



TRINIDAD AND TOBAGO:
SPECIAL TRIBUNAL NO. 8 2009

IN THE INDUSTRIAL COURT

BETWEEN

ESTATE POLICE ASSOCIATION - Party No. 1

AND

NATIONAL MAINTENANCE TRAINING AND
SECURITY COMPANY LIMITED - Party No. 2

CORAM:

- His Honour Mr. V.E. Ashby - Chairman
- Her Honour Mrs. V. Harrigin - Member
- His Honour Mr. L. Achong - Member

APPEARANCES:

Mr. Curtis Robertson)
First Vice President) Party No. 1

Mr. Bertrand Wilson)
Industrial Relations Consultant) Party No. 2

DATE: 1st December, 2011

JUDGMENT

Delivered By Her Honour Mrs. Victoria Harrigin

This is a dispute between the Estate Police Association of Trinidad and Tobago ("*EPA*") and the National Maintenance Training and Security Company Limited ("*MTS* or "*the Company*") which

concerns *"the failure of the Company to pay correct retirement benefits to Solomon Fraser effective June 20, 2007"*.

BACKGROUND:

The Association's Case

The factual background required for an understanding of this matter is provided in the following summary taken from the Association's Statement of Evidence and Arguments.

Estate Constable Solomon Fraser was employed with MTS and was attached to the Judiciary Unit for seven (7) years up until his retirement. While he was attached to the Judiciary he received a rate of pay of eighteen dollars (\$18.00) per hour. This he believed to be his permanent rate. Once he retired, he claimed that the Company failed to pay him the appropriate retirement benefit.

During the course of two meetings the Company informed the Association that Constable Fraser's retirement benefit had been calculated at the rate of ten dollars and fifty cents (\$10.50) per hour and not eighteen dollars (\$18.00) as he had been come to expect.

The Association has claimed that the Company has not honoured its contract with the Judiciary management in respect of its officers who are assigned to function as Judiciary Security.

The Association contended that Constable Fraser did not receive the appropriate retirement benefit and the rate used by the Company for calculating the benefit was wrongly applied. The Association, therefore, argued that the action of the Company was harsh, oppressive and contrary to the principles and practices of good industrial relations, since it failed to honour the rate of pay Constable Fraser received from the Judiciary.

The Employer's Case

In its written Statement of Evidence and Arguments, the Employer has offered the following reasons for the perceived discrepancy in the Constable's retirement benefit:

1. As an Officer of MTS, Constable Fraser would be subject to the terms and conditions of employment as enshrined in the Agreement negotiated between the Association and MTS.
2. Certain specific contracts between MTS and its clients (The Judiciary in the instant case) carry some non-transferrable specific arrangements, including a premium rate which relate to certain levels of responsibility when Officers are assigned to the Judiciary. This implies that there are specific responsibilities required of a Security Officer by the Judiciary for which the Judiciary pays a premium once that officer is assigned to the Judiciary.
3. This premium rate is regarded as temporary and falls to the responsibility of the Judiciary. It forms no part of the compensation package negotiated between the EPA and MTS for and on behalf of Estate Constables in the employ of MTS.
4. Constable Solomon Fraser for the closing period of his employment years with the Company was assigned to the Judiciary from where he retired in 2007. Arising out of his retirement, the Officer was paid all monies due to him as a retiring Officer as provided for in the Agreement negotiated between the Association and MTS on his behalf.

THE EVIDENCE:

The Association's Case:

Constable Fraser gave evidence to support the Association's case. This evidence consisted of a Witness Statement on which he was cross-examined.

Constable Fraser, in his witness statement submitted that he was employed with the Company for approximately eighteen (18) years with effect from March 18, 1989. He further submitted that he had been assigned to the Judiciary for seven (7) years prior to his retirement. He stated that while at the Judiciary, the Company issued to him a pay slip with the hourly rate of pay of eighteen dollars (\$18.00) which rate he received until his retirement.

Consequently, he was led to believe that this was the rate of pay to which he was entitled to the extent that for the last seven (7) years of employment, he had come to regard this rate as his true entitlement and had consistently organised his financial commitments based on it.

It must be mentioned here that while Constable Solomon continued to mention the rate of pay in round figures as eighteen dollars (\$18.00), the actual amount received was eighteen dollars and thirty-eight cents (\$18.38).

The Constable testified that he proceeded on pre-retirement leave on February 13, 2007 until June, 2007. Subsequently, he visited the office in connection with his retirement and was advised by an employee of MTS that she had calculated his retirement benefit based on the last rate of pay he had received at the Judiciary. This, she said would have amounted to fifty-three thousand dollars (\$53,000.00). Continuing, she explained that Management had

recalculated his benefit and actually arrived at a lump sum payment based on the rate of ten dollars and fifty cents (\$10.50) per hour which totalled twenty-three thousand dollars (\$23,000.00) instead of the fifty-three thousand dollars (\$53,000.00), which he had anticipated.

Constable Fraser challenged the Company with regard to what he perceived to be an erroneous payment. However, he was unsuccessful in this challenge.

The Constable indicated that after further negotiations between the Employer and the Association for a new agreement he received an additional cheque for eighteen thousand dollars (\$18,000.00) which represented an adjustment which increased his hourly rate of pay from ten dollars and fifty cents (\$10.50) to twelve dollars (\$12.00).

The Constable, therefore, held the view that:

1. this reassessment constituted a further miscarriage of justice especially since judiciary service had been his area of employment for the final seven years of his career; and,
2. his last hourly rate of pay having been \$18.38; he was therefore firmly convinced that this was the rate at which his retirement benefit should be calculated

During cross-examination by Mr. Bertrand Wilson, the Company's Consultant, the Constable admitted that prior to his assignment to the Judiciary he had been assigned to the Ministry of Education. He admitted further that when he was transferred from the Judiciary to another location, he received yet another hourly different rate from what he had been receiving while at the Judiciary.

He confirmed that while he was assigned to the Judiciary, he wore the normal MTS uniform and thus viewed himself as an Officer of MTS. The Constable refuted the claim that he had always been aware of the stated contract of employment between the Association and the Company which had outlined the terms and conditions of his employment.

Constable Fraser later admitted that:

- (a) he was aware of the normal negotiations when the parties agreed to certain conditions. However, he was unaware of the details of the agreement between MTS and the Association as well as the agreement between MTS and the Judiciary.
- (b) he was employed by MTS and not the Judiciary.
- (c) he had never been paid by the Judiciary; and
- (d) his hourly rate of pay prior to his assignment at the Judiciary was \$10.50.

When he was asked whether he had received payment at the rate of \$10.50 or \$18.38 while on vacation, he responded that in the initial stages of his MTS employment with the Judiciary, he had in fact been paid \$10.50 per hour. Later, however, including the last three years of his employment he received \$18.38 while on vacation.

In seeking to establish the Constable's correct rate of pay, the Company's representative, Mr. Bertrand Wilson, in painstaking detail asked

Q:*"When you proceeded on pre-retirement leave, what was your MTS rate of pay? What was your*

rate of pay that your Employer and Association had negotiated and agreed to pay you?

A: As far as I know, I was working for \$18.38 per hour, because the pay slip is from MTS and that is what it have (sic) on the pay slip. Rate of pay \$18.00 per hour."

The Constable also submitted that he was aware of the increased responsibility as a Security Officer with the Judiciary, which he considered a high risk area, where everyone is required to be alert. However, he was never informed that being assigned to the Judiciary attracted any premium rate or incentive apart from his salary which had been negotiated by the Association. This he assumed to be \$18.38. The Constable stated that he became aware of the differences in the pay rate only after his retirement.

The Company's Case

The Company failed to comply with the order to file Witness Statements. This non compliance had the effect of depriving the Tribunal of the benefit of the Company's account of payments made to the Constable and the provisions of the agreement on which it relied. In addition, no evidence of the arrangement entered into between the Employer and the Judiciary was submitted to the Tribunal.

CLOSING SUBMISSIONS:

The Association

In his address to the Tribunal, Mr. Robertson reiterated that Constable Fraser had worked at the Judiciary for the last seven years of his employment and had come to believe that the hourly rate of pay to which he was entitled was \$18.38. This view was reinforced by the fact that his last rate of pay prior to his retirement

was \$18.38. He was, therefore, convinced that his retirement benefits should have been calculated at that rate.

Mr. Robertson highlighted that no one from the Company had ever informed the Constable that he was in receipt of a special premium rate or any other special allowance. He was informed only after his retirement.

The fact that \$18.38 was never reflected on his pay slip as a special premium rate meant that the Company owed a duty of care to the Constable by ensuring that he was appropriately compensated upon his retirement, that is, calculating his eighteen years' service based on his last rate of pay as stated on his pay slip.

The Association is therefore requesting that the Constable be paid the difference of \$33,000.00.

The Company

Mr. Bertrand Wilson submitted that any benefit to any Officer of the Company is governed by the provisions of the Agreement. He asserted that the Association is asking the Tribunal on its own without proposals or negotiations outside of the Collective Bargaining process to expand the terms and conditions of the Constable. In so doing, it would create a rate of pay, without legal justification, that is higher than the negotiated rate of pay as outlined in the Agreement between the parties.

He marvelled at the submission that the Officer had not been aware of the terms and conditions which governed his employment. He insisted that all employees at MTS are aware of their rates of pay; what happens when they are assigned to special institutions such as the Judiciary and what will happen if they are removed from these institutions.

In addition, he submitted that even as the Company owes a duty of care to its employees, the Association likewise has a responsibility to its members to inform them of the ramifications of their salary arrangement. It is therefore, the position of the Company that the terms and conditions of the worker cannot be expanded to include anything other than what has been negotiated between the Constable's representative (the EPA) and the Company.

The Tribunal was asked to view the matter within the parameters of the terms and conditions of the registered agreement and to accept that the Company had paid to the Constable all that was due to him in accordance with that Agreement.

The Issue for Determination

The issue to be determined is whether the Company paid Estate Constable Fraser all the monies due to him upon his retirement in accordance with the provisions of the Agreement between MTS and the EPA.

ANALYSIS

Findings and Conclusion

The Tribunal noted that during Estate Constable Fraser's viva voce evidence and the Association's closing submission it was intimated that the Constable was unaware of the details of the terms and conditions of his employment and the contractual arrangement between MTS and the Judiciary.

We found the submission to be passing strange. When this Court/Tribunal has to enforce settlement where parties cannot agree, there are prescribed ways in which it can be done.

Under Chapter 88:01 the Industrial Relations Act (the IRA) where there is a recognized majority union, it and the employer are

required to reach agreement on terms and conditions of employment, the result of which is reflected in the collective agreement which is registered at the Court.

What the Supplemental Police Act has done is to create a position where there is one recognized body called the Association. This body is authorized to fulfill the role assigned to the recognized majority union under the IRA by negotiating with employers for terms and conditions of employment, and the settlement of disputes and arriving at agreements. Pursuant to S. 40 of Chapter 15:02 the Supplemental Police Act, the provisions and the approach of the IRA are to be followed except for terminology - constables terms and conditions being set out in an **"agreement"** rather than the **"Collective Agreement"** applicable to workers under the IRA.

Section 41 of the Supplemental Police Act provides further that:

"The Estate Police Association and an employer may enter into an agreement in respect of terms and conditions of employment of its members....and the provisions of Part IV of the Industrial Relations Act that relate to collective agreements shall apply to the agreement..."

In Part IV of the IRA it is provided as follows at S. 47(3):

"Registration of a collective agreement shall be deemed to constitute actual notice of all the provisions thereof."

Once this Agreement is registered, it now becomes the governing law of the workplace which everyone is expected to know and follow. In essence, it is notice to all the world, including Constable

Fraser, notice as to what his entitlement under the Agreement is. Ignorance of this law is therefore no excuse

Further to this, both parties in their written statements of Evidence and Arguments and during their submissions referred to an arrangement by means of which constables employed by MTS would be assigned to work at the Judiciary. Such assignments would entitle them to a series of differentials which would increase their hourly pay by a certain quantum. However, no documentary evidence was presented in support of this arrangement. We hasten to add, nonetheless, that even if there had been documentary evidence of such an arrangement, and it did not form part of the registered agreement, then we would not have been in a position to enforce that agreement.

If the Tribunal is to ascertain what is enforceable, details recorded on a payslip are insufficient evidence on which to base its decision. It is essential for decision making purposes that we refer to the registered agreement. It is incumbent on us to take into account Constable Fraser's rank at the time of his retirement. Furthermore, we are required to determine what the hourly rate of pay of constables of that rank would be at that specific time. All of this can be determined only through our examination of the Agreement which binds us.

The relevant Agreement for the period during which Estate Constable Fraser retired included provision for retirement benefits **Article 34 Severance Pay on Retirement** states inter alia:

1. Where an officer reaches the retirement age of sixty (60) years the Company agrees to pay Severance Benefits as follows:

c. from 10 to 19 years – Four weeks pay for each year of service.

2. Payment shall be made at the Officer's current hourly rate of pay and no later than the Officer's last day of employment with the Company.

It has not been disputed that the Constable's hourly rate of pay prior to his assignment to the Judiciary was \$10.50. However, the Association has contended that the Constable's retirement benefits should have been calculated based on \$18.58, his last hourly rate of pay while at the Judiciary and not at the hourly rate of \$10.50.

There are a number of benefits that Constables receive for example, shift bonuses, cost of living allowance (COLA) and other allowances. However, ordinarily these benefits are not calculated into severance payments. In fact these benefits are regarded as temporary benefits. This Court has made this clear in several judgements. One such judgment is TD No. 42 of 1977 dated July 27, 1979 between Alcoa Steamship Company Inc. and Seamen and Waterfront Workers' Trade Union in which the Union was seeking to have COLA added to Severance Pay and the Court rejected the proposal. This highlights the fact that retirement benefits are to be paid on the basis of basic salary unless parties expressly provide otherwise. There is no evidence at the time of delivery of this Judgment that the position taken in TD No. 42 of 1977 has been changed.

Decision

Having regard to all the circumstances of this case and the submissions of the parties, the Tribunal is of the opinion that Article 34 of the Registered Agreement in respect of the period November 1, 2004 to October 31, 2007 is applicable to the Constable.

Therefore, The Tribunal is not authorised to expand the provisions of the agreement to include anything other than that for which the agreement has provided. Accordingly, we find and so hold that the Company has fulfilled its obligations having paid to Estate Constable Fraser all that was due to him in accordance with the relevant provisions of the registered agreement.

This dispute is therefore dismissed.

**His Honour Mr. V. E. Ashby
Chairman**

**Her Honour Mrs. V. Harrigin
Member**

**His Honour Mr. L. Achong
Member**

