INTHE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 128 **OF 2015**

IN THE MATTER of Section 79 (1) of the *Labour Law (2011 Revision)*

AND IN THE MATTER of Order 55 of the *Grand Court Rules (as revised)*

AND IN THE MATTER of the Appeal of P.M.C Limited under the *Labour Law (2011 Revision)*

BETWEEN:

P.M.C. LIMITED
(T/A CHRISSIE TOMLINSON MEMORIAL HOSPITAL)

Appellant / Applicant

AND: **CISLYN VEOLA PETGRAVE**

Respondent

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on at o'clock or as soon thereafter as counsel can be heard, by counsel on behalf of PMC Limited t/a Chrissie Tomlinson Memorial Hospital for an order that (i) the decision of the Labour Appeals Tribunal of 5 June 2015 be quashed, (ii) the order of the Labour Tribunal of 21 June 2014 be set aside and (iii) any other orders as this honourable Court deems fit.

AND for an order that the costs of and incidental to this appeal may be paid by the Respondent to the Appellant.

AND FURTHER TAKE NOTICE that the grounds of this appeal are:

1. The Labour Appeals Tribunal erred in law by failing to adopt the correct approach in its interpretation of section 51(3) of the *Labour Law (2011)*. The approach adopted by the Labour Appeals Tribunal at paragraph 4 hinged on the question of whether: "...the decision by the Employer to dismiss the Employee was fair in all the circumstances". The ambit of this approach is too wide and is incorrect in law.

The correct approach was for the Appeals Tribunal to apply the "band of reasonableness test", as enunciated by Browne-Wilkinson LJ in the decision of ***Iceland Frozen Foods Limited v Jones*** [1982] IRLR 439. In providing its reasons with regard to the issue of unfair dismissal the Appeals Tribunal should reference the "band of reasonableness test" and must demonstrate in its reasons that the test was considered and properly applied.

2. The Labour Appeals Tribunal erred in law and misdirected itself as it failed to apply the proper interpretive process in considering the Respondent's contract of employment. It misconstrued the contract of employment by failing to acknowledge or consider clauses 13, 8, 2, 7, 4 and 6. Clauses 13, 8, 2, 4, 6 and 7 are express terms of the contract of employment which was entered into evidence and addressed in the Appellant's submissions. The Appellant placed significant weight on clause 13, in particular, in its submissions before the Appeals Tribunal in explaining the reasonableness of its decision to dismiss the Respondent. The approach of the Appeals Tribunal and its conclusion is clearly incorrect in law as it demonstrates an absence of any consideration of clause 13 as well as the relevant express clauses of the Respondent's contract of employment.

3. The Labour Appeals Tribunal misdirected itself in law with respect to its finding of "disparity of treatment" as outlined at paragraph 5 of its decision:

    a. Firstly, the Appeals Tribunal erred in its approach by failing to consider whether the position of the Respondent and Ms. Carol Reid were truly comparable. In providing its reasons the Tribunal erred in law by failing to ask itself the question as to whether the circumstances in each case were actually comparable. The Appeals Tribunal failed to address this issue at the hearing; in addition, its failure to address this question in its decision makes the decision legally flawed.

    b. Secondly, the Appeals Tribunal erred in law in its approach and misdirected itself by placing undue weight on the purported disparity of the treatment of Ms. Carol Reid and the Respondent. The correct approach to be employed when dealing with the question of the fairness of a decision to dismiss is for the Appeals Tribunal to focus its attention on whether the employer acted within the ambit of section 53 (1) of the *Labour Law (2011 Revision)* and should treat any arguments based on disparity with care, which was not demonstrated in the decision.

4. The Labour Appeals Tribunal's decision is contrary to the principles of natural justice as significant weight was placed on "specific material" or "specialized evidence" which was not disclosed to the parties, thus denying the Appellant any opportunity to comment on such opinion or information. The Appeals Tribunal at

paragraph 6 of its decision referred to purported employee coverage in the provision of emergency services. This purported standard formed the basis for the Appeals Tribunal views at paragraph 7 through to paragraph 10 of the decision. It is clear the Tribunal placed substancial weight on this purported standard in coming to its decision. The Labour Appeals Tribunal failed to provide notice to the parties of such specialized opinions at any time prior to, or during the hearing of the matter. As a result there was a clear failure to disclose to the parties such material or evidence and to provide the parties the opportunity to comment on such purported standards or whether they even applied in the context of its case. The procedure adopted by the Tribunal with respect to this evidence or information is unfair and prejudicial to the Appellant's case. The Appeals Tribunal erred in law as the process it employed in coming to its decision was unfair and contrary to the principles of natural justice.

Dated the 27th day of July 2015.

Bodden Litigation

BODDEN LITIGATION
Attorneys for the Appellant

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AND TO: The Respondent / Employee
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AND TO: The Labour Appeals Tribunal
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This Notice of Originating Motion was issued by Bodden Litigation, Attorneys-at-Law for and on behalf of the Appellant whose address for service is that of their said attorneys, namely: 81 West Church Street P.O. Box 742, Grand Cayman, Cayman Islands KY1-1303 [Our ref: 1270 SPS/PGS]