COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division
CLE/GEN/00443 OF 2023

BETWEEN:

MIKE HOLMES

CLAIMANT

AND

THE ATTORNEY-GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

DEFENDANT

Before: The Hon. Mr. Justice Loren Klein
Appearances: Kahlil Parker KC, Roberta Quant, Lesley Brown for the Claimant
Dr. David Whyms for the Defendant
Hearing Date: 15 October 2023

RULING

KLEIN, J.

Civil Servant—Challenge to transfer/redeployment from Family Island to New Providence—"Coding"of Salary—Whether justified by statute, contract or common law—Public Service Commission Regulations—Interlocutory Injunction—CPR 2022, Part 17—American Cyanamid Principles—Mandatory injunctions—Declaratory relief—Interim declaration—Court's powers to grant interim declarations

INTRODUCTION AND BACKGROUND

1. On 15 October 2023 I heard the application of the Claimant mainly for an interlocutory injunction to reinstate his salary which had been "*coded*" (withheld) from April of 2022 after he challenged a transfer Order by the Department of Social Services ("*the Department*") and filed a Standard Claim Form seeking various declarations and orders in respect of the transfer. At the end of the hearing, I granted the order restoring the Claimant's salary and dismissed the cross-application by the Defendant for interim declarations. I promised that I would put my reasons in writing for my decision, as the matter raised some novel issues in public employment law. These are those reasons.

2. As will be explained in more detail below, the Claimant challenged his transfer from Cat Island to New Providence, which he asserts was done without lawful justification, proper notice or consultation with his Union. He continued to report to work at the Department's Office in Cat Island while attempting to resolve the issue with senior officials of the Department, but was issued

an ultimatum to report to his new posting in New Providence and his salary was withheld when he failed to do so. He contends that the withholding of his salary was unlawful and caused him significant financial hardship, including the risk of losing his family home in Cat Island and therefore sought interlocutory relief.

3. The Defendant, who was sued on behalf of the Department, filed a cross-application seeking various interim declarations. In the main, the declarations sought were to the effect that the coding of the Claimant's salary was "*reasonably and lawfully*" done, that he was deemed to be absent from work unless he accepted the transfer to New Providence and, therefore, he was not entitled to receive his salary.

4. "*Coding*" is a euphemistic term traditionally used in the Public Service for stopping or withholding the salary of a public officer (whether in whole or in part), although in recent times the term has fallen into desuetude.

Factual and Procedural Background

5. The Claimant is a social worker, who has been employed with the Department of Social Services ("*the Department*") for some 30 years (since the 2 August 1993). At the point that this matter arose, his annual salary was $29,450.04. During May of 2019, he requested a transfer to Cat Island, apparently with the intention of retiring there. By letter dated 9 January 2020, he was notified that his request for transfer had been approved, with effect from 13 January 2020. He thereupon relocated to Cat Island.

6. On 27 January 2022, he received a letter from the Assistant Director of the Department, informing him that he was "*redeployed*" to New Providence. The material parts of the letter stated as follows:

> "*I am directed to advise that you have been redeployed from the Department of Social Services, Cat Island Office, to the Department of Social Services in New Providence, with effect from Thursday, 1 February 2022.*
>
> *You are hereby requested to report to the Acting Director of the Department of Social Services in New Providence for directives and assignment of new duties*. […]"

7. Greatly distressed at this development, the Claimant travelled to Nassau to speak with senior officials of the Department, outlining the hardship he would face in being redeployed. He pointed out that since his transfer to Cat Island, he had invested in, among other things, a family home and had decided to settle there.

8. His overtures bought him a little time, but on the 11 March 2022, he received a letter which indicated that he had been expected to report for duty at Princess Margaret Hospital ("*PMH*") on 7 March 2022, and reprimanded him for returning to Cat Island "*without approval*". It stated

further that a failure to report to PMH on 14 March 2022, "*will result in you being absent without leave and therefore without pay*."

9. He responded by letter the same day further protesting the transfer. Among other things, he stated that he had become integrated in the Cat Island community, owned a home there, his wife was stationed there, and apparently he had also been elected as a Local Government representative (Deputy Chairman for Arthur's Town). Furthermore, he remonstrated that he did not have any housing or a vehicle in Nassau, and added the caveat that if he were required to return to New Providence (i.e., if the Department did not relent), he would request lodging, transportation, and "*disturbance*" allowances. By letter dated 30 March 2022, the Department refused his request for any of the allowances sought.

10. It appears that the Claimant thereupon took the decision to remain in Cat Island and continue to report to his normal place of work. However, beginning 5 June 2023, he was locked out from the Cat Island office by a colleague who reportedly indicated that she was acting on instructions. The Claimant initiated conciliation proceedings before the Labour Board to try to resolve the matter, but filed a Standard Claim Form and a Notice of Application seeking urgent injunctive relief after the Defendant continued to lock him out.

11. On the 9 June 2023, the Claimant filed a Standard Claim Form seeking a number of declarations and orders relating to his transfer and lock-out. The claimant also sought damages for breach of statutory duty, breach of contract and alleged constitutional breaches, including vindicatory, exemplary and aggravated damages.

12. The main claim was that the "*coding*" of the Claimant's salary was:

> "*…unreasonable, unlawful, unfair, oppressive, arbitrary, and in breach of the Industrial Agreement between the Defendant and The Bahamas Public Services Union (BPSU), the Claimant's Trade Union, (the Agreement), General Orders, the Public Service Commission Regulations (PSCR), the principles of natural justice, the principles of good industrial relations practice, and therefore null, void and of no effect*."

13. For example, it was pointed out, *inter alia*, that the Agreement provided for 15 days' notice in respect of inter-island transfers (which allegedly was not given to the Claimant or the Union). Further, art. 34.4 of the Industrial Agreement provided for an employee to "*…decline a transfer that also includes a geographical posting, if: (a) it would cause undue hardship to his/her family*….". The Claimant also referred to General Orders 604, which provides for an officer who receives an offer of transfer to "*determine his acceptance or refusal entirely in the light of his own interests*", provided he followed up with some explanation or reasons for his decision.

14. The Notice of Application was filed on the 5 July 2023, and in the main sought an order under Rule 17.1 (1)(b) of the CPR 2022 and under the inherent jurisdiction of the Court restraining the Defendant from "*…coding, ceasing or otherwise interfering with the Claimant's salary and directing payment of the Claimant's salary being unreasonably and unlawfully withheld from April*

A.D. 2022 to date." It was supported by the Affidavit of Rushea N. Stuart, legal secretary in the Office of Cedric L. Parker and Co., counsel for the Claimant, which was also filed 5 July 2023.

15. The Defendant filed a lengthy Defence on 30 June 2023, denying that they had unfairly or unlawfully coded his salary, and asserting mainly that the Claimant's failure to follow the directives for his redeployment meant he was absent without leave and his salary was rightly withheld. They also clarified that although "*transfer*" was used in the some of the correspondence with the Claimant, what was being referred to was a "*redeployment*" (not a transfer), as the latter denotes a move to a different Department of Government, which this was not (see s. 2 of the *Public Service Commission Regulations* ("*PSC Regs*")).

16. In response to the interlocutory application, the Defendant filed a Notice of Application on 13 September 2023 seeking several interim declarations pursuant to Rule 17.1 of the CPR 2022, along the lines that the Claimant's salary was being lawfully withheld as he had been "*absent*" from work since in or about April 2022. This was supported by the Affidavit of Joel Lewis, Permanent Secretary in the Office of the Attorney General filed 18 July 2023.

17. The Court was assisted with written and oral arguments from both parties in support of the injunction/declaration applications.

Legal Principles

The injunction

18. The jurisdiction of the Supreme Court to grant injunctions is codified at s. 21 of the Supreme Court Act. It provides for the Court to grant an interlocutory or final injunction "*in all cases in which it appears just and convenient to do so*." The claim for the injunction was made pursuant to Rule 17.1(b) of the Civil Procedure Rules 2022 ("*CPR 2022*"), which simply provides that: "*The Court may grant interim remedies including an interim injunction.*"

19. Although **American Cyanamid** remains the *locus classicus* for the grant of interlocutory injunctions, that case itself and subsequent cases have highlighted that these are general principles that have to be applied with some flexibility depending on the facts of the case. In **Cambridge Nutrition Ltd. v BBC** [1990] 3 All ER 523, Kerr LJ emphasized that:

> "*The American Cyanamid case is no more than a set of useful guidelines which apply in many cases. It must never be used as a rule of thumb, let alone as a straitjacket*….".

In **National Commercial Bank of Jamaica Ltd. v Olint Corp. Ltd.** [2009] UKPC 16, the Privy Council deprecated a "*box-ticking approach*", which it said "*does not do justice to the complexity of a decision as to whether or not to grant an interlocutory injunction*".

20. The well-worn principles of **American Cyanamid v Ethicon** for granting interlocutory relief are often explicated by way of a four-part test as follows: (i) whether there is a serious question to be tried; (ii) whether damages are an adequate remedy; (iii) where does the balance of convenience lie; and (iv) whether there are special factors to be considered.

21. The general principles regarding the grant of interlocutory relief have been admirably summarized by Mr. Christopher Hancock, QC (sitting as a High Court Judge) in the recent case of **O. Brien and another v. TTT Moneycorp** [2019] EWHC 1491 (Comm.), which I am happy to adopt:

> "*(1) Sections 37(1)-(2) of the Senior Courts Act 1981 state that the High Court may by order grant an injunction in all cases in which it appears 'just and convenient' to do so, and any such order may be made either unconditionally or on such terms as the Court thinks just. Interim injunctions are therefore discretionary but the discretion is to be exercised judicially in light of the overriding objective in CPR 1.1.*
>
> *(2) Applying the well-known approach deriving from American Cyanamid [1975] AC 396, (HL), the onus is on the applicant to establish: first, that there is a serious question to be tried; second, that damages would not be an adequate remedy for the applicant if the injunction were refused; and third, that the balance of convenience favours the grant of the interim injunction. These tests are usually applied by reference to the seven guidelines extracted from American Cyanamid by Browne LJ in Fellowes & Son v Fisher [1976] 1 QB 122 (CA) at 137.*
>
> *(3) On an application for an interim injunction, the Court should not attempt to resolve 'critical disputed questions of fact or difficult points of law' on which the claim of either party may ultimately depend, particularly where the point of law 'turns on fine questions of fact which are in dispute or are presently obscure': Sukhoruchkin v Van Bekestein [2014] EWCA 399 at [32] (Sir Terence Etherton C).*
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> *(4) In the exercise of its discretion to grant an injunction, and consistently with the overriding objective, the Court will not grant an injunction where it would be futile or serve no purpose: Mosley v News Group Newspapers [2008] EWHC 687 (QB).*
>
> *(5) A mandatory injunction is less likely to be granted on an interim basis. This is because, where other factors appear to be evenly balanced, the Court 'should take whatever course seems likely to cause the last irremediable prejudice to one party or the other': National Commercial Bank Jamaica Ltd. v Olint Corp. Ltd. (Practice Note) [2009] 1 WLR 1405 (PC). A mandatory injunction requiring a party to take some positive step at an interlocutory stage will usually carry a greater risk of injustice if it turns out to have been wrongly made. It is therefore legitimate in such cases to require a 'high degree of assurance' that the interim relief would ultimately be granted at trial: Shepherd Homes Ltd. v Sandham [1971] Ch. 340 at 351 (Megarry J.).*

> *(6) Furthermore, where the grant of interim relief will have the practical effect of giving the application the final relief that it is seeking in the case, the Court will be more reluctant to grant such relief: Films Rover Ltd. v Cannon Film Sales Ltd. [1987] 1 WLR 670 at 680.*
>
> *(7) Where an interim injunction is granted, the usual practice is to make this subject to a condition requiring the applicant to offer a cross-undertaking to pay damages for any losses sustained by reasons of the injunction in the event that it transpires that it ought not to have been granted*."

22. The only slight modification to be made to this statement of principles is that the reference to s. 37 of the UK Senior Courts Act 1981 is to be substituted with s. 21 of the Supreme Court Act, and, secondly, the procedural rules governing the grant of injunctions in this jurisdiction are now to be found in Part 17 of the CPR 2022 (formerly Order 29 of the *Rules of the Supreme Court* ("*R.S.C.*") 1978).

Mandatory Injunction

23. As indicated in the above summary from the **Obrien** case, where the claimant seeks a mandatory injunction, the general principle is that the Court requires a higher degree of assurance that it will appear at trial that the injunction was rightly granted (see **Shepherd Homes Ld. v Sandham** [1971] CH. 340, per Megarry J., approved in **Locabail International Finance Ltd. v Agroexport** [1986] 1 WLR 657, and in **Jakeman v. SW Thames RHA** [1990] IRLAR 62).

24. In **Locabail**, Mustill J. said [at p. 664]:

> "*One of the cases cited in support of that passage* [a passage from *Halsbury's Laws of England*, 4th ed., Vol. 24 (1979), at p. 534, para. 948, on 'Mandatory injunctions on interlocutory applications'] *is the decision of Megarry J. in Shepherd Homes Ltd. v Sandham [1971] Ch. 340. In the course of this judgment the judge said at p. 351: 'Third, on motion, as contrasted with the trial, the court is far more reluctant to grant a mandatory injunction than it would be to grant a comparable prohibitory injunction. In a normal case the court must feel a high degree of assurance that at trial it will appear that the injunction was rightly granted and this is a higher standard than is required for a prohibitory injunction'.* […]
>
> *It was pointed out in argument that the judgment of Megarry J antedates the comprehensive review of the law as to injunctions given by the House of Lords in American Cyanamid Co. v Ethicon Ltd., but to my mind at least, the statement of principle by Megarry J in relation to the very special case of the mandatory injunction is not affected by what the House of Lords said in the Cyanamid case. The matter before the court is not only an application for a mandatory injunction, but is an application for a mandatory injunction which if granted, would amount to the grant of a major part of the relief claimed in the action. Such an application should be approached with caution and the relief granted only in a clear case*."

25. In **Jakeman,** the High Court refused the claim for an interlocutory injunction and a supporting declaration of entitlement requiring the Regional Health Authority, which employed the plaintiff ambulance drivers, to pay salary and overtime said to be owing them (for hours when they had not called into the central control station after transporting a patient to hospital on an emergency call as required). The claim was disputed by the Authority on the grounds that the

reduced hours worked constituted partial performance by the drivers and was in breach of contract (which was admitted). The Court refused the mandatory injunction on the grounds (*inter alia*) that there were no special circumstances justifying the relief claimed (which was only two weeks' wages plus overtime for a month) and that damages would be adequate if the plaintiffs were to establish their right to the deducted wages at trial. However, Auld J. endorsed the principle stated in **Locabail** and noted that while the test in **American Cyanamid** was the starting point, "…*a more onerous test generally applies where, as here, mandatory relief is sought*."

Declaratory relief

26. The Court's jurisdiction to grant declaratory relief is very wide and derives both from statute (*Supreme Court Act*, ss. 15, 16, 19), the inherent jurisdiction, and Rules of Court. In this regard, Rule 17.1 (a) CPR 2022 provides that the Court may grant interim remedies including "*an interim declaration*". It is observed in passing that there does not appear to be any provision in the CPR 2022 corresponding to what used to be *R.S.C. 1978 Ord. 15, r. 17*, which provides that: "*No action or other proceedings shall be open to objection on the ground that a merely declaratory judgment is sought thereby, and the Court may make a binding declaration of right whether or not any consequential relief is or could be claimed*." However, this is no way diminishes the wide and inherent power of the Court to grant declarations of right.

27. The power to grant interim declarations, while not recognized at common law, has now been stated in the CPR 2022. But as the case law has developed in the United Kingdom (which has a similar rule in its CPR and other procedural rules) interim declarations are provisional and should not be used to achieve a final determination of rights before trial (see, **Martin Richard Walsh v Melanie Trudy Richardson & Anor** [2024] EWHC 3089 (Ch.)).

28. In addition, the power to grant declaratory relief is discretionary and will only be granted where it would serve a useful purpose. In **Financial Services Authority v Rourke** [2002] CP Reg 14, Neuberger J. said:

> "…*the power to make declarations appears to be unfettered. As between the parties in the action, it seems to me that the court can grant a declaration as to their rights, or as to the existence of facts, or as to a principle of law, where those rights, facts, or principles have been established to the court's satisfaction. The court should not, however, grant any declarations merely because the rights, facts or principles have been established and one party asks for a declaration. The court has to consider whether, in all the circumstances, it is appropriate to make such an order*." […]

DISCUSSION AND ANALYSIS

Whether serious issue to be tried/High degree of assurance that injunction would be granted

29. In the normal case, this is not a very demanding test. As this Court observed in **Satish Daryanani v Leon Griffin et. al.** [2020/CLE/gen/000594] (22 January 2022), at para. 62:

> "*Several later cases* [after *American Cyanamid*] *also make the point that that question of what constitutes a serious issue is not to be investigated to any great extent. For example, Mothercare Ltd. v Robson Brooks Ltd. [1979] F.S.F. 466, at 474, Sir Robert Megarry V.C. said: 'All that has to be seen is whether the plaintiff has prospects of success which, in substance and reality, exist.'*

Similarly, in Alfred Dunhill Ltd. v. Sunoptics SA [1979] F.S.R. 373, Megaw L.J. said: 'It is irrelevant whether the court thinks that the plaintiff's chances of success in establishing liability are 90 per cent or 20 percent.'"

30. The Claimant argues that he has easily demonstrated that there is a serious issue to be tried, relating to the lawfulness of his redeployment, coding of his salary, and whether or not it was in breach of his statutory and contractual rights. The Defendant does not argue that there are no serious issues to be tried. As noted, they have filed a comprehensive Defence to the action. Instead, they argue that the grant of the injunction would have the effect of disposing of the action (see the section on balance of convenience, below).

31. In cases involving a claim for a mandatory injunction, the grant should be approached with caution and only made in clear cases. The Court should clearly not embark on a mini-trial of the matter (either of facts or law) on the hearing of an application for an interlocutory injunction, but it can look at the relative strength of the parties' claims where the balance is either evenly matched or where (as in this case) the Court is required to be satisfied of something more than a serious issue to be tried (**Cambridge Nutrition Ltd. v BBC***, supra*).

32. The essential argument being made by the Claimant is that the Defendant has unilaterally, unlawfully and without due process withheld his salary, notwithstanding that he has not been terminated and had continued to report for work until prevented from doing so. The Defendant on the other hand points to several bases as the justification for its actions: (i) paragraph 926 *of General Orders*; and (ii) the *Bahamas Government Human Resources Policies Handbook*, which references regulation 49 of the PSC Regs.

33. Paragraph 926 of General Orders states, in relevant part, that "*unauthorized absences from the place of work will form the basis of disciplinary charges.*" The Handbook provides as follows:

"*Discipline for Unauthorized Absence*

After seven (7) consecutive days of unauthorized leave, disciplinary procedure should be followed in accordance with Public Service Commission Regulation 49. In the meantime, the approval of the Permanent Secretary of Head of Department should be secured for the officer's salary to be coded."

34. Regulation 49 of the PSC Regs provides as follows:

"*49. Where any public officer is absent from duty without leave or reasonable cause for a period exceeding seven days and the officer cannot be found within a period of fourteen days of commencement of such absence, or, if found, no reply to a charge of absence without leave is received from him within ten days after the despatch of the charge to him —*

(a) in the case of a public officer in respect of whom disciplinary control has been delegated, the empowered officer may summarily dismiss him;

(b) in any other case, the Head of Department shall report the matter to the Permanent Secretary, who shall refer the matter to the Director of Public

Personnel and the Director of Public Personnel shall inform the Chairman; and the Commission shall make its recommendation to the Governor-General thereon."

35. Firstly, it is to be noted that Reg. 49 provides for a public officer who is absent without leave within the circumstances set out in Reg. 49 (i.e., absent for 7 days and cannot be found within 14 days, or if found provides no reply to a charge of being absent without leave) to be summarily dismissed, in the case of an officer over whom disciplinary control has been delegated. The Claimant comes within the category of public officer in respect of whom disciplinary control has been delegated (see *Public Service (Delegation of Powers) Order*, para. 2). But it is clear that he is not caught by the prescription of Reg. 49, as he continued to report to his Cat Island station and did reply to the charge of being absent without leave. In any event, he was not dismissed.

36. Further, the Regs provide that even where an empowered authority considers that in the interest of the public service a public officer should cease to exercise his functions while disciplinary proceedings are taken against him for his dismissal, or where criminal proceedings are being instituted against him, that officer can be interdicted and his salary reduced to not less than half during that period (Reg. 37).

37. There is, however, no power under the Regulations (and the Defendant has drawn no other authority to the attention of the Court) that permits the withholding of the entirety of a public officer's salary who continues in employment and against whom no disciplinary proceedings are taken. To the extent that is suggested in the Handbook that the permission of the Permanent Secretary can be sought to "*code*" a public officer's salary (other than the procedure relating to interdiction), this is clearly *ultra vires* the Regulations and unlawful. This is not the place to consider the legal status of the Handbook, but the law is crystal clear that policy documents, even if they form part of a contract—and there was no argument on whether the Handbook formed a part of the Claimant's contract—cannot override statutory provisions.

38. Further, it is to be noted that withholding a public officer's salary is not even a recognized form of punishment. Regulation 40 of the PSC Regs sanctions the following punishments as a result of proceedings taken under the Regulations:

"*(a) dismissal;*
(b) reduction in rank;
(c) reduction in salary;
(d) deferment of increment;
(e) withholding of increment;
(f) reprimand;
(g) forfeiture of any part of any emoluments withheld during any period of interdiction under the provisions of regulations 3."

39. At common law, the legality of withholding a public officer's salary where it is alleged that he is absent without leave depends on the statutory and contractual context governing the employment. In **Miles v Wakefield Metropolitan District Council** [1987] AC 539, the House of Lords allowed the appeal of a Council which had withheld part of the salary of a registrar of

marriages for refusing to officiate marriage ceremonies on Saturdays, on conscientious grounds. The House affirmed the common law principle that pay and work are mutually dependent, but also observed that the ability to withhold part or the whole of a person's salary depended on clear authority derived from either statute, contract, or common law principles (per Lord Oliver at p. 570).

40. In reality, this is not even a case of being absent without leave, nor about claiming pay for work not done. This is a case where the employer always knew where the employee was. Admittedly, he was protesting his redeployment (whether rightly or wrongly), but was willing to work and reported to work at the station at which he was last assigned to work until he was locked out. In fact, it is a point of some significance that the Claimant was not locked out until 5 June 2023, which means that he in fact worked for roughly over a year even after his salary was stopped. So this is not a case where the Claimant is seeking salary for work not done in violation of the common law principle of "*no work, no pay*" (see **Wakefield**, applied in the Privy Council in **Sykes v Minister of National Security and Another** (2000) 59 WIR 411). He had worked for much of the period and had always indicated an intention and willingness to work.

41. If the Department were of the opinion that the Claimant's action constituted a breach of the terms of his employment that merited disciplinary action (even serious disciplinary action), they were free to take such action in this regard. But they had no statutory, contractual, or common law authority to simply withhold all of his pay while affirming his employment and contract with the Department in the absence of any disciplinary proceedings. In the circumstances, I am satisfied that this is a case that meets the high degree of assurance the Court should have when considering whether to grant a mandatory injunction, subject any special or other factors that would militate against the relief.

42. Having said so, it should be clear that the Court is not making any determination as to the lawfulness or otherwise of the deployment Order, or whether the stance taken by the Claimant or Defendant is right or wrong, based on the law and facts. Those are matters for trial, if the parties do not sooner iron out their differences.

Damages

43. In light of the above, it may not be necessary to continue with the **American Cyanamid** guidelines, but I do so for completeness, and in case I am wrong about this matter coming within the **Shepherd Homes Ltd. v Sandham** principle enunciated by Megarry J.

44. The Claimant submits that damages would not be an adequate remedy, as the withholding of his salary has not only interrupted his ability to service his mortgage, but injured his credit and the redeployment would have the effect of separating his family unit. He submits further that the injunction sought would create no prejudice to the Defendant, but nevertheless agrees to abide by any order the Court may make as to damages should it determine that he was not entitled to the injunction sought.

45. The Defendant did not make any submission on the point of damages, but referred to its statutory duty to ensure all employees are treated fairly and to "*foster and maintain order in the workplace through compliance of* (sic) *the rules and principles governing the employee and employer relationship*". This appears to be a reference to the Defendant's statutory obligations *vis-à-vis* its employees generally, and to the extent that this right would be impacted, it is clearly not a matter that is compensable.

46. It all the circumstances, I accept that damages would not be an adequate remedy and therefore I must go on to consider the balance of convenience.

Balance of convenience

47. As was made clear in **American Cyanamid**, the balance of convenience is a protean phrase and the list of matters the Court may take into consideration is not closed. Later cases have opined on whether that phrase accurately describes the exercise that the Court is involved in. For example, the Claimant cites the case of **Cayne v Global Natural Resource plc** [1984] 1 All ER 225, where May LJ said (at 237):

> "*…the balance that one is seeking to make is more fundamental, more weighty, than mere 'convenience'. I think it is quite clear…that, although the phrase may well be substantially less elegant, the 'balance of risk of doing an injustice' better describes the process involved*."

In **National Bank of Jamaica Ltd. v. Olint** (*supra*), the Privy Council simply described it as the Court having to engage in determining which course "*seems likely to cause the least irremediable prejudice to one party or the other*".

48. The Claimant submits that the balance of convenience would clearly favour him, as he stands to lose his family home because of his inability to service his mortgage and meet other expenses, and also because his credit would be damaged. The Defendant submits that the balance of convenience is with them because the result of granting the injunction "*unjustly enriches the Claimant by directing the Defendant to deplete its resources without lawful justification*".

49. On the **American Cyanamid** principles, I would have been completely satisfied that the course most likely to cause the least irremediable prejudice to one party or the other is to favour the grant of injunction sought by the Claimant pending trial or determination of the issues.

50. The Defendant argues, however, that the balance of convenience does not apply in the **American Cyanamid** sense, as the grant of the relief would dispose of the action, citing **Cayne and another v Global Natural Resources plc** [1984] 1 All ER 225, and **Cambridge Nutrition Ltd. v British Broadcasting Corp** [1990] 3 All ER 536. Thus, it is contended that notwithstanding the balance of convenience, the Defendant should not be precluded by the grant of an interlocutory injunction from disputing the Claimant's claim at trial. The headnote to the **Global Natural Resources plc** case in the Report cited reads as follows:

> "*Where the grant or refusal of an interlocutory inunction will have the practical effect of putting an end to an action, the court should approach the case on the broad principle of what it can do in its best endeavor to avoid injustice, and to balance the risk of doing an injustice to either party. In such a case*

the court should bear in mind that to grant the injunction sought by the plaintiff would mean giving him judgment in the case against the defendant without permitting the defendant the right of trial. Accordingly, the established guidelines requiring the court to look at the balance of convenience when deciding whether to grant or refuse an interlocutory injunction do not apply in such a case, since, whatever the strengths of either side, the defendant should not be precluded by the grant of an interlocutory injunction from disputing the plaintiff's claim at trial."

51. While I agree that the grant of an order to reinstate the Claimant's salary would grant him a major part of the relief he is claiming, I am in no way convinced that it would dispose of the action. The Claimant has sought, *inter alia*, declarations that his redeployment was unlawful and in violation of his terms of employment. Reinstating his salary and returning him to the *status quo ante* does not in any way determine those questions, and does not dispose of the claims.

52. In my view, balancing the risk of injustice or taking the course that would cause the least irremediable prejudice favours the grant of the injunction. The Defendant submits that the grant would require them to unlawfully "*deplete*" their resources (i.e., require payments from the Public Treasury), but I am not at all persuaded by that submission. As discussed (and as far as was indicated to the Court at the hearing), the Defendant has not taken any disciplinary action against the Dlaimant that could possibly result in his dismissal (or at all), in any attempt to staunch the "*depletion*" of its resources (as the claim was put). Furthermore, the Defendant cannot be heard to complain about payments without lawful justification when in fact the Claimant worked for over a year without pay, and was only prevented from continuing to work by the Defendant's actions.

53. The Defendant, represented by the Attorney General, is a Government Department. It holds vastly superior bargaining power as well as the statutory authority to take whatever course of action it deemed (or deems) necessary by way of disciplinary action to ensure compliance with any operational instructions and an employee's terms of employment. But it cannot bypass those statutory alternatives in favour of undisguised economic coercion.

Application for declaration

54. As indicated, the Defendant sought a number of "*interim*" declarations. The two main declarations sought were put as follows in the draft Minute of Judgment attached to the Notice of Application:

> "*1. A Declaration that the Claimant is not entitled to the payment of his salary for the period beginning the 1st day of April A.D., 2022, to date hereof and that no interest is calculated thereon from the cessation of salary until its resumption.*
>
> *2. A Declaration that unless that* (sic) *Claimant reports for duty at his newly assigned post in the Social Health Services, Princess Margaret Hospital, he is deemed to be absent from work and he is therefore not entitled to receive salary*."

55. For the reasons given above for granting the mandatory injunction, I necessarily refuse the request for the interim declaration. But as indicated, there is a further procedural reason why the declaration cannot be granted. Notwithstanding the procedural rules in the UK (rule 25.1(1)(b) of the CPR) which provides for the grant of interim declarations (Rule 17.1(b) CPR 2022 is in the

same terms), the Courts have been very reluctant to grant these and have held that this is an exceptional remedy that should not be used to determine the final rights of parties.

56. In **Walsh v Melanie Trudy Richardson & Anor** [2024] EWHC 3089 (CH), the claimant sought the following: "*An interim declaration pursuant to CPR Part 25.1(1)(b) that the second defendant's purported claim is beyond the statute of limitation, that he has no interest in the property*" and that therefore an order for sale should take place. After a review of several of the authorities (**N v Royal Bank of Scotland plc** [2017] EWCA 253, **The British Pilots Airline Association v British Airways CityFlyer Limited** [2018] EWHC 1889 (QB)), Mr. Justice Miles concluded:

> "*23. ...An interim declaration is provisional by nature. In none of the cases which have been referred to has the court actually made an interim declaration in relation to the private rights of the parties.*
>
> *50. ....In my judgment it is not appropriate for the court to make an interim declaration where what is sought is essentially a final determination of rights. The proper procedure for seeking a summary determination of the rights of a party without trial is the summary jurisdiction under Part 24.*"

57. I agree with this analysis, and it is apposite the facts of this case. To grant the declarations sought by the Defendant would be tantamount to determining that the course of action taken by the Department was lawful and that conversely the Claimant's actions were a breach of the terms of his employment. That would have the effect of determining the rights of the parties. In fact, it is hard to not point out the inconsistency in the Defendant's claim for interim declarations that would be determinative of final rights, but yet seek to resist the injunction on the basis that its grant would be dispositive of the matter.

58. I therefore refuse to grant any of the interim declarations sought.

CONCLUSION AND DISPOSITION

59. For the reasons given above, I granted the mandatory injunction restoring the Claimant's salary withheld from 1 April 2022 to the date of the Ruling pronounced on 16 October 2023 (with interest), and ordered the *status quo* as at 31 March 2022 restored pending hearing and determination of the claim (if not sooner settled by the parties).

60. I also refused the grant of the interim declarations sought by the Defendant.

61. Finally, I awarded costs to the Claimants, which I summarily assessed at $6,500.00 after hearing the parties.

Klein J.

15 September 2025