

**COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
IndTribApp. No. 11 of 2022**

B E T W E E N

AETOS HOLDINGS LIMITED

Appellant

AND

JESSICA GRANT

First Respondent

AND

WENDY'S LIMITED

Second Respondent

AND

AETOS HOLDING LIMITED

Third Respondent

AND

NOMOLOS LTD.

Fourth Respondent

BEFORE: **The Honourable Sir Michael Barnett, P
The Honourable Madam Justice Crane-Scott, JA
The Honourable Mr. Justice Jones, JA**

APPEARANCES: **Mr. Obie Ferguson Jr. QC., with Mrs. Alva Stewart-Coakley, Counsel
for the Appellant
Ms. Lakeisha Hanna, Counsel for the First Respondents**

DATES: **25 April 2022; 4 May 2022**

Civil Appeal - Industrial Tribunal – Employment Law - Wrongful Dismissal – Unfair Dismissal - Joining a Party to Proceedings - Section 57 of the Industrial Relations Act -Rule 16 of the Industrial Relations (Tribunal Procedure) Rules, 2011

The first respondent worked at Wendy's restaurant in Freeport, Grand Bahama. She was dismissed by the appellant and given a cheque in the amount of \$2400. She filed a dispute against the appellant. The dispute was referred by the Minister to the Industrial Tribunal. In the Report of the Trade Dispute, the first respondent named Wendy's Limited as the company against whom she

was making her complaint. A Defence was filed by Aetos Holding Limited and Aetos Holding admitted that it was the employer of the first respondent and that Aetos Holdings had terminated her employment.

Counsel for the first respondent applied under Rule 16 of the Industrial Relations (Tribunal Procedure) Rules, 2011 for Aetos Holdings Limited to be joined as a party to the action as it acknowledged that it was the employer who terminated the first respondent. The Vice President made an order for Aetos Holdings Limited to be joined as a party to the proceedings.

At the end of the hearing before the Vice President, the Tribunal made an award in favour of the first respondent. The Appellant now appeals against that Decision.

Held: appeal dismissed; no order as to costs.

There can be no possible complaint to the order joining Aetos Holding Limited as a party to the action. Aetos Holdings Ltd was the employer. It admitted that it was the employer and stated its reasons for terminating Ms. Grant.

The power to join Aetos cannot be challenged as it is clearly provided for in the Rules. It was a proper exercise of the Tribunal's power to join Aetos. Aetos Holding was properly joined. It is not uncommon for courts to permit the joinder of a person as a party to an action where it is discovered that the person being joined is a necessary and proper party to a dispute. The issue was still wrongful and unfair dismissal. Moreover, in this particular case Aetos Holding Ltd actually participated in the conciliation meetings and can assert no prejudice by being joined as a party to the action.

Aetos, having been properly joined, chose not to adduce any evidence at the hearing. It cannot complain about the Tribunal accepting Ms. Grant's uncontroverted evidence and finding in her favour.

Island Hotel Company Limited v John Fox IndTribApp. No. 54 of 2017 distinguished

J U D G M E N T

Judgment delivered by the Honourable Sir Michael Barnett, P:

1. This is an appeal by Aetos Holdings Limited (Aetos) against an award by the Industrial Tribunal for the wrongful/unfair dismissal of its employee, Jessica Grant. The award dated 15th December, 2021 was for the sum of \$19,625.00. The sum represented an award for wrongful dismissal.

2. The appeal is not that the award for wrongful dismissal should not have been made. The appeal is based on the submission that as the Originating Application was brought against Wendy's Limited there was no basis for making an award against Aetos Holdings Ltd.
3. The basis of the appeal was summed up in the following exchange at the hearing:

“THE PRESIDENT: Mr. Ferguson, let us cut to the chase. Your appeal in this matter, on behalf of Aetos Limited, is that Aetos Limited was not a party to the originating application and that the tribunal did not have the power to join Aetos Limited as a party to the proceedings and therefore any judgment against Aetos Limited is null and void. That is your case, is it not?”

MR. FERGUSON, QC: Yes.

THE PRESIDENT: Anything else other than that?

MR. FERGUSON, QC: That is, in effect, our case.

THE PRESIDENT: Okay.

Anything else?

MR. FERGUSON, QC: No, my Lord.

THE PRESIDENT: Thank you.”

4. In our judgment this appeal is wholly without merit.
5. It is correct that the Report of the Trade Dispute brought by Ms. Grant named Wendy's Limited as the company against whom the complaint was made. However, at the conciliation meetings at the Department of Labour, the respondent “Wendy's Ltd” was represented by the Human Resources Manager of Aetos Holdings Ltd.
6. It is also correct that the Referral by the Minister was the referral of a dispute between Ms. Grant and Wendy's Limited.
7. There is also no dispute that the dispute arose out of the termination of Ms. Grant's employment at Wendy's Restaurant in Freeport Grand Bahama.
8. The problem was that Ms. Grant's employer was Aetos Holding Limited and not Wendy's Limited. The termination letter made that clear. It said:

“Termination with Cause — Gross Misconduct

Dear Ms. Grant:

Effective immediately *Aetos Holdings Limited (Wendy's Restaurants — Bahamas)* is terminating your employment with cause due to breach of company policy #12 — *Failure to follow company cash management or cash control policies; and #9 —*

Dishonesty of any kind, including falsification of any document, card, papers, timesheet, sales slip, or other document; and/ or failure to process all sales in strict accordance with company policy; and / or providing any type of false information to Management.

Please find enclosed a cheque in the amount of Two Thousand Four Hundred Dollars (\$ 2,400.00) which represents your final payment.

Please return all company property immediately, including uniforms, to our Administrative Office.

We wish you all the best in your future endeavors.”

9. This problem was identified immediately. In the Appearance filed to the Originating Application the appearance was not made by Wendy’s Limited. The appearance was entered by Aetos Holdings Limited.
10. The Defence to the Originating Application was filed by Aetos Holding Limited and not by Wendy’s Ltd. In its Defence, Aetos Holding admitted that it was the employer of Ms. Grant and that she was terminated by them. It said in the Defence:

During the period January 2020 – July 2020, an investigation was conducted into Jessica’s cash management and related system transactions.

- 1 The Audit investigation findings revealed a substantial number of void were processed by Jessica. The timing, clearing and volume of these transactions construes a Gross Misconduct by failure to conduct job duties satisfactorily and conducting inappropriate business and administrative practices not in line with standard company Policies and Procedures.**
- 2 The Respondent terminated the applicant on September 2, 2020 for breach of company Policy #12 “Failure to Follow company Cash management or cash control Policies”; and #19 “Dishonesty of any kind, including falsification of any document, card, papers, timesheet, sales slip or other documents; and/or failure to process all sales in strict accordance with company policies; and/or providing any type of false information to Management.” ”**

11. Recognizing that Aetos Holding Limited ought to have been made a party to the action as it acknowledged that it was the employer who terminated Ms. Grant, counsel for Ms. Grant applied under Rule 16 of the Industrial Relations (Tribunal Procedure) Rules, 2011 for Aetos Holdings Limited to be joined as a party.

12. Rule 16 provides:

“16. (1) The Tribunal may at any time on the application of any person made by Notice to the Secretary in Form M in e Schedule or of its own motion, direct any person against whom any relief is sought to be joined as a party, and give such consequential directions as it considers necessary .

(2) The Tribunal may likewise, on such application or of its own motion, order that any Respondent named in the Originating Application or subsequently added, who appears to the Tribunal not to have been, or to have ceased to be directly interested in the subject of the Originating Application, be dismissed from the proceedings.

(3) Where a number of persons have the same interest in an Originating Application, one or more of them may be cited as the person or persons against whom relief is sought, or may be authorised by the Tribunal before or at the Hearing, to defend on behalf of all the persons so interested.” [Emphasis added]

13. This Rule has been in the Industrial Relation Tribunal Rules since 1997.

14. By a Ruling made on the 20th August, 2021, The Vice President ordered that Aetos be joined as a party to the proceedings.

15. At that time there was no appeal against that order joining Aetos as a party.

16. The hearing continued.

17. According to the Tribunal’s ruling Aetos Holdings Limited “failed to appear at the trial and to adduce evidence to prove that it had conducted a reasonable investigation into the Applicant’s alleged misconduct or that no investigation was warranted in all the circumstances of the case”.

18. The Tribunal made an award in favour of Ms. Grant.

19. Aetos now appeals that award.

20. In our judgment there can be no possible complaint to the order joining Aetos Holding Limited as a party to the action. Aetos Holdings Ltd was the employer. It admitted that it was the employer and stated its reasons for terminating Ms. Grant.

21. The power to join Aetos cannot be challenged as it is clearly provided for in the Rules. It was a proper exercise of the Tribunal's power to join Aetos.

22. Counsel’s reliance on this court’s decision in **Island Hotel Company Limited v John Fox IndTribApp. No. 54 of 2017** is misplaced. In that case this court held that an originating application could not be amended to include an alternative claim for “unfair dismissal” when the complaint or trade dispute was one for “wrongful dismissal” and that was the claimed

referred to it by the Minister. That judgment was directed to a Tribunal hearing a claim that was not brought by an employee.

23. There was no issue of joining another party to the proceedings to determine the claim being brought by an employee.
24. This is not a case where an issue is being considered by the Tribunal that was not referred by the Minister. The referral by the Minister was a trade dispute for both wrongful and unfair dismissal arising out of the termination of Ms. Grant's employment by her employer. There is no dispute that Aetos Holding Limited was her employer and was the entity that terminated her employment.
25. Counsel for Aetos suggests that Rule 16 is ultra vires the Industrial Relations Act as it purports to allow a claim to be brought against a person who was not a party to the trade dispute and who had no opportunity to conciliate the dispute before the Minister's Referral.
26. Section 59 of the Industrial Relations Act provides:

“59. (1) In addition to the powers conferred on it under the foregoing provisions of this Act the Tribunal may —

(a) proceed to hear and determine any question arising in connection with a dispute in the absence of any party who has been duly summoned to appear before the Tribunal and has failed to do so;

(b) order any person —

(i) who in the opinion of the Tribunal may be affected by an order or award; or

(ii) who in any other case the Tribunal considers it just to be joined as a party, to be joined as a party to the proceedings under consideration on such terms and conditions as the Tribunal may direct;

(c) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the dispute or any other matter before it.”

27. In the exercise of its powers the Tribunal must be mindful of section 57 of the Industrial Relations Act. That section provides:

“57. (1) In the hearing and determination of any matter before it, the Tribunal —

(a) shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings;

- (b) shall not be bound by any written law or rule of law relating to the admissibility of evidence in proceedings before courts;**
- (c) shall make such enquiries of persons appearing before it and witnesses as it considers appropriate; and**
- (d) shall otherwise conduct the hearing in such manner as it considers most appropriate for the clarification of the issues before it and generally to the just handling of the proceedings.”**

28. In my view, Rule 16 is not ultra vires the Industrial Relations Act. Aetos Holding was properly joined. It is not uncommon for courts to permit the joinder of a person as a party to an action where it is discovered that the person being joined is a necessary and proper party to a dispute. The issue was still wrongful and unfair dismissal. Moreover, in this particular case Aetos Holding Ltd actually participated in the conciliation meetings and can assert no prejudice by being joined as a party to the action.
29. Aetos, having been properly joined, chose not to adduce any evidence at the hearing. It cannot complain about the Tribunal accepting Ms. Grant’s uncontroverted evidence and finding in her favour.
30. This appeal is dismissed.

The Honourable Sir Michael Barnett, P

31. I agree.

The Honourable Madam Justice Crane-Scott, JA

32. I agree, also.

The Honourable Mr. Justice Jones, JA