

ORIGINAL

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IN THE GRAND COURT OF THE CAYMAN ISLANDS - *Govl.*
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 99 OF 2004



IN THE MATTER OF the Labour Law (2001 Revision)

(*ex parte*)

RULING ON APPLICATION

PROCEEDINGS heard before
The Honourable Mr. Justice SANDERSON,
on the First day of March of 2004.

APPEARANCE:

ON BEHALF OF THE APPELLANT Mr. C. Allen

RULING ON APPLICATION

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3 This is an application by Sunshine Car Rental
4 and Mobile Mechanic for a stay of proceedings
5 pursuant to Section 79 of the Labour Law
6 (2001 Revision) pending its appeal from a
7 decision of the Labour Appeals Tribunal. The
8 Labour Appeals Tribunal gave its decision on
9 January 23rd, 2004, on an appeal from a
10 decision of the Labour Tribunal made in
11 September 2002. The Labour Tribunal had
12 concluded that the respondents, who were two
13 employees of the appellant, had been unfairly
14 dismissed and it made awards of severance and
15 damages. The Labour Appeal Tribunal upheld
16 that award in principal, but reduced the
17 amount of the award for the reasons set out
18 in its judgment. The appellant appeals that
19 decision primarily on two bases:

20

21 (1) That the appellant did not have
22 available to it certain documents
23 that the respondents provided to the
24 Labour Tribunal hearing in 2002. Its
25 primary argument is that it did not

1 receive a fair hearing on the basis
2 that it did not have those documents
3 available to it either at the hearing
4 or at the appeal.

5
6 (2) Secondly, because the Labour
7 Appeals Tribunal found certain errors
8 in the Labour Tribunal decision, it
9 was not therefore open to the Labour
10 Appeals Tribunal to vary the decision
11 of the Labour Tribunal, but that the
12 decision must be set aside in its
13 entirety and a re-hearing ordered.

14
15 Those being the two main features of the
16 appeal, Mr. Allen has relied upon Section
17 79(1) and (3) of the Labour Law which
18 provide:

19
20 "79. (1) An appeal may be made to
21 the Grand Court from a decision of
22 the Appeals Tribunal upon a point of
23 law only.

24
25 (3) An appeal pursuant to

1 subsection (1) shall not operate as a
2 stay of any award, order or decision
3 of a Labour Tribunal or the Appeals
4 Tribunal, or of the effect of any
5 notice, unless the Grand Court so
6 orders.

7

8 (4) An application for a stay shall
9 be made by ex parte application.

10

11 I asked Mr. Allen if he was aware of any
12 authorities to assist the Court on what the
13 test should be in the granting of a stay of
14 execution under Section 79(3) of the Labour
15 Law. Mr. Allen was unaware of any
16 authorities dealing with this issue and so I
17 am left with applying what I understand the
18 general principals the Court will consider in
19 exercising its discretion as to whether or
20 not a stay should be granted.

21

22 I first consider whether or not the appeal
23 has a reasonable prospect of success. I do
24 not examine in detail the merits of the
25 appeal because that would be essentially

1 hearing an argument on the appeal for the
2 purposes of considering a stay and that is
3 not the function of the Court at this stage.

4 I simply consider whether or not there is a
5 reasonable prospect of success on appeal.

6

7 With respect to the first argument advanced
8 by Mr. Allen, I note from the reasons for
9 judgment of the Labour Appeals Tribunal that
10 they concluded as follows:

11

12 "The appellant also alleged that the
13 respondents were not recording all
14 the money they collected for work
15 done. The respondents then produced
16 to the Labour Tribunal two receipt
17 books in which they recorded the
18 money collected. These were examined
19 by the tribunal but it does not
20 appear that the appellant either
21 asked for or was given copies of the
22 entries in these books at the time of
23 the hearing. It is the evidence of
24 both parties that these books were
25 kept by the respondents during the

1 time of their employment. It is not
2 clear what access the appellant had
3 to these books during the term of
4 employment. There is no evidence to
5 suggest that he asked for these books
6 to be returned to him either prior to
7 or upon termination of the
8 employment."

9
10 It is a fundamental principal of
11 administrative law that all parties before a
12 tribunal are entitled to receive the benefit
13 of notice of what the issues and the hearing
14 are to be about. In some cases that will
15 require the documents being produced, but in
16 other cases it may not. The law is clear
17 that all parties are entitled to a fair
18 hearing in the accordance with the principals
19 of natural justice, but that does not always
20 mean that all documents must be produced. It
21 often means that documents must be produced
22 in order to provide adequate notice, but, as
23 I have said, that is not necessarily so, it
24 will depend on the facts of each particular
25 case.

1
2 On the face of the record in this case, it
3 appears that the appellant did not ask for
4 these books and records at the time of the
5 hearing, or ask for them to be returned upon
6 the termination of the respondents'
7 employment. The appellant did ask for those
8 documents, when the appeal was heard by the
9 Labour Appeals Tribunal. It is therefore not
10 necessarily clear that the plaintiffs will
11 succeed on an appeal on this point.

12
13 Secondly, the appellants argue that because
14 the Labour Appeals Tribunal found some errors
15 in the decision below, therefore the whole
16 decision must be set aside and a re-hearing
17 ordered. Mr. Allen referred me to the case
18 of *Calvin v. Carr and others*, [1979] 2 All
19 ER, at page 440. The passage relied upon by
20 Mr. Allen commences at approximately line 'f'
21 on page 449 and continues over to the
22 following page. The case is summarized
23 accurately in the head note, which states in
24 subparagraph 2,

25

1 "There was no absolute rule that
2 defects in natural justice at an
3 original hearing could or could not
4 be cured by appeal proceedings which
5 had been correctly and fairly
6 conducted."

7
8 I have considered the reasons for judgment of
9 the Labour Appeals Tribunal, and the errors
10 that it found in the decision below,
11 which errors it corrected. I think Mr. Allen
12 may have an arguable point that the decision
13 below should be set aside in its entirety,
14 but absent some legislative scheme
15 restricting the authority of the Labour
16 Appeals Tribunal, I am not certain of how
17 great that likelihood of success is.

18
19 In summary, examining the merits of the case,
20 I am persuaded that Mr. Allen has arguments
21 on both of these grounds, but I am not at the
22 moment persuaded that he has a strong case or
23 a good case on appeal. I am persuaded,
24 however, that it cannot be said that his
25 appeal is frivolous or without merit. It

1 falls somewhere in between the two. I think
2 it is probably fair to say that the appellant
3 has barely met the test of reasonable
4 prospect of success on appeal.

5
6 I turn next to consider the respondents'
7 position. These two employees were awarded
8 certain sums by the Labour Tribunal, which
9 amount was reduced to \$1,400 per employee by
10 the Labour Appeals Tribunal. They have had
11 an award in their favour since September of
12 2002; to date they have not been paid
13 anything on that award.

14
15 A primary consideration in these
16 circumstances is that the successful litigant
17 or plaintiff should not be deprived of the
18 fruits of his or her judgment absent good
19 reason for doing so. The appellant has gone
20 through one stage of appeal and is now
21 launching the second. There was no affidavit
22 evidence before me indicating why the
23 respondents should not be paid the amount of
24 the award. In the course of submissions, Mr.
25 Allen suggested that these respondents may

1 not be in a position to repay any award that
2 they receive. He made that assertion on the
3 premise that these employees washed cars for
4 a living, and when he met them he described
5 them as being the type of people who are
6 living day-to-day. In any event, no
7 affidavit evidence has been filed, and I can
8 see no legitimate reason for depriving the
9 plaintiffs of their award at this time.

10

11 In summary, I have found that there are
12 issues on appeal which could not be
13 considered frivolous or without merit, but
14 fall short of being a strong but serious
15 question on appeal. I conclude the
16 appellants, at best, have a reasonable
17 prospect of success. However, I conclude
18 that the most significant factor in
19 exercising my discretion in this case is that
20 the successful party should not be deprived
21 of the benefit of his or her award absent
22 good reason for doing so and there is none
23 present in this case. Even though I have
24 concluded that the appellant has raised an
25 arguable case for appeal, I am not persuaded

1 that in these circumstances a stay should be
2 granted. Accordingly, the application is
3 dismissed.

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THE HONOURABLE MR. JUSTICE SANDERSON

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