the membership of a member may be terminated.

"4(1) Provision for the appointment of an executive committee (by whatever name called), of two or more trustees, and of a chairman, treasurer and secretary at regular intervals not exceeding three years and the manner in which members of the executive committee and other officers of the union may be removed and that every appointment or removal of any officer of the union shall be notified in writing to the Registrar within fourteen days of the happening thereof.

"8. Provision for the taking of a secret ballot of members for all of the following purposes, namely –

(a) the election or removal of officers or members of the executive committee (by whatever name called)...".

“20. (1) The constitution of every trade union registered under this Act shall provide for the taking of a secret ballot for all of the following purposes, namely –

(a) the election or removal of any officer or member of its executive committee or other governing body...

and the Registrar shall not approve any such constitution unless he is satisfied that every member of the union has thereunder an equal right and a reasonable opportunity of voting, and that the secrecy of the ballot is properly secured thereby.

“ (2) Whenever any trade union proposes to take any ballot for any of the purposes referred to in paragraph (a) or (b) of subsection (1), not less than seven days’ notice in writing shall be given to the Registrar of the intention to take the ballot, and of the time and place at which it will be taken and the ballot shall be taken under the supervision of the Registrar or a designated officer, who shall attend at the time and place; and unless the ballot is so taken and is certified by the Registrar or a designated officer as the case may be to have been properly taken, the ballot shall be void and of no effect and the Registrar or a designated officer shall direct a further ballot to be taken...”.

(Emphasis added).

16. There is a notable persistence of Parliament in the repetition of the requirement in three separate parts of the Act that there be provision in every trade union’s constitution for the taking of a secret ballot by such trade unions, for the purpose of removing an officer. The insistence by Parliament upon the inclusion of this process is unsurprising as the trade union’s general membership in convention are the ones who elect and remove officers. That process, too, is carried out by secret ballot.

17. Further, according to Article XIV, Section I (a) of the constitution of the Union, a secret ballot shall be taken for the election or removal of officers. By its wording, this procedure is compulsory.

18. Upon the basis of these provisions in the Act and the constitution of the Union, the Claimant argues that the Executive Board expelled him without following the process of taking a secret ballot. The Court readily agrees with this argument. In fact, Counsel for the Defendants conceded at trial that the expulsion of the Claimant by the Executive Board was not in

accordance with the constitution of the Union. However, the Defendants further contend that it was incumbent upon the Claimant to engage the process of the secret ballot by appealing his expulsion (as effected by the Executive Board and upheld by the Appeals Committee) to the general membership in convention. The Defendants contend that the Claimant cannot now complain about his expulsion as he “failed to appeal or appear to the Annual General Convention whose decision shall be final for the parties involved.” They rely upon the case of **T’Shura Ambrose v Central Bank of The Bahamas**, 2016/COM/lab/00047, in which a defendant applied for the plaintiff’s claim to be stayed in favour of arbitration where there had been an agreement to resolve disputes amongst the parties by arbitration. There, the Court held that the defendant could no longer avail itself of an agreement to arbitrate its dispute with the plaintiff. In that case, the opportune time for the defendant to seek to have the matter referred to arbitration arose when the plaintiff filed a notice of a trade dispute. That opportunity was lost when the defendants chose at that time to continue to deal with the dispute under the trade dispute procedure as prescribed by the Industrial Relations Act. The defendants’ application for a stay in favour of arbitration was therefore dismissed by Winder J (as he then was).

19. In the Court’s view, the **T’Shura Ambrose** case is of no assistance to the Defendants in this matter. In these circumstances, the only valid method of removal of a member of the Union’s Executive Board is prescribed, and in fact its presence in the constitution is insisted upon by Parliament, in the Act. Such procedure is set out in Article XIV, Section I of the constitution of the Union. That method is by secret ballot. Further the Act requires that no less than seven days’ notice of the ballot be given to the Registrar of Trade Unions, who supervises the process or appoints a designated officer to do so. Unless the ballot is taken in this way, and certified as such, it is void and of no effect. This is in accordance with section 20 (2) of the Act.

20. In my judgment, unless the general membership in convention conducted a secret ballot and thereby removed the Claimant, he was not legitimately expelled as Secretary General. Any purported expulsion of the Claimant from his position as Secretary General without following the prescribed process is void ab initio and of no effect. Moreover, while the Executive Board met with the Claimant before suspending him, there is no evidence before the Court that either the Executive Board or the Appeals Committee met with the Claimant to give him an

opportunity to defend himself against his purported expulsion so as to observe a basic level of fairness in the hearing process.

21. Further, although clause 16.5 of the BEWU Governance Policies and Procedures Manual (the “Manual”) suggests that graver punishments than a warning may be doled out to a member depending upon the severity of the infraction committed, Article XVI, Section I (b) of the Union’s constitution states that a warning is required before expulsion where one is accused of breaching the constitution or any contract, practice or rule of the Union. It suggests that expulsion should have been preceded by warning the Claimant on a previous occasion for his infraction. In this case, the Claimant was given no opportunity to refrain from re-offending, as it were. He was never warned (in accordance with Article XVI, Section I (b) of the constitution. The Defendants have argued that the constitution is superior to the Manual. As such, they ought to have adhered to the constitutional provision as to warning the Claimant. As far as the charge of breach of the constitution, a contract, practice or rule of the Union is concerned, this failure to warn amounts to yet another irregularity in the purported expulsion of the Claimant from the Union by the Executive Board and the Appeals Committee.

22. In the circumstances, as there was no effective decision to expel the Claimant, no provision of the constitution of the Union as to an appeal was activated. I consider the decision of **Jewel Fountain v Susan Palmer et al**, 2017/CLE/gen/00824 to be particularly helpful on this point. In that case members of the executive council of the Airport Airline and Allied Workers Union purported to meet in the absence of the president and vice president of that union during which they laid charges against the president and purported to try her in her absence. The executive council found the president guilty as charged and purported to suspend her for 6 months. These actions on the part of the executive council were problematic as they did not follow the procedures laid down in the constitution of the Airport Airline and Allied Workers Union. Winder J. (as he then was) found that there were no charges properly filed with the Secretary / Treasurer by anyone as required by the constitution. They failed to observe a prescribed 10 day period before laying charges, and some of them who were complainants or accusers of the plaintiff also voted on the issue whether she should be suspended. The Court found that the defendants had blatantly flaunted constitutional provisions which existed to give effect to the two tenets of natural justice – the right to a fair trial and the rule against bias. The

Court therefore found that the defendants' actions were so irregular that they were a nullity and were void ab initio.

23. In the *Jewel Fountain* case the defendants sought to argue that the Court should not interfere with the decision of the executive council and that the plaintiff should pursue her right of appeal. In support of their argument, the defendants cited the following dicta of James LJ in the case of **Hamlet v General Municipal Boilermakers and Allied Trades Union** [1987] 1 All ER 631:

“We have no right to sit as a Court of Appeal upon the decision of the members of a club duly assembled. All we have to consider is whether the notice was or was not given according to the proper rules, whether the meeting was properly convened, and whether the meeting, if properly convened, had come to the conclusion that this gentleman ought to be expelled, having before it the fact that the committee had, upon investigation of the matter, come to that conclusion, and expressed the opinion, that his conduct was such as to entitle them to call upon him to resign.”

24. Winder J. considered this point of argument and stated:

“[12] I am satisfied that there is nothing in Article 14(5) or any other provision of the Union's constitution which purports to oust the jurisdiction of the Supreme Court, even if it could. I find that the Defendants' argument in this regard is without merit. In any event it is only lawful decisions of the executive council from which the constitution sought to permit appeals to the general body and to which James LJ was referring. Having found as I have, that the decision to suspend the Plaintiff was a nullity, it is not a decision for which any contemplated appeal provisions would have applied.” (Emphasis added).

25. This is distinguishable from *T'Shura Ambrose* because in that case, the defendant once had a right to proceed to arbitration which, by defendant's election, it waived. Similar to the finding of the Court in the *Jewel Fountain* case, I am of the view in the instant case that there was no valid event which set in motion the provisions as to an appeal in the constitution of the Union. This is so because the decision of the Executive Board to expel the Claimant, without engaging the proper secret ballot process, was void ab initio and of no effect. I therefore set aside

the expulsion of the Claimant which was purportedly made on 19 April 2022 and any purported decision of the Appeals Committee to uphold such null and void expulsion.

Suspension of the Claimant

26. I turn now to consider the suspension of the Claimant by the Executive Board. The Claimant argues that the Executive Board failed to follow the provisions of the Manual which, by Section 16.4 affords a member the following procedure for disciplinary action:

- (a) First offence – a verbal warning,
- (b) Second offence – a written warning,
- (c) Third offence – disciplinary action.

27. The simple answer to this is in section 16.5 of the Manual, which permits one or more punishments to be doled out on the basis of the severity of the breach. Such punishments include probation and suspension, amongst others. On a reading of the Manual, the Court accepts that if an act committed by an offending member or officer is sufficiently grave, the Executive Board is not bound to follow the actions prescribed on first, second or third offences in that order. Therefore in relation to suspension, the Court does not accept the Claimant's argument on section 16.4.

28. The Claimant argues that the Executive Board decided to suspend and expel the Claimant "before searching for reasons to justify their egregious and malicious actions". Having seen the 5 May Minutes, the Court is not in agreement with this view. The Minutes showed that the Executive Board sought to carry out an investigation (although that process had its flaws) and a part of it was to call the Claimant to respond to questions about his actions concerning the letter from BPL. However, the Court does agree that the Defendants' case against the Claimant for disloyalty and breach of procedures, rules and/or provisions of the constitution is rather thin. There was no prescribed manner for handling correspondence in the constitution of the Union or in its Manual. Further, the Defendants did not make out a convincing case that the Claimant accepted the terms of the BPL document on behalf of the Union. If the Defendants truly believed this, such belief is certainly contradicted by the President's response to BPL in which he sought further time to give feedback. Had there been any belief that the Union's position was

compromised by the Claimant's signature at the foot of BPL's cover letter dated 27 March 2020, one would have expected the President to first clarify to BPL that the Union had not intended, by the Claimant's signature, accepted the terms of the new policy.

29. The Claimant denies breaching the constitution and withholding important correspondence from the Union. He further denies agreeing with the contents of the policy on behalf of the Union. He points out that the letter from BPL did not indicate that the new policy BPL intended to implement was ever open to negotiation between BPL and the Union. The Court observes that the Union was invited in the letter of 27 March 2020 to give feedback or to ask questions about the new policy. However, it is also a fact that the Board of Directors of BPL had already approved the new policy before they sent it to the Union. BPL stated that the document was shared with the Union for 'review and information'. Moreover, BPL gave a rather brief time for the Union to ask questions or give feedback, that is, until 7 April 2020 (12 days). These factors do not support an indication that the Union was expected to negotiate the terms of the policy or cause any significant changes to be made. As a result, there is some validity in the assertion by the Claimant that BPL seemed not be inviting negotiation on the policy with the Union. It seems that the short period of time given for the Union to review and ask questions about the policy was more of a courtesy before its implementation, rather than an invitation to make major changes.

30. As has been stated, the Executive Board led by the President levelled several accusations at the Claimant, one of which was an allegation that the Claimant accepted the terms of the policy document when he signed the letter sent by BPL on 27 March 2020. The Court is not of the view, on the meagre evidence presented, that the Claimant intended to sign the letter from BPL as an indication of the agreement of the terms of the Business Ethics and Conflicts of Interest Policy by the Union. Further, the Defendants have not called a witness from BPL to substantiate that BPL considered that Mr Adderley indicated by his signature the Union's agreement with the terms of the policy they intended to implement vis-à-vis their staff. Additionally, the Defendants have not shown in their pleadings, evidence or arguments that such signature is sufficient to bind the Union in this context. In the President's words, BPL required each staff member to sign the policy. If that is so, there was no demonstration by the Defendants

that the Secretary's signature was substituted for that requirement by BPL. The Court accepts, having considered the evidence presented, that it is more probable that the Claimant signed the foot of the letter to indicate that he received the letter on behalf of the Union.

31. Having regard to the evidence (5 May Minutes) the Court is satisfied that after the Claimant received the letter and Policy document from BPL, he did not immediately (or within the week of collection) place it on the Secretary's file within the Union, but eventually did so. He also circulated the document to the Executive Board on Whatsapp (see page 5 of 29 May Minutes) and gave the President a physical copy by 25 April 2020, when the President asked for the document. There is an appearance that the Claimant did not act in a reasonably prompt manner as he failed to give the letter to the President and Executive Board within the week of collection. According to the letter, the Union had 12 days to consider and comment to BPL on the Business Ethics and Conflicts of Interest Policy. However, the Claimant's actions must also be viewed in the context of several other factors which formed a part of the evidence in this case. These factors are enumerated below.

32. Firstly, during the meeting the Claimant was asked why he did not tell the Executive Board about the letter. In his evidence before this Court he indicated that he answered that question in the meeting. He stated that he informed the meeting that he did not circulate the letter because the President told him not to release any document to the Executive Board without him knowing first, and he would decide what they need to know. This was never denied by the President, so the Court accepts it as such. But the question must be asked why the Claimant did not place the correspondence in the hands of the President physically or electronically. Certainly the letter of 1 April 2020 is a complaint that the Claimant withheld the document, but by that letter he was specifically instructed to attend on 5 May 2020 to deal with the matter.

33. Secondly, the Court notes that there is no evidence that between 27 and 31 March 2020 the President ever requested a copy of the letter he sent the Claimant to collect. In fact, on the evidence presented to this Court, the President did not ask the Claimant for the document to be brought to him until 24 April 2020 and then he gave a deadline of 9:30 am on 25 April 2020. This is when the Claimant brought the document to him. The Claimant simply followed the President's instructions. The Court also cannot ignore that when the Claimant was asked to

collect the letter, there was in effect the 17 March 2020 Proclamation of Emergency due to the onslaught of the Covid 19 Pandemic. This may have affected the actions of both the Claimant and the President, for at that time there was much uncertainty and fear of congregating and contracting the disease of the day, even (or perhaps especially) amongst essential workers.

34. There is a third mitigating factor. By the Defendants' acceptance that the President specifically sent the Claimant to collect the package which contained the document in question from BPL on 27 March 2020, and by the averments in the letter of 1 April 2020, it is clear that the President knew about the letter and policy document well before 5 May 2020. In fact, it is apparent he knew about it and had access to the same before the deadline given by BPL to respond of 7 April 2020. His letter to the Claimant of 1 April 2020 and the acceptance that the members of the Union had received the document by email from BPL in late March 2020 and had confirmed the same with him are events which pre-date the 7 April 2020 deadline. The President did not write to BPL for more time to give feedback about the policy document until 30 April 2020. Despite the President's position in his 1 April 2020 letter to the Claimant that he did not get the package, there is no evidence that the President on or before 1 April 2020 ever approached BPL or the Claimant to get a copy of the documents that were collected by the Claimant. Further, there is no evidence that in late March 2020, the President ever asked his members to send him a copy of the document they were emailed by BPL. (In this regard, see paragraph 2 of the Affidavit of Kyle Wilson filed on 26 July 2023).

35. Fourthly, the attention the Executive Board of the Union pay to the filing of the letter is noteworthy. An issue discussed with some care by members of the Executive Board is whether the document from BPL was put on the file. At the meeting, the Claimant was able to demonstrate that he put a copy of the letter he received from BPL on file at the Union. During the meeting of 5 May 2020, it is documented that the Claimant presented the file with the BPL letter which he had placed there. The attention paid by the Executive Board to the filing of the letter suggests that the Claimant is correct about the protocol (albeit informal) of placing all correspondence on the Secretary's file for viewing by the Executive Board. Therefore, absent any formal protocols put in place for handling such correspondence in order to bring the same to

the attention of the President and the Executive Board, the Claimant defaulted to the usual manner in which the same was to be dealt with in placing a copy of the BPL letter on the file.

36. With regard to a formal protocol concerning the handling of correspondence for the Executive Board, it is also important to consider that the Appeals Committee Chairman, Mr Kirkwood Farquharson, recognized, as apparent in Minutes of an Executive Board Meeting of 29 May 2020 (“the 29 May Minutes”), that the role of the Secretary “is vague” and that it is due to the lack of proper protocol in dealing with correspondence that this matter (that is, the issue which arose with the Claimant’s handling of the package) exists. No clear rules of procedure existed in the constitution or the Manual which the Claimant could follow in relation to his handling of the correspondence for the purposes of the President and the rest of the Executive Board. Mr Farquharson therefore admonished the Union to put protocols into effect immediately, which would provide details of the manner in which correspondence should be dealt with. On the evidence, it was not until 15 June 2020 that any suggested protocol was formulated for dealing with correspondence coming in to the Union. (See letter from Chairman Farquharson to the President dated 15 June 2020, Exhibit “KW7” of the Supplemental Affidavit of Kyle Wilson filed 8 December 2023). As such, suspension for two years of the Claimant in the absence of any clear rules or protocol he should follow seems draconian.

37. By the evidence of the parties, there is no indication that the Defendants recognized any of these mitigating factors in their reasoning (or at least, such as is demonstrated to the Court by the affidavits). The Claimant was suspended for two years as he was deemed to have been disloyal to the Union on the basis he was instructed by the President to collect a letter from BPL and allegedly he did not inform the President when the document was collected. Further it is alleged he was disloyal because he signed the letter in agreement with the policy set out by BPL. The Court does not accept that disloyalty has been adequately made out by the Defendants in relation to either of these two grounds. Although the Claimant could have acted more promptly and prudently in getting a copy of the letter to the President after he received the 1 April 2020 letter, this points to a degree of carelessness on his part rather than disloyalty.

38. Next, the fairness of the process which led to the suspension of the Claimant also falls to be considered. Having met with and heard the case for the President and Executive Board, the

Appeals Committee chaired by Chairman Farquharson, upheld the suspension of the Claimant. However, glaringly absent from the evidence before the Court are any Minutes of a meeting between the Appeals Committee and the Claimant to hear his side of the story and to give him a chance to defend himself on appeal from the suspension. There are indications they intended to meet with him, but no evidence that any such meeting actually took place. There is only evidence of the ex parte meeting of the Appeals Committee with the members of the Executive Board including trustees in which the latter complained about the actions of the Claimant. The Court is therefore not aware that a meeting between the Appeals Committee and the Claimant took place before his suspension was upheld. Certainly, in an appeal where both sides are ready, willing and able to give their respective accounts of the matters in question, to hear one side and not the other is not in keeping with a fair process. If there was a meeting between the Appeal Committee and the Claimant, nothing was put before the Court to demonstrate that this actually took place. The Court therefore has no record of what, if anything, the Claimant said in his defence.

39. In addition, some matters raised in the closed meeting between the Executive Board and the Appeals Committee appear not to have been raised in any meeting involving the Claimant. For example, on pages 4 and 5 of the 29 May Minutes the President and Treasurer in their complaints to the Appeals Committee made several allegations concerning the handling of the letter and other matters. These are alleged facts which were not discussed in a meeting in the presence of the Claimant. There is therefore no evidence the Claimant was afforded an opportunity to respond to those alleged facts, either to the Executive Board before his suspension or to the Appeals Committee before they upheld the decision to suspend him. In the circumstances, it is questionable whether he got a chance to defend the totality of accusations launched against him. Moreover, in the words of the Court in the *Jewel Fountain* case, ‘a goodly number’ of the Executive Board including trustees seemed to stand as accusers of the Claimant, yet they were ‘judge and jury’ in the sense that they all weighed in on the decision to suspend him for two years. It is clear from the 5 May Minutes that several members of the Executive Board including trustees other than the President accused the Claimant (amongst other charges) of signing the BPL policy in agreement with its terms on behalf of the Union, acting on the President’s behalf and deceiving the Executive Board, intentionally withholding information, disrespect of the President and Executive Board and (impliedly) having a personal agenda. These

several accusers then proceeded to vote. Further, the President stated that he would not vote, but this was not transparently executed as he failed to leave the room when the vote was taken by the Executive Board. The 5 May Minutes merely state that the Executive Board voted, however, the President is a part of that Board. These missteps tainted the vote. Additionally, it was suggested by Counsel for the Defendants that the suspension was implemented pending investigation. However, the term of the suspension – that is, for two years – belies the intention of punishment or long term removal of the officer as opposed to suspending the Claimant from acting in this position during the investigative process.

40. To make matters even more egregious, the Appeals Committee appears to have upheld the suspension on an additional ground without ever meeting with the Claimant so that he could answer to those additional charges. The Claimant was informed by letter of 1 April 2020 that he was being proceeded against in relation to Article IX, Section V and VI of the Union's constitution. However, the Executive Board suspended him (by their letter of 8 May 2020) for a breach of Article XV Section II of the constitution. Further, after the Executive Board met with the Appeals Committee, the Claimant was additionally found guilty of breaching Article XV section IV and Article XVI sections I(a) and I(b) of the constitution. On the evidence, the Claimant was not notified he was being accused of breaches of these sections of the Constitution either in writing or otherwise before his meeting with Executive Board on 5 May 2020. There is no evidence the additional charges (with proper identification of the relevant sections of the constitution) were presented to the Claimant so that he could take advice or properly meet the charges, which seemed to be somewhat of a moving feast between 1 April 2020 and 20 July 2022. Further, whether the Appeals Committee gave them or not, the Court was not apprised of the reasons for the Appeals Committee's decision to uphold the suspension of the Claimant. The Court merely saw in the evidence that he was found guilty of those charges. Lamentably, 'natural justice', although touted in the letter of the President dated 1 April 2020, was not afforded the Claimant to any acceptable degree.

41. Given the foregoing missteps in procedure and gaps in the evidence placed before the Court, I opine that the processes which led to the suspension, and thereafter, the expulsion of the Claimant, and any purported appeals were littered with defects. In the face of the allegation of

the Claimant that the rules of natural justice were breached in his suspension and expulsion, and given: (1) the dearth of evidence that there was any hearing involving him before the Appeals Committee, (2) the clear demonstration that the decisions of the Executive Board involved the casting of votes by some of Claimant's accusers, and (3) irregularities in adding on charges of which the Claimant did not receive proper notification or a chance to answer, this Court has not been satisfied the process was conducted by the Defendants with due fairness. This wrought injustice for the Claimant sounding in the death knell of his right to a fair trial and an unbiased decision. In the circumstances, and taking into consideration the evidence and the law, the decision to suspend the Claimant must meet the same destiny as the decision to expel him. The Claimant's suspension cannot stand and must be set aside.

42. In effect, by suspending the Claimant for a period of 2 years, then subsequently expelling him, the Executive Board ousted the Claimant from his duly elected position. By this means the Board denied the General Convention their statutorily-prescribed right to make their decision on whether the Claimant should retain his position. The Board also effectively prevented the Claimant from running for re-election by destroying his membership in the Union altogether.

43. This leaves the Court with the question whether the Claimant ought to be awarded the remainder of his stipend as Secretary General calculated to the end of the term he would have served. According to s. 2, Part II, First Schedule of the Industrial Relations Act each constitution of a trade union must contain provisions as to the conditions under which any member of a trade union may become entitled to any union benefit. This requirement is answered by Article 6 of the constitution of the Union which provides, on the issue of benefits, that "***no member shall become entitled to Union Benefits until (sic) he/she...is not under disciplinary action by the Union.***" The Claimant pleads that he is owed the sum of \$850 per month for 31 months from May 2020 until January 2023, when his position of Secretary General would have expired. The Court notes that section 5.9(a)(iii) and 5.9(c)(iii) of the Manual support the total stipend figure of \$850 per month to be paid in relation to the Secretary General of the Union. The total he therefore claims is \$26,350.00 as his loss. Further, the evidence bears out that in response to his enquiry by letter of 3 February 2021 as to the date of his last stipend payment, one Timothy Gray, Acting Secretary of the Union advised the Claimant by letter of 10 February 2021 that his last stipend cheque was for the month of April 2020. Thereafter, he received a letter dated 29

March 2021 from Counsel for the Union that he was suspended by the Union and, as such, no stipend exists.

44. By reason that the actions in suspending and expelling the Claimant from the Union are void and of no effect, the Court is of the view that the Claimant ought to have received the stipend as Secretary General until the cessation of his appointment, or otherwise until some legitimate disciplinary proceedings were taken out against him. As the only proceedings taken out against him have been set aside, the opinion of the Court is that he ought to be paid the sum of \$26,350 as claimed.

45. In the circumstances, the Court grants the relief sought by the Claimant and makes the following order:

- (1) the suspension and expulsion of the Claimant by the Defendants are set aside as null and void ab initio.
- (2) the Defendants shall pay the Claimant the sum of \$26,350 representing his lost stipend as Secretary General of The Bahamas Electrical Workers Union for the period May 2020 through January 2023, plus interest at the statutory rate from the date of this judgment until payment in full.
- (3) costs shall be paid by the Defendants to the Claimant, which, if not agreed amongst the parties, shall be assessed by this Court.

Dated 23 September 2025.



Simone I Fitzcharles

Justice