EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

ANTIGUA AND BARBUDA

ANULTAP2013/0002

BETWEEN:

SUNDRY WORKERS

Appellant

and

STATE INSURANCE CORPORATION

Respondent

Before:

The Hon. Mde. Gertel Thom — Justice of Appeal
The Hon. Mr. Paul Webster — Justice of Appeal [Ag.]
The Hon. Mr. Michael Fay — Justice of Appeal [Ag.]

Appearances:

Mr. Cosbert Cumberbatch for the Appellant
Mr. Roger Forde, QC with him Ms. Kari-Anne Reynolds for the Respondent

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2017: November 10;
2019: January 14.

Labour tribunal appeal – Collective bargaining agreement – Pension benefits payable to employees of State Insurance Corporation – Right to appeal decision of Industrial Court made pursuant to section 15(2) of Industrial Court Act – Whether Industrial Court misconstrued article 28 of collective bargaining agreement

The State Insurance Corporation (the "SIC") is a statutory body established by the State Insurance Corporation Act (the "SICA"). Prior to the enactment of the SICA, the Government of Antigua and Barbuda established the State Insurance Department, within the Ministry of Finance. This department was a part of the public service and the employees' pension was governed by the Pensions Act. On the establishment of the SIC, those public servants continued in the employment of the SIC and therefore ceased to be public servants to whom the provisions of the Pensions Act applied.

The Antigua Trades and Labour Union ("the Union") became the representative of the employees and entered into a collective bargain agreement with the SIC. Article 28 of the

agreement states that for retiring benefits, the provisions of the Pensions Act shall apply to employees who have contributed at least 33 1/3 years of service. However, section 15 of the SICA allows for the Board of the SIC to make rules in relation to the pension benefits of the employees. It is pursuant to this section that, the SIC has established a contributory pension plan **(the "pension plan")** which all of the employees have joined.

During negotiations of a new collective bargaining agreement, the views of the Union and the SIC differed on the pension benefits which should be paid to the employees. Consequently, this issue (along with other issues which are not relevant to this appeal) was referred to the Industrial Court pursuant to section 15 of the Industrial Court Act.

Before the Industrial Court, the employees argued that the effect of article 28 is that all employees who have worked for 33 1/3 years are entitled to a pension pursuant to the Pensions Act irrespective of whether they are also entitled to a pension in accordance with the Pension Plan. The SIC**'s** position was that the employees are entitled to one pension being pension pursuant to the pension plan. The Industrial Court found that article 28 was ambiguous and produced an unreasonable result. The Industrial Court concluded that retirement benefits of all employees should be in accordance with the provisions of the pension plan and article 28 should be modified accordingly to give it business sense.

The appellants, being dissatisfied with the decision, appealed on several grounds. However, at the hearing of the appeal the issues for determination were (a) whether the Union had a right of appeal against the decision of the Industrial Court made pursuant to section 15(2) of the Industrial Court Act and (b) whether the Industrial Court had misconstrued article 28 of the collective bargaining agreement.

Held: dismissing the appeal and making no order as to costs, that:

1. In interpreting statutes, where the words are clear and unambiguous, they must be given their literal meaning unless to do so would lead to an absurd result. The wording of sections 15(2) and 15(3) of the Industrial Court Act is clear and unambiguous. While provision is made to appeal in the circumstances outlined in section 17(1), where the matter referred to the Industrial Court relates to a collective bargaining dispute and was referred under section 15(2), the decision of the Industrial Court is final. Accordingly, the employees had no right of appeal against the decision of the Industrial Court.

   Caribbean Ispat Ltd v Steel Workers' Union of Trinidad and Tobago (1998) 55 WIR 481 considered.

2. The rationale for the finality provision in section 15 of the Industrial Court Act seems to be based on the fact that the functions of the Industrial Court are not purely judicial, for example, the Industrial Court in making an award is required by section 10 of the Act to have regard to the interest of the community and to do so according to the equity, good conscience and the substantial merit of the case without regard to technicalities and legal form. Further, by section 9, the procedures are not bound by the rules of evidence and by section 16, persons

may be represented by persons who are not attorneys. Likewise, by section 4, the members of the Industrial Court need not be attorneys. In this way, Parliament has determined that disputes relating to collective bargaining agreements should be left to the Industrial Court whose members are qualified and experienced in the industrial relations practice in Antigua and Barbuda and are best determined by them.

3. While the effect of a finality clause is to prevent an appeal, it does not mean that a decision of the Industrial Court made pursuant to section 15(2) of the Industrial Court Act can never be the subject of review on appeal. An example would be if there was a procedural irregularity such as a breach of the rules of natural justice.

   R (on the application of Sivasubramaniam) v Wandsworth County Court) [2002] EWCA Civ 1738 applied.

4. There is no principle of law which prohibits an employer from applying the provisions of the Pensions Act which is an Act to provide for the payment of pension benefits to public officers, to regulate the pension benefits payable to its employees.

5. In determining an industrial dispute pursuant to section 15(2), the Industrial Court is required by section 10(3) to consider among other things the principles and practice of good industrial relations and the Antigua and Barbuda Labour Code. The concept of payment of two pensions for the same period of service by an employee is not a concept in the Antigua and Barbuda Labour Code nor was it established to be a principle of good industrial relations in Antigua and Barbuda. The Industrial court therefore did not err in finding that the employees were not entitled to two pensions.

JUDGMENT

[1] Thom JA: This appeal concerns the pension benefits payable to employees of the respondent, State Insurance Corporation ("SIC").

[2] The background to this appeal is that the SIC is a statutory body established by the State Insurance Corporation Act.[1]

[3] In 1977, prior to the enactment of the State Insurance Corporation Act, the Government of Antigua and Barbuda (the "Government") established the State

[1] Cap.413, Revised Laws of Antigua and Barbuda 1992.

Insurance Department within the Ministry of Finance pursuant to the State Insurance Act[2] which came into force in December 1976. The State Insurance Department carried out some of the functions now carried out by the SIC. The employees were public servants as the department was part of the Public Service. Their pension entitlement was therefore governed by the Pensions Act.[3]

[4] On the establishment of the SIC in 1986, those public servants continued in the employment of the SIC and therefore ceased to be public servants. Consequently, the provisions of the Pensions Act were no longer applicable to them. They were issued with a letter by the General Manager of the SIC to the effect that their years of service in the public service would be taken into account as years of service with the SIC for pension purposes. Subsequently, persons from the private sector were employed by the SIC.

[5] The Antigua Trades and Labour Union ("the Union") became the representative of the employees. The Union and the SIC entered into a collective bargain agreement. Article 28 of the agreement reads:

> "**28.** RETIREMENT BENEFITS
> The normal age of retirement for employees covered by this Agreement shall be sixty (60) years.
> For the compensation of retiring benefits the provision of the Pensions Act Cap 311 as amended and adapted shall apply to all employees who have contributed at least thirty-three and one third (33 1/3) **years of Service.**"

[6] Section 15 of the State Insurance Corporation Act makes provision for the Board of the SIC to make rules in relation to the pension benefits of the employees. It reads:

> "**15. (1) The Board may make rules for the conduct of the Corporation's business** and may issue such orders and instructions as it thinks fit for giving effect to this Act and for the effective management for the Corporation.
> (2) Without prejudice to subsection (1), the Board may, subject to the approval of the Minister, make rules –
> ....

[2] Act No. 21 of 1976, Laws of Antigua and Barbuda.
[3] Cap 311, Revised Laws of Antigua and Barbuda, 1992.

(c) prescribing the salaries, allowances, benefits, pension or superannuation schemes and gratuity for officers and employees of the **Corporation."**

[7] In 2006, pursuant to section 15(2)(c), the SIC established a contributory pension plan. Under the provisions of the pension plan, all employees are eligible to join the plan. Employees are required to contribute 3% of their gross earnings to the plan. Those who do so are entitled to a pension in accordance with the provision of the pension plan. It is not disputed that all of the employees have joined the pension plan.

[8] During negotiations of a new collective bargaining agreement between the Union and the SIC, their views differed on the pension benefits which should be paid to the employees. As a consequence, this issue (along with other issues which are not relevant to this appeal) was referred to the Industrial Court pursuant to section 15 of the Industrial Court Act[4] which provides for the Industrial Court to determine any question relating to interpretation and application of a collective bargaining agreement.

Proceedings in the Industrial Court

[9] Before the Industrial Court, the employees argued that the effect of article 28 is that all employees who have worked for 33 1/3 years are entitled to a pension pursuant to the Pensions Act irrespective of whether they are also entitled to a pension in accordance with the pension plan. The SIC's position was that the employees are entitled to one pension being pension pursuant to the pension plan.

[10] The Industrial Court found that article 28 was ambiguous and produced an unreasonable result because:

(i) It does not make all of the benefits of the Pensions Act applicable to the employees so that persons who work for less than 33 1/3 years would not receive a pension.

(ii) It would allow for the employees to be eligible for two pensions, one under the Pension Plan and another under the Pensions Act.

[4] Cap. 214, Revised Laws of Antigua and Barbuda 1992.

[11] The Industrial Court was of the view that such a result was not practical and could not possibly have been intended by the parties. The Industrial Court was also of the view that if the SIC was required to pay some or all of the employees both pension pursuant to the Pensions Act and pursuant to the pension plan it may result in the SIC having a financial liability which may prove to be burdensome.

[12] The Industrial Court noted section 109 of the Antigua and Barbuda Constitution Order 1981[5] (to which neither counsel had referred) which reads as follows:

> "(1) The law to be applied with respect to any pensions benefits that were granted to any person before 1st November 1981 shall be the law that was in force at the date on which those benefits were granted or any law in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.
>
> (2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall –
>
> (a) in so far as those benefits are wholly in respect of a period of service as a judge or officer of the Supreme Court or a public officer that commenced before 1st November 1981, be the law that was in force on that date, and
>
> (b) in so far as those benefits are wholly or partly in respect of a period of service as a judge or officer of the Supreme Court or a public office that commenced after 31st October 1981, be the law in force on the date on which that period of service commenced,
>
> or any law in force at a later date that is not less favourable to that person.
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> (3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall for the purposes of this section, be deemed to be more favourable to him than the other law or laws.
>
> (4) All pensions benefits shall (except to the extent that they are by law charged upon and duly paid out of some other fund) be a charge on the Consolidated **Fund."**

[13] In view of the provisions of section 109, the Industrial Court was of the opinion that prior to the implementation of the pension plan, it may have been reasonable for the SIC to permit the public employees who were originally public officers to exercise the option as to which provision should be applicable to them, either the Pensions Act or the SIC pension plan.

[5] CAP 23, Revised Laws of Antigua and Barbuda 1992.

[14] The Industrial Court concluded that the retirement benefits of all employees should be in accordance with the provisions of the pension plan and article 28 should be modified in the following manner to give it business sense:

> "For the computation of retirement benefits the provision of the State Insurance Corporation Pension Plan for salaried Employees, as amended and adapted, shall apply to all employees."[6]

[15] The appellants being dissatisfied with the decision of the court appealed on several grounds. However, at the hearing of the appeal the issues for determination were (a) whether the Union had a right of appeal against the decision of the Industrial Court made pursuant to section 15(2) and (b) whether the Industrial Court had misconstrued article 28 of the collective bargaining agreement.

Submissions

Right of Appeal

[16] I will deal first with the issue of the jurisdiction of this Court to hear this appeal which was raised by Mr. Forde, QC.

[17] Mr. Forde, QC in his submissions referred to section 15(3) of the Industrial Court Act and posited that the appellants had no right of appeal against the decision of the Industrial Court since the decision was made pursuant to a reference under section 15(2) of the Act. He contended that subsection 3 was clear and unambiguous. Mr. Cumberbatch in response referred to section 17 and submitted that the employees' appeal fell squarely within section 17. He relied on the case of Jewellers Warehouse v Cecil Norde.[7]

Discussion

[18] Sections 15(2), 15(3) and 17 read as follows:

> 15(2) "Where there is any question or difference as to the interpretation or application of the provisions of a collective agreement any employer or trade union

[6] Para. 94 of the judgment of the Industrial Court.

[7] ANUHCVAP2004/0029 (delivered 27th November 2006, unreported).

having an interest in the matter or the Minister may make application to the Court for the determination of such question or difference.
(3) The decision of the Court on any matter before it under subsection (2) shall be binding on the parties thereto and is final.
...
17.(1) Subject to this Act, any party to a matter before the Court shall be entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no others-

(a) that the Court had no jurisdiction in the matter, but so however, that it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the matter before the making of the order or award;

(b) that the Court has exceeded its jurisdiction in the matter;

(c) that the order or award has been obtained by fraud;

(d) that any finding or decision of the Court in any matter is erroneous in point of law; or

(e) that some other specific illegality, not hereinbefore mentioned, and substantially affecting the merits of the matter has been committed in the course of the proceedings".

[19] The well-established principle in interpreting statutes is that where the words are clear and unambiguous, the words must be given their literal meaning unless to do so would lead to an absurd result. In my view, the wording of sections 15(2) and 15(3) is clear and unambiguous. When read conjointly with section 17(1), while provision is made to appeal in certain circumstances as outlined in section 17(1), where the matter referred to the Industrial Court relates to a collective bargaining dispute and was referred under section 15(2), the decision of the Industrial Court is final. Parliament made special provisions in relation to disputes relative to collective bargaining and determined that those disputes are to be determined exclusively by the Industrial Court. Collective bargaining agreements relate in general to industrial relations practice. A similar finality clause is to be found in section 10(6) of the Industrial Court Act where the Court is required to determine whether a dismissal is harsh and oppressive or not in accordance with good industrial relations practice. Parliament has determined that such issues should be left to the Industrial Court whose members are qualified and

experienced in the industrial relations practice in Antigua and Barbuda and are therefore best suited to determine them. By section 4, the President and members of the Industrial Court need not be attorneys. Also, section 17(4) reinforces the point that an appeal only lies in the limited circumstances referred to under section 17(1). Section 17(4) reads:

> "Subject to subsection (1), the hearing and determination of any proceedings before the Court, and an order or award or any finding or decision of the Court in any matter (including an order or award) –
>
> (a) shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever; and
>
> (b) shall not be subject to prohibition, mandamus or injunction in any court on any account whatever."

[20] When section 15 is read in the context of the Act as a whole, the rationale for the finality provision in section 15 seems to be based on the fact that the functions of the Industrial Court are not purely judicial, for example, the Industrial Court is required, by section 10 of the Act, in making an award in respect of trade disputes to have regard to the interest of the community as a whole which includes the effect of such an award on the economy of the country and on the industry concerned, and by section 10(3) to do so according to the equity, good conscience and the substantial merit of the case without regard to technicalities and legal form. Further, pursuant to section 9, the procedures are not bound by the rules of evidence and by section 16, persons may be represented by persons who are not attorneys such as trade union representatives.

[21] In Sundry Workers of the Antigua Port Authority v Antigua Port Authority[8] this Court heard and determined an appeal from the decision of the Industrial Court which was referred pursuant to section 15(2) in relation to a trade dispute between the parties on the terms to be included in a new collective bargaining agreement. The appeal was dismissed since the Court found, among other things that, there was no demonstrated error of law or any specific illegality committed by the Industrial Court within the meaning of section 17(1)(d) or (e). However, apparently the effect of the finality provision in subsection 15(3) was not considered and therefore no

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[8] ANUHCVAP2001/0008 (delivered 28th January 2003, unreported).

determination was made by the Court. There is no mention of section 15 in the judgment. This case does not provide assistance in the determination of the issue.

[22] The Trinidad and Tobago equivalent of section 15(2) and (3) which is found in section 16(2) and (3) of the Trinidad and Tobago Industrial Relations Act was considered in Caribbean Ispat Ltd v Steel Workers' Union of Trinidad and Tobago.[9] There, de la Bastide CJ expressed doubt whether there was any right of appeal from a decision of the Industrial Court where the matter was referred to the Industrial Court under section 16(2). The issue having been raised by the Court and not by either of the parties, was not fully argued and the Court did not make a definitive decision on the issue but dismissed the appeal on the basis that the Industrial Court had not erred as alleged by the appellant.

[23] The case of Jewellers Warehouse on which the employees relied, in my view, does not assist in the determining the effect of section 15(3). Section 15 was not considered. Indeed, Jewellers Warehouse was not a matter which was referred to the Industrial Court pursuant to section 15(2). It was not a matter involving trade dispute. The issue in Jewellers Warehouse was whether Jewellers Warehouse was entitled to dismiss Mrs. Norde summarily pursuant to section C58(1)(b) of the Antigua and Barbuda Labour Code for incapability of performing the work that she was employed to do. On appeal, the respondent raised the issue whether the appeal was against the finding of facts by the Industrial Court and was therefore not within any of the grounds outlined in section 17(1). The Court was of the view that having regard to the circumstances of the case, it fell within section 17(1)(e).

[24] While the effect of a finality clause is to prevent an appeal (R (on the application of Sivasubramaniam) v Wandsworth County Court),[10] it does not mean that a decision of the Industrial Court pursuant to section 15(2) can never be the subject of

[9] (1998) 55 WIR 481.
[10] [2002] EWCA Civ 1738.

review on appeal. An example would be if there was a procedural irregularity such as a breach of the rules of natural justice.

[25] The dispute in this case being a trade dispute within the meaning of section 15, it was a dispute which the Minister had the power to remit to the Industrial Court under section 15(2). Having regard to the clear and unambiguous wording of section 15(3), the employees had no right of appeal against the decision of the Industrial Court.

Article 28

[26] While the finding in relation to section 15(3) determines the appeal, the parties having made extensive submissions on the effect of article 28, I will consider this issue.

[27] Mr. Cumberbatch, for the workers, submitted that the effect of article 28 is that all employees of the SIC who have served the SIC for 33 1/3 years are entitled to a pension in accordance with the Pensions Act irrespective of any pension to which they are entitled pursuant to the pension plan. He further submitted that even though the pension plan was implemented as late as 2007, the SIC agreed to the inclusion of article 28 in its present form in the collective bargaining agreement with the employees. Therefore, the pension benefits which the employees had pursuant to the collective bargaining agreement were not terminated by the implementation of the pension plan. Mr. Cumberbatch further submitted that the Industrial Court erred in determining the dispute in taking into account extraneous matters being the provisions of the SIC pension plan. He contended the Court was required to consider the collective agreement alone.

[28] Mr. Forde, QC in response submitted that the Industrial Court was correct to find that article 28 was ambiguous. He contended that the Pensions Act is applicable to public servants and it is not applicable to the SIC employees. Article 28 does not state what provisions of the Pensions Act are applicable to the employees. Further, article 28 does not provide that the SIC should be responsible for the payment of the pension pursuant to the Pensions Act or indeed who should pay such pension.

Discussion

[29] I do not agree with Mr. Cumberbatch that in exercising its powers under section 15(2), the Industrial Court was required to only consider the collective bargaining agreement. Section 10(3) of the Act requires the Industrial Court in exercising its powers to make orders and awards which it considers to be fair and just, having regard to the interests of the persons concerned and the community as a whole and in so doing to act in accordance with equity, good conscience and the substantial merits of the case having regard to the principles and practices of good industrial relations and the Antigua and Barbuda Labour Code. Having regard to the provisions of section 10(3), in my view, the approach adopted by the Industrial Court in considering the provisions of the State Insurance Corporation Act, the pension plan and the collective bargaining agreement is the correct approach.

[30] Pension benefits can simply be described as payments made to an employee by an employer at the conclusion of a period of years of service and having attained a certain age.

[31] It is common ground that at the time of the establishment of the SIC none of the workers who were public officers and who assumed duties at the SIC had qualified for a pension pursuant to the Pensions Act. It is also common ground that at the time when the employees who were public officers assumed duty with the SIC there was no pension plan, hence the letter by the General Manager of the SIC to them. While the letter was not part of the record of appeal, it is not disputed it was exhibited before the Industrial Court and it acknowledged that the employees' years of service and any benefits which had accrued under the Pensions Act would be honoured by the SIC. Employees who were employed subsequently had not served in the public service and therefore were not given a similar letter. When the employees were unionised, and article 28 was included in the collective bargaining agreement the SIC pension plan was not yet established. I agree that there is no principle of law which prohibits an employer from applying the provisions of the

Pensions Act which is an Act to provide for the provision of pension benefits to public officers, to regulate the pension benefits of its employees. However, the effect of article 28 did not to make the provisions of the Pensions Act applicable to the employees of the SIC. Section 6 of the Pensions Act provides for pension to be paid to employees in several circumstances including employees who have served a period of 10 years. None of the circumstances outlined in section 6 requires an employee to have completed 33 1/3 years. In fact, the reference to 33 1/3 years in the pensions legislation relates to the quantum of the pension to be paid. It is not a qualifying requirement.

[32] The provisions of section 15 of the State Insurance Corporation Act are very clear. Section 15(3) gives the Board of the SIC the power to determine the pension benefits of its employees. It was in the exercise of this power that the Board established a contributory pension plan for it employees. While the deed was not finalised until 2006, the pension plan is applicable from January 1988 and is so designed to take into account, the employees' years of service prior to 1988. Pensionable service is defined in article 1.26 as follows:

> "Pensionable service means the total of Pensionable Past Service and Pensionable Future Service."

Articles 1.23 and 1.25 define Pensionable Future Service and Pensionable Past Service as follows:

> "Pensionable Future Service means the number of full years and completed months of continuous employment after entry into the plan during which the Member remains an employee; during which regular contributions are made, if required by article IV clause 4.1, and during periods in which the member continues to accrue pensionable service under the plan."
> "Pensionable Past Service means subject to the definition of Pensionable Service the number of full years and completed months prior to 1st January 1988 of continuous employment as an employee since the date of employment of the said member."

[33] Having regard to the wide definition of pensionable service, the years of service of the employees who would have served in the public service would be taken into

account in computing their pension. When the circumstances are looked at as a whole, when article 28 is considered in the context of the collective bargaining agreement and read conjointly with the State Insurance Corporation Act and the pension plan, and having regard to the role of the Industrial Court as set out in section 10(3), which requires the Industrial Court to take into account the principles and practice of good industrial relations and the Antigua and Barbuda Labour Code, in my view, it cannot be said that the Industrial Court erred in law or there was any demonstrated specific illegality in the proceedings. The concept of payment of two pensions for the same period of service by an employer is not a concept in the Antigua and Barbuda Labour Code[11] nor was it canvassed in the submissions before this Court that it was a principle of good industrial relations in Antigua and Barbuda. Indeed, such a concept is unheard of. Accordingly, I find that there is no merit in the submissions advanced on behalf of the appellant. The appeal is accordingly dismissed.

[34] In relation to the issue of costs, section 10(2) of the Industrial Court Act, provides that the Court (including this Court) shall make no order as to costs unless for exceptional reasons. I will make no award as to costs since counsel for the appellant has not shown any exceptional circumstances within the meaning of section 10(2) to warrant such an order.

I concur.
Paul Webster
Justice of Appeal [Ag.]

I concur.
Michael Fay
Justice of Appeal [Ag.]

By the Court

[11] Cap 27, Revised Laws of Antigua and Barbuda 1992.

Chief Registrar