

**INDUSTRIAL TRIBUNAL**

**COURT #2 FREEPORT INSURANCE CENTER, 21B WEST MALL & POINCIANA  
DRIVE, FREEPORT, GRAND BAHAMA, COMMONWEALTH OF THE BAHAMAS**

**Before**

**MRS. HELEN J. ALMORALES-JONES (VICE-PRESIDENT)**

**(SITTING ALONE)**

---

**HOWARD STUART**

**APPLICANT**

**CLEAR BLUE MARITIME AGENCY LTD.**

**RESPONDENT**

---

**ORDER ON DIRECTIONS**

---

**APPEARANCES**

For the Applicant

Justin Palacious  
Labour Advocate  
Freeport, Grand Bahama  
The Bahamas

For the Respondent

Counsel Cassietta Z. M<sup>c</sup>Intosh-Pelecanos  
M<sup>c</sup>Intosh & Co.  
Freeport, Grand Bahama  
The Bahamas

**WHEREAS:**

- 1) On the 22<sup>nd</sup> November, 2022, **Howard Stuart** ("the Applicant") filed a **Report of a Trade Dispute** against **Clear Blue Maritime** with The Department of Labour in Grand Bahama, The Bahamas, which stated, inter alia, that the issue relevant to the dispute was ***Vacation Pay***;
- 2) By a **Certificate of Referral** dated the 21<sup>st</sup> February, 2023 (received on the 9<sup>th</sup> March, 2023), the Honourable Minister of Labour & Immigration referred the trade dispute between the Applicant and **Clear Blue Maritime Agency Ltd.** ("the Respondent") to the Industrial Tribunal, Northern Region, ("the Tribunal");
- 3) The Tribunal served the **Applicant** with notice of the referral on the 10<sup>th</sup> March, 2023;
- 4) The **Applicant** filed a **Form A** (Originating Application) on the 13<sup>th</sup> March, 2023, which stated, inter alia, that:- his employment commenced in *April 2016*; he was *never terminated*; and he was claiming *Vacation pay calculated from April 2016 – April 2022*;
- 5) On the 14<sup>th</sup> March, 2023, the Tribunal served a copy of the **Form A** (Originating Application) together with a **Form C** (Notice of Originating Application) and a **Form D** (Notice of Appearance) on the Respondent's place of business;
- 6) The **Respondent** filed a **Form D** (Notice of Appearance) on the 22<sup>nd</sup> March, 2023, which stated, inter alia, that:- it intends to resist the application; its name is **Jane Rolle, Vice-President**; and the name of its Representative is **Cassietta Z. M<sup>c</sup>Intosh-Pelecanos** of **M<sup>c</sup>Intosh & Co.**;
- 7) The **Respondent** filed a **Form E** (Defence) on the 6<sup>th</sup> April, 2023, which stated, inter alia, that:-

Its name is *Clear Blue Maritime Agency Limited*;

The Applicant commenced working with the Respondent in *April 2016*;

The date of his termination was *August 2019*; and

It intends to resist the application on the grounds that:-

*The Applicant discontinued working with the Company in August 2019;*

*The claim is not properly before the Court as the time exceeds 1 year;*

*The Applicant is not owed Vacation pay as stated in the Originating Summons; and*

*The time of employment was previously stated by the Applicant;*

- 8) The **Tribunal** today conducted a **Case Management** hearing in this matter;
- 9) The **Applicant** appeared with his **Representative** and the **Respondent's Vice-President, Jane Williams-Rolle**, appeared on behalf of the Respondent;
- 10) No appearance of the **Respondent's Counsel** who consented to the Tribunal conducting the Case Management hearing in her absence;
- 11) The **Tribunal** disclosed to the parties that the Respondent's President, **Corey Gazel Rolle**, is the Second Cousin of her Husband, but she (Vice-President Jones) is not well-acquainted with him and does not socialize with him;
- 12) The **Tribunal** directed that the parties inform the Tribunal in writing, before the adjourned date, whether or not they are requesting that Vice-President Jones recuse herself from hearing and determining this trade dispute because of the foregoing disclosure;
- 13) The **Tribunal** directed that the Respondent's Counsel advise the Tribunal in writing, before the adjourned date, whether or not the Respondent denies owing the Applicant Vacation pay because he did not work for them under a contract of employment;
- 14) The **Tribunal** advised the parties that:-

**No. 5.** of the Respondent's **Form E** (Defence) challenges the Applicant's entitlement to bring these proceedings because he filed the Report of a Trade Dispute more than 12 months after the trade dispute arose;

**Rule 9 of The Industrial Relations (Tribunal Procedure) Rules, 2010** ("The Rules") provides:-

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

*(2) The Tribunal shall not determine such an issue unless the Secretary has sent notice to each of the parties giving them an opportunity to submit representations in writing and to advance oral argument before the Tribunal.";* and

In ***Corrine Higgins v. Kerzner/Island Hotel Company***, No. 294 of 2014, (written judgment: 15<sup>th</sup> February, 2016), The Bahamas Court of Appeal (Isaacs J.A.) said that "*as a matter of procedural good sense*", it would be too late for a party to make an application under **Rule 9(1) of The Rules** after the hearing has commenced;

- 15)The **Tribunal** will therefore give the Respondent's Counsel until **3:00 p.m.** on **Wednesday, 31<sup>st</sup> May, 2023**, to submit to the Tribunal any written representations regarding the Applicant's entitlement to bring these proceedings against the Respondent;
- 16)The **Tribunal** will give the Applicant's Representative until **3:00 p.m.** on **Wednesday, 28<sup>th</sup> June, 2023**, to submit to the Tribunal any written representations in response to the Submissions of the Respondent's Counsel;
- 17)The **Tribunal** asked the parties to consider that **Section 68(2)** of **The Industrial Relations Act**, Cap. 321 ("The I.R.A.") provides:-
- "68.(2) A trade dispute may not be reported to the Minister if a period of more than twelve months has elapsed since the dispute first arose, and any dispute not reported within that period shall be deemed to have been determined, so, however, that the Minister may in any case extend such period if he considers it just to do so."*  
(Tribunal underline);
- 18)The **Tribunal** referred the parties to the *dicta* in The Bahamas Court of Appeal decision of **New Providence Building Supplies Ltd. v. Richard Lee Thompson**, No. 58 of 2000 (*bahamascourtofappeal* website), decided on the 24<sup>th</sup> April, 2001, which The Bahamas Court of Appeal followed in:- **Corrine Higgins v. Kerzner/Island Hotel Company** (cited in paragraph 16); and **Lydia Johnson v. The National Insurance Board**, No. 131 of 2015 (*bahamascourtofappeal* website), decided on the 29<sup>th</sup> March, 2016;
- 19)The **Tribunal** will deliver the Ruling on the parties' Submissions pursuant to **Rule 9 of The Rules** at **10:00 a.m.** on **Friday, 14<sup>th</sup> July, 2023**;
- 20)If the Respondent's challenge to the Applicant's entitlement to bring these proceedings is successful, the Tribunal will dismiss the Applicant's **Form A** (Originating Application);
- 21)If the Respondent's challenge to the Applicant's entitlement to bring these proceedings fails, the parties must file their **List of Documents** and **Bundle of Documents** (if any) by **3:00 p.m.** on **Tuesday, 1<sup>st</sup> August, 2023**;
- 22)The **Tribunal** will conduct the trial of the Applicant's claim for *Vacation pay* at **10:00 a.m.** on **Wednesday, 16<sup>th</sup> August, 2023**; and
- 23)The **Tribunal** advised the parties that **The Rules** require that they file any **Brief/ Skeleton Arguments** [pursuant to **Rule 3(5)**] or **Written Representations** [pursuant to **Rule 3(6)**] with the Tribunal at least 7 days before the trial date;

**IT IS HEREBY ORDERED** as follows:-

1. The **Respondent's Counsel** submit any written representations regarding the Applicant's entitlement to bring these proceedings against the Respondent to the Tribunal by **3:00 p.m. on Wednesday, 31<sup>st</sup> May, 2023**, and at the same time serve a copy thereof on the Applicant's Representative;
2. The **Applicant's Representative** submit any written representations in response to the submissions of the Respondent's Counsel to the Tribunal by **3:00 p.m. on Wednesday, 28<sup>th</sup> June, 2023**, and at the same time serve a copy thereof on the Respondent's Counsel;
3. This matter is adjourned to **10:00 a.m. on Friday, 14<sup>th</sup> July, 2023**, for ruling on the parties' Submissions under **Rule 9 of The Rules**;
4. The **parties** inform the Tribunal in writing, before the adjourned date, whether or not they are requesting that Vice-President Jones recuse herself from hearing and determining this trade dispute;
5. The **Respondent's Counsel** advise the Tribunal in writing, before the adjourned date, whether or not the Respondent denies owing the Applicant Vacation pay because he did not work for the Respondent under a contract of employment;

**Should the Respondent's challenge to the Applicant's entitlement to bring these proceedings against the Respondent fail:-**

6. Each party file their **List of Documents** and **Bundle of Documents** (if any) by **3:00 p.m. on Tuesday, 1<sup>st</sup> August, 2023**, and at the same time, serve a copy thereof on the other party;
7. Each party file any **Brief/Skeleton Arguments** or **Written Representations** with the Tribunal by **3:00 p.m. on Wednesday, 9<sup>th</sup> August, 2023**, and at the same time, serve a copy thereof on the other party; and
8. This matter is adjourned **10:00 a.m. on Wednesday, 16<sup>th</sup> August, 2023**, for trial of the Applicant's claim for *Vacation pay*.

**DATED: This 3<sup>rd</sup> day of May, A.D., 2023.**

**Her Honor, Helen J. Almorales-Jones,  
Vice-President**