Neutral Citation No. [2014] NIQB 23 | *Ref:* **TRE9189**

Judgment: approved by the Court for handing down | *Delivered:* **18/02/2014**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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Brown's (Frederick) Application [2014] NIQB 23

IN THE MATTER OF AN APPLICATION BY JAMES FREDERICK BROWN FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

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TREACY J

Introduction

[1] This is an application for judicial review in which the applicant James Frederick Brown challenges a decision of The Industrial Tribunals and The Fair Employment Tribunal of Northern Ireland ("the Industrial Tribunal") dated 26 November 2013 in which it dismissed the applicant's request for a full merits review and refused to state a case to the Court of Appeal.

Order 53 Statement

[2] The applicant sought the following relief:

> "(a) An order of certiorari to bring up and quash the Industrial Tribunal's decision dated 26 November 2013;
>
> (b) A declaration that the decision was unlawful, ultra vires and void;
>
> (c) An order that the matter be remitted to the Industrial Tribunals for consideration according to the ruling of this court;
>
> ..."

[3] The grounds on which the relief was sought included:

> "(a) The Industrial Tribunals will act unlawfully in failing to apply the composite approach to give a fair hearing under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, contrary to Sections 2, 3 and 6 of the Human Rights Act 1998 and paragraph 4(b) of Article 130 of the Employment Rights (Northern Ireland) Order 1996."

Background & Discussion

[4] The applicant is a personal litigant who has generated a plethora of judicial review applications arising out of his dismissal from his position of Civil Engineer in the Department of Regional Development ("the Department") in which he unsuccessfully sought to rely on the protection of Art 6 in relation to the internal procedure of the Department.

[5] There were no less than three further applications for leave listed yesterday. I dismissed one, adjourned the other (against the Civil Service Appeal Board) and reserved the decision in the present application until the following day.

[6] The applicant has also challenged his dismissal before the Industrial Tribunal. The target of the attack in the present judicial review is the decision of the Industrial Tribunal refusing the applicant's request for a "full merits" review.

[7] In accordance with the Rules of Procedure, following the Case Management Discussion on 26 November 2013, the Chairman issued to the parties a Record of Proceedings dated 28 November 2013. In relation to the applicant's contention that any substantive hearing under Rule 26 of the Rules of Procedure must be a 'full merits' review, the Chairman stated, in summary:

> "I emphasised to the claimant that the tribunal's jurisdiction to determine the claimant's claim is governed by statute and case law interpreting the provisions of the relevant legislation and that the tribunal had no power to act outside the terms of the legislative provisions (see further, for example, the decision of the Lord Chief Justice in ***Rogan***)".

[8] This was a reference to the judgment of the Lord Chief Justice in Rogan v South Eastern Health & Social Care Trust [2009] NICA 47. As the Chairman explained to the applicant in some detail at the Case Management Discussion, it is for the tribunal to determine, inter alia, in a claim of unfair dismissal:

> "Whether the decision of the employer fell within the band of reasonable responses which a reasonable employer might have adopted".

[9] It is not the function of the tribunal to conduct a primary fact-finding exercise, as contended by the applicant, but rather it is to review the employer's decision applying the above test. The Chairman expressly referred the applicant to a recent decision by a tribunal of which he was the Chairman in McNaughton v Northern Health & Social Care Trust (1388/10) which reviewed the authorities on this issue. He urged the applicant to consider them in detail as he made it clear he could not accept the applicant's contentions and therefore intended to proceed to provisionally list the matter for hearing and to give relevant case-management directions/orders in connection therewith.

[10] What the applicant is, in reality, complaining about is the content of the state's substantive domestic law. The scope of the tribunal's jurisdiction is, as the Chairman Mr Drennan QC observed, governed by statute and case law and the tribunal has no power to act outside the terms of the legislative provisions.

[11] The applicant's reliance on Art 6 is misconceived. Art 6 is concerned with *procedural* fairness in the determination of both criminal charges and, more relevantly for present purposes, civil rights and obligations. The object and purpose of Art 6 is "to enshrine the fundamental principle of the rule of law" [see Salabiaku v France (1988) 13 EHRR 379 at para 28 and para 4.6.1 of *Human Rights Law & Practice* by Lester & Pannick]. Art 6 does not control the content of a state's substantive domestic law. The concept of a "right" is autonomous because it does not depend on how the privilege or interest concerned is classified in the domestic system. However, it is not open to an applicant in reliance upon Art 6 to create by way of interpretation a substantive right which has no legal basis in that system [see Markovic v Italy (2006) 44 EHRR 1045 at para 93 and Lester & Panick at para 4.6.5]. If there is no actionable domestic claim as a matter of substantive national law, the article will not normally apply.

[12] Furthermore, given the fact that his claim before the Industrial Tribunal has not yet been heard the present application was premature. Unnecessary and costly satellite ligation is an impermissible use of the supervisory jurisdiction of the High Court.

Conclusion

[13] For the above reasons the application must be dismissed.