

## **Urgent question**

**1st December 2009**

### **7.1 Deputy G.P. Southern of Her Majesty's Attorney General regarding the terms of redundancies at the Jersey New Waterworks Company Limited:**

I am grateful for the opportunity to ask these questions. This week is, I understand, the deadline for the redundancies at Jersey New Waterworks, which is why the urgency. Has the Law Officers' Department been asked for advice by either the Minister for Treasury and Resources, as representative of the States majority shareholding in the Jersey New Waterworks Company Limited or by the Minister for Social Security as the Minister responsible for J.A.C.S. (Jersey Advisory and Conciliation Services) on the terms contained in the document JACS1 (Agreement in respect of termination of employment by reason of redundancy between Jersey New Waterworks Company. Limited and its employees) with particular reference to paragraph 3 and items F and G of Schedule 1 which appear to require that the employee abrogate their rights under the Human Rights (Jersey) Law 2000 and the Health and Safety at Work (Jersey) Law 1989?

#### **Mr. T.J. Le Cocq., H.M. Attorney General:**

I regret that I am unable to give an answer to this question. It is a matter of settled principle as reflected, for example, in the Code of Practice for Scrutiny Panels in the Public Accounts Committee adopted by the States on 12 March 2008, that the Law Officers' Department do not reveal whether or not advice has been sought nor what, if any, advice may have been given and accordingly I cannot answer the question in the terms as put. Naturally I do not know what, if any, advice the Jersey New Waterworks company might have taken from its own legal advisers on any agreement that it might have entered into.

#### **7.1.1 Deputy G.P. Southern:**

That is very reminiscent of 4 years ago and a particular Scrutiny Panel, which I am sure the Chair will appreciate, however, I think I can ask whether the Attorney General is able at this stage to advise a Member of the States - me - on whether he finds such an agreement acceptable that one can simply, in a contract, waive ones rights to protection under the Human Rights Law?

#### **The Attorney General:**

At the risk of sounding like I am being deliberately unhelpful to the Member, I do not think I can offer that advice in any form of categorical statement. Clearly, there are lots of factors that go into considering the form of any agreement and, whereas I take the Deputy's statement as to what the agreement contains as being absolutely correct, it seems to me that there are circumstances in which things can be written out, but I would not wish to make any definitive statement without knowing the full background and the opportunity to reflect on the terms of the agreement.

#### **7.1.2 Deputy G.P. Southern:**

Sir, may I have a second supplementary? Is the Attorney General aware of circumstances in other jurisdictions - particular circumstances - in which members of the public,

employees or otherwise are asked to waive their rights under the equivalent Human Rights Law in that jurisdiction?

**The Attorney General:**

No, I am not aware of any other situation.

**7.1.3 Deputy M.R. Higgins:**

I would just like to follow up on Deputy Southern's questions of the Attorney General. If the European Convention on Human Rights is a convention which the United Kingdom has signed up to, and this Island has also signed up to, surely you cannot derogate from a convention in a contract, and as the Jersey New Waterworks Board is, I believe, a public authority as coming under the definition of the Human Rights Law, how can they derogate from the convention?

**The Attorney General:**

I do not think it is appropriate for the Attorney General to comment on the detail of an agreement, but in terms of general principle, in the short time I have had available to me to consider this, my understanding is that there are certain aspects of the Human Rights Convention, as embodied in our Statute Law, where it would be possible to contract out of. There are other aspects of the Convention where clearly it would not be possible, but I do not think I can go any further than that.

**7.1.4 Deputy M.R. Higgins:**

If I may just ask the Attorney General if he will come back at the next session and explain exactly what the position is? Thank you.

**The Attorney General:**

If I were to return at the next session, I think I would then be giving an extremely lengthy advice and I am not sure that that would be possible or appropriate in the circumstances. If there is a specific question addressed to me then I will do my best, of course, to answer it but merely to come back and explain what the position is will be the equivalent of reading out a text book, I suspect.

**7.1.5 Deputy M. Tadier:**

Though I am not a lawyer by any means, it would seem that if the Attorney General has just told us there are certain human rights which can be contracted out of and some which cannot be contracted out of, then the question would simply be, those that we are talking about in Jersey with relation to the Jersey Waterworks Company, are those contractual obligations the type that can be opted out of or are they of the type that cannot be opted out of?

**The Attorney General:**

I do not think I can answer that because I do not think it is clear to me, from looking at what paperwork I have seen, what rights are specifically relevant to the arrangements between the Jersey New Waterworks Company and its former employees, and therefore to come back and say ... it would require me to identify what those rights were and that is

something that I could not do without a lot more background information relating to the context in which the agreement was entered into.

**Deputy G.P. Southern:**

Sir, may I return with ...?

**The Deputy Bailiff:**

Deputy Southern, I am keeping you for your final supplementary and I saw Deputy Jeune.

**7.1.6 Deputy A.E. Jeune:**

If I could ask the Attorney General, I am assuming that it would be correct that if I am employed by somebody and I am leaving their employ that the terms that I choose to agree with them is my right? Thank you.

**The Attorney General:**

As a matter of general principle, of course, one is free to contract generally in most circumstances on whatever basis one wishes. There are, however, issues of principle where sometimes the court will hold a contractual agreement of that nature to be contrary to *bonnes mœurs* and matters such as that, and it is difficult to say categorically whether anything within this agreement falls within such a category.

**7.1.7 Deputy G.P. Southern:**

May I refer the Attorney General to the terms which I have supplied him with last night, and Article 4 says: "The employee accepts the payment specified in paragraph 2 above, in full and final settlement of the claim set out in Schedule 1 of this paper." Schedule 1 says: "Any claim made or alleged in respect of failure to comply with any obligations under the Human Rights (Jersey) Law 2000 and ..." more concretely, because we might be concerned about human rights, but the employee might be more concerned about the second part: "... any claim made or alleged in respect of breach of the Health and Safety at Work (Jersey) Law 1989." Does the Attorney General consider that that is an extreme case for an exemption and a protection for the employer at the expense of the employee, especially when it is done by inducement, because if you do make a claim under that you lose the right to your redundancy payment?

**The Deputy Bailiff:**

Are you going to answer that, Attorney General?

**The Attorney General:**

It is very difficult for me to give any kind of, I think, constructive answer. As the Deputy rightly says, I have seen the document that has been provided to me as of yesterday afternoon. To understand the document one needs to understand the context and what is meant specifically by the ambit of any particular provision within it. Quite clearly, taken at face value, a removal of a claim under the Human Rights Law would not, in my view, encompass cruel and unusual punishment, for example. That would be something that would not be possible, but there may well be areas under the Human Rights Law and under the Health and Safety at Work Law where it is perfectly reasonable in the context

of a payment made in advance, to be taken it as being settled by that payment and in the event that someone wishes to return the payment, then it will be at liberty to take those proceedings. It is very difficult for me to say categorically whether any of those provisions would be objectionable as such.

**The Deputy Bailiff:**

Very well, we now come to a question that Deputy Southern wishes to ask the Minister for Treasury and Resources.