

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 00052/2004

BETWEEN                      NEIL COLLMAN                      CLAIMANT  
AND                              AIR JAMAICA LTD.                      DEFENDANT

Mr. Gordon Robinson and Ms. Winsome Marsh for the Claimant

Mr. John Graham and Ms. Michelle Smith instructed by John Graham  
& Company for the Defendant

Heard: 22<sup>nd</sup>, 23<sup>rd</sup> February, 31<sup>st</sup> March, 5<sup>th</sup> April and 12<sup>th</sup> May 2006

Sinclair-Haynes J

Calamity visited Mr. Neil Collman who was an aircraft technician employed to Air Jamaica on the 12<sup>th</sup> November 2002. On that fateful day he was arrested by the United States of America (US) Immigration authorities for breaching their immigration law. His misfortune began when he was instructed by Air Jamaica's officers to travel to Philadelphia in the US to do relief work on their aircraft. He was provided with a B1 Visa on which to travel.

Upon arrival at the Philadelphia Airport, Air Jamaica's manager and representative applied for the necessary identification which would enable him to work in certain areas of the airport. The identification included a badge which was issued by the US Customs. The airport identification was issued but the customs badge was not.

Mr. Rupert Auld, Air Jamaica's duty engineer at the said airport made enquires concerning the badge. The US Customs then requested Mr. Collman's passport for

inspection. Mr. Collman commenced his work on the aircraft. Sometime after, he was summoned to the Customs Office at the airport. There, Mr. Auld who was present was advised by a Custom's Officer and an Immigration Officer that a perusal of his passport revealed that Air Jamaica had failed to obtain the necessary H1 Visa which would allow him to work in the United States. He was informed that he would be detained and returned to Jamaica on the next available flight.

It was at this juncture that Mr. Collman's nightmare began. Immediately, he was transformed into a common criminal who was at high risk of fleeing the consequence of some outrageously evil crime he had committed. He was closely guarded by two Immigration Officers whilst the Immigration Naturalization Services (INS) agents were summoned.

Upon their arrival he was manacled and shackled to his waist depriving him of the right even to scratch his nose or touch his face. Sometime after 2:00 p.m. he requested something to eat as he had begun work at 6:00 a.m. The request was denied.

In his shackled state he suffered the ignominy of being marched through the lobby of the Renaissance Hotel to the room he occupied. Whilst in the room in his manacled and shackled state he endeavoured, with the attendant difficulty to pack a few of his belongings.

One of the two INS agents who accompanied him made some inappropriate if not insulting remarks. He commented that Mr. Collman had many expensive things e.g. his computer and clothes and he asked him where he had the marijuana. As a result Mr. Collman was worried as he felt very vulnerable that this agent could do anything to him and he would not be able to prove his innocence. The second agent was, however, more

professional in his behaviour. He allowed Mr. Collman to leave the keys to his room at the front desk of the hotel and a set of keys in a car which he had borrowed.

He was taken to the INS Office at about 5:00 p.m. where he was unshackled. That, however, was not the end of his woes as he suffered the indignity of being stripped of his belongings which included his watch, shoe laces and a sweat top he was wearing. His sweat top was replaced by one which was a size smaller than his fit.

He was placed into a cell from which he was removed to be finger printed, photographed as a criminal and felt forced to give an affidavit.

His nightmare worsened as he was taken to a central jail where he was subjected to searches and his picture taken. He was further disgraced and humiliated by being tagged with a red arm band which bore his name, number and the letters FEDs. As he waited to be interviewed, a nurse further affronted his dignity by telling him she had seen him in jail before. She examined him and asked him if he ever entertained thoughts of suicide.

After 5:00 p.m. and during the interview he requested something to eat. He was given a mere sandwich which consisted of two slices of bread, a slice of cheese and a four-ounce box of iced tea.

He was returned to the jail cell which he shared with two others. This cell was constructed of assembled steel bars which dimensions were 5' x 6'. There was no bed, only a stainless steel projection which was attached to one side of the wall which allowed one person to recline. There was a unit which served the dual functions of providing drinking water and for urination. He was forced to urinate whilst being observed by his two cell mates. He had to suppress the urge to defecate because of the shame and

humiliation involved in that process. The area for that function was located elsewhere which necessitated him shouting to the guard to take him there. There was also no toilet paper available. There was no natural light available so he was forced to shout to the warders whom he couldn't see to ask the time. He lay on the concrete floor of the cell because the steel frame was only able to accommodate one person. Also, he felt insecure beside his cell mates. The floor was not clean. He was unable to sleep because he felt vulnerable and exposed to his cell mates. In order to summon the warders he had to shout and often the shouts were not responded to. As a result, he felt rejected, humiliated, angry, petrified and embarrassed at his situation. He felt abandoned by Air Jamaica whom he felt would have secured an attorney to assist him.

After what appeared to him to be an eternity, a warder came and inspected his arm band through the rail and removed him from his cell. He then realized it was morning. He was handcuffed to another prisoner who had spent four years in prison for armed robbery and who obscenely spoke of his lack of female companionship during his period of incarceration.

He was handed over to the INS agent and placed in a US Customs' van. At the airport, he and the other prisoner were taken to the holding area of the Immigration Office. The holding area resembled the one from which he was taken. He was left alone with the crude and boorish prisoner. However, his handcuffs were removed. He dressed himself, replaced his shoes and put on his belt and watch.

An agent informed him that the Air Jamaica flight was full and he would have to return him to jail. This statement filled Mr. Collman with horror at the thought of being deprived of food and the ability to shower and rest. He felt utterly rejected, disappointed

and abandoned because he knew the next flight would have been the following morning. He asked the agent to enquire of Mr. Auld whether he could get the jump seat. The agent left, returned and informed him that Mr. Auld had received permission for him to use the jump seat.

He and another deportee were escorted to the Boarding Gate by two Agents and an Immigration Officer. A uniformed Immigration Officer arrived with his passport and handed it to him. He was accompanied into the aircraft.

Whilst on the aircraft, Miss Y. Reid of Air Jamaica removed him from his seat and placed him in first class. She expressed her sympathy and regret at what had transpired.

Upon arrival in Kingston he felt dirty, tired and ashamed. No Air Jamaica personnel met him. He felt treated like a criminal. He had no identification, transportation or Jamaican money. He felt hopelessly neglected and like a reject. He was rescued by a friend whom he was fortunate to see and who offered him a ride home.

His ordeal did not end. On one subsequent occasion he attempted to enter the US and was turned back. On other occasions he was subjected to hours of interrogation by US authorities.

Mr. Collman has instituted proceedings against Air Jamaica for damages for negligence and/or breach of contract, damages for false imprisonment and aggravated damages. He alleges that Air Jamaica:

- a. failed to take any proper step to ensure that he was safe from harassment or detention whilst in the US on its business;
- b. failed to take any effective step to prevent or reduce his ordeal whilst it

was happening;

- c. failed to apply for the correct form of visa or permission from the US Customs to enable him to work temporarily in the US on its behalf;
- d. failed to ensure that there was a firm commitment in place from the US Embassy, the US Customs, INS or other relevant and appropriate authorities to the effect that its employees sent to work on its aircraft would not be harassed or detained; alternatively it failed to prescribe clearly and unambiguously the procedure to be followed to achieve that objective.

Mr. Collman alleges that he has suffered mentally, physically and is still suffering as a result of the ordeal and the adverse attention he receives from the US Immigration Officers whenever he travels. He claims to suffer from shock, trauma, difficulty sleeping and concentrating, depression and anxiety.

Air Jamaica failed to file its witness statement pursuant to the Order made at Case Management Conference. As a result its statement of case was struck out and Default Judgement was entered for the Claimant.

**Submissions by Mr. Gordon Robinson**

Mr. Gordon Robinson on behalf of Mr. Collman submits that Mr. Collman is entitled to substantial damages because his ordeal was exacerbated for the following reasons:

- a. it occurred in a foreign country where his status was that of an illegal alien;

- b. it occurred at the hands of officers of a foreign state (superpower) and Mr. Collman had no way of contacting his home and was never visited whilst in confinement by any representative of Air Jamaica. As a result he felt abandoned;
- c. damages ought to be aggravated because Air Jamaica's attitude to him upon his return to Kingston was unwelcoming and not reassuring;
- d. since his return to Jamaica in 2000 he has been ignored and treated with indifference. Since the institution of this claim he has been subject to hostile, high-handed and unfeeling behaviour from Air Jamaica;

Counsel for Air Jamaica has insisted on his right to participate in the matter even though Air Jamaica's Statement of Case had been struck out and there was no pleading to support any position. Defence Counsel has "furiously attacked" the claim in his cross examination and made several attempts to infer that the claimant's disability was his own fault. He even attempted to rehash the issue of liability. He submits that the claimant is entitled to an award of \$6,000.00 for aggravated damages.

Mr Robinson submits that if Air Jamaica had been an agent of the State, the Claimant would qualify for a large award for exemplary damages. He relies on **Tamara Meerson v Drexel Cartwright and The Attorney General** PC Appeal no. 61 of 2003, **Attorney General v Siewchand Ramnaroop** PC Appeal no. 13 of 2004.

In support of his contention that substantial damages ought to be awarded, he submits that it was sometime after Mr. Collman's ordeal that Air Jamaica had a conference with the US Immigration. The conference was not followed up with specific regard to Mr. Collman's situation.

Prior to Mr. Collman's ordeal, Air Jamaica did not consider the advice from INS necessary and relied exclusively on the advice given by the local embassy. As a consequence of Mr. Collman's ordeal he has a permanent black mark on his INS record which causes him to be detained for hours whenever he tries to enter the United States and he has been refused entry on an occasion. He has become fearful of travelling to the US and of the effect the black mark will have on his future.

As a result he suffers from stress, trauma and continues to have feelings of anger, frustration, humiliation, depression and anxiety. These feelings have been aggravated by the callous, unfeeling, high-handed, insulting and hostile attitude of Air Jamaica subsequent to his ordeal. Air Jamaica has made no offer of compensation nor have they taken any steps to settle the matter.

He submits further that the claim is for negligence and not false imprisonment simpliciter. The damages awarded are on a much broader basis than the issue of confinement alone. He submits that Mr. Collman is entitled to recover damages that flow from his imprisonment which could reasonably have been foreseen by a reasonable employer sending a particular employee in a dangerous situation so far from home. As a consequence of Air Jamaica's negligence, the Claimant was an alien who entered the United States in breach of the Immigration Law under the relevant regulation. The Claimant was:

- a. not eligible to be considered for release from custody. He was entirely at the discretion of the INS officers;
- b. not entitled to contact his family, friends or employer. He was only entitled to contact the Jamaican Consular or Diplomatic Officers in the



United States. Jamaica did not have a Consular Office in Philadelphia. He was therefore at the mercy of the INS officers. His feelings of abandonment were justified;

- c. he was obliged to allow himself to be finger printed and photographed;
- d. information relating to the treatment of detainees like Mr. Collman could not be obtained by his family members or any Jamaican Government Officer.

Mr. Robinson submits further that the fact that the Claimant was soft spoken, well mannered and cooperative with the INS officers resulted in the amelioration of his situation thereby mitigating damages.

He submits that the case of **Celma Pinnock v The Attorney General** Suit no. CL P188 of 1993 cited in **Ursula Khan**, volume 5 page 289 is a useful guide in determining the level of damages that ought to be awarded. He argues that Mr. Collman's award ought to be higher than that of **Miss Pinnock** because **Miss Pinnock's** case was one of false imprisonment and assault simpliciter, whereas the claimant's case is for negligence with the additional ramifications to be considered under the head of foreseeable consequential damages.

He distinguishes **Celma Pinnock's** case from that of Mr. Collman by submitting as follows:

- a. **Miss Pinnock** voluntarily subjected herself to the vagaries of the airport in furtherance of her business. Mr. Collman was an employee of Air Jamaica and he had no option;

- b. **Miss Pinnock's** ordeal occurred in Jamaica whilst Mr. Collman's occurred in a distant land with no familiar person in view. His ordeal occurred under oppressive and arbitrary foreign laws which were meant to be oppressive, unfair and unjust;
- c. **Miss Pinnock's** detention was for a relatively short period. Her humiliation was comparatively private and did not involve extreme restraint. Mr. Collman was detained for 18 hours. He spent a night in jail in a foreign land. He was shackled and publicly humiliated. He lived in fear of violation. He was forced to urinate with two men behind him and under the watchful eyes of one of whom had been without female companionship for four years;
- d. he submits that Mr. Collman's ordeal was no less cruel, degrading or inhumane than **Miss Pinnock's** and it involved more extreme restraint, more publicity, more hopelessness and it lasted longer;
- e. **Miss Pinnock** had committed no offence. Her ordeal ended as soon as she was declared drug free. On the other hand Mr. Collman was a criminal alien; therefore the probability of a lengthy period and degrading treatment was high.

Mr. Collman's fears were more intense and the consequences much wider and of more comprehensive effect on his life. He submits that the consequences of Mr. Collman's ordeal persists and seems never ending as Mr. Collman continues to be harassed whenever he attempts to enter the United States. **Miss Pinnock's** continuing

disability was less severe and did not cause continuing public embarrassment and humiliation. It has not affected her ability to earn and it has Mr. Collman's.

**Miss Pinnock** suffered from a limited version of the phobia of travelling as does Mr. Collman. The symptoms of stress and trauma are almost identical. He submits that the effects of Mr. Collman's ordeal are real and debilitating because his passport carries a black mark, and even after he received written assurance from the INS that he would not be harassed he was prevented from entering the United States. He is afraid to travel. He continues to be traumatized and there is no sign of relief.

Alternatively, he submits that Mr. Collman is entitled to damages for breach of contract as the claimant was in a special relationship with Air Jamaica and it carelessly ordered him into danger without thought for his personal situation. He had no option but to obey the instructions. As a result of the defendant's orders he breached the US Immigration Law. If it were not for the basic decency of some of the US officials he encountered, his ordeal could have been worse.

He submits that Mr. Collman is deserving of compensatory award no less than \$10,000,000.00 since his case is twice as damaging as hers.

**Mr. John Graham's response**

Mr. Graham submits that the medical report of Dr. Audrey Allen ought not to be considered in the assessment of the award of damages as it was not put into evidence in the manner prescribed by the Civil Procedure Rules (2002). Rule 32.7 of the CPR, he submits requires the evidence of an expert witness to be given in a written report unless the court otherwise directs. Rule 32.13 requires details of the witnesses' qualification,

any literature or other material which the witness used in making the report. It requires a summary of the conclusion rendered.

Rule 32.6 states that an expert witness' report may not be put in without the court's permission. Further, he submits the applicant is required to name the expert witness and identify the nature of his expertise. He relies on Rule 32 of the CPR which states that a party who fails to comply with a directive to disclose an expert witness' report may not use the report at trial unless the court gives permission.

Mr. Graham further submits that there is no provision in the Immigration Act which speaks to the detention for violation of an incorrect visa for which the defendant could be liable. The court ought to reduce an award for damages because Mr. Collman failed to take steps to mitigate his damages. It was his sister who wrote to the US Customs. There is no evidence that she did so at his request.

The letter was written in October 2001 and the incident occurred on the 5<sup>th</sup> December 2000. The claimant has not written to nor has he sought audience with the US officers to explain the incident or to ask that the situation be rectified.

Mr. Graham submits that the claimant's evidence is that he travels with a copy of the letter from the US Customs, but the authorities question its authenticity. It is Mr. Graham's contention that:

- a. there is no evidence that he tried to get the original;
- b. there is no evidence that he attempted to inform the US Immigration of the difficulties he encountered subsequent to their response by way of the letter.

Mr. Graham further submits that Mr. Collman failed to take any action in the

US with regard the incident. He has made no effort to have the notation removed from his record; he has provided no real evidence to this notation. He has not forwarded the visa or any real evidence of this notation. He further submits that the defendant took swift steps to rectify and seek clarification on the matter, in that on the 13<sup>th</sup> December 2000 it wrote to the US Embassy and requested a meeting with the officials.

On the 19<sup>th</sup> December 2000, its representative travelled to Philadelphia to meet with the INS officials concerning his detention. He contends that the fact that the claimant suffers from the adverse attention from the INS whenever he travels to the US is not evidence that he is being harassed because of the incident. Rather, since the event of 11th September 2001, US Immigration is more rigorous and travellers are generally subject to more questions. This is supported by the letter from US Customs dated January 2002. Further, he submits, Mr. Collman has offered no evidence of the attention he received except his suspicion and speculation.

The fact that he, has worked with several airlines after he terminated his employment with Air Jamaica is evidence that he has never been denied clearance.

**Re: Treatment by Air Jamaica**

It is Mr. Graham's submission that he was upgraded to first class when it came to their knowledge that he was on the flight and Miss Reid expressed her sympathy to him. The defendant was not notified that he would be returning hence the necessary arrangement for Air Jamaica's representative to meet him was not in place.

The fact that he was prevented from entering the hangar without his identification was appropriate in light of the fact that the area is sterile. He submits that the claimant's

wait of twenty minutes to speak to the manager was not long. It was the claimant's own impatience that prevented the manager assisting him.

**Re: Aggravated Damages**

It is Mr. Graham's submission that no evidence was offered to support an award for aggravated damages. It is Mr. Collman's evidence that agent Gary Matthaei was very cooperative. Also, whilst being conveyed in the van, the agents realized his passport was not among his belongings and they made efforts for it to be sent to the airport.

The fact that he was stripped of his belongings was not exceptional. It was routine and could not justify an award for aggravated damages. There is no evidence as to a hostile and adversarial questioning. The fact that he was forced to urinate with two men in the cell was not exceptional as this is a usual occurrence in male public rest rooms.

There was no deliberate action by the INS agents outside of their objective of returning him to Jamaica. Further, he submits, Air Jamaica had no control over the practices which the US Customs followed. The assessment of damages must be based on the actual injuries which the defendant inflicted.

In the circumstances, he submits that an award of \$50,000.00 for negligence and \$100,000.00 for false imprisonment is reasonable.

He submits that the cases of **Celma Pinnock and Sharon Greenwood-Henry** are distinguishable as the severity of the injuries Mr. Collman sustained cannot be compared to those suffered by **Celma Pinnock and Mrs. Greenwood-Henry**, both claimants in those cases also suffered phobic disorder whereas Mr. Collman has only alleged a general

fear which has prevented him from reapplying to the US for a visa and a fear whenever he has to undergo security clearance required by his employer.

He submits that his fear is not borne out as he has travelled from Jamaica to Canada on a number of occasions. He also did relief work with Air Jamaica for two years after the incident. He relies on **John Cassie v. Detective Sergeant Williams & The Attorney General** – Suit No. C.L.C. 364 of 1994.

### The Law

The learned authors of **Charlesworth and Perry on Negligence** 7<sup>th</sup> Edition paragraph 4-29 said:

*“The principle, on which damages for negligence are assessed, is that they are to be regarded as compensation for an injury sustained and not as punishment for a wrong inflicted. Generally speaking in English Law, subject to the qualification or restriction that damages must not be too remote, the only rule, which is adopted, is one of restitutio in integrum, whether the wrongful act arises out of breach of contract or tort.”*

The learned authors of **Mayne and McGregor on Damages** 12<sup>th</sup> Edition at para. 850 adumbrated as follows:

*The details of how the damages are worked out in false imprisonment are few; generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury and their discretion. The principal heads of damage would appear to be the injury to liberty, i.e., the loss of time considered primarily from a non-pecuniary viewpoint and the injury to feelings i.e. the indignity, mental suffering, disgrace and humiliation with any attendant loss of social status. This will all be included in the general damages which are usually awarded in these cases; no breakdown appears in the cases. In addition there may be recovery for any resultant, physical injury, illness or discomfort as where the imprisonment has a deleterious effect on the plaintiff's health. Damages maybe recovered for any resultant discomfort.”*

The claimant was imprisoned as a result of Air Jamaica's negligence. According to the US Immigration and Naturalization Act 236 – Apprehension and Detention of Aliens, an alien in contravention of US visa regulation can be detained and deported. Air Jamaica obtained a B1 Visa for Mr. Collman to do relief work in the US ignoring the INS advice. Its failure to ensure that Mr. Collman obtained the proper visa caused him to be detained far away from his homeland in circumstances hostile to aliens. It cannot be said that he was falsely imprisoned by the US Immigration authorities. However, Air Jamaica's negligence resulted in his imprisonment and exposure to the US less than civilized treatment of persons in violation of US Immigration law. It is now my task to assess the damages he suffered.

**Whether the court should rely on the Medical Certificate**

Rule 32.13 requires that an expert report must give:

- a. details of the expert witnesses' qualifications;
- b. details of any literature or other material which the expert witness has used in making the report.

The foregoing is absent from the report. Neither at Case Management Conference nor Pre Trial Review was any Order made for the report to be put in evidence. No application was made to the court for permission so it is unnecessary to state that the name of the doctor and the nature of his expertise were never stated. Further, at the assessment of damages hearing, no application was made for permission to rely on the medical nor was any attempt made to show that it was not reasonably practicable to have applied for relief at an earlier stage (see Rule 32.15(1) (2)).



In the circumstances the medical was not put in evidence in the manner prescribed by the CPR. In the premise the court therefore will not rely on the medical certificate.

It is, however, Mr. Collman's evidence that as a result of the incident he was totally traumatized. The incident affects his ability to sleep. He was unable to concentrate and was depressed and anxious. He suffered loss of appetite and had flash-backs of the incident which caused him to suffer bouts of anger.

Consequently, he sought the help of Dr. Allen a Consultant who prescribed medication to calm him and make him sleep. His evidence is that he still suffers from bouts of anxiety, sleeplessness, depression and anger. This condition, he claims is further compounded by the fact that since the incident he has been constantly harassed by US Immigration Officers when he tries to enter the United States. I accept this evidence.

**Assessment.**

The instant case is one of negligence and or breach of contract. Not false imprisonment simpliciter. In fact it is not a case of false imprisonment but rather that the defendant caused the claimant to be imprisoned. The awards for false imprisonment are however, good guides.

The learned authors of **Halsburys Law of England** 3<sup>rd</sup> Edition Volume 11 had this to say at paragraph 426:

*“Trespass to the person whether by assault, battery or false imprisonment is actionable without proof of actual damage. Thus in all cases of trespass nominal damages at least are reasonable and substantial damages are recoverable for discomfort and inconvenience or injury to dignity even where no physical injury is proved.”*

Mr. Collman's evidence is that he felt embarrassed when he was asked by a nurse if he ever considered committing suicide

Mr. Collman's evidence is that whilst in his cell he had feelings of fear, anger, frustration, rejection, humiliation, abandonment, embarrassment and anxiety. He suffered from insomnia as the thought of being treated like a common criminal prevented him from sleeping whilst he lay on his back on the floor of his cell. He was also afraid upon hearing the reason the other persons were in jail since he was unable to give them a reason for being there. However, there can be no recovery for the mental distress of being frightened for one's own safety except under the tort of assault (see **Behrens v Bertram Mills Circus Ltd** 1957 2 Q.B. 1).

Whilst he was at the airport preparing for deportation he was told he had to return to the jail because the agent at the check-in-counter informed the agent that the plane was full. He felt disappointed, rejected and abandoned when he thought about returning to jail. He felt weak, helpless and ashamed. Those feelings were not long lasting as Mr. Auld made arrangements for him to obtain a seat on the plane. In fact shortly after boarding the plane he was upgraded to first class. I had earlier mentioned his feelings upon his arrival in Kingston.

Mr. Collman met with Mr. Gordon, a senior director of Air Jamaica, the day after his deportation. He enquired of Mr. Gordon as to the course of action the company would take to assure him that the US Customs would not arrest or detain him again as a result of the incident. Mr. Gordon's cavalier attitude and response to his predicament angered and frustrated him. Mr. Gordon remarked, 'You haven't travelled as yet, let's wait and see. Sometimes when you probe you only open a can of worms unnecessarily.'

**Celma Pinnock** was strip searched at the Norman Manley Airport. In the process, she was assaulted by a male officer who forcibly inserted his finger into her vagina. Dr. Aggrey Irons found that she suffered from severe anxiety, severe depression, loss of libido, severe phobia responses related to travel and sexual activity.

In the instant case, Mr Collman's evidence is that the imprisonment and added scrutiny he was subject to by the US authorities as a consequence of the incident has a deleterious effect on his health He suffers from depression anxiety. I accept his evidence in this regard.

The strip searching and the insertion by the male officer of his finger into **Miss Pinnock's** vagina was a disgraceful misuse of power. It was an unwarranted intrusion and a violation of her right which added that extra dimension to the wrong which justified an award of exemplary damages. Such an award was necessary to register the sense of public outrage and to deter other would-be transgressors of that ilk from violating other persons in that way.

I am not at all seeking to diminish or gloss over the trauma suffered by Mr. Collman but I do not think it equates with that suffered by **Miss Pinnock**. I am cognizant that his dignity has been affronted and he has indeed suffered as he said he did. His complaint that he was forced to urinate with two men in his cell was not unusual for persons who are incarcerated. Mr. Graham submits that it is not unusual generally as men do urinate in the view of other men in public urinals. Assuming that is so, it must be borne in mind that in public urinals one has the liberty to decide whether to use the same or not. However, in a confined cell it is not unreasonable to find that he was indeed uncomfortable and humiliated. However, that cannot compare to a woman being stripped

before a male who violates and demeans her further by inserting his finger into her most private part. Mr. Collman was not touched by these men. His back was towards to them.

Mr. Collman's evidence is that he suffers from a fear of travelling as a result of the long interrogation he is subject to and the fact that he was once refused entry. There is, however, no medical evidence as to whether his fear amounts to a phobia. Further, there is no evidence medical or otherwise whether his fear is severe, moderate or mild. **Miss Pinnock** suffered from a phobia of travelling. Like **Miss Pinnock**, Mr. Collman suffered from anxiety and depression. However, there is no evidence as to whether his suffering was mild or severe or whether it amounts to a phobia. There is no reliable professional assessment before the court as to the likely duration of his suffering.

**Miss Pinnock** was indecently assaulted and her privacy violated in a most egregious manner. This was compounded by the fact that she had been celibate for two-and-a-half-years prior to the incident. She was just entering a new relationship as her child's father had died tragically. The incident resulted in her suffering loss of libido. In July 1998 she was awarded the sum of \$2,500,000.00 which now translates to approximately \$5,000,000.00.

The jury found it was an appropriate case for an award of exemplary damages but declined to make a further award as they felt the sum of \$2,500,000.00 was sufficiently punitive.

Mr. Collman was not assaulted but he was detained for 18 hours in a foreign country in the demeaning and mortifying circumstances outlined. His dignity was most certainly assaulted.

Mr. Graham submits that an award of \$100,000.00 for false imprisonment and \$50,000.00 for negligence ought to be made. He relies on **John Cassie v Detective Sergeant Williams and The Attorney General**, Suit No. CL C364 of 1994.

In the case of **John Cassie v Detective Sergeant Williams**, the claimant was instructed by the officer to accompany him to the station. Whilst at the station he was told he was free to remain there and assist in his investigation. The claimant was not released until about 21 1/2 hours later. He was awarded \$50,000.00 for false imprisonment. The claimant in that case was falsely imprisoned. However, he was not shackled and paraded in public, nor was he placed in a cage with criminals. He remained in the guard room. Further, there was no evidence that he was forced to exercise his excretory function under the circumstances Mr. Collman was forced to. Nor was there any evidence that he was forced to suppress the natural urge to release his waste as Mr. Collman. Further, Mr. Collman was detained for 18 hours in an environment particularly hostile to persons in breach of US Immigration Laws. The added anxiety accompanying this ordeal in a foreign country has to be factored in Mr. Collman's favour.

Mr. Graham also relied on the case of **Sharon Greenwood-Henry v The Attorney General** - Suit no. CL G 116 of 1999 in support of his contention that an award of between \$50,000.00 and \$100,000.00 is appropriate. The claimant in that case was arrested at Norman Manley International Airport at about 8:30 p.m. She was taken to the Airport Police Station and then to Kingston Public Hospital (KPH). The ambulance which conveyed her from the airport exclaimed its arrival very loudly with sirens blasting. This attracted a crowd of persons from whom several comments

insinuating that she was a conduit for drugs emitted. At KPH she was x-rayed and given laxatives. She was detained for about 15-16 hours. During her detention she was without the advice of her friends or family. She was awarded \$100,000.00 for false imprisonment.

Mr. Collman was also publicly debased. In fact he was manacled and shackled. He was imprisoned for 18 hours at least two hours longer than she. Most of those hours she was afforded the "relative luxury" of a hospital bed, whilst Mr. Collman spent most of his hours on the floor of a jail which was concrete, cold and dirty.

**Mrs. Greenwood-Henry** was deprived of the advice of her friends and family. Mr. Collman was thousands of miles away in a hostile environment. Mr. Collman's conditions of detention were far less pleasant.

**Mrs. Greenwood-Henry** was awarded the sum of \$700,000.00 for aggravated damages and \$700,000.00 for exemplary damages and \$ 26,000.00 for assault.

The behaviour of police officers and the doctor, involved in her case was high-handed, outrageous, particularly reprehensible and entirely unlawful. Mr. Collman was subjected to normal US procedure albeit harsh and insensitive.

She was stripped searched. Her vagina and anus were invaded by the doctor and a female officer. Bitter tasting laxative was administered to her despite her objection. Three times blood was removed from her without her permission and she was never given the results. She was also x-rayed without her permission.

The claimant in that case suffered post traumatic stress disorder. Mr. Collman has suffered post traumatic stress in that he continues, understandably to fear travel.

## The question of Aggravated Damages

Lord Devlin in **Rooks v Barnard** (1964) All E R, 407 said:

*“The object of damages in the usual sense of the term is to compensate.”*

He continued:

*“ Moreover it is very well established that in cases where damages are at large, the jury (or the judge) if the award is left to them can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong maybe such as to ignore the plaintiff's proper feelings of dignity and pride. They are matters which the jury can take into account in assessing the appropriate compensation.”*

In the instant case there is no evidence that Air Jamaica was malevolent or spiteful. Mr. Gordon might have been somewhat indifferent in his handling of the matter but there is no evidence of spite or ill will on his part or any of the defendant's officers towards Mr. Collman.

Mr. Robinson's contention that damages ought to be aggravated because Air Jamaica has since treated him hostilely and high-handedly is not supported by the evidence.

He contends that Air Jamaica's unwelcoming and un-reassuring behaviour upon his arrival justifies an award for aggravated damages.

It would have been thoughtful and humane if someone from Air Jamaica had met with him upon his arrival and saw to his needs. Mr. Graham submits that Air Jamaica was unaware of his arrival. The evidence is that Mr. Auld knew that he was on the flight and ought to have informed the officers in Kingston. The fact that he was dirty and

reduced to begging a ride home was a direct consequence of Air Jamaica's breach of duty to him and must be factored in the assessment of damages.

Mr. Robinson also submits that damages ought to be substantial because he was not visited by any officer of Air Jamaica during his period of confinement. This contradicts his submission that whilst Mr. Collman was in custody US Immigration would not allow anyone to communicate with him except a Consul for Jamaica. Further, S. 236.6 of the Immigration regulation prevented Air Jamaica obtaining any information relating to a detainee.

Lord Devlin illuminated his statement at page 412:

*"It is the class of case in which the injury to the plaintiff has been aggravated by malice or by the manner of doing the injury that is the insolence or arrogance by which it is accompanied. There is clear authority that this can justify exemplary damages though (except in **Gordon v Ryder** (167)) it is not clear whether they are to be regarded as in addition to or in substitution for the aggravated damages that could certainly be awarded."*

At the time Mr. Collman was informed that he was in violation of US Immigration Law and taken into custody there is no evidence that Air Jamaica's behaviour was arrogant, malicious or insolent towards Mr. Collman. There is evidence that an agent made observations about his computer and clothes that were arrogant and insolent. The agent rudely enquired of him where he had marijuana. Those comments did not emanate from an Air Jamaica's representative.

In order to aggravate damages, it is the behaviour of the defendant that must be taken into consideration. However, it is a claim in negligence. The question therefore is



whether it was reasonably foreseeable that if Mr. Collman was arrested for breach of Immigration regulation it was likely that he would be insulted in that way.

The evidence also is that the other officers were helpful and cooperative. It is Mr. Robinson's submission that were it not for the cooperation of the officers Mr. Collman's suffering would have been greater. The behaviour of the insolent officer was an isolated act of rudeness. This isolated act of insolence was not a consequence of Air Jamaica's breach that was foreseeable.

### **Handicap on the Labour Market**

Mr. Robinson submits that the claimant is entitled to an award for handicap on the labour market. According to him the inference is irresistible that there is a substantial or real risk that Mr. Collman will lose his present employment at sometime before the estimated end of his working life as a consequence of the incident.

He submits that since Mr. Collman has left, between 2002 and 2005 he has worked in four different jobs with four different airlines including his present job. He has not disclosed the 2000 incident to his employers subsequent to Air Jamaica's. His present job requires him to travel to Europe or Cincinnati for further training. The incident will resurface and it might cause him to lose his job or not advance if he is unable to obtain the training.

He relies on **Owen Francis v. Corporal Baker, Constable Bently and The Attorney General – S.C.C.A. 109/1991** in which case an award for \$250,000.00 which now translates to \$2,618,270.00 was made in November 1992 to a man who was shot, disabled and rendered incapable of working.

Mr. Graham submits that an award ought not to be made under this head as there is no likelihood of Mr. Collman losing his job as a result of the incident.

### **Ruling**

There is no evidential connection with the incident and the fact that Mr. Collman has worked at four different jobs. It is his evidence that he has not informed his employers and there is no evidence that such a discovery was made. His frequent change of employment cannot therefore be attributed to the incident.

He has expressed the fear that a revelation of the incident to his employers might result in the termination of his employment. What he has suffered is unfortunate. However, the records are available which will indicate that what transpired was not as a result of any wrong doing on his part.

The US Embassy has issued him a letter which exonerates him. It is not unreasonable on a balance of probabilities to find that such a discovery will only evoke sympathy for Mr. Collman. The risk of Mr. Collman losing his job on a balance of probabilities as a result of his employers discovering the incident is not even slight. In the circumstances, whatever fears he has in this regard must be considered as irrational. I do not find that he is entitled to an award for handicap on the labour market.

### **Conclusion**

A. S. Burrows in his text **Remedies for Torts and Breach of Contract** opined as follows:

*'As with all non-pecuniary losses, the aim must be to award a fair and reasonable sum which is in line with other mental distress awards. It would also be sensible to maintain "external consistency", most obviously with damages for pain and suffering in personal injury cases, but as yet there has been little sign of judicial recognition*

*of this. Clearly, however, the courts do not regard mental distress as that serious (although of course the worse the distress the higher the damages should be) for they have often stressed that awards should be kept at a moderate level e.g. Perry v. Sidney Phillips & Son (1982) 1 W.L.R. 1297; Archer v. Brown (1984) 2 All E.R. 267.*

This court is of the view that Mr. Collman is entitled to compensation for the following:

- a. His imprisonment;
- b. feelings of humiliations suffered;
- c. injury to dignity;
- d. mental suffering;
- e. feelings of disgrace;
- f. the subsequent harassment and anxiety;
- g. depression

Consequently, the sum of \$1,500,000.00 is awarded for General Damages with interest at 6% per annum from 12<sup>th</sup> April 2004 to 12<sup>th</sup> May 2006.

Special Damages in the sum of \$133,447.56 with interest from 5<sup>th</sup> December 2000 to 12<sup>th</sup> May 2006.

Costs to be taxed if not agreed.