

IN THE SUPREME COURT OF BELIZE, A.D. 2017

ACTION NO. 230 of 2016

BELIZE SUGAR INDUSTRIES LIMITED

CLAIMANT

AND

FRANCISCO REJON

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Hearings

2017

7th February

8th February

Written Submissions

Claimant – 8.3.2017

Defendant – 7.3.2017

Decision

26.4.2017

Mr. Yohhahnseh Cave for the Claimant.

Mr. Darrell Bradley for the Defendant.

Keywords: Tort – Conversion – Trespass to goods – Mistake – Wrongful Dismissal – Summary Collective Agreement – Breach – No Consultation with Unions – Breach of Natural Justice – Summary Dismissal – Gross Misconduct - Reinstatement – Damage – The Labour Act Cap 297 and The Labour (Amendment) Act, No. 3 of 2011 – The Trade Union and Employers’ Organisations (Registration, Recognition and Status) Act Cap. 304

JUDGMENT

1. Francisco Rejon (Mr. Rejon) was employed by The Belize Sugar Industry Limited (BSIL) as a wharf attendant II. He had been employed by BSIL for twenty five years and had moved up through the ranks to where he currently supervised two other workers. On or about the 12th January, 2015 BSIL discovered one of their three phase pad mounted IMVA transformers (The Transformer) missing. On the 19th January, 2015 Mr. Rejon was charged for its theft. He was subsequently dismissed from his employment on the 20th January, 2015 (as agreed by the parties in their Pretrial Memorandum).
2. Mr. Rejon maintained his innocence throughout the criminal trial and was eventually acquitted. He continues to maintain his innocence even now, and says he had, in fact, been wrongfully accused and wrongfully terminated. Such termination having been done in breach of both natural justice and the Collective Bargaining Agreement made between BSIL and the Belize Workers' Union (The Agreement) which governed his employment. He alleges that during a BSIL internal inquiry, he was forced to sign a statement (The Statement) which he had not and could not read; prior to his dismissal he was not afforded a fair hearing or an opportunity to be represented or accompanied by his union representative; he was not afforded the opportunity to know the full details of the allegations made against him and his Union had not been consulted. He received no severance or benefits and lost his pension since all his contributions were returned to him.
3. BSIL now seeks damages for the conversion of, or trespass to, The Transformer and Mr. Rejon counterclaims for reinstatement and in the alternative damages, for wrongful termination. He also requests (unspecified) relief pursuant to section 42 of the **Trade Unions and**

Employers’ Organisations (Registration, Recognition and Status) Act.

The Ancillary Defendant says that Mr Rejon is not entitled to any relief since he had been properly summarily dismissed for gross misconduct in accordance with sections 41 and 43 of the **Labour Act**.

4. The Issues raised in the claim for determination are:
 1. Did Mr. Rejon convert The Transformer to his own use or commit trespass to same.
 2. If he did convert The Transformer to his own use or commit trespass to same, is the Claimant entitled to damages and in what sum.
5. The issues raised on the counterclaim will be dealt with subsequently.

Did Mr. Rejon convert The Transformer to his own use or commit trespass to same:

The Law:

6. Counsel for the Claimant submits and I quote in agreement:

“22. The learned authors of Halsbury Laws of England, 5th Edition at para. 604, opine that the gravamen of the tort of conversion is the misappropriation by one person of goods belonging to another. While refraining from attempting a precise definition which would universally apply to all circumstances involving the commission of the Tort, the learned authors notwithstanding suggested that there were basic features which attended the commission of the tort of conversion.

“...Its basic features are as follows:

- 1) The defendant’s conduct was inconsistent with the rights of the owner (or person entitled to possession)*
- 2) The conduct was deliberate, not accidental; and*
- 3) The conduct was so extensive an encroachment on the rights of the owner as to exclude him from use and possession of the goods.*

Another notable feature of conversion is that liability in tort is strict. Although the defendant’s interference with the Claimant’s chattel, in the sense of his dealing and physical contact with it must be deliberate his infringement of the Claimant’s right need not be. Indeed, there is no need to prove that the Defendant was at fault at all, so complete ignorance of the claimant’s right affords no general defence.”

23. *The learned authors of Clerk and Lindsell on Torts, 18th Edition, pg. 726, It is a wide tort, covering the deliberate taking, receipt, purchase, sale, disposal or consumption of another's property."*
24. *While the tort of conversion is concerned with the unlawful interference with a Claimant's right or title to the goods in question the tort of trespass is concerned with interference or injury to the Claimant's right to possession."*

7. The Defendant helpfully refers to the Belizean case of ***Nathan Funk v Julian Patt Supreme Court Claim No. 2 of 2008*** paragraph 10 where Justice Legall explains:

"The heart of the tort of conversion is the unlawful appropriation of another's chattel, whether for the defendant's own benefit or that of a third party: see Clerk and Lindsell on torts 18th Edition page 726. To prove the tort, the claimant has to prove appropriation – an intentional taking by the defendant of the claimant's equipment for his own use without the permission of the claimant. The taking has to be accompanied by an intention to exercise permanent or temporary dominion over the equipment or item. In Sanderson v Marsden and Jones 1922 LL Reports 467 it was held that an act of conversion amounts "to a deprivation of possession to such an extent as to be inconsistent with the rights of the owner and evidence of an intention to deprive him of that right" ...

8. He submits further that, at its highest, the alleged admission made in The Statement did not prove the requisite intention to take The Transformer or *"to exercise permanent or temporary dominion over it."* This, of course, is a question of fact which will now be considered when one is reminded that liability in conversion is strict, so mistake is not ordinarily a defence. Lord Diplock in ***Marfani & Co Ltd v Midland Bank Ltd (1968) 1 WLR 956 at 971*** explains:

"At common law one's duty to one's neighbour who is the owner of any goods is to refrain from doing any voluntary act in relation to his goods which is a usurpation of his proprietary or possessory rights in the. Subject to some exceptions... it matters not that the doer of the act of usurpation did not know and could not by the exercise of any reasonable care have known of his neighbour's interest in the goods. This duty is absolute; he acts at his peril."

The Evidence:

9. The basic facts are not in contention. Mr. Rejon was an employee of BSIL. On numerous occasions, but outside the scope of his employment, he purchased scrap metal from BSIL through an organized and well established, bidding process.
10. BSIL owned The Transformer and discovered it missing in or about January, 2015. They launched their own internal investigations during which Mr. Rejon was interviewed (according to BSIL) or interrogated and threatened (according to Mr. Rejon) by four officers employed by BSIL or present on BSIL's behalf. In The Statement, secured through this process and signed by Mr. Rejon, it is stated: *"I then pointed a green transformer box already stripped that was about five feet away from the pallets on the other side which he loaded to the back of the truck box... I also want to give an estimated weight of the stripped transformer to be about 2 ½ tons which I sold to Gonzalo Rojan ... I taught (sic) that this stripped transformer (skeleton) was also on the scrap electrical area."*
11. Mr. Rejon says that The Statement was involuntary and moreover, untrue. He explains that he had been coerced through intimidation and threats to sign a written document in circumstances of his own, admitted, illiteracy. He, therefore, signed same under duress and fear. BSIL on the other hand says the statement was voluntarily given and ought to be believed.

Consideration and finding:

12. For what it's worth, I found Mr. Rejon to be a most unreliable witness. He lied under oath – first by saying he had never made the statement and then admitting that he had taken only stripped the transformer box, demonstrating that at least that part of The Statement was true. He pretended, strategically,

not to understand certain questions, but, without prompting, when asked whether he had a driver's licence, he explained that he had never taken the written test. All this, while counsel was cross-examining him on his assertion of illiteracy. I realized then that I had before me a very smart and sufficiently cunning man. One who not only duly understood what was being asked, but was even able to pre-empt counsel when it suited his need. But when it did not suit his need however, he feigned confusion or inability to comprehend. This being especially blatant when he was being strenuously cross examined about what precisely happened during the interview/interrogation.

13. I also considered his demeanour in the box and concluded that he was not being forthright with the court most of the time and particularly when he described what had occurred during the interview/interrogation. I do accept and appreciate that being questioned by four persons could be very intimidating especially when one considers their status or rank (all out ranking Mr. Rejon, one coming in from abroad specifically to have conduct of the investigation). What I do not believe, however, is the myriad and ever changing threats which Mr. Rejon pleaded and testified to throughout this case. They varied in intensity and specificity until I was forced to disbelieve that any had been made at all.
14. Nonetheless, even taken at its highest, The Statement amounts to nothing more than an admission of taking a transformer housing, shell or box which the court understood and found to be the external component of The Transformer. In fact, Albert Wade, the very employee of BSIL who attested to loading the item (at Mr. Rejon's directive) says he had moved The

Transformer many times in the past and it did not feel the same when he loaded it that day. It was lighter. He was obviously well acquainted with The Transformer. Mr. Rejon himself explained that the forklift which Mr. Wade described as having used to lift the item “cannot lift weights above three tons otherwise it would tip over.” Why he felt the need to share this bit of information is not clear especially since his defence was that he had not interfered in any way with The Transformer.

15. But, BSIL has asked me to make a quantum leap so as to find that the item loaded by Mr. Wade was The Transformer when not even Mr. Wade who loaded it was willing to testify to this. What he did testify to, however, was that the item was not with the five pallets of scrap metal which he loaded for Mr. Rejon. It was some distance away and had been pointed out by Mr. Rejon as forming part of his Lot for removal. I could really find no reason to doubt Mr. Wade’s testimony especially in light of the admission made later in the trial by Mr. Rejon.
16. Teofilo Rejon personally recorded The Statement. But it goes no further than admitting taking the transformer box and not “*the said transformer*” as he states at paragraph 6 of his witness statement. He too denied that any threats were made to Mr Rejon. He insisted that The Statement had been ,aide voluntarily.
17. Jeremy Surpin, the Regional Security Manager testified to leading the investigations for BSIL, the findings of which, he says, indicated that Mr. Rejon removed The Transformer sometime during the period of October to November, 2014. He explained that during Mr. Rejon’s interview he admitted to taking the entire transformer for a weighted value of 2.5 tons.

He goes on at paragraph 25: *“The Defendant gave a statement to us which he voluntarily signed detailing this admission that he had taken the transformer and sold it.”* He refers to The Statement, in which I simply cannot find any such admission.

18. Mr. Surpin tried to bridge the glaring gap by offering some insight into the weight of The Transformer. He stated it at 7,900 pounds. The iron core structure and wiring had an estimated weight of 5,600 pounds or 2.5 tons. However, he, Mr. Surpin, never admitted any personal knowledge of The Transformer. Instead, he based his information about its weight on what he referred to as a copy of the manufacturer’s specifications marked TS3. I perused that entire document and could not find a transformer sized IMVA as the witness indicated. I could, therefore, not make the requisite link to the weight which he had presented in his testimony and which perhaps could have been cogent evidence to support BSIL’s case. Whether The Transformer box or internal components weighed 2.5 tons is unknown to me and I will not endeavor to speculate.
19. Although, much was made over discrepancies in precisely when The Transformer or The Transformer box was taken from or last seen on, BCIL’s compound, I find same to be entirely irrelevant at this point. The item was discovered missing in January and that is when the witnesses were questioned. One’s memory of a date may not be as lucid as ones memory of the particular act itself. Many of the witnesses admitted on the stand that they could not precisely recall, which is a sure indicator of the fallibility of the human mind. There is no great difference between December 1st and November or even the ending of October for that matter when it comes to

recall, particularly since Mr. Rejon admitted in court that he had taken, what I find to be, the external part of The Transformer.

20. What concerned me more than a precise date is that Mr. Rejon, having allegedly been coerced and threatened to give an oral and written statement admitting guilt, was allowed to remain at work from the 15th January 2015 until the 19th January, 2015 when he was charged. Mr. Surpin explains that the status quo was maintained as Mr. Rejon seemed willing to assist the investigations. Counsel for the Claimant impressed that it was counter intuitive for the accused and threatened Mr. Rejon to continue coming to work. Perhaps so, but Mr. Rejon was earning his bread and butter.
21. When the court considered all the evidence, the witnesses for the Claimant were found to be far more believable. Mr. Surpin and Teofilo Rejon were unshakeable and although Mr. Wade left some to be desired, I found him to be truthful for the most part and felt safe relying on his testimony that he had loaded The Transformer but it was lighter than usual. On a balance of probability I found that Mr. Rejon had not been threatened or coerced to make or to sign The Statement. I was strengthened in my assessment of Mr. Rejon when under cross-examination he admitted again as he did in The Statement that he had in fact taken the transformer shell. Certainly, he would be unable to say that he had been threatened or coerced here in the court to make this particular admission. I believed that Mr. Rejon gave that statement voluntarily and further, that he did know that The Transformer housing did not form part of the scrap he had won the bid to purchase. Mainly because he testified that prior to putting in his bid he had had the *“opportunity to examine the items, which are put out by the company for sale.”* But in

any event, whether or not he was mistaken, he had acted to his peril as it related to the item. This court therefore finds that Mr. Rejon took that external part of The Transformer and converted it to his own use by selling it as scrap.

22. What the court cannot find, however, is that Mr. Rejon converted The Transformer or engaged in any trespass to The Transformer. Since the claim alleges only a trespass to The Transformer or conversion thereof, it must necessarily be dismissed. In any event, I agree with Counsel for the Defendant that BSIL have provided no proof of the value of The Transformer other than their say so, in circumstances where they submit at paragraph 20 of the Statement of Claim that they have *“been put to incur expenses of purchasing a replacement.”*
23. The claim against the Defendant is accordingly dismissed. Issue two consequently falls away and the counterclaim now stands to be determined.

Issues to be determined on the counterclaim:

24.
 1. Was the Ancillary Claimant wrongfully dismissed in breach of The Agreement.
 2. Was the Ancillary Claimant unlawfully dismissed in breach of natural justice and due process.
 3. Was the Ancillary Claimant wrongfully summarily dismissed.
 4. Is the Ancillary Claimant entitled to any remedies and, if so, what and in what quantum (if necessary).

Was the Ancillary Claimant wrongfully dismissed in breach of The Agreement:

25. There is no written contract of employment between BSIL and Mr. Rejon. However, the parties accept in the pretrial memorandum that The Agreement governed Mr. Rejon's employment with BSIL. This court finds further, that The Agreement is binding on both parties herein. Reliance is placed on the **Trade Unions and Employers' Organisations (Registration, Recognition and Status) Act** section 42 which reads:

"42.-(1) A collective bargaining agreement is binding on the trade union and the employer who are parties to the agreement, and unless stated otherwise, on every employee who is a member of such trade union or who is a member of the bargaining unit in respect of which the trade union is certified as the bargaining agent.

(2) The terms of the collective bargaining agreement are and shall be deemed to be incorporated into the employment contract of each employee to whom the agreement applies.

(3) Where any person alleges a breach by any person of any of the provisions of a collective bargaining agreement, such person may apply to the Supreme Court for redress, and the Supreme Court may make such orders and grant such other relief in respect of the application as it may think appropriate to ensure compliance with the provisions of the collective bargaining agreement."

26. In **Commonwealth Caribbean Employment and Labour Law** page 134 the authors state:

"The term 'wrongful or unlawful' dismissal denotes a situation where the employer terminates the employment contract in breach of the provisions which govern the expiration of the contractual term."

Then at 135:

"The unlawful dismissal claim may also be sustained in circumstances where the contract stipulates a particular procedure to be followed for termination to be effected and this was not adhered to."

27. To prove such a claim the contractual terms and the facts must be scrutinized in order to determine what was required and if there was compliance.

The Evidence:

28. The Agreement established certain expressed contractual terms of employment, some of which Mr. Rejon claims fettered BSIL's right to dismiss at will and which BSIL failed to observe. He maintains, in particular, that he was dismissed without the proper procedure expressed therein, being invoked. He pleads at paragraph 7 of his counterclaim:

“The Claimant’s termination of the Defendant was in breach of Article 7 of the Collective Agreement which mandates that “at all times where possible, during factory shifts operations in particular a Shop Steward or any other Union Official shall be present if disciplinary action is contemplated ...” Article 7(c) (ii) also requires the company to consult with the union prior to discipline of the employee where the employee is liable to dismissal.”

29. The pertinent parts of Article 7, which is captioned Disciplinary Action, is reproduced below:

“(a) At all times where possible, during factory shifts operations in particular a Shop Steward or any other Union Official shall be present if disciplinary action is contemplated. Failing this, the Union shall be advised within the next normal day of the action taken.

(b) Disciplinary action shall be taken as set out below when an employee is absent from work without permission, and such action will be recorded on the employee’s file.....

(c) (i) Disciplinary action shall also be taken when an employee is guilty of offence other than absenteeism, such as misconduct, willful disobedience to lawful orders given by any person in charge, for habitual or substantial neglect of his duties, and such disciplinary action will be recorded on the employee’s file. A copy of each entry shall be given to the Union and the employee.

First offence - One day suspension without pay.

Second offence - Three days suspension without pay.

Third offence - The employee will be immediately suspended pending dismissal and the Union will be immediately advised that the employee is subject to dismissal and they may make representations under the Grievance Procedure on behalf of the employee if they so wish. In the event no representations are made by the Union within one week of their receiving advice, the employee will be dismissed.

(ii) In the event of an employee committing an act which could cause injury to other person/persons or serious loss and/or damage to property and/or equipment, the Company shall reserve the right after consultation with the Union, to discipline the employee beyond the provisions of section (c) (i) above, including liability for dismissal. This in no way removes the right of the Union to take up the matter under Article 6 – Grievance machinery.

(iii) In compliance with the Company's Substance abuse Policy the use or trafficking of illegal substances at the work place and/or on the job shall make an employee liable for dismissal."

30. BSIL asserts that the disciplinary procedural requirements of The Agreement do not apply to the present circumstances and impress instead sections 41 and 43 of the **Labour Act**, the relevant sections of which read:

"41.(1) Notwithstanding the foregoing provisions of this Part, an employer may dismiss the worker or the worker may abandon service of the employer, without giving notice and without any liability to make payment as provided in sections 37 to 40 or section 83 if there's good and sufficient cause for such dismissal or abandonment of service:

Provided that an employer may not get up as a good and sufficient cause that the worker at the time of the dismissal was a member of a trade union.

(2) For the purpose of subsection (1) good and sufficient cause for dismissal without giving notice shall include dismissal

(a) when an employee is guilty of misconduct, whether in the course of his duties or not, inconsistent with the fulfilment of the express or implied conditions of his contract of employment.

"43.(1) An employer is entitled to dismiss summarily without notice or without payment of any severance or redundancy allowance or terminal benefit, any worker who commits an act of gross misconduct.

A (2) The gross misconduct referred to in subsection (1) is restricted to that conduct which is directly related to the employment relationship and has a detrimental effect on the business and is based on the operational requirements of the enterprise of such a nature that it would be unreasonable to require the employer to continue the employment relationship."

31. It is BSIL's contention that Mr. Rejon committed an act of gross misconduct by converting BSIL's property which, at the very least, was a good and sufficient cause to terminate the contract of employment and which allowed them to summarily dismiss him in accordance with section 43.

Consideration and findings:

32. The Ancillary Claimant's evidence is that he was interrogated on the 15th January with a view to dismissal and the procedure under Article 7 (a)

should, therefore, have been followed. I do not believe this to be correct. From the evidence presented, BSIL seemed to have been conducting internal investigations into a missing transformer. The Ancillary Claimant was among a number of persons questioned. I accept that prior to the interview BSIL had their suspicions about Mr. Rejon's involvement. However, what Mr. Rejon revealed in that interview sent the investigation in a particular direction after which he was allegedly eventually summarily dismissed. None of the evidence provided by Mr. Rejon indicates, in anyway, that his dismissal was in contemplation at that session. In fact all his testimony reveals is that the entire episode related to The Transformer. I should find it very strange if not unlawful for BSIL to have contemplated dismissal of anyone without conducting a full investigation into the matter. I therefore find that the interview of the 15th January 2015 was not done in contemplation of dismissal. Article 7(a) was not then engaged and it was not required to be engaged.

33. Mr. Rejon says further that he was dismissed in breach of Article 7(C)(ii). There is no letter of dismissal, but the parties agree that Mr. Rejon was dismissed on the 20th January. For the first time, in Mr. Rejon's submissions, I read that he had been "*constructively dismissed*", this was never pleaded. All that was pleaded was that "*The Defendant was unlawfully and wrongly terminated by the Claimant for a crime he did not commit*" This is significant because Section 42A of the **Labour Act** says the employee is deemed to have been dismissed unfairly where he has been constructively dismissed.
34. Be that as it may, I have perused Article 7(C)(ii) and cannot hold that it "*requires the Company to consult with the Union prior to discipline of the employee*

where the employee is liable to dismissal.” The sub-section states quite clearly and plainly that it deals specifically with acts of misconduct which **could cause** certain consequences i.e. injury to a person and damage to or loss of property or equipment. It does not deal with acts which actually cause damage, loss or injury. There is to my mind a distinct difference between the two. An employee who neglects to secure an area, as is his duty to do, may be considered as having acted in such a way as **could cause** loss, damage or injury (depending on the situation). However, if his failure to secure that area actually results in injury or loss through theft, is this not a different category of misconduct altogether! One which this court finds is not dealt with by The Agreement at all and most definitely not by Article 7(C)(ii). The procedure there is therefore confined. Having already found that Mr. Rejon did convert BSIL’s property, there can be no doubt that the claim for wrongful dismissal on the basis of failure to adhere to the contractual procedure as outlined in Article 7(C)(ii) must fail.

Was the Ancillary Claimant wrongfully dismissed in breach of natural justice and due process:

35. Mr. Rejon says that he was not treated properly during the interview. His pleadings state at paragraph 8 that he asked for his union representative repeatedly to no avail. Oddly his witness statement is completely silent as to his many requests. He simply states at paragraph 50: “... *and they never gave me an opportunity to speak to the shop steward or union representative.*”
36. He says further that he was threatened, intimidated and forced to sign a statement he could not read. Yet on being released from the inquiry he made no contact with the union representative he had allegedly so desperately

demanded. He never asked the union to intervene on his behalf. It was the Union which contacted him some five days later after he was arrested, charged and summarily dismissed from his employ. In fact, the Union was informed by BSIL on the 20th January stating that Mr Rejon had been summarily dismissed. They seemed to have intervened without him ever requesting them to.

37. Mr. Rejon also raised issues of procedural fairness. However, this is not a claim for unfair dismissal pursuant to **The Labour (Amendment) Act, No. 3 of 2011** where principles of natural justice and fairness become relevant. As stated in *Wallace v United Grain Grower's Ltd [1997] 152 DLR (4th) 1; at pg 301:*

“A wrongful dismissal action is not concerned with the wrongness or rightness of the dismissal itself. Far from making dismissal a wrong, the law entitles both employer and employees to terminate the employment relationship without cause. A wrong arises only if the employer breaches the contract...”

38. **Commonwealth Caribbean Employment and Labour Law** helpfully explains at **pg 155:**

*“Thus one of the most critical distinguishing features of the two concepts is that ‘... unfair dismissal involves an enquiring into the overall merits of the dismissal (substance and procedure) where as the common law action for wrongful dismissal essentially ...looks typically at the form of the dismissal’. (See Smith, I. et al. (2010) **Smith and Woods Employment Law (10th Ed Oxford University Press) at 418**) Therefore, a person can be both terminated wrongfully and unfairly dismissed on the same set of facts and can, in principles, claim redress for both wrongs, the two are not mutually exclusive.”*

Then at pg 227

“In the second stage of the unfair dismissal determination, the adjudicating body must also enquire into the procedure used in dismissing the worker/employee. These procedures may be enshrined either in statute, codes of practice, work rules or collective labour agreements. At as basic intrinsic level of common law fairness, the concepts of natural justice, due process and particularly the right to warnings and a fair hearing are also in issue. Those concept is also referred to as ‘procedural fairness’.”

39. Wrongful dismissal is a common law phenomenon. There is no common law entitlement of workers to reasons or to be heard in his or her defence as they have no part in private contractual relationships. Many say this treats the worker as a commodity not as a person and though this may have merit, it does not change the common law principles. Belize has, in wisdom, chosen to introduce the statutory action for unfair dismissal to protect employees from the ravages of the common law. Mr Rejon has chosen not to avail himself of same. This claim for wrongful dismissal must fail.
40. **Was the Ancillary Claimant wrongfully summarily dismissed:**
Now, the Ancillary Defendant does not deny that Mr. Rejon was not given a disciplinary hearing, notice of dismissal or payment in lieu of notice nor that he was not paid severance or any benefits subsequent to dismissal. Instead they say his gross misconduct allowed them to summarily dismiss him pursuant to section 43 of the **Labour Act**.
41. There is no written contract of employment and the expressed terms as stated in The Agreement do not exclude summary dismissal or relate it only to the occurrence of certain circumstances. The **Labour Act** on the other hand provides for summary dismissal on the basis of gross misconduct in respect of employment relationships governed by the Act.
42. Gross misconduct, defined in Section 2 of the **Labour Act** as “... *misconduct that is such that the employer can not reasonably be expected to take any course other than to terminate the employment of the worker;*” may justify summary dismissal. However, the onus of proof lies with the employer and is a question of fact and degree to be determined by the court. The failure of successful criminal

prosecution regarding the conduct is not an indicator that the dismissal was wrong or unfair, because the standard of proof in criminal matters is different to that of a balance of probability in civil matters.

43. Summary dismissal is founded on the employee's repudiatory breach of the employment contract. Such breach according to the **Labour Act** is confined to those related to the employment relationship and which could be detrimental to the business. Neither the **Labour Act** nor the common law requires the employer to follow any particular procedure for summary dismissal. The employee is not required to be heard nor is natural justice required to be complied with.

44. In this case BSIL conducted their own internal investigation where they formed an opinion that Mr Rejon was guilty of having taken The Transformer. This court finds that he in fact took the external component of The Transformer only. But this makes very little, if any, difference in the circumstances. Mr Rejon was placed in a supervisory position. His action had involved an innocent employee, Mr Wade whom he instructed to load the item. Mr Rejon knew that the transformer was an integral part of his employer's business. He also knew that it did not form part of the lot for which he had won the bid. There can be no doubt that such dishonest behaviour by Mr Rejon constitutes a repudiatory breach as defined by The Labour Act and was a valid reason for dismissal. It breached the implied term of trust and confidence necessary for an employer – employee relationship. BSIL's response in summarily dismissing him therefore, constituted a reasonable response in the circumstances.

45. As both parties have failed at their claims they shall bear their own costs accordingly.

IT IS HEREBY ORDERED AS FOLLOWS:

1. The claim is dismissed.
2. The counterclaim is dismissed.
3. Each party shall bear their own costs.

**SONYA YOUNG
JUDGE OF THE SUPREME COURT**