

IN THE SUPREME COURT OF BELIZE, A.D. 2015

CLAIM NO. 138 of 2015

ROBERT K. ALLEN

CLAIMANT

AND

ATTORNEY GENERAL

DEFENDANT

CLAIM NO. 153 of 2015

DEON PASCASCIO

CLAIMANT

AND

ATTORNEY GENERAL

DEFENDANT

BEFORE the Honourable Madam Justice Sonya Young

Hearings

2015

27th July

17th September

Mrs. Andrea McSweeney McKoy & Co., for the Claimants.

Mr. Nigel Hawke, Attorney General's Chambers for the Defendant.

**Keywords: Employment Law - Contract of Employment - Fixed Term
Contract - Implied Terms - Termination by Notice or Payment in Lieu -
Breach of Contract - Damages - The Labour (Amendment) Act, No. 3 of 2011
(The Act)**

JUDGMENT

1. Robert K. Allen and Deon Pascascio were separately contracted by the Government of Belize for a period of two years as Project Engineer and Project Manager respectively. When these claims were filed, the two years have not yet expired, but both men no longer held those positions. Their appointments, through the Ministry of Works, concerned a multimillion dollar, phased project for the upgrade of the road network in Corozal and Orange Walk. Together, Corozal and Orange Walk, form the sugar belt of Belize. As such, they were most affected by the price reduction in sugar occasioned by certain reforms being undertaken by the European Union. This project, funded by the European Commission, formed part of the Government of Belize's response to the challenges the industry was experiencing. It was a major element of their robust Sugar Adaptation Strategy.

2. Both men came adequately qualified and experienced to meet the requirements of their job. In fact, the contracts which have become the subject matter of these claims (herein after The Agreements) were their third, consecutive, two year contracts in the same posts. Briefly, Mr. Pascascio, as project manager, had general oversight of the project and was responsible for monitoring the project and the contractors engaged therein. Mr. Allen, as project engineer, was to provide general technical assistance and oversight to the project and to aid the project manager in the execution of his duties.

3. The Agreements commenced on 17th August, 2013. They were drafted by the Government of Belize and contained the following (except for the party's nomenclature) identical clauses for termination:

“5.0 Termination of Agreement

- 5.1 *This Agreement shall terminate automatically on the occurrence of one of the following:*
- a) *Death of the Project Engineer;*
 - b) *Assignment of this agreement by either party without the express written consent of the other party.*
 - c) *The Project Engineer is unable to provide the services stipulated in this agreement due to illness for an extended period of not less than one month.*
 - d) *Criminal Conduct of the Project Engineer as determined by the courts in Belize.*
- 5.2 *The Project Engineer may at any time terminate his engagement by giving the Ministry of Works one month 's notice or by paying one month 's salary in lieu of such notice to terminate this agreement.*
- 5.3 *Should the Project Engineer fails (sic) to fulfill any of his obligations under this Agreement the Government shall, after giving one month 's notice to remedy the default, be entitled to determine this agreement and may claim damages from the Project Engineer if there are grounds for so doing.*
- 5.4. *The Government may also summarily terminate this Agreement in cases where there is evidence that:*
- a) *the Project Engineer has offered or given to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do or having done or for borne to do any action in relation to the obtaining or execution of this agreement;*

b) the Project Engineer has shown favour or disfavor to any person or firm in relation to this agreement;

c) the Project Engineer in relation to any Government contract has committed an offence under the (Prevention of Corruption Act), Chapter 96 of the Laws of Belize or any Act replacing or under any Law of Belize relating to corruption or bribery.

5.5 In the event that this Agreement is terminated in accordance with Article 5.4, the Project Engineer shall be liable for any loss or damage resulting from such termination, notwithstanding any criminal liability which may thereby be incurred.

4. In 2012 and before the currency of The Agreements, a dispute arose regarding the execution of the project. It is agreed by all parties, that significant parts of the project road had been constructed using substandard material. These sections had to be redone at a considerable cost to the Government of Belize. The project would only be a gift to the people of Belize if it was done to the required standard. It is unclear why the contractors were not pursued as there is evidence that the Attorney General's chambers gave legal advice to that effect.

5. Nonetheless, it is the case for the defence that the Defendant generally accepted that both Mr. Allen and Mr. Pascascio had been negligent in the execution of their duties. The Government of Belize, therefore, unilaterally decided to terminate their employment early. They paid each of them one month's salary in lieu of notice. And by letter dated 8th September, 2014, advised them of their termination effective on the 10th September, thanked them for their service and wished them well. I find it imperative to

reproduce the body of that termination letter in its entirety (they were identical except for the addressee's name):

"This letter serves to inform you of the termination of your contract with the Government of Belize as the Project Manager (Project Engineer for Accompanying Measure for Sugar (AMS) Project Execution Unit (PEU), with effect from Wednesday, September 10, 2014.

In lieu of notice you will be paid one month's salary, as well as any vacation leave you would have accumulated as of the date of your termination. Additionally, you will be paid salary up to the end of September 2014.

You are requested to prepare and deliver handing over notes on all programmes, projects and administrative issues on going and planned prior to your departure. You are also required to hand over all equipment, vehicles and property issued to you for the execution of your duties, prior to you demitting office.

On behalf of the Government of Belize let me thank you for the service rendered to the country and people of Belize, and wish you all the best in your future endeavours.

Regards,

Errol G.T. Gentle, Sr.

Chief Executive Officer

6. The Claimants say that this procedure for termination was not in accordance with the terms of their contracts and was therefore wrong. Furthermore, they were given no reason for the termination nor were they afforded an opportunity to respond to any allegations, if they existed. They attempted to discuss the matters of full compensation or reinstatement with the Government of Belize, but were unsuccessful. They eventually brought these claims for breach of their contracts and the consequential wrongful dismissal. The court decided to hear the matters together for reasons of efficiency. They each claim:

"(1) A Declaration that the Defendant breached the Claimant's employment

contract made in writing on or around 17th August, 2013 between the Claimant and the Defendant for the employment of the Claimant as Project Engineer of Accompanying Measures for Sugar (AMS) Project Execution Unit (PEU);

- (2) A Declaration that the Defendant has wrongfully dismissed the Claimant;*
- (3) Special Damages in the sum of BZ\$66,800.00 and BZ\$70,000.00 respectively;*
- (4) Damages;*
- (5) Further or in the Alternative an Order directing the Defendant to pay to the Claimant loss of salary, loss of allowances and payment in lieu of vacation;*
- (6) Interest on any damages found to be due to the Claimant pursuant to sections 166 and 167 of the Supreme Court of Judicature Act, Chapter 91 of the laws of Belize R.E. 2000;*
- (7) Costs;*
- (8) Any further or other relief which the Honourable Court may deem just. ”*

7. The Defendant however, maintains that the termination was proper. They accept that there was no expressed term for the employer to terminate by notice or payment in lieu. However, they urge that such a term may be implied into the contract by law and must of necessity be so implied to give balance or business efficacy thereto. They say that since such a clause existed for the employee, then it ought rightly to likewise exist for the employer - it goes without saying. Moreover, there was no contractual term, whether implied or expressed, that the Claimants should be provided with a cause for termination or be afforded an opportunity to be heard prior to termination. They ask that the claims be dismissed with costs.

The Issues:

8. The parties filed an agreed list of issues and the court is grateful. However, the following list seemed more workable for the court.
 1. Whether The Agreements were for a fixed/definite term.
 2. Whether termination by notice or payment in lieu of notice could be implied into a fixed term contract.
 3. Whether the Claimants were wrongfully dismissed:
 - a) in breach of The Agreements and/or
 - b) by not being given reason(s) for termination or not being afforded an opportunity to be heard before termination.
 4. If the Claimants were wrongfully terminated what remedies are available to them.

Whether The Agreements were for a fixed or definite term:

9. A fixed term contract lasts for a definite period of time. Alternatively, such contracts can end with the completion of a specified task or when a particular event takes place. Section 2 of The Act defines indefinite period as *"employment under a contract of employment where the period of service is not specified"*. In the UK, statute provides that except in special circumstances, any new contract, which follows four years of continuous employment on a fixed term contract, takes effect as a permanent contract and is regarded as one of indefinite duration, that is not the position in Belize. Here, each new fixed term contract remains of a definite duration and the ordinary rules apply accordingly.

10. By the clear and unequivocal words of paragraphs 1.2 and 1.7 of Mr. Allen's contract (only 1.2 is duplicated, with the obvious amendment, in Mr. Pascacio's) the true nature of The Agreements is revealed;

1.2 The engagement of the Project Engineer is for Twenty-Four consecutive calendar months commencing August 17, 2013....

1.7 The term of engagement of the Project Manager shall be deemed to be completed when all approved civil engineering construction activities under the AMS Project had been substantially completed and his final monthly report has been accepted by the Project Manager of the EC-Executing Unit.

11. This court finds that The Agreements were both for a fixed or definite period. We launch our discussion from that premise.

Whether termination by notice or payment in lieu of notice could be implied into a fixed/definite term contract:

12. Ordinary principles of contract law apply to contracts of employment. Therefore, where an employer intends to terminate the employment contract he must do so in accordance with the stipulated terms of the contract. The Common law rule of implying a term for termination by notice or payment in lieu of notice is invoked only where there is no means of determining the contract at all. So, where the contract fails to make specific provision for termination, then a term will be implied to enable the contract to be brought to an end. It is not simply available to all contracts of employment as the Defendant seems to postulate.

*“Indeed, where the contract on its face has **no** provision for termination then, in the absence of any indication of an intention that the contract be perpetual, the courts will imply a term that the contract is terminable upon reasonable notice*
Staffordshire Area Health Authority v South Staffordshire Waterworks Co (1978)

1 WLR 1387)” *Textbook on Contract Law by Jill Poole 6th Ed paragraph 7.4 (emphasis mine).*

13. This rule is also distinct from that which implies a reasonable period of notice into a contract. In those cases, the contract would already have provided for termination in some way. In the absence of evidence to the contrary, if that termination could be without cause, the courts have always been swift to imply a term for a reasonable period of notice and/or payment in lieu of notice, prior to termination. Such a period is determined with reference to various factors including custom, nature of employment, length of employment, the period for which the employee was supposed to have been employed and the periods at which he was paid his remuneration- **Hill v CA Parsons and Co Ltd (1972) Ch 305**. Consideration has also be given to the availability of similar roles, seniority, qualifications as well as the statutory periods of notice for termination of indefinite contract such as appear in section 37(2) of The Act.
14. On the other hand, a contract of a determinate period, as the ones before the court, end at the last day specified therein. Unless there is some provision for earlier termination, whether by notice or otherwise, within that contract, the contract will continue until the fixed term expires. In the absence of such a specific clause, the employer has no right to terminate and purporting to terminate under these circumstances would constitute a breach.
15. In fact, the precedent provided by the defence supports this view. Consider ***Reda v Flag Ltd. (2002) 61 WIR 118 at page 131:***

*“The appellants observe that dismissal without cause is not the same as dismissal without notice, and submit that the implication of a requirement of reasonable notice would accordingly not be inconsistent with the express terms of the contract. So far their lordships agree with them. But they part company from them at the next stage of their argument, viz that all contracts of employment are, as a matter of law, subject to an implied term that they are terminable on reasonable notice, and that such a term can be displaced only by clear words; see *Lefebvre v HOJ Industries Ltd* [1992] 1 SCR 831.*

*In their lordships’ view there is no such rule. **The true rule, which is not confined to contracts of employment but applies to contracts generally, is that a contract which contains no express provision for its determination is generally (although not invariably subject to an implied term that it is determinable by reasonable notice; see *Chitty on Contracts* (28th Edn) para 13-025. The implication is made as a matter of law as a necessary incident of a class of contract which would otherwise be incapable of being determined at all. Most contracts of employment are of indefinite duration and are accordingly terminable by reasonable notice in the absence of express provision to the contrary. *Lefebvre v HOJ Industries Ltd* was such a contract. **But there is no need for the law to imply such a requirement in a case where the contract is for a fixed term.*****

The appellants were each employed for a fixed term of three years. Save in so far as their contracts permitted it, they could not be dismissed at all during the contractual term. Clause 5 permitted earlier dismissal in specified circumstances and on prescribed grounds. In the case of dismissal without cause the contract did not expressly require notice to be given, and their lordships can see no basis on which lordships agree with the Court of Appeal on this point also.”
(Emphasis mine)

16. For comparison, when the provisions of The Act are considered it becomes apparent that it gives statutory force to this common law rule. The Act defines contract of employment and contract of service as: *“Any agreement between an employer and a worker, whether expressed or implied, oral or written, for a definite or indefinite period by which the worker works under the authority and directions of the employer even if not under his direct supervision, in return for remuneration fixed according to the hours of work or at piece or task rate, and includes a contract of apprenticeship or probation.”* Therefore the old distinctions, in the original **Labour Act Cap 297**, between written and oral contracts of employment of service no longer exist.

17. Section 36 explains the three ways by which a contract of employment could be terminated - 1. Expiry of period, 2. Death of the employer or worker, 3. Mutual agreement between the parties. Section 37(1) which bears the side note "Notice period for voluntary termination of contract." then states, rather untidily:

“The notice of the termination of a contract of employment for an indefinite period may be terminated either by the employer or by the worker, without assigning reason therefor, by giving to the other the notice for the period specified in subsection (2).”

18. Subsection 2 outlines particular periods of notice relative to the duration of the employment. Payment in lieu of the specified period of notice is allowed by Section 38(2). The Act is silent as to such notice being implied into or applied to, contracts for definite periods. This is clearly so because it has already stipulated that such a contract of employment could end on its expiry date.

19. The only dimension left now to be considered is whether for balance or to give business efficacy to The Agreements such a term ought reasonably to be implied. The defence says that since the employees have been given the right to terminate early with notice and without cause, then reasonably, they too ought to have such a right. The mere fact that it is not expressed makes no difference.

20. They rely on the officious bystander test which determines whether or not a term could be implied into a contract based on the intention of the parties.

"Prima facie that which is left to be implied and need not be expressed is something so obvious that it goes without saying, so that, if while the parties were making their bargain, an officious bystander were to suggest some express provision for it in their agreement, they would testily suppress him with a common 'Oh, of course!'" **Shirlaw v Southern Foundries (1939) 2 KB 206 at 277**

21. Lord Hoffman at paragraph 21 of **Attorney General of Belize and Ors v Belize Telecom Ltd and Anor [2009] UKPC 10** explains the dangers of and warns against using these separate tests such as 'necessary for business efficacy' or 'goes without saying'. Instead he says *"there is only one question: is that what the instrument, read as a whole against the relevant background, would reasonably be understood to mean?"*
22. The Agreements are carefully drafted contracts which were prepared in the advancement of a very costly project of both national and international importance. The employer had the opening advantage of drafting them. They contain detailed and explicit terms relating to termination by both or either party. The right to terminate by notice was given to the employees. Clearly, such a term was within the knowledge and contemplation of the Government of Belize. Yet, it was not included as a right of the employer.
23. From a legal perspective termination of an employee's contract is one of the areas that require the most attention in drafting. It is highly recommended that employers include a clause for termination by notice or payment in lieu in fixed term contracts. Such a clause should be carefully and precisely drafted. It ought not to be left to possible implication.

24. When we review the terms relating to early termination by the employer, they operate in a very narrow set of circumstances and seem mainly to be with cause. None of which are relevant to the case at hand, but they set the tone for the court's view that it was not the parties' intention to include this term. The test is not what seems fair or right in the circumstances, it is what the clear intention of the contracting parties must have been.

25. Although the term has been specifically excluded, the contract can still be otherwise determined. In fact, I find that the termination provisions were quite adequate. The employment arrangements are certainly effective without any need to imply a clause allowing the termination of the contract by the Government of Belize by notice or payment in lieu of notice. The court will therefore not imply such a term. Having so found, we now consider our second issue.

Whether the Claimants were wrongfully dismissed:

26. The main issue in a claim for wrongful dismissal is whether the employer acted in breach of the terms of the contract. The employee must have either been engaged for a fixed period or a period terminable by notice and been dismissed either before the period expired or without notice.

27. **Halsbury's Laws of England 4th edition Vol 16 para 302** adds that "*(t)here may be cases where the contract of employment limits the grounds on which the employee may be dismissed or makes dismissal subject to a contractual condition of observing a particular procedure, in which case it may be argued that, on a proper construction of the contract, a dismissal for an extraneous reason or without observance of the procedure is a wrongful dismissal on that ground.*"

28. The Agreements contain certain specific and available grounds for early termination. However, if any of those grounds existed, they were not used. The words of the termination letters are clear. They make no reference to the contracts or to any cause whatsoever for termination. They were not an acceptance of the Claimants' alleged repudiatory breach. Instead, they offer payment in lieu of notice, which the defendant maintains was done in accordance with a term implied into The Agreements. This is, in the court's determination, cogent evidence that the termination was not for cause. **Cocoa Industry Board and Cocoa Farmers Development Co. Ltd and F.D. Shaw v Burchell Melbourne (1993) 30 JLR 242** is extremely strong support for the view that dismissal under such circumstances is not to be considered, in law, as being one for cause.
29. Therefore, attempting to present a cause at this stage is futile. To confound matters, the defence has presented the case of **Cyril Leonard & Co v Simo Securities Trust Ltd and others [1971] 3 ALL ER 1313**. This case, which relies solely on **Boston Deep Sea Fishing and Ice Co v Ansell [1886-90]** is support only, for the entitlement to use a ground, which is discovered subsequent to the dismissal and if the dismissal was originally for cause. In such a situation, the existence and presentation of evidence of misconduct could make an otherwise wrongful dismissal, a lawful dismissal.
30. This court could find nothing to support the position that this rule could be of any assistance whatsoever, in circumstances where the dismissal was without cause or where the cause was already known prior to dismissal, but was not used.

31. **Smith and Wood's Employment Law pg 457** states in reference to the **Boston Deep Sea case**

"For example at common law a summary dismissal would be lawful if the employer acted on reason A which was quite inadequate, but later found out about reason B which could in fact justify summary dismissal"

32. Also consider the statement made at page 148 in **Fundamentals of Ethics, Corporate Governance and Business law** on the very same case:

"...when an employee is dismissed for possible inadequate reasons and the employer then discovers more serious misconduct, in an action for wrongful dismissal, evidence of these subsequent discoveries would be admissible as part of the employer's defence."

33. The defendant cannot successfully contend that they did not know of the dispute or of the alleged breach before the new contracts were executed. I find as a fact that the termination herein was without cause. If cause could be introduced at this stage, an employer would be allowed an unfair opportunity to change the entire existing situation.

34. The court now places reliance on **Cavenaugh v Williams ltd (2012) EWCA CIVIL 697**. This case does not deal with wrongful dismissal but rather with a recovery of debt after dismissal. Nonetheless, the principles laid out are most helpful. Here, the employee's guilt of gross misconduct was not known to the employer until after he had been dismissed for redundancy and payment in lieu of notice had been agreed. The employer regarded itself as discharged from liability since the misconduct would have allowed the employee to be summarily dismissed. The court of appeal found that the

later discovery did not enable the employer to avoid the payment already agreed. Mummery LJ at paragraph 37 explains that:

"Having chosen to terminate the service agreement in that way the company was not entitled to resile from the contractual consequences of its choice by later following the different common law route of accepting repudiation by relying, after the termination on an earlier act of misconduct."

35. Tomlinson LJ, in his supplementary judgement, considers the trial judge's approach and reinforces Mummery LJ's decision at paragraphs 53 and 54

*"In my view the judge here fell into error by overlooking that termination by acceptance of a repudiatory breach and a contractual termination where there is no breach may not give rise to equivalent effects or remedies. Here what had occurred was in essence termination on six month's notice, albeit the employer had exercised the right to dispense with the notice period by making or promising to make the appropriate payment in lieu. It brought about an entirely different situation from that which would have obtained had the contract been terminated by reason of a repudiatory breach, because in those circumstances the employer would have been entitled to an immediate termination without further liability save for salary and other benefits accrued up to the date of summary termination. Accordingly this was not a case where the termination letter could serve equally as a contractual termination or as achieving a termination by reason of an accepted repudiatory breach. However as Mummery LJ has explained **the Boston Deep Sea Fishing principle is in any event of no relevance here, since the employer is not seeking retrospectively to justify a termination which was impermissible upon the grounds put forward at the time.** The employers were entitled to terminate the contract forthwith on the terms indicated, The contract did indeed come to an end upon service of the employer's letter of 12 March 2010. **That being the case the Boston Deep Sea Fishing principle has no further role to play. There is no place for it and there is no need for it, even if the employer could overcome the difficulty that acceptance of repudiatory***

breach and termination on notice and/or on payment in lieu of notice here lead to inconsistent outcomes. The employee's repudiatory breach remains unaccepted and of no effect." (Emphasis mine)

36. Tomlinson LJ goes even further, when he reflects that had the respondent summarily dismissed the claimant for a spurious reason rather than simply terminating the contract for redundancy then they may have been able to rely on the repudiatory breach.
37. If there was some breach perceived, The Agreements also expressly stipulate the procedure to be followed. It most certainly was not termination by one month's notice or payment in lieu. The very defences filed allege that there was some misconduct amounting to a breach of duty which they felt the claimants were guilty of. Yet, the defence does not particularize this misconduct in any detail at all.
38. Compelling evidence is required for an employer to demonstrate a termination for cause. This applies both to establishing that the wrong doing occurred and that it was serious. In fact, other than the sole witness's say so, they did not try to prove this misconduct or breach of duty. Courts are not generally impressed with the subjective impressions of individuals within the employer's organization. Furthermore, the very nature of the allegations demanded that some objective evidence should have been presented at the very least. Having provided no evidence to prove the alleged negligence, the defence attempted to simply rely on the cross examination of the Claimants. They gained nothing by this.

39. It was obvious that they did not intend to rely on any misconduct at the trial. They cannot have it both ways. They cannot contend that they properly terminated without cause and seek now to raise a cause not having followed the contracted procedure for terminating with cause. Moreover, the alleged breach occurred in 2012, the defendant renewed both contracts in 2013. Could they honestly say that they relied on the repudiation. To my mind, by knowing of the misconduct, but allowing so much time to pass without making an election and by acting in a way that clearly contradicts acceptance of repudiation, I find that they condoned or disregarded the repudiation if it did occur. They are deemed to have affirmed The Agreements.
40. Having so found it is inevitable that a declaration will be made that the Claimants' employment was terminated in breach of The Agreements. I do not think it necessary therefore to discuss whether they ought to have been given reasons or an opportunity to be heard. What I would state however is that in **Malloch v Aberdeen Corporation [1971] 1WLR 1578 at 1595** Lord Wilberforce remarked obiter dicta that at common law no rule of natural justice attends the employer's decision to dismiss. Likewise in **Ridge v Baldwin [1904] AC 40 at 65**, Lord Reid resolved that an employer is under no duty to hear an employee's case before dismissal and may terminate "*at anytime and for any reason or for none*" subject only to the terms of the contract. There is therefore no common law right for an employee to be given reasons for his dismissal. Wrongful dismissal is not the same as unfair dismissal.

What remedies are available to the Claimants:

41. Parke B in **Robinson v Herman [1848] 1 Ex 85, 88** explains that

"The rule of the Common Law is, that where a party sustains a loss by reason of the breach of contract, he is, so far as money can do it, be placed in the same situation with respect to damages, as if the contract had been performed."

The Claimants presented the case of **Lisamae Gordon v Fair Trading Commission Claim No. 2005 HCV 2699** in the Supreme Court of Jamaica, where the learned Justice Brooks stated:

"..... the damages payable for the wrongful termination of a fixed term contract is the equivalent of the salary which would have been due for the unexpired portion of the contract. In Carr, cited above, Wallace J.A. Said at page 36:

"A fixed term contract serves a number of purposes. It sets forth the duration of the employment and thereby defines the extent of the damages to which a party is exposed for wrongful termination of the contract."

42. This court agrees with the quotation from **Carr v Farma Holdings Ltd. (1989) 63 D.L.R. 25 (Carr)** but cannot, with respect, accept that the damages for wrongful dismissal is equivalent only to salary. Much preferred is **Halsbury's Laws of England (ibid)** which places the starting point for assessment as the remuneration for the remainder of the term. Remuneration would include salary, allowances and other fringe benefits. A claimant, wrongfully dismissed, is entitled only to claim the sums which he was contractually entitled to receive and not that which he would probably have received, such as mileage, lunch or commissions - **Micklefield v SAC Technology Ltd [1990] 1WLR 1002.**

43. We must look to The Agreements themselves to ascertain the value of the financial benefit they would have received had the employer not been in breach. It is clear that they were both paid a monthly salary and a telephone

allowance. These will form part of their compensation. Mr. Pascascio, by his contract, was assigned the use of a government vehicle or in the alternative a \$400 vehicle maintenance allowance. **Shove v Downs Surgical PLC (1984) LCR 523** considered the issue of a company car and fuel and gave an award for this loss. However, in the present case no such claim was made.

44. Any assessment of damages made is, of course, subject to the claimants' duty to mitigate their loss. Mitigation is notional as well as actual - what they did in fact earn and/or what they could have earned had they made the effort to find employment.
45. It is accepted that if the employee obtains paid employment which he would not otherwise have been able to undertake, during the period for which damages are to be calculated, those amounts are to be deducted from the damages - **Reid v Explosives Co. 19 QBD264**. Since the contracts did not provide for pay in lieu or for notice, the sums paid for the period September 10th to October 10th, as well as all holiday pay, will be deducted as part of the mitigation for both parties. It must be remembered that the breach occurred from the moment the Claimants were wrongfully terminated on the 10th September 2015.
46. The duty to mitigate does not drive an employee to unreasonable lengths; see the discussion in **Secretary of State v Joblin (1980) LCR 380**. Mr. Allen and Mr. Pascascio both provided evidence of their attempts to find work and their general lack of success, which they attributed to the manner in which they were dismissed. The onus is on the defence to show that they

could reasonably have obtained suitable employment at similar wages after dismissal. The defence produced no such evidence.

47. Mr. Allen says he worked intermittently, on any available task, from his home office. He added that his earnings have significantly decreased but he never gives a figure for his income during the relevant period. This court is not convinced that such sporadic work could not have been conducted during his employ with the Government of Belize. At best it shows his efforts to mitigate but not a sum which ought to be deducted from his award.
48. Mr. Pascascio admits that he has always earned otherwise, but with the loss of his job he earns significantly less. He presented no evidence of working in his professional field, but maintains that it was not for want of trying. It is the view of this court that he also tried to mitigate, but failed. There is, therefore, no need to reduce his compensation either.
49. Finally, we consider the claims for damages for loss of reputation made by both Claimants. No submissions were made in relation thereto so one can only assume that they have been abandoned. However, I state only for completeness that damages for wrongful dismissal are only recoverable for loss caused by the breach of contract.
50. **Addis v Gramophone Co Ltd (1909) AC 488 at 488** informs that:

"Where a servant is wrongfully dismissed from his employment the damages for the dismissal cannot include compensation for the manner of the dismissal, for his injured feelings, or the loss he may sustain from the fact that the dismissal of itself makes it more difficult for him to obtain fresh employment".

Lord Hoffman remarked at paragraph 44 of **Johnson v Unisys Limited** [2001] UKHL 13

"In Mahmud v Bank of Credit and Commerce International SA [1998] AC 20, 51 Lord Steyn said that the true ratio of Addis's case was the damages were recoverable only for loss caused by a breach of contract, not for loss caused by the manner of its breach..... Therefore, if wrongful dismissal is the only cause of action, nothing can be recovered for mental distress or damage to reputation.

IT IS ORDERED AND DECLARED THAT:

1. The Defendant breached the Claimants' contracts of employment.
2. The Claimants were wrongfully dismissed.
3. Special damages is awarded to Robert Allen in the sum of BZ\$60,461.82. Such sum is to be paid by the Defendant with interest at the rate of 3% from the 10th September, 2014 to the date of judgment on the claim herein and thereafter at the statutory rate of 6%.
4. Special damages is awarded to Deon Pascascio in the sum of BZ\$64,991.40. Such sum to be paid by the Defendant with interest at the rate of 3% from the 10th September, 2014 to the date of judgment on the claim herein and thereafter at the statutory rate of 6%.
5. Costs to the Claimants in the agreed sum of \$17,500.

SONYA YOUNG
JUDGE OF THE SUPREME COURT