

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. Cv. 3214 OF 2000

**IN THE MATTER OF THE INDUSTRIAL RELATIONS ACT CHAP. 88:01 AND THE
INDUSTRIAL COURT (PENSIONS AND GRATUITIES OF MEMBERS)
REGULATIONS**

BETWEEN

LENORE HARRIS

PLAINTIFF

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANT

AND

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. Cv. 3215 OF 2000

**IN THE MATTER OF THE INDUSTRIAL RELATIONS ACT CHAP. 88:01 AND THE
INDUSTRIAL COURT (PENSIONS AND GRATUITIES OF MEMBERS)
REGULATIONS**

BETWEEN

RUBY THOMPSON-BODDIE

PLAINTIFF

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Before The Honourable Mr. Justice Stollmeyer

Appearances:

**Mrs. M. Dean-Armorer for the Plaintiffs
Ms. Delicia Noel for the Defendants**

JUDGMENT

By two originating summons both filed on 21st December 2000 the Plaintiffs seek an interpretation of Regulation 9 of the Industrial Court (Pensions and Gratuities of Members) Regulations, as well as certain declarations and orders.

The questions for determination are whether:

1. the expression "total emoluments" in Regulation 9 includes salaries, Cola, entertainment allowance, commuted travelling allowance, housing allowance and chauffeur allowance received by the Plaintiff as members of the Industrial Court during their service and, if not, then which of these payments are included in that expression;
2. the Plaintiffs are entitled to receive a gratuity of 20% of the total of these payments.

The reliefs sought are:

1. a declaration that the term "total emoluments" includes all of those payments set out above;
2. an order that the Defendant pay to each of the Plaintiffs \$129,377.72 with interest thereon; and
3. costs.

The principal issue for determination is whether the "chauffeur allowance" is to be included in the definition of "total emolument". The Defendant concedes that all of the other payments and allowances are properly included within that definition.

Skeleton arguments were filed on behalf of the parties and when the summons came on for hearing before me on 8th January 2002, they were then adjourned to 15th January 2002 for hearing.

On 15th January 2002 I asked advocates to file further skeleton arguments in relation to the following:

1. if a chauffeur is not employed, then is the Plaintiff entitled to the chauffeur allowance;
2. if a chauffeur is employed, then is the Plaintiff entitled to have all amounts paid to the chauffeur taken into account when the gratuity is being computed;
3. is the total gratuity payable to the Plaintiff 20% of the total emoluments received during the period of service, as is set out in Regulation 9, or is it subject to any restriction or "cap" and not to exceed five times the annual pension calculated in accordance with Regulation 6.

Additionally, Mrs. Dean-Armorer for the Plaintiffs had suggested that the matters be consolidated and heard together. No such order was made at the time, but I make it now.

The supplemental skeleton arguments were filed on behalf of the Plaintiffs on 1st February 2002. Those on behalf of the Defendant were filed on 21st March 2002

The Facts

The facts in respect of each plaintiff are identical.

They were each appointed a member of the General Services Division of the Industrial Court on 1st December 1991 for a period of three years. Prior to the expiration of that period, they were re-appointed for a further term of five years expiring on 31st November 1999. There was no further appointment and they have therefore each served for 8 years, or 96 months.

During their period of service there was a salary increase effective retroactively to 1st July 1998, as well as an increase in the travelling allowance payable, also effective from that date. Full payment of all salary and travelling allowance, including the retroactive increases, has been made to the Plaintiffs.

As to the gratuity, each of the Plaintiffs has been paid \$196,909.60 in respect of the salary received during the term of service, without taking into account the retroactive increase. Neither of them has received any gratuity in respect of that retroactive increase or of any of the other

amounts paid to them during their period of service. This results in each of them claiming payment of \$129,372.72 in respect of unpaid gratuity made up as follows:

1. Increased salary paid retroactively	\$15,300.00
2. Cola	\$ 5,391.00
3. Housing	\$44,145.16
4. (a) Travelling allowance received during the period of service	\$18,945.00
(b) Increased travelling allowance received retroactively	\$ 2,040.00
5. Entertainment allowance	\$ 4,800.00
6. Chauffeur allowance	\$ 38,756.00

The Regulations

Regulation 3 provides for payment of a pension or a gratuity, or both, to members of the Industrial Court calculated in accordance with the Regulations.

Regulation 9 reads as follows:

"There shall be paid to a member in respect of any service on the Court, which is not pensionable under these Regulations, a gratuity equal to twenty per cent of the total emoluments he received for such service or an amount not exceeding five times the annual amount of the pension calculated in accordance with regulation 6".

In one respect Regulation 9 is therefore clear. It provides that the gratuity is to be payable to those members of the Industrial Court whose service is not pensionable under the Regulations.

The Plaintiffs were appointed on contract. It is common ground that they are not eligible to receive a pension, but that they are entitled to be paid a gratuity.

In another respect, however, Regulation 9 leads to a possible ambiguity. This is because of the reference to Regulation 6 which reads as follows:

"Subject to these Regulations, the pension that shall be granted to a member without pensionable service shall be an amount not less than one-six hundredths of his annual pensionable emoluments drawn by him at the date of his retirement for each completed

month of service on the Court; the amount of pension granted shall not however exceed two-thirds of such emoluments".

Total Emoluments – Chauffeur Allowance

Neither the Industrial Relations Act nor the Regulations contain a definition of "total emoluments" although the former defines "pensionable emoluments" at Regulation 2 as being "the salary paid to a member in respect of his service on the court". The expression "total emoluments" used in Regulation 9 is therefore in stark contrast to the limited definition of pensionable emoluments.

A number of definitions of the word "emoluments" have been put before me. In *Words and Phrases Legally Defined* 3rd Ed. 2 page 151 it is defined as:

"the profit arising from office or employment; that which is received as compensation for services, or which is annexed to the possession of office, as salary, fees and perquisites; advantages; gain, public or private".

Jowitt's Dictionary of English Law 2nd Ed. page 694 defines emoluments as follows:

"Emoluments: a profit or advantage; anything by which a person benefits.

It is a wider term than "remuneration" (R. v. P.M.G. (1873) 3 QBD 428), but when used in a statute it may not include a servant's residence in his master's house, a meal or a suit of livery supplied by the master (Tennant v. Smith) [1892] AC.

"When the word is used in connection with the relation of employer and employee, it means in my opinion a grant of something additional to ordinary wages for the purpose of meeting some particular requirement connected with the service rendered by the employee or as compensation for unusual conditions of that service".

Black's Law Dictionary 7th Ed. defines emolument as:

"Any advantage, profit or gain received as a result of one's employment or one's holding of office".

In *The Queen v. The Postmaster General* [1876] 1QBD at 658 page 665:

"...I think the "emolument" means all by which he has benefited. In either case where he has a fixed salary or where he has a remuneration for his services, the emolument would be that by which he made a profit and which has been taken away from him by the Government purchasing the undertaking".

"...the question turns upon the meaning of the expression "annual emolument", and I find on looking at Johnson's Dictionary, that emolument is defined to be profit or advantage, and ...it therefore means the annual profit or advantage, which the prosecutor has derived from the office...in ascertaining what is the annual profit and advantage that he derived from his office, you must take into consideration the sum paid him for travelling expenses, and taking the whole into consideration does he derive any annual profit or advantage from it? If he does, that is what he is entitled to, and that must be taken into consideration in calculating the amount of compensation. It appears to me to turn on that word, which has a wider meaning than the word remuneration....".

In *Shelford v. Mosey* 1KB [1917] 154 at page 159:

"It is not necessary to define "emolument" which is a term not usually applicable to wages payable to a section but it is meant to include something paid to him for his work over and above the wages actually agreed to be paid.

In *Kiddie v. Port of London Authority* [1929] 93 JP 203 at page 205 emolument is set out as meaning:

"... the advantage or benefit which the Plaintiff is entitled to in virtue of his office for employment in addition to his salary".

It is clear that the expression "emolument" has a meaning far wider than merely salary and includes all perquisites and allowances which an employee might be paid, or to which an employee might be entitled as compensation for his services. Further, this is so unless the expression or definition of emolument is somehow circumscribed or restricted by an individual's terms of employment, whether statutory or otherwise.

Doubtlessly, it is on this basis that the Defendant concedes that the expression "total emoluments" includes not just the Plaintiffs' salary but also Cola, entertainment allowance, commuted travelling allowance and housing allowance.

The Defendant, however, views the chauffeur allowance differently and submits that, although by the nature of their jobs the Plaintiffs were entitled to a chauffeur, the chauffeur was paid by the Plaintiff as the employer, and that if no chauffeur were so employed then a member of the Industrial Court was not entitled to the chauffeur allowance. It is an allowance, submits the Defendant, which was taxed according to the income tax liability of the employed chauffeur, and not according to the income tax liability of the member of the Industrial Court. It was further submitted that it was not a legitimate profit of a member of the Industrial Court resulting from the terms of the contract of employment. The submission on behalf of the Defendant is in essence that the "profit" was that of the chauffeur and not that of either Plaintiff, and that it was the chauffeur who was liable to payment of income tax, national insurance contributions and any other statutory deductions. In support of these submissions I was referred to the decision in *Bridgetown (Mayor etc.) v. Phillips* 5 WIR 177 where at page 179G Stoby C.J. said:

"For a sum of money to be treated as a profit from an office it must be a legitimate profit resulting from the terms of the contract of the office. Subsistence allowance, travelling entertainment and uniforms may all result in profits to those who receive them but they were never intended to be profits".

Bridgetown, however, decided that the value of uniforms supplied to the employee was not to be taken into account in calculating his "pensionable emoluments", which were defined at Section 2 of the Pensions Act 1944 of Barbados as including, among others, personal allowances, house allowance and commissions payable to the employee by virtue of his office. The Court held that the supply of the uniform was "an indication of office" to ensure respect and protection for the wearer. It was not an emolument, being merely a requirement attached to the office in much the same manner as pen and ink supplied to a clerk or a typewriter to a stenographer, each of those employees being unable to function without those items.

I do not think that the provision of a chauffeur, or a chauffeur allowance can be looked upon as an indication of office to ensure respect and protection for the office holder.

There also appeared to be to me some question as to whether the Plaintiffs did in fact employ chauffeurs.

Asheek Ali, in his affidavit filed 20th July 2001 on behalf of the Defendant deposes that up to June 1994 all chauffeur allowances were paid to members of the Court on behalf of chauffeurs actually employed by them. This was the practice despite a memorandum of 30th November 1981

from the Chief Personnel Officer which required that the allowance be paid directly to the chauffeur and sets out that it was payable only if a chauffeur was in fact employed. He goes on to say that this method of payment was only implemented in June 1994, but gives no reason for the change. Consequently, members of the Industrial Court were paid the chauffeur allowance directly up to that time. He goes on to depose that there is no record of payment of a chauffeur allowance to any member of the Industrial Court from June 1994 to the date of his affidavit.

While I found paragraphs 13 and 14 of his affidavit difficult to reconcile, they do not appear to raise actual employment of a chauffeur by either Plaintiff as a live issue. I therefore accept Mrs. Dean-Armorer's submission that the Plaintiffs did in fact employ chauffeurs during the time when they were members of the Industrial Court.

The submission on behalf of the Plaintiffs is that payment of the chauffeur allowance (as well as cost of living allowance and employer's contributions to the National Insurance Scheme) were made by the Government and represent a saving to the Plaintiff as an employer. It is consequently an advantage enjoyed by the Plaintiffs during the term of their office and they are thereafter liable pay out of their own resources these amounts to, or on behalf of, the chauffeur. Failure to do so would be a breach of the contract of employment and statute.

The Defendant emphasises the use of the word "profit" when establishing whether a particular payment is to be regarded as part of an employee's emoluments, and seeks to distinguish the chauffeur allowance from the others paid to the Plaintiffs on this basis, as well as on the basis of that allowance, together with Cola, being subject to taxation and statutory deductions in the hands of the employed chauffeur.

But the definition of emolument does not rest with the word "profit". It clearly includes all allowances and perquisites, and equally clearly extends to "advantages". It is, as Blackburn L.J. said in *Postmaster General*, at page 665 "*...emolument means all by which he has benefited...*" and at page 664 "*...if he were dismissed improperly and unlawfully, the measure of the damages would be not only the money paid to him, but the money and moneys-worth in remuneration for his services, which he would have received if the contract had been carried out;*"

Similarly, if the contract of either Plaintiff in the instant case had been wrongfully terminated, that Plaintiff would be entitled as part of the damages awarded to payment in respect of the chauffeur. If she was in receipt of the allowance only, then it would be the allowance. If she in fact employed a chauffeur then it would be the amounts paid to or on behalf of the chauffeur, whether paid by the Plaintiff or on her behalf by the Government.

In my view, this determines the issue of whether the chauffeur allowance is an emolument. As with the other emoluments, it is one which could be claimed as damages if the Plaintiff was wrongfully dismissed. The Plaintiff would be entitled to be paid it if she had performed her obligations under her contract.

In my view the chauffeur allowance falls within the definition of the expression "total emoluments".

If a chauffeur is not employed, then is the Plaintiff entitled to the chauffeur's allowance

On further consideration, this does not appear to be a live issue, as I have said, and I therefore do not find it necessary to determine it. Indeed, in order to do so I would need to have before me (which I do not) the terms and conditions upon which the Plaintiffs entered into their contracts to serve as members of the Industrial Court in 1991.

If a chauffeur is employed, then are the plaintiffs entitled to have all the amounts paid to the chauffeur taken into account when the gratuity is being computed.

Regrettably, I do not have the information before me which enables me to determine this particular issue. I will need to have the terms and conditions of service applicable to a member of the Industrial Court in 1981, 1991 and 1994. I will also need to be informed as to whether those terms incorporate the provisions of the memorandum of 30th November 1981, and whether the latter remains in effect, or whether there has been any change in the method of payment of this allowance and, if so, the reason for it.

Is the total gratuity payable to the Plaintiffs 20% of the total emoluments received as set out in Regulation 9 or is it subject to any restriction or "cap" and not to exceed 5 times the annual pension calculated in accordance with the Regulation 6.

The further skeleton arguments on behalf of the Defendant defined this issue in the following manner:

"Whether the gratuity payable to a judge is 20% of the total emoluments received or alternatively an amount not exceeding five times the amount of pension calculated in Regulation 6, or does the alternative cap the amount to be paid by way of gratuity".

The submissions on behalf of the Defendant are that "the alternative does not cap the amount to be paid by gratuity" and that "this cap is limited to the amount that can be paid using the alternative method".

I admit to some difficulty in understanding these submissions. On the one hand, the Defendant appears to say that there is no cap to the gratuity payable and that the gratuity is therefore to be 20% of the total emoluments received during the period of service, no matter what that amount may be. On the other hand the submission also appears to be that the amount of the gratuity is capped at the amount which can be paid using the alternative method of computation as is set out in Regulation 6. Surely it must be one or the other.

"Pensionable service" in Regulation 6 means service that is pensionable under the Pensions Act Chap. 23:52, and refers to a person who has left such service in consequence of being appointed a member of the Industrial Court. In other words, a member of the Industrial Court who is not entitled to a pension under the Pensions Act or, rather is without pensionable service under the Pensions Act as a consequence of being appointed a member, is to be granted a pension under the Regulations if he or she attains the age of 55 at the date of his retirement and has held office for a period of not less than 10 years (see Regulation 5 (2)). Neither Plaintiff is eligible for such a pension not having held office for 10 years.

As a mathematical exercise, each plaintiff was in receipt of an annual pensionable emolument of \$183,600.00 (i.e. salary) on their retirement date of 30th November 1999. That retirement date is arrived at under the provisions of Regulation 4 (b) which specifies that a member without pensionable service is deemed to have retired when his or her contract expires, unless re-appointed for a further term.

One six-hundredth of the annual pensionable emoluments is therefore \$306.00 and since each of the Plaintiffs had completed 96 months service at the time of their retirement, the pension payable under Regulation 6 would have been \$29,376.00, subject to the "cap" of two thirds of the pensionable emoluments imposed by that Regulation.

Two-thirds of the annual pensionable emoluments (\$183,600.00) is \$122,400.00. This is the "cap" imposed by Regulation 6.

It will be recalled that Regulation 9 provides for payment of a gratuity not exceeding an amount equivalent to five times the annual pension calculated in accordance with Regulation 6. This produces a maximum gratuity of \$612,000.00.

Each of the Plaintiff's, however, compute the total gratuity to which they are entitled at \$326,287.32, inclusive of the disputed chauffeur allowance. The consequence of this is, of course, that any cap which may be imposed by Regulation 6 is not exceeded.

Consequently, I am not required to determine this issue. Were I required to do so however, I would conclude that the gratuity provided for in Regulation 9 is to be calculated taking into account the cap imposed by Regulation 6.

Disposition

The question as to whether the term or expression "total emoluments" in Regulation 9 of the Industrial Court (Pensions and Gratuities of Members) regulations includes the chauffeur allowance payable to members of the Industrial Court in calculating the gratuities payable to the Plaintiffs is therefore answered in the affirmative.

The question as to whether the Plaintiffs are entitled to receive a gratuity of 20% of the total of their emoluments is answered in the affirmative.

There will therefore be:

- (1) a declaration that the term or expression "total emoluments" includes salary, cost of living allowance, entertainment allowance, commuted travelling allowance, housing allowance and chauffeur allowance paid to the Plaintiffs in respect of their service as members of the General Services Division of the Industrial Court;
- (2) an order that the Defendant do pay to each of the Plaintiffs the sum of \$129,377.72;
- (3) an order that the Defendant pay interest on each such sum at the rate of 6% per annum from 3rd April 2000 to judgment.
- (4) an order that the Defendant pay the Plaintiffs' costs of the consolidated originating summonses.

25th July 2002

C.V.H. Stollmeyer
Judge