

**IN THE COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Public Law Division  
2021/CLE/gen/00559**

**IN THE MATTER** of the Industrial Relations Act (the Act), the Public Service Commission Regulations (PSCR), and the General Orders.

**AND IN THE MATTER** of the Industrial Relations Agreement between the Government of the Commonwealth of The Bahamas and The Bahamas Public Services Union for the period July 1<sup>st</sup> A.D. 2018 (the Industrial Agreement)

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

**ARIMENTHA NEWMAN  
ELIZABETH COLLIE  
ERNESTINE FERNANDER  
LAURETTA MARSHALL  
CARLETTA TURNQUEST**

1<sup>st</sup> Claimants

**AND**

**THE BAHAMAS PUBLIC SERVICES UNION**

2<sup>nd</sup> Claimant

**AND**

**THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS**  
Defendant

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**JUDGEMENT**

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**Before:**

The Honorable Madam Justice Carla D. Card-Stubbs

**Appearances:**

Mr. Kahlil Parker KC and Ms. Roberta Quant for the Claimants

Mr. Antoine Thompson of Counsel for the Defendant

*Application for Declarations of breach of statutory and contractual rights – Whether public servants redeployed or transferred- Framework for redeployment and transfers within the Public Service– Whether Trade Union as Bargaining Agent entitled to notice or consultation – whether breach of natural justice - The Industrial Relations Act - The Public Service Commission Regulations - General Orders of The Bahamas - Industrial Agreement between the Government of The Commonwealth of The Bahamas and The Bahamas Public Service Union*

*The First Claimants are Public Servants, employed in the post of Family Island Administrators. Without notice, they were issued letters of redeployment which required them to leave their posts and report for duty at other various Government Ministries. The Second Claimant is their bargaining unit and Trade Union. The Claimants alleged that the Defendant's action amounted to transfers and that the action was unreasonable, unlawful and unconstitutional. The Defendant's case was that the First Claimants were lawfully redeployed as part of a reorganization exercise in keeping with the prerogative powers, customary functions and management of the operation of the Public Service.*

*HELD: The purported redeployment was in substance a *de facto* transfer. The court found that the process utilized to effect the move failed to comply with mandatory statutory and contractual processes required for a transfer. The Court also found that the Defendant acted in breach of the principles of natural justice. The First and Second Claimants were entitled to various remedies, including declarations of breach and damages.*

*The purported redeployment of the First Claimants was held to be null, void and without legal effect.*

## **CARD-STUBBS, J**

### **INTRODUCTION**

[1.] On the 17<sup>th</sup> day of February, 2026, this Court delivered its decision, with reasons to follow. This judgment sets out the decision as well as the reasons for the decision.

[2.] The First Claimants are five Public Servants, employed by the Government of The Bahamas. They were, during the course of their employment, each appointed to the post of Family Island Administrator IV. Subsequently, they each received letters described as letters of redeployment which required them to report for duty at various Government Ministries. The Claimants allege that such action amounted to transfers and that the action was unreasonable, unlawful and unconstitutional.

[3.] The Defendant's case is that the First Claimants were redeployed as part of a reorganization exercise in keeping with the prerogative powers, customary functions and management of the operation of the Public Service. The Defendant's case is that such powers were duly and lawfully exercised.

[4.] The parties have agreed the following facts:

1. The First Claimants are Public Servants engaged by the Government of The Bahamas in the Public Service pursuant to and in accordance with the Public Service Commission Regulations (PSCR), General Orders and the Industrial Agreement. The Second Claimant is the duly recognized Trade Union and Bargaining Agent for the First Claimants who form part of its Bargaining Unit.
2. The Defendant is the legal representative for all agencies of the Government of the Commonwealth of The Bahamas.
3. By letters dated various dates, the First Claimants were advised by the Governor-General acting in accordance with the advice of the Public Service Commission that they had been duly transferred and promoted to the office of Family Island Administrator IV.
4. Prior to the 29<sup>th</sup> day of November A.D. 2021, there was no consultation between the Defendant and the Claimants about the First Claimants' redeployment/transfer to various other Government Ministries.
5. On or about the 29<sup>th</sup> day of November A.D. 2021, the First Claimants received letters dated the 29<sup>th</sup> day of November A.D. 2021 issued by the Permanent Secretary in the Ministry of the Public Service, giving notice of their redeployment from their positions as Family Island Administrators in the Ministry of Agriculture, Marine Resources and Family Island Affairs to various other Government Ministries.

## **THE ACTION**

[5.] On April 20, 2022, the Claimants filed action against the Defendant in relation to the redeployment exercise. The Claimants seek the following relief against the Defendant:

1. A Declaration, pursuant to and in accordance with the letter and spirit of Regulation 24 of the PSCR, General Orders 500 and 600, and Article 34 of the Industrial Agreement, that the First Claimants, having been promoted and appointed to the office of Family Island Administrator, by Order of His Excellency the Governor General acting in accordance with the advice of the Public Service Commission, and deployed by the Defendant to their respective Family Island Districts, were at all material times and remain the duly appointed holders of the substantive office of Family Island Administrator so deployed.
2. An Order that the Defendant rescind all its directives issued by the Ministry of The Public Service, the Ministry of Agriculture, Marine Resources and Family Island Affairs, its officers, agents, or otherwise, whether written or verbal, giving effect to, or acting pursuant to and/or in accordance with, the purported "redeployment"/transfer of the First Claimants.
3. An Order that the Defendant forthwith and in any event within fourteen (14) days, or such other reasonable period as may be fixed by the Court herein, take all reasonable and necessary steps to return the First Claimants to their substantive posts as Family Island Administrators deployed to their respective Family Island Districts.
4. A Declaration that the redeployment or transfer of the First Claimants, or any Public Servant, conducted or carried out by the Defendant otherwise than in accordance with the letter and spirit of the Act, Regulation 24 of the PSCR, General Orders 500 and 600, Article 34 of the Industrial Agreement, the principles of natural justice, and the principles of good industrial relations practice is null, void, and of no effect.
5. A Declaration that the Permanent Secretary in the Ministry of the Public Service is not empowered to unilaterally, by letter and/or at all, "redeploy/transfer the First Claimants from their duly appointed substantive posts and deployments as Family Island Administrators in the Ministry of Agriculture, Marine Resources and Family Island Affairs.
6. A Declaration that the letters issued by the Defendant to the First Claimants, dated the 29th day of November A.D. 2021, under the hand of the Permanent Secretary in the Ministry of the Public Service, purporting to "redeploy"/transfer the First Claimants from the Ministry of Agriculture, Marine Resources and Family Island Affairs, where they each served as duly appointed Family Island Administrators deployed in their respective Family Island Districts, to various other Ministries was *ultra vires* the Act, the PSCR,

General Orders, the Industrial Agreement, unreasonable, unlawful, and unconstitutional.

7. A Declaration that the Defendant must provide the Second Claimant and any member of its Bargaining Unit with prior reasonable notice of the nature, scope, and expected duration of any purported redeployment or transfer.
8. A Declaration that the Defendant is bound by the Act, the PSCR, General Orders, the Industrial Agreement the principles of natural justice, and the principles of good industrial relations practice to reasonably and properly consult with the Second Claimant on behalf of affected members of its Bargaining Unit regarding decisions which would have a substantive impact on members of its Bargaining Unit and their careers.
9. A Declaration that the First Claimants have a right to, and a legitimate expectation of, resuming their respective posts and deployments as Family Island Administrators.
10. A Declaration that the Defendant's decision to "redeploy/transfer" the First Claimants without prior consultation with the Second Claimant constitutes a violation of, and an unlawful and unreasonable interference with, the Second Claimant and its members' constitutional, statutory, and contractual right to freedom of assembly and association, and trade union representation at the workplace.
11. Damages for Breach of Statutory Duty.
12. Damages for Breach of Contract.
13. Exemplary Damages.
14. Aggravated Damages.
15. Vindictory Damages for breach of the Claimants' constitutional rights.
16. Damages
17. Such further or other relief as the Court may in the circumstances deem just.
18. The costs of and occasioned by this action.

[6.] The central issue in this case concerns whether the reassignment of the First Claimants ('Family Island Administrators') constituted a "redeployment" or a "transfer" between Ministries. This distinction is significant, as the parties are agreed that a transfer

necessitates adherence to formal procedures, including approval by the Governor General based on the recommendation of the Public Service Commission, and generally requires consultation with the employees involved and their union representatives, the Second Claimant ('BPSU').

[7.] This Court must determine whether the action initiated by the Defendant with the November 29, 2021 letters was a redeployment or, in effect, a transfer of the First Claimants. The nature of the action will dictate the process that ought to be followed. This Court will then determine whether the correct process was followed or whether there were any breaches of the relevant law and policies pleaded by the Claimants. This Court will also determine whether the Claimants are entitled to damages as a result of a breach, if any.

## ISSUES

[8.] The issues before me are:

1. Whether the action of the Defendant amounted to a redeployment or transfer of the First Claimants (Family Island Administrators).
2. Whether such action was in breach of the Industrial Relations Act, the Public Service Commission Regulations (PSCR), General Orders and/or the Industrial Agreement signed between the Second Claimant and the Defendant and principles of natural justice and those of good industrial relations practice.
3. Whether the Defendant's action without prior consultation with the Second Claimant (BPSU) constitutes a violation of their statutory, contractual and constitutional rights.
4. Whether the Claimants are entitled to damages.

## SUBMISSIONS OF THE PARTIES

### Claimants' submissions

[9.] The Claimants contended that the Defendant's actions constituted a transfer rather than a redeployment. They asserted that the Defendant transferred the First Claimants from their substantive positions as Family Island Administrators IV. They maintained that these transfers were not in accordance with the Industrial Relations Act, the Industrial

Agreement, PSCR, or General Orders.

[10.] The Claimants argued that the Defendant failed to provide reasons for the transfer and failed to consult with the Second Claimant regarding the transfer.

### **Defendant's submissions**

[11.] The Defendant contended that the First Claimants were redeployed and that such deployment was part of a three-prong process, namely redeployment, transfer and reclassification. The Defendant argued that such redeployment is commonplace and is in compliance with the Industrial Relations Act, the Industrial Agreement, PSCR, and General Orders.

[12.] The Defendant maintained that the Permanent Secretary in the Ministry of Agriculture, Marine Resources and Family Island Affairs has the power to effect the redeployment by virtue of delegation powers in Article 110 of the Constitution.

### **ISSUE 1**

*Whether the action of the Defendant amounted to a redeployment or transfer of the First Claimants?*

[13.] The critical issue and starting point in this matter is whether the movement of the First Claimants from their Family Island Administrator posts was a redeployment or a transfer.

[14.] The parties are agreed as to the sources of the various terminology. The Claimants' case is that the Defendant is in violation of the Industrial Relations Act, Regulation 24 of the Public Service Commission Regulations, General Orders 500 and 600, and Article 34 of the Industrial Agreement.

## LAW AND DISCUSSION

[15.] By way of context, it is important to consider the legal foundations governing the relationship between the First and Second Claimants and the Defendant.

[16.] The Second Claimant, BPSU, is a Trade Union and the Bargaining Agent for the First Claimants, the Family Island Administrators. As members of the BPSU's bargaining unit, the Family Island Administrators' employment contracts are governed by the Industrial Agreement entered into between the Defendant and BPSU on 1 July, 2013. However, because the Family Island Administrators are public officers, their employment is also regulated by the General Orders of The Bahamas and the Public Service Commission Regulations (PSCR). Their employment is further regulated by applicable government policies governing the Public Service.

[17.] The Claimants rely on the terms of a registered agreement under the Industrial Relations Act. The Industrial Relations Act, as amended, provides at section 51(1A):

1A. The terms and conditions of a registered agreement shall, where applicable, be deemed to be terms and conditions of the individual contract of employment of the workers comprised from time to time in the bargaining unit to which the registered agreement relates.

[18.] The relevant agreement for these purposes is the Industrial Agreement between the Government of The Commonwealth of The Bahamas and The Bahamas Public Service Union. Transfer and Redeployment are defined in that agreement. Article 4 deals with definitions and provides:

4.15 Redeployment means the movement from one workstation to another within the same Department.

4.20 The term 'Transfer' shall mean: deployment from one Ministry/Department/Budget Head to another with or without change in status.

[19.] Significantly, the Industrial Agreement acknowledges the prerogative and powers of the Defendant, stipulating that its provisions are “not to be inconsistent with the said prerogatives, powers and customary functions of the Public Service”. Article 1.1 provides:

The Union recognizes that it is the right of the Employer to exercise all the prerogative, powers and customary functions of management in all matters pertaining to the operation of the business provided, however, the Employer in the exercise of such rights does not violate the terms of this Agreement which shall in any event not be inconsistent with the said prerogatives powers and customary functions of the Public Service.

[20.] The terms of the Industrial Agreement therefore constitute the terms and conditions of the individual contract of employment of each Family Island Administrator. However the Family Island Administrators are public servants, subject to prerogatives powers and customary functions of the Public Service. They are subject to the Public Service Commission Regulations (PSCR). Regulation 2 of the Public Service Commission Regulations deals with definitions. There is no definition of redeployment or deployment. However, Regulation 2 provides the following definition of transfer:

“transfer” means the conferment upon a public officer whether permanently or otherwise of some public office other than that to which the officer was last substantively appointed, not being a promotion; but the posting of an officer between duty posts in the same grade within a Department shall not be regarded for this purpose as a transfer.”

[21.] The Claimants also rely on The Bahamas Government Human Resources Policies (‘HR Policies’) for definitions of the terms “transfer”, “deployment”, “redeployment” and “reclassification”. Those policies provide:

At page 39 of 154:

#### TRANSFER

Transfer is the movement of staff between Ministries, departments and approved authorities (i.e. from one budget head to another).

The transfer of monthly paid staff must be approved by the Public Service Commission on the recommendation of the Ministry of the Public Service.

At page 47 of 154:

## DEPLOYMENT

Where there is a need for staff movement within a Ministry and/or Department(s), the Permanent Secretary may deploy staff members.

For Example: The posting of an officer from the Post Office Department to the Port Department – both of which fall under the purview of the Ministry of Transport and Aviation

At page 47 of 154:

## REDEPLOYMENT

Where there is a need for additional staff or staff movement, the Ministry of the Public Service may redeploy officers to various Ministries/Departments.

Redeployment is also used in cases pending official transfers.

Note: No staff should be redeployed without the written approval of the Ministry of the Public Service

[22.] In this case, the Family Island Administrators were being moved from one Ministry to another. The Claimants assert that the purported “redeployment” of the First Claimants was, in substance, a transfer from their positions as Family Island Administrators IV. The Claimants submit that the movement from one Ministry to another, by itself, demonstrates that the movement is a transfer as per the terms of the Industrial Agreement. The Defendant submits that the agreement cannot be inconsistent with the function of the public service and relies on the crafting of the term under the HR Policies.

[23.] The Family Island Administrators are subject to the various rules and policies of the Public Service. The Industrial Agreement cannot usurp the prerogatives, powers and customary functions of the Public Service. By The Bahamas Government Human Resources Policies, deployment is defined as staff movement within a Ministry or a Department but redeployment is defined as redeployment “to various Ministries/Departments” where there is a need for additional staff or staff movement. I find that this definition can therefore bear the interpretation of movement between Ministries. To my mind, that interpretation is strengthened by the clarification that “Redeployment is also used in cases pending official transfers.” By virtue of the Industrial agreement and the HR policies, transfer refers to a movement between Ministries.

[24.] It seems to me therefore that the mere movement between Ministries is not determinative of whether the movement is a transfer or a redeployment. In a case such as this, a court must therefore determine whether in this case the movement between Ministries is (1) a redeployment triggered by “a need for additional staff or staff movement” and/or are (2) cases “pending official transfers” or (3) whether the movement is a *de facto* transfer.

## **The Evidence**

### *Transfer or Redeployment*

[25.] The Claimants’ case rested on the evidence of Elizabeth Collie and Kimsley Ferguson. They relied on the affidavit evidence of those two witnesses. Their evidence went unchallenged and the affiants were not cross-examined on their affidavits.

[26.] Ms. Collie’s evidence is that she was advised on September 3, 2021, of the approval of her transfer and promotion to Family Island Administrator IV:

2. By letter, dated the 3<sup>rd</sup> day of September A.D. 2021, under the hand of the Permanent Secretary in the Ministry of the Public Service and National Insurance (as it then was), I was advised by the Defendant that His Excellency the Governor-General, acting in accordance with the advice of the Public Service Commission, given at its meeting on the 26<sup>th</sup> day of August A.D. 2021, had approved my transfer from the Police Department, Ministry of National Security, to the Department of Local Government, Ministry of Transport and Local Government and promotion to Family Island Administrator IV.
3. By letter, dated the 31<sup>st</sup> day of December A.D. 2020, under the hand of the Permanent Secretary in the Ministry of Transport and Local Government (as it then was), I was advised that I was being deployed by the said Ministry “*to the Long Island District, with effect from 12<sup>th</sup> January, 2021*”, where I was serving at that time under the supervision of Family Island Administrator III Desiree Ferguson....

[27.] Ms. Collie’s evidence is that while she was in Long Island on the 29<sup>th</sup> day of November A.D. 2021, she received the Defendant’s letter of the same date “without notice or explanation, requiring me to be in Nassau, apparently on the same date”. The substance of the letter to Ms. Collie read:

*Dear Madam:*

*I am to advise you that you will be redeployed from the Ministry of Agriculture, Marine Resources and Family Island Affairs to the Ministry of National Security (Royal Bahamas Police Force) with effect from 29 November, 2021. Please report to the Permanent Secretary (Acting), Ministry of National Security, at 9:00a.m for additional information on your assignment.*

*In acknowledgment of receipt of this letter kindly sign and date the enclosed copy and return to the undersigned.*

*Yours faithfully,*

*Renee Bullard (Mrs.)*

*(for) Permanent Secretary*

[28.] It is an agreed fact that by correspondence, the Family Island Administrators were informed of their "redeployment" to their previous Ministries. The redeployment was to take immediate effect. The parties agree that the November 29, 2021 letter to Elizabeth Collie is an example of the nature and content of the letters sent by the Defendant to 4 of the First Claimants.

[29.] The letter to Mrs. Carletta Turquest is dated 21<sup>st</sup> December 2021 and worded differently although the effect is the same. It reads:

*Mrs. Carleeta [sic] Turnquest  
Family Island Administrator  
Ufs Permanent Secretary  
Ministry of Agriculture, Marine Resources & Family Island Affairs  
(Department of Local Government)  
Eleuthera, Bahamas*

*Dear Madam,*

*I am directed to advise that you will be redeployed from Ministry of Agriculture, Marine Resources & Family Island Affairs (Department of Local Government) (Eleuthera) to the Ministry of Transport & Housing (Department of Road Traffic) (Eleuthera) with effect from 22 December, 2021.*

*We extend best Wishes to you in your new assignment and career development.*

*In acknowledgement of receipt of this letter, kindly sign and date the enclosed copy and return to the undersigned.*

*Sincerely,*

*G.D. Renne Davies (Mrs.)  
For Permanent Secretary  
GDRD/ps*

[30.] Copies of these letters are included in the Defendant's Bundle of Documents filed on 4th September 2023.

[31.] Significantly, Ms. Collie had been transferred from a post in the Ministry of National Security (Royal Bahamas Police Force) to the post of Family Island Administrator IV within the Ministry of Agriculture, Marine resources and Family Island Affairs. With each letter issued to the Family Island Administrators, they were informed of their redeployment to the Ministry from which they were transferred.

[32.] The Defendant's case rested on the evidence of Joel Lewis and Sandra Jennings. Each witness gave evidence by affidavit and was cross-examined and re-examined thereon. The Defendant relies on the affidavit evidence and oral testimony of its witnesses.

[33.] Mr. Joel Lewis was the then Permanent Secretary of the Ministry of Agriculture, Marine Resources and Family Island Affairs. He testified that the transfers of the Family Island Administrators were made pursuant to instructions issued by the then Minister responsible for Agriculture, Fisheries, and Family Island Affairs. His testimony was that the intended redeployment of the Family Island Administrators was part of a three-prong approach. This approach comprises redeployment, transfer, and reclassification.

[34.] Mr. Joel Lewis' evidence by affidavit is that:

4. In my capacity as Permanent Secretary to the ministry with responsibility for the Family Island Administrators, I received instructions from The Honourable Mr. Clay Sweeting, Minister of Agriculture, Marine Resources and Family Island Affairs, sometime in November 2021, in relation to the reorganizing of Family Island Administrators.

5. The instructions including [sic] having four of the five Plaintiffs, namely Arimentha Newman, Elizabeth Collie, Ernestine Fernander and Lauretta Marshall, redeployed to their previous Ministries, in the first instance, with the understanding that they would then be transferred and eventually reclassified in other Ministries.

6. Based on these instructions, a report was made to the Permanent Secretary of the Ministry of Public Service, Ms. Donella Bodie, to have the relevant letters prepared for the redeployment of the four named Plaintiffs.

[35.] Mr. Lewis then penned a Memorandum to the Permanent Secretary, Ministry of Public Service, concerning the movement. The Memorandum makes it clear that the Claimants were to be “redeployed” “to the Ministries/Departments identified (i.e. their original Ministries/Departments)”.

[36.] The Memorandum indicates that the redeployment was to facilitate an exercise to re-organize Family Island Administrators. The Memorandum also indicated that “this redeployment is with the view to the officers being subsequently transferred and reclassified to an appropriate post to which the receiving Ministry/Department should decide.”

[37.] Mr. Lewis' evidence was that:

9. ...the redeployment of officers within the Public Service is nothing new or unusual. Further, the process of redeployment of the Plaintiffs, to the best of my knowledge, was correct. Also, despite the Plaintiff's claim of receiving their redeployment letters dated the same date as their redeployment, it is a policy, and it would be expected, that time would be extended for the Plaintiffs to report to their respective Ministries.

[38.] Mr. Lewis was cross-examined. Questioned by counsel for the Claimants on the process, Mr. Lewis's evidence was that his instructions were to remove the Claimants from their posts as Family Island Administrators. Significantly, his instructions only pertained to moving the First Claimants: (pages 21 – 22 Transcript)

Q. Now at paragraph 3 you state that you make this affidavit primarily in regard to the process of redeployment with respect to the plaintiffs. Now at paragraph 5 you go on to suggest that the Minister's instructions included having the plaintiffs redeployed to their previous Ministries in the first instance.

I put it to you that the Minister's instructions only included moving the First Plaintiffs.

A. As far as I can remember, yes.

Q. Now I put it to you, Mr. Lewis, that the First Plaintiffs were not -- you say that they were to be redeployed, transferred and then reclassified; correct?

A. Correct.

Q. Now you accept that each of those words has a

distinct meaning in the Public Service?

A. Correct.

Q. You accept, Mr. Lewis, that redeployment means the movement of staff by the permanent secretary internal to his ministry; you work from this work station or this worksite?

A. Not necessarily internal. Deployment is internally. Redeployment meant to move them because of their expediency, reclassified; in terms of their transfer, transfer also referred to their movement with funds personal to them. Therefore, because they wanted them moved expeditiously, they wanted redeployment.

Q. I put it to you, Mr. Lewis, that when you move a public servant or when a public servant, rather, is moved from one ministry, one substantive post to another ministry in another substantive post, that is a transfer.

A. Correct.

Q. And that transfer is effected by the Governor General on the instructions --

A. -- of the Public Service Commission.

Q. Yes.

Now I put it to you, Mr. Lewis, that -- perhaps, let me deal with reclassification. You accept that a public servant cannot be reclassified without their consent?

A. Yes, I would say that. Yes.

[39.] Mr. Lewis' evidence was that it was for the Ministries to which the Claimants were reassigned, to determine where to place them. (pages 21 – 22 Transcript)

Q. Okay. Now let's look at the paragraph below where you say, "Please be advised that this redeployment is with a view to the officers being subsequently transferred and reclassified to an appropriate post to which the receiving ministry/department shall decide." So what you're saying there is these people are being sent to these places and the places that they go to are going to decide where they put them?

A. Correct.

[40.] Mr. Lewis's evidence was that the redeployment was part of a 3-prong process. On cross-examination, he confirmed that the intention in relation to the Family Island Administrators was to effect a transfer to another Ministry. (pages 23 – 24 Transcript)

Q. Okay. Now let's go back to redeployment for a second. You say that in situations where there are exigencies sometimes people are redeployed from one ministry to another and not necessarily transferred; correct?

A. The transfer usually comes after.

Q. My point to you is this: When you wrote this memo, when you received your instructions it was made clear to you by the Minister that the First Plaintiffs were never to come back and serve as Family Island Administrators; correct?

A. Correct.

Q. Okay. And I put it to you that when they received these letters and received these directives it was with a view to transferring them out of the ministry, your ministry, to these other Ministries.

A. Correct.

[41.] On reexamination, Mr. Lewis reiterated that redeployment could be used as a preliminary step to a transfer and that the use of redeployment prior to a transfer was very common. (page 26 Transcript)

Q. And in your experience, Mr. Lewis, could you tell the court this redeployment, as you describe, the person going to a different ministry with the understanding that the transfer will follow?

A. That's correct.

Q. Is this common --

A. Yes, it is.

Q. --in the Public Service?

A. Yes.

Q. How common is it?

A. Very common.

Q. And in particular, in your Ministry?

A. That ministry, yes. All of the Ministries, yes.

.....

Q. So give me an example, Mr. Lewis, a Public Service officer can physically transfer to another Ministry?

A. Physically moved, yes.

Q. Physically moved without being administratively transferred. That can follow?

A. Yes.

[42.] What is instructive is the evidence of Mr. Lewis as it concerns the post of Family Island Administrators. His evidence is that although it is a common practice in the Public Service to redeploy a public officer with a transfer to follow, it was unusual for the post that the First Claimants occupied. His evidence is (page 26 Transcript):

Q. Is this common --

A. Yes, it is.

Q. --in the Public Service?

A. Yes.

Q. How common is it?

A. Very common.

Q. And in particular, in your Ministry?

A. That ministry, yes. All of the Ministries, yes.

Q. I am talking about your Ministry?

A. Well, yes. The thing with that particular Ministry, Family Island Administrators don't usually move at all. Once they got in they basically stay in for the duration of their tenure.

[43.] The second of the witnesses for the Defendant was Sandra Mae Rolle Jennings, Chief Executive Officer of the Ministry of Public Service, Team 4 with the portfolio for the Ministry of Agriculture, Marine Resources and Family Island Affairs. Her evidence by affidavit was that there was a reorganization process which included the named First Claimants. Her evidence was also that the intended redeployment of the Family Island Administrators was part of a three-prong approach, viz redeployment, transfer, and reclassification. Her evidence was that such an approach was "commonplace" in the Public Service and Mrs. Jennings sought to explain the difference in the terminology and stages.

[44.] As it concerned the First Claimants, the Family Island Administrators, Mrs. Jennings averred:

4. The Plaintiffs were among a number of persons recommended for a reorganizing exercise carried out by the Ministry of Agriculture, Marine Resources and Family Island Affairs sometime in November 2021. Instructions from Mr. Joel Lewis. Permanent Secretary Ministry of Agriculture, Marine Resources and Family Island Affairs were communicated to the Permanent Secretary of the Ministry of Public Service, Ms. Donella Bodie, in regard to the same.

5. The reorganizing process involving the Plaintiffs, as communicated by Permanent Secretary Lewis, was to be a three prong process of redeployment, transfer and reclassification of the officers.

.....

11. As stated above, the reorganization of the Plaintiffs is supposed to be a three prong process of redeployment, transfer and reclassification of the officers. To date, the redeployment process has been completed and the Ministry of Public Service is currently in the process of reclassifying the Plaintiffs in their new positions. Once the reclassification process is complete, the Plaintiffs will subsequently be transferred into the various Ministries and their salaries transferred to the respective ministry.

12. Based on the foregoing, there is need to clarify the misconception of the processes regarding the reorganizing exercise involving the Plaintiffs. It must also be noted that these reorganizing exercises are commonplace throughout the Public Service, and through my own knowledge, I know that the Plaintiffs were not the only Family Island Administrators affected by the said reorganizing exercise.

[45.] As it concerned the process, Mrs. Jennings averred:

6. For clarification, it is imperative that these three processes be fully explained, as there seems to be some confusion in regard to each in this matter.

7. The redeployment of an officer of the Public Service may be done at any time during the employment of that officer, without the approval or input of the officer by the Permanent Secretary of their respective Ministry. With redeployment, the Ministry of the Public Service may redeploy officers to various Ministries/Departments; however, the officer's salary remains on the budget of the Ministry from which they came until they are officially transferred. The officer's salary does not change.

8. Redeployment of an officer of the Public Service does not involve recommendation to the Public Service Commission or the Governor General. These powers are delegated to the Permanent Secretary, Ministry of the Public Service by *Article 110* of the *Constitution of the Commonwealth of The Bahamas* and reinforced by the *Public Service (Delegation Of Powers Order)*. Moreover, *Regulation 25(1)* of the *Public Service Commission Regulations* specifically outlines the procedure for the exercise of delegated powers and reads as follows:

*25. (1) Subject to any general or special directions of the Commission, empowered officers shall have power to make appointments to any established or un-established post the power to appoint to which has been delegated to them.*

True copies of Article 110 of *the Constitution*, the *Public Service (Delegation of Powers Order)* and *Public Service Commission Regulations* are attached hereto and marked "SRJ1" to "SRJ3" respectively.

9. The transfer of an officer of the Public Service, however, requires that where a ministry sees a need to fill a position, the said ministry will make recommendation to the Ministry of the Public Service for submission to the Public Service Commission. As noted by *General Order 600*, all transfers are made by The Governor General acting on the recommendation of The Public Service Commission. The definition of a transfer is also outlined in *Regulation 2* of the *Public Service Commission Regulations* and the procedure for transfer is found in *Regulation 24* of the said Regulations. Once a transfer occurs, the officer's salary is transferred to the receiving ministry's budget and the person is transferred to said ministry. True copies of *General Order 600* is attached hereto and marked "SRJ4"

10. In reclassifying an officer of the Public Service, the officer may remain within the same scale or is reclassified to a scale which is basically "on par" with each other (on par means that the salary in both posts/scales begins and ends basically at the same point).

[46.] On cross-examination, Mrs. Jennings was challenged on her evidence that the First Claimants "were among a number of persons recommended for a reorganizing exercise". (page 28 Transcript)

Q. But you have not identified anybody else who was the subject of this exercise; have you?  
A. No, sir.

[47.] Mrs. Jennings evidence was that she was not a part of the reorganization exercise and could not speak to it. At the date of the trial (September 29, 2023), Mrs. Jennings indicated that she could say nothing further about what had happened since the issue of the letter: (pages 33 to 34 Transcript):

Q. Now I'm putting it to go, you're seeing in this letter Ms. Collie is being directed to attend "the Ministry of National Security at 9:00 a.m. for additional information on your assignment."

You see that?

A. Yes, sir.

Q. Now, are you aware that up to today's date Ms. Collie has not received any additional information as referred to in this letter?

Are you aware of that?

A. No, sir.

Q. So you know nothing about current situations involving any of the First Plaintiffs right now?

A. No, sir.

Q. And you've received no instructions with respect to that?

A. No, sir.

....

Q. When you say at paragraph 11 -- we've just explored the fact that you do not know what is going on with the plaintiffs. You say, however, at paragraph 11: *"To date the redeployment process has been completed and the Ministry of Public Service is currently in the process of reclassifying the plaintiffs in their new positions".*

You can't really speak to that; can you?

A. Not at this time.

[48.] Regarding the 3-prong approach cited by Mrs. Jennings, Mrs. Jennings accepted that the only notification of the reorganization exercise given to the First Claimants was what was contained in the November 29, 2021, letter. Her evidence is that the Family Island Administrators could not be re-classified without their consent.

[49.] On re-examination, Mrs. Jennings confirmed that the First Claimants were "issued letters to return to their respective Ministries, and I understand that they all returned."

[50.] On re-examination and subsequent cross-examination, with leave of the court, Mrs. Jennings suggested that there was some movement in the 3-prong process: (pages 38 to 39 of the Transcript).

(Re-examination)

I'm going to take you back to paragraph 11,

.....

And I'm asking you, do you have knowledge, as asked by my Learned Friend, of the current process with regards to the plaintiffs?

A. Yes, there is something being done for the officers to be reclassified, redeployed and transferred; but I cannot speak specifically to that at this time.

.....

(Further Cross-examination, with leave)

Q. You stated in paragraph 11 -- do you have any information as to what positions you are talking about there?

A. I have information but at this time I cannot disclose it because the letters are not finalized. I therefore cannot speak to that at this time.

(Further Re-examination, with leave)

Q. Ms. Jennings, can you tell the court what letters you are speaking of, without going into any great detail. The letters that are not final.

A. The final letters for the officers with regards to redeployment, transfer and reclassification for the five officers.

[51.] Mrs. Jenning's evidence on further re-examination was that there was indeed some movement in the process as it concerned the First Claimants.

## ANALYSIS

[52.] The undisputed facts on the evidence, and agreed between the parties, was that letters were sent to the First Claimants, Family Island Administrators, advising of their reassignment to their previous Ministries. It is common among the parties that that letter was the first notice of any process involving a "redeployment" to their previous Ministry.

[53.] The Defendant's witnesses could not identify other public officers said to be part of a reorganization exercise involving a three-prong approach. I find, on the evidence, that the reorganization exercise involved only the First Claimants. The evidence is that they were to be moved "expeditiously" and they were moved to their previous Ministries.

[54.] It is agreed between the parties that a transfer is a movement from one substantive post in a Ministry to a substantive post in another Ministry. It is also my determination, for reasons earlier given, that a redeployment could involve a movement between Ministries if it is (1) a redeployment triggered by "a need for additional staff or staff movement" and/ or (2) a redeployment used in cases "pending official transfers".

[55.] Was this a redeployment triggered by "a need for additional staff or staff movement"? I find that it was not. On the evidence of the Claimants, the First Claimants were transferred from their former Ministries to the post of Family Island Administrators. The reassignment, termed "redeployment", was triggered by an instruction to move them out of that Ministry. This was not a request for a need of personnel by their previous Ministries. This was a direction to return the First Claimants to their former Ministries.

[56.] The removal of public servants from the position of Family Island Administrator was an uncommon occurrence, according to the testimony of the Defendant's witness. This action did not result from a reassignment initiated or requested by the Ministry of Public Service or by the Claimants' previous Ministries. The parties' evidence does not indicate any need for additional staff or staff movement within the relevant Ministries. The evidence further demonstrates that the First Claimants were summarily returned to their prior Ministries. It then became the responsibility of these former Ministries, which had initially transferred the First Claimants, to identify appropriate positions for them.

[57.] Was this redeployment pending official transfer or part of a three-pronged approach leading to an official transfer? When considering the use of "redeployment" in situations involving pending official transfers, the inclusion of the phrase "pending official" prior to "transfers" appears to clarify the specific context in which redeployment occurs.

[58.] The Bahamas Government Human Resources Policies provides that redeployment is used when additional staffing or staff movement is required, while transfer refers to relocation between Ministries, departments and approved authorities. Transfers follow consultation with the public officer, who retains the right to decline the transfer. Transfers are formalized through an official process involving appointment by the Governor General, acting on the advice of the Public Service Commission. This constitutes an "official transfer" and follows the designated "official process."

[59.] Since redeployment is utilized to address requirements for additional personnel or staff movement according to the Human Resources Policies, then in cases where transfer between Ministries is necessary, redeployment may be initiated as a prelude to, and during, the official transfer process. It is not inconsistent, when the policies are read together, that in cases requiring transfer between Ministries, redeployment may occur while the official transfer process is underway.

[60.] However, implementing redeployment "pending official transfer" without demonstrating a clear need for staff movement or additional personnel - and when the public servant's consent for official transfer has not been secured - is inconsistent with the policy provisions. Without proper consultation and commencement of the transfer process, an "official transfer" cannot be considered as pending. In such a case, there can be no redeployment pending official transfer. To give the term "redeployment pending official transfer" any other meaning would lead to an absurdity and would result in a practice that is not congruent with the rules and policies in place that govern transfers.

[61.] "Redeployment pending official transfer" cannot mean "redeployment and maybe a transfer." This is in the context of a move from one Ministry to another and form one substantive post to another. Otherwise, a redeployment, which involves moving an employee to a different role within a different Ministry in the Public Service, could be used under the guise that a transfer—a formal process—is imminent, thereby enacting the effects of a transfer without adhering to official procedures. This would allow the Public Service to implement the consequences of a transfer without completing its formal process. Such a practice could circumvent the protections afforded to public servants by established processes and regulations related to their movement within the service.

[62.] In the case before me, there was no rationale given for the purported redeployment save the Minister's instruction to remove the Family Island Administrators from their post. There was no evidence of requirements for additional personnel or staff movement. What is more, the evidence was that the Family Island Administrators were in limbo up to the date of the trial, almost 2 years after being reassigned. Save what had been written in their re-deployment letter, there was no evidence of anything "pending". They were not informed that there was any transfer or reclassification on the horizon. In any event, on the Defendant's own admissions, neither a transfer nor reclassification could take place without the consent of the Family Island Administrators.

[63.] I find that Mrs. Jenning's evidence, elicited through re-examination, that the process was moving is unconvincing. Her evidence under cross-examination was that she could not speak to the process and that she was unaware of the current situation of the Family Island Administrators. Given her confirmation that neither transfer nor

reclassification could take place without the consent of the First Claimants, it is puzzling that “the process of reclassifying the Plaintiffs” was being undertaken at the end of which “the Plaintiffs will be subsequently ‘retransferred’ into the various Ministries”. It is curious that there would be letters being finalized which would be “final letters for the officers with regards to redeployment, transfer and reclassification for the five officers”. If indeed such letters were being finalized after a near 2-year hiatus, it is difficult to see how a “final” letter on the 3-prong process could issue without the consent of the First Claimants. Such a claim rings hollow.

[64.] The Defendant submits that the “the reorganization exercise, which redeployed the First Plaintiffs, in the first instance, is a normal practice of the Public Service and was not *ultra vires* the Industrial Relations Act, Regulation 24 of the Public Service Commission Regulations, General Orders 500 and 600, or Article 34 of the Industrial Agreement”. The Defendant submits that that exercise was “within the day-to-day management and operation of the Public Service, reorganizing of officers is a commonplace and vital process in its continued growth, development and diversification”.

[65.] The Defendant’s own evidence is that the Family Island Administrators were moved “expeditiously” on the Minister’s instructions. I find that there was no overall reorganization exercise as the exercise was limited to the First Claimants. I find that there was no evidence of necessity in the receiving Ministries for additional staff or staff movement. No reason was advanced by the Ministry of Public Service for additional staff or staff movement in the affected Ministries. The Family Island Administrators were placed in their former Ministries and it was for those Ministries to decide what to do with them. I find that the real intention was to effect, in the words of the Defendant’s witness, “a retransfer”. This was clearly the goal of the alleged 3-prong approach.

[66.] Lastly, I consider Regulation 2 of the Public Service Commission Regulations provides that a transfer is the “conferment upon a public officer whether permanently or otherwise of some public office other than that to which the officer was last substantively appointed, not being a promotion”. In this case, the Family Island Administrators were being reassigned to “some public office other than that to which the officer was last substantively appointed, not being a promotion.” Indeed, the “redeployment” letter to Mrs. Turnquest extended best wishes to her on her “new assignment and career development.” It is my determination that the reassignment of each Five Family Island Administrator amounted to a transfer in all but name.

[67.] This Court finds that the Defendant's witnesses provided testimony that was frank and candid. Nevertheless, the evidence indicates an ill-crafted solution to support a decision to remove the First Claimants from their posts as Family Island Administrators. Regardless of how the letters addressed to the Family Island Administrators are characterized, this Court concludes that the First Claimants were, in effect, transferred rather than redeployed. Based on the evidence, I find that there was no *bona fide* "redeployment" and that the movement of the First Claimants from their Family Island Administrator Posts in the Ministry to various posts in their former Ministries was an attempted *de facto* transfer.

## ISSUE 2

*Whether such action was in breach of the Industrial Relations Act, the Public Service Commission Regulations (PSCR), General Orders and/or the Industrial Agreement signed between the Second Claimant and the Defendant and principles of natural justice and those of good industrial relations practice.*

[68.] I have found that the reassignment of the First Claimants amounted to a *de facto* transfer. The question now for determination is whether the *de facto* transfer was in breach of the Industrial Relations Act, the Public Service Commission Regulations, General Orders and/or the Industrial Agreement signed between the Second Claimant, BPSU, and the Defendant and principles of natural justice and those of good industrial relations practice.

[69.] I will first address the various pieces of rules and legislation and then the issue of natural justice and good industrial relations practice.

[70.] In considering Issue 1, it was necessary to note the status of the Industrial Agreement as binding between the parties and that its terms are deemed to be the terms of the contract of employment of the Family Island Administrators, subject to the prerogatives, powers and customary functions of the Public Service. It was also necessary to consider some of the relevant rules as it relates to transfers. I will make reference to those rules in the determination of this issue.

[71.] Regulations 22 to 24 of the Public Service Commission Regulations set out procedures for transfers. Regulation 22 (Procedure for transfers) and Regulation 23 (Procedure in cases of urgency) are not relevant for these purposes. Transfers are made by the Governor General acting in accordance with the recommendation of the Public Service Commission. Regulation 24 provides in part, as far as is relevant, that

The appointment (not being an appointment delegated by the Governor-General under Article 110 of the Constitution), promotion and transfer of public officers shall be made by the Governor General acting in accordance with the recommendation of the Commission and, subject to the provisions of regulation 23 of these Regulations the following procedure shall be followed ....

The rest of the regulation deals with particular situations such as a transfer in the case of a vacancy or creation of a new post.

[72.] Chapter 6 of the General Orders, Commonwealth of The Bahamas, deals with Transfers.

#### Chapter 6 – Transfers

##### General Orders

600: Transfers are made by The Governor General acting on the recommendation of The Public Service Commission.

601: Transfers shall be dealt with under the procedure for promotion when an increase of emoluments is involved (see Chapter 5) and under the procedure for appointments when there is no immediate increase in emoluments (see Chapter 2).

604: Only for the most exceptional reasons will the simple refusal by an officer of a transfer (with or without promotion) prejudice his prospects for further offers. An officer who receives an offer of transfer is at liberty to determine his acceptance or refusal entirely in the light of his own interests, although it would normally be desirable for him to follow up a refusal with an explanation of his reasons, which would afford some guidance in determining whether any, or what kind of, offer should be made to him at a later date.

[73.] The Bahamas Government Human Resources Policies provides that a transfer of a monthly paid staff is to be approved by the Public Service Commission:

At page 39 of 154:

#### TRANSFER

Transfer is the movement of staff between Ministries, departments and approved authorities (i.e. from one budget head to another).

The transfer of monthly paid staff must be approved by the Public Service Commission on the recommendation of the Ministry of the Public Service.

[74.] As noted before, the Claimants rely on the terms of a registered industrial agreement under the Industrial Relations Act. That registered agreement is “deemed to be terms and conditions of the individual contract of employment”. The Industrial Agreement between the Government of The Commonwealth of The Bahamas and The Bahamas Public Service Union makes provisions for the process of a transfer.

Article 4.20 TRANSFER The term 'Transfer' shall mean: deployment from one Ministry/Department/Budget Head to another with or without change in status.

Article 34.3 The Union recognizing the Employer's need to ensure the optimum use of his human resources for an efficient and effective operation, agrees that transfer from one ministry/department to another is a normal management process. The Employer shall give notice to the employee and the Union of all transfers prior to the transfer taking effect as follows:

intra-island transfer five (5) working days  
inter-island transfer fifteen (15) working days

Article 34.4 An employee may decline a transfer that also includes a geographical posting, if:

- (a) it would cause under hardship on his/her family
- (b) the transfer is in violation of Article 12.1 of this Agreement; or
- (c) ill health, documented by a medical doctor appointed by the Employer, is evidence.

Article 34.5 A transfer within in [sic] the same geographical location (island) shall be considered as a part of normal management process and shall not be impeded by an employee declining this posting.

[75.] Considered together, the Public Service Commission Regulations, the Human Resource Policies, General Orders and the Industrial Agreement recognize that certain

procedures ought to be observed in the event of a transfer of a public servant. Indeed, the parties are agreed that a transfer triggers certain formalities. I do not propose here to set out the procedures or formalities of a transfer but will make observations of features of the process and formalities to be undertaken. I draw the following conclusions from the provisions noted and from the evidence of the parties:

1. Transfers of public officers are made by the Governor General, acting on the recommendation of the Public Service Commission. The procedures for such transfers are set out in the Public Service Commission Regulations and further detailed in the General Orders of the Commonwealth of The Bahamas. The process varies depending on the reason for the transfer and depends on whether the transfer involves an increase in emoluments (treated as a promotion) or not (treated as an appointment).
2. The transfer of monthly paid staff specifically requires approval from the Public Service Commission, based on the recommendation of the Ministry of the Public Service
3. Public officers have the right to accept or refuse a transfer offer. The rules are also explicit that a simple refusal should not, except in the most exceptional circumstances, prejudice future prospects. If an officer refuses a transfer, in order to guide future decisions, it is recommended that the officer provide reasons for refusal.
4. The Industrial Agreement between the Government and The Bahamas Public Service Union is incorporated into individual contracts of employment and sets out additional requirements for transfers. These include:
  - i. Notice periods for transfers (five working days for intra-island, fifteen for inter-island).
  - ii. The right of employees to decline transfers involving geographical relocation under certain conditions (family hardship, violation of agreement terms, or documented ill health).

[76.] In summary, the transfer process within the Bahamian Public Service is regulated through statutory provisions, administrative directives, and a collective bargaining agreement. This framework provides oversight of transfers, safeguards employee rights, and emphasizes procedural fairness and transparent communication.

[77.] It is my determination that the process in the instant case was flawed.

[78.] On November 29, 2021/December 21, 2021, the Family Island Administrators were given notice to move from their post on one island to another with immediate effect. The evidence of Mr. Lewis, witness for the Defendant, is that notwithstanding the contents of those letters as previously outlined, it should have been reasonably anticipated by the Family Island Administrators that they would be afforded an opportunity to settle their affairs on their respective Family Islands prior to reporting to the various Ministries on another island. The Court does not accept this evidence. The letters issued on November 29, 2021, unequivocally instructed each of the First Claimants to report to their respective former Ministries at 9:00 a.m. on the date of the letter i.e. the same day. The letter issued on December 21, 2021, informed Mrs. Turnquest that her deployment took effect the following day. The language of the letters was clear and appeared to leave no room for discretion. There was no notice so that the Family Island Administrator could complete tasks and prepare to hand over to a successor. In this case, the Family Island Administrators were entitled to notice under the Industrial Agreement.

[79.] The Claimants submit that the terms of the letter were unreasonable. In the context of the Industrial Agreement and in the context that the move to be undertaken was from one island to another and from one Ministry to another, I accept the submission of the Claimants. An established principle of administrative fairness is that adequate notice must be provided to allow affected parties to prepare for significant changes in their employment circumstances. Inadequate notice is not only unfair, but also unreasonable.

[80.] Mr. Joel Lewis was the only witness that had some involvement with the process from the inception. There is no evidence that Mr. Lewis or anyone else interacted with the Family Island Administrators or told them of their rights or options on the issuance of the letters. Those rights and options included the right to notice and the option to refuse a transfer. In this case, the Industrial Agreement gave the Family Island Administrators the right to decline a transfer in certain conditions. The General Orders provides that an officer “is at liberty” to refuse the offer of a transfer.

[81.] No communication or consultation was carried out with the Family Island Administrators as captured and intended by the registered Industrial Agreement or the General Orders and the PSCR. The First Claimants had no knowledge that the 29<sup>th</sup> November 2021/21<sup>st</sup> December 2021 move was pending until a letter of the same date was issued. Mrs. Jennings’ evidence was that letters were being finalized to complete a process including reclassification and transfer, despite her acceptance that reclassification and transfer could not be done without the consent of the Family Island Administrators. She has had no interaction with the Family Island Administrators. The letters that Mrs.

Jennings referred to, are, for all intents and purposes, being finalized without the input of the Family Island Administrators.

[82.] It is my determination that the purported redeployment, which was a *de facto transfer*, did not comply with the notice requirements stipulated in the Industrial Agreement, which is binding on the Defendant. It is this Court's determination that the directive for an immediate reassignment to a different island and to a different Ministry constituted a direct breach of the contractual terms of the Family Island Administrators.

[83.] The Defendant submits that "the present action sets a dangerous precedent that seeks to undermine the entire prerogative, powers and customary functions of management pertaining to the operation of the Public Service, especially in the areas of the deployment and redeployment of officers."

[84.] It is my view that the prerogatives of the Defendant are not under challenge. However, it is for the Defendant to abide by the rules "pertaining to the operation of the Public Service". For the reasons given above, I have already determined that the so-called redeployment was in essence an attempted *de facto* transfer. I now find that it was unlawful. Transfer of a public servant is not a unilateral determination. It requires communication and consent. A transfer of a public servant is a considered process filtered through the Public Services Commission and finalized on the fiat of the Governor General. It is my view that to ignore the rules and regulations governing the Public Service would serve to "undermine the entire prerogative, powers and customary functions of management". The rules and regulations work to establish parameters not just for the Employer but for the Employees as well.

[85.] There was a set process in place. The First and Second Claimants did not benefit from the safeguards of the process. The transfer process is not unknown to the parties. The evidence is that the Family Island Administrators, had shortly before the events unfolded in November 2021, been transferred to those posts by way of the relevant process, ending with the fiat of the Governor General. They were entitled to expect that a similar process would be followed if their recent transfers were to be undone by a "retransfer"- which was the consequence and admitted goal of the purported redeployment, said to be part of a 3-prong approach.

[86.] The parties are agreed that a transfer is effected by the Governor General on advice of the Public Services commission. This means that a Permanent Secretary may not, by letter, bring about the effect of a transfer of a public servant. Such a letter is *ultra vires* the governing rules and regulations.

[87.] It is this Court's determination that the redeployment process was an unlawful transfer in law. I find that the Defendant was in breach of its statutory duty and contractual obligations to the Family Island Administrators.

## NATURAL JUSTICE

[88.] The Claimants submit that the Defendant was in breach of the principles of natural justice. The Claimants rely on the cases of **Ridge v Baldwin [1964]AC40** and **Kayla Ward et al v. The Gaming Board for The Bahamas 2017/CLE/gen/01506**.

[89.] In **Ridge v Baldwin**, the House of Lords examined the dismissal of the appellant, a chief constable, who was removed from office by a tribunal. He was dismissed without being informed of the specific charges and without being provided an opportunity to respond. The court determined that the principles of natural justice were mandatory in circumstances where a tribunal renders a decision of this nature. Natural Justice principles require both sufficient notice of the allegations and a fair hearing, thereby allowing the individual facing dismissal to address the charges.

[90.] In **Kayla Ward et al v. The Gaming Board for The Bahamas**, the Claimants were former employees of The Defendant. Their employment had been terminated. The court had to consider whether the terminations constituted redundancy or termination without cause, and whether the employer had followed the correct legal procedures. The court found that, in respect of one set of employees, the termination was due to redundancy rather than termination without cause, and that the employer failed to follow the proper redundancy procedures as required by law. Those procedures included the obligation to consult with the union or employee representatives.

[91.] In **Kayla Ward et al v. The Gaming Board for The Bahamas**, the learned judge, the Honourable Madam Justice Indra H. Charles, opined at paragraphs 68 and 69 of the judgment as follows:

[68] As Mr. Munroe QC correctly pointed out, contrary to the position in Jamaica, the right to consult with the Plaintiffs' bargaining agent being the Bahamas Public Services Union is etched in our Act. **The upshot of this is that failing to consult with the Plaintiffs' Bargaining Agent or, if none exists, their representative, is tantamount to a breach of natural justice.**

### **The evidence**

[69] In accordance with the 2017 Act and the Industrial Agreement, the Defendant was to consult with the Plaintiffs' Bargaining Agent or if none exists, their representatives, before making them redundant. It is beyond dispute that such consultation never took place. No evidence was led as to whether the Minister of Labour was ever consulted.

[Emphasis supplied.]

[92.] The principles of natural justice require that affected individuals be given adequate notice of decisions affecting their rights, an opportunity to be heard, and a fair and impartial process. In the employment context, these principles are reflected in statutory and contractual procedures governing consultation and decision-making.

[93.] In this case, it is difficult to see how the process that was undertaken by the Defendant could accord with the principles of natural justice. The letters were directives to leave a post with immediate effect. There was no opportunity for a considered response. By failing to notify the Family Island Administrators and by failing to follow the prescribed procedures, the Defendant denied the Family Island Administrators the opportunity to be informed of, and to respond to, the proposed changes to their employment. This lack of notice, information and participation constitutes a breach of natural justice, as it deprived the Family Island Administrators of a fair process and the ability to protect their interests.

[94.] I find that the process undertaken in the “redeployment exercise” breached the principles of natural justice.

## **ISSUE 3**

*Whether the Defendant's action without prior consultation with the Second Claimant (BPSU) constitutes a violation of their statutory, contractual and constitutional rights?*

[95.] At the outset, I note that there was no discreet pleading of a breach of the Constitution or of a particular article of the Constitution notwithstanding a declaration sought for “constitutional, statutory, and contractual right to freedom of assembly and association and trade union representation at the workplace.” The Claimant's witnesses also made generic references to breaches of constitutional rights without condescending to detail. At trial, the Claimants cited The Constitution of the Bahamas, Article 108/110, merely to show that only the Governor General, on the advice of the Public Service Commission, can appoint, remove, or transfer public officers and that that power was non-delegable. Counsel for the Claimants advanced no substantial submission on the breach of an Article of the Constitution. In any event, the Claimants are bound by their pleading. In

the circumstances, there is nothing before me which can found a declaration of a violation of a constitutional right to freedom of assembly and association and trade union representation at the workplace.

[96.] In coming to my determination on Issue 2, it was my conclusion that the terms of the Industrial Agreement which were incorporated into the employment contract of the First Claimants were breached. The remaining questions concern whether there was a breach of any statutory or contractual right of the Trade Union BPSU, the Second Claimant, and whether there is a duty to consult.

[97.] The Claimants submit that the Defendant “unreasonably and unlawfully failed to consult” with the Second Claimant regarding the reorganization exercise and that the Defendant “is obliged to engage meaningfully and consult with the BPSU on behalf of members of its bargaining unit.” The Claimants also contend that the BPSU was entitled to notice of the reorganization exercise.

[98.] The Industrial Agreement impacts not only the employment terms but also delineates the operational framework governing the relationship between the Government of The Commonwealth of The Bahamas and the Bahamas Public Service Union once the agreement is effective. The following provisions are germane to the issues of notice and consultation.

Article 34.3 The Union recognizing the Employer’s need to ensure the optimum use of his human resources for an efficient and effective operation, agrees that transfer from one ministry/department to another is a normal management process. The Employer shall give notice to the employee and the Union of all transfers prior to the transfer taking effect as follows:

intra-island transfer five (5) working days  
inter-island transfer fifteen (15) working days

[99.] Matters of communication and consultation are set out in the Code of Industrial Relations Practice, the Third Schedule to the Industrial Relations Act. Articles 35, 36 and 45 of the Code provide:

35: Management and trade unions should co-operate in ensuring that effective communication and consultation take place so as to promote efficiency, understanding and the individual employee's sense of satisfaction and involvement in his job.

36: Communication and consultation are particularly important in times of change. The achievement of change is a joint concern of management and employees and should be carried out in a way which pays regard both to the efficiency of the undertaking and to the interests of employees. Major changes in working arrangements should not be made by management without prior discussions with employees or their trade unions.

45: Consultation means jointly examining and discussing problems of concern to both management and employees. Consultation between management and employees or their trade union representatives about operational and other day-to-day matters is necessary in all establishments. Large establishments should have systematic arrangements for management and trade union representatives to meet regularly.

[100.] The Claimants also rely on the case of **Kayla Ward et al v. The Gaming Board for The Bahamas**, cited above.

## ANALYSIS

[101.] The Code of Industrial Relations Practice, the Third Schedule to the Industrial Relations Act, is premised on the importance of communication and consultation between management and employees or their union, especially in times of change or major operational adjustments. It emphasizes that *major changes, including transfers, should not occur without prior discussion with employees or their union representatives*, and that systematic consultation is necessary in all establishments.

[102.] The registered binding agreement, under the Industrial Relations Act, also provides for notice to be given to the employee and the Union *prior to the transfer taking effect*.

[103.] Both parties agree that the Industrial Agreement are binding (per Article 41 of the Industrial Agreement). The Defendant does not deny that there was no consultation or notice given. However, the Defendant prays in aid management prerogative.

[104.] The evidence of Kimsley Ferguson, President of the BPSU, is:

5. The Defendant did not inform, and has not to the date hereof informed, the 2<sup>nd</sup> Plaintiff of any situation giving rise to its contemplation of the said

“*redeployment*”/transfer of the 1<sup>st</sup> Plaintiffs, and the Defendant failed to provide the 2<sup>nd</sup> Plaintiff with the requisite written notice and particulars thereof. The Defendant has since advised the 2<sup>nd</sup> Plaintiff that the 1<sup>st</sup> Plaintiffs’ purported “*redeployment*”/transfer is not up for discussion, and that the Plaintiffs all had to accept it. However, the Defendant has failed to provide any substantive reasons or justification for the purported “*redeployment*”/transfer of the 1<sup>st</sup> Plaintiffs, or the facts relevant thereto, which is particularly egregious considering the oppressive and unlawful manner in which the Defendant has carried out the said purported “*redeployment*”/transfer.

...

7. The Defendant is required to put the 2<sup>nd</sup> Plaintiff in a position, through the proper consultation and the provision of meaningful, factual, substantive information, to communicate to its members the reasons for any lawful “*redeployment*”/transfer exercises. By acting in breach of its duty to consult with the 2<sup>nd</sup> Plaintiff, the Defendant has unreasonably and arbitrarily destabilized industrial relations between the parties, and unfairly and oppressively prevented the 2<sup>nd</sup> Plaintiff’s members from properly understanding why their professional and personal lives are being upended. By this action the Plaintiffs seek vindication of the letter and spirit of their constitutional, statutory, and contractual rights, which rights underpin good industrial relations practice nationally.

[105.] The Defendant submits that the move was to be a redeployment and that may be by way of explaining the lack of consultation. However, the terms of the Industrial Agreement, which is admittedly subject to the customary functions of the Public Service, reflect that a redeployment is a movement within the same department and a transfer is movement from one Ministry to another. In that case, the Industrial Agreement contemplates that employees and the Union would be notified on a movement *between Ministries*. That is the spirit of the agreement. What is clear from the Industrial Agreement is that movement between Ministries triggers a notification to the employee and to the Union. What is also clear is that no notice was given pursuant to that agreement even if the Defendant maintained that the movement was a redeployment between Ministries.

[106.] In any event, I have found that the purported redeployment was a *de facto*, and unlawful, transfer. Transfers attract notices under the Industrial Agreement.

[107.] As examined in **Kayla Ward et al v. The Gaming Board for The Bahamas**, the Industrial Relations Act, which includes a reference to its Third Schedule, The Industrial Code of Practice, imposes specific procedural obligations on employers particularly in the context of collective employment rights. One such obligation is the requirement for consultation with appropriate representatives, including recognised bargaining agents, especially when an employer proposes to implement measures such as movement to new roles and to new geographical locations.

[108.] By Articles 34 – 36 of Third Schedule, it is contemplated, and mandated, that communication and consultation is to take place and particularly in times of change. Specifically, Article 36 provides, in part:

Major changes in working arrangements should not be made by management without prior discussions with employees or their trade unions.

[109.] In the case before me, the mis-characterized redeployment of Family Island Administrators involved the termination of their duties in their existing positions to which they had been newly-appointed, and their engagement in new roles at different Ministries at a different geographical location. It seems to me that such an alteration of the terms of work of several persons would amount to a “major change in working arrangements” that attracted communication and consultation under the Industrial Relations Act.

[110.] I find that the action of the Defendant in “redeploying” the First Claimants falls squarely within the scope of the statutory consultation requirements and the contractual notice obligations.

[111.] Failure to consult with the BPSU, as occurred in the present case, constitutes a breach of statutory duty. Failure to give notice to the Union, in the present case, constitutes a breach of contractual duty.

[112.] Counsel for the Claimants submits that the failure to consult is also not within the letter and spirit of the Act and the Agreement and offends the principles of good industrial relations practice. There is merit in that submission. In considering the provisions as they relate to communication and consultation, it becomes apparent that the consultation requirement is not a mere formality but a substantive obligation designed to protect employees’ interests and to promote industrial harmony. The promotion of industrial harmony is in the interest of both employer and employee.

[113.] In the context of the redeployment of Family Island Administrators, the Defendant’s failure to engage in communication and meaningful consultation with the BPSU deprived the BPSU of their statutory rights and undermined the collective bargaining process.

[114.] In **Kayla Ward et al v. The Gaming Board for The Bahamas**, the Court found that the employer’s failure to consult with the union or employee representatives was a breach of natural justice and statutory requirements.

[115.] In this case, the Second Claimant, BPSU, was never notified of pending changes. The failure to consult also meant that BPSU was never given the opportunity to make representation on behalf of the First Claimants. The very role of the Second Claimant, BPSU, is as “bargaining agent of and for” the First Claimants. They are so recognized by virtue of the Industrial Agreement with the Defendant. By acting without consultation, and in effecting the actual movement of the First Claimants without reference or regard to the Second Claimants, the Defendant acted in breach of the rules of natural justice. The Second Claimant was not given an opportunity to be heard.

[116.] For the reasons rehearsed above in relation to the First Claimants, I find that there was a breach of natural justice in the process carried out as it related to the Second Claimant

## CONCLUSION AND REMEDIES

[117.] In this instance, where an employer fails to comply with mandatory statutory and contractual processes, affected employees and their union are entitled to seek remedies, including declarations of breach and damages. I have found that the Defendant is in breach of the statutory and contractual obligations to both the First Claimants and the Second Claimants as detailed above. I have also found that the Defendant is in breach of the principles of natural justice. The combined effect of these breaches is to render the purported redeployment of Family Island Administrators unlawful. I have found that the redeployment was, in substance, a *de facto* transfer unlawfully carried out.

[118.] The Claimants are entitled to seek remedies, including declarations of breach and damages.

[119.] The Claimants have sought various declarations. I must consider the nature of the declarations appropriate in this instance given my findings and determinations in law. In this regard, the Privy Council judgment in **McLaughlin v. Governor of the Cayman Islands [2007] UKPC 50** is instructive. The appeal before the Privy Council addressed the issue of the appropriate compensation for Dr. McLaughlin, who was dismissed from the Government service of the Cayman Islands. Dr McLaughlin had held a public office and his dismissal (or purported dismissal) had been effected in breach of the rules of natural justice and in breach of regulation 29 Public Service Commission Regulations. The dismissal was held to be unlawful. The Privy Council had to consider the propriety and effect of the declaration granted by the first (of two) Courts of Appeal that “the decision to dismiss Dr. McLaughlin and his dismissal were void.”

[120.] Lord Bingham of Cornhill at page of the court's judgment determined, at page 14:

It is a settled principle of law that if a public authority purports to dismiss the holder of a public office in excess of its powers, or in breach of natural justice, or unlawfully (categories which overlap), the dismissal is, as between the public authority and the office-holder, null, void and without legal effect, at any rate once a court of competent jurisdiction so declares or orders. Thus the office-holder remains in office, entitled to the remuneration attaching to such office, so long as he remains ready, willing and able to render the service required of him, until his tenure of office is lawfully brought to an end by resignation or lawful dismissal.

[121.] Lord Bingham of Cornhill concluded, at page 17:

In its judgment under appeal the Court of Appeal sought to re-write its first judgment by, in effect, substituting "unlawful" for "void". But the expression "void" was apt and in no way doubtful in its meaning, and the change of language does not alter the legal result: whether described as "void" or "unlawful" the decision to dismiss and the dismissal were without legal effect.

[122.] In this case, I have found that the action of the Defendant was not a redeployment and concluded that the reassignment amounted to an unlawful transfer. I have also determined that, in this case, the Defendant acted in breach of natural justice. Accordingly, I therefore hold that the purported redeployment of the First Claimants are null, void and without legal effect. The Claimants are entitled to the declarations that will be made the subject of this Court's Order.

[123.] Due to the passage of time, I refrain from making an order requiring the Defendant to return the First Claimants to their posts at this time. It is unclear whether such a return is feasible or practicable or is to be addressed by way of compensation in damages. I invite the parties to make submissions in that regard.

[124.] The parties are also directed to make submissions on damages according to the timetable directed by the court. The court will hear the submissions of the parties on May 14, 2026.

## **COSTS**

[125.] The Claimants have been successful in their suit. Taking into account the provisions of Part 71, CPR and in particular the provisions of Part 71, Rule 71.6, I find no reason to depart from the general rule that the unsuccessful party should pay the costs of the successful party. Therefore, in this matter, the Defendant shall pay the Claimants' costs of and occasioned by this action, such costs to be assessed by a Registrar, if not agreed.

## **ORDER**

[126.] The order and directions of this Court are as follows.

1. This Court makes the following Declarations THAT:

(i) Pursuant to and in accordance with the letter and spirit of Regulation 24 of the Public Service Commission Regulation (PSCR), General Orders 500 and 600, and Article 34 of the Industrial Agreement, the First Claimants, having been promoted and appointed to the office of Family Island Administrator, by Order of His Excellency the Governor General acting in accordance with the advice of the Public Service Commission, and deployed by the Defendant to their respective Family Island Districts, were at all material times and remain the duly appointed holders of the substantive office of Family Island Administrator so deployed.

(ii) The purported redeployment of the First Claimants was carried out by the Defendant otherwise than in accordance with the letter and spirit of the Act, Regulation 24 of the PSCR, General Orders 500 and 600, Article 34 of the Industrial Agreement, the principles of natural justice, and the principles of good industrial relations practice and is null, void, and of no effect.

(iii) The letters issued by the Defendant to the First Claimants, dated the 29th day of November A.O. 202 I, under the hand of the Permanent Secretary in the Ministry of the Public Service, purporting to "redeploy" the First Claimants from the Ministry of Agriculture, Marine Resources and Family Island Affairs, where they each served as duly appointed Family Island Administrators deployed in their respective Family Island Districts, to various other Ministries, were ultra vires the Act, the PSCR, General Orders, the Industrial Agreement, and were unreasonable and unlawful.

(iv) The Defendant must provide the Second Claimant and any member of its Bargaining Unit with prior reasonable notice of the nature, scope, and expected duration of any transfer of staff in accordance with the Industrial Agreement.

(v) The Defendant is bound by the Act, the PSCR, General Orders, the Industrial Agreement the principles of natural justice, and the principles of good industrial relations practice to reasonably and properly consult with the Second Claimant on behalf of affected members of its Bargaining Unit regarding decisions which result in major changes in working arrangements for members of its Bargaining Unit.

2. The Court reserves the questions of reinstatement and damages to be determined after further submissions of the parties.

3. The Defendant shall pay the costs of the Claimants, such costs to be assessed by a Registrar, if not agreed.

**Dated this 20<sup>th</sup> day of February 2026**



***Carla D. Card-Stubbs, J***

Court