**SAINT VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE**

**CIVIL SUIT NO. 371 OF 2001**

**IN THE MATTER OF AN APPLICATION BY ROGER ADAMS OF ADAMS BROTHERS ENGINEERING LTD FOR JUDICIAL REVIEW PURSUANT TO CPR 2000 PART 56.7 AND IN THE MATTER OF A DECISION MADE BY THE LABOUR DEPARTMENT HEARING OFFICER ON 27TH JULY 2001.**

**BETWEEN:**

**ADAMS BROTHERS ENGINEERING LTD**

Claimants

**and**

**(1 ) EZEKIEL LYTTLE**
**(2) APPELLATE AUTHORITY – DEPARTMENT OF LABOUR**

Defendants

**Appearances**:
Mr. Stephen Huggins for Claimant/Applicant
Mr. Jaundy Martin, Senior Crown Counsel, Attorney General's Chambers for Defendants/Respondents.

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2002: April 24
2003: March 10

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**JUDGMENT**

[1] **BRUCE-LYLE, J**: This was an application for Judicial Review brought by the applicant Adams Brothers Engineering Limited, a limited liability company incorporated under the Laws of Saint Vincent and the Grenadines, with its registered office located at Arnos Vale.

[2] The Respondent Ezekiel Lyttle of Sharpes was a battery service operator at Adams Brothers Engineering Ltd.

[3] In this application the applicant sought and was granted leave on the 15th February 2002 to apply for Judicial Review for an order of certiorari to quash the decision of the Labour

Appellate Authority made against it on 27th July 2001; and a stay of execution of the order made by the Labour Commissioner and upheld by the Appellate Authority.

[4] The applicant sought judicial review on the following grounds:

(i) That the tribunal had come to a conclusion that no reasonable authority could have come to, in that it ruled that the Respondent had been unlawfully dismissed by the applicant;
(ii) That the tribunal misdirected itself as to law;
(iii) That the decision was illegal, unsafe, irrational, arbitrary and rife with procedural irregularities.

[5] The applicant further stated in his claim that no alternative form of redress existed as the Appellate procedure had already been exhausted; and also that the limited time for hearing of this application had not yet passed; and that the applicant was directly affected by the Appellate Tribunal's decision.

[6] The matter came up for hearing on the 24th of April 2002.

[7] The facts briefly stated are as follows – On the 6th day of December 2000, Mr. Roger Adams, Manager of the Claimant/Applicant herein spoke to and informed his then employee, Ezekiel Lyttle, concerning a tattered jumpsuit he was wearing on the job, and asked him to desist from wearing the said jumpsuit. He was also told that it was not appropriate to be worn at Adams Brothers Engineering Ltd's place of business, and that the employers would shortly provide him with a new suit that would conform to the dignity of the business place. In addition he was asked to wear his own clothes until the jumpsuit was provided.

[8] It seems to me that the respondent Ezekiel Lyttle insisted on wearing the tattered jumpsuit to the chagrin of his employers and was reminded by his employer of his directions the previous day concerning the said jumpsuit, whereupon Mr. Lyttle left the work compound ostensibly without the permission of anyone in charge. There was a meeting subsequently, a few days later between the Claimant and the Labour Commissioner in response to a summons from the Labour Commissioner, to have the matter resolved with

Mr. Lyttle. There was an agreement, which is not in dispute, that Mr. Lyttle could return to work on condition that he not wear the tattered jumpsuit at work.

[9] It is also not in dispute that some four days after the meeting with the Labour Commissioner, Mr. Lyttle turned up at work, inquired as to whether the jumpsuits had arrived, and on receiving a negative response from Mr. Adams, he again left the compound and only returned on the 18th of December 2000 to collect his salary, left the compound and failed to report for work subsequently. Mr. Adams then received a letter informing him of a hearing concerning the unlawful termination of Mr. Lyttle.

[10] The matter was heard ex parte on the 15th February 2001 due to the fact that Mr. Adams forgot to attend the hearing due to what he claimed were "business exigencies", and a decision to the effect that Mr. Lyttle had been unlawfully dismissed was rendered by the hearing officer. This is also not in dispute.

[11] An appeal to that decision was heard on the 27th July 2001, which upheld the decision of the hearing officer at first instance. It is this decision that the claimant seeks to have reviewed.

[12] A glance at Ex. R.A. 2 which purports to be a copy of the report of the Appellate Authority and signed by Cecil M. John as Chairman of the said Authority and copied to the Honourable Attorney General, and the Labour Commissioner, at page 3, under the heading "Submission By the Appellate Authority" states at paragraphs 3, 4 and 5 –

> " (3) It can be extrapolated from the suspensions that the Manager, Mr. Adams, wanted to get rid of the employee, but did not want to dismiss him formally because of the obvious consequences. The provision of Employment Act does not give a formal definition for "dismissal", and Mr. Adams seems to have taken advantage of this loophole.
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> (4) The employee, Mr. Lyttle, seems to have argued that his dismissal was implied, and the authority agrees with the Hearing Officer that the employee was severed from his employment.

(5) Whatever the shortcomings of the employee may have been, Management on the whole may have found some merit in him to have kept him in their employ for as long as 16 years. Hence, to pressure him into severance over the question of a jumpsuit seems to be unfair."

[13] The authority went further to conclude under the heading "Decision Of The Authority" at page 3 –

> "Having taken into consideration all the arguments put forward by the Appellant and counter-arguments by the Respondent, and guided by the Protection of Employment Act No. 16/80, and by legal advice, we hereby agree that the Decision of the Hearing Officer should be upheld. Therefore, in accordance with sub-section 3 of Section 24 of the Protection of Employment Act No. 16/80, it is so decided."

[14] These seem to have been the basis upon which the appellate authority upheld the decision of the hearing officer at first instance, having regard also to the facts of this matter as put forward to the hearing officer at first instance.

[15] There are three heads of Judicial Review as identified by Lord Diplock in the case of C.C.S.U.V. Minister of the Civil Service [1984] 3 ALL E.R. 935,950. These heads were identified as illegality, irrationality and procedural impropriety broadly. This Court's function in the whole ambit of Judicial Review is to look at the decision-making process to see whether there was any illegality, irrationality or procedural impropriety involved therein. This Court cannot therefore have regard to the Applicant's version of the facts as stated or contained in his affidavit in support of this application, as these facts were never put before the appellate authority as the hearing officer at first instance heard the matter ex parte the applicant.

[16] The facts contained in the record from the appellate authority and exhibited as "R.A. 2", "R.A. 3" and "R.A. 4" are what this Court should be concerned with. Having reviewed those facts, can it be held that there was any illegality, irrationality, or procedural impropriety involved therein? I shall deal with the issue of procedural impropriety first as whatever conclusion I arrive at on that issue will have a direct bearing on the other issues of illegality or irrationality.

[17] Having regard to Exhibit R.A. 3 which represents the report of the Hearing Officer at first instance, Mr. George L. Bailey, it can be gleaned that there was a hearing conference held at 9:30 a.m. on Thursday 15th February 2001, in accordance with Section 22, Nos. 1, 2 and 3 of the Protection of Employment Act No. 16 of 1980 and also by order of the Minister of Labour, in order to adjudicate in an Industrial Relations dispute between Roger Adams, Manager, Adams Brothers Ltd. and Ezekiel Lyttle, a former employee of that establishment, who represent the parties to this suit.

[18] The report goes further to show that the Employee Ezekiel Lyttle attended the Hearing Conference. The report notes that -

> "Notwithstanding that an official summons was delivered by hand to the office of Adams Brothers Ltd, some seven days in advance, no-one appeared at the hearing on behalf of the Adams Brothers establishment. This matter was therefore dealt with 'ex-party' ".

It is clear from the above that the applicant in this matter did not attend the Hearing Conference, despite clear notice to him of the event.

[19[ If the Hearing Officer at first instance was satisfied that adequate and due notice was afforded the applicant to attend the Hearing Conference, he was entitled to proceed in the absence of the applicant, since there was no excuse, or reason offered to the Hearing Officer as to why the applicant had failed to attend. Furthermore, the appellate authority found as a fact in Ex. R.A. 2 that-

> "Mr. Adams was served a letter to appear at a hearing at the Labour Office, however due to heavy involvement in other matters, the day went by and he did not recall that he had such a hearing to attend."

I do not find there to have been any procedural impropriety on the part of the Hearing Officer in proceeding to hear the matter and arriving at a conclusion in the absence of the applicant, nor do I find any such impropriety on the part of the Appellate Authority in accepting that position.

[20] Flowing from this therefore I agree with the conclusion adopted by the Appellate Authority that –

> "The grounds of appeal that the Hearing Officer did not have the benefit of evidence from Mr. Adams cannot be tenable since Mr. Adams himself admitted that he was duly served with a notice to attend …"

[21] Having thus concluded, and now having regard to the issues of illegality and irrationality, can it be held that the other conclusions arrived at by the Appellate Authority were fraught with illegality and irrationality? I say no. There is nowhere in the affidavits filed by the applicant in support of this review, where he gives examples of any illegality or irrationality on the part of the authority. There was no basis on which the Appellate Authority could have rejected the findings of the Hearing Officer and I find and hold their conclusion at the hearing of the appeal to be sound and with merit having regard to the circumstances of the whole.

[22] The whole matter rested on the facts as presented to the Hearing Officer, and also on the facts as accepted by the Appellate Authority having heard arguments from both parties. I see no reason therefore to interfere with the decision of the Appellate Authority. Moreover, this Court cannot enquire into the merits of the decision of a Statutory Tribunal. It can only look at the decision making process to see whether there was any illegality, irrationality or procedural impropriety. This is the law as posited in the case of Chief Constable of North Wales vs Evans [1982] 3 ALL E.R. 141 and in the case of Marks v Minister of Home Affairs [1984] 35 WIR 106.

[23] It is clear that having heard submissions from both parties at the Appeal Hearing, the authority accepted the evidence of the employee in favour of the employer/applicant, as it was entitled so to do, especially with regard to the issue of the "suspension" of the employee. I agree with Learned Counsel for the respondents, Mr. Jaundy Martin, that the Tribunal in doing so had properly taken into account a material consideration.

[24] Looking at the report submitted by the Tribunal, I am of the view that the comments and observations made in respect to the evidence and all the circumstances of the case were

in order. The tribunal was entitled to make those comments and observations, unless those statements prima facie pointed to bias, unfairness or some improper or illegal consideration. I see no such imputation from the comments and observations on the evidence as made by the Tribunal. The Tribunal properly based its conclusion on proper consideration of the evidence and the law pertaining to the case before it. The issues of illegality, irrationality and procedural impropriety cannot be attached to the decision of the Tribunal in any way whatsoever.

**ORDER**

[25] In the circumstances I dismiss this application for Judicial Review accordingly. The decision of the Appellate Authority is hereby upheld. The applicant in this case will pay the respondent's costs in the sum of $2,500.

**Frederick Bruce-Lyle**
HIGH COURT JUDGE