

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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JAMIESON

-v-

AIB

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**MORGAN LCJ**

[1] The remaining issue in relation to this Appeal is that disclosed at Ground C of the Notice of Appeal and it is whether the Tribunal has erred in law in reaching a finding that no implied contractual provision relating to the respondent's contract of employment existed which entitled the appellant to withhold contractual payments. The issue was identified by the Tribunal at paragraph 2A of its decision and was then addressed by the Tribunal at paragraphs 12 and 13 of its Determination.

[2] As part of the argument that has been advanced in relation to this ground, Mr O'Donoghue, in his careful submission, directed us to the sections of the written submission made on behalf of the Bank by Mr Mulqueen which dealt with the question of the applicability of the Officious Bystander Test and the Business Efficacy Test as a basis for implying the obligation which it was sought to establish. The Tribunal dealt with the reasoning in a robust way at paragraphs 12 and 13 of its decision. Mr O'Donoghue notes that at paragraph 9 instead of setting out their understanding of the law that the tribunal simply recorded that it had identified the extensive written submissions of the parties and confirmed that they were taken into consideration in reaching their decision.

[3] Although they do not directly deal with each and every paragraph and aspect of the submissions made on behalf of the Bank nor refer to any case law, it is clear from paragraph 13 that the substance of the decision does in fact deal firstly with the question of whether the Officious Bystander Test should lead to any view that an implied term should be found; and secondly, that in the latter portion of paragraph 13 that they also deal with the argument that for business efficacy reasons and the necessity of the contract to work that such a contractual right available to the Bank should be implied. We consider therefore that within paragraph 13 there is found the substance of the reasoning which is necessary to identify the decision reached by

the Tribunal. We agree that it would have been open to the Tribunal if they had so wished to refer at some greater length to some of the authorities in relation to the issue. But it is not necessary for a Tribunal which is coming to a conclusion in relation to matters such as this to do other than ensure that both the parties and the appeal court are aware of the basis upon which the decision was taken and as long as that test is satisfied there are very few circumstances indeed in which this court would be inclined to intervene.

[4] The second question is whether or not there is any error in relation to the approach which the tribunal took. In our view at paragraph 13 it is clear that when one examines each of the aspects which are identified by the Tribunal that each of these go to either the question of the Officious Bystander Test or the Business Efficacy Test and in our view there is nothing to indicate any error on the part of the Tribunal in the manner in which they approached those matters. The conclusion that they reached is one, which in our view again, cannot be called into question having regard to the matters taken into account by the Tribunal. So in the circumstances we consider that the Ground C is not made out and accordingly the appeal must be dismissed.