

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE EQUAL OPPORTUNITY TRIBUNAL

E.O.T. No. 0006 OF 2017

BETWEEN

CLARISE JUPITER

Complainant

AND

PETROLEUM COMPANY OF TRINIDAD AND TOBAGO

Respondent

DECISION

CORAM: Her Honour Donna Prowell-Raphael, Judge/ Chairman,
Her Honour Ms. Leela Ramdeen, Lay Assessor

Dated 13th February, 2019.

APPEARANCES:

Ms. Abayomi T. Ajene, Attorney at Law for the Complainant.

Ms. Deborah Peake SC leading Mr. Ravi Heffes- Doon, instructed by Ms. Marcelle A Ferdinand,
for the Respondent.

QUESTION 1: THE STATE OF TEXAS

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THE EQUAL OPPORTUNITY TRIBUNAL

1. The Equal Opportunity Act¹ (“the Act”) permits a person who claims that he has been discriminated against to submit² “*a written complaint ... setting out the details of the alleged act of discrimination*” to the Equal Opportunity Commission (“the Commission”). If the complaint after investigation cannot, or is not resolved, through conciliation by the Commission, the Commission is mandated with the consent and on behalf of the complainant, to institute proceedings before the Equal Opportunity Tribunal (“the Tribunal”)³ for judicial adjudication.

CONTEXT: HISTORY AND TRAJECTORY

2. The adjunct complaint was lodged at the Commission on May 28, 2014⁴. The Commission was of the view that it could have been resolved by conciliation. Therefore, with the concurrence of the parties, two (2) conciliation sessions were held on November 30, 2015 and March 17, 2016. The matter was not resolved at conciliation. As such and further to section 39(1) of the Act, the Commission prepared its Report dated March 31, 2017 (the Commission’s Report)⁵. The matter was referred to the Tribunal by certificate dated May 25, 2017.
3. In compliance with various orders of the Tribunal, the parties have met the Case Management Time-table fixed by the Tribunal.
4. The trial was fixed for hearing on October 15, 2018. At the trial, the respondent sought leave to take a preliminary point of law (‘the said application’). The said application was made orally. Coming out of these submissions, the Tribunal by order of even date, certified the following issues for preliminary determination and directed the parties to file written submissions thereon:-

(i) The Tribunal’s jurisdiction to grant the reliefs prayed in the Complaint filed 16th May, 2018.

¹ Ch. 22:03, Act 69 of 2000 Amended by 5 of 2001 (EOA).

² EOA,30

³ EOA,39(2)

⁴ See Commission’s Report para 4.

⁵ See Commission’s Report para. 29.

- (ii) *Whether the time barred issue affects the viability of the Complaint before the Tribunal.*
- (iii) *Any ancillary applications to strike out.*

5. The respondent filed its submissions ('Respondent's Submissions') on 2nd November, 2018 the complainant ('Complainant's Submissions') responded by submissions filed on 22 November 2018 and the respondent filed its submissions in response ('Respondent's Reply') on November 29, 2018.

SUBMISSIONS

6. The thrust of the submissions of the Counsel for the respondent is that certain allegations (the said allegations') that the complainant has advanced in her Claim Form and Particulars of Claim⁶ ('the Claim') were not canvassed and or investigated by the Commission and therefore the Tribunal has no jurisdiction to hear them. The respondent has compared the allegations set out in the Commission's Report to the allegations made in the Claim Form and identified the said allegations as not having been included in the Commission's Report. The respondent contends that in so far as the said allegations are not mirrored in the Commission's Report that they have not been investigated and or canvassed therefore, outwith the Tribunal's jurisdiction. She relies on sections 39(1) and 41(4) of the Act, the Court of Appeal decisions in *Equal Opportunity Commission v. Attorney General of Trinidad and Tobago & Director of Personnel Administration*⁷ as well as *Hosein v. Caroni (1975) Limited*⁸.
7. The respondent contends in summary that only some allegations are within the scope of the complaint for discrimination by victimisation and can be properly advocated before the Tribunal. The complainant has sought to distinguish both cases on the ground that these cases would only apply if a new ground of discrimination had been raised in the Claim. However, the Claim does not raise a new ground of discrimination and therefore, their cases do not apply.
8. At the trial, prior to the hearing of oral submissions on the said application, Counsel for the respondent sought to adduce the Commission's Report as part of a Supplemental List on which she intended to rely. In the absence of a pleading in the Defence that links the Commission's

⁶ Filed on May 16, 2018

⁷ CA NO. P 291 OF 2014

⁸ CA NO. P 204 OF 2017

Report to its case, its relevance and probative value to the respondent's case remains to be established.

9. The Tribunal also raised with the parties its disquiet as to whether the Commission's Report trespassed on section 40(1) of the Act. Counsel for the respondent expressed the view that the Report referred to the investigation, and not the conciliation. Counsel for the complainant stated that the Report did not fully ventilate all the issues that were addressed at the Tribunal. The Tribunal opted to take a further look at the Report before deciding on its admissibility meanwhile permitted the respondent to proceed with the said application.
10. In the interim the Tribunal has further considered the admissibility of the Commission's Report in the case of *Baptiste v. University of Trinidad and Tobago*⁹. The Tribunal has made a copy of that decision available to the parties, and indicated its willingness to permit supplemental submissions to be made. The Tribunal has received no indication that the parties wished to supplement their submissions.

LAW/ANALYSIS

11. This said application has come fairly late in these proceedings. It would have been a better order had the said application been made earlier¹⁰. The respondent has not made any reference in its Defence ('Defence')¹¹ to its intention to take a jurisdictional point with respect to the said allegations. At the hearing on June 22, 2018, Counsel for the respondent indicated that she did not wish to take any preliminary applications so that the Tribunal proceeded to give directions for Trial.
12. As it is a point of law there may not have been a necessity to plead the jurisdictional point, but certainly if the respondent intended to rely on the insufficiency of the Claim vis-a-vis the Commission's investigation, it ought to have averred to the facts that it was contending had been investigated and the facts that were not, in its Defence. These averments would have put the complainant on notice that the scope of the investigation was in issue she would have been

⁹ No. 0008 of 2017 (December 10, 2018), para 22-24.

¹⁰ See Rule 1.5 of the Equal Opportunity Tribunal Rules of Practice and Procedure 2016. Rule 9.7 of the Civil Proceedings Rules.

¹¹ Filed on June 14, 2018

able (if so desired) to file a Reply. This would have set the foundation for the jurisdictional point that is being taken. Instead the respondent has responded copiously to the said allegations in its Defence. Similarly the respondent has gone on to adduce evidence in its Witness Statement in respect of the said allegations.

13. Phase II of the said application if successful would be the striking out of certain portions of the Claim and or the complainant's Witness Statement. In that event, the Tribunal may need to strike out as well the relevant corresponding averments in the Defence, as well as analogous evidence in the Witness Statement of the respondent. On the face of it, in the absence of the supporting averments as to the scope of the investigation, an early preliminary application and or a clear reservation to take this jurisdictional point, the respondent may have waived its rights or is estopped by its acquiescence from taking it at this stage.
14. The foregoing notwithstanding this Tribunal has on different occasions within the recent past, sought to clarify and differentiate the respective roles of the Commission and the Tribunal in the resolution of a complaint¹². The Commission's Report though part of the referral is not automatically incorporated into the proceedings before the Tribunal. The proceedings before us is defined by the Claim Form and Particulars of Claim ('the Claim') filed on May 16, 2018 and the Defence ('the Defence') filed on June 14, 2018 and the respective pleadings they contain. If any party wishes to rely on the information contained in the Commission's Report, this ought to have been pleaded and be brought into the proceedings before the Tribunal. In the instant matter there are no averments in the Defence, to support the jurisdictional point being taken with respect to the said allegations, the point is delayed, and the said allegations have been unreservedly defended and or traversed.
15. In the *Baptiste* case, the Tribunal concluded that the information uncovered in the investigation, straddles and fuels the ensuing conciliation. Hence, as a general proposition, whenever a complaint moves to conciliation, in the absence of guidance from the Commission as to whether the information was used in conciliation, it would be reasonable to infer the allegations of the parties and observations of the Commission expressed the joint outcome of the investigation and conciliation. This would need to be looked at on a case by case basis.

¹² See *Baptiste v. UTT*; *Moriba Baker v. UTT*

16. Even if the Commission's Report were admissible, it does not specify what allegations were investigated and what allegations were not investigated. The Tribunal is now being asked to infer that because the said allegations were not mentioned among the complainant's allegations set out in the Commission's Report that they were not investigated. Not only is it unclear whether the said allegations emanate from the original complaint under section 30(1), subsequent interactions and or the conciliation)¹³ but the complainant is contending that the Commission's Report does not record the entirety what transpired there.
17. The Commission reports that in the course of its investigation it requisitioned many records from the complainant which would have facilitated a broad and wide-ranging examination of the complainant's work history with the respondent¹⁴. In the absence of a pleadings on the scope of the investigation by the parties, the Tribunal has nothing before it at this stage on which to determine the said application. A proper determination of the said application is inextricably linked to the admissibility of the Commission's Report in part or at all. The Tribunal will therefore hear the parties at the Trial as to what parts if any of the Commission's Report is admissible in these proceedings.

DECISION

18. The said application cannot be upheld at this stage and is dismissed without prejudice
19. With respect to the time barred issue at paragraph 4(ii) supra, the parties have agreed that this should be determined after the trial. With respect to 4(iii), no further ancillary applications have been filed.
20. The Trial is now fixed to continue on April 11, 2019. Costs are reserved to be determined at the trial.

¹³ See section 41 of the Act, See also Baptiste v. UTT, para.

¹⁴ See Appendices I & II of the Commission's Report.

21. The foregoing decision is made and delivered by the Judge/Chairman of the Tribunal in accordance with Section 44 (7) of the Act.¹⁵ There is a limited right to appeal under section 50(2)¹⁶ of the Act.

Judge/Chairman



¹⁵ The decision of the tribunal in any proceedings shall be made by the Chairman and shall be delivered by him.

¹⁶ 50. (1) Subject to subsection (2), the hearing and determination of any proceedings before the Tribunal, and an order or award or any finding or decision of the Tribunal 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; (b) shall not be subject to prohibition, mandamus or injunction in any Tribunal on any account whatever. (2) Subject to this Act, any party to a matter before the Tribunal is entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no other: (a) that the Tribunal has no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such grounds of appeal, unless objection to the jurisdiction of the Tribunal has been formally taken at some time during the progress of the matter before the making of the order or award; (b) that the Tribunal 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 Tribunal in any matter is erroneous in point of law; (e) that the Tribunal has erred on a question of fact saved that no appeal shall lie except by leave of the Court of Appeal sitting in full Court; or (f) that some other specific illegality not mentioned above, and substantially affecting the merits of the matter, has been committed in the course of the proceedings.

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IN THE EQUAL OPPORTUNITY TRIBUNAL

E.O.T. No. 0006 OF 2017

BETWEEN

CLARISE JUPITER

Complainant

AND

PETROLEUM COMPANY OF TRINIDAD AND TOBAGO

Respondent

CORRIGENDUM

DECISION ISSUED ON FEBRUARY 13, 2019

At page 5 paragraph 10 of the Decision, line 3 is amended by deleting the comma after “parties”, and all the ensuing text to the end of that paragraph. The amended paragraph 10 will therefore be:-

10. In the interim, the Tribunal has further considered the admissibility of the Commission’s Report in the case of Burton Baptiste v University of Trinidad and Tobago. The Tribunal has made a copy of the decision available to the parties.

Dated the 15th day of February 2019.

Judge/Chairman.

Chairman
Equal Opportunity Tribunal