

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)

THURMAN JOHNSON

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^cIntosh-Pelecanos
M^cIntosh & Co.
Freeport, Grand Bahama
The Bahamas

WHEREAS:

- 1) On the 14th December, 2022, **Thurman Johnson** ("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 21st February, 2023 (received on the 9th 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 10th March, 2023;
- 4) The **Applicant** filed a **Form A** (Originating Application) on the 13th March, 2023, which stated, inter alia, that:-

His employment commenced in *July 2016*;
 He was *never terminated*; and
 He was claiming *Vacation pay calculated from April 2016 – July 2022*;

- 5) On the 14th 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 22nd March, 2023, which stated, inter alia, that:-

It intends to resist the application;
 Its name is **Jane Rolle**; and
 The name of its Representative is **Cassietta Z. McIntosh-Pelecanos** of **McIntosh & Co.**;

- 7) The **Respondent** filed a **Form E** (Defence) on the 6th April, 2023, which stated, inter alia, that:- its name is **Clear Blue Maritime Agency Limited**; the Applicant was not dismissed; and it intends to resist the application on the grounds that:-

The Applicant discontinued working with the Company in June 2019;
The claim is not properly before the Court as it exceeds 1 year;
The Applicant is not owed Vacation pay as stated in the Originating Application; 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 the Company 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: 15th 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, 31st 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, 28th 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** also asked the parties to consider the *dicta* in The Bahamas Court of Appeal decision of **New Providence Building Supplies Ltd. v. Richard Lee Thompson**, No. 58 of 2000, decided on the 24th April, 2001, which The Bahamas Court of Appeal followed in:-
Corrine Higgins v. Kerzner/Island Hotel Company (cited above);
Lydia Johnson v. The National Insurance Board, No. 131 of 2015, decided on the 29th 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, 14th 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, 1st August, 2023**;
- 22)The **Tribunal** will conduct the trial of the Applicant's claim for *Vacation pay* at **10:00 a.m.** on **Wednesday, 16th 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, 31st 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, 28th 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, 14th 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, 1st 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, 9th 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, 16th August, 2023**, for trial of the Applicant's claim for *Vacation pay*.

DATED: This 3rd day of May, A.D., 2023.

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