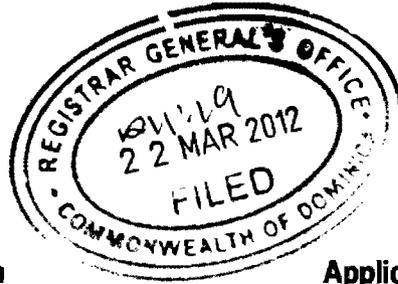


**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA**

SUIT NO. DOMHCV2012/0058



BETWEEN:

Cecilia Robin **Applicant**
And
The Attorney General
The Permanent Secretary **Respondents**
Ministry of Health

Appearances:

Mr. J. Gildon Richards for Applicant
Ms. Pearl Williams for Respondents

.....
2012: March 19th, 21st
.....

RULING

- [1] **Cottle, J:** The Applicant sought leave to apply to the court for Judicial Review for an order of certiorari to remove into the High Court and quash a decision by the second Respondent to stop paying the salary of the Applicant after June 2011. The Applicant also sought leave to apply for certain declarations claiming that the Respondent's action violated Section 8 (8) of the Constitution. The action of the Respondents was also said to have been without jurisdiction and unreasonable as well as in breach of the rules of natural justice.
- [2] In her affidavit in support of her application for leave the Applicant deponed that she is a registered staff nurse employed by the Government of Dominica. She swears that during the course of her employment she received injuries which necessitated her being placed on sick leave from 20th May, 2010. She considered that her injuries resulted from the failure of the Respondents to provide her with a safe work environment. She filed a claim against the Government of Dominica claiming damages for the injury, pain, suffering and loss she endured.
- [3] The Applicant continued on sick leave for six months after her accident. She was paid in full. For the following six months she remained on sick leave. She was paid half pay for this period. Thereafter, the Applicant received no pay. This took effect from the month of June 2011.

- [4] Despite the claim already filed -which remains pending- the Applicant now makes this application for Judicial Review.
- [5] Faced with the application, the Respondents resist the grant of leave on several grounds. Firstly, it is argued that the application ought not to be entertained because it has been tainted by undue delay. As at June 2011 the Applicant knew she had not been paid. She waited until January 2012 to make the present application.
- [6] In response, Mr. Richards says that the Applicant ought not to be penalized because the delay was due to the fact that the Respondents, by their actions, indicated a desire to resolve the matter amicably. It is this indication that caused the Applicant to delay. It is unclear to this court how this argument can be advanced to justify delay between July 2011 and January 2012. Since February 2011 the Applicant had formed the view that she wished to resolve her dispute with her employers by litigation. I do not see how negotiations which predated the filing of the claim for damages can justify delay in making this application for leave.
- [7] There are important agreed facts which form the backdrop of this application. The Applicant has already filed a claim for damages in which she avers that her injuries are as a result of the negligence of her employers the Government of Dominica represented by the Attorney General. That claim is pending.
- [8] Secondly, the Applicant applied to her employers for the grant of sick leave. Her application was approved. By memorandum dated 2nd June, 2010 she was advised that from 1st June, 2010 to 30th December, 2010 while on sick leave she would be paid her entire salary.
- [9] For the period 31st December, 2010 to 30th June, 2011 she would receive half pay while she remained on sick leave. Should she remain on sick leave past July 2011 she would be on no pay sick leave.
- [10] By her letter of appointment the Applicant was made aware that the General Orders of the Public Service applied to her contract of employment. General Order 5.25 sets out the periods over which a

public officer may be granted sick leave. I reproduce General Orders 5.25 (i) (ii) and (vi) which cover the Applicant's situation.

(i) On the submission of medical certificate to the satisfaction of the Head of Department, sick leave may be granted, with full salary, up to a maximum period of six months during any period of twelve months, if there is a reasonable prospect of recovery supported by medical certificate;

(ii) thereafter, if necessary, further extensions of sick leave may be granted, with half salary, subject to a maximum period of twelve months sick leave in all, with full and half salary;

(vi) Sick leave beyond an aggregate of 12 months in any period of 4 years or less will only be granted in exceptional circumstances; should leave be granted beyond this aggregate, such further extension or sick leave may be granted either with half salary or without salary;..

[11] It is instructive that the Applicant has not sought leave to review the decision of her employers to pay her half her salary over the second six months of her sick leave. I find it difficult to understand why the Applicant accepts the propriety of the decision to pay her salary at the full rate for six months under the General Orders and a further six months at half pay under those Orders but now complains of a failure to pay her after twelve months on sick leave when this course is also provided for in the self same General Orders.

[12] Mr. Richards for the Claimant urges the court to find that there is an arguable case of breach of S. 8 (8) of the Constitution with regard to the Claimant. Section 8 (8) reads:

"Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or authority, the case shall be given a fair hearing within a reasonable time."

[13] This section is meant for the protection of the law to citizens and others in Dominica. It mandates a fair hearing within a reasonable time by a court or other quasi judicial authority. It has nothing to do with the application being considered. This is an instance of an employer applying the terms of an employment contract when dealing with an employee. There is no effort to determine the existence or extent of any civil right or obligations by the employer.

[14] For the reasons above, I conclude that there is no basis to justify the grant of leave to the Applicant. The application is accordingly refused.

[15] As is usual, in matters of this nature, I make no award as to costs.



Brian S. Cottle
High Court Judge