

JERSEY / JUDGMENT

States Employment Board v Fire and Rescue Service [2019] JRC 067 (18 April 2019)

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judgment

the commissioner: 1. The States Employment Board ("the SEB") appeals against the decision of the Employment and Discrimination Tribunal ("the Tribunal") to make a declaration under Article 22 of the Employment Relations (Jersey) Law 2007 ("the Employment Relations Law") to the effect that the SEB has failed to observe the provisions of an available procedure to resolve a collective employment dispute. 2. The SEB is a body corporate established under the Employment of States of Jersey Employees (Jersey) Law 2005 to employ those in public service, including those in the Fire and Rescue Service. 3. The respondent ("the FRSA") is a trade union that (for these purposes) represents those members of the Fire and Rescue Service employed by the SEB before 1 st January, 2016. 4. In 2010, the FRSA on behalf of its members entered into a "No Impairment of Service Agreement" with the SEB in which each whole time fire fighter received a non-pensionable lump sum of £6,000 for agreeing not to take any industrial action which might impair the service provided by the Fire and Rescue Service and this on the basis that any disputes would be resolved by a fast-track procedure set out in a document entitled "Fast Track Resolution Procedure". 5. Paragraph 2 of section 3 of the Fast Track Resolution Procedure explains the purpose of the agreement:- "2. The purpose of this agreement is to set down a framework for the discussion of issues, whether proposed by Management or the FRSA ... which involve those aspects of pay, terms and conditions of service of Fire and Rescue Service's staff represented by the FRSA... that are subject to negotiated outcomes as covered by Section 1 of the Terms and Conditions Agreement." 6. Paragraph 4 sets out the no impairment agreement:- "The FRSA and its members will not at any time take any industrial action/actions which impairs or may impair the service provided by the Service. This includes emergency response to incidents, community fire safety activities, fire prevention work and all preparatory activities such as training and equipment maintenance. In return a Fast Track Procedure for the settlement of collective differences has been developed and is set out in Section 4." As can be seen it is the mandatory application of the Fast Track Resolution Procedure to collective differences, which would result in binding arbitration, that was the quid pro quo for the members agreeing not to take industrial action. 7. Section 4 sets out general principles which are described as

"paramount", sub paragraph a) of which provides:- "a) Where disagreements involve pay, and items covered by Section 1 of the Terms & Conditions Agreement that are subject to negotiated outcomes, the resolution of disputes procedure set out in sections 4, 5 and 6 of this agreement must be followed. ..." (my emphasis) 8. There is then set out a four stage process which in the event of a disagreement remaining unresolved, leads finally in arbitration the result of which is binding on both parties. 9. Section 1 of the Terms & Conditions Agreement contains provisions relating to representation rights, working hours, pay, pension and fire-fighter career progression amongst others. The dispute 10. The dispute, which the FRSA claims should be subject to the Fast Track Resolution Procedure, arose out of the pension provision for the members. Their contract of employment describes the post of Firefighter as pensionable and from the date the employee took up his or her duties they were eligible to join the Public Employees Contributory Retirement Scheme, which is a final salary pension scheme. In 2013, following consultations with representative bodies of public sector employees and trade unions, changes to the pension were brought into effect through the Public Employees (Pensions) (Jersey) Law 2014 . In simple terms under the new scheme the final pension is based on the career average earnings as opposed to the average of the last three years. It is known as the "CARE Scheme". The CARE Scheme took effect for new employees from 1 st January, 2016, and for existing employees from 1 st January 2019. 11. Advocate Roberts, for the appellant, explained that the CARE Scheme is designed to be fair to all of the employees under the scheme, but it is the case of the FSRA that the CARE Scheme is particularly detrimental to its members, who are of long service, in terms of increased contributions and reduced benefits. Initially, the FRSA sought to have the CARE Scheme amended, but it accepted that amending the legislation was not within the gift of the SEB, and not susceptible, therefore, to a negotiated outcome with the SEB under the Fast Track Resolution Procedure. The FRSA therefore sought compensation from the SEB for the financial loss to its members, but the SEB has refused to deal with the matter under the Fast Track Resolution Procedure. 12. On 30 th August, 2018, the FRSA lodged a claim with the Tribunal. The jurisdiction of the Tribunal arises under Article 22 of the Public Relations Law , which provides that proceedings may be brought before the Tribunal in respect of a "Collective employment dispute" at the request of any party to the dispute in the following circumstances:- "(2) The circumstances to which this paragraph refers are - (a) that the body or person making the request considers that as far as is practicable all other available procedures have been applied unsuccessfully to seek to resolve the dispute; and (b) that a party to the dispute is acting unreasonably in the way in which that party is or is not complying with an available procedure." 13. Under Article 23 (1) and (2), in so far as it is relevant, the Tribunal may make a declaration as to whether any party to the dispute is not observing any relevant terms and conditions. 14. At the centre of this appeal is the definition of "Collective employment dispute" which is contained in Article 5:- "5 "Collective employment dispute" (1) In this Law, "collective employment dispute" means a dispute between one or more employers and one or more employees, where - (a) The employee or employees concerned are represented by a trade union; (b) A collective agreement exists between the employer or employers and the trade union; and (c) The dispute relates wholly or mainly to one or more of the matters described in paragraph (2)." (2) The matters to which this paragraph refers are - (a) the terms of employment of one or more employees; (b) ..." 15. It was not in dispute in

this case that the employees concerned were represented by a trade union, namely the FRSA, and that a collective agreement existed between the SEB and the FRSA, namely the Fast Track Resolution Procedure, and so the requirements of Article 5(1)(a) and

- (b) were met. The central argument of the SEB is that this is not a dispute with it as employer, but with the States Assembly over the provisions of the CARE Scheme and that, in any event, this is not a dispute about terms and conditions or pay and does not come within the provisions of the Fast Track Resolution Procedure. Decision of the Tribunal 16. Before the Tribunal, the SEB asserted that the dispute is not with the SEB, but with the States Assembly, because:- (i) the root cause of the dispute is the FRSA's objection to the CARE Scheme; (ii) it was the States Assembly, and not the SEB, which imposed the CARE Scheme; (iii) the FRSA was seeking redress for perceived losses caused by the implementation of legislation; and (iv) the States Assembly and the SEB are separate legal entities which cannot be "lumped together." 17. The FRSA made it clear that:- (i) it accepted the CARE Scheme would come into effect for its members from 1 st January, 2019; (ii) it did not seek to delay the implementation of the CARE Scheme; (iii) it did not seek to change the CARE Scheme; (iv) it did not seek any recompense from the CARE Scheme. The FRSA sought monetary recompense from the SEB as the members' employer to offset the financial detriment which it claims its members will suffer, when their pensions provisions change. 18. The Tribunal made this finding at paragraph 35:- "Having considered both parties' submissions, the Tribunal rejected the SEB's assertion that the Dispute is with the States Assembly rather than with the SEB. To fall within the perimeter of the Article 5 Test, a dispute simply has to exist between employer and employee. In this case, the Dispute relates only to the attempt by the FRSA to secure monetary recompense from the Members' employer (the SEB). Thus, as soon as: a) The FRSA made a claim for monetary recompense from the SEB; and b) The SEB rejected that demand, a 'dispute' existed between the parties. The root cause of the Dispute (i.e. Implementation of CARE by the States Assembly) is not relevant for the purposes of the Article 5 Test." 19. The Tribunal then considered whether the recompense sought by the FRSA constituted " pay " for the purposes of the Fast Track Resolution Procedure, and/or whether it constituted an issue which is the " subject of negotiated outcomes ". The SEB asserted that the dispute did not fall within the scope of the Fast Track Resolution Procedure on the following grounds:- (i) The claim for recompense is " misconceived " because the dispute is an ongoing pension dispute with the States Assembly, rather than a pay dispute with the SEB. The recompense sought by the FRSA therefore cannot constitute " pay ". (ii) In correspondence, the FRSA identified the dispute as relating to " compensation for loss " arising from the introduction of the CARE Scheme, and not relating to " pay ". The SEB asserted that " compensation " is not the same as " pay ", and (iii) The implementation of the CARE Scheme (and consequently any alleged losses suffered by members) was the product of a consultation process and was not therefore the " subject of negotiated outcomes " as required under the Fast Track Resolution Procedure. 20. The Tribunal reached this conclusion at paragraphs 38 - 41:- "38 The Tribunal carefully considered all written and oral submissions and carefully considered the Article 5 Test. It was clear to the Tribunal from the

submissions that the FRSA is seeking monetary recompense (either by way of an increase in hourly rate of pay or by way of a lump sum payment) from the Members' employer (the SEB). The cause of the Dispute was the implementation of the CARE legislation. However, (and as stated previously), for the purposes of the Application the Tribunal does not accept that the cause of the Dispute is a relevant consideration when applying the Article 5 Test. During the Hearing, the parties used various words to describe the FRSA's claim, including 'compensation', 'pay' and 'recompense'. The parties may seek to attach any label they want to the FRSA's claim, but the Tribunal makes a finding of fact that the Dispute relates to Members seeking monetary recompense from their employer. It appears to the Tribunal that once it has been established that the Dispute is: a) against the SEB (as the employer); and b) is for monetary recompense, the Dispute can only be a "pay" dispute and it cannot be a dispute of any other nature when the Dispute exists because employees (the members) are seeking more money from their employer (the SEB). Furthermore, the SEB's assertion (that the Dispute is not the 'subject of negotiated outcomes' because there was a consultation) cannot succeed if the Dispute is with the SEB rather than with the States Assembly. The [Fast Track Resolution Procedure] is a procedure which the FRSA and the SEB agreed between themselves. Consequently, references in the Collective Agreement to 'consultation' and 'negotiated outcomes' relate only to the resolution of disputes between the FRSA and the SEB; they do not relate to disputes which fall outside that relationship. Therefore the fact that there was a consultation before the implementation of CARE is not relevant to the question of 'negotiated outcomes' because of the Tribunal's finding of fact that the Dispute is with the SEB and not with the States Assembly." 21. Accordingly the Tribunal was satisfied that this is a "pay" dispute which is the subject of "negotiated outcomes". 22. At paragraph 42, the Tribunal rejected the assertion that it was acting outside its jurisdiction by trespassing into the province of legislature and that to make a declaration would thwart and frustrate the will of the legislature. It found that this was a dispute between employees and their employer, and the original cause of that dispute (the implementation of the CARE Scheme), was not relevant to the application. 23. Consequently, the Tribunal was satisfied that this dispute was a "Collective employment dispute" for the purposes of Article 5 of the Employment Relations Law . 24. The Tribunal went on to find that pursuant to Article 22 of the Employment Relations Law, the Fast Track Resolution Procedure was an "available procedure" and that the SEB had acted unreasonably in failing to comply with it. 25. It is fair to observe that if this was a Collective employment dispute, as defined, and that the Fast Track Resolution Procedure was an "available procedure", then prima facie in the light of the mandatory provisions of the Fast Track Resolution Procedure, the SEB would have acted unreasonably in failing to comply with it. However, in terms of whether it had acted unreasonably, the SEB broadened its submissions to the Tribunal by making these submissions summarised by the Tribunal at paragraph 50:- "a) the content and implementation of CARE is a legislative matter for the States Assembly; b) the States Assembly cannot be bound by arbitration and the SEB cannot be liable to compensate or indemnify Members for a legislative decision; c) it would be constitutionally inappropriate for the SEB to agree to binding arbitration; d) the SEB has no power to delegate policy

relating to pensions to an arbitrator; e) there are possible wider consequences if a small group of public sector workers 'receive a pay rise' when others do not. This could lead to a 'tsunami' of claims and could place CARE in jeopardy; f) CARE was the subject of extensive consultation and the proposals were agreed by all unions other than FRSA; g) the Members constitute approximately 1% of the entire workforce, being only 33 fire-fighters out of a total public sector workforce of approximately 9000. A successful claim would 'raise the very real spectre of unravelling CARE', h) CARE already has legislative force, having come into force for New Employees on 1 January 2016; and i) SEB is not in breach of the Collective Agreement." 26. The Tribunal dismissed these submissions at paragraph 53 and 54:- "53 Having considered both parties' submissions, the Tribunal concluded that it was not the intention of the States Assembly that the Tribunal should make expansive decisions as to the potential consequences of a successful application under the FTRP. The Tribunal therefore rejected all of the submissions which the SEB made (which are summarised in paragraph 50 above) with regards to whether or not its behaviour was 'unreasonable'. The Tribunal is satisfied that a party to an 'available procedure' behaves 'unreasonably' under Article 22(b) of [the Employment Relations Law] simply by failing to comply with that available procedure unless there are procedural reasons for that failure (eg. the other party has not exhausted earlier stages of the 'available procedure'). The SEB's fears that by following the [Fast Track Resolution Procedure]; a) there may be unpalatable consequences; or b) a small percentage of the workforce may be treated differently are not acceptable grounds to refuse to engage in the agreed procedure." 27. Consequently, the Tribunal concluded that the SEB had acted unreasonably by failing to comply with the Fast Track Resolution Procedure and made this declaration:- " Declaration In accordance with Article 23(1)(b) of [the Employment Relations Law] the Tribunal HEREBY DECLARES that the SEB has failed to observe the provisions of the [Fast Track Resolution Procedure] which is an 'available procedure' under Article 22 [the Employment Relations Law] and which forms part of the terms and conditions of the Collective Agreement." The law 28. Under Article 94(1) of the Employment (Jersey) Law 2003 , a person aggrieved by a decision or order of the Tribunal may, on a question of law only, appeal to the Royal Court by applying to the Tribunal for leave to appeal. Leave to appeal was refused by the Tribunal on 7 th January 2019. The SEB therefore applies to this Court for leave to appeal, pursuant to Article 94(6) of the Employment (Jersey) Law 2003, and I give that leave. 29. The test to be applied is now settled law. It was considered by Sir Michael Birt, then Deputy Bailiff, in *Voisin (trading as Voisins Department Store) v Brown*

[2007] JLR 141 at paragraphs 18-19:- "18 The wording of Article 94 mirrors that of the equivalent English legislation which confers a right of appeal on a question of law from an Employment Tribunal to the Employment Appeal Tribunal. Mr Preston accepted that Harvey on Industrial Relations and Employment Law set out the position accurately at Division T, para 1630:- 'An appeal from the employment tribunal lies only on 'a question of law' (ETA 21(1)). Accordingly, the EAT will have no power to interfere with a tribunal's decision unless it can be shown: (a) that the tribunal misdirected itself in law or misunderstood the law or misapplied the law'; or (b) that there was no evidence to support

a particular conclusion or finding of fact; or (c) that the decision was either perverse in that it was one which no reasonable tribunal, directing itself properly on the law, could have reached, or alternatively, was one which was obviously wrong ...'. 19. I would add that there has been some disagreement in the English courts as to whether the alternate formulation of ground (c) '...or alternatively, was one which was obviously wrong ...' is accurate. Thus May LJ in *Hereford and Worcester County Council v Neale*

- [1986] IRLR 168 at 174 said that neither the EAT nor the Court of Appeal should disturb a decision of an employment tribunal 'unless one can say in effect: 'my goodness, that was certainly wrong'. On the other hand, Lord Donaldson MR in *Piggot Bros & Co Limited v Jackson*
- [1991] IRLR 309 at 312 preferred to stay with the test that the decision of the tribunal must be perverse, in the sense that it was one which no reasonable tribunal, directing itself properly on the law, could have reached. We do not need to resolve this conflict today as Mr Preston's main argument is that the Tribunal erred in law.'" 30. This has subsequently been applied in *Jones v Royal Bank of Scotland International*
- [2007] JLR Note 44 and *JT (Jersey) Limited v Wood* [2016](2) JLR 293. Some further clarification in respect of ground (c), that a decision was perverse, was proffered by Sir Michael Birt, Bailiff (as he then was), in *Luxicabs Limited v Baal*
- [2011] JLR 208 , in which he stated at paragraph 18(ii) that: 'Article 94 of the Law is very specific and provides that an appeal from a decision of the tribunal lies to the Royal Court (not the Petty Debts Court) and may only be brought on a point of law. This means that the fact that a party to proceedings before the tribunal considers that the tribunal has erred on the facts does not give rise to an appeal unless the party concerned can contend that the decision of the tribunal was Wednesbury unreasonable (i.e. a decision so irrational that no reasonable tribunal could have reached that decision), in which event it becomes a matter of law' . 31. The Court of Appeal in *JT (Jersey) Limited v Wood*
- [2016] JCA 183 stated that the point concerning the precise scope and application of ground (c) has been settled by *Luxicabs v Baal* and would only lie as a valid ground where the Tribunal's decision could be shown to be so unreasonable that no reasonable tribunal could have made it. Grounds of appeal 32. This appeal is concerned centrally with the issue of whether this dispute is a "Collective employment dispute " for the purposes of Article 5 of the Employment Relations Law and whether the Fast Track Resolution Procedure is an " available procedure" for the purposes of Article 22(2). 33. The same arguments were maintained by the SEB before this Court as were maintained before the Tribunal. I would summarise them as follows:- (i) This was not a dispute between the members as employees and the SEB as employer. This dispute was between the members and the States Assembly. Their objection was to the implementation of the CARE Scheme in which the SEB played no part. This submission was predicated on this section of the claim form filed by the FRSA, dealing with "details of claim":- "The Employer refused the FRSA to take a collective dispute over pension arrangements to arbitration, stating that a

statute in law decision could not be arbitrated over. The FRSA amended the claim to ensure that the actual legislation of the pension scheme would not be affected, therefore allowing the FRSA to pursue our dispute to binding arbitration as defined in the above framework agreement. ... The new pension scheme is due to be imposed on all Public Sector workers on January 01 2019. Therefore the FRSA requests, where possible, that this matter be expedited and fast tracked due to the timing issues involved." Advocate Roberts argued, therefore, that by its own admission, the FRSA had confirmed its dispute was with the implementation of the CARE Scheme and the effect on its members. It follows, she said, that this cannot amount to a Collective employment dispute for the purposes of the Employment Relations Law , which provides a statutory mechanism for the resolution of Collective employment disputes between employers and employees; it does not provide trade unions or other interested parties with an instrument to stifle the passing of legislation or to render such legislation as nugatory vis-à-vis its effect. (ii) Having realised that its dispute could not amount to a Collective employment dispute for the purposes of Article 5 of the Employment Relations Law , the FRSA then changed tack, and argued that this was actually " a claim by the FRSA for compensation from the employer (pay) due to the losses which would be incurred from the introduction of the pension scheme ... the FRSA was not making a claim against the pension scheme". The terms " compensation " and " pay " do not appear in the details of claim section of the FRSA's claim form. The request by the FRSA for the matter to be dealt with expeditiously as " the new pension scheme is due to be imposed on all public sector workers on January 01 2019" demonstrated that its dispute concerned the implementation of the CARE Scheme in and of itself, and was not merely a dispute concerning compensation. 34. Advocate Roberts argued that the analysis of the Tribunal contained at paragraph 35 (set out above) was too simplistic. Having found that all that was required to fall within the parameters of Article 5 was for the FRSA to make a claim for monetary recompense which was then rejected, the Tribunal then went on in the very next sentence to acknowledge that the " root" , or as the SEB would submit, the " true " or " actual " cause of the dispute was the " implementation of CARE by the States Assembly ". The Tribunal decision goes on at paragraph 38 to refer to the implementation of the CARE Scheme as the cause of the dispute which the Tribunal determined was "not relevant for the purposes of the Article 5 test ." Advocate Roberts submitted that it was not only relevant, but struck at the very heart of the test prior to the application of the three limbs of Article 5(1); if the dispute concerned the implementation of the CARE Scheme by the States Assembly, then there cannot have been a dispute between the SEB and one or more employees, represented by the FRSA. The Tribunal therefore misapplied the law in determining that the " dispute relates only to the attempt by the FRSA to secure monetary recompense from the Members' employer (the SEB)" (her emphasis added). 35. Advocate Roberts further added that the third limb of Article 5(1) was not satisfied. Pursuant to Article 5(2)(a), the dispute had to relate wholly or mainly to " the terms of employment of one or more employees ". The Tribunal's analysis at paragraph 35 of its decision did not address this in circumstances where the dispute was with the implementation of the CARE Scheme, not the terms of employment. From a public policy

perspective the Tribunal's analysis could not be correct. Quoting from her skeleton argument at paragraph 38:- "38 ... it stretches the jurisdiction of the Tribunal beyond the determination of collective employment disputes, and in this instance, frustrates the will of the legislature. By making a declaration in accordance with Article 23(1)(b) of the 2007 Law, the Tribunal has rendered the Respondent's dispute suitable for arbitration under the terms of the Agreement. Should this be accepted as the correct interpretation and it ultimately be possible for the Respondent to be compensated for the implementation of the CARE Scheme, then the Tribunal has, through its wide interpretation of the 2007 Law, trespassed on the jurisdiction of the States Assembly as the legislature of the Island. The effect of the Tribunal's decision is that the Appellant could be contractually bound to enter into a binding arbitration in circumstances where the outcome of the arbitration may have the effect of reversing any progressive measure on pension reform." 36. Even if she was wrong in this analysis Advocate Roberts submitted that the Tribunal misdirected itself in law by recharacterizing the claim for "monetary recompense" as being a claim for "pay". The dispute could not amount to a claim for "pay" for the reasons already given. She said the term "pay" is a specific term of art which is defined in Section 1, paragraph 4, of the Terms & Conditions in this way:- "Current rates of pay are maintained in accordance with published rates agreed between the Employer and Employee Representatives." 37. This is separate to the term "pension" which is separately defined in the Terms & Conditions Agreement. The Fast Track Resolution Procedure only applies to "those aspects of pay, terms and conditions of service ... that are subject to negotiated outcomes as covered by Section of the Terms & Conditions Agreement." The implementation of the CARE Scheme was not capable of being a term or condition of service that was susceptible to a negotiated outcome with the SEB. 38. In short, Advocate Roberts submitted that the Tribunal decision was so unreasonable and so obviously wrong that it can be said to be perverse, i.e. no reasonable tribunal properly directing itself in law could have held that a collective employment dispute existed. 39. Finally, Advocate Roberts submitted that the Tribunal's reasons were inadequate. She referred to the case of *Wood v JT Jersey Limited*

[2016] 1 JLR 369, where it was held:- "The tribunal was required to give reasons for a decision that were sufficient to enable the parties to understand why they had won or lost. It was a basic entitlement and part of a fair hearing. It also enabled the parties to form a realistic view as to whether an appeal was sensible. The tribunal had, however, to deliver *bonne et brève* justice. It was intended to deal with employment matters efficiently and with the least formality consistent with ensuring a just outcome, and to be a tribunal to which employees and employers could have access without incurring the legal fees associated with court hearings (although many litigants before the tribunal were legally represented, as were the parties in the present case). The essential work of the tribunal would not be undermined by requiring it to act as a court and deliver long, detailed judgments. In the present case, the tribunal had given an adequate explanation of its reasoning which was not difficult to follow." 40. Advocate Roberts said the Tribunal had offered no analysis as to why the dispute was between the SEB and the FRSA and not the States Assembly or why

the cause of the dispute is not relevant. Similarly, the Tribunal did not offer any justification for its finding at paragraph 39 that the dispute " can only be a 'pay' dispute and it cannot be a dispute of any other nature and the Dispute exists because employees (the Members) are seeking more money from their employer (the SEB)." Having made a finding of fact that the FRSA's dispute was in essence a claim for " monetary recompense " prior to determining that the FRSA's claim " can only be a pay dispute", the Tribunal relied upon this finding of fact to justify its determination that the claim " can only be a pay dispute ". No analysis was offered in respect of this finding or its interplay with the Article 5 test. Whilst the forum of the Tribunal is to deliver *bonne et brève* justice , it still has to provide sufficient reasoning to justify its decision, and in this respect, the Tribunal had not satisfied this threshold in that its reasons were inadequate. Decision 41. When challenging the Tribunal's findings of fact, the SEB faces the very considerable hurdle of showing that there was no evidence to support such findings. The Tribunal concluded as a matter of fact, that the dispute related to the members seeking monetary recompense from their employer, the SEB. In my view, the Tribunal was perfectly entitled to reach that conclusion on the evidence before it. Indeed, I find it difficult to see what other conclusion it could have reached. 42. It is the case that this started as a dispute over the proposed changes to the pension scheme, but the correspondence shows that the FRSA accepted the proposed changes were not under the control of the SEB, and that those changes would be brought in by the States Assembly, through legislation. It therefore amended its claim to one of financial compensation by the SEB for the financial detriment suffered by its members as a consequence of the introduction of the CARE Scheme. The letter from Mr Craig Channing, the president of the FRSA, of 3 rd April, 2018, (before the application to the Tribunal was made), defines the dispute in this way:- "The membership of the FRSA will be materially disadvantaged by the changes to the pension scheme and claim recompense for that detriment from their employer, the SEB. The resolution sought is that FRSA members should be no worse off in terms of their pension provision or the cost to them of such provision, after the changes to the legislation, as they were before that change was imposed." 43. The FRSA's written submissions before the Tribunal were entirely consistent with this being a claim for compensation against the SEB. I agree with the Tribunal that the original cause of the dispute, namely the implementation of the CARE Scheme is not relevant. We are concerned with the nature of the dispute that led to the proceedings under Article 22 of the Employment Relations Law . 44. Under Article 5(1)(c), the dispute must relate to one of the matters described in paragraph (2), the only relevant matter for the purposes of this case being sub paragraph (a) namely that it related to " the terms of employment of one or more employees" . The terms of their employment would clearly include the amount the Firefighters are paid and it is therefore a question of whether this dispute related to "pay" both for the purposes of Article 5(2)(a) and for the purposes of the Fast Track Resolution Procedure i.e. whether the Fast Track Resolution Procedure is " an available procedure " for the purposes of Article 22 of the Employment Relations Law . 45. Article 22(3) provides that:- "22(3) ... a procedure is an available procedure if - (a) it is a procedure for the resolution of the dispute that is contained in a collective agreement, a

relevant contract of employment or a relevant handbook for employees; (b) it is a procedure for the resolution of the dispute in accordance with an approved code of practice; .." 46. It is not in dispute that the Fast Track Resolution Procedure is a collective agreement for the resolution of disputes, but the SEB contends that this dispute does not come within its terms. 47. Section 4(a) of the Fast Track Resolution Procedure, set out above, has two elements, firstly, that it must involve a disagreement "over pay, and items covered by section (1) of the Terms & Conditions Agreement" and secondly, that such disagreements are subject to "negotiated outcomes" as between the SEB and the FRSA. Pensions are covered by Section 1 of the Terms and Conditions Agreement but they are not under the control of the SEB, and therefore, are not susceptible to a negotiated outcome with the SEB. Accordingly, if the Fast Track Resolution Procedure is to apply to this dispute, it must come under the term "pay". 48. There is nothing that I can see in the Fast Track Resolution Procedure to indicate that the word "pay" should be narrowly construed. I note, for example, that under Section 2 it establishes a strategic consultation group "to provide a formal, recognised and respected mechanism for communication and information sharing" over a wide range of roles other than pay. Under Section 3 headed "Achieving agreements" and the sub-heading "Collective procedure", paragraph 2, which I have already set out above, provides:- "2. The purpose of this agreement is to set down a framework for the discussion of issues, whether proposed by Management or the FRSA ... which involve those aspects of pay, terms and conditions of service of Fire and Rescue Service's staff represented by the FRSA ... that are subject to negotiated outcomes as covered by Section 1 of the Terms & Conditions Agreement." 49. Paragraph 4 (also set out above) refers to the Fast Track Resolution Procedure having been developed to settle "collective differences", a very broad term. The SEB argues that the word "pay" is a term of art, which is defined in Section 1 paragraph 4 of the Terms & Conditions Agreement. Paragraph 4 simply states under the heading "Pay" that "Current rates of pay are maintained in accordance with public rates agreed between the employer and the employee representatives." That is not a definition but a statement as to the current rates agreed from time to time. 50. To suggest that the word "pay", which is used separately in Section 4(a) of the Fast Track Resolution Procedure, cannot extend to claims for recompense for the detriment the members claim following the introduction of the CARE Scheme, is to place a very restrictive interpretation upon it, which is not warranted in the context of the Fast Track Resolution Procedure as a whole. "Pay" is simply the amount that an employer pays an employee for services rendered. "To Pay" is defined in the Shorter Oxford English Dictionary as "to recompense or reward a service". Recompense is a synonym for pay. The amount of pay or recompense of an employee is inherently something that is susceptible to a negotiated outcome. 51. I do not accept the criticism that the Tribunal's analysis contained in paragraph 35 of its decision is too simplistic. To repeat:- "Thus, as soon as: c) The FRSA made a claim for monetary recompense from the SEB; and d) The SEB rejected that demand, a 'dispute' existed between the parties. The root cause of the Dispute (i.e. Implementation of CARE by the States Assembly) is not relevant for the purposes of the Article 5 Test." 52. The Fast Track Resolution Procedure is

not a complicated agreement. In return for the Firefighters agreeing not to take industrial action, the SEB agreed that all disagreements over pay that are subject to negotiated outcomes "must" follow the procedure, a procedure that leads to binding arbitration. It does not matter how the disagreements arise or whether they come about for internal or external factors; if there is a disagreement over pay, the procedure applies. In this case there is a disagreement over pay. 53. There is no merit in the suggestion that application of the Fast Track Resolution Procedure to this dispute somehow trespasses on the jurisdiction of the States Assembly. Whatever is agreed or determined by an arbitrator at the end of the process can have no effect on the CARE Scheme as enacted in law. If the Firefighters claim ultimately succeeds it simply means that their pay will be increased. I accept that the SEB has serious concerns as to the wider implications of this dispute over pay coming within the Fast Track Resolution Procedure for the reasons summarised in paragraph 50 of the Tribunal's decision set out above, but I agree with the Tribunal that it cannot be concerned with such issues; they will fall ultimately to be considered by an arbitrator. The issue for the Tribunal was simply whether this is a Collective employment dispute which comes within the Fast Track Resolution Procedure and I agree with the Tribunal that it is. In view of the mandatory provisions of the Fast Track Resolution Procedure, it follows that the SEB has acted unreasonably in not complying with it. 54. I do not accept Advocate Roberts' general criticisms of the adequacy of the Tribunal's reasoning. It first identified correctly the issues before it and set out the background, which included a full description of the Fast Track Resolution Procedure and the Terms & Conditions of Service Agreement. It then set out the applicable law, and having done so, addressed the following questions:- (i) Is this a "Collective employment dispute"? (ii) Is the dispute with the SEB or with the States Assembly? (iii) Is the Tribunal stepping outside its jurisdiction? 55. It addressed each question in turn, concluding that the dispute did fall within the provisions of Article 5 and that this was a Collective employment dispute. It then addressed the question of whether the Fast Track Resolution Procedure was an "available procedure" for the purposes of Article 22 of the Employment Relations Law, and whether the SEB's behaviour had been reasonable, which it again addressed in turn, concluding that it was an "available procedure" and that the SEB had acted unreasonably by failing to comply with the Fast Track Resolution Procedure. Thus the decision was logically set out and clear. 56. In conclusion, I agree with Advocate Morley-Kirk that the Tribunal's decision was correct in law and that the appeal therefore fails. Authorities Employment Relations (Jersey) Law 2007. Employment of States of Jersey Employees (Jersey) Law 2005. Public Employees (Pensions) (Jersey) Law 2014. Article 22 of the Public Relations Law Employment (Jersey) Law 2003. Voisin (trading as Voisins Department Store) v Brown

[2007] JLR 141 . Jones v Royal Bank of Scotland International

[2007] JLR Note 44 . JT (Jersey) Limited v Wood

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