COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

SUIT NO. HCV 0042 OF 2003

BETWEEN:

WATERFRONT AND ALLIED WORKERS UNION (WAWU)

Claimant

AND

DOMINICA PORT AUTHORITY

Defendant

Appearances:

Mr. Gene Pestaina Counsel for the Claimant
Mr. Alick Lawrence Counsel for the Defendant

_____

17th MARCH 2003

_____

DECISION

IN CHAMBERS

[1]　　**Cenac J.**　　In February this year the Claimant/Applicant obtained an injunction against the Defendant restraining it from implementing new conditions for long shore and stevedore work carried out at the Woodbridge Bay Port (as contained in its letter of 4th February 2003).

[2]　　The application was filed before a Claim Form was issued. Indeed, having regard to the nature of the dispute between the parties, it is quite unlikely that one will be filed since the issues to be resolved, to my mind, and as conceded by the parties through various correspondence, are for a Tribunal pursuant to the provisions of the *Industrial Relations Act.*

1

[3]   However, on the return date, the Defendant put forward several grounds for the dissolution of the injunction, namely, patent violations of the **CPR 2000** as adumbrated in Counsel's submissions:

     (i)   The application failed to state briefly the grounds on which the Applicant is seeking the order (**r. 11.7(1)(a))**;

     (ii)   The application was made without notice and as such the evidence in support should state why notice was not given – a requirement which is mandatory under the rules – (**r. 17.3(3)**);

     (iii)   No undertaking by the Applicant to abide by an order as to damages caused by the granting of the order (**r. 17.4(2)**);

     (iv)   The Court granting the interim remedy should have required an undertaking from the Applicant to issue and serve a Claim Form by a specified date since no claim was issued before the interim remedy was granted (**r. 17.2(5)**).

[4]   Secondly, argues Counsel, there was no legal basis for the grant since –

     (i)   There is no serious issue to be tried, having regard to the affidavit in support which discloses no cause of action;

     (ii)   There is no agreement or legal relationship between the parties which can be the basis of an order to restrain the Defendant from doing that which it proposed to do.

[5]   Thirdly, Counsel argued that damages would be an adequate remedy, even if the Court held that there was a serious issue to be tried.

[6]   Finally, argument was put forward respecting the balance of convenience theory and non-disclosure of material facts.

DEFENDANT'S REPLY

[7]   In Reply, the Defendant has conceded that there is no substantive action to be tried but submits that the Claimant is seeking to invoke the equitable jurisdiction of the Court; thus the grant of the injunction sought was in the nature of a discretionary remedy and that the Claimant's approach was that there would be a simultaneous application for leave to apply for an Order of Mandamus compelling the Minister to establish a Tribunal according to law etc.

CONCLUSION

[8]   I do not want to lose sight of the issue which is now before the Court: whether the ex parte injunction granted on the 19th day of February 2003 should be discharged for irregularity.

[9]   It is obvious that there were violations/breaches of the **CPR 2000** as stated nin Counsel's submissions with which I concur.   Secondly, having regard to the affidavit in support of the ex parte injunction, there is no serious issue to be tried by this Court.   This fact has been conceded by the Defendant.   Having so found, I find it unnecessary to deal with the other issues raised by Counsel: whether damages would be an adequate remedy and the balance of convenience theory.

[10]   Just prior to the hearing of this matter an application for leave to apply for an order of Mandamus was filed by the Claimant to have the Minister refer the matter to a Tribunal according to law.   This is where I think this matter really belongs.   A mandamus order was subsequently issued.

[11]   Accordingly, I will grant the application and dissolve the injunction with costs to the Defendant.

                                                                    Dunbar Cenac
                                                                    HIGH COURT JUDGE