

**IN THE CARIBBEAN COURT OF JUSTICE
Original Jurisdiction**

CCJ Application No AR 2 of 2008

Between

Doreen Johnson

Applicant

And

Caribbean Centre for Development Administration

Respondent

THE COURT,

composed of M de la Bastide, President and R Nelson, D Pollard, A Saunders, D Bernard, J Wit and D Hayton, Judges

having regard to the written submissions of the parties on the preliminary issues raised in relation to the application for special leave to commence proceedings under Article 222 of the Revised Treaty of Chaguaramas, filed at this Court on 4th July, 2008 and to a public hearing held on 12th December, 2008

after considering the oral observations submitted on behalf of:

- The Applicant, by Mr C M Pilgrim, Attorney at law
- The Respondent, by Ms C Chase, SC

on the **2nd day of March, 2009** issues the following

JUDGMENT

Background

- [1] The Applicant, a national of Barbados, was employed with the Caribbean Centre for Development Administration (CARICAD) from 1990 until 2007. Her services were terminated owing to redundancy according to a letter dated 4th September, 2007 signed by the Executive Director, Jennifer Astaphan. From September 2005 to September 2007 the Applicant had been on approved no-pay study leave. Prior to her resumption of duties, about August 2007, she had written to the Executive Director requesting details of the terms and conditions of her employment, including her right to a pension, she having been employed with CARICAD for seventeen years.
- [2] Upon the applicant's return to work on September 3, 2007 she was informed that her services were terminated forthwith. The Board of CARICAD had decided to make her position as Head of the Administration Unit redundant with immediate effect.
- [3] On July 4, 2008 the Applicant sought special leave to proceed against the Defendant CARICAD and Jennifer Astaphan alleging inter alia abuse of power, wrongful dismissal, violation of the labour laws of Barbados, breach of contract, and breach of the Constitution of Barbados. She also claimed that she had been discriminated against on grounds of nationality, because employees who were Barbados nationals were not afforded the pension rights conferred upon employees who were nationals of other countries.
- [4] On 25th August, 2008 an interlocutory application was filed by the Proposed Defendants seeking an extension of time for filing a request to be heard and an order that Ms. Astaphan be removed from the suit. On 7th October, 2008 the Court granted the extension sought, ordered that Ms Astaphan be removed as a party to the proceedings, and directed that the following preliminary issues be

tried before the hearing of the application for special leave to commence proceedings:

- (a) Can CARICAD be sued in the Caribbean Court of Justice?
- (b) Which, if any, of the complaints made in these proceedings are justiciable by the Court?

If the answer to the first issue is in the negative, then there will be no need to consider the second issue.

First Issue – Can CARICAD be sued in the CCJ?

- [5] This issue relates to the jurisdiction of the Court, and Article 216(2) of the Revised Treaty of Chaguaramas (“the Treaty”) provides that where a dispute arises as to whether the Court has jurisdiction, the matter shall be determined by the decision of the Court.
- [6] It was contended by Counsel for the Applicant that this Court’s jurisdiction to hear and determine the Applicant’s claims is based on the fact that CARICAD is listed in Article 21 of the Treaty as one of the Institutions of the Community; further, that being such an Institution, CARICAD’s legal personality and capacity to be sued are derived from Article 228 of the Treaty which accords the Community full juridical personality. Counsel for the Applicant further submitted that Article 222 of the Treaty gives this Court jurisdiction to hear this matter as the interests of justice require that she be allowed to bring the claim irrespective of the identity of the defendant.
- [7] CARICAD is indeed named as an Institution of the Community in Article 21, being one of the entities established by or under its auspices, and is a sub-centre of the Latin American Centre for Development Administration. It has a Board of

Directors which is the governing body charged with general responsibility for its operations. The general objective of the Centre is to render assistance to countries of the Caribbean for the purpose of improving their administrative capabilities, and membership is open to those Caribbean countries which signed and ratified the Agreement establishing it on March 13, 1979. Most of the Member States of the Community signed and ratified the Agreement, but some did not.

- [8] Article 10 of the Treaty provides that the principal Organs of the Community are the Conference of Heads of Government and the Community Council of Ministers. In performance of their functions the principal Organs are assisted by the following Organs, namely: the Council for Finance and Planning (COFAP), the Council for Trade and Economic Development (COTED), the Council for Foreign and Community Relations (COFCOR) and the Council for Human and Social Development (COHSOD). Subsequent articles of the Treaty delineate the composition and functions of these Organs.
- [9] Article 23 provides for the Secretariat to be the principal administrative Organ of the Community with subsequent articles delineating the functions of the Secretariat and the Secretary-General.
- [10] Article 18 establishes Bodies of the Community, these being the Legal Affairs Committee, the Budget Committee, and the Committee of Central Bank Governors; in like manner their composition and functions are expressly delineated.
- [11] Significantly, the language used in Articles 10, 23 and 18 in establishment of the Organs and Bodies of the Community is positive and forthright: “The principal Organs of the Community *are*” (Article 10); “the Secretariat *shall be* the principal administrative Organ” (Article 23); and “*There are hereby established* as Bodies

of the Community” (Article 18). When contrasted with the language used in Article 21 in connection with the Institutions of the Community, one can clearly discern that the Institutions although within the Community System, were not intended to be an integral part of the Community. Article 21 is worded in the following way:

“The following entities established by or under the auspices of the Community shall be *recognised* as Institutions of the Community.” (italics added)

Article 22 provides for certain entities with which the Community enjoys important functional relationships which contribute to the achievement of the objectives of the Community to be *recognised* as Associate Institutions of the Community.

[12] Institutions and Associate Institutions of the Community are not unlike the specialised agencies of the United Nations which are not Organs of the United Nations. Article 7 of the United Nations Charter stipulates that the General Assembly, the Security Council, the Economic and Social Council, Trusteeship Council, the International Court of Justice, and the Secretariat are Organs of the United Nations. Specialised agencies are autonomous intergovernmental agencies which contribute in their own way to the achievement of the objectives and purposes of the United Nations. These institutions form part of the United Nations System, but they are not an integral part of the United Nations. Similarly, Institutions and Associate Institutions of the Community are autonomous inter-governmental entities which contribute to the achievement of the objectives of the Community, but are not an integral part of the Community.

[13] References are made throughout the Treaty to the roles and functions of the Organs and Bodies of the Community: for example, Articles 47 and 49 of Chapter Three on “Establishment, Services and Movement of Community Nationals,” Articles 57, 70, 74 and 77 of Chapter Four on “Policies for Sectoral

Development,” and Article 187(c) of Chapter Nine on “Disputes Settlement,” to name a few. Attention is also directed to Article 240(1) of the Treaty where it is provided that decisions of competent Organs are subject to the relevant constitutional procedures of Member States before creating rights and obligations for nationals of such States. Under Article 240(2) Member States undertake to act expeditiously to give effect to decisions of competent Organs and Bodies in their municipal law.

[14] No reference is made in any of the articles of the Treaty to any role to be played by the Institutions or Associate Institutions in implementing the Treaty. Article 21 is the only article where reference is made to Institutions. All of this leads inevitably to the conclusion that the Institutions of the Community do not enjoy the same degree of identification with the Community as do the Organs and Bodies. The policies and work of the Community are effected through the Organs and Bodies of the Community. The Organs and Bodies reflect the will of the Community. The Institutions and Associate Institutions on the other hand are merely entities that have some connection with the Community. Although recognised as entities working within the CARICOM system they have no power actual or ostensible to bind or represent the Community. Their acts and omissions are not necessarily attributable to the Community as are the acts and omissions of the Organs and Bodies.

[15] It is clear that the Community can be sued for the conduct of its Organs and Bodies and that of the Secretary General¹. It is equally clear, however, that, for the reasons set out above, CARICAD, an Institution of the Community, cannot be sued in proceedings before this Court. Moreover, even if CARICAD were an Organ of the Community, it could not be made a defendant in proceedings commenced in the Court as proceedings in respect of its acts or omissions would have to be brought against the Community itself.

¹ See also the Court’s Judgment in *TCL v. The Caribbean Community*, Case No. AR 3 of 2008 (2009) CCJ 2 (OJ) [5th February 2009]

[16] The Court's jurisdiction in contentious proceedings is grounded in Article 211 which confers on it compulsory and exclusive jurisdiction to hear and determine disputes concerning the interpretation and application of the Treaty. This includes (apart from disputes between Member States, disputes between Member States and the Community and referrals from national courts) applications by persons in accordance with Article 222. Article 222 is concerned with specifying the circumstances in which a person can bring a claim before the Court. It does not speak to the question of who may be a competent defendant and it is therefore not relevant to the issue whether CARICAD can be sued in this Court.

[17] For all these reasons the Court holds that actions against CARICAD cannot be commenced in this Court.

[18] Although the legal personality of CARICAD was not raised as a preliminary issue, important legal consequences may arise depending on whether CARICAD is a legal entity on the municipal or international plane e.g. with regard to its capacity to conclude treaties or to sue or be sued in municipal courts. This, however, is an issue on which this Court need not pronounce for the purposes of these proceedings, except in so far as we hold that CARICAD cannot derive its legal personality from that conferred upon the Community by Article 228 of the Treaty.

Second Issue – Justiciability of Applicant's claim

[19] It was stated earlier at [4] that if the answer to the first issue was that CARICAD could not be sued in this Court, then there would be no need to consider the second issue which concerns justiciability of the Applicant's claims. The Court, however, is constrained to point out that the issues in this case of wrongful dismissal, breach of contract and breach of the Constitution or labour laws of Barbados are not justiciable in this Court. Although the Court is competent to interpret and apply Article 7 of the Treaty which prohibits discrimination on

grounds of nationality only, there is no question of it doing so in this matter since, as the Court has held, proceedings against CARICAD cannot be initiated in this Court.

[20] For all of the reasons discussed above the Applicant's application is dismissed. There will be no order as to costs.

The Rt Hon Mr Justice M. A. de la Bastide (President)

The Hon Mr Justice Rolston Nelson

The Hon Mr Justice Duke Pollard

The Hon Mr Justice Adrian Saunders

The Hon Mme Justice Désirée Bernard

The Hon Mr Justice Jacob Wit

The Hon Mr Justice David Hayton

grounds of nationality only, there is no question of it doing so in this matter since, as the Court has held, proceedings against CARICAD cannot be initiated in this Court.

- [20] For all of the reasons discussed earlier the Applicant's application is dismissed. There will be no order as to costs.

/s/ M A de la Bastide

The Rt Hon Mr Justice M. A. de la Bastide (President)

/s/ R F Nelson

The Hon Mr Justice Rolston Nelson

/s/ Duke Pollard

The Hon Mr Justice Duke Pollard

/s/ A Saunders

The Hon Mr Justice Adrian Saunders

/s/ D P Bernard

The Hon Mme Justice Désirée Bernard

/s/ J Wit

The Hon Mr Justice Jacob Wit

/s/ D Hayton

The Hon Mr Justice David Hayton