IN THE COURT OF APPEAL OF BELIZE AD 2014

CIVIL APPEAL NO 35 OF 2010

CHRISTINE PERRIOT Appellant

v

(1) **BELIZE TELECOMMUNICATIONS LIMITED**
(2) **BELIZE TELEMEDIA LIMITED** Respondents

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BEFORE

The Hon Mr Justice Manuel Sosa	President
The Hon Mr Justice Douglas Mendes	Justice of Appeal
The Hon Mr Justice Samuel Awich	Justice of Appeal

Appellant in person.
M C E Young SC and D Arzu Torres for the respondents.

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26 and 27 June 2013, 14 March and 7 November 2014.

SOSA P

[1] I concur in the reasons for judgment given, and the orders proposed, in the judgment of Awich JA, which I have read in draft.

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SOSA P

MENDES JA

[2] I am in agreement with the majority that this appeal stands to be dismissed and that the cross-appeal is to be allowed, but only to the extent of reducing the total award of damages made by the learned trial judge. But because the amount which I would substitute for the award made in the court below, and the reasons for coming to my conclusions so substantially differ from the majority, I am constrained to record my dissent.

[3] The appellant was once employed with Belize Telecommunications Limited, the first respondent on this appeal. She was dismissed by letter dated 27 February 2007. Belize Telemedia Limited, the second respondent, subsequently took over the first respondent's undertaking and now stands in the first respondent's shoes as far as liability in respect of the appellant's claim is concerned. Any reference to 'the respondent' hereafter is accordingly to be taken as a reference to the respondents collectively.

[4] On 11 June 2010, Sir John Muria J held that the appellant had been dismissed from her employment with the respondent because of her participation in lawful trade union activities, in violation of section 5(2) of the Trade Unions and Employer's Organisations (Registration, Recognition and Status) Act Cap. 304. In the exercise of his powers under section 11 of the Act, Muria J ordered the respondent to pay compensation in the sum of $350,870.40. The order which was subsequently entered and signed by the Registrar includes a further order for interest at the rate of 6% per annum on the award of compensation starting from 27 February 2007, the date on which the appellant’s employment was terminated.

[5] The appellant appealed against the award of compensation contending that the trial judge ought to have included sums for what she referred to as 'severance pay' and for her injured feelings and mental distress; that he failed to pay any sufficient regard to her evidence relating to her loss of future earnings and ought to have awarded a larger

amount under this heading; and that he failed to take into account the evidence that the respondent took back from her the sum of approximately $19,000.00 initially paid to her as termination benefits. Although she initially included as a ground of appeal that the rate of interest awarded was too low, she abandoned this ground at the hearing.

[6] The respondent initially cross-appealed against the trial judge's ruling that the appellant was dismissed for her trade union activities. However, on the eve of the hearing of the appeal, the respondent notified the court that it did not intend to pursue this aspect of its cross-appeal. The respondent nevertheless maintains its original position that the trial judge's award was based upon wrong principles and in any event was excessive, and further challenges the award of interest, pointing out that, although it appeared in the final order, it did not appear in the trial judge's written judgment.

[7] I am satisfied that the trial judge adopted the wrong approach in his award of compensation and I have accordingly assessed afresh the compensation to which the appellant is entitled. I am also satisfied that the award of 6% interest from the date the claim was filed is appropriate and cannot be impugned on the grounds put forward by the respondent. I will accordingly first examine the proper approach to the award of compensation under section 11 of the Act and say where I think the trial judge went wrong. I will then give my reasons for the award which I think is appropriate in the circumstances of this case.

Principles for the assessment of compensation

[8] Section 11(3) and (4) of the Act provide as follows:

> "(3) Where the Supreme Court finds that an employee was dismissed in contravention of subsection (2) of section 5, it may make an order directing the reinstatement of the employee, unless the reinstatement of the employee seems to that Court not to be reasonably practicable, and may further make such other orders as it may deem just and equitable, taking into account the circumstances of the case.

> (4) Without prejudice to the Court's powers under subsection (3), where the Supreme Court finds that a complaint made under subsection (1) has been proved to its satisfaction, it may make such orders in relation thereto as it may deem just and equitable, including without limitation orders for the reinstatement of the employee, the restoration of benefits and other advantages, and the payment of compensation."

[9] The principles to be applied in the exercise of the Supreme Court's power to award compensation under section 11 were first examined by this Court in ***Mayan King Limited v Reyes et al*** (CA 19 of 2009, 21 October 2010). Writing for the Court, Sosa JA (as he then was) rejected counsel's submission that a termination contrary to section 5(2) of the Act was akin to the unfair dismissal cause of action available to dismissed workers in England. In his view, section 5(2) created a new cause of action which could not "by analogical reasoning, be affected by common law rules and authorities relating to any other form of dismissal known to law in this jurisdiction, let alone in a foreign jurisdiction not having a statute containing similar provisions" (para 92). Sosa JA accepted wholeheartedly the proposition that section 11 mandated that any award of compensation must be just and equitable and that in making an award the Supreme Court is vested with "the widest possible power to grant relief" (para 92). However, he rejected any notion that a court would "dispense compensation arbitrarily", but rather would exercise its jurisdiction under section 11 "judicially and on the basis of principle." The upshot of this was that, in determining what was just and equitable, the Court was not restricted to "the loss sustained by the Complainant" but could have regard to and compensate for "injury to pride and feelings" (para 93).

[10] Specifically, Sosa JA held that workers dismissed in breach of section 5(2) were entitled to loss of remuneration for the period of time during which they were out of work which, in the absence of specific evidence in that regard, could be assessed on the basis of the affect which the manner and circumstances of the dismissal had on the dismissed workers' "chances of finding new employment in a shrinking labour market" (para 94). He awarded each worker twelve months pay under this head. In respect of

injury to each worker's pride and feelings, he awarded a sum of $30,000.00 which he was careful to point out had "nothing to do with punishment."

[11] Mayan King appealed to the Caribbean Court of Justice which unanimously reduced the awarded made by this court (***Mayan King Ltd v Reyes et al*** [2012] CCJ 3 (AJ)), but Nelson J, in dissent, would have reduced the award even lower. Writing for the majority, Saunders J agreed with the approach taken by Sosa JA, that is to say, that it would be wrong to assess compensation as if the remedies available to a dismissed worker under section 11 "were confined to common law paradigms relating to a cause for breach of an employment contract and related damages" (para 29). It was the court's duty to ensure that the new cause of action had "content and meaning" having regard to the "ample means for its enforcement" provided for in the Act (para 30). In the appropriate case, therefore, an award for distress and inconvenience may be justified (para 32). On the other hand, it was not appropriate to have regard to cases involving the violation of constitutional rights for guidance. The reason for this is that damages awarded against the State for the violation of constitutional rights may "embody elements like deterrence that are more closely associated with punitive sanctions" and, as a result, would ordinarily be greater than in a case involving a breach of a statutory right by a private individual (para 32). Nevertheless, it is appropriate to have regard to such cases "simply to get an idea of the range within which certain damages awards have been given", provided that the caveats concerning the distinctive features of such cases are borne in mind.

[12] With regard to specific heads of damage, Saunders J, in agreement with the approach taken by this court, divided the monetary award to which a worker is entitled into "that aspect which represents quantifiable loss suffered and that aspect which is not so quantifiable" (para 33). Included within the first aspect of the monetary award is the earnings lost as a consequence of dismissal. In this regard, Saunders J rejected the notion of a conventional award and emphasised that the onus lay on the dismissed worker "to give positive evidence in relation to the availability of or difficulty in securing alternative employment "(para 34). The fact that the "dwindling fortunes" of the industry

in which the workers were employed may have affected their chances of finding new employment was not enough to justify the award of one year's salary, as distinct from any other period, as this Court had held (para 33). Evidence which would be relevant would include (para 34):

> "How old was each claimant? Were the claimants employed fortnightly, monthly? What was their contractual notice period? How much notice or wages in lieu of notice was received by those workers who were retrenched respectively in February and in March … How long did it take each worker to obtain fresh employment? How did earnings from the new employment compare with those obtained from Mayan?"

[13] In the absence of clear evidence of this sort, the Court felt unable to make the inference which this Court did and accordingly rejected the award of one year's salary since such an award "would secure to (the dismissed worker) an element of double-dipping since each of them is also to receive a lump sum" (para 35). Further, "the rationale for so generous an award (that is not rooted in solid evidence) would overlap with the rationale for a compensatory lump sum" (para 35). In the case of one of the workers, the court reduced the award to three month's pay given that there was evidence that he obtained fresh employment some three months after the dismissal. With regard to the others, the court awarded an amount equivalent to the period over which they were usually paid (fortnightly in this case) and increased this amount to one month giving that as a result of the dismissals, they would be required to find new housing (para 35).

[14] With regard to the heading of non-quantifiable loss, which Saunders J. referred to as the "compensatory lump sum", the court was required to have regard to all the circumstances surrounding the dismissal such that the compensation awarded is just and equitable (para 36). Included among the relevant circumstances are the length of employment and the manner of the dismissal (para 36), the degree of reprehensibility of the employer's conduct in so far as this may have impacted on the dismissed worker (para 42), whether the dismissed worker had an unblemished record (para 43), and

whether he or she suffered mental distress (para 43). On the other hand, the court must bear in mind that the purpose of the award is not to punish the defendant (para 42) and "must strive to avoid giving a sum that is simply too high or one that is just too low" (para 44). Having regard to the character of the employment in this case, Saunders J. was satisfied that the sum of $30,000.00 awarded by this court was too high and that the sum of $15,000.00 was just and equitable for the wrong done to the workers.

The trial judge's award

[15] The trial judge awarded the appellant the sum of $90,000.00 by way of compensation for the breach of the appellant's rights and freedoms which he described as being guaranteed by the Constitution and furthered by sections 5 and 11 of the Act. He did not say what factors he took into account in arriving at this sum but he did accept that matters which affect the gravity and seriousness of the conduct of the defendant were relevant.

[16] Apart from this amount being patently excessive having regard to the level of the award made by the Caribbean Court of Justice in the ***Mayan King*** case, it is clear that in so far as the trial judge treated the case as one involving the breach of a constitutional right, he approached the award under this heading from an erroneous stand point. The appellant, whose able arguments on her own behalf would justifiably induce envy on the part of a young practitioner, argued that it was right for the trial judge to treat this case as one involving a breach of the constitution. After all, she did invoke section 13 of the Constitution in her claim form, she pointed out, and the respondent is part owned by the government of Belize. But the fact that the Government of Belize has a shareholding interest in an otherwise private corporate entity does not transform the appellant's claim from one sounding in private law to one tenable against the state for the breach of constitutional rights. As was held by this Court and confirmed by the Caribbean Court of Justice in ***Mayan King***, it was accordingly wrong to treat the case as one for constitutional redress. For these reasons, the trial judge's award under this

heading must be set aside and it now falls to this court to determine what an appropriate award for compensation for breach of the appellant's statutory rights would be.

[17] Muria J. also awarded the appellant the sum of $260,870.40 made up primarily of the remuneration and other benefits which the appellant would have enjoyed over a three year period. He added to that a nominal amount of $15,000.00 attributable to life, health, dental and vision insurance and the sum of $260.00 for medical bills. He referred to the three year award as severance pay, the amount of which was to be determined having regard to the nature of the appellant's employment, her age, experience, training, qualifications and length of service and the availability of similar employment. But it is clear that what he was actually calculating was the period of reasonable notice to which the appellant would have been entitled in a common law action for wrongful dismissal on the assumption that her contract of employment did not contain an express term for termination by notice. That this is so is apparent from the trial judge's citation of the decision of the High Court of Ontario in ***Bardal v Globe & Mail Limited*** (1960) 24 DLR 140, a case which is frequently the reference point in the assessment of damages for wrongful dismissal at common law. It is also apparent from his description of his concept of severance pay as being "an ex gratia payment based on the concept of reasonable notice given to an employee in a particular case", although reasonable notice, in the absence of an express contractual notice period, is something to which an employee is entitled as of right where he or she is dismissed without cause, and is not paid '*ex gratia*' by any means.

[18] It is also clear, therefore, that in light of the finding in the ***Mayan King*** case that the remedies available to workers under section 11 are not confined to the remedies available at common law, the trial judge took the wrong approach and the task now falls to this court to assess the appellant's damages.

Assessment

Loss of Earnings

[19] I will begin by assessing the earnings which the appellant has lost as a consequence of her unlawful dismissal.

[20] The appellant was dismissed by letter dated 27 February 2007 with immediate effect. She commenced these proceedings on 23 March 2007 and applied for an interim order of reinstatement in her previous position which the Supreme Court granted on 5 April 2007. She returned to work on 10 April 2007. She eventually resigned her employment with the respondent on 9 November 2007 for reasons which she claimed constituted constructive dismissal and she amended her claim accordingly to include a claim for damages on this basis. However, it is not necessary to consider her complaints of harassment which she said led to her forced resignation or to assess the impact which her resignation might have had on her claim for redress for unlawful dismissal because, on 28 June 2008, this court set aside the interim order of reinstatement and the trial judge found that the appellant accordingly remained terminated from her employment as from 27 February 2007. As he noted (para 8):

> "The reinstatement was, in law, ineffective and consequently, no claim can be brought by the claimant or counter-claim by the defendant, arising from her reinstatement between 5 April and 9 November 2007. Very properly the claimant withdrew her claim for constructive dismissal which was alleged to have occurred on 9 November 2007."

[21] Right or wrong, there is no appeal or cross-appeal against this finding and, accordingly, the impact of the appellant's resignation falls to be ignored, except to the extent that she would be disentitled from claiming any damages for the period during which she was reinstated. In this regard, it was common ground that the appellant received all that she was entitled to during this period, although she was not paid her monthly salary and other benefits during the initial months of her reinstatement, the respondent electing to set off against her monthly entitlements the sum of $15,846.81

which was paid to her on termination. But there is clear evidence that the appellant was unemployed and was not paid for the period 27 February 2007 to 10 April 2007.

[22] It is also clear that by 25 February 2008, the appellant was still unemployed. In an affidavit sworn to on 4 December 2007, which was accepted as part of her evidence in chief at the trial, she deposed that since she left the respondent's employment the previous month she had been thinking of places where she could find employment but since her primary skills and experience were unique to the telecommunications industry, she was unable to come up with a company that she could fit into. The appellant, who was 37 years of age when she was terminated, began her employment with the respondent in 1990 when she was 20 years old, which meant that she had spent her entire working life in the telecommunications industry. It is not disputed that there is only one other telecommunications company in operation in Belize and that the respondent is the dominant provider in the industry, making it that much more difficult for the appellant to find another job suited to her particular skills.

[23] She deposed further that she was getting feedback from business people that a press release issued by the respondent had the effect of scaring off potential employers. The release she referred to was published after the interim order reinstating her was made in April 2007. In it, the respondent expressed the view that the order was "unfortunate from the stand point of all employers in Belize" since it would not be in the interests of employers to be forced to employ someone who "continually works to undermine the company and its management with a detrimental effect on the efficiency of its business and overall staff morale." The respondent therefore called on the Belize Chamber of Commerce, the Belizean Business Bureau and all employers in Belize "to endorse these concerns and to give recognition to employers' constitutional rights."

[24] It is also significant that the respondent had earlier published a release dated 28 February 2007 explaining its decision to dismiss the appellant. The release stated in part:

> "The action displayed by Ms. Perriott, and the personal views she has expressed, concerning the Management team and the Company as a whole, have clearly indicated that she is not happy working as an employee of BTL within the current operating environment. The Company considers that Ms. Perriott had not been adding value to the company for some time, and indeed has been completely counter productive. Ms. Perriott's employment has therefor been terminated, and she has been paid all her entitlements under the law in full, and in addition she has been paid an additional ex-gratia payment...
>
> Her former position has now been filled by a well qualified, motivated, and hard working BTL employee, with that person receiving a well deserved promotion. Efforts will now be made to appoint a replacement to the BTL workforce to fill the vacancy that has been created at the lower level...
>
> BTL is focussed on delivering the services demanded by customers at affordable and attractive rates. The company can only achieve these objectives with the support and cooperation of a skilled, loyal, hard working and flexible team that is prepared to work and support the efforts of management. There is no room at BTL for those that want to engage in disruptive activities and create conflict, and who do not have the interest of all stakeholders at heart, namely its employees, shareholders, customers and the whole of the Belize community that we serve.

The clear implication is that the appellant was someone who engaged in disruptive activities, created conflict, and who paid scant regard to the interests of the respondent's employees, shareholders, customers and the whole of Belize.

[25] In the light of the respondent's public statements it is not surprising that the feedback which the appellant said she received was that she was *persona non grata* among the business community and that her prospects for employment in the private sector were dim.

[26] Given these challenges, the appellant began exploring the possibility of self-employment to provide caregiver services to working parents. To that end, as she deposed in her affidavit sworn to on 25 February 2008, she completed an online course on how to start her own small business.

[27] There is no evidence whether the appellant was able to start up her own business after February 2008 and, if so, how much profit she was able to make. But it did emerge in the course of her cross-examination at the start of the trial in July 2009 that she had been employed with the Belize City Council as the Director of Human Resources and Public Relations for a period of nine months ending in January 2009, which means that she began her employment there at the beginning of May 2008. Working backwards, she was accordingly unemployed for the period November 2007 to April 2008 and then again from February 2009 to June 2009, making a total of 12 months since her termination at the end of February 2007 during which she was unemployed. The question is whether she is entitled to be compensated for this entire period.

[28] Mr. Young submitted that no claim could be made for loss of earnings beyond May 2008. The appellant's employment with the Belize County Council effectively stopped the clock running on any claim for monetary loss since any period of unemployment thereafter would no longer be traceable to the appellant's unlawful termination. In other words, he submitted, the chain of causation is broken where a dismissed employee finds alternative employment.

[29] I do not agree. Under section 11 of the Act, the Supreme Court is mandated to provide a worker who is dismissed for her trade union activities with 'redress' and to make such orders as it may deem just and equitable, including the restoration of benefits and other advantages and the payment of compensation. The ample power which is thereby vested in the Supreme Court has been alluded to by Saunders J in the ***Mayan King*** case and he took pains to emphasise that it is the duty of the court to ensure that the right not to be dismissed for one's trade union activities has content and meaning. In ***Maharaj v Attorney General of Trinidad and Tobago*** [1979] AC 385, it was held that the term 'redress' as used in the constitution of Trinidad and Tobago bears its ordinary meaning of reparation or compensation, including monetary compensation. As used in section 11, coupled with the court's expressed power to make orders which are just and equitable and to restore benefits and

advantages, the power to provide a dismissed employee with 'redress' in my view empowers the court to adopt a ‘make whole’ philosophy and to put the dismissed worker as far as is reasonable practicable in the position she would have been in had she not been unlawfully dismissed. This means that she should be fully compensated for the loss of wages and other benefits which she could reasonably be expected to have earned but for her unlawful dismissal.

[30] We have not been referred to any evidence which suggests that the appellant would not have continued in her employment with the respondent until at least July 2009. The fact that the appellant was once again unemployed in February 2009 is accordingly directly traceable back to her unlawful dismissal two years previously. The fact that a worker who is unlawfully dismissed has obtained alternative employment certainly means that she must give credit for anything she earned in her new employment as part of her duty to mitigate her loss, but it does not necessarily break the chain of causation. Take, for example, a worker who immediately after her unlawful dismissal finds alternative employment without any loss of pay or other benefits, but is terminated three months later on the grounds of redundancy, that is to say, through no fault of her own. On Mr. Young's submissions, that worker would not be entitled to any redress under the heading of monetary loss, even if she would undoubtedly have continued to be employed with her former employer but for the unlawful dismissal. In such a scenario, the employer who violated the worker's right to engage in trade union activities would benefit disproportionately from the fact the worker was able immediately to find alternative, if short lived, employment. That could not be a result which is just and equitable.

[31] It would be entirely different if an employee who found alternative employment were to abandon her new job without any just cause or were to have conducted herself in such a way as to bring about her lawful termination. In such a case, she could not claim any loss for any period thereafter during which she remained unemployed because she will have failed to mitigate her loss. It may also then be justifiably said that the chain of causation linking the unemployment into which she plunged herself and her

prior unlawful dismissal has been broken. The cause of her continued unemployment would in such circumstances be her own decision to abandon her new job or to misconduct herself in such a way as to give her new employer no choice but to terminate her employment - see ***Levitt - The Law of Dismissal in Canada***, 3rd ed., pp 10-38-10-39.

[32] But it is important to keep in mind that in ***Gest Plc v Lansiquot*** [2002] 1 WLR 3111, the Privy Council made clear (at para 16) that

> "... if a defendant intends to contend that a plaintiff has failed to act reasonably to mitigate his or her damage, notice of such contention should be clearly given to the plaintiff long enough before the hearing to enable the plaintiff to prepare to meet it. If there are no pleadings, notice should be given by letter."

In so concluding, their Lordships declined to follow their earlier decision in ***Selvanayagam v University of the West Indies*** [1983] 1WLR *585*, where it was held that the onus lay on a plaintiff to prove on a balance of probabilities that her failure to mitigate her damages was reasonable. Instead, their Lordship referred with approval to a statement by Sir John Donaldson MR in ***Soitros Shipping Inc v Sameiet Solholt*** [1983] 1 Lloyd's Rep 605, 608, where he said:

> "A plaintiff is a under no duty to mitigate his loss, despite the habitual use by the lawyers of the phrase 'duty to mitigate'. He is completely free to act as he judges to be in his best interests. On the other hand, a defendant is not liable for all loss suffered by the plaintiff in consequence of his so acting. A defendant is only liable for such part of the plaintiff's loss as is properly to be regarded as caused by the defendants' breach of duty."

[33] It emerged during cross-examination of the appellant that she was dismissed from her employment with the Belize County Council in January 2009. Although somewhat sketchy, it appears that the appellant was initially suspended for a period of two weeks but later the Mayor apologised to her and wrote a letter saying they would give her back the salary she was denied during the suspension. Subsequently, she was

called to a meeting and told by the Mayor that she was being terminated because of 'politics'. The appellant maintained that her termination had nothing to do with her performance and that, in the meeting at which she was informed of her dismissal, the Mayor told her that she was a 'good worker' but that she was forced to terminate her or "otherwise (it) would be problem for me."

[34] The respondent did not plead that the appellant had failed to mitigate her loss by bringing about her dismissal from the Belize County Council. We have also not been referred to any notification which may have been given to the appellant that the reasons for her dismissal from the Belize County Council would be raised in support of a plea that she had failed to mitigate her loss. The appellant's brief evidence on the point must accordingly be accepted. She was not dismissed because of her performance but because of "politics". In the absence of any notification by the respondent of its intention to raise the issue of her termination from the Belize County Council, it would be unfair to make an adverse finding on this point against the appellant – see ***Terrence Calix v Attorney General of Trinidad and Tobago*** [2013] UKPC 15, para 21. I therefore find that the chain of causation was not broken by the appellant's employment with and subsequent dismissal from the Belize County Council. Accordingly, in my judgment, the appellant is entitled to be compensated for the entire period of twelve months prior to July 2009 during which she was unemployed.

Loss of future earnings

[35] The appellant has urged upon us with admirable persistence that she should be awarded all of the earnings she lost beyond the date of her trial, right up to the date she would ordinarily have retired at age 55. Her reasoning is that, but for her unlawful dismissal, she reasonably expected that her employment would have continued until retirement and she should therefore be compensated in full for her loss. Her assumption was that she would be unemployed, due to her unlawful dismissal, for that entire period.

[36] In my judgment, loss of future earnings for a period of unemployment, or for employment at a salary lower than that previously enjoyed, beyond the date of trial, is an appropriate heading of loss for which redress should be given under section 11. Suppose, for example, that an employee who is unlawfully dismissed manages to bring her trial on within months of her dismissal and is able to demonstrate by cogent evidence that she is likely to continue to be unemployed for the foreseeable future, despite her best efforts to find alternative employment, in circumstances where she reasonably expected that the employment from which she was unlawfully terminated would have in ordinary course continued beyond the trial date. Had the trial been brought on later, she would no doubt, utilising the same evidence, have been able to lay claim to all earnings she had lost up to the trial. It is not just or equitable that she should be worse off because she was fortunate enough to secure an earlier than usual trial date. It does not appear that this point arose in the ***Mayan King*** case since at the date of the trial all of the workers concerned were employed.

[37] Except in a case where the dismissed employee was due to retire within a relatively short period of time after the dismissal, it would clearly not be right to make an award for loss of earnings right up to the date of retirement except in the most exceptional circumstances and in the face of the clearest evidence that the dismissed employee has virtually become unemployable as a consequence of the unlawful dismissal. There is no such evidence in this case and I would accordingly reject the appellant's claim for all her earnings until retirement. There is no reason to think that the appellant will not obtain suitable employment at some time, if she has not already, and there is no guarantee in any event that she would have continued to be employed with the respondent throughout. Redundancy may have intervened. She may have fallen ill. She may herself have gone on to greener pastures.

[38] The fact, however, is at the date of trial the appellant was still unemployed and the task of this court is to determine whether she should be awarded any further sum under this hearing. As in the ***Mayan King*** case, the difficulty here is the paucity of evidence. What is required in my judgment is a projection of the likely period during

which the appellant would have continued to be unemployed beyond the trial in July 2009. She should be compensated for lost earnings up until the time she can fairly be expected to find reasonably suitable alternative employment – see ***Christie, England and Cotter*** – ***Employment Law in Canada****,* Butterworth's 2nd ed., p. 714. But this would require evidence of the labour market conditions for the type of work which the appellant was previously engaged in and suitably alternative work, and the attractiveness of the appellant in that market. The latter would depend on her age, experience and qualifications.

[39] There is evidence of the last mentioned matters. And there is some evidence that in the period immediately following the appellant's dismissal the respondent issued statements which could only have poisoned the atmosphere against the appellant and diminished her prospects of employment in the private sector. But whether and to what extent the disability thereby created still operated some 2½ years later is not known and was not explored in evidence before the trial judge. On the other hand, it is a notorious fact that in a small country like Belize, telecommunications companies do not proliferate and accordingly the natural market for the appellant's skills would have narrowed. In addition, given that she had spent her entire working life in the telecommunications industry, her ability to compete with others and therefore her attractiveness in other fields of endeavour would have been impacted, unless she retrained. The fact is as well that by July 2009 she was still unemployed and there is nothing to suggest, and the respondent did not plead or contend, that she was slouching around at home making no effort to find alternative employment. Indeed, to the contrary, she took preparatory steps to open her own business and she did find alternative employment with the Belize County Council in the human resources and public relation field, which itself was evidence that there was an employment life for her beyond telecommunications, given her trade union background, in the human resources and industrial relations departments in other industries. Taking all these features into account, and doing the best I can in the circumstances, I would award an additional period of three months loss of earnings under this heading. I find myself constrained to award what might appear to

be a short period for loss of future earnings because there was no real attempt to explore by adducing appropriate evidence the appellant's future employment prospects.

[40] The trial judge accepted, and this was not challenged on appeal, that at the date of her dismissal, she was entitled to a salary of $4,759.69 (which included an increase of $1,329.43), a fixed line of credit of $150.00, a cellular phone credit of $50.00, free DSL internet access of $100.00 and 30 hours of credit dial-up internet service of $90.00, making a total monthly package of $5,340.07 (see para 160). He found further that she was entitled to an annual passage grant of $1,100.00 and annual vacation leave of 21 days.

[41] I would therefore award the appellant $64,080.84 (12 x $5,340.07) as loss of earnings up to the date of trial, and the sum of $16,020.21 (3 x $5,340.07) for loss of future earnings.

[42] The appellant gave evidence that at the Belize City Council she was earning $100 less than she was entitled to with the respondent. She also said that her benefits were inferior, but she did not give particulars. Accordingly, she is entitled to an additional sum of $900.00 (9 months by $100.00) as loss of earnings during the period she was employed at the Belize City Council.

[43] Given that I have effectively assessed her award on the assumption that, in effect, she would have continued to be employed with the respondent up to three months past the trial in July 2009, she is entitled to be compensated for the annual passage grant and vacation leave she would have earned during that period, but for her unlawful dismissal. She is therefore entitled to $2,750.00 ($1,100.00 x 2½ years) as loss annual passage grant, and $7,953.88 ($3,181.55 x 2½) as lost vacation leave.

[44] In the letter terminating the appellant’s employment, the respondent stated that a sum of $15,846.81 was being paid to the appellant made up of $4,545.07 in lieu of

notice, $3,181.55 as accrued holiday pay, and $12,120.10 as an ex-gratia payment. As noted this sum was in fact set off against the remuneration to which she was entitled upon her reinstatement in April 2007. The appellant claims that this sum should be included in her award. But since the appellant is required to bring into account as mitigation the sums she earned while employed with the respondent after termination, this is not an amount she can recoup in its entirety. On the other hand, part of the sum paid on termination was an amount for vacation leave already accrued. That amount belonged to her and must be returned. I would accordingly award her the sum of $3,181.55, not as damages for her unlawful dismissal, but as sums due and owing.

Severance Pay

[45] The appellant also claimed an amount properly called severance pay, being the amount to which workers are entitled under section 183 of the Labour Act as amended upon termination. In the case of an employee such as the appellant who has been continuously employed for a period of over ten years, she is entitled to be paid two weeks wages in respect of each year of service, where she is terminated by her employer for reasons which do not amount to dismissal, where she has abandoned her job pursuant to section 41 of the Act or where she retires on of after attaining the age of 60 years or on medical grounds (s. 183(1)). An employee who resigns is eligible, though not entitled, to a gratuity equal to severance pay (s. 183(2)).

[46] The appellant initially claimed a sum for severance pay amounting to $14,062.94 but she later abandoned this claim. In any event, it is clear that none of the circumstances under which, as an employee with more than ten years service, she would have been entitled to, as opposed to eligible for, severance pay applied to her. She was dismissed for an unlawful reason.

[47] On the other hand, as a direct consequence of her unlawful dismissal, the appellant will be entering any future employment without the benefit of the 19 years continuous service with the respondent which made her eligible for the substantial

entitlements under section 183 of the Labour Act. She would enter any new employment from scratch and would have to rack up 10 years continuous employment first to qualify for her level of severance pay and then a further 9 years to recover the position she lost upon being unlawfully dismissed. It would seem to me therefore that it is just and equitable that she be compensated for this loss. However, her loss does not necessarily equate with the amount she would have been entitled to under section 183. The fact is that her employment may have been lawfully terminated by the respondent or in any future employment on grounds which do not entitle her to severance pay under section 183. What she is to be compensated for therefore is the lost opportunity to benefit from section 183 in the event that, at some time in the future, she is terminated in circumstances which would have entitled her to severance pay, if she had taken along with her, her accumulated service with the respondent. Doing the best I can, I would assess that loss at half the severance pay benefit the appellant would have been entitled to upon this heading- see ***Norton Tool Company Limited v Tewson*** [1973] 1 WLR 45,51. The appellant calculated her total severance pay benefit as $14,062.94. This sum has not been disputed. I would therefore award $7,031.47 under this heading.

[48] I would wish to make clear that, to my mind, my award under this heading does not constitute the reinstatement of the appellant's abandoned claim for severance pay. What was abandoned was a claimed entitlement to the severance pay to which an employee is entitled under section 183 of the Labour Act upon termination. As I have pointed out, the appellant was not entitled to the statutory entitlement in the circumstances of this case in any event. The award made under this heading is for the loss of the benefit under section 183 which the appellant would have enjoyed were she to have been terminated in the future in circumstances which gave rise to the entitlement under section 183.

Compensatory Lump Sum

[49] As already noted, it is clear that the sum of $90,000.00 awarded by the trial judge under this heading is far too high. Mr. Young initially suggested that we should reduce it

to $15,000.00, the same amount awarded by the Caribbean Court of Justice in the ***Mayan King*** case. In the end, however, he said that he would have no quarrel with an award of $30,000.00. I agree that that sum is appropriate in the circumstances of this case.

[50] As the trial judge said, the respondent terminated the appellant's employment because of her trade union activities, just at the time that she was actually engaged in the pursuit, on behalf of her union, of what appeared to be hotly contested trade disputes. But to add insult to injury, the respondent notified the public that the real reason for her termination was that she lacked the necessary skills, was not hard-working, was inflexible, did not support the efforts of management, was disruptive, created conflict and did not have the interests of her employer's stake holders at heart. Right up to trial, the respondent through its various personnel, maintained that the real reason for the dismissal was the appellant's substandard performance, a position which they maintained even in the face of a recent performance appraisal which rated her performance as meeting company standards. Suffice it to say that the trial judge rejected performance related issues as being the reason for the dismissal. According to him (paras 127-129)

> "The reason why the claimant was a thorn in the side of Management is on the evidence, not because of her work performance or her attitude toward work or being uncooperative to achieve work objectives or lack of commitment to work …
>
> The "real reason" for terminating the claimant from her employment was because she was too active and vocal, both within and outside her work place on behalf of herself and union members whom she represented."

[51] The appellant was a long standing employee of 19 years service. She was dismissed for exercising her right to engage in trade union activities. She was dismissed, summarily, with immediate effect. There was no warning. She held the position of Senior Technician. Although she has not said so specifically, it is patent that such high handed action on the respondent's part would have caused the appellant

distress, compounded by the attack on her reputation made known to the public at large. I find the sum of $30,000.00 under this heading to be appropriate.

Interest

[52] Mr. Young's only complaint on the question of interest is that it did not appear among the orders made in Muria J's judgment, but later appeared in the order entered and signed by the Registrar. But in his judgment, the trial judge did mention that the appellant was claiming 8% interest, while the respondent had suggested that 6% was appropriate. There was accordingly no dispute that interest should be awarded. The dispute was on the quantum. It is clear therefore that the trial judge, by inadvertence, omitted to include the award of interest in his judgment and corrected his error under the slip rule before the order was perfected.

[53] On the appeal, Mr. Young accepted 6% as the appropriate rate. I agree. This is the same rate ordered by this court in the ***Mayan King*** appeal. I would accordingly order that the respondent pay interest at the rate of 6% per annum on the total sum awarded from the date the claim was filed (23 March 2007) to the date of this judgment.

Award

[54] I would accordingly have ordered that the respondent do pay to the appellant the following:

Loss of earnings	$ 64,980.84
Loss of future earnings	$ 16,020.21
Loss of annual passage grant	$ 2,750.00
Loss of vacation leave	$ 7,953.88
Accrued vacation leave	$ 3,181.55
Loss of severance pay entitlement	$ 7,031.47
Compensatory Lump Sum	$ 30,000.00
Sub-Total	$131,917.95

Interest at the rate of 6% per annum from 23 March 2007 to 24 October 2014	$ 60,022.67
Total	$191,940.62

[55] On the question of costs, it is clear that the appellant did not succeed on her appeal in that she failed to persuade us to increase the amount awarded by the trial judge. On the other hand, the respondent did persuade us to reduce the trial judge's award, albeit not to the extent initially claimed. I put in the balance as well the fact that the respondent only withdrew its appeal on liability at the eleventh hour. All considered, in agreement with the majority, I would, provisionally, make no order as to costs.

_____

MENDES JA

AWICH JA

[56] The appellant, Christine Perriot, was employed in 1990 as an assistant technician by Belize Telecommunications Limited. The exact date of the commencement of her employment was not given in the evidence. The employer subsequently changed its name to Belize Telemedia Limited – BTL. Control and management of the company also changed. Belize Telecommunications Limited is no more. The citation of two respondents in the title of the appeal is not accurate. Belize Telemedia Limited should have been the only defendant. It is the only respondent, although two respondents have been cited.

[57] For the reasons set out below, I would dismiss this appeal. Further, given that the respondent has withdrawn the cross-appeal ground that, the trial judge erred in holding

that the appellant was dismissed for trade union reasons, I would allow the request in the respondent's notice to vary the judgment dated 11 June, 2010 of Sir John Muria J, the trial judge in the Supreme Court. I would vary the judgment by assessing the total damages award to Mrs. Perriot to the sum of $125,902.74 instead of the sum of $350,870.40 assessed by Sir. John Muria J. But the appellant will be paid the net sum of $123,682.46. Interest at the rate of 6% will be paid on the net sum from 27 February, 2007 to the date of payment in full. Parties will bear their own costs of the appeal. I would confirm the order for costs made by Sir John Muria J.

The facts.

[58] On 27 February, 2007 the appellant held the post of a technician grade 6 in the respondent's telecommunications business establishment. By a letter of that date, the respondent terminated the employment of the appellant with immediate effect, without cause under the Labour Act, Cap. 297, the respondent stated. The respondent paid to the appellant the sum of $19,846.81 which the respondent stated was comprised of: $4,545.07 in lieu of notice of termination, $3,181.55 accrued holiday pay, and $12,120.19 *ex gratia* payment.

[59] The appellant contended that she was dismissed for the reason that she was the general secretary of Belize Telecommunications Workers Union, and for her trade union activities. She said that, at that time she and other officials of the union had taken up with the management of the respondent, the dismissal of three of their members by the respondent, and also had called a meeting of the employees to discuss a controversial change of "ownership" and "the management" of their common employer, the respondent.

[60] On the above allegations, the appellant made a claim at the Supreme Court on the ground that she was unlawfully dismissed for participating in trade union activities. Her claim was made under ss. 5 (2) and 11 of the Trade Unions and Employers

Organisations, Registration, Recognition and Status Act, Cap. 304 TUEO (RRS) Act. She claimed the relief of reinstatement and damages under ss. 11 (3) and (4).

[61] In the course of the court proceedings the appellant applied for a court order for an interim relief that, she be reinstated in her employment until the determination of her claim. Sir John Muria J granted the order on 5 April 2007. On 10 April, 2007 the appellant returned to her employment. During the reinstatement, the respondent did not pay the monthly salary of the appellant, it informed the appellant that, the respondent would regard the salaries as payable from the *ex gratia* sum of $12,120.19 which had been received by the appellant on termination of employment. Generally the appellant did not like the attitude of the employer. On 9 November, 2007 she resigned from the employment.

[62] In the meantime BTL appealed the interim relief order made on 5 April, 2007 to this Court. The appeal was allowed and the interim relief order was quashed. In this appeal the appellant no longer asks for reinstatement. Her appeal is for a higher compensation sum.

[63] About May, 2008 the appellant was employed by the Belize City Council. Her appointment was to the post of director of human resources and public relations. The evidence was that her salary was, “a little less than”, the salary that she had been paid when employed by BTL. She also said that it was about $100.00 per month less. Nine months after, at the end of January, 2009 the appellant resigned from her employment at the City Council. The reason stated by the appellant for her resignation was a matter between the appellant and the City Council. It was not proved that the resignation was about the fact that the appellant had a rather too specialised telecommunications technician experience. It was also not proved that the appellant was dismissed as the consequence of certain two adverse press releases about the appellant published by the respondent.

[64] In the trial of the claim Sir John Muria J rendered judgment on 11 June, 2010 in which he accepted the claim that, the appellant had been dismissed, "*for the prohibited reason in section 5(2) of the TUEO (RRS) Act, namely, for the reason of her union activities."* On page 60 at paragraph 129 of his judgment, Sir John Muria J explained his decision in these words: *"The real reason for terminating the claimant from her employment was because she was too active and vocal, both within and outside her work-place on behalf of herself and union members whom she represented. She was vocal about the management, as well as the 'current operating environment at the defendant company."*

[65] Sir John Muria J then awarded the sum of $350,870.40 damages, and ordered costs to the appellant. In the court order that the learned judge approved later, interest at 6% per annum from 27 February, 2007 (the date of the dismissal) was added. The learned judge had mentioned in his judgment that, the claimant had claimed interest at the rate of 8% per annum, but the judge did not make a specific decision on interest until he approved it at the rate of 6% per annum in the draft court order submitted for his approval.

[66] The damages award made by the trial judge was comprised of two parts. The first part was what the judge described as "severance pay". The sum was $260,870.40. In computing it the judge based it on salaries, benefits and all other items of remuneration that would have accrued to the appellant over a period of 36 months (3 years). He stated that, the 36 months period was based on the evidence that the appellant was 37 years old and would have 17 years of employment before she would retire at the age of 55. He called this, "a projection", of the remaining, "working life of the appellant." He rejected the claim by the appellant that, the "projection" should be for the entire 17 years. The reason the judge gave was that, the appellant had not been guaranteed a job for life. The judge concluded that, *"in the circumstances and in Belize",* the projection was 36 months. He computed the total of salary and all items of remuneration at $5,340.07 per month, and multiplied that by 36 months. The total sum was $260, 870.40.

[67] The second part of the award for damages was what the judge described as, "*compensation for breach of the claimants' rights and freedom guaranteed by the Constitution and furthered by Sections 5 and 11 of the TUEO (RRS) Act.*" To make an assessment under this head, the judge compared the facts of the present case to the facts of several Canadian cases and of the Belize Supreme Court Case, ***Reyes and Others v Mayan King Limited and John Zabaneh, SCC No. 309 of 2001*****,** and noted the sums awarded as damages in those cases. ***The Mayan King*** case had been appealed, but the decision on appeal had not been made when Sir John Muria J rendered his judgment. He assessed damages under this second head in the sum of $90,000.00. The total sum assessed by the trial judge was $350,870.40, which was comprised of $260,870.40 and $90,000.00.

[68] ***The Mayan King*** has since been decided by the Caribbean Court of Justice the CCJ. Several principles regarding assessment of damages have been stated therein by the CCJ. Regrettably the assessment made by Sir John Muria J is not compatible with some of the principles stated by the CCJ. Sir John Muria J, of course, had not had the benefit of reading the judgment of the CCJ. We have had that benefit, and are in a position to correct the errors.

[69] The appellant appealed against the assessment of damages. In particular, she complained that, the judge erred in refusing to include in the assessment the projected total remuneration that the appellant would have earned over the 17 years before retirement. She requested a court order from this Court that, damages be re-assessed. She also appealed against the order awarding interest at the rate of 6% per annum on the judgment sum instead of the rate of 8% per annum that she had pleaded. She complained that the judge did not consider her evidence.

[70] The grounds of appeal were stated as follows:

"(1) The Learned Trial Judge erred in law when he decided that the Appellant was entitled to severance pay but failed or omitted to make any award to the Appellant by way of severance pay.

(2) The Learned Trial Judge erred in law when he decided that the Appellant was entitled to compensation for 'injury to feelings and mental distress' but omitted or failed to make any award to the Appellant for this item of compensation.

(3) The Learned Trial Judge erred and misdirected himself in that he awarded damages or compensation to the Appellant for lost pay or loss of future employment by giving little or no regard to the Appellant's evidence set out in the projections of salary and benefits.

(4) The Learned Trial Judge erred in law and misdirected himself by awarding compensation to the Appellant for only three years of the Appellant's remaining 17 years 'job life'.

(5) The Learned Trial Judge erred in law in failing to take any account of the Appellant's evidence that the Respondents took back from the Appellant the sum of $19,000.00 paid to her as termination benefits when she was re-instated in her job.

(6) The Learned Trial Judge erred and misdirected himself in awarding only 6% per annum as the rate of interest on the total compensation awarded to the Appellant."

[71] The respondent responded by filing under ***r.5 O. II of the Court of Appeal Rules***, a notice to vary the judgment and the order made by Sir John Muria J. The decisions in the judgment sought to be varied were:

" (1) That the Appellant was unlawfully terminated from her employment with the Respondents as the result of her membership of the Belize Communications Workers Union (BCWU) and such termination being in contravention of the Trade Unions and Employer's Organization (Registration Recognition and Status) Act.

(2) That the Respondents pay to the Appellant compensatory damages for unlawful termination in the amount of $350,870.40 together with interest at the rate of 6% from the 27th February, 2007 and costs."

[72] The grounds for the variation of the judgment (the cross-appeal) initially included ground No. 1 that:

"(1) There was no or sufficient evidence to substantiate and prove the claim that the Respondent's employment was terminated in breach of Section 5(2) of the Trade Unions and Employer's Organizations (Registration, Recognition and Status) Act (Chapter 304 of the Laws of Belize)."

[73] The relief sought initially were:

(1) An Order that, the decision of the trial Court that the Respondent's termination was unlawful be set aside;

(2) In the alternative, that the award of compensatory damages be varied and that, the Court substitute such award as it deems fit and just or remit the case to the Supreme Court for reassessment of damages."

[74] At the hearing of the appeal Mr. Michael Young SC, for the respondent, applied and obtained leave to amend the grounds of the cross-appeal. The amended grounds and relief were the following:

"(1) That the Learned Judge erred in His Lordship's approach in the assessment of compensation properly payable to the Appellant.

(2) That the Learned Judge erred in assessing compensation as if the Appellant had made a claim and was being awarded damages or compensation for breach of constitutional rights.

(3) That the Learned Judge erred in assessing compensation on the basis of severance pay.

(4) That the Learned Judge erred in assessing compensation on the basis of three years pay.

(5) That the Learned Judge erred in making an award that was excessive and well beyond the range that could properly have been awarded.

(6) That on the basis of the uncontroverted evidence of the Respondents adduce in the Court below the compensation awarded was excessive.

(7) That the Judgment Order erroneously included interest at 6% per annum on the principal judgment amount of $350,870.40 when the Learned Judge had not considered or included interest in his written decision.

RELIEF SOUGHT

That the award of compensatory damages be varied and that the Court substitute such award as it deems fit and just or remit the case to the Supreme Court for reassessment of damages;"

Determination.

Interest: justification for and the rate.

[75] I commence the determination of this appeal in a rather unusual way by first examining the ground of appeal against the order made for interest to be paid on the damages assessed, and the ground of the cross-appeal against the rate of interest at 6% per annum instead of the rate of 8% per annum claimed.

[76] Interest means, *"payment by time for the use of money" –See* ***Bennett v Ogston [1930] 15 TC 374.*** A more detailed meaning is: *"the return or compensation for the use or retention by one person, of a sum of money belonging to, or owed to another." see* ***Halsbury's Laws of England, Fourth Edition, page 53 at paragraph 106.***

[77] The common law justification for awarding interest on a judgment sum, whether it be for a debt or damages is that: in practically every case a judgment against the defendant means that, he should have admitted the claim when it was made and have paid the appropriate sum as a debt or damages. There are, of course, some cases wherein it is reasonable that, the defendants should have time to investigate the claims before they admit the claims. In such a case the court may award interest from a date when a reasonable time expired.

[78] I accept the above justification for awarding interest on a judgment sum, I endorse what the Court of Appeal in England stated in ***Harbutt's Plasticine Ltd. v Wayne Tank and Pump Co. Ltd. [1970] 2WLR 198.*** The court stated at page 213 that:

> ***"the basis of an award of interest is that the defendant has kept the plaintiff out of his money, and the defendant has had the use of it himself. So he ought to compensate the plaintiff accordingly."***

[79] In this appeal Sir John Muria J entered judgment for the appellant against the respondent on the evidence adduced at the trial. The admission of liability by the respondent came too late at the hearing of the appeal, and the respondent has not made payment. The judge proceeded to award damages and interest on the damages sum. He was justified in awarding interest by the fact that, the judgment meant that the respondent should have admitted liability for the wrongful dismissal of the appellant within a reasonable time of the complaint made by her, and should have paid over to the appellant a sum owed to her as damages. The respondent kept the appellant out of money that the appellant was entitled to, and the respondent had possession of the money.

[80] The above justification for award of interest has been put into statute in Belize, as had been in England. The firm statutory authority by which the Supreme Court of Belize, the trial court, awards interest on a judgment sum is now in ***ss. 166 and 167 of the Supreme Court of Judicature Act, Chapter 91.*** The sections state:

> **166. In any proceedings tried in the Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:**
>
> **Provided that nothing in this section shall -**
>
> ***(a)*** **authorise the giving of interest upon interest; or**
>
> ***(b)*** **apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or**
>
> ***(c)*** **Affect the damages recoverable for the dishonour of a bill of exchange.**

167. Every judgement debt shall carry interest at the rate of six *per centum per annum* from the time of entering up the judgement until the same is satisfied, and such interest may be levied under a writ of execution on such judgement.

These sections in ***Cap. 91 of the Laws of Belize*** were adopted word for word from ***s. 3 of the Law Reform (Miscellaneous Provisions) Act, 1934 (England).***

[81] Any doubt that might have been in England in the common law about the jurisdiction of courts to award interest on damages was resolved by the Act of 1934. That was made clear by the Court of Appeal (England) in ***Jefford and Another v Gee [1970] 2 WLR 702.*** In the case, the appellant admitted liability for negligence in driving a motor vehicle and thereby causing grave injuries to the respondent. The trial judge awarded special damages and general damages. He was asked to award interest on the whole or part of the damages. He awarded interest under s. 3 of the Act of 1934, at 6 ½% on the general damages from the date of the accident to the date of trial. He did not award interest on the special damages.

[82] The defendant appealed contending that: (1) no interest at all should have been awarded on the general damages, or alternatively, it should not have been awarded on the part of the damages that represented loss of future earnings; (2) the rate of 6 ½% was too high and the period of 2 ½ years(from the date of the accident to the date of the trial) for the interest was too long; and (3) the decision to award interest took no account of the payment made into court on the admission of liability. The plaintiff cross-appealed and asked for an order that, interest be awarded on the whole of the damages including the special damages, and the rate should be higher than 6 ½%.

[83] The Court of Appeal (England) held among others that: s 3(1) of The Law Reform (Miscellaneous) Act, 1934, gave the court power to award interest on debts and damages; interest on damages in personal injuries should be awarded to a plaintiff only for being kept out of money which ought to have been paid to him, no interest should be

allowed on damages for loss of future earnings; interest should be awarded on damages for pain and suffering and loss of amenities from the date of the service of the writ (the claim form) to the date of trial (judgment); and interest should be allowed on special damages from the date of the accident to the date of trial (judgment) at one – half the appropriate rate.

[84] In the present appeal Sir John Muria J made the order for interest on damages to take effect from 27 February, 2007, the date of the dismissal of the appellant (to the date of payment in full). The damages he awarded were general damages. The judge must have derived his authority for making the award of interest from both ***ss. 166 and 167 of Cap. 91.*** From ***s. 166*** he derived authority for awarding interest from the date of dismissal, 27 February, 2007 when the cause of action arose, to the date of entering the judgment, 11 June, 2010. From ***section 167*** he derived the authority for awarding interest on the judgment sum from the date of entering the judgment to the date of full payment of the judgment sum, at 6% per annum. He made a single and combined order of interest for both the period from the date when the cause of action arose to the date of the trial, and the period from entering judgment to the date of payment in full. He authorised a common rate of 6% per annum.

[85] There has been no evidence to prove that the rate of interest at 8% pleaded by the appellant was the appropriate rate of interest, or that the rate of 6% was the appropriate rate of interest from 27 February, 2007 to the date of entering judgment, and to the date of payment in full. But at least the rate of 6% per annum has been acknowledged in ***s. 167 of Cap. 91*** as the rate of interest on a judgment sum, a judgment debt.

[86] Sir John Muria J did not err in awarding interest on damages, and at the rate of 6% per annum from the date of the dismissal of the appellant to the date of full payment of the damages. His decision was founded on the justification for award of interest, and the principle of law made statutory law in ***ss. 166 and 167 of Cap. 91***. According to ***Jefford v Gee***, interest would not be allowed on damages for loss of future earnings.

The law has advanced. ***Section 167 of Cap 91*** requires that, interest at 6% per annum be charged on a judgment debt from the date of entering up the judgment until payment in full.

[87] It may well be that when the legislature fixed the court rate of interest at 6% per annum, it was not foreseen in Belize that, bank rates of interest could fluctuate over a wide range. It is now known. For instance, interest rates on savings deposits have fallen over four years from above 5% per annum to below 3%. A legislation that takes into account the reality of large fluctuation of interest rates may be desirable in the future. In some jurisdictions court rates of interest are declared annually by legal notice.

Interest need not be pleaded or asked for.

[88] It has been long established, based on the justification for awarding interest on a judgment sum, and on ***s. 3 of the Law Reform (Miscellaneous Provisions) Act, 1934 (England),*** that interest need not be pleaded or asked for by the successful party. Since ***s. 166 of Cap. 91, Laws of Belize*** is the same as ***s. 3 of the Act of 1934 (England)***, I adopt that rule in determining the present appeal. Moreover, ***s. 167 of Cap. 91*** requires that, a trial judge order interest on a judgment sum. It is my view that, interest on a judgment sum under ***s. 167*** need not be pleaded or asked for by the successful party, and the judge need not specifically decide and declare it in the body of his judgment before he awards it on the judgment sum, or merely includes it in the final order of the court. The award of interest on a judgment sum is a statutory direction to judges.

[89] The rule that interest need not be pleaded has been applied in ***Riches v Westminster Bank Ltd. [1943] 2 All ER 727.*** In the case, the trial judge entered judgment for a sum of money against the defendants/appellants who were executors of a deceased estate, in a claim in contract for the reason that, the deceased had defrauded the plaintiff/respondent by not sharing equally the proceeds of certain transactions between them. The court also awarded interest at 4% per annum on the judgment sum from the appropriate date. The appellants appealed on the ground that,

under the Act of 1934 (England) the judge had no power to award interest when the respondent had not included in his pleading, interest on judgment sum. The Court of Appeal (England) dismissed the appeal. At page 725 Lord Green MR Stated:

> ***"It was said, first of all, that he [Oliver J] had no power to exercise that discretion, because there was no claim in the statement of claim for interest, and that, therefore, without an amendment of the pleading, at any rate, the judge could not act under the section [s.3 of the Act of 1934]. In my opinion that argument is ill-founded. There is nothing in the section to indicate that the claim must be pleaded, or that the statement of claim must say that, at the trial the plaintiff, if successful, will ask the judge to exercise his discretion. There is nothing in the section which suggests the necessity of that...I cannot see how it can be read in."***

[90] It is my decision that, Sir John Muria J did not err when he approved an order for interest on the judgment sum notwithstanding that, he had not specifically made a decision on it in the main body of his judgment. He was required to award interest on the judgment sum whether or not interest had been pleaded or asked for. The ground of the cross-appeal fails.

Severance pay.

[91] About this ground of appeal, I simply note that, the appellant had withdrawn severance pay as a head of claim in the trial court, he cannot now restore it as a ground of appeal that, the trial judge did not include severance pay in the assessment of damages he made. In any case, severance pay would be claimed only if the appellant's claim was made under ***the Labour Act Cap. 297, Laws of Belize.*** The appellant's claim was not made under the Labour Act, it was made under the ***TUEO (RRS) Act***:

[92] Despite the withdrawal of severance pay as a head of claim, and despite the statutory nature of the claim for severance pay, Sir John Muria J stated, erroneously

that, he considered severance pay to be a factor in the assessment of the general damages. He also erred in his view of what severance pay is. At paragraph 156 of his judgement he stated: *"The claimant's projection on severance benefits is for BZ$135,866.00 for the remaining 17 years. While the claimant is entitled to severance pay, there is little evidence to justify the amount claimed. Since severance pay is contingent on a number of things, it would rarely be given for the entire remaining years of the claimant's working life. In effect it is an ex gratia payment based on the concept of reasonable notice given to an employee in a particular case, having regard to the nature of his employment, the length of service, the age of the employee and availability of similar employment to the employee, having regard to his experience, training and experience: Bardal v Globe Mail Ltd. (1960) 24 D.L. R 140 (On. HC)".*

[93] If that is severance pay according to the Canadian case cited by the judge, it is certainly not the statutory severance pay that is payable under ***s. 183 of the Labour Act*** as amended ***by Act No. 3 of 2011.*** Under ***s.183*** severance pay is payable when an employee has been employed for five to ten years (at a given rate) and over ten years (at another given rate). The events upon which severance pay is payable are: termination of the employment by the employer other than by dismissal; termination by consent; resignation; abandonment of the employment; and retirement on achieving the age of sixty, or retirement on medical ground. The appellant might have been entitled to severance pay had she made her claim under the Labour Act.

The cross-appeal ground that the appellant was not dismissed for trade union activities.

[94] This ground of the cross-appeal was quite properly withdrawn by Mr. Young. He obtained leave and amended the grounds of the cross-appeal. The main effect of the amendment was that the respondent withdrew the ground that: "the trial judge erred in finding that, the termination of the appellant's employment was unlawful," together with the corollary ground that: "there was no or sufficient evidence to substantiate and prove the claim that the appellant's employment was terminated in breach of section 5(2) of

the Trade Unions and Employers' Organisations (Registration, Recognition and Status) Act…" As the consequence, the questions in the appeal were much reduced.

[95] Mr. Young informed the Court that: the respondent's attorneys had written to the Registrar of the Court to advise that, the respondent would not contend at the hearing of the appeal that, the decision of the Supreme Court on wrongful termination should be reversed. The reasons stated by Mr. Young were that: "(a) there was evidence upon which the learned judge could have so found, and (b) His Lordship carried out, and reflected in his judgment, a meticulous analysis of the evidence relating to that issue."

[96] There had been a change in the representation of the respondent. Mr. Young was not the counsel who represented the respondent in the trial court, and was not the attorney who initially filed the respondent's notice to vary judgment.

[97] There had also been changes of attorneys for the appellant. The last one sought and obtained leave from this Court to withdraw from representing the appellant. In the end the appellant presented her appeal in person. She presented the facts of her case well. Understandably she was unable to offer help to this Court regarding the principles of law on which an assessment of damages in a dismissal from employment case is made. The law in this area is not simply a matter of common sense, or popular viewpoint. Courts, of course, decide cases according to the law applicable to the subject matter. Sometimes the law is the same as common sense on a point at issue, or the same as the popular view.

[98] I do confirm that, an objective appraisal of the evidence leads to the conclusion that, the appellant was dismissed by the respondent from employment for the reason that: she was the general secretary of the Telecommunications Workers Union; she and other officials of the union took up with the respondent, the dismissal of other members of the trade union by the respondent; she and other officials of the TWU questioned the several litigations about change of control and management that the respondent embroiled itself in; and she and other officials of the TWU enquired about the

shareholding of the employees in the respondent. The single question that remains in the grounds of appeal and the grounds of the cross-appeal, for this Court to determine is whether the trial judge erred in the assessment of damages payable to the appellant.

Trade union Rights of employees under the TUEO (RRS) Act.

[99] Although it has been conceded that the respondent unlawfully under ss. 4 and 5 of the TUEO (RRS) Act**,** dismissed the appellant for the reason of membership of a trade union and trade union activities, it is still convenient, for the purpose of deciding the relief available to the appellant that, I set out here the parts of the law in ***ss.4,5 and 11 of the Act*** that are applicable. They are the following:

PART II

Freedom of Association

4. (1) Subject to section 13 of the Belize Constitution, every employee shall have and be entitled to enjoy the basic rights specified in subsection (2).

(2) The basic rights referred to in subsection (1) are:

(a) taking part in the formation of a trade union;

(b) freely deciding whether to be a member of a trade union or a federation of trade unions;

(c) taking part in any lawful trade union activities;

(d) holding office in any trade union or a federation of trade unions;

(e) taking part in the election of any union representative, shop steward or safety representative or offering himself as a candidate at such election;

(f) acting in the capacity of a union representative, shop steward or safety representative if elected as such;

(g) exercising any other rights conferred on employees by this Act or any Regulations made hereunder, the Belize Constitution, or any other law governing labour and

employment relations, and assisting any other employee, union representative, shop steward, safety representative or trade union in the exercise of such rights.

5. (1) It shall be unlawful for an employer, or an employers' organisation or federation, or a person acting for and on behalf of an employer or an employers' organisation or federation, to engage in the activities specified in subsection (2) in respect of any employee or person seeking employment.

(2) The activities referred to in subsection (1) are:

(a) requiring the employee or person seeking employment not to join a trade union or a federation of trade unions or to relinquish his membership therein as a condition precedent to the offer of employment, or, as case may be, the continuation of employment;

(b) discriminating or engaging in any prejudicial action, including discipline, dismissal or, as the case may be, refusal of employment because of the employee's exercise or anticipated exercise, or the person seeking employment's anticipated exercise of any rights conferred or recognised by this Act or any Regulations made hereunder, the Belize Constitution, any other law governing labour and employment relations, or under any collective bargaining agreement;

(c) discriminating or engaging in any prejudicial action, including discipline, dismissal or, as the case may be, refusal of employment against the employee or person

seeking employment by reason of trade union membership or anticipated membership, or participation or anticipated participation in lawful trade union activities;

(d) threatening any employee or person seeking employment with any disadvantage by reason of exercising any rights conferred or recognized by this Act or any Regulations made hereunder the Belize Constitution, and other law governing labour and employment relations, or under any collective bargaining agreement;

11. (1) Any person who considers that any right conferred upon him under this part has been infringed may apply to the Supreme Court for redress.

(2) Where a complaint made under subsection (1) alleges that an employer or an employer's organisation, association or federation has contravened any of the provisions of subsection (2) of section 5, the employer, employers' organisation, association or federation shall have the burden of proving that the act complained of does not amount to a contravention of any of the provisions of subsection (2) of section 5 which is the basis of the complaint

(3) Where the Supreme Court finds that an employee was dismissed in contravention of subsection (2) of section 5, it may make an order directing the reinstatement of the employee, unless the reinstatement of the employee seems to that Court not to be reasonably practicable, and may further make such other orders as it

may deem just and equitable, taking into account the circumstances of the case.

(4) Without prejudice to the Court's powers under subsection (3), where the Supreme Court finds that a complaint made under subsection (1) has been proved to its satisfaction, it may make such orders in relation thereto as it may deem just and equitable, including without limitation orders for the reinstatement of the employee, the restoration of benefits and other advantages, and the payment of compensation.

The assessment of the damages: the jurisdiction of an appellate court.

[100] The appellant contends that, the sum of $350,870.40 damages awarded by Sir John Muria J is too low because it ignores the evidence, particularly the evidence regarding the remaining years of the working life of the appellant. The respondent contends that, $350,870.00 is way too high.

[101] The first principle that guides an appellate court in an appeal against assessment of damages made by a trial judge is that, a trial judge is in a better position than an appellate judge to assess the damages (on the evidence), but if the trial judge approaches the assessment on a wrong principle, the appellate court may remit the matter back to the trial judge for him to make the assessment on the correct principle, or the appellate court may make the assessment itself. That was stated in the majority judgment of the Caribbean Court of Justice delivered by Saunders JCCJ in ***The Mayan King Limited v Jose Reyes and Others [2012] CCJ 3 (AJ).***

[102] The principle was developed in the common law, and is now firmly confirmed in the Commonwealth Caribbean jurisdictions. It had been stated in judgments in notable cases such as, ***Flint v Lovell [1935] 1K.B. 354; Nance v British Columbia Electric Railway Co. Ltd. [1951] AC 630; and Terrence Calix (Appellant) v Attorney General***

of Trinidad and Tobago [2013] UKPC 15. The Court of Appeal of Trinidad and Tobago had before the Terrence Calix case, adopted the common law principle in the notable case, ***Anthony Sorzano and Steve Mitchell v Attorney General of Trinidad and Tobago, Civil Appeal No. 101 of 2002,*** and in several others.

[103] In the ***Flint case*** in 1934, liability of the defendant/appellant was admitted that, the plaintiff/respondent suffered serious injuries in a motor collision caused by the negligence of the appellant in driving the other vehicle. The respondent, a healthy and vigorous sports oriented man aged 70, brought an action claiming damages. Special damages were admitted. In assessing the general damages the trial judge took into consideration as a factor a proved fact that, the normal expectation of a longer life of the plaintiff was reduced by the injuries suffered to only one year instead of about eight years. This was a factor for a high award. On appeal by the defendant it was contended that, an award of €4,000.00 general damages was too high, and that, in the assessment of damages for personal injuries in the common law, death of the person is not included as an element and so, shortening of the plaintiff's life should not have been included as an element; the trial judge erred. The Court of Appeal (England) held and confirmed that, in assessing damages the trial judge was entitled to take into consideration as an element, the fact that the plaintiffs' normal expectation of life had been materially shortened. The majority judges further observed that, the award of € 4,000.00 was rather generous, but declined to interfere with it. Greer LJ sounded a reminder about the jurisdiction of an appellate court in an appeal about assessment of damages at pages 359 and 360 in these words:

> ***"I would like to add a few words about the jurisdiction of this Court in appeals where the only contention, or one of the contentions, is that the damages awarded by a judge hearing a case without a jury are excessive…I think it's right to say that this Court will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tired the case in the first instance they would have given a lesser sum. In order to***

justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damages to which the plaintiff is entitled. The result is that the appeal will be dismissed with costs."

[104] Even Roche LJ who dissented to the view that, shortened expectation of life was a factor in assessing damages agreed with the majority judges on the principle regarding the jurisdiction of an appellate court in an appeal against assessment of damages. At page 366 Roche LJ stated:

"I regret that I am unable to concur in the judgment of the Lords Justices, I am of opinion that the amount awarded to the plaintiff by the judgement under appeal was excessive and ought to be reduced. I agree with the view expressed by Greer L.J. that, notwithstanding the powers this Court undoubtedly possesses to review any decision of a judge, it ought not lightly to interfere with the conclusion reached by a trial judge as to the quantum of compensation to be awarded to a plaintiff, and I should certainly not favour such interference merely because I should myself have awarded somewhat more or less than the trial judge."

[105] In the ***Terrence Calix*** case, an appeal from Trinidad and Tobago to the Privy Council (UK), decided in 2013, the appellant had been awarded TT $38,000.00, equivalent to BZ $12,666.00 damages by the High Court, the trial court, for the tort of malicious prosecution on charges of robbery and rape. The trial judge took into consideration the evidence that, the plaintiff/appellant was a recluse who lived in an abandoned dilapidated farm house in squalid condition similar to the condition at the prison where the appellant was detained. This was a factor tending towards a small

award of damages. The appellant appealed that, the award was too low. The Court of Appeal of Trinidad and Tobago dismissed the appeal and confirmed the award of TT $38,000.00. The Court of Appeal also held that, the granting of bail on condition that the appellant provide a surety had the effect of disentitling the appellant to any damages from that point on, firstly because this constituted an intervening judicial act which supplanted the prosecution as the cause of the appellant's continued detention; and secondly, because failure by the appellant to apply for a variation of the bail conditions was what "endangered" the appellant's liberty.

[106] On further appeal to the Privy Council, their Lordships held that, both the High Court, and the Court of Appeal of Trinidad and Tobago erred on those two points, among others, as matters of principles of law on which those courts based and confirmed the assessment of damages. Their Lordships also reviewed the range of the sums of money which had been awarded by courts in Trinidad and Tobago as damages for malicious prosecution and false imprisonment, and concluded that the award in the appeal (the Terrence Calix appeal) was too low. Their Lordships quashed the award of TT $38,000.00, and remitted the case back to the Court of Appeal of Trinidad and Tobago to make a new assessment, taking into account the errors pointed out by their Lordships, and because, ***"it is obviously preferable that a local court, plainly more conversant with local conditions and domestic jurisprudence in this area, should have the opportunity to consider [the] appeal again."***

[107] Before exercising their appellate jurisdiction to quash the assessment, their Lordships made observation about the limitation to the appellate jurisdiction in an appeal against assessment of damages. At paragraphs 28 and 29 at pages 11 and 12 they stated as follows:

> **"*28. It is well settled that before an appellate court will interfere with an award of damages it will require to be satisfied that the trial judge erred in principle or made an award so inordinately low or so unwarrantably high***

that it cannot be permitted to stand, In Flint v Lovel [1935] 1 KB 354, 360 Greer LJ said:

> ***'In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgement of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.'***

29. A statement to like effect was made by Viscount Simon in Nance v British Columbia Electric Railway Co Ltd [1951] AC 601, at page 613 [as follows]:

> ***'[T]he appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. ... [I]t must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages...''***

[108] In ***the Sorzano*** case in 2004, the Court of Appeal of Trinidad and Tobago had clearly adopted the common law principle regarding the jurisdiction of an appellate court, in an appeal regarding assessment of damages. In the judgement of Mendonca JA in which the other two judges concurred, he stated at paragraph 19 the following:

> ***"This Court will not interfere with the Master's assessment, unless he has misdirected himself on the law or on the facts or that (sic) the award was a***

wholly erroneous estimate of the damage suffered. It is not in dispute that, as the Master failed to take into account the first period and the second period [of detention], it is a basis on which this may vary the award."

[109] In that appeal the Master of the court had assessed general damages at TT $ 10,000.00, equivalent to BZ $3,333.00 for malicious prosecution. He did not take into consideration that the claimant/appellant had been detained, there was loss of liberty. The Court of Appeal of Trinidad and Tobago held that the Master should have taken into consideration the loss of liberty as an element in the particular malicious prosecution, for the purpose of assessing general damages. So, the omission was an error of law. The Court of Appeal exercised jurisdiction, quashed the assessment of TT $10,000.00 and assessed general damages at TT $180,000.00, equivalent to BZ$60,000.00.

Damages: The errors made by the trial judge.

[110] In my respectful view Sir John Muria J erred in this case in several ways. The first error is that, he assessed the general damages as, "*compensation for breach of the claimant's rights and freedoms guaranteed by the constitution...",* although he qualified the constitutional rights and freedoms that they were, "*furthered by sections 5 and 11 of the TUEO (RRS) Act."* The second error is that, he misunderstood what severance pay is in the laws of Belize. The third error is that, the award of BZ$350,870.40 is so inordinately high that it must be regarded as a wholly erroneous estimate of the damages. The judge might have paid too much attention to the range of awards in the cases from Canada that he cited, and not enough attention to the range of awards in Belize and the Commonwealth Caribbean cases. The fourth error is that, the judge failed to note that a compensation sum that included compensation sum for the period when the appellant was employed by the City Council, included in it a part which was double compensation. The fifth error is that, the judge did not consider the questions of *novus actus inrerveniens* and remoteness of damages.

[111] Regarding the first error it might be argued that, Sir John Muria J did not err in basing the assessment of damages on constitutional rights and freedoms because the

Constitution of Belize declares in ***s.3*** that: ***"every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the rights...to... (b) freedom of conscience, of expression and of assembly and association..."*** which are the same rights and freedoms protected by ss.5 and 11 of the TUEO (RRS) Act. It might be argued further that, the learned judge did not err because ***s.13 of the Constitution*** provides that, ***"... a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons, and in particular, to form or belong to trade unions or other associations for the protection of his interest..."*** ,which also are the same rights and freedoms protected by ss. 5 and 11 of the TUEO (RRS) Act. These arguments have been answered conclusively by the CCJ in ***The Mayan King.*** This Court, and The Supreme Court, the trial court, are bound by the answer.

[112] Indeed the CCJ did give these arguments much consideration. It acknowledged them with much appreciation, at paragraph 28 of its judgement as follows:

> ***"The premise upon which the trial judge awarded the sum of $70, 000.00 to each worker was that he/she had suffered the breach of a constitutional right. It is understandable why the judge may have taken that view. The Act does have a constitutional gloss about it…the rights granted by it are specifically located in the guarantee provided by section 13 of the Constitution. It might be said that, Parliament indented, by passing the Act, to give horizontal effect to the constitutionality enshrined right and freedom of association."***

[113] Notwithstanding, the CCJ answered that, it was erroneous to assess damages under ***s.11 (3) and (4) of the TUEO (RRS) Act*** as if they were damages for infringement upon a constitutional right or freedom, or merely as if they were damages for unlawful dismissal under the common law. The CCJ accepted and confirmed the decision of this Court that ***s. 5 of the TURO (RRS) Act*** created a new cause of action regarding dismissal from employment. First, the CCJ stated that a private employer

was, ***"not a state-actor or a public body"***, breach of constitutional rights and freedoms could not be claimed against a private employer. Secondly, the CCJ outlined the reasons for a claimant to make a claim that a public authority, in contrast to a private person, may be held liable for breach of constitutional rights and freedoms. At paragraph 32 the majority judges of the CCJ conveyed their decision and reasons in these words:

> ***"[32] To determine the actual amount that should be awarded under this new cause of action, cases of constitutional infringement do not provide the most reliable guide. The state has the supreme duty to conduct its relations with its citizens in an exemplary manner and has voluntarily committed itself, through the Constitution, not to breach fundamental rights. Moreover, while an additional criminal sanction may be visited on a private employer, that is not the case in relation to the State. Damages against the State may therefore embody elements like deterrence that are more closely associated to punitive sanctions. For these reasons the amounts awarded in constitutional infringement cases would ordinarily be greater than those awarded in a case of this sort. Provided that these caveats are kept in mind, however, it is not altogether inappropriate to look at the constitutional cases simply to get an idea of the range within which certain damages awards have been given."***

[114] In addition to answering the two direct arguments regarding constitutional rights and freedoms, the CCJ held in ***The Mayan King*** that, the claim was not a claim made for the enforcement and protection of a constitutional right or freedom under s.20 of the Constitution, it was not so pleaded, it was a claim made under the ***TUEO (RRS) Act***. The claim in this appeal too was not pleaded as a claim for the enforcement and protection of a constitutional right or freedom ***under s.20 of the Constitution***, it was a claim made under ***ss. 5 and 11 of the TUEO (RRS) Act***.

[115] The decision of Sir John Muria J that, an award be made for 36 months without taking into consideration that the appellant was subsequently employed by the City Council meant that the compensation included the period from May, 2008 to January, 2009 when the appellant was employed by the City Council, and some 13 more months beyond. It is my respectful view that, it is erroneous. Compensation to appellant did in that event, cover a period when the appellant received salaries from the City Council. That was double counting the period and, double compensation, for the period.

[116] The purpose for awarding damages for a breach of contract is to put the claimant in the position he would have been in if the contract had been performed. The damages are of course, subject to the rule of causation of the loss, and of remoteness of damages. In this appeal, the contract of employment between the appellant and the respondent could have been terminated lawfully if trade union activity was not the reason, by either side giving six weeks notice of termination. That meant that, on each day that the appellant reported to work, she was guaranteed only six weeks of employment, or six weeks salaries, benefits and other remuneration in lieu. So under the general principle of the law of contract of employment, an award of damages measured by six weeks remuneration could put her in the position she would be in had her contract of employment been performed.

[117] It is for the fact that the appellant was unlawfully dismissed under the TUEO (RRS) Act, that the general purpose of compensation must be modified in this appeal by adding to the general purpose of compensation the purpose of the other relief under the Act. The Act provides for a special right not to be dismissed from employment on the ground of membership of a trade union and trade union activities. It provides for reinstatement, award of compensation and other court orders that the court deems just and equitable in the circumstances. So, the purpose of awarding damages under the Act may include in addition, providing to the claimant relief that is equitable in the circumstances, for the unlawful interference with trade union right of the claimant.

[118] The decision of Sir John Muria J is, in any case, contrary to the principles in ***Galoo Ltd. And Others v Bright Grahame Murray [1994] 1 All ER16*** and Hadley ***v Braxendale [1854] 9 Exch 341,*** regarding causation and remoteness of damage. In ***the Galoo*** case it was stated that, following a breach of a contract, the innocent party cannot recover any loss occasioned unless a causal link is shown between the damage suffered and the breach of the contract. Further, even if a link has been shown, the law may regard some losses as too remote from the breach of the contract, and court will not award compensation for the remote losses. It was also stated that, to reach the conclusion that the breach of the contract entitled the claimant to claim damages, consideration must be given to the question whether the breach of the contract was the cause of the claimant's loss, or merely the occasion for the loss – see also ***C & P Haulage v Middleton [1983] 3 All ER 94***. It must be shown that, the breach was the dominant cause of the loss.

[119] In this appeal the evidence shows that, the dismissal of the appellant was the dominant cause of the loss to the appellant of her salaries, benefits and other remuneration. But it is my respectful view that, the dismissal of the appellant by the respondent was not the cause or the dominant cause of the loss by the appellant of salaries, benefits and other remuneration from January, 2009 when the appellant resigned from her employment at the City Council, and beyond. The employment of the appellant by the City Council was, in my view, a *novus actus interveniens.* It was an intervening event which supplanted the dismissal of the appellant by the respondent as the cause of the loss of salaries and other remuneration by the appellant. The employment by the City Council disconnected the casual link.

[120] Where losses have been shown to have causal link with a breach of the contract, the court will limit the extent to which compensation may be awarded, according to whether the particular item of loss is regarded as remote. A loss is regarded as remote if the parties could not at the time they entered the contract have had the loss within reasonable contemplation as resulting from the breach of the contract. In the ***Hadley v***

Baxendale case, Alderson B made the statement which has remained the basis of the rule against compensating for remote damage. He stated:

> ***"Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such a breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."***

[121] It is my respectful view that, in this appeal, the parties could not be taken to have reasonably had in contemplation that upon wrongful dismissal of the appellant, and should she get another employment and resign or be dismissed from that other employment, the respondent would resume liability for the losses that would follow after the resignation or the second dismissal. The losses of the appellant accruing after her resignation from the City Council are too remote a consequence of her dismissal by the respondent.

[122] Because of the errors mentioned, this Court may remit the case back to the trial judge for reassessment of the general damages, taking into consideration the observations that I have made. Sir John Muria J is no longer on the bench of Belize so, this course of action is no longer practical. The second course of action is open and practical. Accordingly, I would quash the award of general damages made by Sir John Muria J in the sum of BZ$350,870.40 and proceed to make an assessment based on the evidence available.

Quantifying the damages.

[123] I commence the quantification of damages by noting that, generally the relief for an infraction of ***s.5 of the TUEO (RRS) Act,*** as occurred in this appeal case, must be,

according to **s.11**, *"reinstatement where this is reasonably practicable",* and in addition, a court order that, *"the court may deem equitable in all the circumstances."* We are now concerned only with an award of damages and any other order which may be considered equitable in all the circumstances. Reinstatement of the appellant in the employment is no longer an issue, the appellant no longer wants it.

[124] The CCJ has laid down two divisions of awards of damages under ***s. 11 of the TUEO (RRS) Act***, for unlawful dismissal cases under ***s.5 of the Act.*** It described the first division as award for ***"quantifiable loss"***, by the claimant; and the second division as award for, **"*not so quantifiable [loss]"***. The CCJ explained that, quantifiable loss would be, ***"referable to the worker's wages",*** and further as, ***"that part that was ascribed to loss of earnings."*** I understand the explanation to mean loss of salaries or wages, allowances, benefits and other remuneration for which a sum of money may be mathematically calculated and assigned.

[125] The, ***"not so quantifiable loss"*** is, according to the CCJ, loss which 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 another employment, the manner of dismissal and distress and inconvenience are taken into consideration.

[126] It is now well established that distress and inconvenience is a factor in the assessment of damages for dismissal from employment. In ***The Maya King*** the CCJ stated at paragraphs 31, 42 and 43, the following:

"31....Mayan King was at all times fully aware that the manner of the dismissals necessarily entailed much more than ending an employment relationship. The dismissals were accompanied by immediate expulsion of the claimants (and in some cases their families) from their homes. Whether under the old common law principles expounded in Hadley v Baxendale, or under the 'just and equitable.' standard prescribed by the Act, these dismissals justify awards to the claimants for distress and inconvenience.

42....Further, the degree of reprehensibility of the defendant's misconduct is to be considered more for its impact on the victim, bearing in mind that the function of the civil law is ordinarily not to punish the defendant.

43....Dismissing them and evicting them from their place of residence with barely 24 hours notice must have occasioned significant mental distress."

[127] Although the subject of this appeal is not a constitutional claim, it is worth nothing that, there are many examples where distress and inconvenience has been included as a factor in the assessment of damages for dismissal from employment in contravention of the Constitutions of several Commonwealth Caribbean countries see: ***Clement Wade v Maria Roches, Civil Appeal No. 5 of 2004 (Belize); Horace Fraser v Judicial and Legal Services Commission, Privy Council Appeal No. 116 of 2006; and Angela Lnniss v Attorney General of Saint Christopher and Nevis, Privy Council Appeal No. 29 of 2007***.

[128] Sir John Muria J erroneously described the quantifiable total sum of BZ$260,870.40 as severance pay for 36 months, but he correctly itemised the heads of quantifiable loss. I would, however, exclude the items shown as: "bonus 4 %"; and "overtime wages (3 years)". I would also reduce the sum for insurance, and the sum for leave pay which are stated to be for 3 years.

[129] In my view, the proper period for the award of quantifiable damages is 14 months, the period from the end of February, 2007 when the appellant was dismissed to

the beginning of May, 2008 when the appellant obtained employment at the City Council. I consider it wrong according to the law, that the respondent should be liable for the period after the appellant had got another employment, except for any difference between the total remuneration at BTL and the remuneration at the City Council for a reasonable period, had diminution in salary and other remuneration been proved. The judge did not mention that the salaries of the appellant at the City Council was $100.00 per month less. He may have considered it not sufficiently established. I would agree. The appellant's evidence on the point of fact was rather tenuous.

[130] Neither the appellant nor the respondent appealed against the itemisation made by the learned judge, or against the figures assigned to the items. The appellant simply wanted the items calculated for 17 years instead of (3 years). It is, however, the duty of the Court to accept only relevant items and figures in the assessment of the damages. But the Court should not in its examination, ignore the principle that the trial judge was in a better position to itemise the heads of quantifiable damages from the evidence, subject to the qualifications I have stated above.

[131] The explanations for the qualifications that I made are these. The "4% bonus" in the sum of $1,646.52 has not been explained. There is already an item described as, "performance bonus, Oct. 2006". Overtime wages for 3 years, a period in the future cannot be included. There was no evidence that overtime work would continue, and I do not accept that compensation for the appellant should be for 36 months (3 years). The sum of $15, 000.00 for insurance is also a sum for 3 years. I would allow from that sum only a fraction for the 14 months when the appellant remained unemployed. The sum is $5,833.33. Similarly, I would include only a fraction representing 14 months out of the sum of $3,300.00 passage grant for 36 months; the sum is $1,283.33.

[132] So, I would confirm the itemisation made by Sir John Muria J with variations as follows:

Item	Sum per month
Salary (Including increase of $1,329.43)	$4,759.69 p.m.
Fixed Line Phone Credit.	$150.00 p.m.
Cellular Phone Credit	$50.00 p.m.
Free DSL Internet Access	$100.00 p.m.
Pension 4% of salary	$190.38 p.m.
30 hrs. Monthly Credit Dial-up Internet Service @ $3.00 per hour	$90.00 p.m.
Sub-total per month	$5,340.07 p.m.
Add:	
Annual Passage Grant 1,100 p.a.	$91.67 p.m.
Annual Leave pay 21 days $3,181.55 p.a.	$265.13 p.m.
Insurance (Life, health, dental, vision) (not disputed but no figure suggested) A nominal amount of $15,000.00 awarded (for 36 months)	$416.67 p.m.
Total of monthly salary and other remuneration	**$6,113.54 p.m.**

[133] The views of Sir John Muria J that, it would be reasonable to remunerate the appellant for 36 months is not without merit. That would be a reasonable period for this appellant to obtain another employment or start a business. The evidence that I took into consideration is that: the appellant was fairly educated; she had worked for 16 years for the respondent and had been promoted; the last assessment of her work performance was good; but the nature of her employment made her experience restricted to a specialized field, she would need to retrain for other jobs, and it would take a long time to find a similar or other employment, or to start a business.

[134] Fortunately, the appellant obtained another employment 14 months after the respondents dismissed her. I cannot ignore that evidence of the actual time she took to obtain another employment, and prefer an estimated reasonable time of 36 months for her to find another employment. So, I would assess the total of monthly quantifiable loss in the sum of $6,113.54 x 14 months. The sum is $85,589.56. To that sum I would add:

the sum of $53.18 annual performance bonus for 2006, and the sum of $260.00 medical bill. The grand total of quantifiable loss would be $85,902.74.

[135] On the facts of this appeal, it is not necessary to show in the calculation, the sum that would have been paid during the period required for notice prior to the date of termination, had the employment of the appellant been terminated not unlawfully, and upon giving the required notice of termination. The appellant was employed for indefinate period. According to the "collective bargaining agreement," that is, the agreement between Belize Communications Workers Union and Belize Telecommunications Limited 1999-2001, at article 12, termination of employment was to be by notice. In the case of the appellant, 6 weeks (1.5 months) notice was required. The quantifiable loss during the period of notice would be salaries and other remuneration for the 1.5 months.

[136] But the period of notice, the 1.5 weeks falls within and is included in the 14 months when the appellant remained unemployed. Her salaries and other remuneration for the period of notice cannot be additional to the salaries and other remuneration for the period of 14 months before the appellant obtained employment at the City Council. That would be double counting and double compensating for the period for notice.

[137] The damages for not so quantifiable loss must be a reasonable estimated sum taking into consideration all the factors, some of which I have enumerated earlier, and the range of pervious awards in similar cases, especially awards in Belize and the Commonwealth Caribbean cases.

[138] ***In The Mayan King*** case, the respondents were dismissed for joining, and participating in trade union activities; they were the local contact persons on the Mayan King plantation. They were plantation labours whose wages were between $165.00 and $280.00 per fortnight. Four of them had been employed for between 3 years and 14 years. No period of employment was given for the other two. They endured considerable stress and inconvenience. One of them obtained employment after 3

months. The Supreme Court of Belize awarded $70,000.00 lump sum damages to each respondent. This Court reduced the lump sum award of damages to $30,000.00 to each respondent and awarded 12 months wages to each respondent. On further appeal, the CCJ awarded $15,000.00 lump sum damages in addition to award for quantifiable losses of one month wages to each, but three months salaries to the respondent who obtained another employment three months after the dismissal.

[139] The appellant in this case is fairly well educated and her job required a special skill, it would take longer to obtain a similar or other employment. Her salaries were way higher than the wages in ***The Mayan King***. The evidence about distress and inconvenience that the appellant endured is much more than the appellants in ***The Mayan King*** endured. I need not repeat in detail the evidence of the repressive actions and attitude of Mr. Dean Boyce, the Chairman of the Board of the respondent, and also the CEO, towards the appellant. It suffices to simply mentioned that Mr. Boyce and the rest of the board comprised of Mr. Boyce, Mr. Phillip Osborn, Mr. Keith Arnold and Mr. Ediberto Tesucum denied any hearing to the appellant under the collective agreement, and ignored a plea from the Minister of Government responsible then, and a plea from the national political opposition party. Instead, the respondent proceeded to publish in newspapers two press releases falsely stating how bad a worker the appellant was. We know now that, the press releases were false because the respondent has admitted that the appellant was dismissed for the reason that, she was an official of the trade union.

[140] Although the court cannot take this evidence as a factor for escalating damages in a punitive way, the court is entitled to take the evidence as proof of distress and inconvenience that the appellant had to endure, and as evidence for the purpose of estimating how long it would take the appellant to obtain another employment had the appellant not obtained employment before the trial of her claim. Given all the above facts, a fair lump sum award of damages to the appellant will be much greater than the sum of $15,000.00 awarded in ***The Mayan King***.

[141] In the ***Wade v Roches*** case, the respondent was a school teacher dismissed by the Catholic Church in Belize in breach of her constitutional right. Distress and inconvenience was one of the factors considered. The Supreme Court of Belize awarded a lump sum of $150,000.00 for damages. This Court reduced the award to $60,000.00. There was no appeal to the CCJ so, the award of this Court has stood. In ***the Horace Fraser*** case, the appellant in the Privy Council appeal was a magistrate who had been dismissed. The Privy Council held that, he was dismissed in breach of the Constitution of Saint Lucia. Their Lordships confirmed the $10,000.00 awarded as damages by the trial judge for the distress and inconvenience element of the damages.

[142] Taking into consideration all the circumstances, and noting that a lump sum award under the TURO (RRS) Act is normally less than a lump sum award for infringement upon a constitutional right, and that the award of this Court in ***Wade v Roches*** stood at $60,000.00, I would award $40,000.00 as unquantifiable lump sum damages in this appeal. The total award of damages would be the $85,902.74, for quantifiable losses, plus $40,000.00 for not so quantifiable losses. The total is $125,902.74. I would subtract from that, the sum of $2,220.28 which the appellant retained out of the $19,846.81 paid to her on dismissal. Out of the $19,846.81, the respondent paid income tax on behalf of the appellant, and paid (deducted) monthly salary of the appellant for the period she was reinstated. The net sum for damages due to the appellant is $125,902.74 minus $2,220.28. The sum is $123,682.46.

[143] The orders that I would make would be the following:

1. The appeal is dismissed.
2. The respondent's notice is partly dismissed, and partly allowed to the extent that, the damages award of $350, 870.40 made by Sir John Muria J is varied to $125,902.74.
3. The respondent will pay $123.682.46, the net sum due to the appellant out of the $125,902.74 award of damages.

4. Interest is chargeable on the net sum, $123,682.46 from 27 February, 2007 until payment in full.
5. The order for costs made at the Supreme Court (the trial court below) is confirmed.
6. Because the respondent withdrew ground No. 1 of its notice to vary the judgment late, each party to this appeal shall bear own costs of the appeal. This order for costs is provisional, to be made final after seven days unless either party will have applied for a different order for costs, which will be dealt with according to the practice of this Court.

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AWICH JA