



BARBADOS

IN THE EMPLOYMENT RIGHTS TRIBUNAL

ERT/2020/043

Roslyn Patricia Smith

Claimant

and

National Union of Public Workers

Respondent

BEFORE:

The Hon. Mr. Justice (ret'd) Christopher Blackman, GCM Chairman

Edward Bushell, Esq Member

Frederick Forde, Esq; GCM Member

DATES: On: December 5, 2022, January 16 and 18, 2023
February 2, 6, 10 and 28, 2023

APPEARANCES: Ms. Duana M Peterson, Attorney-at-Law for the
Claimant

Mr Larry Smith S C and Mr Codie Hinds, Attorneys-at-Law for the Respondent.

DECISION

1. The issue for determination in this matter is whether Roslyn Smith (hereinafter referred to as the Claimant or Ms. Smith) a former General Secretary of the National Union of Public Workers was unfairly dismissed or whether as contended by her former employer (hereinafter referred to as the Respondent or the NUPW) her contract of employment came to an end on the attainment of the retirement age, namely 65 years, as stipulated in her letter of appointment as the General Secretary of the NUPW dated 4 November, 2015 which she signed.
2. It is common ground that when Ms. Smith first commenced her employment with the NUPW in November 1972 at the age of 19, there was no mention of either retirement age or a date of retirement in her contract of employment.
3. The six substantive grounds of Ms. Smith's claims as detailed in the Claim Form 1 dated 12 October 2020 are:
 - a. Unfair dismissal pursuant to section 27 of the Employment Rights Act (the Act);
 - b. Failure to pay the termination amount due pursuant to section 22(3)(c) of the Act;
 - c. Failure and or refusal to provide a certificate of employment record pursuant to section 23 (1) of the Act

- d. Breach by the NUPW of the terms and conditions of her employment contract, which, did not provide for a retirement age;
 - e. Unfair dismissal while on certified sick leave in breach of section 30(1)(b)(i) of the Act
 - f. Unfair dismissal pursuant to section 30 1 (c) (iv)) of the Act in respect of a complaint concerning the unauthorized use by the President of the NUPW, of the NUPW's credit card.
4. The Tribunal has on its own motion, considered whether it has jurisdiction to consider items c, e and f detailed in paragraph 3 above, and for the reasons hereinafter stated, has concluded that it does not have jurisdiction to entertain any of the foregoing claims.
 5. Section 25 (4)(a) of the Act provides that the Tribunal shall not consider a complaint with respect to the failure and or refusal to provide a certificate of employment record pursuant to section 23 (1) of the Act unless the complaint is made to the Tribunal before the end of the period of 3 months beginning with the date on which the employment ended.
 6. Section 37 of the Interpretation Act, Cap 1 states that:

“In an enactment passed or made after the 16th June, 1966 the expression “shall” shall be construed as imperative and the expression “may” as permissive and empowering.”

7. The letter dated July 15, 2019 to the Chief Labor Officer (the CLO) Exhibit RS 18 attached to the Claimant’s Witness Statement of October 2020, and written on behalf of the Claimant, stated that the Claimant had been terminated from **April 30, 2019** (emphasis added) and sought compensation only in respect of the basic award, pay in lieu of notice, and 95 days vacation pay. The Tribunal accordingly finds as a fact that the first occasion on which the claim for failure and or refusal to provide a certificate of employment record has been advanced, is on the Claim Form 1 dated 12 October 2020 and that the elapsed period of over 17 months between the alleged termination date of April 2019, and the date on the Claim Form 1 is substantially in excess of the time period prescribed in the Act. Consequentially, the Tribunal has determined that it has no jurisdiction to consider the claim for non-production of a certificate of employment record and to make an award in respect of that claim.
8. The Tribunal would consider together, the claims for unfair dismissal while on certified sick leave in breach of section 30(1)(b)(i) of the Act and unfair dismissal pursuant to section 30

(1) (c) (iv)) of the Act in respect of a complaint concerning the unauthorized use by the President of the NUPW, of the NUPW's credit card. Section 32 (1) of the Act provides that an employee may make a complaint to the Tribunal that he was unfairly dismissed by his employer, and subsection (2) further provides the Tribunal shall not consider a complaint under subsection (1) unless the complaint is made to the Tribunal before the end of the period of 3 months beginning with the effective date of termination.

9. As noted in paragraph 7 above, the letter dated July 15, 2019 **Exhibit RS 18**, stated that the Claimant had been terminated from **April 30, 2019** (emphasis added) and sought compensation only in respect of the basic award, pay in lieu of notice, and 95 days vacation pay. The Tribunal would also refer to the letter dated 1ST July, 2019 to the NUPW, **Exhibit RS 17** attached to the Claimant's Witness Statement of October 2020, and written on behalf of the Claimant which dealt only with the issue of retirement age and the Claimant's contract.
10. The Tribunal finds as a fact that the claims of unfair dismissal while on certified sick leave in breach of section 30(1)(b)(i) of the Act and unfair dismissal pursuant to section 30 1 (c) (iv)) of the Act in respect of a complaint concerning the unauthorized use by the

President of the NUPW, of the NUPW's credit card, first appeared on the Claim Form 1 dated 12 October 2020, and so are well outside the period of 3 months prescribed for advancing a claim for unfair dismissal in the specified circumstances detailed in the Act. Consequentially, the Tribunal has determined that it has no jurisdiction to consider either of the claims made under section 30(1)(b)(i) and section 30 1 (c) (iv)) of the Act.

11. The Tribunal would wish to emphasise that failure to fully identify breaches of the Act, including those relating to the unfair dismissal of an employee, in the referral letter to the Chief Labour Officer under section 42 (2) of the Act, within the period of 3 months or 6 months as the case may be as stipulated in the relevant sections of the Act, may well constitute a bar to the Tribunal hearing and determining the complaint. See the remarks of Lord Denning MR in *Deadman v. British Building and Engineering Appliances Ltd* [1974] 1 All ER 521 at page 526, letters b to e, those of Walker LJ at paragraph 12 in *Porter v. Bandrige Ltd* [1978] IRLR 271 and the recent decision in *Wray v. Jewish Care* [2019] UKEAT/ 18, three English cases that address the consequences of non-compliance with the statutory requirements to present the complaint. The Tribunal has also considered two recent decisions of the Court of Appeal of the

Bahamas which are germane to the issue of jurisdiction. These are ***Island Hotel Company Limited v. John Fox*** IndTribApp No. 54 of 2017, the decision given on 26 September 2018 and ***First Caribbean International Bank (Bahamas) Ltd v. Byron Miller*** IndTribApp No. 40 of 2018, judgment given on 27 June, 2019.

12. The Tribunal would now proceed to consider the Claimant's claim for unfair dismissal pursuant to section 27 of the Act in the context of the alleged breach by the NUPW of the terms and conditions of the Claimant's original employment contract which had not stipulated a retirement age.
13. The evidence considered by the Tribunal is contained in (a) the Claimant's Witness Statements (inclusive of the several Exhibits to the said Witness Statements) dated respectively 12 October 2020, 18 May 2022, 20 July 2022 and 1 December 2022; (b) the Witness Statements of Mr. Richard Greene the current General Secretary of the NUPW, dated 26 July, 2022, and that of Delcia Burke a former General Secretary of the NUPW dated January 13, 2023, filed on behalf of the Respondent, and (c) the sworn testimony of the above mentioned persons, given under cross-examination.
14. In August 2013 the Claimant was appointed Deputy General Secretary of the NUPW with effect from August 15, 2013. The terms and conditions of her appointment in relation to salary,

allowances and other benefits were detailed in the letter of August 19, 2013 and accepted by the Claimant on August 20, 2013. There was no reference to a retirement age or a date of retirement in that letter.

15. The circumstances of the Claimant's appointment on 23 October, 2015 as General Secretary of the NUPW are, however, in some dispute.

16. Extracts from paragraphs 6, 9, 10 and 11 of the Claimant's Witness Statement dated 12 October 2020 which are considered material to the issues for determination, are reproduced hereunder:

"6. On the 23rd day of October, 2015, I was promoted from the post of Deputy General Secretary of the NUPW to the post of General Secretary of the NUPW by the National Council of the NUPW. When I was appointed General Secretary by the National Council, I do not recall being issued with a formal letter of appointment in respect of this promotion. However, I continued to work under the existing terms and conditions of service of my employment, which did not include a retirement age.

9. In or around April 2016, an urgent personal issue arose and I needed to secure urgent financing from Royal Bank (Barbados) Limited. I therefore requested a job letter to take into the Bank to facilitate my application. I was surprised when instead of a

standard job letter, I was handed a backdated letter dated November 4th 2015, intituled "Appointment to the Post of General Secretary." The letter was authored and signed by the President of the NUPW, Mr. Akanni McDowall. I immediately noticed that the letter contained an error, specifically that " iv.....**your normal retirement age is October 1st, 2018.**" (emphasis added)

10. I pointed this out to the President and requested that the error be corrected and the portion of the letter which stated that**your normal retirement age is October 1st, 2018** be deleted because I did not consent to this modification of the terms and conditions of my employment contract. The President refused to remove the portion of the letter.....I told him that I was signing the letter under **duress** (emphasis added).....I signed the letter and dated it '7th April 2016' acknowledging the date when I received it."

11. I decided that in due time I would revisit the issue with the National Council if any attempt was made to force this unilateral modification of my employment contract on me.....I recall that I had previously received a letter from SAGICOR Life Inc. in relation to fixing the retirement age at 65 years. I had rejected that proposal and I recall that SAGICOR Life Inc. had written back to propose the adjustment of the pensionable age for staff members

to whom a retirement age applied to 67. I also drew this to the President's attention."

17. The appointment letter dated November 4th 2015, referred to above, further detailed the salary and monthly allowances which the position carried and noted that a travelling allowance of \$750.00 would be paid in lieu of a fully maintained car, which was part of the benefits of the post, until the car became available. As noted in paragraph 9 in the Witness Statement of 12 October, 2020, item **iv.** of the said letter stated that ***"Your contribution of 5% of basic salary to the Staff Pension Scheme will remain in place and your normal retirement age is October 1st, 2018."***
18. On the Claimant's evidence, which is not in dispute at this point, the Tribunal finds as a fact that Ms. Smith was promoted to the position of General Secretary of the NUPW on or about the 23rd day of October, 2015. The terms and conditions of her new position were set out in her appointment letter ostensibly dated 4 November, and signed by the NUPW President, Mr. Akanni McDowall, expressly provided at item **iv** that ***"...your normal retirement age is October 1st, 2018."***
19. The Claimant as noted at paragraph 9 of her Witness Statement of October 12, 2020 said she only received the appointment letter in early 2016 when she approached the NUPW for a job letter to take

the Royal Bank of Canada. Miss Delcia Burke the Claimant's successor as General Secretary of the NUPW, has disputed the "job letter" story, and for reasons given later, the Tribunal finds as a fact that there was no "job letter" incident.

20. The Claimant in her Witness Statement said that on receiving the letter, she "immediately" noticed the "new" stipulation about her expected retirement age. While the Claimant claims that she considered the stipulation to be an error, and a unilateral variation of her contract, she never the less signed the appointment letter, dating it on 7th April, 2016 as the date she received it, and coincidentally, the same date of the continuation meeting of March 31, 2016, the minutes of which have been seen as Exhibit RS25.
21. The Tribunal has noted at **Exhibit RS 13**, a memorandum dated 2019-05-13 which advised inter alia, that on March 7, 2019 Ms. Smith's contract of employment was extended for a period of six (6) months, i.e October 1, 2018 to March 31, 2019. The Tribunal has also noted from **Exhibit RG3**, the Personnel Manual of the NUPW, that there is reference to the establishment by January 1994 of a pension plan for employees of the NUPW, and that the normal retirement age was 65.

22. The Claimant at paragraph 16 of the Witness Statement dated 12 October, 2020 noted that while it had been her intention of dealing with the issue of her contract on her return from vacation in December 2018, she went on certified sick leave and was hospitalized from 20th December 2018 at the Queen Elizabeth Hospital. On the 16th March, 2019, while still at the Queen Elizabeth Hospital, the Claimant was sent a memo from the President of the NUPW, Mr. Akanni McDowall which stated in part that *“Your contract has already been extended from 30th September 2018 to 31st March 2019. The decision to extend your contract was taken during a recent National Council meeting while you have been on sick leave and hospitalized from December 2018 to current date.”*
23. At paragraph 10 of the Claimant’s Witness Statement dated December 1, 2022, it was asserted that the 1994 Personnel Manual of the NUPW, which provided for a pension plan for employees of the NUPW and a retirement age of 65, had been revised in October 2017 to raise the NUPW retirement age to 67. This assertion was however disputed under cross-examination by both witnesses for the Respondent, Richard Greene and Delcia Burke. While the Tribunal has not seen any material from the Claimant supportive of her assertion that the policy had been

revised in October 2017, the Tribunal considers this date to be significant, for the reasons hereinafter given.

24. Mr. Richard Green, the current General Secretary of the NUPW was tendered for cross-examination by Counsel for the Claimant, after formally identifying his Witness Statement to which his signature had been appended. In that Witness Statement, he attached as exhibit **RG1** minutes of the 4th Regular meeting of the National Council of the NUPW held on March 31, 2016. The Claimant identified in the minutes as General Secretary, was shown as present. Under the heading, **Staff Matters** the letter of appointment to the post of General Secretary was considered. In light of its importance to the issues in this matter, item 4 (a) of the said minutes are reproduced below.

25. *"The General Secretary informed Council that Executive had appointed her effective October 23, 2015 and that a letter was prepared and given to the Chairman to sign and so far it had not been returned to her.*

Councillors queried why the General Secretary's letter of appointment was not signed.

The Chairman stated that the letter was not compliant with the Employment Rights Act (ERA). He explained that the statement of particulars was excluded. He said that he had e-mailed to the

Administrative Officer what he wanted included in the letter. He also informed Council that he had approached the Chief Labour Officer and asked if he should sign the letter as it was and he had said he could not, that he should follow the law.

*The General Secretary explained that her letter did not mirror Bro. Dennis Clarke's letter since he was not in the Pension Plan. **She informed Councillors that the Chairman wanted to insert age 65 as the retirement age (emphasis added)***

Councillors agreed that the Administrative Officer would prepare the letter and insert the applicable parts of the ERA and that the letter would return to Council for its approval and for the Chairman to sign. Council agreed to discuss the matter on April 4, 2016."

26. The Tribunal has also taken note of Exhibit **RG4** being the minutes of the Continuation of the 4th Regular meeting of the National Council of the NUPW held on April 7, 2016. Those minutes showed that the Claimant was excused, and that Delcia Burke was present as General Secretary, Ag. The first item of business at that meeting was the letter of appointment to the post of General Secretary. For the reasons stated previously, the Tribunal reproduces the record in the minutes, on the appointment letter.

“The Chairman explained that the matter was settled in respect of issuing Sis Roslyn Smith with her letter of appointment as General Secretary. He informed the meeting that the letter sought to comply with requirements of the Employment Rights Act such as stating whether the appointment was temporary or permanent. The letter stated that retirement age would be in accordance with the Union’s pension plan that is, age 65.

The General Secretary stated that since the Union’s age of retirement under the Union’s Pension Plan was age 65, she had no problem with the letter of appointment.”

27. The Tribunal is aware that there is some contention as to the accuracy of the foregoing minute as to whether the reference to the General Secretary should not be a reference to the General Secretary Ag, as on the face of the minutes, the Claimant had been excused from the meeting. However, as has been noted previously, the Claimant signed the appointment letter on April 7, 2016, the same date of the continuation meeting of the Council meeting of the NUPW.
28. Under cross-examination, Mr. Green stated that he had been employed with the NUPW for 28 years and had held a number of positions before being appointed General Secretary on February 1, 2022. While those positions had not entitled him to sit on the

General Council, he had become aware as General Secretary, of the earlier history and business of the NUPW and so was sufficiently conversant with its affairs to speak to the issues in this matter. He further said that the 1994 Personnel Manual of the NUPW which inter alia provided for a pension plan for employees of the NUPW stipulated that the normal retirement age would be 65. As noted previously, he disputed the Claimant's contention that the January 1994 pension policy had been revised in October 2017.

29. The final witness for the Respondent was Delcia Burke who retired from the post of General Secretary on December 31, 2020 at the age of 68. At paragraph 13 of her witness statement, Miss Burke contradicted the statement by the Claimant at paragraph 9 of her witness statement that she had requested a letter from the NUPW to take to Royal Bank (Barbados) Limited. Miss Burke further stated that such a letter would have been prepared by the AO and signed by her as Deputy General Secretary and that consequently if such a letter existed, it would also be in the Claimant's file.
30. Under very grilling cross-examination by Counsel for the Claimant, while she agreed that a number of individuals had retired at ages greater than 65, she stated that she was unaware of the specifics of their respective terms of appointment. Save for the

contradiction at paragraph 14 of her witness statement that Miss Smith *“did not return to Council before the date in which she had agreed to retire on October 1, 2018”* while a statement in **Exhibit RS24**, showed that the Claimant was in fact present at the meeting on January 4, 2018, the Tribunal found the evidence of Miss Burke consistent and credible. Like Richard Green, she disputed the Claimant’s contention that the January 1994 pension policy had been revised in October 2017, as to her recollection the proposal had been a draft only, and that up to the time she left the NUPW in December 2020, it had not been approved. Moreover, the discussion under the heading **Retirement Age** at page 5 of the **Exhibit RG 5**, a continuation meeting of the Council of the NUPW held on 13th March, 2019 is supportive of the assertion that as of October 2017, there had been no revision.

31. Counsel for the Claimant has submitted that her client’s forced retirement was an unfair dismissal contrary to the provisions of section 27 of the Act, and moreover a dismissal while on certified sick leave in breach of section 30 (1)(b)(i) of the Act. In the circumstances that Ms Smith’s salary for April 2019 was paid, 30th April, 2019 has been treated as the terminal date of employment, with the consequential reduction of the 125 vacation days due to

the Claimant, to that of 95 vacation days due by the NUPW to Ms Smith.

32. Consequent to the cessation of the employer/employee relationship, the Claimant wrote the Chief Labour Officer on July 15th, 2019 about her termination, and as a result of the failure of the conciliation proceedings, the Chief Labour Officer on September 7, 2020 referred the issue to the Tribunal “*to determine and settle the dispute between Mrs. Roslyn Smith on the one hand and the National Union of Public Workers on the other hand, concerning the termination of the employment of Mrs. Roslyn Smith.*”

THE ISSUE

33. As noted in the opening paragraph of this decision, the issue for determination is whether the Claimant was unfairly dismissed or whether her contract of employment came to an end by effluxion of time by reason of attainment of the retiring age fixed by the employer.
34. Mrs. Peterson, Counsel for the Claimant in her written submissions, has placed reliance on two English authorities, ***Waite v. Government Communications Headquarters*** [1983] IRLR 341; [1983] AC 714, a House of Lords decision and ***Mauldon***

v. British Telecommunications plc [1987] ICR 450, a decision of the Employment Appeal Tribunal (EAT).

35. The facts of Waite are that on retirement from the army in 1961, Colonel Waite became a temporary civil servant, becoming “established” in March 1967. The Civil Service Code under which he was engaged provided for a minimum retiring age of 60. However, the code also provided that ‘an officer who has not completed 20 years’ reckonable service on reaching age 60 should, provided he is fit, efficient and willing to remain service, be allowed to continue until he has completed 20 years’ reckonable service or has reached age 65, whichever is earlier.’ On April 30, 1978 when Colonel Waite was 60 ½, his employment as a senior executive officer was terminated and he was re-employed as a clerical officer. He made a complaint of unfair dismissal in respect of this action.
36. An Industrial Tribunal accepted the employers’ argument that Colonel Waite was barred from complaining of unfair dismissal by the provisions of s.64 (1)(b) of the Employment Protection (Consolidation) Act 1978, since at the effective date of termination as senior executive officer, he had attained the normal retiring age for an employee holding that position. This

- decision was upheld on appeal by both the EAT and the Court of Appeal, and those decisions were affirmed by the House of Lords.
37. The EAT decision in **Mauldon** was in favour of the employee, an engineering storeman, who was employed under a contract of employment that provided for a contractual retiring age of 60. It was the employers' practice to retain persons beyond that age, subject to certain conditions. When Mauldon was dismissed just short of his 63rd birthday on the ground that his state of health no longer met the requirements for employment over the age of 60, he sued for unfair dismissal. The industrial tribunal hearing the complaint, considered whether Mr. Mauldon had attained the normal retiring age at the date of his dismissal within the meaning of s.64 (1)(b) of the Employment Protection (Consolidation) Act 1978 (the same legislation considered in the **Waite** matter). The tribunal held that since retention was a matter of discretion for the employers, a statistical approach was to be rejected and the normal retiring age was the contractual age of 60. The EAT however in allowing the appeal, held that the industrial tribunal had erred in rejecting the statistical approach, and directed that it be remitted for further consideration.
38. Mr. Larry Smith SC Counsel for the Respondent in his Written Submissions submitted that the presumption of continuity of

employment as stated in section 4 of the Act did not mean that the terms and conditions of the Claimant's employment could not be varied, in that "*Continuity may be maintained across a number of separate contracts, as long as the requirements of the Act are met: even though a man may change his job...change the terms of his contract of employment as long as he is with the same employer all the way through then, it is continuous employment*" (See *Labour Law 6th edition Deakin and Morris*, page 221; *Wood v. York City Council [1978] IRLR 228* and *Nicholl v. Nocorrode Ltd [1981] IRLR 163*. He contended that this was evident by the terms of the contract for the post of General Secretary which had no effect on her continuous employment with the NUPW.

39. Counsel for the Respondent further submitted that an employer may implement a retirement policy where none previously existed, by giving reasonable notice of that intention. Two cases have been cited in support of that proposition namely the British Columbian case of *Brown v Coles* (1986) 5 B.C.L.R (2d), and that from the Court of Appeal of Antigua and Barbuda, Civil Appeal No.12 of 2002, *E Alex Benjamin Limited v. St. Lawrence Defreitas*. In *Brown* the employee's contract did not contain a mandatory retirement age. The employer, one month before the employee's 65th birthday implemented a retirement age of 65,

and the employee was forcibly retired when she reached 65. The British Columbian Court ruled the retirement policy of the company was 'not one which could take effect *without giving reasonable notice to Mrs. Brown*'. The concept of reasonable notice was also considered in *E Alex Benjamin Limited* where **Saunders JA** (as he then was) noted at paragraph 14 that counsel for the employer had conceded that the implementation of a retirement policy *per se* was neither unreasonable nor unfair, and at paragraph 18, that it was obligatory for Mr. De Freitas's employers to have first given him reasonable notice. The Tribunal will also refer to the Employment Appeal Tribunal decision of the United Kingdom in *Barclays Bank plc v. O'Brien* and others [1994] ICR 865 which recognized an employer's right to set a normal retirement age, and the case of *Norman Grant v. Barbados Beach Club*, ERT 2018/090 which also adopted the principal of reasonable notice.

Discussion.

40. The Tribunal has given careful consideration to the submissions of Counsel for the Claimant and the authorities relied upon. The Tribunal is however of the view that neither *Waite* nor *Mauldon* are supportive of the Claimant's case. In *Waite*, Lord Fraser of Tullybelton said in the opening paragraph of the judgment "My

Lords, the main question raised in this appeal concerns the proper construction of the expression 'normal retiring age' where it occurs in the Trade Union and Labour Relations Act 1974. The expression was used in the same context in the Industrial Relations Act 1971.....The 1974 Act was the legislation in force at the time which is material for this appeal." and as noted above, the learned Law Lords affirmed the decisions that the retiring age of 60 was applicable to Colonel Waite.

41. There are also important factual distinctions in the case of **Mauldon**, details of which have been set out in paragraph 37 of this decision, with the instant matter. **Mauldon**, like **Waite** was concerned with the term **normal retiring age'** within the meaning of s.64 (1)(b) of the Employment Protection (Consolidation) Act 1978. In the opinion of the Tribunal, there is no issue of statutory construction for determination in this matter, but rather whether in the context of the terms of the appointment letter dated November 4, 2015, did the Complainant have reasonable notice of retirement. It should also be noted that the Employment Rights Act of Barbados has not made any provision for a retirement age, and as the Tribunal noted in Grant (supra) there are no overarching statutes which speak to retirement. The National Insurance Pensions legislation while speaking to the payment of

pensions, is silent on the issue of retirement in relation to the receipt of a pension.

42. At the Council Meeting of the NUPW held on March 31, 2016 referred to in paragraph 11 above, reference was made to the need for compliance with the Act and the advice which had been given to then President of the NUPW by the Chief Labour Officer, and again at paragraph 12 above, when the then President advised that the Act required that the statement of particulars to be given to an employee should contain certain details. Section 13 (2) of the Act states that “The statement shall contain (a) the name of the employee..(d) the title of the job; (k) ;.... or the date when the employment is to end, when it is for a fixed term; (n) (i) entitlement to holidays...(iii) pensions and pension schemes.
43. On that basis, the Tribunal has considered the following several incidents or documents:
- (a) paragraph 11 of Miss Smith’s Witness Statement of 12 October 2020 where she said in part *I recall that I had previously received a letter from SAGICOR Life Inc. in relation to fixing the retirement age at 65 years. I had rejected that proposal and I recall that SAGICOR Life Inc. had written back to propose the adjustment of the pensionable age for staff members to whom a retirement age applied to 67;*

(b) the notation in the minutes of March 31, 2016 Exhibit RG1, and detailed at paragraph 10 above that, ***She***(meaning the Claimant) ***informed Councillors that the Chairman wanted to insert age 65 as the retirement age (emphasis added)***;

(c) the minutes of the meeting held on **April 7, 2016**, Exhibit RG4;

(d) the letter of appointment as General Secretary dated 4 November, 2015 and signed on 7th April 2016 under the caption 'I **accept the terms and conditions above**'; and

(e) the statement at paragraph 10 of the Claimant's Witness Statement of 1 December, 2022 that the normal retirement age of 65 had been revised in October 2017, to the age of 67.

44. It seems to the Tribunal having reviewed the several matters cited in the foregoing paragraph, the Claimant had to be aware as early as 1994 of the letter from SAGICOR Life Inc. fixing the retirement age at 65 years, and at the latest in October 2017, when there were discussions, albeit non-conclusive, about revising the retirement age to 67. Critically however there is the clear and expressed recognition from **RG1** that on March 31, 2016 Councillors were informed that ***the Chairman wanted to insert age 65 as the retirement age***. This shows that the Claimant, at that time, knew that the retirement age was 65, and that a retirement age of 67 was only being proposed, but not yet

established. The Tribunal has taken note that acceptance of the appointment letter as General Secretary on **7th April, 2016** which advised that the retirement age was 65 years and the Claimant was expected to retire on 1st October 2018 coincided with the date of the continuation meeting of that same date. This has as a consequence raised some concerns for the Tribunal as to the accuracy of the remarks at paragraph 9 of the Witness Statement of October 2020 that *"In or around April 2016, an urgent personal issue arose and I needed to secure urgent financing from Royal Bank (Barbados) Limited. I therefore requested a job letter to take into the Bank to facilitate my application. I was surprised when instead of a standard job letter, I was handed a backdated letter dated November 4th 2015, intituled "Appointment to the Post of General Secretary." The letter was authored and signed by the President of the NUPW, Mr. Akanni McDowall."*

45. Miss Burke both in her Witness Statement and under cross examination disputed the Claimant's version of events in relation to the request for a job letter. The Tribunal is of the view that Miss Burke's statement of events is the more credible, and that the appointment letter albeit dated November 4, 2015 was handed to the Claimant on or around the same time as the meeting held on

April 7, 2016 which is the date affixed to the letter by the Claimant, accepting the post of General Secretary.

46. The Tribunal, in the case of **Norman Grant** cited above, had observed that ‘the Claimant had the responsibility to initiate the discussion if he had a contrary opinion as to when retirement ought to be.’ Likewise, **Lord Denning MR** in ***Western Excavating (ECC) Ltd v. Sharp*** [1978] 1 All ER 713 at page 717 cautioned that *“if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment...the employee is entitled to treat himself as discharged from any further performance...he terminates the contract by reason of the employer’s conduct....Moreover, he must make up his mind soon after the conduct of which he complains; for, if he continues for any length of time without leaving, he will lose right to treat himself as discharged. He will be regarded as having elected to affirm the contract.”*
47. In this action, the Claimant though stating that she had signed the letter of 7th April 2016 under duress, has not produced any correspondence or other written material to the National Council or the President of the NUPW protesting the requirement to retire on October 1st, 2018. At paragraph 11 of the Witness Statement dated 20 October 2020, the Claimant stated that **‘in due time I**

would revisit the issue with the National Council.’ However, no evidence has been produced to the Tribunal that the issue was ever revisited **in writing** with the National Council, and the only evidence before the Tribunal as to contact with the National Council, related to attempts to do so **after** the retirement took effect, which were rejected with no meetings being held.

48. The Tribunal on a consideration of the evidence given and the circumstances mentioned in paragraph 43 above together with the guidance provided by the legal authorities considered, are unanimously of the opinion that the Claimant was not unfairly dismissed, but that her relationship with the NUPW came to an end by retirement, in accordance with the terms set out in the letter of appointment as General Secretary dated 4 November, 2015, and modified by the 6 month extension referred to in paragraph 21 above.
49. The Tribunal has also considered the observations by **Lord Denning** in *Western Excavating* that an unhappy employee should take quick action for a perceived wrong else he would be taken to affirm the action. The failure by the Claimant to take action for close to three years to challenge a letter which she said she had signed under duress, amounted to acquiescence and acceptance of the perceived offending provision in the letter.

50. Mrs. Peterson Counsel for the Claimant in her supplemental submission dated 6 March, 2023 sought to introduce a new claim, that of age discrimination. This claim must be rejected for two reasons. First, for the reasons previously given that notice of such a claim should have been made to the CLO in July 2019 and second, that it is an abuse of process to make a new claim **after** (emphasis added) both parties had the closed their respective cases, and the only matter left outstanding was the filing of Supplemental Written Submissions.

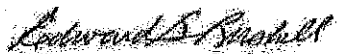
51. The claims referred to the Tribunal for unfair dismissal and the several grounds specified in paragraph 14 of Claim Form 1 dated 12 October 2020., are therefore dismissed.

52. Each party to bear their own costs.

Dated this 29th day of March 2023.



Christopher Blackman
Chairman



Edward Bushell
Member



Frederick Fotae
Member

