IN THE COURT OF APPEAL OF BELIZE A.D. 2024
CIVIL APPEAL NO. 5 OF 2023

BETWEEN:

BELIZE TELEMEDIA LIMITED

Appellant

and

(1) ERVEN MARIN
(2) LORNA LONGSWORTH
(3) ANDREW ARNOLD
(4) LOWELL BROOKS
(5) LOIS GARBUTT
(6) LAURIE BARROW
(7) LEROY TILLETT
(8) JUAN QUINECTUE
(9) DANALYN MURILLO
(10) KRSNA RENEAU
(11) LORNA MARTINEZ
(12) RUTHLYN AYUSO
(13) MAILIN VASQUEZ
(14) GUADELUPE ESCALANTE
(15) CURTIS KELLY

Respondents

BEFORE:

The Hon. Mde Justice Minott-Phillips	Justice of Appeal
The Hon. Mr Justice Foster	Justice of Appeal
The Hon. Dr Justice Bulkan	Justice of Appeal

Appearances:

Fred Lumor, S.C. & Mrs. Melissa Balderamos Mahler for the Appellant
Eamon Courtenay, S.C., Ms. Priscilla Banner & Ms. Alyson Courtenay for the Respondent

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2024: March 20;
May 20

JUDGMENT

[1] Minott-Phillips, J.A.: The factual issues underlying the judgment that is the subject of this appeal are:

i. whether the Respondents ("Marin et al"), being all former employees of the Appellant, Belize Telemedia Limited ("BTL") were entitled to the severance pay they claimed; and,

ii. if so, whether that severance pay was paid to them.

[2] The situation that resulted in the claim being brought was that Marin et al felt they were entitled to be (and were not) paid severance pay pursuant to the Labour Act.

Agreed factual background

[3] In a document titled ***"Agreed Statement of Facts & Issues"*** dated the 30th November 2021 and signed by counsel on both sides, the parties agreed the following facts:

i. Marin et al are former employees of BTL;

ii. The retirement age for employees of BTL is 55 years;

iii. Save for those within Marin et al who retired or resigned before 18th April 2018, employees of BTL enjoyed the benefits of a Collective Bargaining Agreement between the Belize Communication Workers Union ("the Union") and BTL ("the CBA") dated 18th April 2018, under which the parties mutually agreed to fulfil all the terms of the CBA.

iv. Those within Marin et al who retired or resigned prior to the 2018 CBA enjoyed the benefits of the CBAs between the Union and BTL as follows:

    i. 1991-1993;

    ii. 1993-1995;

    iii. 1999-2001; and

    iv. 2013-2016 (applicable to the 3rd and 7th Respondents).

v. CBAs which pre-dated the 2018 CBA also provided that the retirement age of employees of BTL was 55.

vi. The 2018 CBA expressly provides that all of BTL's employees who reach the age of 55 shall retire and will be entitled to benefits mandated by the Labour Laws of Belize.

vii. The Labour Act defines the law for determining the payment of severance upon cessation of employment.

viii. Marin et al participated in and benefitted from BTL's Pension Plan.

[4] The employees (all of whom had more than 10 years' service) fell into three classes:

i. The Retirees (the 1st – 5th Respondents) - those retiring pursuant to the terms of the CBA having reached the retirement age of 55 years;

ii. The Resignees (the 6th-10th Respondents) - those resigning from BTL;

iii. The Voluntary Retirees (the 11th -15th Respondents) - those agreeing to take voluntary early retirement packages offered by BTL under a Retirement Agreement.

[5] This appeal, heard on 20th March 2024, is from a decision of the Hon. Madam Justice Young, pronounced on 4th January 2023 and granting judgment in favour of Marin et al on their claim against BTL.

[6] Marin et al claimed, *inter alia*:

i. A declaration that they were *"entitled to receive the severance to which they are entitled in accordance with the provisions of the Labour Act"*.

ii. A declaration that the Retirement Agreement is null and void by reason of illegality; and

iii. An order directing BTL to pay Marin et al such sums as is due to them pursuant to section 183 of the Labour Act.

The trial judge granted judgment in their favour.

[7] The eight (viii) grounds of appeal were:

i. The learned trial judge erred in law and misdirected herself in determining that the retirement of the 1st through 5th Claimants at the age of 55 years amounted in fact and/or at law to termination by the Appellant and in finding, as a result, that these Claimants were entitled to severance as if terminated by the Appellant.

ii. The learned judge erred in law and misdirected herself in determining that the retirements from employment of the 1st through 5th Claimants were unilaterally imposed by the Appellant by reason of age and in ignoring entirely clear provisions providing for such retirement in

applicable Collective Bargaining Agreements which were all incorporated into the contracts of employment of the 1st through 5th Claimants each of whom agreed to and were bound by them.

iii. The learned trial judge erred in law and misdirected herself in finding that there was no reason why the Claimants could not enhance their respective positions by showing that retirement at age 55 could still be covered under the Labour Act as termination, despite the fact that this position was not advanced and this issue was neither raised nor pleaded by the respective Claimants.

iv. The learned trial judge erred in law and misdirected herself in determining that the voluntary early retirement of the 11th through 15th Claimants at the age of 55 years as a part of a Voluntary Early Retirement Program amounted in fact and/or at law to resignations by those employees and in finding, as a result, that these Claimants were entitled to severance as if they had resigned.

v. The learned judge erred in law and misdirected herself in finding that the Voluntary Retirement Agreement, which explicitly acknowledged and stated that severance payments were taken into consideration as part of the Appellant's contribution to the pension fund, is null and void by reason of illegality.

vi. The learned trial judge erred in law and misdirected herself in construing section 194 of the Labour Act as not having displaced the Appellant's obligation to pay severance to all Claimants in respect of the periods of time for which severance payments were claimed by each of them because those periods of service were in fact served while the pension benefits were accruing (and not before) and were in fact taken into account in ascertaining the pension benefits paid to each of the Claimants.

vii. The learned trial judge erred in law and misdirected herself in holding that section 194 of the Labour Act on its true construction required that the dollar value of severance payments be accounted for within

pension benefits instead of giving effect to the plain meaning of the words of section 194 providing for severance to be payable only for such period of time served before becoming entitled to pension benefits and which were not taken into account when ascertaining the pension benefits.

viii. The Decision of the learned trial judge is against the weight of the evidence.

[8] It was not in issue between the parties that pursuant to the CBA all employees who reach the age of 55 and retire or who resign would be entitled to the benefits mandated by the Labour Laws of Belize. What was in issue, was whether those benefits, on the facts of this case, included an entitlement to severance payments.

[9] The resolution of the first of the several issues identified by the trial judge *viz*., whether Marin et al are entitled to be paid severance by BTL, informed her resolution of those that followed. This court, therefore, examines first the correctness of the determination by the trial judge that Marin et al were entitled to be paid severance by BTL.

[10] The Labour Act (Part XV) sets out, under the heading *"Severance Pay Provisions"*, the following:

> **183.**
> (1) Where a worker who has been continuously employed by an employer for a period of,
> *(a)* five to ten years and,
> *(i)* his employment is terminated by the employer; or
> *(ii)* the worker retires on or after attaining the age of sixty years or on medical grounds,
> that worker shall be paid a severance pay of one week's wages in respect of each complete year of service; or
> *(b)* over ten years and his employment is,
> *(i)* terminated by the employer for reasons, which do not amount to dismissal,
> *(ii)* abandoned by the worker pursuant to section 41 of this Act;
> *(iii)* contracted for a definite period and the employment is terminated on the expiration of such period and the contract either makes no provision for or makes less favourable provisions for severance pay; or

(iv) ended because the worker retires on or after attaining the age of sixty years or on medical grounds,

that worker shall be paid a severance pay of two weeks' wages in respect of each complete year of service.

(2) A worker with a minimum of ten years' continuous service who resigns his employment shall be eligible for a gratuity equal to severance pay computed in accordance with this section

(3) Notwithstanding subsection (1)*(b)* of this section, where an employee has completed over ten years of continuous employment, the severance pay shall be computed as follows,

(i) for the period served before 31st day of December 2011, at the rate of one week's pay for each complete year of service; and

(ii) for the period served after the 31st day of December 2011, at the rate of two weeks' pay for each complete year of service[1].

184.

…

(8) Periods of short term contracts granted in succession with less than thirty-day intervals, shall count for the purpose of calculating the continuous period of employment.

(9) Acceptance of severance pay by an employee shall terminate the continuous period of employment.

…

190.

Any agreement between an employer and the worker which purports to exclude the operation of any of the provisions of this Part shall be null and void.

…

194.

(1) A worker, who becomes entitled under any law to a pension, age benefit, retirement benefit or benefit under a scheme to which his employer is required to contribute, other than the contributions payable under the Social Security Act, Cap. 44 and regulations made thereunder, shall nevertheless be entitled, if he thereafter ceases work in the circumstances set out in section 183 of this Act, to severance pay in respect of any period which was served by him prior to his becoming entitled to such pension or benefit and which is not taken into consideration in ascertaining such pension or benefit.

(2) A worker, who becomes entitled under any law to a pension, age benefit, retirement benefit or benefit under a scheme to which his employer is required to contribute, other than the contributions payable under the Social Security Act, Cap. 44 and regulations made thereunder, shall nevertheless be entitled, providing he fulfils any requirement therein contained, to any benefit he would have been entitled to under any collective agreement or other contract of service in respect of any

[1] This sub-section specifically carves out the position that obtains in relation to periods served before 31 December 2011 by employees with 10+ years of service from the more generous basis for payment set out in sub-section (1)(b).

> period which was served by him prior to his becoming entitled to such pension or benefit and which is not taken into consideration in ascertaining such pension or benefit.
> (3) For the avoidance of doubt it is hereby declared that the liability of the employer to pay the severance pay arises on the date of the cessation of work by the employee in the circumstances set out in section 183 of this Act or in any collective agreement or contract of service.

[11] The liability of an employer to pay severance pay is clearly set out in sub-section (3) of section 194 and this court's analysis of the correctness of the trial judge's conclusion starts there.

[12] The liability of the employer to pay the severance pay arises on the date of the cessation of work by the employee in the circumstances set out:

i. In section 183 of the Act; or
ii. In any collective agreement or
iii. In any contract of service.

[13] The trial judge brought the facts of this case within section 183 by deeming (or interpreting) the retirements of Respondents 1-5, and the Voluntary Retirements of Respondents 11-15, to be terminations effected unilaterally by BTL. This is what she said at paragraphs 20-24 of her written reasons:

> *"19. There is no law in Belize which mandates a retirement age for the private sector. Persons are therefore free to contract any age as they see fit. However, the Act does not mandate severance payment on retirement before age 60 except on medical grounds.*
>
> *20. The Defendant urged that the Retirees who retired at 55 and the Voluntary Retirees who also retired before attaining the age of 60 have immediately lost their footing as there are no severance benefits mandated by the Act in those circumstances. And in any event, they were receiving an enhanced benefit by being able to retire before 60.*
>
> *21. To this the Claimant says that if that is the position, then the CBAs which imposed compulsory retirement at 55 would effectively exclude the sections of the Labour Act regarding the payment of severance.*

> *22. To my mind, there is a certain absurdity that would be visited on the situation if persons who were obligated to retire at 55 were somehow no longer able to benefit. So, those who resigned or who were terminated at 55 may be in a better position than those who were made to retire at 55.*
>
> *23. This cannot be, as the retiree's years of service would be rendered useless by the mere use of the word "retirement". The entire purpose of the severance payment provision, the protection afforded by section 190 and the true intent of the Labour Act would be defeated.*
>
> *24. Because of the time of the retirement under the CBAs, the employees really have no option but to retire before they were even entitled to retirement severance under the Act. The Court must, therefore, consider the compulsory retirement before the age of 60 for what it really is – a termination by the employer."*

[14] The judge below anchored her determination that the retirements effected prior to age 60 were really terminations, on the basis that to find otherwise would lead to an absurdity. Since all these Respondents had over 10 years' service, the applicable part of section 183 (relating to termination by an employer of an employee with over 10 years' service) is section 183(1)(b)(i).

[15] The correctness of the trial judge's determination that the retirees' cessation of work was really a termination by the employer, depends on whether the facts before the court are capable of supporting that conclusion. The question whether evidential material exists that can support a finding by the trial court, is a question of law[2]. This court, in considering that ground of appeal[3], looked to see if evidence before the trial judge existed upon which she could have arrived at the conclusion she did.

[16] Section 183(1)(a) of the Labour Act applies to workers continuously employed by an employer for a period of 5-10 years and, in the circumstances of that section, mandates payment of severance pay of one week's wages in respect of each complete year of service.

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[2] ***Devi v Roy*** (1946) AC 508 at 521 (last sentence of item 4), Per Lord Thankerton
[3] Ground viii

[17] Section 183(1)(b) applies to workers who have been continuously employed by an employer for a period of over 10 years and, in the circumstances of that section, mandate an award of severance pay of two weeks' wages in respect of each complete year of service.

[18] As the period of service of all of the Respondents in this case exceeded 10 years, the court had to determine if any of the circumstances set out in section 183(1)(b) applied to these employees. Those circumstances are where a worker's employment is:

i. Terminated by the employer for reasons which do not amount to dismissal;
ii. Abandoned by the worker pursuant to section 41;
iii. Contracted for a definite period and the employment is terminated on the expiration of such period and the contract either makes no provision for or makes less favourable provisions for severance pay; or
iv. Ended because the worker retires on or after attaining the age of 60 years or on medical grounds.

The Retiree Respondents

[19] The situations of:

i. termination of employment by an employer, and
ii. employment ending because of retirement on or after attaining the age of 60 or on medical grounds;

are treated as entirely separate situations in section 183(1)(b). The trial judge found that BTL terminated the employment of the Retirees. Accordingly, her finding that severance was payable to the retirees by BTL was anchored to section 183(1)(b)(i). That is, that they were terminated by BTL for reasons which do not amount to dismissal.

[20] In my view, the evidence before the court is not capable of supporting a finding that any of the Respondents were terminated by BTL. Under the terms of the applicable CBA, BTL and Marin et al agreed that the latter would retire at age 55, thereby bringing an end to their employment. This was not a unilateral act/decision of BTL, but an agreed term of the parties' contract. Inherent in an agreement is an acceptance

by the parties of its terms. Neither the CBA nor the Voluntary Retirement Agreement effected a unilateral imposition by BTL of *"compulsory retirement before the age of 60"* (to use the words of the trial judge in paragraph 24 of her written reasons quoted above). Rather, the parties agreed (following negotiations between BTL and the Union) that the employees would retire at the age of 55. The agreements entered into between BTL and the Retirees (Respondents 1-5) and between BTL and the Voluntary Retirees (Respondents and 11-15) were entirely bi-lateral. Ground viii of appeal is made out.

[21] I find it deliberate and significant that the Labour Act uses the word ***"ended"*** at the beginning of sub-section (iv) of section 183(1)(b) and not ***"terminated"***, as is used at the beginning of sub-section (i). The termination of work referenced in sub-section (i) is a cessation of work occurring as a result of the unilateral act of the employer. The cessation of work referenced in sub-section (iv) occurs by a consensus struck between employer and employee, the timing of which, in the ordinary course of things, is known by both from the outset. It is only where retirement occurs after age 60, or earlier on medical grounds, that severance is payable. This does not produce an absurdity, as the purpose of severance is to cushion the hardship arising from an unanticipated or permanent cessation of work. Severance is not payable in all circumstances where there is a cessation of work after a period of continuous service of 5 or more years. Were it so, that would be all the Act need say. Instead, it delineates the specific circumstances in which a severance benefit arises.

[22] Required notice periods for resignations are not usually long but, as those periods are either statutorily set or agreed, they, though relatively short, are not unilaterally imposed. This may explain why the entitlement on resignation is not to severance but, rather, to a gratuity calculated in the same way severance would be calculated pursuant to section 183.

[23] It follows from my interpretation set out above of the legislation and of the CBAs, that BTL had no obligation to pay severance to the Retiree Respondents under section 183(1) (b)(i) of the Labour Act as they did not fall within the class of employees entitled to receive severance payments under that sub-section of the Act. Although their contracts of employment were ending because of their retirement, that ending was occurring before they reached the age of 60 years, and not on medical grounds. Accordingly, those retirees also could not come within sub-section (iv) of section 183(1)(b). None of them was terminated, nor were any of them retiring at or after age 60, or on medical grounds.

[24] It follows that the trial judge erred in regarding the ending of the Retirees' employment as having been terminated by BTL. The Retirees, having not been terminated, were not entitled to a severance pay benefit under sub-section (1)(b) (i) of section 183 of the Labour Act.

[25] Grounds i-iv of Appeal all take issue with the correctness of the trial judge treating the retirement of Respondents 1-5 and 10-15 as terminations or resignations. All are made out as the trial judge did so regard them and, in doing so, she erred.

[26] For the reasons stated above no liability on the part of BTL to pay severance arose under section 183 of the Labour Act in respect of Respondents 1-5 and 10-15. This court, before so concluding, examined section 183 (1)(b)(iii) to see if, on the material before the court below, these Respondents could have come within that sub-section. I concluded they could not have, because an element of that sub-section is the **termination** of employment and, as I've already pointed out, the cessation of work by retirement was, in the context of section 183, an **ending** of their employment by retirement, not a **termination** of their contract. In any event, as Fred Lumor, S.C. pointed out in his reply the case below was not presented by BTL on any basis other than the agreed underlying factual basis of the retirement of those employees from BTL. I took note of Eamon Courtenay, S.C.'s submission to the court that section 183 (1)(b)(iii) was an alternative basis on which we could, exercising our power under section 205 of the Senior Courts' Act, uphold the conclusion of the trial judge in spite of there being no Respondents' notice requesting us to do so. Aside from the issue that course would raise of procedural fairness to the Appellant, were we take it, my view that section 183 (1)(b)(iii) was not an available alternative on the facts of this case led to the ultimate rejection of that submission.

[27] To cover all situations set out in section 194 (3) giving rise to the liability of an employer to pay severance, the court must be satisfied, not only that the liability to pay does not arise statutorily under section 183 of the Act, but also that there is nothing set out in in any collective agreement or contract of service that gives rise to an unfulfilled obligation by BTL to pay severance. Counsel for the Respondents indicated at the hearing that there were no unfulfilled severance benefits owed by BTL to any of the Respondents for any period prior to 1995.

[28] In this case the operative contract (except as regards Respondents 3 & 7 whose situation was governed by the 2013-2016 CBA) would be the 2018 CBA. The parties agree the 2018 CBA is silent on severance benefits and provides only that the Retirees will be entitled to *"benefits mandated by the Labour Laws of Belize"*. As the Labour Laws of Belize do not mandate the payment of severance benefits to the Retiree Respondents in the circumstances of this case, the 2018 CBA does not provide them with a separate basis upon which they can claim an entitlement to severance. Unfortunately for the 3rd Respondent, the 2013-2016 CBA (in Article 15) is similarly silent about a contractual severance benefit. Upon cessation of employment (be it by Resignation, Termination/Dismissal, Retirement or Redundancy) that CBA also states that the employee is entitled to *"benefits mandated by the Labour Laws of Belize"*.

[29] In looking at the earlier CBA between BTL and the Union governing the period 1st October 1991- 30th September 1993, the court notes specific provision is made (in Article 12) for a severance pay benefit where an employee's services are no longer required due to Redundancy, Ill Health, Death, Retirement **at 55 years of age** [my emphasis] as set out in a Schedule (4) to the CBA. This entitlement to severance upon retirement at 55 years of age does not appear in the 2013-2016 or 2018 CBAs.

[30] The documentary evidence before the court does, therefore, support the position of BTL referred to by the trial judge (at paragraph 63 of her written reasons) recited, then rejected, when she states,

> *"The Defendant seems to say that by some agreement between them and the Union, they abolished the Defendant's liability to pay severance under the CBA and replaced it with their pension scheme. However, there was no such agreement provided in evidence and, even if there was, there is no agreement which could legally exclude the provision for payment of severance under the Act (section 190). Section 194 certainly does not sanction this act either."*

[31] The CBAs before the court did show that the provision for a severance benefit that existed in the earlier CBAs was deleted from subsequent ones. Those agreements were in evidence. Furthermore, while it is the law that no agreement can legally exclude a requirement to pay a severance benefit arising under the Act, that applies only where the exclusion is of severance payable pursuant to the operation of any of the

provision of Part XV of the Labour Act. As shown above, that is not the case in relation to the Retiree Respondents.

The Resignee Respondents

[32] The 7th Respondent is a Resignee (not a Retiree) and, as such, his position is addressed together with the other Resignee Respondents (being Respondents 6-10).

[33] In the case of a Resignee, section 183(2) of the Labour Act makes that employee eligible for a gratuity equal to severance pay computed in accordance with the section, provided he/she is a worker with a minimum of ten years' continuous service. At paragraph 30 of her written reasons the trial judge said the following:

> *" 30. There really could be no issue of whether or not the Resignees are entitled to some form of severance. The Act does not mandate severance for persons who resign prior to continuous employment for a minimum of 10 years. With a minimum of 10 years, as all the relevant Claimants have, the Act allows payment of a gratuity equal to severance computed in accordance with section 183."*

[34] In my view the trial judge was correct in that finding and the Resignees are entitled to a gratuity equal to severance computed in the manner set out in section 183 of the Act. In so finding she was clearly applying section 183(2) of the Labour Act.

[35] Section 194(1) speaks to severance pay benefits that accrued to workers prior to them becoming entitled to pension, age benefit, retirement benefit or benefit under a scheme to which their employer is entitled to contribute **and** which are not taken into consideration in ascertaining such pension or benefit. An entitlement to statutory severance pay only arises if the worker (after becoming entitled to benefits under the scheme to which his employer is required to contribute) ceases to work in the circumstances set out in section 183.

[36] Section 194(2) speaks to benefits that accrued to workers under any collective bargaining agreement or other contract of service prior to them becoming entitled to a pension, age benefit, retirement benefit or benefit under a scheme to which his employer is required to contribute. It preserves the workers' entitlement to those benefits if they have not been taken into consideration in ascertaining his pension or benefit.

[37] In short, section 194 preserves statutory severance or other benefits that have accrued to a worker whether by way of section 183 (in the case of statutory severance) or *via* any collective agreement or contract of service (in the case of other benefits) that applied prior to him becoming entitled to his pension or benefits due to him under the scheme to which his employer is required to contribute).

[38] The claim before the court relates to severance only, not to any other benefit. Except for the Resignees, none of the Respondents, having become entitled to their pension benefits under the CBA, thereafter ceased work in circumstances set out in section 183. Nor did they have an entitlement to severance under the applicable CBAs that only specified an entitlement to benefits mandated by the Labour Laws of Belize or covered under the CBAs (which CBAs said nothing about severance).

[39] The Resginees, however, ceased work in circumstances set out in section 183(2), conceivably bringing them within the parameters of section 194(1) as regards severance benefits payable in the form of a gratuity equal to severance pay.

[40] The result is that Respondents 6-10 (being the Resignees) having accrued gratuity equal to severance pay under section 183 of the Labour Act, are each entitled, on the day he/she ceases working, to have BTL pay him/her a gratuity equivalent to a severance pay benefit (calculated in accordance with the formula set out in section 183), provided BTL did not take that gratuity severance benefit into consideration in ascertaining the pension or benefits due to him/her upon his/her cessation of work.

[41] The evidence before the court setting out the payments BTL made to the Resignees when they ceased working fails to establish that their severance entitlements were taken into account. If severance gratuity entitlements are subsumed within the payment of benefits made to an employee upon his cessation

of work, it must be discernible in the figures presented to the employee that BTL has accounted for the accrued severance gratuity payable him in the benefits payable under the scheme to which BTL contributed.

[42] In the face of the statutory entitlement of the Resignee employees (in this instance) to receive gratuity benefits equal to severance, it was incumbent on BTL to present them with a breakdown of the figure paid at the cessation of their employment showing how it has taken the severance gratuity payable under section 183 into account in arriving at the sum being paid to them. Instead of doing that, BTL issued a letter to the employee – using the example of the letter issued to Laurie Barrow - saying, *inter alia*,:

> *"In recognition of your services to the company, your statutory entitlements and benefits (in accordance with the Labour Act, Chapter 297 of the Laws of Belize, RE 2011), will be paid to you in full and final settlement of any claim you may have against the company. In accordance with the Labour Act, the company's contribution to the Staff Pension Fund represents full satisfaction of and subsumes all severance payments due to you."*

And then requested the employee to,

> *"…sign below to indicate that you have accepted the terms of this letter and you agree to release BTL of and from any liability or claim, on account of, or in any way growing out of your employment at BTL."*

[43] The only way an employee can know whether the employer's contribution to the pension fund fully satisfies and subsumes all severance payments due is if the figures presented to the employee show that the severance payments due have been taken into consideration in arriving at the portion of the payout figure that represents BTL's contribution to the Staff Pension Fund. I agree with the trial judge when she says (at paragraph 57 of her written reasons) that, properly interpreted, section 194,

> *"…means that an employer cannot rely on an employee's entitlement to receive pension benefits as a basis to reduce or replace its statutory obligation to provide severance. Inherent in this section, when read in conjunction with section 190, is the obligation to ensure that severance is accounted for and included in that pension payment. There is no option offered."*

Ground vi of Appeal, accordingly, fails. Ground vii does not accurately reflect the position of the trial judge. We make no pronouncement on it.

[44] I agree with the trial judge's statement (at paragraph 64 of her written reasons) that pension and severance are different. Severance payments must be objectively discernible from pension.

[45] Unlike the 2021-2024 CBA that showed a 2.5% increase in the employer's contributions to the pension scheme to account for severance, the CBA applicable to the period covered by the claim involved, as the trial judge pointed out (in paragraph 65 of her written reasons), equal contributions by the employer and the employee. As she said,

> *"There was absolutely nothing in this division which would indicate that somewhere residing quietly within the Defendant's contribution was some sum which accounted for statutory severance."*

I agree with her.

[46] For the reasons I've set out above, the part of the contract that came into existence when the letter referred to in paragraph 42 above was signed by the employee, effectively excludes the operation of section 194 and, as such, the letter agreement is null and void pursuant to section 190 of the Labour Act.

[47] The same would have applied to the Voluntary Early Retirement Agreement – using the example of that applicable to Mailin Vasquez-, on account of a not dissimilar wording in clause 5, had severance benefits been payable to the Voluntary Retirees. However, as severance benefits were not payable to the Voluntary Retirees, the court considers clause 5 to be meaningless and, in keeping with clause 10, severs it from those agreements. Accordingly, that clause is deemed not to form part of those agreements. For that reason I am of the view that it was not necessary for the trial judge to declare the Retirement Agreements null and void for illegality, and that she erred in doing so. Ground v of this appeal succeeds only for the reasons set out in this paragraph.

[48] Our understanding from counsel appearing before us is that there is no issue regarding the amounts found by the trial judge to be payable in respect of each Respondent and that, if liability to pay severance exists, the figures in her judgment are agreed.

[49] Consequent upon the foregoing, the order of this court is that:

1. The appeal is allowed in part.

2. The judgment (pronounced on 4th January 2023 and dated 3rd February 2023) is set aside.

3. Judgment on the claim issues:
    a. For Claimants/Respondents 6-10 against the Defendant/Appellant; and
    b. For the Defendant/Appellant against the Claimants/Respondents 1-5 and 11-15.

4. It is declared that Claimants 6-10 are entitled to receive severance gratuity from the Defendant/Appellant in accordance with section 183 of the Labour Act.

5. The Defendant/Appellant is directed to pay over the sum of $91,347.92 to Respondents 6-10 as specified below:

    Laurie Barrow $25,308.45
    Leroy Tillett $14,148.39
    Juan Quinectue $18,484.14
    Danalyn Murillo $30,628.80
    Krsna Reneau $12,414.14

6. Interest at the rate of 6% is awarded on the sum found to be owing at paragraph 5 above from the date of filing of the Claim to the date of payment in full.

7. Two-thirds of the sum of $56,302.14 being the prescribed costs of the proceedings below are awarded to the Defendant/Appellant, BTL against Respondents 1-5 and 11-15 (each being liable for one-tenth of the awarded costs), with the remaining one-third being awarded to Claimants/Respondents 6-10 against the Defendant/Appellant BTL (each being entitled to one-fifth of the awarded costs).

8. Two-thirds of the prescribed costs of this appeal are awarded to the Appellant against Respondents 1-5 and 11-15 (with each of those respondents being liable to pay one-tenth of those costs).

9. One-third of the prescribed costs of this appeal are awarded to Respondents 6-10 against the Appellant (with each of those respondents being entitled to receive one-fifth of that sum).

[The orders at paragraphs 8 & 9 above on the costs of this appeal are provisional and may be varied as a consequence of our deliberation on any written submissions on the appropriate orders for costs of this appeal received by the court from the parties within 7 days of the promulgation of this decision].

Sandra Minott-Phillips
Justice of Appeal

[50] I concur.

Peter Foster
Justice of Appeal

[51] I concur.

Bulkan, JA
Justice of Appeal