

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 176 of 2009

CONRAD LEWIS

CLAIMANT

BETWEEN AND

**NATIONAL ASSEMBLY STAFF
COMMITTEE
ATTORNEY GENERAL**

1st DEFENDANT

2nd DEFENDANT

Hearings

2009

29th July

16th September

15th October

11th November

Dr. Elson Kaseke for the Claimant

Mr. Jose Cardona for the 1st Defendant

Ms. Priscilla L. Banner for the 2nd Defendant

LEGALL J.

JUDGMENT

Facts

1. The claimant was Deputy Clerk to the National Assembly for the period 1999 to 1st January, 2003. The Governor General appointed him Clerk to the National Assembly by instrument dated 14th August,

- 2003 with effect from 1st January, 2003. The instrument did not specify any period or duration of the appointment.
2. After performing the functions of Clerk for about five years, the claimant, for reasons which he did not explain, agreed in writing with the National Assembly to be appointed Clerk to the National Assembly for a period or duration of five years, commencing from 1st January, 2008. According to the written agreement, the parties are the claimant and the National Assembly; but it is signed by the chairperson and vice chairperson of the National Assembly Staff Committee.
 3. The National Assembly Staff Committee (the Committee) is a body established by section 3(1) of the National Assembly Staff Act (The Act) Chapter 14 of the Laws of Belize. The Committee consists of the Speaker, three members of the House of Representatives, the President of the Senate, a member of the Senate; and a member of the staff of the National Assembly.
 4. Section 5(1) of the Act provides that the Clerk to the National Assembly shall be appointed by the Governor General acting in accordance with the advice of the Committee. Section 5(2) provides that the power to exercise disciplinary control over the Clerk, and the power to remove him from office are vested in the Governor General acting in accordance with the advice of the Committee. Section 10 of the Act provides for the preparation of budget estimates for the

Committee to be part of the annual Appropriation Bill; and the Committee is authorized to make regulations for the fixing of salaries.

5. Clause 4 of the written agreement states that the Clerk shall receive a salary of \$75,948 per annum with a five percent cost of living annual adjustment. The agreement provides for vacation leave of 30 working days each year with full pay; but if the leave is not taken, the Clerk is entitled to the salary in lieu of leave. Clauses 9 (a) and (b) of the agreement provide as follows:

9. (a) During the first three months of the period of engagement the presiding officers may advise the Governor General to terminate the service of the person engaged by giving one month notice or paying him one month's salary in lieu of notice.

- (b) If the service of the person engaged is continued after three months, the presiding officers may thereafter, without prejudice to clause 6 hereof, advise the Governor General to terminate his engagement by giving him three months notice or by paying him one month's salary in lieu of notice.

6. About ten months after entering into the written agreement, the claimant received a letter from the chairman of the Committee, who is also the Speaker of the House of Representatives. The letter reads as follows:

16th October, 2008

“Mr. Conrad Lewis
Clerk to the National Assembly
BELMOPAN

Dear Mr. Lewis,

The National Assembly Staff Committee at its meeting today, 16th October, 2008, has by majority taken a decision to exercise an option contained in the agreement signed by you on 21st December, 2007, to determine your said employment. The Governor General has been advised to terminate with immediate effect. (emphasis mine)

Pursuant thereto, one months salary in lieu of notice together with any benefits payable has been agreed to be paid immediately. The committee thanks you for your service to Belize and wish you the best in your future endeavours.

Sincerely,

(HON. EMIL ARGUELLES) (Mr.)
Chairman, National Assembly Staff Committee
(HON. ANDREA GILL) (Ms.)
Member, National Assembly Staff Committee”

7. The letter was delivered on the said 16th October, 2008, to the claimant by the Speaker of the House of Representatives and the President of the Senate. After an exchange of some words, the claimant having cleared out his desk, left his office on the said date. On 21st October, 2008, he received a letter from the administrative officer in the office of the Governor General as follows:

“Mr. Conrad Lewis Sr.
Clerk
National Assembly
National Assembly Building
Belmopan

21st October 2008

Dear Mr. Lewis,

I am directed to inform you that His Excellency the Governor General, acting on the advice of the National Assembly Staff Committee and in accordance with paragraph 9 (b) of the schedule to your employment contract dated 21st December, 2007 and all other powers thereunto him enabling, has terminated your engagement as Clerk to the National Assembly with immediate effect on paying you one month's salary in lieu of notice.

You will also be paid pro-rate gratuity up to the date of termination and any vacation leave and overtime which may be due to you.

His Excellency takes this opportunity to thank you for your services to the National Assembly and wished you well in your future endeavours.

Sincerely,

Amelia M Poornananda JP
Administrative Officer
Office of the Governor General

8. Learned counsel for the claimant wrote a letter dated 27th October, 2008, to the Speaker and the President of the Senate to the effect that

the dismissal was in breach of the claimant's employment agreement and demanded within seven days of the letter, the payment of \$642,823.99 for wrongful dismissal.

9. By the 10th February, 2009, there being no payment forthcoming, the claimant filed the present action in which he claimed as follows:

- “1. Damages for wrongful, unlawful and unfair dismissal, and breach of contract dated 21st December, 2007.
2. Interest at the statutory rate.
3. Costs.”

10. In paragraph 3 of the statement of case, the claimant contended that the “decision to determine the claimant's employment was contrary to Clause 9(b) of the contract dated 21st December, 2007.” This claim before me is for damages for breach of the said contract or agreement. The nub of the claimant's case is that his dismissal was in breach of the rules of natural justice, more specifically the right to be heard; and that the Committee exceeded its jurisdiction when it made the decision that he should be dismissed. The Committee also, it was submitted, acted in breach of the claimant's written employment agreement.

Right to be heard

11. The defendants called as a witness, the Speaker, who is chairman of the Committee. He gave evidence as to the procedure that was

adopted at the meeting of the Committee that made the decision to determine the claimant's employment. This is what the Speaker said in evidence:

“As Clerk the claimant was at all times present at the meeting until the point where his contract would have been discussed and he was then asked to leave. A decision was made at the meeting to advise the Governor General to terminate the Clerk's service. The claimant was not invited at that part of the meeting to show why the decision to terminate him should not be made.”

The President of the Senate, Miss Andrea Nicole Gill, gave evidence as a defence witness as follows:

“The Clerk was at the meeting initially and was then asked to leave. When the subject of his contract came up, he was asked to leave the meeting.”

12. From the above evidence the Clerk attended the Committee meeting on 16th October, 2008 as he is authorized to do by section 3 (5) of the Act which states that the Clerk or Deputy Clerk shall act as secretary to the Committee. When the Committee reached the stage at which they discussed the question of termination of the claimant's service under his agreement, he was asked to leave the meeting. The decision to terminate his employment under the agreement was taken in his absence.

13. At the same meeting allegations were made against the claimant. The Speaker testified that there were two ministers of Government who were members of the Committee; and these ministers at the meeting expressed the opinion that the interaction with the claimant in terms of confidence and comfort level were not achieved between the time the government changed in February, 2008, until October, 16th 2008, the date of the meeting.

14. According to the evidence, the People's United Party formed the Government until February, 2008, when general elections were held and a new party, United Democratic Party, won the election and formed a new government in February, 2008. At the Committee meeting of the 16th October, 2008, the Speaker's evidence is that the two ministers of the new government felt that because the claimant had previously been a candidate for the People's United Party, and because he, as Clerk, would be privy to and sometimes first to arrange orders, motions, petitions and sometimes sit in ministerial meetings and committees, it affected their participation and contribution to discussions, because they were uncomfortable to discuss issues and express personal opinions in the presence of the claimant, a supporter of the People's United Party. The ministers, therefore, at the meeting proposed a resolution to advise that the termination mechanism be put in place.

15. The Committee at that same meeting on the 16th October, 2008 by majority, took a decision under the aforesaid agreement dated 21st December, 2007, according to the letter dated 16th October, 2008

above, to determine the claimant's employment as clerk. However, according to the Speaker in his evidence above, the Committee made a decision to advise the Governor General to terminate the claimant's service.

16. It is clear to me, from the evidence in this case, that the claimant was not heard in relation to the allegations made against him at the meeting, nor was he given an opportunity to be heard in relation to the allegations. The claimant, as Clerk to the National Assembly, held an office established by section 67(1) Constitution which is the Supreme law of Belize. He cannot be properly removed from that office unless he is heard in respect of any allegation made against him or given an opportunity to be heard.

17. A person holding an office established by statute has a right to be heard in relation to any charge or allegation made against him, before the dismissal or termination of his employment. The Committee was a body with legal and statutory authority to make a decision that would affect the employment of the claimant who held a constitutional office, and it seems to me, that the Committee, in the discharge of that authority, must obey the rules of natural justice. The Privy Council in *A.G. v. Ryan 1980 AC 718*, a case from the Bahamas, in which a minister had failed to give a hearing, stated the principle with commendable clarity:

“The minister was a person having legal authority to determine a question affecting the rights of

individuals. This being so it is a necessary implication that he is required to observe the principles of natural justice when exercising that authority, and if he fails to do so, his purported decision is a nullity.”

18. The claimant was denied the opportunity to respond to the allegations made by the ministers. He might have wanted to bring to the attention of the ministers and other members of the Committee, the competence with which he performed his duties as Clerk, as the Speaker mentioned in his evidence. “I would”, the Speaker testified, “rate the performance of Mr. Lewis as Clerk as good, professional, and cordial, and respectful. His knowledge and competence were as good as I could expect.” The claimant was denied the opportunity to present his case and to defend himself. In my judgment, the Committee acted in breach of the claimant’s right to be heard.

Ultra Vires

19. It was also submitted on behalf of the claimant that the Committee exceeded its jurisdiction when, in the dismissal letter dated 16th October, 2008, quoted above, it determined the employment of the claimant contrary to section 5(2) of the Act. Section 5(2) states:

“5(2) Power to exercise disciplinary control over persons holding or acting in the office of Clerk or of the Deputy Clerk and the power to remove such person from office shall likewise vest in the Governor General, acting in accordance with the advice of the National Assembly Staff Committee.”

19. The above section gives the Governor General the power of removal, acting on advice; but the Committee, according to the wording of the letter dated 16th October, 2008, determined the claimant's employment, which it had no power to do. The Committee therefore exceeded its jurisdiction, and acted contrary to section 5(2) of the Act. The Committee is authorized by the section to make a decision to advise the Governor General on the removal of the claimant; but is not legally authorized to determine the claimant's employment.

21. Though the letter states that the Governor General has been advised to terminate the employment; this appears in the letter, after the letter states that the Committee decided to determine the claimant's employment. The letter in the first paragraph, if the desire was to comply with section 5(2) of the Act, should have simply said that the Committee had taken a decision to advise the Governor General to remove the claimant from the office of Clerk to the National Assembly with effect from such date as the Committee wished to advise.

22. It was further submitted that clause 9(b) of the agreement above, gave the presiding officers, that is the Speaker and President of the Senate, the authority to advise the Governor General to terminate the claimant's employment, by giving the claimant three months notice, or by paying the claimant salary for one month in lieu of notice. The letter of the 16th October, 2008, stated that it was the Committee, and not the presiding officers, that took the decision to determine the

claimant's employment thereby acting contrary to clause 9(b) of the written employment agreement.

23. The letter of 16th October, 2008 is clearly not in accordance with clause 9(b) of the written agreement even though it was signed by the presiding officers. The authors of the letter of 16th October, 2008, found themselves in a dilemma: How to satisfy section 5(2) of the Act, and clause 9(b) of the Agreement with respect to the functionary to advise the Governor General concerning removal or termination of the claimant's employment. Clause 9(b) of the contract could have removed the dilemma by simply giving the power to advise termination or removal to the Committee, rather than to the presiding officers.

APPEAL

24. A further submission was made by learned counsel for the first defendant based on section 7 of the Act. Section 7 states:

“7. An appeal shall lie to the Belize Advisory Council from any decision of the Governor General, acting in accordance with the advice of the Committee under section 5, or from any decision of the Committee under section 6, in relation to the staff of the National Assembly.”

25. It was submitted that under the above section, the decision “is appealable to the Belize Advisory Council, and not to the Supreme Court.” The above section gives the claimant a right to appeal to the

Council. He has the option whether to exercise that right. The section does not state that a person affected by a decision of the Governor General shall appeal to the Council before making a claim to the Supreme Court for redress. The claimant has a lawful right of access to the Supreme Court; and since section 7 does not specifically require any person to appeal before access to the Supreme Court, I am of the view that the claimant did not have to first appeal to the Council, before making his claim to the Supreme Court.

DAMAGES

26. The claimant claimed damages for breach of the written employment agreement dated 21st December, 2007. In the statement of claim, the total damages claimed is \$642,823.99. Specific details showing how this amount was arrived at were not given in the statement of claim. The claimant has a duty to include in the statement of claim, a statement of all the facts on which the claimant relies to support the amount of the claim.

27. In the claimant's second witness statement, however, the amount mentioned as damages is \$573,341.80; and the basis for arriving at this amount was given as salaries, housing, entertainment and telephone allowances, and vacation leave, for the period October, 2008 to December, 2012, the date on which the five year contract would have come to an end. The amount also included a gratuity of 20% of salary earned. These alleged facts, which the claimant seems to rely on, should have been included in the statement of claim, as

required by Rule 8.7 (1) of the Supreme Court (Civil Procedure) Rules 2005.

28. This claim before me is for damages for breach of the written employment agreement dated 21st December, 2007, signed and agreed to by the claimant. Clause 2 of the agreement states:

“2 This agreement is subject to the conditions set forth in the clauses of the Schedule hereto annexed which forms an integral part of the agreement.”

29. In the Schedule, are paragraphs 9 (b) and (d) which the claimant, as the person engaged, agreed to. The paragraphs are as follows:

“9. (b) If the service of the person engaged is continued after three months, the presiding officers may thereafter, without prejudice to clause 6 hereof, advise the Governor General to terminate his engagement by giving him three months notice or by paying him one month’s salary in lieu of notice.

(d) After the expiration of three months the person engaged may at anytime terminate his agreement by giving the presiding officers three months notice or on paying one month’s salary in lieu of notice.”

30. My interpretation of the paragraphs above is that the claimant agreed

that after three months, he may terminate the employment by giving three months notice or paying one month's salary in lieu of notice to the presiding officers. If the claimant's employment is continued after three months, his employment can be terminated by giving him three months notice or paying him for one month salary in lieu of notice. The claimant agreed to the three months notice or one month's salary in lieu of notice in the event of termination of his employment by the Governor General.

31. The Governor General did by letter to the claimant dated 21st October, 2008 terminate the claimant's employment with effect from the date of the letter on the payment to him of one month's salary in lieu of notice. The claimant was paid, in accordance with the termination letter from the Governor General, one month's salary in lieu of notice, in the amount of \$6,375.24; but he returned the amount to the treasury on 29th October, 2008.
32. There is an inconsistency between clause 9(b) and section 5(2) of the Act as to who is authorized to advise the Governor General on termination of the employment agreement; but there is no inconsistency between these two provisions as to who is authorized to terminate the employment. The Governor General on 21st October, 2008 terminated the employment and this is in accordance with clause 9(b) of the agreement and section 5(2) of the Act.
33. I am of the view that the claimant is bound by the terms of his written agreement. He agreed in effect to one month's salary in lieu of notice if

his agreement is terminated after three months of the engagement. He has not denied the agreement or any provision contained in clause 9 (b). In my judgment, the claimant is entitled to the amount he agreed to in clause 9(b) of his agreement, that is to say, \$6,375.24 representing one month's salary in lieu of notice.

34. The administrative officer in the office of the Governor General in paragraph 2 of the letter of termination stated to the claimant:

“You will also be paid pro-rated gratuity up to the date of termination and any vacation leave and overtime which may be due to you.”

There is no evidence whether the claimant received any or all of the payments referred to in the above paragraph. The claimant is entitled, if he had not yet been paid, to the payments due to him referred to paragraph 2 of the Governor General's letter above.

35. The defendant was paid salary up to 15th October, 2008. He was dismissed with effect from the date of the Governor General's letter, that is 21st October, 2008. He ought to be paid salary up to the legally effective date of his dismissal. I believe he left his office on 16th October, 2008 because of the letter from the Committee of that date. He therefore has a right to be paid salary for six days, from 16th October, 2008 to 21st October, 2008, both days inclusive.

36. There is no evidence proving that the 2nd defendant is liable to the claimant. I make no order as to interest with respect to the amount stated in the judgment, because the claimant was paid the amount and returned it to the Treasury on 24th October, 2008.

CONCLUSION

37. I therefore make the following orders:
1. Judgment for the claimant against the No. 1 defendant in the amount of \$6,375.24 representing one month's salary in lieu of notice.
 2. The claimant must be paid by the No. 1 defendant salary for six days for the period 16th October, 2008 to 21st October, 2008, both days inclusive.
 3. Claimant must be paid by the No. 1 defendant pro-rata gratuity up to and including 21st October, 2008, as well as any vacation leave and overtime pay due to him.
 4. Case against the No. 2 defendant is dismissed.
 5. There is no order as to costs.

Oswell Legall
JUDGE OF THE SUPREME COURT
11th November, 2009

