

IN THE SUPREME COURT OF BELIZE, A.D.

CLAIM NO. 713 OF 2018

(FREDERICK CABRAL CLAIMANT

(

BETWEEN (AND

(

(BELIZE WESTERN ENERGY LTD.

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mrs. Peta-Gay Bradley of the Belize Legal Advice and Services Center

No Appearance for the Defendant

1. This is an Application for determination of terms of a Default Judgment. The Claimant, Frederick Cabral, is a former employee of Belize Western Energy Ltd. (B.W.E.L.), the Defendant Company. The Defendant is a limited liability company carrying on business as a Gas Services provider. The Claimant worked as an office worker for this company from March 4, 2010 to January 15, 2015. He was paid an annual salary of \$18,980.00. He was terminated without notice from his employment on January 15, 2015. He filed this claim

for wrongful dismissal against B.W.E.L. on March 26, 2019. The Claim and Statement of Claim was duly served on the Defendant Company on November 13, 2018 at its registered office at No. 39 Central American Boulevard in Belize City. No Acknowledgment of Service was filed by the Defendant and after more than 14 days had elapsed the Claimant therefore applied for default judgment to be granted to him. Default judgment was granted by the Registrar on February 18, 2018 against the Defendant. On March 26, 2019, the Claimant filed an ex parte Application for the court to determine the terms of the default judgment. Written submissions in support of this Application were filed on behalf of the Claimant on July 7, 2019. This matter was inadvertently misplaced and the court apologizes for the delay in delivery of its decision.

2. Submissions in support of the Application to Determine Terms of the Default Judgment

Mrs. Peta-Gay Bradley submits on behalf of the Claimant that the Claimant is entitled to the following relief:

- 1) A declaration that the Claimant was wrongfully dismissed from his employment with the Defendant Company, Belize Western Energy Ltd.
- 2) Damages for wrongful dismissal
- 3) Vacation Pay of \$730 BZ

- 4) Exemplary damages for wrongful dismissal
- 5) Interest
- 6) Costs
- 7) Such further or other relief as the court deems just

Mr. Cabral was 60 years old at the time of his termination. He had worked for BWEL from March 4, 2010 to January 15, 2015. He was therefore employed on a salary of \$375BZ per week by BWEL for a period of 4 years, 10 months and 12 days at the time of his dismissal. His annual salary was \$18,890.00. The basis of this claim is that Mr. Cabral was wrongfully dismissed as he was not provided with Notice of Termination by B.W.E.L. as required under the Labour Amendment Act, Act No. 3 of 2011:

“37.-(1) The notice of the termination of a contract of employment for an indefinite period may be terminated either by the employer or by the worker, without assigning reason therefor, by giving to the other the notice for the period specified in subsection (2) of this section.

(2) Where the worker has been in the employment of the same employer continuously, the period of notice shall be as follows:

Period of Employment	Notice Period Required
For more than 2 weeks but not more than 6 months	One week
For more than 6 months but not more than 2 years	Two weeks
For more than 2 years but not more than 5 years	Four weeks
More than 5 years	Eight weeks

3. Assessment of Damages

Mrs. Bradley submits that the Claimant is not entitled to severance pay, but he is entitled to vacation pay in the sum of \$730BZ pursuant to his employment arrangement. Learned Counsel states that the Defendant admits that he is so entitled.

The claim for damages for wrongful dismissal is governed by the common law. Mrs. Bradley cites **McGregor on Damages** (17th ed. at para 28-002) as follows:

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

Mrs. Bradley relies on the reasoning in Consolidated Claim 200 of 2013 and Claim 260 of **2013 Mark Menzies v. Belize Water Services Ltd** where this very court held as follows:

“At common law it is still true that reasonable notice to terminate is given when the contract is terminated lawfully, and it follows that the employee has no claim for wrongful dismissal. It does not matter that the employee was terminated for a bad or arbitrary reason, or indeed, for no reason at all; nor how long the employee has been employed, nor his record, provided that the employer has given notice or pay in lieu of notice, the employee has no claim.” Ms. Bradley argues that since the employee in the case at bar was not given any notice of his termination, this proves that he was wrongfully dismissed.

In determining what would be a reasonable period of notice in respect of an engagement for an indefinite period terminable by either party, at any time, on notice, it was concluded in **Waithe v Caribbean International Airways Ltd(1988) 38 WIR 61** that “that was a question of fact to be determined in all the circumstances”. The Court held that among the factors to be considered were the character of the plaintiff’s employment, and the availability of

similar employment having regard to the plaintiff's experience, training and qualifications.

4. Taxation

Mrs. Bradley on behalf of the Claimant submits that where damages involve a pre-estimate of possible future earnings one must take into account the tax that would be payable on them.

Learned Counsel relies on **British Transport Commission v Gurley** and **Waithe v Caribbean International Airways Ltd** as authority that there ought to be a deduction from the compensatory damages awarded for wrongful dismissal. This deduction represents the taxes which would have been payable by the Claimant.

5. Aggravated/Exemplary Damages

Mrs. Bradley contends that the circumstances of this case are such that an award for aggravated damages is warranted. She cites the House of Lords decision in **Malik v. Bank of Credit and Commerce International S.A.** 1997 H.L. it was held that:

“But of the many forms which trust-destroying conduct may take, some may have continuing adverse financial effects on an employee even after his employment has ceased...”

In the case at bar, Mrs. Bradley states that Mr. Cabral had to endure unfounded allegations of misappropriation of B.W.E.L.’s funds. This led to him being arrested and detained for 48 hours by the Belize Police Department, amounting to egregious breaches of his constitutional rights. He is therefore entitled to “stigma damages” as set out in **Malik v BCCI**. Allegations of dishonesty undoubtedly create a negative impression of the Claimant and made the possibility of alternative employment even more difficult for him to find.

The Claimant is therefore claiming the following sums:

Damages for Wrongful Dismissal: 6mths pay:	\$ 8,760
Vacation Pay:	\$ 730
Aggravated Damages (\$50,000 Trinidad dollars)	\$ 1,488.92
Total:	\$10, 978.92
Interest from January 2015 to January 2019	\$ 2 634.94
Interest from February 1 st to July 1 st , 2019	\$ 267.10
Total with interest	\$13, 880.96
Prescribed Costs:	\$ 3,470. 24

6. RULING

I thank Mrs. Bradley for these very helpful submissions and I must state that I agree with them entirely. The Claimant is fully entitled to damages for wrongful termination as the Labour Amendment Act clearly states that persons working for 4 years is entitled to 4 weeks' notice. His evidence is that he has been working with this company for over 4 years. Mr. Cabral is entitled to the payment of the damages sought. I also agree that this is a case where exemplary damages are appropriate. It is reprehensible that an employee who had faithfully served the company for 4 years found himself as a respectable senior citizen at 60 years of age suddenly in the humiliating position of being thrown in jail for unfounded allegations of misappropriating company property. I therefore award the sum requested as compensation for the indignity heaped on the Claimant by the company in these circumstances under which he was terminated. This is a small society and it is not beyond the realm of probability to think that Mr. Cabral's reputation was smeared by this unfortunate incident as described in his affidavit. On this basis I grant the Claimant the relief sought as follows:

- a) A declaration that the Claimant was wrongfully dismissed from his employment with the Defendant Company, Belize Western Energy Ltd.

b) Damages for wrongful dismissal in the sum of 10, 978.92

c) Vacation Pay of \$730 BZ

d) Exemplary damages for wrongful dismissal in the sum of
\$1,488.92

e) Interest of \$2,902.04

f) Prescribed Costs 3,470. 24

I so order.

Michelle Arana

Chief Justice (Acting)

Supreme Court of Belize