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COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
IndTribApp & CAIS No. 48 of 2019

Brenda Bastian
Appellant
and

Perfect Luck Employer (No. 1) Limited
Respondent

(Substantive Appeal)

Before: The Hon Mr Justice Isaacs, JA
The Hon Mr Justice Jones, JA
The Hon Mr Justice Evans, JA

Mr Obie Ferguson, Counsel for Appellant
Mr Ferron Bethell, with Ms Camille Cleare, Counsel
for Respondent

11 July 2019

1 The oral judgment of the court was delivered by
2 Isaacs, JA:

of 3 The appellant appeals from that part of the order
4 Acting Vice-President Derrence Rolle Davis (the "VP") dated
5 26th February, 2019, whereby he ordered:

6 "That the Originating Application filed herein be
7 dismissed forthwith under S.58 of the Industrial
8 Relations Act. It is unnecessary since 4 days
9 pay would amount to \$400 plus and the refusal of
10 two weeks pay is noted which is in excess of the
11 (4) four days' pay on suspension. The Court
12 agree that this matter is trivial and unnecessary
13 or undesirable in the public interest."

order 14 She asked that we grant an order that the VP's
15 be varied and/or set aside and be remitted back to the
16 Industrial Tribunal for hearing of the Originating
Application 17 in accordance with rule 10 of the Rules of the Industrial
18 Relations Act (Tribunal Procedure) Rules 2010.

19 The grounds of appeal are as follows:

20 "1. The Acting Vice President misdirected
21 himself and erred in law in failing to recognize
22 that the Tribunal is only empowered to deal with
23 disputes which have been referred to it by the
Minister of Labour pursuant to section 72 or 73
of the Industrial Relations Act on the 25th
October, 2017 which was received by the Tribunal
on the 16th November, 2011.

"2. The Acting Vice President misdirected himself
and erred in law in failing to recognize that it
cannot go behind the Minister certificate of
referral and vary what was referred and what he

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is statutory bound to consider and determined
pursuant to sections 55A and 55B of the
Industrial Relation Act, 2017.

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"3. The Acting Vice President erred in law in not

1 "recognizing that it was empowered to deal with
2 both the suspension without pay and breach of the
3 Appellant's contract of employment and was not
4 empowered to deal only with suspension without
5 pay.

6 "4. The Acting Vice President came to conclusion
7 without the Appellant giving evidence."

8 The trade dispute that was referred by the
9 Minister
10 to the tribunal on the request of the appellant was dated
11 4th
12 July, 2017. The appellant's Originating Application is
13 dated
14 19th December, 2017, and at Item 11, titled, "Please explain
15 to
16 the grounds for your Application below. It will be helpful
17 to
18 the Tribunal if you can give details of the reasons for the
19 application; you will be able to amplify them at the
20 hearing",
in
manner
the appellant wrote, "The employer suspended me without pay
breach of my contract of employment, allegedly for the
in which I spoke to the Executive Housekeeper."

21 The appellant submitted that the above issues were
22 the only issues that the tribunal was empowered to hear and
23 determine pursuant to section 55A and 55B of the Industrial
24 Relations Act and the referral of the trade dispute to the
25 industrial tribunal by the minister dated 24th October,
26 2017,

21 pursuant to 72 and 73 of the Industrial Relations Act.

22 "73. Where the Minister has endeavoured under
23 subsection (3) of section 69 to secure a
24 settlement of a trade dispute within a
25 non-essential service and such settlement has not
been reached within the period of sixteen days
mentioned in that subsection or, as the case may
be, any longer period agreed upon by the parties
pursuant to that subsection, then the Minister

1 "may if, in his opinion the public interest so
2 requires, refer the dispute back to the parties
3 for further consideration; and where there is a
4 failure to reach a settlement within such
5 reasonable period, after such a reference, as may
6 be determined by the Minister, the party
7 reporting the dispute shall notify the Minister
8 of such failure and the Minister shall forthwith
9 refer the dispute to the Tribunal."

10 Rule 3 of the Industrial Relation (Tribunal
11 Procedure) Rules 2010, ("the Rules") states inter alia:

12 "(1) Where the Minister has referred a dispute to
13 the Tribunal pursuant to sections 72 or 73 of the
14 Act, the Applicant shall within fourteen days of
15 receiving notice of the referral present to the
16 Secretary an Originating Application in Form A in
17 the Schedule, which shall be signed by the
18 Applicant.

19 "(2) The Originating Application shall contain -

20 "(a) the name and address of the Applicant;

21 "(b) the name and address of the Respondent;

22 "(c) the relief sought; and

23 "(d) the grounds, with particulars thereof,
24 upon which the relief is sought."

25 Rule 9 of the Rules provides:

26 "(1) the Tribunal may at any time before the
27 Hearing of an Originating Application, on the
28 application of a party made by Notice to the
29 Secretary or of its own motion, determine any
30 issue relating to the entitlement of any party to
31 bring or contest the proceedings to which an
32 Originating Application relates."

33 We are satisfied that the tribunal on its own
34 motion

35 has taken the position that inasmuch as the claim in the

25 Originating Application mentions only the suspension of four

1 days, notwithstanding that it also says in breach of the
2 employment contract, meant that when the appellant was
offered 3 two weeks' pay that that was in excess of what was being
4 claimed by the appellant in her Originating Application.

5 During the course of the submissions, Mr. Ferguson
6 asked the question why then did the employer offer 14 days?
7 That may be answered by the appellant's original complaint
8 that she was suspended without pay for ten days and then
9 suspended without pay for four days. In an effort to arrive
10 at an accommodation, the sum of 14 days may have been
offered 11 to that end.

12 Notwithstanding their motives, the fact is that
the 13 appellant was offered in excess of what she actually was
14 claiming in the Originating Application, and in those
15 circumstances it rendered otiose the necessity to proceed
16 through a hearing in the view of the VP. It also rendered
it 17 unnecessary in the view of this court.

18 In the circumstances, this appeal stands
dismissed.

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Dated this 11th day of July, 2019

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ISAACS, JA

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25 ss