

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE EQUAL OPPORTUNITY TRIBUNAL**

(Referred pursuant to S. 39(2) of the Equal Opportunity Act 2000 as amended by Act No. 5 of 2001)

E.O.T. No. 0002 of 2013

**BETWEEN**

**WILFRED G EDWARDS**

**Complainant**

**AND**

**PETROLEUM COMPANY OF TRINIDAD AND  
TOBAGO LIMITED (PETROTRIN)**

**Respondent**

**CORAM:**

His Honour Mr. Rajmanlal Joseph - Judge/Chairman

Her Honour Ms. Leela Ramdeen - Lay Assessor

His Honour Mr. Harridath Maharaj - Lay Assessor

**APPEARANCES:**

**Mr Jawara Mobota** appeared on behalf of the Complainant

**Mr. Russell Martineau, S.C** appeared on behalf of the Respondent

**Date of Delivery: June 30, 2016**

## JUDGEMENT

1. Briefly, the complaint in this case is concerned with the allegations by the complainant, a former employee of the Respondent, during the period December 1993- April, 1999. After a work related accident on April 12, 1999 suffered certain injuries which required hospitalization. After his “recovery” he presented himself on May 15, 2000 to resume work, but was told that he was no longer eligible to be placed on the company’s roster of temporary workers, which was tantamount to a dismissal. The Complainant alleged that the Respondent discriminated against him on the basis of his disability, and also that the company refused and/or deliberately omitted to offer him employment or re-employment contrary to Section 8 of the Equal opportunity Act, Chap. 22:03 (the Act); and also by victimization contrary to Section 6(1) of the Act.
  
2. The Respondent in its defence filed on May 29, 2014 at paragraph 3 thereof stated:  
*“... that the Equal Opportunity Commission was plainly wrong in accepting and considering the complainant’s complaint which was filed with it more than six (6) months from the date of the alleged act of the discrimination.”*
  
3. It is based on this contention that counsel for the Respondent took the preliminary point at a Pre Trial Review on May 14, 2015 that the matter ought to be struck out on the basis that the complainant was out of time. As a consequence, directions were given for the parties to file and serve their written submissions and October 7, 2015 was the date set for hearing counsel on the said preliminary point.

## **RESPONDENT'S SUBMISSION**

4. In essence the Respondent submitted to the Tribunal that the Complainant's complaint should be dismissed on the basis that the Equal Opportunity Commission (EOC) was wrong to accept and consider his complaint which was filed with it more than six (6) months from the date of the alleged act of discrimination. Secondly, there was a ten (10) year delay in the Complainant bringing his complaint which has caused prejudice to the Respondent and is an abuse of process. Finally, that the alleged discrimination not to rehire the Complainant occurred on May 15, 2000 and that the relevant Parts of the Act came into force on January 31, 2001 and that the complaint was therefore misconceived.

## **COMPLAINANT'S SUBMISSION**

5. Briefly, counsel for the Complainant responded as follows:
  - (a) While the relevant sections 4, 5, 7 and 10 came into operation on January 31, 2001, there is nothing in the Act which prohibits a retrospective interpretation.
  - (b) That the delay point raised by the Respondent was untenable as they had acquiesced in the proceedings before the EOC and was therefore estopped from relying on any point with reference to any such delay. And furthermore, that the Equal Opportunity Act (the Act) is really a recognition of the constitutional vested rights and for ensuring that these vested rights are recognized and enforced.

## ANALYSIS

6. The Equal opportunity Act, Chap. 22:03 and in particular Section 30 (1) to (3) states as follows:

“(1) A person who alleges that some other person has discriminated against him or has contravened Section 6 or 7 in relation to him may lodge a written complaint with the Commission setting out the details of the alleged act of discrimination.

(2) A complaint under subsection (1) shall be lodged with the Commission within six (6) months from the date of the alleged act of discrimination.

(3) Notwithstanding subsection (2) , the Commission, in exceptional circumstances, may accept a complaint which is lodged more than six (6) months after the date of the alleged act of discrimination.”

It is clear from the foregoing that the Commission is tasked with the responsibility to ensure that complaints lodged with it must be done within six (6) months from the date of the alleged discrimination. However, the Commission is given a discretion to extend time provided that there are exceptional circumstances.

7. The term exceptional circumstances can be taken to mean “*conditions which are out of the ordinary course of events; unusual or extraordinary circumstances*” (Black’s Law Dictionary, 6<sup>th</sup> Ed. 1991 @ P. 389). In the instant matter the Complainant sought to resume duties on May 15, 2000 and was informed that he was no longer eligible to be

placed on the Respondent's roster of temporary workers. However, according to the Report of the Commission dated June 26, 2013 the Complainant lodged his complaint with the Commission on February 12, 2010 – almost ten (10) years from the date of the alleged discriminatory conduct of the Respondent. Moreover, there is nothing in their report to remotely suggest that the question of extending time was examined or considered. By accepting and processing his complaint, the Commission had acted inconsistent with the provision of Section 30(2) of the Act; and it is on that basis alone that this complaint cannot move forward; even though counsel for the Complainant submitted that the fact that the Respondent had participated in the conciliation process had estopped the Respondent from taking the point that the Complainant's matter was out of time.

8. In this regard the learning in Halsbury Laws of England, Vol. 16(2) para. 960 is instructive where it is stated that:

*“There is no absolute rule as to whether estoppel may, or may not, be used to circumvent a statutory provision, although the principle that a party cannot set up an estoppel in the face of a statute has been described as a principle that appears in our law in many forms (see KOK Hong –v-Leong Cheong Kwang Mines Ltd. [1964] AC 993 @ 1015, [1964], All ER 300 @ 307-308.”* The essential point in this extract is that there is an established principle that one cannot use an estoppel to defeat the clear provision of a statute.

9. To be sure, the Act as passed by the House of Representatives on June 2, 2000 and the Senate on September 29, 2000 and Assented to on October 20, 2000 contained a section 2 which reads as follows:

"2. *This Act comes into force on such a date as is fixed by the President by Proclamation.*" Consequently, on November 20, 2000 a Proclamation was issued by the President of the Republic of Trinidad and Tobago via Legal Notice No. 285 wherein Part VI of the Act was brought into force on November 20, 2000; and remaining Parts of the said Act was brought into force on January 31, 2001.

10. Part VI of the Act deals with the establishment and composition of the Commission, this part is of no significance to the analysis herein. However, Sections 6, 7, and 8 are relevant since the Complainant anchors his complaint on those sections which came into force on January 31, 2001. However, the fact remains that his complaint on May 15, 2000 emerged at a time that is prior to the passing of the then Bill in the House of Representatives and Senate. In short, the Complainant's complaint arose prior to such alleged discriminatory conduct became unlawful. This point was fully ventilated by counsel for the Respondent. However, counsel for the Complainant would have us believe that since the anti-discrimination provisions of the Act is similar to the inequality provision of our Constitution, that we should "*put a strained interpretation to the relevant provisions of the EOA, for them to have retrospective effect*".

11. The short answer to that submission can be found in *Bennion on Statutory Interpretation*, 5<sup>th</sup> Ed. at pp. 315-316 where the concept of retrospectivity is examined in some detail, at page 315 the learned author in dealing with the presumption against retrospective operation, had this to say "*unless the contrary intention appears, an enactment is presumed not to be intended to have a retrospective operation*".

The learned author goes on to state further at page 316 that: "*Retrospectively is artificial, deeming a thing to be what it was not. Artificiality and make-believe are generally repugnant to law as the servant of human welfare. So it follows that the courts apply the general presumption that an enactment is not intended to have retrospective effect*". As always, the power of Parliament to produce such an effect where it wishes to do so is nevertheless undoubted.

The general presumption, which applies only unless the contrary intention appears, is stated in Maxwell on the Interpretation of Statutes in the following emphatic terms:

*"It is a fundamental rule of English Law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication"*.

12. Another factor one has to bear in mind in making submissions that equate the anti-discriminatory provisions in Section 4 of our Constitution and those of the Equal Opportunity Act, is that in the former the right of the citizen not to be discriminated against lies against the institutions of the state and its servants or agents; and in our dichotomous legal system belongs in the realm of public law; while the anti-discrimination provisions of the Act lies in private law. Hence, the Complainant in this case could not successfully bring his complaint against the Respondent at the High Court of Justice, since the Respondent is not an institution of the State or its servant/agent.

## CONCLUSION

13. From the foregoing analysis of the submissions made by counsel for the parties herein and a detailed examination of the Act; it is quite clear that this complaint cannot go forward since the complainant at the date of the emergence of his "complaint", that is, May 15, 2000, he did not acquire a legal right as against the Respondent. However, since the Commission erroneously accepted and processed, that is, investigated and attempted to conciliate his complaint; such actions may have led the Complainant to perceive that he had an arguable case. This factor has a direct bearing on the exercise of the Tribunal's discretion on costs.

## ORDER

14. That the Complainant's complaint is dismissed with no order as to costs.
15. The foregoing decision of the Tribunal is made in accordance with Section 44(7) of the Act, which states:

*"The decision of the Tribunal in any proceedings shall be made by the Chairman and shall be delivered by him".*

**HIS HONOUR MR. RAJMANLAL JOSEPH  
JUDGE / CHAIRMAN  
EQUAL OPPORTUNITY TRIBUNAL**