

IN THE GRAND COURT OF THE CAYMAN ISLANDS

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Cause No. 164 of 2002

In the matter of the Labour Law 2001 Revision

And in the matter of an appeal pursuant to Section 79 of the said Law

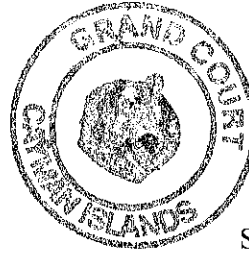
BETWEEN:

CABLE & WIRELESS (CAYMAN ISLANDS) LTD

APPELLANT

AND

THE LABOUR APPEALS TRIBUNAL

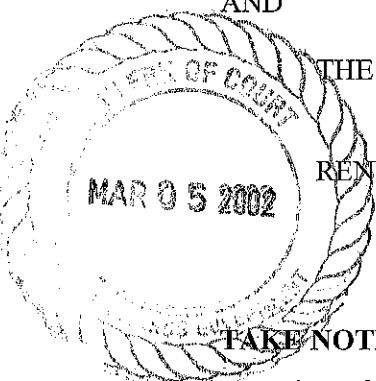


FIRST RESPONDENT

RENWICK CONOLLY

SECOND RESPONDENT

NOTICE OF ORIGINATING MOTION



~~TAKE~~ NOTICE that the Court will be moved on [29 April], 2002 at [930] or as soon thereafter as counsel can be heard, by counsel on behalf of Cable & Wireless (Cayman Islands) Ltd for an order that the decision of the Labour Appeals Tribunal dated 22nd February 2002 be set aside.

And for an order that the costs of and incidental to this appeal be paid by the Respondent, Mr. Renwick Conolly;


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

The Decision of the First Respondent of 22nd February 2002 was erroneous in law for the following reasons:

1. The First Respondent erred in law in failing to follow its own direction; namely that the Labour Appeals Tribunal may only "interfere with the decision of the lower Tribunal if it can be shown that (i) there was a misdirection on the law; (ii) there was no evidence to support a finding of fact or (iii) it was perverse, i.e. was such that no reasonable employment tribunal could have reached that conclusion" (page 2 of the First Respondent's decision) in that it did not find that either one or more of grounds (i), (ii) and (iii) was established before overturning the Labour Tribunal's decision.

2. The First Respondent erred in law in its interpretation of sections 51 and 52 of the Labour Law (2002 Revision) and in failing to consider at all, let alone apply the test set out in British Leyland v Swift [1985] IRLR 91.
3. The First Respondent erred in law in its application of Polkey v Dayton Services (1987)3 WLR 1153 which was a case dealing specifically with redundancy and failure to follow written procedures concerning redundancy and therefore not relevant to consideration of the applicability of sections 51 and/or 53 of the Labour Law (2001 Revision) in the circumstances of this case.
4. Alternatively, the First Respondent erred in law in failing to accept the arguments advanced on behalf of the Appellant distinguishing this case from the decision in Polkey for, inter alia, the reasons outlined above.
5. In the alternative, the First Respondent erred in law in failing to accept the arguments advanced on behalf of the Appellant, based on the decision in Polkey, that the result would have been the same had there been consultation and that, in the light of that analysis, there was no procedural unfairness of the type which would have rendered the dismissal unfair.

DATED the 5th day of March 2002.


WALKERS
Attorneys-at-Law for the Appellant

TO: THE CLERK OF THE COURT

AND TO: RENWICK CONOLLY
C/o General Nutrition Centre
P.O. Box 30351 SMB
Grand Cayman
Cayman Islands, B.W.I.

This Notice of Originating Motion was issued by Walkers whose address for service is Walkers, Attorneys-at-law for the Appellant whose address for service is Walker House, Mary Street, P.O. Box 265 GT, Grand Cayman, Cayman Islands, British West Indies