

SHOULD THE IDT HAVE JURISDICTION IN REDUNDANCY CASES?

From all indications, it appears that the trade union movement does not consider the Judicial Review court's decisions in the cases of **Chartermagnates Limited v The Industrial Disputes Tribunal and Norma Roberts AND Cable and Wireless Jamaica Limited v The Industrial Disputes Tribunal and Winston Sewell** handed down on February 14, 2020, to be love letters for workers. The cases which sought to impugn decisions of the Industrial Disputes Tribunal (IDT) which were favourable to employees, in effect states that the IDT does not presently have the power to adjudicate in redundancy related disputes, since such matters do not constitute an "industrial dispute" within the meaning of the **Labour Relations and Industrial Disputes Act** (LRIDA).

In summary the rationale of the court in coming to its conclusion is that the LRIDA must explicitly provide the IDT with jurisdiction to hear such cases, especially since the **Employment (Termination and Redundancy Payments) Act (ETRPA)** already provides an avenue for such matters to be addressed through the conventional courts. Further, since the LRIDA is a legislation enacted later in time than the ETRPA, this matter should have been frontally addressed, if indeed it was Parliament's intent to endow the IDT with this authority.

On the other hand it should be noted that, in 2010 the LRIDA was amended to provide an avenue for non-unionised employees to pursue industrial disputes relating wholly to the termination or suspension of employment or any matter affecting the rights and duties of any employer or any worker at the IDT. These so called "disputes of rights" are said to encompass existing rights accorded to an employee which arises either through statute or by negotiated contract. If this proposition is accepted, it would mean that the Minister of Labour and Social Security would not be acting ultra vires in referring disputes related to redundancy claims to the IDT, since such issues could fall under the rubric of statutory rights.

Interestingly, in October 2019, another decision of the Judicial Review Court, appears to have come to the opposite conclusion than in the abovementioned cases. In **Advanced Farm Technologies Jamaica Limited v Minister of Labour and Social Security** the court was asked to negate the Minister of Labour's reference of a dispute to the IDT, to settle issues surrounding the termination of a worker's employment on the basis of redundancy. In that case, when a similar question was raised as to scope of the Minister's powers, the court ruled that in its view there was nothing in the definition of "industrial dispute" prescribed for non-unionised workers which precluded the IDT from addressing the concerns and claims of redundancy payments.

As it currently stands, there are three decisions emanating from courts of similar hierarchical jurisdiction, which stand at variance with each other ostensibly on the same issue. This has the effect of creating uncertainty as to the state of the law in a pivotal area of labour and employment jurisprudence, especially in the context of the social and economic upheavals brought on by the COVID-19. It is understood that the cases are now being appealed and of course, a pronouncement from the Court of Appeal, will no doubt assist in clearing the legal cobwebs surrounding this concern. However one thing which was clear in all three

judgments, was the fact that the courts sought valiantly to ascertain the “intent of parliament” in reaching its conclusion. It is not the role of the judiciary to formulate policy or create the legislative provisions, but rather to interpret it. The former roles of necessity based on our system of government must rest with the Executive and the Legislature.

A review of the Hansard of the Houses of Parliament, in respect of the 2010 LRIDA amendment appears to point to the Legislature at the very least contemplating that rights disputes, similar to the current matter should have the ear of the IDT. The parliamentary debates showed that there was concern raised that the courts may be somewhat legalistic in addressing these matters as well as possibly encumbered by the volumes of its caseloads. Thus it was said that the IDT presented a speedier and specialized forum to deal with such matters, in the interest of all affected parties.

I believe the real question to be addressed should therefore be not whether the IDT has the power to address redundancy issues, but rather, should the IDT be vested with this power? In other countries, such as Trinidad and Tobago, Barbados, Antigua and Barbuda and the United Kingdom, the specialized employment adjudicatory bodies such as Industrial Courts and Employment Tribunals (via explicit statutory provisions) have been bestowed with such jurisdiction. Should Jamaica’s Cabinet positively consider this approach, we would therefore not be reinventing the wheel. The question of whether the IDT in its current configuration possesses the capacity to undertake this and other such matters, would of course be a matter to be fully reviewed, and a policy decision made following meaningful tripartite consultations. A unique framework would then have to be established, taking into account the peculiarities of the local industrial relations history and practice.

This current issue is however largely symptomatic of a far more pressing problem that unfortunately has not been purposefully and holistically addressed by our policy makers over the years. The cracks in the legislative and administrative structures which underpin the labour and employment operations in Jamaica are showing and are threatening to become craters. They are in dire need of review, and all the more as the country seeks to get on the path to full recovery from the Covid Pandemic. It was Winston Churchill that said “never let a good crisis go to waste”. This present conundrum offers us the opportunity to rethink and pivot to create a more modern system that adequately meets the needs of the country. It is hoped that the requisite will be summoned by all stakeholders to start and complete this essential process.

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