



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2008 HCV 04100

BETWEEN	CASEY WILSON-BROWN	CLAIMANT
AND	NATIONAL SOLID WASTE MANAGEMENT AUTHORITY	1 ST DEFENDANT
AND	JOAN GORDON-WEBLEY	2 ND DEFENDANT

Ms. J. Wilcott and Mr. Michael Howell instructed by Knight, Junor & Samuels for the claimant.

Ms. T. Hamilton instructed by the Director of State Proceedings for defendants.

Heard: 11th May 2011 and 1st March 2012

Wrongful Dismissal – Breach of Contract of Employment – No Reason for Dismissal – Damages for Breach

G. Brown, J.

[1] The claimant was formerly employed to the 1st defendant as a Procurement Officer up to January 25, 2008 when her services were terminated. On the 22nd August 2008 she filed an action seeking the following:

- (a) A declaration that the claimant was wrongfully terminated by the defendants;
- (b) Damages;
- (c) Damages for breach of contract;
- (d) Special Damages;
- (e) All monetary and other benefits due to the claimant pursuant to her employment from January 25, 2008 to date and continuing;
- (f) Interest at such rate as the Court thinks fit;
- (g) Costs; and
- (h) Such other relief as the Court thinks fit.

[2] It was the defendants' case that the claimant's termination was in accordance with the terms and conditions of her employment letter of June 2003. The defendants, in their defence filed, never plead that the claimant was dismissed for cause and did not seek an amendment to include this. Notwithstanding the 2nd defendant sought to justify her decision to terminate the claimant's employment.

[3] The letter dated January 25, 2008 signed by the 2nd defendant to the claimant terminating her employment reads:

Dear Mrs. Wilson-Brown.

Please be advised that your contract of employment with the National Solid Waste Management Authority is terminated with immediate effect.

In accordance with the terms and conditions of your contract, especially the termination clause, you will be paid one (1) month salary in lieu of notice.

Your final payment will be dealt with by the Finance Department.

The National Solid Waste Authority wishes to thank you for your service to the organisation and wish you all the best in your future endeavours.

*Yours sincerely
National Solid Waste Management Authority*

[4] Thus, the 2nd defendant at paragraph 42 of her witness statement stated as follows:

In keeping with the termination clause that was agreed to and signed by Mrs. Wilson-Brown in her letter of employment dated 17 June 2003, her final payment was prepared by way of National Commercial Bank cheque number 691049 and dated January 31, 2008, which included one month's pay in lieu of notice, payment in lieu of 5 days vacation leave earned and not taken, motor vehicle upkeep allowance for the period January 1-25, 2008, special allowance.

[5] This letter was never received by the claimant and the cheque was never paid over. The defendants said this letter was sent to her address on their file and returned as unclaimed.

[6] The claimant on the other hand maintained that the defendants were in breach of the policy as stated in the staff manual. It reads:

It is the policy of the N.S.W.M.A:

(a) To maintain the greatest possible stability of employment and to retain in its service, within the limitations of its operations, all employees who are performing their duties satisfactorily;

(b) To consider all the factors relating to the merits of the case whenever the question of termination arises;

(c) To terminate employment only for justifiable reasons;

Dismissal

Should it become necessary to dismiss an employee, the reason for dismissal will be stated and due notice in writing or pay in lieu of notice will be given.

[7] In this case the letter terminating the claimant's employment did not state the reason for dismissal. The evidence disclosed that the 2nd defendant had accused her of altering a purchase order in order to benefit a former employee. The claimant denied the allegation and insisted that this was done by another employee without her knowledge. This employee supported the claimant when he was questioned by the 2nd defendant and took responsibility for the act. He denied that she had instructed him to do so and refused to implicate her in the matter.

[8] The 2nd defendant said that she had instructed the internal auditor to investigate the matter and the findings of the investigation formed the basis of the reason for dismissal. However the findings did not implicate the claimant of any misconduct. Notwithstanding the 2nd defendant terminated the claimant's employment with the organisation as she had formed the opinion that "*Mrs. Wilson-Brown deliberately lied to me as the Executive Director and the NCC when she said that there was only one supplier of biodegradable bags.*"

[9] It is settled law that wilful disobedience is a sufficient ground for dismissal. In **Laws v London Chronicle** (Indicator Newspapers) Ltd.¹ Evershed M.R. said:

“.....since a contract of service is but an example of contracts in general, so the general law of contract will be applicable, it follows that the question must be—if summary dismissal is claimed to be justifiable—whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service. It is, no doubt, therefore generally true that wilful disobedience of an order will justify summary dismissal since wilful disobedience of a lawful and reasonable order shows a disregard—a complete disregard—of a condition essential to the contract of service namely, the condition that a servant must obey the proper orders of the master, and that unless he does so, the relationship is, so to speak, struck fundamentally.”

[10] In the letter of dismissal to the claimant it was stated that she would be paid “one month salary in lieu of notice” and a cheque was prepared in keeping with this. However it was not paid as the defendants said she could not be found at the address on their file. The defendants are now claiming that the dismissal was for cause. The failure to state the reason for dismissal was a clear breach of the 1st defendant’s policy. The evidence showed that Mrs. Gordon-Webley was upset with the claimant and was no longer prepared to keep her as an employee although the charge was not proved. There was no evidence that the claimant had instructed anyone to disobey any lawful order or to alter the purchase order issued. Instead she acted on trivial and spurious reasons in order to accomplish her goal. It is my opinion that on a balance of probability the claimant’s dismissal was wrongful and was done without cause. The 1st defendant is therefore liable.

What are the Remedies for breach of contract of employment? (Not a fixed term contract)

[11] The measure of damages for wrongful dismissal is prima facie the amount that the claimant would have earned had the employment continued according to the contract subject to a deduction in respect of any amount

¹ (1959) 1 W.L.R. 698

accruing from any other employment which the claimant, in minimizing damages, either had obtained or should have reasonably obtained. The measure of damages is obtained by taking into consideration the usual rate of wages for the employment contracted for, and the time lost before a similar employment could be obtained. The law considers that employment in any ordinary branch of industry can be obtained by a person competent for the place, and that the usual rate of wages for such employment can be proved, and that it is the duty of the servant to use diligence to find another employment.

The amount the employee would have earned under the contract

- [12] The amount the claimant would have earned under the contract is the salary or the wages which the defendant had agreed to pay. The value of benefits in kind must also be taken into account e.g. rent-free residence, board and lodging, lunch vouchers and benefits under a pension scheme.
- [13] **The Employment Termination and Redundancy Payments Act s. 3** allows for there to be a minimum period of notice that should be given by employers to employees when terminating their period of employment.
- [14] Therefore the remedies available for breach of contract of employment are damages. There are a number of decisions from the court that deals with this issue. In **Cocoa Industry Board and Cocoa Farmers Development Company Limited and F.D. Shaw v Burchell Melbourne**² damages was awarded for wrongful dismissal of an employee. The claimant/respondent was employed by the defendants/appellants as a book-keeper. His contract of employment stated, inter alia, that his services were terminable on one month's notice or one month's salary in lieu of notice. In addition, the company's manual stated that termination could be effected immediately by mutual consent, by reasonable notice on either side or summarily for adequate cause. The claimant's/respondent's contract of service was

² (1993) 30 JLR 242 (CA)

terminated on the basis that his performance was below expectation and that he betrayed the confidence his employers had placed in him. He was paid one month's salary in lieu of notice. The claimant brought an action for wrongful dismissal. Judgment was granted in his favour and the trial judge awarded \$7,200 representing a month's salary less statutory deductions as special damages and exemplary damages of \$20,000. The defendants appealed. The Court of appeal held:

(i) Where it is an express term of a contract that an employee who is dismissed without notice is to be paid his wages for a certain period in lieu of notice or where there is usage to that effect, the measure of damages for breach is the amount of such wages. The trial judge's award in the instant case of nine months net salary as special damages was arbitrary as there was no evidence to establish that the period of nine months would have been the time it would take a person in the respondent's position to obtain employment. In any event, this type of award is only properly made where the contract is for a fixed period and is terminated before the set date;

(ii) it is settled law that exemplary damages may only be awarded in an action in tort and then only in a limited category of cases; the award for exemplary damages in the instant case was wrong in law. Neither exemplary nor aggravated damages could be awarded.

[15] In **Addis v Gramophone Co, Ltd**³ where an employee had been wrongfully dismissed, the court stated that in an action for wrongful dismissal the jury, in assessing the damages, are debarred from awarding exemplary damages because of circumstances of harshness and oppression accompanying the dismissal and injuring the feelings of the servant, and also from taking into consideration the fact that the dismissal will make it more difficult for him to obtain fresh employment.

[16] It is clear from these authorities that the court is precluded from awarding damages due to the circumstances under which an individual was wrongfully dismissed. This point is further reinforced by the **Addis v Gramophone** which is the leading authority to state that there can be no damages given for loss of

³ [1908-10] All ER Rep 1

reputation for breach of contract. The judges in the House of Lords stated that the claimant's action for wrongful dismissal should be confined to damages for his direct pecuniary loss, such as loss of salary.

[17] In **Kaiser Bauxite Company v Vincent Cadien**⁴ the court held that, in a case of wrongful dismissal, the damages recoverable is the estimated pecuniary resulting as a reasonable and probable consequence from the premature determination of the employee's service. Since under the Employment (Termination and Redundancy Payments) Act the respondent would have been entitled to be given six weeks notice of termination if no cause had been shown, that would have been the appropriate measure of damages for his wrongful dismissal.

The claimant in this instant is therefore entitled to one month salary and motor vehicle upkeep and any outstanding or unused vacation leave. The defendants had calculated this to be the sum of \$235,420.48.

Judgment for the claimant in the sum of \$235,420.48 with interest at the rate of 6%.

Cost to be agreed or taxed.

⁴ (1983) 20 JLR 168 (CA)