



TRINIDAD AND TOBAGO
ST NO. 20 OF 2009

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INDUSTRIAL COURT

IN THE INDUSTRIAL COURT

Between

ESTATE POLICE ASSOCIATION - PARTY NO. 1

And

MINISTRY OF NATIONAL SECURITY - PARTY NO. 2
STRATEGIC SERVICES AGENCY

CORAM

His Honour Mr. V.E. Ashby - Chairman
Her Honour Mrs. J. Rajkumar-Gualbance - Member
His Honour Mr. L. Achong - Member

APPEARANCES

Mr. C. Robertson)
Vice President) for Party No. 1

Mr. L. Marcelle)
Attorney-at-Law) for Party No. 2

DATED JUNE 30, 2011

JUDGMENT

DELIVERED BY HIS HONOUR MR. V.E. ASHBY

In this dispute with the Ministry of National Security Strategic Services Agency ("**the SSA**"), the Estate Police Association ("**the EPA**") makes the following claims arising from the termination of the employment of five estate constables:-

1. *that the termination of their employment was 'unfair' having regard to the fact that they had worked continuously for four years without a break in service which, in the words of the EPA, "would have deemed them to be employees".*
2. *that the constables were not given adequate notice of termination of their employment.*
3. *that the procedure adopted to terminate the employment of the constables was not "fair" or "transparent."*
4. *that the SSA acted contrary to good industrial relations practice in that the employment of the constables was terminated because they were members of the EPA.*

The relief sought for the constables is "**compensation and damages for unfair termination of their services.**"

The EPA is, pursuant to S 38 (1) of the Supplemental Police Act Chapter 15:02 the body exclusively authorized to make representations on behalf of Estate Constables (**Constables**).

The SSA is a specialized security intelligence agency created by Act of Parliament No. 24 of 1995. The aggrieved Estate Constables, with their respective dates of employment are as follows:

<i>Mr. Moriel Caliste</i>	-	<i>January 1, 2000</i>
<i>Mr. Charles Kirk</i>	-	<i>September 6, 2000</i>
<i>Mr. Harold Charles</i>	-	<i>February 1, 2001</i>
<i>Mr. Keith Dorsett</i>	-	<i>February 1, 2001</i>
<i>Mr. Anthony Girod</i>	-	<i>February 13, 2001</i>

The Constables were all engaged by identically worded letters of employment which read as follows:

"September 06th, 2000

Dear

The Agency is pleased to offer you employment as a General Assistant (Security) on a month to month basis, commencing on the date of your assumption of duty.

The terms of your employment will be as follows:

- *Salary \$2700.00 per month*

Your duties will be those of the position, as outlined in your Job Description.

I would like to take this opportunity to wish you all the best during your stay with the Agency.

Yours faithfully,

/Sgd:/ HR Coordinator"

So far as is material, their letters of termination of employment (*identically worded and all dated June 29, 2004*) read as follows:

"29th June 2004

Dear Mr.

Further to our meeting on 29th June 2004, I am writing to confirm the Agency's decision to terminate your employment. As explained to you, the reason for the termination is the intended implementation by the Agency of a new organizational structure as a result of the audit of the Agency's operations carried out in 2002.

The termination of your employment will take effect from 30th June 2004.

Consequent upon termination the Agency will pay to you the following sums:

1. A sum representing one (1) month's pay in lieu of notice at your current rate of salary.
2. A sum representing vacation leave earned but not taken as at 30th June 2004.
3. A sum representing compensation for loss of employment at the rate of one (1) month's pay for each year of continuous service with the Agency.

(This payment will be made gratuitously and without admission on the part of the Agency of any liability to make it.)"

/Sgd:/
By the Director"

Common Ground

There was agreement between the parties on the following facts:

The aggrieved Constables were first engaged on different dates as unprecepted employees in the position of General Assistant (Security).

The duties of the General Assistants were primarily to secure the personnel and premises of the SSA.

Subsequent to their engagement the employees were precepted as Estate Constables and at a date before the termination of their employment, their salaries were increased from \$2700 per month to \$5000 per month.

Throughout their service, the Constables were entitled to annual vacation and paid sick leave.

At a meeting held on June 29, 2004 the aggrieved Constables were informed of the termination of their employment on month-to-month contracts and were given the letters of termination of employment quoted earlier in the judgment.

Unchallenged evidence of the SSA's witness

Ms. Ursuline Hood was called as a witness by the SSA. At the time she testified, she was employed by the SSA as Assistant Director, Administration and had been in that position for some three years. Although not in the employ of the SSA when the aggrieved Constables were dismissed, Ms. Hood was able to testify on the basis of the SSA's records with which she was familiar.

The following facts attested to by Ms. Hood were not controverted:

- The SSA was established by Act of Parliament No. 24 of 1995 (*'the SSA Act'*).
- By Cabinet Minute No. 1043 dated May 9, 1996 an organizational structure with seventy two (72) positions was approved by the government. According to her witness statement, the Cabinet Minute further provided that the positions be filled in the following ways:
 - "(i) on contract, the terms and conditions of which must be negotiated with the Chief Personnel Officer and*
 - (ii) via secondment of officers from the Public Service and the Police Service'.*
- The SSA Act provides at S. 5 (1) (a) and (b) for the Director of the SSA *"to employ personnel as he/she considers necessary for the due performance of its duties and functions and to provide for remuneration and other terms and conditions of employment."*
- The General Assistants (Security) (including the aggrieved Constables) were recruited during the period 2000 to 2001 on a month-to-month basis to replace Special Reserve Police Officers who were phased out between October 2000 and July 2001 and absorbed within the Police Service. When the General Assistants were engaged there were no positions on the establishment of the SSA for them and they were, accordingly, engaged as temporary employees pursuant to S. 5 (1) (a) of the SSA Act.
- On April 1, 2004 following an "efficiency review" of the SSA, proposals were made which were accepted by the government for the restructuring of the SSA.

In carrying out the restructuring exercise, the employment of all employees of the SSA was terminated on June 30, 2004 and a skeleton staff of eight was re-engaged on a month-to-month basis with effect from July 1, 2004. They were employed during a

transitional period which ended November 1, 2004 when the new organizational structure was in place.

The EPA's witnesses

Keith Dorsett ("**Dorsett**") and Moriel Caliste ("**Caliste**") testified as witnesses for the EPA.

Dorsett testified that he was given no explanation of the expression "**month-to-month**" used in his letter of employment. He testified in addition, that at a meeting in 2003, a Director of the SSA, Serena Joseph-Harris, called upon him and other constables to "**immediately withdraw our membership from the Association [the EPA]**". He said that he complied with the request and a copy of an unsigned letter dated May 26, 2003 addressed to the President, Estate Police Association was tendered in support of his claim.

The unsigned document reads as follows in its opening paragraph:
"We wish to inform you that we are formally withdrawing our application for membership in the Estate Police Association of Trinidad and Tobago".

The final paragraph refers to an attached "**list of the names of persons referred to in paragraph 1 above**". No copy of such a list was tendered.

In the course of his evidence in chief Dorsett admitted that before the meeting on June 29, 2004 when he received his letter of termination

"We had prior meetings and were informed that there is to be a restructuring process."

Under cross-examination, Dorsett admitted that he is still a member of the EPA and could provide no positive information on the alleged withdrawal of membership. He said :

"I conveyed my message as a member of a group; someone was seeing about it at that end. I personally didn't go up to the Association to deal with it."

Caliste's testimony was similar to Dorsett's with respect to the alleged request to withdraw from the membership of the EPA and the fact that the constables were told in advance *"about a restructuring and we will be part of the restructuring"*.

On the meaning of the expression *"month-to-month"* Caliste stated in the course of his evidence in chief:

"Well, you work this month and you are not sure to work next month."

DECISION

No issue arises in this dispute as to the adequacy of the terminal benefits received by the Constables. The Retrenchment and Severance Benefits Act, Chapter 88:13, (*the RSBA*) the only statute making provision for severance pay upon termination of employment on grounds of redundancy, applies to workers within the meaning of the Industrial Relations Act Chapter 88:01 and within the meaning of definitions in the RSBA. Estate Constables do not come within these provisions. The Constables, moreover, were not covered by any agreement between the SSA and the EPA in which provision was made for severance pay. It is not in dispute that the SSA acknowledged the Constables' periods of month-to-month service by computing a terminal benefit at the rate of one month per year of service - a formula more generous than is

provided for in the RSBA. The Constables received the sums calculated as an ex gratia payment.

The Court has long recognized the right of the Employer to reorganise or restructure his operations. In Trade Dispute No. 42 of 1977 Alcoa Steamship Company Inc. v. Seamen and Waterfront Workers Trade Union delivered on July 27, 1979 the Court said:

"It [the Industrial Relations Act] does not empower the Court to make orders as to how an employer should organize and carry on his business or even, indeed, whether he should continue to carry on his business."

This is not to say, however, that claims of restructuring are left to pass unexamined by the Court. The Court recognizes its responsibility to ensure that claims of reorganization or restructuring are more than merely nominal. This responsibility on the part of the Court was described in T.D. No. 4 of 1991 Transport and Industrial Workers' Union v. Trinidad Distributors Limited delivered on July 10, 1992 as follows:

"It is altogether too easy for an employer to use words such as "restructuring" "reorganization" and "redundancy" as a smokescreen or cover for terminating the services of a worker at the lowest cost to himself and this Court has a duty to be vigilant to detect and deter such oppressive industrial relations practices."

Mindful of this responsibility the Court has considered carefully the evidence before it concerning the circumstances surrounding the termination of the employment of the Constables.

For the determination of this dispute, each of the EPA's contentions set out at page 2 above will be examined.

Issue: Effect of Continuous Service

It was contended by the EPA that, based on the length of their continuous service in month to month employment, the Constables were entitled to be "*deemed ... to be employees*". The concept was not fully explained but, to the extent that it was an assertion that their length of service entitled them to a change of their status to that of permanent employment, we were not shown nor are we aware of any authority to support that proposition as a matter of law or of good industrial relations practice.

It was claimed by the EPA that the Constables had four years service but that was so only in the case of Caliste. Kirk had three years and nine months and the others approximately three and a half years each. It was the uncontroverted testimony of Ms. Hood that there were no positions on the establishment for the Constables when they were engaged on month-to-month contracts.

The EPA's representative claimed to find support for the EPA's contention in the judgment **RSBD No. 4 of 1996 Oilfields Workers Trade Union v. Schlumberger Trinidad Inc.** (*the Schlumberger case*) which was delivered on February 24, 1997. We do not agree. In the Schlumberger case it was held that the employer could not avoid the obligation under the Retrenchment and Severance Benefits Act, No 32 of 1985 to pay severance pay by reliance on such descriptive terms as "*employment on contract*" or "*casual employment*" which were applied to different segments of the more than ten years continuous service of a worker when his employment was terminated on grounds of redundancy. That case

is no authority for the EPA's contention that the Constables' periods of continuous month-to-month service entitled them to have their employment status converted to that of permanent employees.

Issue: Notice

The EPA contended that the SSA committed a breach of good industrial relations practice when it terminated the employment of the Constables and paid a month's salary in lieu of notice. It is not necessary to deal with the question as to whether and, if so, how much notice is required when employment on a month-to-month contract is being terminated. The effect of paying one month's salary to each Constable in lieu of notice was to give a month's notice of termination of employment without requiring him to work during the period of notice. To do so is not an infringement of law or of good industrial relations practice.

Issue: Alleged Defective Procedure and Lack of 'Transparency' in Terminating Employment

It was not altogether clear what departures from procedural rectitude were being complained of by the EPA. By the admission of the EPA's witnesses they were told in advance of the forthcoming restructuring of the SSA. They claimed that they were led to expect that they would be employed after the restructuring exercise was complete. Having regard to lack of specificity of the EPA's complaints and the clarity and cogency of the testimony of Ms. Hood on the reasons for the restructuring of the SSA, we find that the EPA has made no case of procedural breach on the part of the SSA.

Issue: Allegation that Membership of EPA was Reason for Termination

The evidence led by the EPA that the employment of the Constables was terminated because of their membership of the EPA does not rise anywhere close to the level of making a case for the SSA to answer.

Award

On the totality of the evidence before us, we find and so hold that the contentions of the EPA have not been substantiated. Accordingly, this dispute is dismissed. It is so ordered.

**V.E. Ashby
Chairman**

**J. Rajkumar-Gualbance
Member**

**L. Achong
Member**