COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

IndTribApp. No. 47 of 2021

B E T W E E N

EVANGELISTIC TEMPLE

Appellant

AND

LAURIETTE LIGHTFOOT

Respondent

BEFORE: **The Honourable Madam Justice Crane-Scott, JA**
The Honourable Mr. Justice Evans, JA
The Honourable Madam Justice Bethell, JA

APPEARANCES: **Mrs. Tara Archer-Glasgow with Mr. Keith Major for the Appellant**
Mr. Rawson McDonald for the Respondent

DATES: **15 July 2021; 14 October 2021**

****

Civil Appeal – Industrial Tribunal Appeal – Appeal by employer against finding of wrongful dismissal and award under section 29 of Employment Act – Whether Tribunal's failure to consider the evidence, identify crucial legal issues for its determination, or make findings of fact or of mixed fact and law constitutes an error of law – Tribunal's Decision unsupported by reasoning – Order for re-hearing – Section 64 Industrial Relations Act

On this appeal the appellant challenges a written Decision of the Industrial Tribunal handed down on 26 February, 2021 in which the Tribunal held that the appellant had unilaterally varied the respondent's written employment contract without her consent and that she had been wrongfully dismissed. The appellant further seeks to set aside the award by the Tribunal to the respondent of the net sum of $52,905.18 as compensation, calculated in accordance with section 29 of the Employment Act.

The respondent was employed by the appellant under a written contract of employment. The agreed terms were set out in a letter of offer, a copy of which was signed and returned to the appellant signaling her acceptance of its express terms. While the letter had attached her official job description and further set out her remuneration, pension and medical contributions, vacation entitlement and required working hours, it had been completely silent as to its duration or as to the age at which the respondent would be expected to retire.

After accepting the offer, the respondent assumed her employment with the appellant on 1 January 2005. Just over 10 years later, the respondent issued a general staff Memorandum to its non-pastoral staff (including the respondent) notifying them of the Church Board's decision to implement with immediate effect a mandatory retirement policy for non-pastoral staff upon their reaching the age of 65. The written Retirement Policy was attached for the "information and perusal" of staff.

After receiving the Memorandum, the respondent determined that she would raise no complaint or objection. She claimed that the policy was never discussed with her and she reasonably assumed it could only apply to new employees. She said that she did not wish to object and so risk immediate termination as she was already 62, a single mother with a son and had financial obligations to meet. Furthermore, the policy had *'no immediate practical effect'* on her.

The respondent claimed that she had heard nothing further about the policy until a week before her 65th birthday when the Board Secretary advised her that she would be expected to retire on 14 February, 2018. The appellant disputed this fact and claimed that in keeping with the written policy the respondent had in fact been sent a "Notification letter" in 2016, approximately 2 years before her scheduled retirement, which reminded her of the policy and expressly advised that her official retirement date would become effective on 14 February, 2018 – her 65th birthday.

On 14 February 2018, the appellant issued the respondent with an official Retirement letter which thanked her for her service and enclosed a cheque representing her final pay.

The respondent thereupon invoked the trade dispute procedures under the Industrial Relations Act and claimed compensation under the Employment Act on account of her "forced retirement" which she said amounted to wrongful/unfair dismissal. The appellant defended the claim on the basis that the respondent had not been dismissed, but had been lawfully retired in accordance with its written Policy of which she was well aware. Additionally, the respondent claimed she had impliedly consented and affirmed the variation by conduct. The employer also contended that it had led evidence at the trial of its longstanding custom and practice to retire staff at age 65.

Following a contested trial, the Industrial Tribunal held that the respondent's contract of employment had been unilaterally varied without her consent and that she had consequently been wrongfully dismissed. The appellant appealed, claiming, *inter alia,* that the respondent had been lawfully retired, and further that by her non-objection, she had consented to the variation and affirmed her contract of employment with its varied terms.

After hearing arguments, the Court reserved its decision.

Held*:* Appeal allowed. In accordance with section 64(2)(c) of the Industrial Relations Act, Ch. 321, the Tribunal's decision (including the award) is set aside with an order that a new hearing be held. There is no order as to costs.

The Industrial Tribunal erred in law by arriving at its final conclusions without conducting a proper analysis of the evidence, and without making crucial findings of fact and of mixed fact and law on the numerous legal issues which arose for its determination.

The Tribunal's *approach* to the resolution of this employment dispute disclosed a fundamental error of law. A court or tribunal simply cannot arrive at its final conclusions (as this Tribunal did) by ignoring crucial legal issues which had not only arisen on the evidence, but which had been expressly identified for its determination in the respective submissions and authorities which had been laid over for its consideration. Failing to do so is an error of law.

There is nothing in the Tribunal's *reasoning* which disclosed that it had considered the issues of repudiation, waiver of repudiation, affirmation or implied consent; or again, whether it would or would not be prepared (based on the evidence) to incorporate into the respondent's contract, an implied term reflecting the existence of a pre-existing unwritten custom and practice at the Temple's workplace of which the respondent was aware requiring its non-pastoral staff to retire at age 65. All of these legal issues demanded that the Tribunal (as the primary fact-finder) make specific findings (whether of fact or of mixed fact and law) with a view to finally resolving the dispute one way or the other.

Unfortunately without the benefit of the Tribunal's *reasoned* Decision on any of these crucial legal issues, it is impossible for us to resolve them on this appeal. In the circumstances, we are satisfied that the matter must be remitted to the Industrial Tribunal for a rehearing and proper determination in accordance with the applicable law.

Aparau v. Iceland Frozen Foods, [1996] IRLR 119; mentioned
Bond v. CAV Ltd [1983] IRLR 360; considered
*British Telecommunications plc v. Sheridan, [1990] IRLR 27;*mentioned
Duke v. Reliance Systems Ltd, [1982] IRLR 347; considered
English v. Emery Reinbold & Strict Ltd [2002] 1 WLR 2409; applied
Ferguson v. Bahamas Taxi Cab Union, [2018] 1 BHS J No. 108; mentioned
Ferguson v. Snack Food Wholesale Ltd, [2010] 3 BHS J No. 94; mentioned
Henry v. London General Transport Services Ltd, [2001] IRLR 132; applied
Henry v. London General Transport Services Ltd, [2002] EWCA (Civ) 488; applied
Howard v. Department of National Savings, [1981] IRLR 40; mentioned
James Catalyn v. The Ministry of Tourism, 1998/IT/ES/335; mentioned
Johnson v. Gaming Board of the Commonwealth of The Bahamas, [2014] 3 BHS J No. 82; mentioned

Jones v. Associated Tunneling Co. Limited, [1981] 10 IRLR 478; mentioned
Judy Russell v. Palm Security Ltd, 2016/BIT/NR/15; mentioned
Lister v. Romford Ice & Cold Storage Co Ltd, [1957] 1 All ER 125; mentioned
Liverpool City Council v. Irwin, [1976] 2 All ER 39; mentioned
Longley v. Colina Financial Advisors Limited (CFAL), [2012] 2 BHS J No. 104; mentioned
*Meek v. City of Birmingham District Council, [1987] IRLR 250;*applied
Melon and others v. Hector Powe Ltd, [1980] IRLR 477; considered
Morris (in a representative capacity) v. Paradise Enterprises Limited, [2018] 1 BHS J No. 10;
Nothman v. Barnet London Borough Council (1979) 1 WLR 67; mentioned
Peart v. Dixons Store Group Retail Limited [2005] All ER (D) 18; applied
Quinn and others v. Calder Industrial Materials Ltd, [1996] IRLR 126; mentioned
Sagar v. Ridehalgh & Son, [1931] 1 Ch. 310; mentioned
St. Andrew's School v. Margo Albury, IndTribApp & CAIS No. 75 of 2013; mentioned
The Post Office v. Wallser, [1981] IRLR 37; mentioned
Trollope and Colls Ltd v. North Western Metropolitan Hospital Board (1973) 1 WLR 601; mentioned
W.E. Cox Toner (International) Ltd v. Crook [1981] I.C.R. 823; mentioned
Western Excavation (ECC Ltd.) v. Sharp [1978] 1 QB 761; mentioned

---

JUDGMENT

Decision delivered by The Hon. Madam Justice Crane-Scott, JA

Introduction

1. This is an appeal by the Evangelistic Temple ("the Temple") which challenges a written Decision of the Industrial Tribunal handed down on 26 February, 2021 in which the Tribunal held that the respondent ("Ms. Lightfoot") had been wrongfully dismissed; and awarded her the net sum of $52,905.18 as compensation, calculated in accordance with section 29 of the Employment Act, Chapter 321A.

2. The Temple seeks an order from this Court which would set aside the Tribunal's Decision and would further dismiss Ms. Lightfoot's claim before the Tribunal on the basis that she was not dismissed, but had reached the retirement age in accordance with its retirement policy.

3. We heard the appeal on 15 July 2021 and reserved our decision. We have allowed the appeal on grounds 1, 4, 5 and 6. However, in accordance with section 64(2)(c) of the Industrial Relations Act, Ch. 321, we set aside the Tribunal's decision (including the award) and order that a new hearing be held. There is no order as to costs. The detailed reasons for our decision appear below.

4. Some background facts will set the stage for our discussion.

Background to the Appeal

5. Ms. Lightfoot was hired by the Temple as its Business Administrator by way of a letter of offer dated 15 December 2004 which she signed and accepted on the 17 December 2004. Thereafter, her employment with the Temple took effect from 1 January 2005.

6. Her primary responsibilities were outlined in a Job Description attached to the offer letter. The Job Description explained that Ms. Lightfoot was to be responsible for the management of the Accounting and Finance operations, and for ensuring that the business of the Temple was conducted efficiently. In particular, she was responsible for generating the monthly financial statements and was to be instrumental in the creation of the budget.

7. The offer letter also set out the agreed remuneration which included her base annual salary, a matching contribution to the compulsory pension scheme up to a maximum of 5% of her annual salary and a 50% contribution to the medical plan. Her annual vacation entitlement and official hours of work were also spelled out.

8. Unfortunately, Ms. Lightfoot's employment contract was completely silent as to its duration and in particular, contained no term as to whether, or when, she was expected to retire. Both parties also agreed that when Ms. Lightfoot commenced her employment in January 2005, the Temple had no written mandatory retirement policy in place.

9. In October 2015 (just over 10 years after the start of Ms. Lightfoot's engagement) the Temple's staff was notified by Memorandum that the Temple had implemented a written Retirement Policy which was said to take effect immediately. The Memorandum, dated 15 October 2015, was issued and signed by the Senior Pastor, Reverend Dr. Vaughn Cash and stated:

> **"At its meeting held on Tuesday, October 14, 2015, the Official Board of Evangelistic Temple established <u>a Retirement Policy for all employees other than the Pastors</u>.**
>
> **<u>A copy of the said Policy is attached *for your information and perusal*</u>. Please be advised that <u>the policy is effective immediately</u> and will be**

added to the Evangelistic Temple Employee Handbook." [Emphasis added]

10. The Policy was attached to the Temple's Memorandum and is reproduced below in its entirety and speaks for itself:

"**EVANGELISTIC TEMPLE RETIREMENT POLICY**

A. Purpose

The purpose of this policy is to set forth the guidelines for Evangelistic Temple employees as it relates to employee retirement. Evangelistic Temple holds that the establishment of a clear policy will assist employees in planning for their retirement and will allow for effective succession planning for future staffing of the Church. The policy applies to all employees other than Pastors.

B. Policy Statement

1. **For all employees, Evangelistic Temple establishes a retirement age which becomes effective at the end of the retiree's birth month.**

2. **The Church considers this important to help ensure and facilitate staff stability while providing opportunities for younger, trained professionals or others who are at the early stage of their vocational careers.**

3. **Upon reaching retirement age, should a suitable replacement be unavailable, the Church upon approval of the Senior Pastor and the Official Church Board, and the consent of the employee may retain the services of such employee in a fixed-term capacity**

C. Procedures

1. **The Secretary of the Church Board, upon being advised by the Senior Pastor, will write to the employee two years before he/she reaches the retirement age of sixty-five (65) advising the employee of their impending retirement.**

2. **The <u>Business Administrator will meet</u> with individual employees in <u>the final year</u> of employment <u>to provide guidance</u> on the pension/NIB process.**

3. **If the Church wishes to retain an employee beyond the retirement age of sixty-five (65) for a fixed period for objectively justifiable reasons, the Senior Pastor will make recommendation to the Church Board, and the individual will be advised of the outcome and reasons for the decision in writing." [Emphasis added]**

11. As noted, the Memorandum stated that the Policy was attached for **"information and perusal"**. The Temple's staff was not invited to consent to it, or (as is sometimes done) to sign and return a duplicate copy to signify their agreement to it.

12. The evidence showed that upon receiving the Policy in 2015, Ms. Lightfoot took a deliberate decision not to object to it. According to her Witness Statement, the offer letter which she accepted in December 2004 and which formed the basis of her written employment contract, contained nothing about a retirement age. Further, the Policy was not discussed with her, and in any event, it had *'no immediate practical impact'* on her. She expected that it would not apply to her, but only to new employees engaged after the implementation of the Policy. Furthermore, Ms. Lightfoot's evidence was that the Temple made no further mention of it until 8 February, 2018 when the Secretary of the Board informed her that her last day of employment would be 14 February, 2018. This fact was, however, disputed by the Temple which claimed that she was sent a "Notification Letter" some 2 years before her retirement date in accordance with the procedures laid down in the Policy.

13. Both parties, however, agreed that on her 65th birthday, by a letter dated 14 February, 2018 ("the Retirement Letter") the Church Board Secretary wrote to Ms. Lightfoot notifying her that she had reached the retirement age of 65 and thanking her for her service. The letter also referenced the Temple's Retirement Policy of October 2015 along with the Temple's "Notification letter" of 2016 and enclosed a cheque for $2,553.54 representing her final pay.

14. It was primarily the issuance by the Temple of its so-called "Retirement Letter" which grounded Ms. Lightfoot's claim for wrongful/unfair dismissal before the Tribunal.

15. After leaving the Temple's employ on 14 February, 2018, Ms. Lightfoot invoked the trade dispute procedures under the Industrial Relations Act, Chapter 321. In due course, the dispute was referred to the Industrial Tribunal.

16. On 29 November 2018, Ms. Lightfoot filed an Originating Application. At item 11 of the prescribed "Form A", she set out the grounds of her complaint which she described as: **"Employee forced retirement in breach of contract of employment that did not provide for mandatory retirement."** At item 13, she circled the words **"wrongly/unfairly dismissed"** and further indicated that she was claiming compensation in consequence of her dismissal.

17. In its Defence set out on the prescribed "Form E" filed on 1 February, 2019, the Temple stated that Ms. Lightfoot had not been dismissed, but had instead reached the established retirement age of 65 years on 14 February, 2018 on which date her employment had ceased. At item 5 of its Defence, the Temple explained why it was resisting the application. The Temple claimed:

> **"On the 14th October, 2015 the Respondent implemented a mandatory retirement policy which set the mandatory retirement age at 65 years old. The Applicant was informed of the policy by written notification dated 15th October 2015. The Applicant worked with knowledge of this policy without objection and was provided with a letter dated 8th February, 2016, reminding her of the policy and her retirement date of February 2018. The employment thereafter continued until the scheduled retirement date of February, 2018. Accordingly, the Applicant was not dismissed but was retired in accordance with the Respondent's known retirement policy. " [Emphasis added]**

18. Notwithstanding that the Temple's Defence made no express mention of its reliance on a pre-existing unwritten workplace custom and practice on which staff retired at age 65, it appears that at the trial, the Temple's written submissions indicated that in addition to the implementation of its written Retirement Policy in October 2015, it would adduce evidence of a longstanding custom and practice at the workplace by which its non-pastoral staff retired at 65.

19. In preparation for the trial, the parties filed Witness Statements in the usual way setting out the evidence on which each side intended to rely in support of their respective positions.

20. In her Witness Statement, Ms. Lightfoot acknowledged having seen and received the Temple's Memorandum of 15 October 2015 and its attached Retirement Policy. Indeed, at paragraph 3.0 of her Witness Statement she admitted that it had been handed to her by the Temple's Assistant Pastor, Bradick Cleare.

21. At paragraphs 4.0 through 6.0 of her Witness Statement she explained her rationale for not objecting to the written Policy and set out the basis of her claim to have been wrongfully dismissed in the following terms:

> **"4.0 At the time I was hired by Evangelistic Temple my contract of employment did not contain a Retirement Policy. No prior discussion was held with me by the Senior Pastor or the Board to inform me about a planned Retirement Policy. At the time of the implementation of the Policy I was 62 years old, in good health and no complaint was raised with me regarding my performance. It was my intention to remain at Evangelistic Temple as long as my health permitted me to continue to perform my duties at the established standard. At age 62 my prospects for finding a new job with the same salary and status was difficult if not impossible. In any event I was satisfied with my job and when the Policy was implemented, I was employed for a period of 13 years.**
>
> **5.0 As a single parent with a son and financial obligations to meet, I did not wish to object to the implementation of the Policy and risk being fired with immediate effect. The Policy *did not have an immediate impact on me* as my salary was not reduced and my hours of work had not changed. Moreover, no further mention was made to the Policy until February 8, 2018 when I was informed by the Secretary of the Board that my last day of employment, in accordance with the Retirement Policy was February 14th, 2018 as I had reached the age of 65 on February 14th, 2018.**
>
> **6.0 I did not expect the Retirement Policy to apply to me as I was employed 11 years prior to its implementation. As no retirement was part of my contract, therefore my contract was unilaterally varied without my consent. I expected that the Policy would not apply to me, but only to employees engaged after the Retirement Policy was implemented. As I was forced into retirement through this mandatory Retirement Policy, in effect I had been dismissed in breach of my employment contract by the Respondent, Evangelistic Temple, and therefore, I seek compensation for wrongful dismissal under Section 29 of the Employment Act in the amount of $55,458.72…The compensation is calculated at $4,621.56 per month for 12 months in accordance with the employment law."** [Emphasis added]

22. The Temple denied Ms. Lightfoot's assertion at paragraph 5.0 of her Witness Statement *(extracted above)* that **"no further mention had been made to the Policy until 8 February 2018".** At the hearing, it adduced evidence through its Senior Pastor, Rev. Dr. Vaughn L Cash, who claimed that that in keeping with the procedures laid down in the written Policy, the Secretary of the Church Board, Vaughn Delaney, had issued a "Notification Letter" to Ms. Lightfoot on 8 February, 2016.

23. According to the Temple's case, the "Notification Letter" had been issued approximately 2 years before her scheduled retirement, and had reminded her of the Temple's Retirement Policy and had further informed her of her impending retirement on her 65th birthday on 14 February, 2018. It appears that under cross-examination at the trial, Ms. Lightfoot confirmed that notwithstanding paragraph 5.0 of her Witness Statement, there had in fact been further communication about the Temple's Policy between 2015 when the Policy had been documented and 14 February 2018 when she was forced to retire.

24. Between paragraphs 8 through 12 of his Witness Statement on behalf of the Temple, Senior Pastor, Rev. Dr. Vaughn L. Cash made the following averments:

> **"8. A copy of the Policy was <u>first provided</u> to the Applicant, inter alia, by way of Memorandum dated October 15th, A.D., 2015. Additionally, the Employee Handbook of the Respondent was revised to reflect the establishment of the Policy which, in addition to all the other policies included therein, governed the Applicant's terms and conditions of employment with the Respondent.**
>
> **9. At the time the Policy was implemented, the Applicant was approximately sixty-two (62) years of age. As such, <u>the Applicant, having elected to remain with the Respondent even after the Policy was implemented, was provided with effective notice of the Respondent's retirement policy and the time at which it would apply to her directly, more than two (2) years in advance</u>. Notwithstanding this, <u>at no time prior to her retirement did the Applicant raise any opposition or protest</u> to the implementation of the Policy by the Respondent, as far as I am aware.**
>
> **10. <u>By way of letter dated the 8th February, A.D., 2016, (the "Notification Letter") the Applicant was notified of her specific retirement date in accordance with the Policy</u>.**

> **11. Under cover of letter dated the 14th February A.D., 2018, (the "Retirement Letter") the Respondent provided the Applicant with her final entitlements upon her retirement, along with a categorization of the same. The Applicant signed the Retirement Letter acknowledging her receipt of the same.**
>
> **12. Accordingly, the Applicant was retired in accordance with the Policy and provided with payment for all accrued sums due to the Applicant upon her retirement, including her accrued salary, accrued vacation pay, pension entitlements, less National Insurance Contributions and Medical Insurance premium, as at her retirement date. Other than the above, there were no other accrued or vested sums due and owing at the time of her retirement."** [Emphasis added]

25. At the hearing, Ms. Lightfoot and Reverend Cash were both subjected to cross-examination on their Witness Statements. Thereafter, after inviting closing submissions in writing from both parties and reserving its decision, the Tribunal subsequently handed down its written Decision on 26 February, 2021.

26. The Tribunal's findings at paragraphs 15 and 17 of its written Decision now lie at the heart of the Temple's complaint on this appeal.

27. The Tribunal found:

> **"15. The Court is of the opinion that there was a unilateral variation of the Applicant's contract of employment without her consent. This is clearly unacceptable even though the Applicant made no objection to the same. This answers the issues raised by the Respondent which lead the Court to the opinion that the applicant was not lawfully retired. Although the Court is not of the opinion that she was unfairly dismissed it is of the opinion that she was wrongfully dismissed.** [Emphasis added]
>
> **…**
>
> **17. There is no dispute that the Applicant was in a supervisory position and that her salary was Fifty-five Thousand Four Hundred and Fifty-Eight Dollars and Seventy-Two Cents ($55,458.72) per annum. She is therefore entitled under Section 29 of the Employment Act as follows:**
>
> **1 month's pay - $ 4,621.56**

1 month's pay for each year of service (4,621.56 x 11)	**-**	**$ 50,837.16**
		$ 55,458.72
Deductions (amount received at retirement)	**-**	**$ 2,553.54**
		$ 52,905.18"

[Emphasis added]

28. Against the foregoing background, we turn to consider the grounds of appeal.

The Grounds of Appeal

29. In its Notice of Appeal filed on 31 March, 2021, the Temple identified seven (7) grounds. Although they are lengthy and raise overlapping issues, we have decided to set them out in full. They are as follows:

> 1. **"That the learned Vice-President erred in law and misdirected herself in finding that the Appellant unilaterally varied the Respondent's contract of employment without her consent, after failing to consider at all or apply the proper test as set out in the Supreme Court cases of *Johnson Gaming Board of the Commonwealth of The Bahamas [2014] 3 BHS J. No. 82* and *Ferguson v. Bahamas Taxi Cab Union [2018] 1 BHS J. No. 109* to the evidence;**
>
> 2. **That having not considered or distinguished the Bahamian Supreme Court authorities relied on by the Appellant, the learned Vice-President erred in her findings as she was bound under the doctrine of *stare decisis* to apply the Bahamian Supreme Court authorities in precedence over those of the Honourable Tribunal upon which the learned Tribunal ultimately based her decision;**
>
> 3. **That the learned Vice-President erred in her interpretation and application of the principles enunciated in the Industrial Tribunal cases that she relied upon, namely, *Judy Russell v. Palm Security No. BIT/NR/15* and failed to consider or distinguish the facts of the said cases where there was no "workplace policy" in existence in those cases; unlike in the instant case where there was a clear written policy;**
>
> 4. **That the learned Vice-President erred in law and was wrong in failing to find that the Respondent acquiesced to the retirement age**

by continuing to work for more than 2 years after its introduction (in October 2015) and then continued to work, without objection, for a further year subsequent to receiving a reminder and a notification of her imminent retirement by letter dated 8th February, 2016. Further, the learned Vice-President failed to consider these documented facts in conjunction with the legal principles enunciated in *Ferguson v. Bahamas Taxi Cab Union* where, *inter alia*, a retirement policy was implemented 10 years after the commencement of employment and was found to be binding; consequently, the learned Vice-President erred by not finding that the Respondent was lawfully retired;

5. **That the learned Vice-President having found at paragraph 16 of the Decision that the Respondent *"…made no objection…"* erred in law and misdirected herself by failing to determine that, by not objecting to the retirement policy, the Respondent in fact accepted the retirement age and was estopped from claiming breach of contract;**

6. **That the learned Vice-President erred in law and misdirected herself by failing to give any, or sufficient weight or consideration to the Appellant's witness' testimony, referred to at paragraph 9 of the Ruling, that *"his understanding since joining the church staff in 1995 [was] that the retirement age of staff members was the same as is customary in the country which is age sixty-five (65)".* The learned Vice-President was wrong and erred in law by failing to consider, or to consider sufficiently, the practice and custom of the Appellant to retire all non-pastoral staff at the age of 65;**

7. **That the learned Vice-President erred in law and misdirected herself in finding that the Respondent was wrongfully dismissed in the absence of such a claim for wrongful dismissal being specifically and expressly set out in the Respondent's Originating Application as was held as a pre-requisite for such a finding, by the Bahamian Court of Appeal in the decision in *Island Company Limited v. John Fox – IndTribApp. No. 54 of 2017*; and**

8. **Any other ground that the Court may deem just and equitable."**

30. In our view, the grounds may be conveniently arranged and examined under four headings which broadly correspond to the legal issues which arose for the Tribunal's determination both on the evidence as well as in the parties' respective written submissions.

Grounds 1, 4 & 5 – Did the Tribunal err in finding that there had been a unilateral variation of Ms. Lightfoot's employment contract without her consent? Did the Tribunal also err by failing to find that by her non-objection to the implementation of the retirement policy Ms. Lightfoot impliedly accepted or affirmed the contract as varied and was estopped from claiming breach of contract? Did the Tribunal err by failing to consider or to apply the legal principles set out in the Supreme Court cases to which the Tribunal had been referred?

31. As we see it, underlying all three of these grounds is the Temple's complaint that the Tribunal's *conclusion* at paragraph 15 of its Decision (see para 27 above), is unsupported by legal reasoning and wrong in law.

32. Counsel for the Temple, Mrs. Archer-Glasgow, contends that the Tribunal could not properly reach its conclusion without having first grappled with the evidence; and without having also considered the numerous legal issues which had arisen on the evidence and which had been identified in the parties' submissions (and in the authorities) which had been laid over for its consideration.

33. Counsel further submits that the Tribunal failed to consider or to apply what she describes as the *"proper test"* set out in the 2 Bahamian Supreme Court cases identified in ground 1 which the Temple had cited. She claims that the Tribunal had instead, erroneously followed 2 previous Bahamian Industrial Tribunal authorities, namely, **Judy Russell v. Palm Security Ltd,** [2016] BIT/NR/15, and **James Catalyn v. The Ministry of Tourism,** [1998] IT/ES/335 upon which it ultimately based its decision.

34. In support of her contentions, Mrs. Archer-Glasgow relies, *inter alia*, on: **Johnson v. The Gaming Board of the Commonwealth of The Bahamas**, [2014] 3 BHS J No. 82; and **Ferguson v. Bahamas Taxi Cab Union**, [2018] 1 BHS J No. 108. Mrs. Archer-Glasgow also relies on the Bahamian Supreme Court decision of **Morris (in a representative capacity) v. Paradise Enterprises Limited**, [2018] 1 BHS J No. 10, which in her view *"clarified the position in Bahamian jurisprudence"* as to the use of evidence of workplace custom and practice in order to determine an employee's 'normal retirement age' in cases where the contract is silent as to retirement. She also claims that **Morris** is the *"proper test"* which the Tribunal failed to apply.

35. For his part, Counsel for Ms. Lightfoot, Mr. McDonald, submits that the Tribunal was correct to have concluded that his client had been wrongfully dismissed. He contends that the Tribunal correctly applied the "*test"* enunciated in **Jones v. Associated Tunneling Co Ltd,** [1981]

IRLR 477 which is applied in **Aparau v. Iceland Frozen Foods plc,** [1996] IRLR 119 and has been followed in the Bahamas Industrial Tribunal decision in **James Catalyn** *(above).* He also contends that the fact that Ms. Lightfoot had not objected to the implementation of the policy in 2015 could not be taken as an indication of her implied acceptance of the variation of her employment contract since at the time when the written retirement policy was implemented in 2015, it had no *"immediate practical impact"* on her.

36. As we understand his submission, based on these 3 authorities, Mr. McDonald contends that an employee's silence or non-objection following variations unilaterally introduced by his employer is not necessarily indicative of his or her implied consent or affirmation of the unilateral variation which has occurred. The submission is that as the Temple's 2015 Retirement Policy had no *"immediate practical impact"* on her, Ms. Lightfoot could (as she did) continue working, take a 'wait-and-see approach', and essentially defer taking legal action until the Temple had (as it did on 14 February, 2018) repudiated the terms of her written contract by unequivocally applying the Policy to her.

37. In essence, Ms. Lightfoot's contention is that the repudiation of her contract actually occurred on 14 February 2018 when the Temple issued her with the 'Retirement Letter' and a cheque representing her final pay, and **not** in 2015 when the written Policy was first issued, ostensibly only for the **"information and perusal"** of its staff.

38. Although counsel for the respective parties cited what they considered to be the relevant authorities and identified the *"tests"* which each claimed the Tribunal had either correctly applied (or failed to apply), we are satisfied that the Tribunal's *approach* to the resolution of this employment dispute discloses an error of law of a more fundamental nature.

39. Simply put, a court or tribunal cannot properly arrive at its final *conclusions*, (as this Tribunal did) by ignoring crucial legal issues which not only arose on the evidence, but which had been expressly identified for its determination in the respective submissions (and cases) which had been laid over for its consideration. [See **Peart v. Dixons Store Group Retail Limited,** [2005] All ER (D) 18; **Henry v. London General Transport Services Ltd,** [1981] IRLR 132 subsequently affirmed by the England and Wales Court of Appeal in its decision of 21 March 2002; and **English v. Emery Reinbold & Strict Ltd** [2002] 1 WLR 2409.]

40. In our judgment, the dispute between Ms. Lightfoot and the Temple clearly raised a multiplicity of legal issues, each requiring the Tribunal's careful consideration, and ultimately, determination. The issues which arose in this case included the following:

    (a) whether (as Ms. Lightfoot contended) her written contract, having made no express provision in relation to its duration or as to a retirement age, was

repudiated by her having been "forced" into retirement on her 65th birthday by reason of the issuance by the Temple on 14 February, 2018 of its 'Retirement letter' pursuant to a written Retirement Policy first unilaterally issued to staff on October, 2015 to which she had not consented?;

(b) whether (as Ms. Lightfoot also claimed) inasmuch as the Temple's unilateral written Policy: (a) was not discussed with her; (b) had ostensibly been issued only for "information and perusal"; (c) appeared, on its face, ambiguous as to whether it was to apply to her or only to new employees; and (d) appeared to have *"no immediate practical effect"* on her, Ms. Lightfoot was within her rights to elect to continue working, and to take no action on it until the Temple (as it did on 14 February 2018) took steps to unequivocally repudiate the terms of her original employment contract by issuing her with a "Retirement Letter" and a cheque representing her final pay?

(c) whether (as the Temple contended) Ms. Lightfoot's conduct in having continued to work with the Temple without protest or objection for a period of almost 3 years subsequent to her having being notified of its written Policy, should be regarded as conclusive of her having given her implied consent to or affirmation of the new contractual terms as varied in 2015?

(d) whether (as the Temple also claimed) the evidence adduced before the Tribunal was such that the Tribunal could properly find that there had in fact been a pre-existing custom and practice at the Temple's workplace which could by necessary implication be incorporated into the employment contract as a contractual term requiring her to retire at age 65?;

(e) whether (as the Temple also claimed) in all the circumstances, Ms. Lightfoot is estopped, and should be regarded as having waived any right she may have had to claim that her contract was breached and she had been dismissed?

41. In our view, the law governing these crucial legal issues is not necessarily found in the few authorities on which counsel for the parties relied. To appreciate the breadth of the law in relation to these issues, one need only examine the many employment law and contract law textbooks to appreciate the seemingly endless legal authorities which can be found for and against any of these issues.

42. Employment disputes are notoriously fact-sensitive. Whether a particular legal authority embodies the *"proper test"* to be applied, or is capable of assisting a court or tribunal in

resolving a given dispute will invariably depend on the *evidence* led, and on the specific issues of fact and of mixed law and fact which have arisen for determination in that case.

43. Having read the entirety of Tribunal's written Decision, we have found it to be devoid of any proper analysis of the evidence led, the issues raised or the relevant law. Admittedly, at paragraphs 13 and 14, the Tribunal does indicate that it had taken into consideration two previous Industrial Tribunal cases of **Judy Russell** and **James Catalyn**. But to our astonishment, nowhere in the Decision is there any *reasoning* or analysis of the evidence or the issues; or any findings of fact, or of mixed fact and law which led the Tribunal to the final *conclusions* seen at paragraph 15.

44. At paragraph 15 the Tribunal clearly accepted that Ms. Lightfoot had not objected to the Temple's 2015 Policy. However, in arriving at its final *conclusions*, the Tribunal clearly ignored the evidence located in Ms. Lightfoot's Witness Statement which had set out her rationale for not objecting.

45. No mention was made in the Tribunal's Decision of Mr. McDonald's contention, based on the observations of Browne-Wilkinson J in **Jones v. Associated Tunneling Co Ltd,** [1981] IRLR 477 and **Aparau v. Iceland Frozen Foods plc**, [1996] IRLR 119 (applied in **James Catalyn**) that an employee's silence or non-objection is not necessarily indicative of his implied consent or affirmation of the new contractual terms in circumstances where the variation has *"no immediate practical effect"* on the employee's position.

46. Additionally, there is nothing in the Tribunal's *reasoning* which discloses that it had considered the issues of repudiation, waiver of repudiation, affirmation or implied consent; or the possibility of incorporating into Ms. Lightfoot's contract, an implied term reflecting the existence of a longstanding unwritten retirement custom and practice at the Temple's workplace based on the evidence before it.

47. As noted, all of these legal issues had clearly arisen for the Tribunal's thoughtful consideration, and further required careful legal analysis and *reasoning* before it could arrive at a final determination of the dispute one way or the other.

48. With that said, we are satisfied that there is considerable merit in the Temple's complaint that the Tribunal failed to treat with the evidence or to examine the many legal issues which had arisen for its determination.

49. This is particularly evident from paragraph 15 of the Tribunal's Decision where the Tribunal found that a unilateral variation of the employment contract had taken place without Ms. Lightfoot's consent. After also finding that Ms. Lightfoot had not objected to the Policy, the

Tribunal (with no analysis of the other evidence or of the issues raised) thereupon dismissed the Temple's issues stating: **"This answers the issues raised by the Respondent which lead the Court to the opinion that the applicant was not lawfully retired."**

50. It need hardly be said that the mere fact that a unilateral variation of the terms of an employment contract appears to have occurred without an employee's express consent, does not automatically mean that the contract has been breached or that the employee has been terminated or dismissed. As even the most cursory review of the authorities in this area of the law will reveal, a wide variety of related legal issues can, and may arise on the evidence in individual cases, all of which will require thoughtful analysis and a *reasoned* determination made in the light of the applicable law.

51. As we see it, apart from the few authorities laid over by counsel for the respective parties to which reference has already been made, we consider that the Tribunal might also have benefitted from an examination of the manner in which the law relating to repudiation of contract, waiver, affirmation and implied consent was applied for example, in: **Marriott v. Oxford District Coop Society Ltd (No. 2),** [1970] 1 QB 186; **W.E. Cox Toner (International) Ltd v. Crook,** [1981] I.C.R. 823; **Western Excavation (ECC Ltd) v. Sharp,** [1978] 1 QB 761; **Ferguson v. Snack Food Wholesale Limited,** [2010] 3 BHS J No. 94; and **Tyrone Morris v. Paradise Enterprise Ltd,** SCCivApp No. 50 of 2018 to name a few.

52. As to the common law principles relative to how a court or tribunal may incorporate into a contract by necessary implication terms to which the contracting parties did not expressly or impliedly agree, the Tribunal might usefully also have been invited to consider the guidance found in the House of Lords authorities of: **Lister v. Romford Ice & Cold Storage Co Ltd**, [1957] 1 All ER 125 pages 130-135 per Viscount Simonds; **Trollope and Colls Ltd v. North Western Metropolitan Hospital Board,** [1973] 1 WLR 601 page 610 per Lord Pearson; **Liverpool City Council v. Irwin and anor,** [1976] 2 All ER 39 pages 43-46 per Lord Wilberforce and pages 46-48 per Lord Cross of Chelsea; **Nothman v. Barnet London Borough Council,** [1979] 1 WLR 67 pages 69-73 per Lord Salmon. As well as the English Court of Appeal decisions in **The Post Office v. Wallser,** [1981] IRLR 37 per Lawton LJ at paragraphs 24-25; and **Howard v. The Department of National Savings,** [1981] IRLR 40 per Lord Denning MR at paragraphs 14-26.

53. The Tribunal might also have been referred to the English Employment Appeals Tribunal decisions in **Duke v. Reliance Systems Ltd,** [1982] IRLR 347 at paragraphs 8-13 per Browne-Wilkinson J; and **Quinn and others v. Calder Industrial Materials Ltd**. [1996] IRLR 126 at paragraphs 6-9 per Lord Coulsfield. The Bahamian Supreme Court authority of **Longley v. Colina Financial Advisors Limited (CFAL),** [2012] 2 BHS J No. 104 might also have been usefully drawn to the Tribunal's attention. At paragraph 38, Adderley J (as he then was)

adverted to the guidance of the House of Lords in **Liverpool City Council v. Irwin** *(above)* and identified the applicable *"tests"* for implying a term in fact.

54. We turn finally to situations where evidence of a prevailing custom or practice within a workplace has been adduced before a court or tribunal to assist in the resolution of certain employment disputes. Apart from the 3 cases cited by the Temple, the Tribunal might, for example, also have been referred to the following authorities where recognized *"tests"* and common law standards for establishing the existence of a custom or practice within any given workplace are discussed. In our view, these authorities exemplify both the nature, as well as the cogency of the evidence of custom and practice which may have to be adduced before the relevant court or tribunal. [See for example **Sagar v. Ridehalgh & Son,** [1931] 1 Ch. 310 pages 336-337 per Lawrence LJ; and **Bond v. CAV Ltd** [1983] IRLR 360 paragraphs 54-56 per Peter Pain J; **Duke v. Reliance Systems Ltd** *(above)* per Browne Wilkinson J at paragraphs 13 and 14 and the EAT decision in **Henry v. London General Transport Services Ltd,** [2001] IRLR 132 at paragraph 35 per Lindsay LJ, subsequently affirmed on appeal to the England and Wales Court of Appeal.]

55. We have drawn attention to the existence of the above authorities simply to re-emphasize what we said earlier, which is that the applicable principles and *"tests"* relative to the many issues which arose for the Tribunal's determination do not necessarily only reside in the 3 Bahamian Supreme Court authorities on which the Temple relied. As will be evident, there are numerous decisions of the House of Lords, Court of Appeal and the English Employment Appeals Tribunal, as well as other Bahamian Court of Appeal and Supreme Court cases and decisions of the Bahamas Industrial Tribunal, which may also have a bearing on many of the issues which arose in this case.

56. As we see it, the Tribunal's written Decision in this case falls well below the standard required. Its conclusions at paragraph 15 are unsupported by proper *reasoning*, and as we have already said, this fact alone discloses a fundamental error of law. The crucial issues as to whether or not Ms. Lightfoot's conduct after receipt of the Temple's written Retirement Policy in October 2015 amounted to a waiver of repudiation, affirmation or acceptance of a new contract, and whether she lost her right to object to its application in relation to her on 14 February, 2018, were quite simply, never considered.

57. The necessity for an appellate Court to have the benefit of a *reasoned* judgment from the Industrial Tribunal below is obvious and trite. In **Henry v. London General Transport Services Ltd**, [2002] EWCA (Civ) 488, the England and Wales Court of Appeal endorsed the EAT's decision to remit the matter for reconsideration by the Employment Tribunal below. At paragraph 18 of its judgment, authored by Pill LJ., the Court of Appeal drew attention to the

following observations of Bingham L.J., in **Meek v. City of Birmingham District Council,** [1987] IRLR 250, with which we wholeheartedly agree:

> **"8…the decision of an Industrial Tribunal is not required to be an elaborate formalistic product of refined legal draftsmanship, but must contain an outline of the story which has given rise to the complaint and a summary of the Tribunal's basic factual conclusions *and* a statement of the reasons which have led to them to reach the conclusion which they do on those basic facts. The parties are entitled to be told why they have won or lost. There should be sufficient account of the facts *and of the reasoning* to enable the EAT or, on further appeal, this court to see whether any question of law arises; and it is highly desirable that the decision of an Industrial Tribunal should give guidance both to employers and trade unions as to practices which should or should not be adopted."** [Emphasis added]

58. By virtue of section 64 of the Industrial Relations Act, appeals from The Bahamas Industrial Tribunal are maintainable only on questions of law. Without the Tribunal's findings (whether of fact or of mixed fact and law) set out in a reasoned written Decision, it is impossible for this Court, applying the usual standard of appellate review, to determine whether the Tribunal in this case either misdirected itself in law or reached a decision which no reasonable Tribunal, directing itself properly on the law, could have reached. [See: **Melon and others v. Hector Powe Ltd,** [1980] IRLR 477 (HL) para12 per Lord Fraser of Tullybelton.]

59. As would by now be evident, we are completely satisfied that the Tribunal's *approach* to this dispute discloses a fundamental error of law which thoroughly justifies the decision which we now make, which is to quash the Tribunal's written Decision in its entirety and to remit the matter to the Tribunal for rehearing and proper reconsideration.

60. The Tribunal's Decision cannot be allowed to stand. It must be quashed in its entirety.

Grounds 2 & 3 – Did the Tribunal erroneously fail to follow Supreme Court authorities by which it was bound and erroneously fail to properly distinguish the authorities on the facts?

61. While these two grounds broadly overlap with grounds 1, 4 and 5, the issue which they raise is more discreet. Both grounds essentially relate to the narrow question whether the Industrial Tribunal, as an inferior court, is bound by the principle of *stare decisis* and the doctrine of judicial precedent to follow the decisions of the Bahamas Supreme Court, as a superior court.

62. Given the position we have just taken in relation to grounds 1, 4 & 5, we consider it unnecessary for us to enter into what at this stage is a largely academic exercise. We would

simply observe that the Bahamas Industrial Tribunal routinely considers relevant authorities which have emanated from the English employment tribunals as well as from English and Bahamian courts of higher authority. As we have found, the Tribunal's Decision in this case was fatally flawed as it has not demonstrated that it had grappled with the evidence or the issues before it and the appeal is allowed on that basis.

63. In the circumstances, we decline to make any findings on grounds 2 & 3.

Ground 6 - Did the Tribunal erroneously fail to consider the evidence as to the employer's longstanding practice and custom to retire its non-pastoral staff at age 65?

64. At is core, the focus of ground 6 is on the threshold evidence which is required to successfully establish the existence of a 'normal retirement age' at the workplace based on practice and custom in circumstances where the contract is silent on the issue as to when the employee should retire.

65. On the one hand, the Temple says that the Tribunal erred in law in failing to give sufficient weight to the evidence which had been adduced at the trial through its witness Reverend Cash (which it claims was corroborated by Ms. Lightfoot's sworn testimony at the trial). The evidence, it says, supported its written submissions that prior to Ms. Lightfoot joining the Temple's employment in 2005, there had been a prevailing custom and practice in place in relation to retirement at age 65 and which had always been adhered to.

66. On the other hand, in his response Mr. McDonald submitted firstly, that the Temple's filed Defence had made no reference to the existence in the workplace of a pre-existing custom and practice as to retirement at age 65, and that secondly, the necessary foundation had not been laid before the Tribunal to permit the Temple to essentially rely on an un-pleaded ground. Mr. McDonald relied on the observations of Barnett C.J, at paragraph 29 of **Ferguson v. Snack Food Wholesale Ltd,** *(above),* and submitted that as the Temple had never expressly pleaded the existence of a workplace custom and practice, it would be unfair to Ms. Lightfoot to permit the Temple to rely on that un-pleaded ground.

67. As we see it, Mr. McDonald's submission is well made since the Temple's filed Defence merely relied on the written policy. Furthermore, there is nothing in the filed Defence or in Reverend Cash's Witness Statement which indicates that the Temple had initially been relying on custom and practice to establish the existence of an unwritten retirement policy at its workplace which was reasonable, notorious or certain. That objection is clearly one which would have been better made before the Tribunal itself during the hearing. Without the verbatim transcripts, we have no way of knowing whether this objection was ever raised.

68. As to the evidence required to establish the existence of a retirement policy by custom and practice within the workplace, Mr. McDonald cited **Sagar v. Ridehalgh & Son** *(above)* and submitted that it was incumbent on the Temple, as the employer, to establish that such practice was *"reasonable, certain and notorious".*

69. He further relied on the dictum of Browne-Wilkinson J in the English Employment Appeal Tribunal decision in **Duke** *(above)* and submitted that a policy adopted by management unilaterally cannot become a term of the employee's contract on the ground that it is an established custom and practice unless it is shown that the policy has been drawn to the attention of the employee or has been followed without exception for a substantial period.

70. Mr. McDonald further submitted that the Bahamian Supreme Court authorities of **Johnson** *(above)* and **Ferguson** *(above)* had been decided in the light of the particular circumstances in those cases, whereas in the present case, the Temple had not adduced the necessary evidential foundation to establish the existence of a workplace custom and practice such that the Tribunal could imply a retirement term into Ms. Lightfoot's contract.

71. Notwithstanding the Temple's complaints, Mr. McDonald urged us not to interfere with the Tribunal's Decision. He relied on the observations of this Court (differently constituted) in **St. Andrews School v. Margo Albury,** IndTribApp & CAIS No. 75 of 2013 paragraph 59 per Osadebay JA; and the observations of Lord Donaldson MR at paragraph 35 of the English Court of Appeal decision in **British Telecommunications plc v. Sheridan**, [1990] IRLR 27. He submitted that the Tribunal had not misdirected itself as to the applicable law and that there was evidence to support the findings of fact which the Tribunal made.

72. Based on the Temple's evidence led at the trial (more specifically the contents of Reverend Cash's Witness Statement) it does not appear that the Temple had ever set about to positively establish the existence of a longstanding unwritten custom and practice in the workplace by which its non-pastoral staff retired at 65. As far as we can determine, the Temple's Witness Statement makes no mention of a custom and practice, and no employment records were produced nor was any list of the persons who had been retired at age 65 put into evidence. Quite simply, there appears to be nothing in the appellate record to indicate when the alleged custom and practice commenced, how long it had been in place, and most importantly, whether the practice was *"reasonable, certain and notorious"* which, as the cases show, is the legal standard to be met by any party seeking to rely on a custom or practice. [See **Sagar v. Ridehalgh & Son** *(above);* **Bond v. CAV Ltd** [1983] IRLR 360 paragraph 54-56 per Peter Pain J; and the Court of Appeal decision in **Henry and others v. London General Transport Services Ltd,** paras 27-34 per Pill LJ *(above).]*

73. We note from the Temple's written submissions both before the Tribunal and again on appeal (see paras 6.43–6.51) that during the trial, oral evidence of the existence of an unwritten custom and practice of retirement at age 65 was adduced during the cross-examination of both Reverend Cash and Ms. Lightfoot. Mrs. Archer-Glasgow complains that the evidence was cogent, but was not considered by the Tribunal which made no findings on the issue.

74. That said, we have not been provided with the verbatim transcripts of the hearing and only have counsel's summary of what, she says, the totality of the evidence of the Temple's pre-existing custom and practice was. Whether a Tribunal would be prepared to accept those few portions of the oral testimony as having met the required legal standard of *"reasonableness, certainty and notoriety"*, still remains to be seen.

75. As we have already found in our discussion relative to grounds 1, 4 and 5, the Tribunal in this case failed to make any findings in relation to any of the issues which had been placed before it for its determination. This included the question whether the fact of the Temple's alleged retirement custom and practice had been established to a such a standard that the Tribunal would have been prepared to incorporate into Ms. Lightfoot's written contract (which had contained no express provision as to its duration or when she was to retire) an implied term requiring her to retire at age 65.

76. The Tribunal's failure to demonstrate in its *reasoning* that it had frontally addressed the evidence, or the numerous issues before it, constitutes a fundamental error of law which fully justifies our interference.

77. The Tribunal's Decision cannot be permitted to stand and must be quashed.

Ground 7 - Did the Tribunal erroneously find that the claimant was wrongfully dismissed, notwithstanding that the Originating Application failed to expressly plead a case of wrongful dismissal?

78. It is unnecessary to consider ground 7 in any great depth. We are of the view that notwithstanding that items 11 and 13 of the Originating Application did not expressly identify whether the claim was for wrongful/unfair dismissal or both; and had only referred to her **"forced retirement in breach of her contract of employment"**, the Temple cannot now complain that it was embarrassed or prejudiced by the pleadings or that it did not know the case it was required to meet at trial. Indeed, the claim that she was dismissed was expressly refuted and answered by the Temple as appears at item 5 of its Defence. [See paragraph 17 above.]

79. Furthermore, it is obvious from paragraph 6.0 of her Witness Statement, filed in advance of the trial, that Ms. Lightfoot was indeed making a claim for wrongful dismissal and was seeking

compensation under section 29 of the Employment Act in respect of the dismissal. [See also paragraphs 16, 20 and 21 above.]

80. Before leaving this ground we would simply observe that proceedings before the Industrial Tribunal are intended to be relatively informal. The filed pleadings are certainly not expected to be as tightly drawn as would be expected in the other courts. The Form "A" Originating Application is in many cases filed by lay persons acting invariably without legal assistance. Notwithstanding that items 11 and 13 of the Originating Application in this case were completed by Ms. Lightfoot (on her own behalf) we are satisfied that the issues for the Tribunal's determination were expressed in terms which were sufficiently clear to enable not only a Defence to be filed by the Temple, but for the Vice-President (as she did) to make a finding of wrongful dismissal, as erroneous as her *approach* to that *unreasoned conclusion* ultimately turned out to be.

81. There is no merit in ground 7 which is duly dismissed.

Disposition and Order

82. In summary, the Industrial Tribunal erred in law by arriving at its final conclusions without conducting a proper analysis of the evidence, and without making crucial findings of fact and of mixed fact and law on the numerous legal issues which arose for its determination.

83. The Tribunal's *approach* to the resolution of this employment dispute disclosed a fundamental error of law. A court or tribunal simply cannot arrive at its final conclusions (as this Tribunal did) by ignoring crucial legal issues which had not only arisen on the evidence, but which had been expressly identified for its determination in the respective submissions and authorities laid over for its consideration. Failing to do so is an error of law.

84. There is nothing in the Tribunal's *reasoning* which disclosed that it had considered the issues of repudiation, waiver of repudiation, affirmation or implied consent; or again, whether it would or would not be prepared (based on the evidence) to incorporate into Ms. Lightfoot's contract, an implied term reflecting the existence of a pre-existing unwritten custom and practice at the Temple's workplace of which Ms. Lightfoot was aware requiring its non-pastoral staff to retire at age 65. All of these legal issues demanded that the Tribunal (as the primary fact-finder) make specific findings (whether of fact or of mixed fact and law) with a view to finally resolving the dispute one way or the other.

85. Unfortunately without the benefit of the Tribunal's *reasoned* findings on any of these crucial legal issues, it is impossible for us to resolve them on this appeal. In the circumstances, we are satisfied that the matter must be remitted to the Industrial Tribunal for a rehearing and proper determination in accordance with the applicable law.

86. For all the foregoing reasons, the appeal is allowed. In accordance with section 64(2)(c) of the Industrial Relations Act, Ch. 321, we set aside the Tribunal's Decision (including the award) and order that a new hearing be held. There is no order as to costs.

The Honourable Madam Justice Crane-Scott, JA

The Honourable Mr. Justice Evans, JA

The Honourable Madam Justice Bethell, JA