IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE, A.D. 2020

CONSOLIDATED MATTERS
BY ORDER DATED 3RD April 2021

CLAIM No. CV291 of 2020

BETWEEN:

JENNIFER BALDERA

Claimant

and

[1] ARISTON MARKETING COMPANY LTD

First Defendant

[2] KRIZYA MELGAS ARZU

Second Defendant

CLAIM No. CV292 of 2020

BETWEEN:

MELANIE FERNANDEZ

Claimant

and

[1] ARISTON MARKETING COMPANY LTD

First Defendant

[2] KRIZYA MELGAS ARZU

Second Defendant

Appearances:

Mr. Leeroy Banner for the Claimants
Ms. Velda Flowers for the First Defendant

2024: November 20;

November 25.

JUDGMENT

Trial – Wrongful Termination – Unfair Dismissal – Written Employment Contract – No Notice Given for Termination – Employment Contract Provides for Termination Without Notice in Specified Cases – Absence Without Reasonable Excuse as Basis for Termination – Whether Employer was Responsible for Soliciting Excuse for Absence to Determine its Reasonableness – Whether Wrongful Termination was Established – Whether Unfair Dismissal was Proved on the Evidence – Damages.

[1] **ALEXANDER, J.**: This judgment relates to the wrongful termination claims of two claimants arising from the same workplace incident. By their amended claims filed on 6th November 2020, the claimants also made a claim for unfair dismissal.

[2] The claimant in CV291 of 2020 is Mrs. Jennifer Baldera ("Mrs. Baldera") and the claimant in CV292 of 2020 is Ms. Melanie Fernandez ("Ms. Fernandez"). I shall refer to them together as "the claimants".

[3] The claimants claim that they were wrongfully terminated and unfairly dismissed from their employment on 27th November 2019 by the first defendant, when they went absent from their workstations for about two hours on that day. They were only given notices of their dismissal two days later, but without receiving a prior warning, or being given an opportunity to explain, and/or without an investigation being conducted into the cause for their absences.

[4] The employment contract of Mrs. Baldera was made on 12th November 2015 ("the Baldera contract") and that of Ms. Fernandez was made on 16th June 2017 ("the Fernandez contract"). These contracts provided that an employee may be dismissed without notice if the employee is absent from work without permission or without reasonable excuse. In the instant case, the claimants were dismissed by letter dated the same day of their absences.

[5] I find that Mrs. Baldera and Ms. Fernandez were wrongfully terminated. They had a reasonable excuse for being absent from their workstations on the said day. Their absences from the workplace were for a period of approximately two hours and came

about because of a report to the police made by their immediate supervisor, the second defendant ("the report"). As a result of the report, the claimants were detained for questioning by the police and were subsequently cleared of all wrongdoing. I find that in addition to having a reasonable excuse for their absences, the excuse was known to their employer. In fact, their immediate supervisor and/or the second defendant was present with them at the police station. The employer's action in firing them without notice was wrong.

[6] I grant the claimants judgment on their claims for wrongful termination and award them damages and costs.

[7] On their claims for unfair dismissal, the claimants made no differentiation between that claim and their wrongful termination cause of action, and seemed not to have pursued it at trial. Unfair dismissal is a statutory cause of action that is distinct from the common law claim of wrongful termination. Unfair dismissal cannot be subsumed under a claim for wrongful termination or treated as indistinguishable. The claim for unfair dismissal was not made out or advanced at the trial. Therefore, I refuse to make any finding or award for unfair dismissal. In my judgment, there was a clear failure by the claimants to advance their case for unfair dismissal.

Background

[8] The following are the short facts of the cases advanced by the claimants via amended claims dated 6th November 2020.

[9] **Mrs. Baldera** claimed that she was working at the first defendant's call centre, initially as a concierge/customer service representative, then she was assigned to the Escalation Team to deal with what she described as "problematic issues such as errors in bookings and extremely upset customers".[1] She also provided tutorials on the company's website. She was then moved to the Cruise Department to deal with booking cruises, that is as a booking agent. She did not sign a new contract for the different positions, as her salary

[1] Witness statement, paragraph 7 of Jennifer Baldera.

was basically the same as under her written contract dated 12th November 2015, that is BZ$5.625 per hour for a 45-hour week. Her employment with the first defendant was for about four years and fifteen days, when the dispute that currently engages this court arose.

[10] **Ms. Fernandez** claimed that she was employed at the first defendant's call centre, initially as a concierge/customer service representative before being appointed as a booking agent in the Cruise Department. At the time of her dismissal, Ms. Fernandez was earning a salary of BZ$6.88 per hour and worked a 45-hour week, including weekends. She did not sign a new contract when she became a booking agent, and she provided salary slips to support her income. At the time of her dismissal, Ms. Fernandez was in the employ of the first defendant for about two years and four months when the present dispute emerged.

[11] The claimants' case is that on 27th November 2019, they were on their lunch break at a restaurant next to their workplace, when at or around 12:30 p.m., they were detained by police officers and taken to the San Ignacio Police Station. Their detention came about due to a report that was made to the police by their immediate supervisor, Mrs. Krizya Melgar Arzu, the second defendant in the matter. Mrs. Baldera stated that as their immediate supervisor, the second defendant had the power to grant or refuse permission for time-off from the job or to leave the workplace and that she dealt with all managerial issues concerning staff.

[12] It was at the police station that the claimants found out that the second defendant had reported them to the police. In the report, the second defendant alleged that they were in possession of nude pictures and screenshots of the second defendant and a third party and were spreading rumours about her. Following their detention at the police station for questioning, they were released and returned to work sometime around 2:00 p.m. On returning to work, they discovered that they were logged off their computer systems and could not do any work or earn pay for the remainder of that day. The claimants left the office, purportedly in search of one of the call centre owners, Mr. Sergio Chuc, to explain their plight to him and get his intervention. They did not communicate that they were

leaving to the managerial team, as the other managerial staff members on the compound were purportedly either in a close personal relation with or were close friends of the second defendant.

[13] The claimants returned to work on 29th November 2019 and were given termination letters dated 27th November 2019. The 28th November was an official holiday and day-off for staff of the first defendant company. On the same 29th November 2019, the claimants were invited to a meeting with the Human Resource Manager relating to their termination.

Issues

[14] I identify the primary issue for determination as whether there was a wrongful termination of the employment contracts of the claimants. To determine this, I must first determine the following:

1. Whether the dismissal notices were in breach of the employment contracts?
2. Whether their absences were without reasonable excuse and justified a without notice termination of the employment contract?
3. Whether the claimants are entitled to damages and, if so, in what amount?

[15] The question of unfair dismissal is addressed also but as secondary to the issue of wrongful termination.

Discussion

Whether the Dismissal Notices were in Breach of the Employment Contracts?

(a) Distinction Between Wrongful Termination and Unfair Dismissal

[16] Wrongful termination occurs when an employer violates an employment contract or law in firing an employee. In the instant case the parties' relationship was governed by an employment contract. That contract specifies that it is governed by the **Belize Labour Act Chapter 297 R.E. 2020** ("the Labour Act"). The claimants also by virtue of their

amended claims pleaded unfair dismissal, which is a statutory cause of action that is separate from the wrongful dismissal claim. However, the case advanced by the claimants was not made out for the distinct claim of unfair dismissal, and even their submissions were silent on this cause of action. The principle of unfair dismissal is found in section 42A of the Labour Act and states:

"S. 42A

(1) An employee is entitled to terminate the contract of employment without notice or with less notice than that to which the employer is entitled by any statutory provision or contractual term, where the employer's conduct has made it unreasonable to expect the worker to continue the employment relationship.

(2) Where the contract of employment is terminated by the employee pursuant to sub-section (1), the employee shall be deemed to have been unfairly dismissed by the employer for the purposes of this Act."

[17] The distinction between these two types of claims is lifted from **Halsbury's Laws of England Vol. 16 4th Edition** as:

"Wrongful dismissal is a dismissal in breach of the relevant provision in the contract of employment relating to the expiration of the term for which the employee is engaged. To entitle the employee to sue for damages, two conditions must normally be fulfilled, namely:

(1) the employee must have been engaged for a fixed period, or for a period terminable by notice, and dismissed either before the expiration of that fixed period or without the requisite notice, as the case may be; and
(2) **his dismissal must have been without sufficient cause to permit his employer to dismiss him summarily**.

In addition, there 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." [My Emphasis].

[18] **Halsbury's** explains the distinction further by stating:

"**The common law claim for wrongful dismissal must be considered entirely separately from the statutory claim for unfair dismissal**. The existence of the latter

does not, however, abrogate the common law claim, which may still be particularly appropriate in two cases:

> (a) where the employee is not entitled to bring a claim for unfair dismissal;
> (b) where the damages for wrongful dismissal are likely to exceed the statutory maxima placed on compensation for unfair dismissal (as, for example, in the case of a well-remunerated employee on long notice or a fixed-term contract).

When an employee is wrongfully dismissed, he is released, by the employer's repudiation, from the contract's provisions…" [My Emphasis].

[19] It is axiomatic on the case as advanced by these claimants that the instant claims are for wrongful termination. It is the claimants' responsibility, not the court's, to advance the cases they want to, and it does not fall to this court to disagree with or intervene by dictating how claimants bring or litigate their claims. A court's role is to pronounce its judgment on the case brought before it in light of the evidence provided.

[20] I am not satisfied that the evidence adduced by the claimants show that their case for unfair dismissal was made out and/or that it was unreasonable to expect them to continue in the employment of the first defendant. In fact, the claimants' evidence was that having left their personal belongings on the job, it was their intention to return to their jobs on the next working day. Their claim for unfair dismissal has failed.

(b) Was the Employment Contract Breached?

[21] The contract provided that the employment could be **terminated without notice** in certain specified circumstances. The contract also specifically stated that the workers' "employment is in accordance with the Labor (sic) Laws of Belize Chapter 297 of 2000": see Belize Labour Act. I find useful at this point to lift and reproduce the contractual term dealing with termination without notice:

"**Dismissal:** Your employment may be dismissed without notice for the following reasons:

A. Misconduct, on or off the job, inconsistent with the fulfilment of the expressed or implied conditions of your employment.
B. Wilful disobedience to lawful orders given by management.

C. Lack of skill which you express or by implication warrant yourself to possess.
D. Habitual or substantial neglect of duties.
E. Absence from work without permission of your employer or without other reasonable excuse. [Emphasis Original]."

[22] For present purposes, the relevant circumstances, that could give rise to a without notice dismissal on the facts before me, are that the employees, namely Mrs. Baldera and Ms. Fernandez, either had no permission to be absent or had no reasonable excuse for being absent. If the evidence shows that the claimants were absent, and their absences were without a reasonable excuse then the termination without notice will stand.

[23] Having incorporated the "summary dismissal" provision from the Labour Act into the contract, the first defendant when deploying that termination clause needed to be circumspect to ensure that it was properly used. Essentially, an employer who terminates without notice must act within the confines of its power to so do. The use of this cause is not a free standing or unchecked power that an employer could exercise at will. Thus, if the summary dismissal is based on any of the listed factors for dismissal in the contract, then the employer must show that it interrogated the situation and was satisfied that it could move to dismiss the employee on the evidence that existed, showing that the employee was in breach. In the instant case, the claimants were dismissed for being absent without reasonable excuse. The dismissal by letter dated 27th November 2019 was instantaneous and within hours of their absences. The employer will need to show that the claimants either had no permission for being absent and/or that the excuse given was not reasonable.

[24] The claimants' evidence was simple and straightforward. Mrs. Baldera stated that her employment was terminated without notice because she was absent from her workstation for approximately two hours for which she had an excuse. She stated that it was her immediate supervisor whose "false report" caused her to be away from work and detained at the police station. The first defendant did not inquire into the reason for her absence as there was no need to do so. The immediate supervisor and/or second defendant was also at the police station to which Mrs. Baldera was taken and was present throughout the questioning.

[25] Similarly, Ms. Fernandez stated that her immediate supervisor, and the second defendant in the matter, was instrumental in orchestrating the detention and was present at the station so was always aware of the excuse for Ms. Fernandez's absence from work. It is the second defendant who would have had to authorize their time away from work in any event. In fact, Ms. Fernandez made clear in her witness statement at paragraph 11 that, "As it pertains to the chain of command, any issues concerning work was the responsibility of the immediate supervisor, and if we go to anyone else, we would be referred to the immediate supervisor." Moreover, the claimants settled the present claim with the second defendant in these proceedings.

[26] The report was later found to be a false report, and the claimants denied the allegation that they were absent from work without a reasonable excuse. The claimants also denied the allegation of job abandonment raised by the first defendant. The claimants' evidence is that when they returned from the police station, they were logged off their computer systems and could not do any work. During cross-examination, it was clarified that they could have logged back onto their systems but did not, as it was near the end of the workday, and they had already lost hours of pay.

[27] The first defendant's defence is that the claimants were not logged out of their computer system but had abandoned their posts. At the trial, the first defendant sought to marshal evidence to show that the claimants had access to their systems. Through video footage shown at the trial, the claimants could be seen returning to their desks and attempting to access their computers. The videos could not confirm the first defendant's case of job abandonment and that the claimants did not try to enter the work program. The video footage showed that the claimants had returned to work and were by their desks. The video also showed employees milling around, some looking at the claimants, and even walking across to look at the claimants' monitors. Their was no direct footage of the computer screens to determine what was actually happening.

[28] Mr. Banner, counsel for the claimants, submitted that the video footage showed a tense work environment, where rumours of theft were spreading, and that it was no doubt embarrassing for the claimants. I rejected the submissions of Mr. Banner. The video

footage did not and could not show the *rumours* being discussed, as the sound was inaudible, nor was it capable of establishing that the work environment was tense or uncomfortable. The video footage only showed the claimants returning to their workstations, attempting to "access" their computers, another employee coming across to check their systems and, shortly thereafter, the claimants left.

[29] Mrs. Flowers, counsel for the first defendant, submitted that the claimants' departure from work around 2:18 p.m. or 2:20 p.m., after returning from the police station, without permission constitutes a breach of their respective contracts for which they could be dismissed. The court was invited to disregard the claimants' evidence of their discomfort in approaching their immediate supervisor or other management personnel despite what had transpired earlier that day. Counsel argued that prior to the incident, the claimants had shared a good relationship with their immediate supervisor and had been cleared by the police of any involvement in the nude photos circulation. I rejected this argument of Mrs. Flowers and that the evidence proved job abandonment.

[30] I also rejected Mrs. Flowers' submission that before the first defendant terminated the claimants' contracts, it sought advice on the same day from the Labour Department on how to proceed so the termination was lawful. I find interesting the evidence of Ms. Gutierrez on this point who stated, "I then **at 6:41 pm** personally messaged an officer from the Labour Department, Mr. Pastor to inquire about dismissal of the Claimants … I then informed the Human Resources Manager, Davine Jones that **I had also called the Labour Department to see what actions could be taken** where I was told that they could be dismissed for job abandonment and for leaving without permission." [My Emphasis]. It is clear from the evidence of Ms. Gutierrez that the first defendant was already exploring dismissal on the day of the incident, without inquiring into the excuse for their absence. In any event, obtaining advice from the Labour Department does not necessarily safeguard an employer's dismissal from being deemed wrongful.

[31] There is no dispute that the contracts provided for termination without notice, but in clearly defined circumstances. One such instance is where the employee is absent "without reasonable excuse". The length or period of the absence, whether two hours or two days,

is not the determinative factor. It is the reason or excuse that is germane to the determination of whether the first defendant acted in accordance with the contract in terminating the employment. This excuse must be found to be "reasonable".

[32] To satisfy the requirement of "without reasonable excuse", therefore, it is presumed that the first defendant would have at minimal first met with the claimants to find out their excuse for being away from their workstations for about two hours. How else would an employer determine if the excuse was "reasonable" or not?

[33] Ms. Gutierrez, the operations manager of the first defendant, stated in evidence that she had met with the claimants on 29th November, which was after the fact. She could not say why the claimants were terminated. She came prepared to and did maintain her rehearsed position that the claimants had abandoned their jobs. I did not find her to be a reliable witness for the first defendant. There was no evidence before me of any meeting taking place save the one set on 29th November after the termination letters were given to the claimants. The evidence was that the termination letters were dated 27th November, the same day on which the claimants were absent from work for two hours. To satisfy itself of the existence or non-existence of a "reasonable excuse" that information must be solicited before the termination letters are issued. However, the evidence pointed to the "inquiry" being conducted only after the letters were issued.

[34] Further, I am satisfied on the evidence that the claimants' intention was to return to work. I have no clear evidence in support of job abandonment. Issuing without notice termination letters in these circumstances, before looking into the cause or excuse for the absence, was contrary to and in breach of the employment contract. The first defendant, as the employer, was required to solicit the excuse in order to determine its reasonableness, before terminating the employment contract. This did not happen.

[35] It is clear from my findings of fact that I do not consider that there was sufficient cause for the first defendant's dismissal of the claimants without notice or summarily, as there was no evidence of the judicious examination of their excuse for being absent.[2]

[2] Zetina v Galen University (2014) Claim No. 142 of 2013, BZ 2014 SC 10, where a similar conclusion was reached on the question of dismissal for misconduct in that case.

[36] The dismissal notices were in clear breach of the employment contracts.

Whether the Absence was Without Reasonable Excuse and Justifies a Without Notice Termination of the Employment Contract?

[37] The second issue is a short one. The claimants' case is that they had an excuse for their absence from the workplace; and the excuse was known to the first defendant through its supervisor. Their excuse was also reasonable in the circumstances of the case. Their excuse was that they were participating in a police investigation authored by the second defendant who was present at the police station with them.

[38] In my view, the evidence supports the case that management knew of the reasons for their absence. Was their excuse for being absent reasonable?

[39] Their absence was caused by the action of the second defendant, an officer who is part of the management team of the call centre and the immediate supervisor of the claimants. The second defendant was also the one with the authority to grant permission to the claimants to be away from the workplace. Moreover, if knowledge of the excuse for being absent is denied, the first defendant was mandated through its management team to find out the excuse in order to determine if the absence was without reasonable excuse. It is an injudicious act to draft termination letters for a two-hour absence from the job and, without interrogating the reasons to determine reasonableness, simply dismiss employees.

[40] In considering if the claimants' excuse was reasonable, I start by presuming that the first defendant would have been aware of or, at least, informed itself through its management team of the reasons for the claimants' absence. Moreover, since it was the claimants' immediate supervisor who had made the report to the police that led to the claimants' detention, it is disingenuous for the first defendant to deny being aware of the excuse for their absence. Indeed, the police officer came to the workplace to remove the claimants for questioning and was directed to where they were having lunch next to their workplace.

The detention was by no means a covert police operation, nor was it conducted by stealth under the cover of darkness since the claimants were driven away in the police mobile transport during the lunch period. It was by no means unreasonable in the circumstances of the case that the claimants would be absent from work to deal with the police matter.

[41] In further consideration of the issue of absence without reasonable excuse, I note in particular the evidence of Ms. Fernandez. Ms. Fernandez stated that she was called on the morning of 29th November 2019 to collect her personal items from her desk and was provided with the dismissal letter on that day. At the time, she was getting ready for work. She averred in her witness statement, "When we got there all of our things were already packed in a plastic bag and (sic) were met with Ms. Yasil Gutierrez and Ms. Davine Jones who handed us our letters of dismissal." Ms. Fernandez stated that it was only after she was provided with the letter of dismissal that she was asked why she and her co-worker had left work the day before. She was informed that the employer (i.e. the first defendant) was attempting to call her during the period of absence but was unsuccessful. It was then that she was able to clarify for them that they were calling her on the wrong number, although she had previously provided them with her new telephone number.

[42] According to Ms. Fernandez when she left work on 27th November 2019, she attended a meeting with one of the owners of the first defendant company, Mr. Sergio Chuc. She learned from Mr. Chuc that he had received an end of the day report by email, which indicated that she was terminated for job abandonment. She categorically denied abandoning the job. I have no evidence of abandonment of the job before me since both claimants returned to work after their detention. I accepted Ms. Fernandez's evidence that, on finding out that she was logged out of the dialer system, and with less than two hours of the workday remaining, she knew that it was a signal that she would not be paid for the remaining hour or so. She left, as she was already logged off. Both claimants left their personal items on their desks to seek an audience with Mr. Chuc. This is not evidence of walking-off or abandoning their jobs.

[43] I find the first defendant's evidence unconvincing. It was packaged to justify the dismissals but fell woefully short of convincing me that the first defendant had acted judiciously in

determining if a reasonable excuse existed for the claimants' absence from work. To satisfy itself of the existence or non-existence of a "reasonable excuse" that information must be solicited and considered before the termination letter is issued. I am not satisfied that there was any inquiry into the claimants' excuse for being absent from the workplace. In fact, the evidence showed that the termination notices were drafted on the same day as their absence, and that their personal belongings were packaged for collection, all before an excuse was requested or considered.

[44] I find that on the evidence before me, the excuse for the absence was *reasonable* in the circumstances. The first defendant's termination of the claimants' contracts without notice was wrong.

Whether the Claimants are Entitled to Damages and, if so, in what Amount?

[45] Having ruled that the without notice termination was wrong, I find that the claimants are entitled to damages. In this regard, the remit of this court is to compensate the claimants for their loss of earnings suffered consequent on being deprived of reasonable notice.

[46] Mr. Banner submitted that each claimant is entitled to eight weeks salary in lieu of notice as well as to damages that are equivalent to one year's salary. Essentially, Mr. Banner advanced that the claimants were entitled to damages reflecting fourteen months' salary. He relied on the authority of **Lloyd Enriquez** v **Belize Tourism Board**[3] a decision of the Honourable Chief Justice Benjamin made on 3rd June 2014. **Enriquez** is the locus classicus on wrongful dismissal in this jurisdiction, but its facts are distinguishable from the present case. Nevertheless, I find **Enriquez** instructive and its guidance on the approach to damages illuminating.

[47] In **Enriquez**, the questions of reasonable notice and the damages to be awarded in cases of wrongful dismissal were comprehensively examined by reference to several cases and the applicable principles. That court awarded damages on the basis of twelve months' notice. Several factors were considered in arriving at the notice period and these were

[3] Claim No. 517 of 2011.

varied. These included the claimant's qualifications (i.e. a master's degree in business administration), and his initial position of Registrar of Hotels and Tourist Accommodation, which was a statutorily created post[4] held for seven years before he was appointed Director of Destination Planning in September 2010 and then terminated in March 2011. Considered, therefore, were factors such as the length of his employment (i.e. eight years), his age of 38 years at the date of termination, and his senior management position at a unique statutory body, rendering comparable employment not readily available. In these circumstances, reasonable notice was found to be twelve months' notice.

[48] **Enriquez** is not similar to the present case in many respects. Neither claimant held a post that shares any equivalency with that of the claimant in **Enriquez**, whether in terms of the management level or uniqueness of the company and type or length of employment. In the instant case, the claimants provided no evidence of their qualifications, managerial or otherwise, to show entitlement to the damages based on a one-year notice as claimed. In other cases, a one-year notice was approved as reasonable notice for wrongful dismissal viz. **Waithe** v **Caribbean International Airways Ltd**;[5] **Dominica Agricultural and Industrial Development Bank** v **Maria Williams**[6] and **Rajmangal** v **BVI Electricity Corporation**.[7] I also considered the case of **Frederick Cabral** v **Belize Western Energy Ltd.**[8] where that court stated that damages for wrongful dismissal ought not to extend beyond a period of six months. Of note is that courts would generally consider factors such as the character of the employment, its length, the availability of similar or comparable employment, the training and the qualifications of the claimant.

[49] That the above was the proper approach to arrive at a fair award of damages was confirmed by Awich JA in **Christine Perriott** v **Belize Telecommunication Ltd.**[9] His Lordship took into consideration lump sum awards made in dismissal cases, based on the assessment of quantifiable loss (such as loss of worker's wages and benefits which can be calculated) and non-quantifiable loss and stated:

---

[4] A post created by s.3 of the Hotels and Tourist Accommodation Act, Chapter 285.
[5] (1987) 39 WIR 61.
[6] Civil Appeal No. 20 of 2003 (Dominica).
[7] BVIHCV 2006/0270.
[8] Claim No. 713 of 2018, Belize.
[9] Civil Appeal No. 35 of 2010.

"The not so quantifiable loss' is represented by 'a lump sum' estimate which is not too high or too low, taking into consideration awards in previous cases of dismissal. I understand this to mean that it is loss for which a sum of money cannot be mathematically calculated, such as loss of opportunity in the same employment, loss due to diminished prospects of obtaining another employment and loss due to distress and inconvenience. The lump sum damages are assessed by considering, 'all the circumstances surrounding the dismissal so that ultimately compensation that is just and equitable can be given'. **Factors such as the age of the claimant, the period for which the claimant had been employed, her salaries or wages, benefits and other remuneration, prospects of obtaining other employment, the manner of dismissal and distress and inconvenience are taken into consideration**." [My Emphasis].

[50] The award of damages for wrongful dismissal would hinge on the measure employed in assessing damages. Generally, the measure of damages seeks to put a claimant as far as practicable in the financial position that she would have enjoyed had her engagement not been prematurely terminated. However, a claimant is under a general duty to take tangible steps to mitigate her loss. The rule of thumb for the measure of damages used in wrongful dismissal cases was described in **McGregor on Damages** (17th ed. at para 28-002) as follows:

"The measure of damages for wrongful dismissal is prima facie the amount that the claimant would have earned had the employment continued according to contract subject to a deduction in respect of an amount accruing from any other employment which the claimant, in minimizing damages, either had obtained or should reasonably have obtained."

[51] The contract, in the present proceedings, was for an indefinite duration, and not for a fixed term. The Labour Act at page 18 defines this type of contract as employment under a contract of employment where the period of service is not specified. The instant contract specifically specified the notice that should be given by either side to terminate the contract. It states:

"**Notice**: The Company and/or the Employee may terminate this employment by giving the appropriate notice as follows:

Period of Employment	**Notice Period Required**
Over two weeks to six months	One week
Over six months to two years	Two weeks
Over two years to five years	Two months

Please note that the Company may decide to forgo the notice and pay in lieu of such notice not given. If the worker fails to give the appropriate notice then you will be financially liable to the Company for ½ of the notice which should have been given." [Emphasis Original]

[52] In the instant case, the first defendant chose not to give the "appropriate notice" as prescribed under the contract, which was two months' notice, and dismissed the claimants under the specialised provision for dismissal without notice. I have interrogated the evidence before the court to determine if, in the circumstances of this case, the claimants are entitled to a full one-year notice or fourteen months' salary as claimed. I do not find that the claimants are entitled to damages equating to one year's notice or more. For the wrongful dismissal in this case, I consider it reasonable to award damages to align with three months' notice.

Mrs. Baldera

[53] Mrs. Baldera's was earning a salary of BZ$5.625 per hour for 45 hours a week, that is BZ$225.00 weekly, including weekends. She was required to work shifts, holidays and overtime, with overtime work to be paid at the overtime rate of BZ$8.4375 per hour. The evidence did not assist with any calculation of overtime payments and Mrs. Baldera did not pursue such a claim at trial nor in her submissions. She claimed that she had tried to mitigate her losses but was unsuccessful. As at the date of the trial, she was selling personal accessories to earn a living. She provided no details about the income she derived from this enterprise.

[54] In advancing Mrs. Baldera's case for damages, Mr. Banner submitted that she is entitled to eight weeks' salary in lieu of notice in the sum of BZ$2,025.00 plus an additional "one year's salary, without overtime and bonus", in the sum of BZ$12,150.00. As stated above, Mr. Banner relied on **Enriquez**. In **Enriquez**, the claimant was awarded one year's salary in lieu of notice. However, the initial lump sum of BZ$14,145.64 that was paid to that claimant following his termination was deducted from the global award of general

damages. The claimant in **Enriquez** did not receive fourteen months salary for the wrongful dismissal.

[55] In the present case, I find three months' salary in lieu of notice in the sum of BZ$3,037.50 is reasonable and I so award.

Ms. Fernandez

[56] I consider it reasonable to award Ms. Fernandez damages for wrongful dismissal to align with three months' notice. At the time of her dismissal, Ms. Fernandez was earning a salary of BZ$6.88 per hour and worked 45 hours a week, that is BZ$309.60 weekly, including weekends. She was required to work shifts, holidays and overtime, with overtime work to be paid at the overtime rate. Her contract did not stipulate the overtime rate and Ms. Fernandez provided no evidence of any overtime rate of pay to which she was entitled. Moreover, she did not seem to have pursued overtime in her claim.

[57] Ms. Fernandez stated, however, that she had attempted to mitigate her loss by seeking employment otherwise but was initially unsuccessful since the dismissal occurred during the busy Christmas season. She stated that it was only on 30th March 2020 that she obtained employment and was now earning an income of BZ$6.25 per hour. She provided no further evidence of this income such as her weekly earnings nor was there a pay slip or any other documentary evidence. I noted that she was earning an hourly pay at her new employment that equated closely with her salary at the first defendant's company. Within four months, she had mitigated her losses.

[58] On the issue of damages, Mr. Banner submitted that Ms. Fernandez is entitled to eight weeks' salary in lieu of notice in the sum of BZ$2,476.00 plus an additional "one year's salary, without overtime and bonus", in the sum of BZ$14,860.00 based on **Enriquez**. Given Mr. Banner's argument, Ms. Fernandez is effectively entitled to fourteen months' salary. I disagree. I have set out above at paragraphs 47 to 50 my considerations in arriving at damages and note in particular the evidence that within four months, Ms. Fernandez had found comparable employment.

[59] Ms. Fernandez is awarded three months' salary in lieu of notice in the sum of BZ$3,715.20.

Costs

[60] The general rule is that a successful party is entitled to its costs of the trial. The claimants are awarded their costs.

Disposition

[61] It is hereby ordered as follows:

1. Judgment on liability for wrongful termination is granted to the claimants as against the first defendant.
2. The first defendant is to pay to:
    i. The claimant in CV291 of 2020 the sum of BZ$3,037.50 as damages with interest of 6% from 27th November 2019 to the date of judgment and thereafter statutory interest of 6% until the debt is paid in full.
    ii. The claimant in CV292 of 2020 the sum of BZ$3,715.20 as damages with interest of 6% from 27th November 2019 to the date of judgment and thereafter statutory interest of 6% until the debt is paid in full.
3. The first defendant is to pay the claimants' costs on the prescribed basis.

Martha Alexander
High Court Judge