

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 162 OF 2006

BETWEEN:

WHITNEY JACOBS
(ACTING BY HIS ATTORNEY ON RECORD
BASIL JACOBS OF PORT ELIZABETH, BEQUIA)

Claimant

AND

ADMIRALTY TRANSPORT COMPANY LTD.
OF PORT ELIZABETH, BEQUIA

Defendant

Appearances:

Mr. Olin J. B. Dennie for the Claimant/Respondent

Mr. Samuel Commissiong for the Defendant/Applicant

2007: January 19th

2007: April 17th

DECISION

[1] **BRUCE-LYLE, J:** The claimant Whitney Jacobs has been working with the Admiralty Transport Company for 16 years. He is a Seaman. For the last 11 years of his employment with the defendant, he was a Chief Engineer.

[2] As a result of his job performance which his employers, the Defendant, found to be unsatisfactory as per a series of Crew Memo's addressed to him dating from 19th September, 2003 to 29th February, 2004 (5 memos in all); and the claimant ignoring these

several memos and continuing to behave in a manner unsatisfactory to his employer the defendant, he was dismissed on the 14th May, 2004 and paid the benefits he was entitled to up to that time.

[3] The claimant, not being satisfied with the manner of his dismissal and the money put in his hand as a result of that severance, he on the 14th June 2004, having taken his matter to the hearing officer at the Labour Department, attained judgment in his favour. This judgment was from Hearing Officer Matthew Thomas. It was adjudged that the claimants employment with the Defendant Company was wrongfully terminated and that the claimant was entitled to be paid by the defendant the sum of \$28,866.00.

[4] The hearing was attended to by the claimant, Mr. Elvis Gooding, Managing Director of the defendant Company and Joan Davis the General Manager of the defendant Company.

[5] On the 31st March, 2006, the claimant filed a claim for the enforcement of the judgment of the Hearing Officer Mr. Matthew Thomas. On the 14th November, 2006, judgment was entered for the claimant on the ground that there was no acknowledgement of service of the claim filed, by the defendant. On the 29th November, 2006, the Defendant filed an application to set aside the judgment in default of Defence and for leave to file a defence out of time on the ground that it has a good defence to the claimants claim, and also that whatever took place before the Hearing Officer Mr. Matthew Thomas was a nullity since Mr. Thomas had no jurisdiction to entertain that hearing.

[6] The issues for the determination of this Court are simple –

- (1) Did the hearing officer have jurisdiction to adjudicate in the dispute between the claimant and the defendant.
- (2) Does the Shipping Act apply to this dispute so as to invoke the jurisdiction of the Admiralty Court.
- (3) Does the defendant have a valid defence to the claim.

- [7] There is no dispute that at all material times the claimant was employed as an Engineer with the defendant and was not employed pursuant to any crew agreement as contemplated by Section 77 of the Shipping Act 2004 of the Laws of St. Vincent and the Grenadines. At all material times the defendant himself had placed himself under the jurisdiction of the Labour Commissioner as evidenced by the letters dated 22nd January 2004 on the subject “work attitude” written to the claimant and copied to the Labour Commissioner and another letter dated 28th January, 2004 sent by the claimant to the defendant. The author of both letters referred to is Ms. Joan Davis, General Manager of the Defendant Company.
- [8] The defendants case revolves around the proposition that the hearing before the hearing officer is a nullity and that the ruling he delivered was a nullity, and since that ruling formed the basis of a High Court judgment that was administratively, entered by the Registrar and not adjudicated upon by a High Court Judge, that judgment too will be nullity.
- [9] The defendant contends basically that it has a good defence to the claimants claim on two issues. Firstly it posits that the hearing officer had no jurisdiction to convene the hearing as he did on the 9th June, 2004 in the presence of the Defendant Company’s Managing Director and its General Manager and to enter judgment in favour of the claimant. Further the defendant posits that by participating in the proceedings on the Defendant Company, it did not confer jurisdiction on the Hearing Officer to adjudicate in the dispute between the Claimant and the Defendant.
- [10] Secondly, the defendant submits that the claimants claim is essentially an Admiralty claim and therefore falls under the jurisdiction of the Admiralty Court and to the provisions of the Shipping Act No. 11 of 2004 especially Section 74(f) and the CPR 2000 (Civil Procedure Rules). Section 74(f) of the said Shipping Act reads as follows:-

“As from the 11th day of June 1997 the provisions of Article 1-16 of the International Convention on Maritime Liens and Mortgages 1993 as set out in the schedule shall form an integral part of this Act and have the force of Law as such,

but without prejudice to any transaction enacted prior to that date to which the provisions of Article 1-11 of the Brussels Convention 1926 applied.”

[11] Counsel then went on to expound on certain areas of the 1993 Brussels Convention and drew the conclusion that Article 4 of the said Convention headed “Maritime Liens” states that claims for wages and other sums due to the Master, officers, and other members of the vessels complement in respect of their employment on the vessel are Maritime Liens which shall be secured on the vessel itself. He further contended that such should be enforced only by recourse to CPR 2000 Part 70 entitled Admiralty Proceedings, and that a claim against the ship is a claim in rem and is covered by Part 70.3 (1), (3) and (4) and may be brought against the ship. He further contended that it is clear that a claim for crews wages must be brought in admiralty proceedings against the ship and its owners pursuant to CPR 2000 and that no other Court has jurisdiction in rem to entertain such proceedings. He concluded by saying if another Court without such jurisdiction were to entertain and adjudicate on such a claim the ruling will amount in Law to nullity.

[12] The claimant on the other hand contends that the defendant has no valid defence to the claimants claim to enforce the judgment of the Hearing Officer which was served on the defendant who failed to file an appeal within the period prescribed by the Protection of Employment Act of Saint Vincent and the Grenadines. They further contended that the Hearing Officer had jurisdiction to adjudicate in the dispute between the claimant and the defendant. The claimant also submits that the Shipping Act No. 11 of 2004 has no relevance to this dispute between the parties.

[13] Section 77 of the said Act reads as follows:-

“Except as provided under subsection (5), and agreement in writing shall be made between each person employed as a seafarer in a Saint Vincent and the Grenadines ship and the persons employing him and shall be signed both by him and by or on behalf of them.”

It is not in dispute that there is no crew agreement signed by the claimant and the defendant as stipulated by the Shipping Act. For the defendant to invoke the provisions of the said Act in the instant case he must comply with Section 77 of the said Act outlined

above. The defendant never did this, but instead always brought any dispute between himself and the claimant to the jurisdiction of the Labour Commissioner.

[14] The question then is, if the defendant has always, as in Paragraph 5 of the Affidavit of Eveta Davis filed on his behalf on the 19th February, 2006, maintained that the question of wages claimed by a Seaman or Seafarer falls within the jurisdiction of the Admiralty Court, why would he then place himself under the jurisdiction of the Hearing Officer on the 9th June, 2004 to discuss the very issue of wages due to the claimant?

[15] It is my considered view that the Shipping Act has no relevance in this matter. There is no evidence before this Court, which is not in dispute, that there was ever any Crew Agreement signed by the parties as per Section 77 of the said Act. The Shipping Act to my mind was never a factor in the employment relationship of the claimant and the defendant. It has only surfaced as an after thought even though it has no relevance. I consider it a last ditch effort by the defendant to circumvent the wrath of the Court having failed to file a defence for over one year since it was due. Moreover the defendant for whatever reason failed to appeal against the decision of the Hearing Officer.

[16] The Wages Regulation (Industrial Workers) order 2003 at Section 4(e) states:-

“This order applies to workers employed in the following undertakings:-

- (a)
- (b)
- (c)
- (d)
- (e) Transport of Passengers or goods.”

The defendant, Admiralty Transport Company owned two vessels, the Admiral I and Admiral II. This Company through these two vessels was involved in the transportation of passengers and goods, and the claimant was employed with the said Company.

Therefore pursuant to the aforementioned Wages Regulations (Industrial Workers) Order 2003 and specifically Section 4(e) of that order, the Hearing Officer was cloaked with jurisdiction to adjudicate in the dispute between the claimant and the defendant. I cannot see it any other way.

- [17] Therefore having held that the Hearing Officer had jurisdiction to hear the dispute and enter judgment, and that the Shipping Act has no relevance to this matter, in that it cannot and does not apply to this instant matter, I hold that the application by the defendant to set aside the order of the Registrar and to be allowed to file a defence out of time be dismissed. The defendant cannot have any valid defence in this matter. I order also that the defendant pay costs in the sum of \$1500.00 to the claimant.

FREDERICK V. BRUCE-LYLE
HIGH COURT JUDGE