IN THE SUPREME COURT OF BELIZE, A.D. 2010

CLAIM NO. 371 of 2010

MARIA GUERRA **APPLICANT**

AND

ATTORNEY GENERAL **RESPONDENTS**
DIRECTOR OF IMMIGRATION & NATIONALITY SERVICES
PUBLIC SERVICES COMMISSION
BELIZE ADVISORY COUNCIL

Hearings
2010
27th September
21st October
29th November

Mr. Dean R. Lindo SC for the Claimant.
Mr. Andrew Bennett for the Defendants.

LEGALL J.

JUDGMENT

1. The claimant was employed by the government on 16th January, 2007 as Immigration Officer III. She was assigned to the Phillip Goldson International Airport to carry out her duties as an immigration officer.

On 31st May, 2008, a search was made of a bag which was allegedly in the possession of the claimant at the airport, in which was found the sum of US$11,500.00 which was not declared. Detailed circumstances involving the finding of the money were not given in evidence. The claimant was criminally charged jointly with one Jose Aldana in the Magistrate's Court for the offence of unlawfully importing $11,500.00 US currency. Both the claimant and Jose Aldana were found not guilty on 1st April, 2009 of the charges. There is no evidence of the reasons for the not guilty verdict.

2. Prior to the hearing of the criminal charge against the claimant in the Magistrate's Court, the Public Services Commission by letter dated 18th July, 2008 to the claimant, suspended the claimant from active duty with effect from 21st July, 2008, for a period of sixty days pending the outcome of the investigation of the criminal charge against her. The letter of suspension stated that the claimant during the period of her suspension would receive, not her full salary, but fifty percent of it. Mr. Rodney Neal, Chairman of the Public Services Commission swore in an affidavit, that the suspension of the claimant was further extended on the 21st September, 2008, but neither the document making the further extension, nor the date to which the extension was made, was given in evidence.

3. By letter dated 24th July, 2009, the Public Services Commission informed the claimant that it was contemplating disciplinary action against her for misconduct in relation to the finding of the US currency in the bag allegedly in the possession of the claimant, under

regulations 26, 27 and 40 of Services Commission Regulations 2001 No. 159 of 2001; and for violating the Code of Conduct specified in regulation 19 of the Public Services Regulations No. 160 of 2001. In so far as is relevant to these proceedings, regulations 26, and 40 are as follows:

> "26. A public officer who, without reasonable excuse does an act which:-
>
> (b) contravenes any of the provisions of these Regulations, the Public Service Regulations or any other Regulations for the time being governing the conduct of Public Officers; or
>
> (c) is prejudicial to the efficient conduct of the Public Service or tends to bring the Public Service into disrepute.
>
> is liable to disciplinary proceedings for that misconduct in accordance with the provisions of these Regulations.
>
> 40. An officer who is acquitted of a criminal charge in any court is not precluded from having proceedings instituted against him under these Regulations in respect of an alleged act of misconduct arising out of that criminal charge."

4. The letter also told the claimant of her rights as follows:

> "In accordance with Regulation 29(1) of the Services Commissions Regulations (S.I. 159 of 2001), the Commission hereby gives you an opportunity to exculpate yourself. Please also be advised that under Regulation 29(1)(f) of the said Regulations, you may request that you appear before and be heard by the Commission with or without a Union Representative, an Attorney-at-Law or some other person to assist you at the hearing. The Commission is to be given advance notice of who will represent or assist you at the hearing.
>
> Please also note that if any witnesses are called to give evidence at the hearing, you will have an opportunity through your Counsel, Union Representative or otherwise, to cross-examine such witnesses. If you wish to cross-examine any other witnesses, please indicate the names of such witnesses to enable the Commission to arrange for their attendance."

5. The said letter also stated that several documents were attached, but these documents were not presented to the court, except a letter from the Director of Immigration and Nationality Services, Mrs. J. Saldivar Ramirez, to the CEO of the Ministry of National Security recommending that the claimant "be dismissed from the Public Service." The claimant was also informed, on 29th August, 2009, according to the witness Rodney Neal, of the names of the witnesses who would appear on behalf of the Immigration Department at the disciplinary hearing before the Commission.

6. The disciplinary hearing was conducted by the Public Services Commission on the 3rd September and 5th October, 2009. At the hearing the claimant, as well her attorney-at-law, appeared and cross-examined witnesses. The Commission, at the conclusion of the hearing, sent a letter, dated 24th November, 2009 which states as follows:

> "The Public Services Commission after careful consideration of the evidence presented at the hearings, found that you contravened:
>
> (1) Public Service Regulation 19(a), (b), (d) (e) and (f) which states:-
>
> In accordance with section 121 of the Constitution, all public officers shall conduct themselves in such a way as not to:-
>
> (a) place themselves in positions in which they have or could have a conflict of interest;
> (b) comprise the fair exercise of their official functions and duties;
> (d) demean their office or position;
> (e) allow their integrity to be called into question; nor
> (f) endanger or diminish respect for, or confidence in, the integrity of the Government.
>
> (2) Services Commissions Regulations 26 (b) and (c) which states:-
>
> A Public Officer who, without reasonable excuse, does an act which:-
>
> (b) contravenes any of the provisions of these Regulations, the Public Service Regulations or any other Regulations for

the time being governing the conduct of Public Officers; or

(c) is prejudicial to the efficient conduct of the Public Service or tends to brings the Public Service into disrepute, is liable to disciplinary proceedings for that misconduct in accordance with the provisions of these Regulations.

As a consequence, the Public Services Commission approved that:-

(1) you be dismissed from the Public Service with effect from November 25, 2009.

(2) the fifty percent (50%) salary withheld during the period of suspension i.e. July 21 2008 to November 23, 2009, be forfeited;

(3) that you be paid in lieu of all vacation leave accrued as at July 20, 2008, in accordance with Public Service Regulations 55 and 58."

7. No specific reasons were not given to the claimant by the Commission for finding that the claimant contravened the above mentioned Regulations, nor was the claimant informed by the Commission of her right to appeal the decision of the Commission to the Belize Advisory Council, and the time required for making such an appeal. Regulations 33 and 34 require that the record of the proceedings contain reasons for the findings, and that the claimant be informed of the right to appeal. Regulation 33 and 34 are as follows:

"33. In any disciplinary proceedings, a record of proceedings shall be made which shall contain statements of evidence, the findings of the Services Commission,

> together with reasons for the finding and the penalty imposed.
> 34. The Services Commission shall, as soon as possible, inform the officer in writing of its findings, the penalty imposed on him, of his right to appeal the determination of the Services Commission to the Belize Advisory Council and of the time required for making such application.

8. Though the claimant was not informed of her right to appeal as required by the above Regulations, and was not given specific reasons for the findings by the Commission that she contravened the Regulations, the claimant nevertheless appealed the decision of the Commission to the Belize Advisory Council (the Council) on 9th December, 2009. The Council met and heard the appeal on 23rd April, 2010 and upheld the decision of the Commission. The Council refused to grant the claimant an oral hearing at the appeal, purportedly acting under Rule 8(1)(2) of the Belize Advisory Council Procedure Rules 1997, which states as follows:

> "8. (1) The Council shall consider and determine every appeal on the basis of written submissions made by both parties but may call for additional information or evidence if it deems necessary.
> (2) It shall not be incumbent on the Council to grant the appellant or the other party an oral hearing."

The Council did not give the claimant reasons for upholding the decision of the Commission and for dismissing her Appeal.

9. On 18th May, 2010 the claimant made an application to the Supreme Court for permission to apply for Judicial Review to quash the decisions of the Commission and the Council. The court, by a consent order dated 18th June, 2010, granted the permission to the claimant, who, on 5th July, 2010, filed a Fixed Date Claim form for orders of Certiorari to quash the decisions of the Commission and Council. In addition, the claimant claims the following:

> "An order that that claimant be re-instated to her post of Immigration Officer 111 with effect from the 21st July, 2008.
>
> Consequential relief and damages as a result of the claimant's wrongful dismissal from the Department of Immigration & Nationality Services.
> Interest on sums found to be due to the claimant.
> Costs.
> Such further and/or other relief as the court deem just."

Suspension and the right to be heard

10. The question is whether a public officer has a right to be heard before being suspended on an allegation of misconduct against him. Counsel for the respondent submits that there is no such right; but counsel for the claimant disagrees. In ***Barnwell v. AG 49 WIR 88*** a judge was

suspended on allegations that he offered a "bundle of money" to a magistrate for the purpose of influencing the result of a case that was before the magistrate, that involved relatives of the judge. The Court of Appeal held that a judge was entitled, as a matter of natural justice, to be heard before suspending the judge pending disciplinary charges. In the case of **Rees and others v. Crane 1994 1 AER 832** where a judge was suspended from duty pending investigations that the judge was not fit to carry out his duties due to the performance of the judge in court and doubts about the state of health of the judge, the Privy Council held that although the judge would have had an opportunity to answer the allegations against him at a later stage in the investigation, fairness required that the audi alteren partem rule be applied at the Commission stage of the proceedings to suspend a judge.

11. Suspension from an office can result in the office holder being deprived of the full use of his salary, and in that sense, deprived of his right to property. This case before me is a good example where the claimant, on being suspended, was deprived of the use of 50% of her salary for the period of the suspension. Suspension is a matter which could affect the reputation and standing in the community of the officer concerned. ***Rees*** was to the effect that the suspension was unlawful without a hearing; and their lordships further held that the rule might apply similarly to other cases, and not merely to the case of judges.

12. But there are authorities which suggest that an employer ought to have the power to suspend an officer without a hearing as a holding measure pending enquiries into the allegations or suspicions. In the case ***Furnell v. Whangarei High Schools Board 1973 AC 660***, the Privy Council held that a school teacher was not entitled to a hearing before suspension without pay, on the basis that the teacher would be fully heard later, on the disciplinary charges, in accordance with statutory provisions. In **Northwest Holst Ltd. v. Secretary of State for Trade 1978 Ch. 201**, it was said that a policeman was not entitled to be heard before suspension, pending investigation of charges of misconduct. On the other hand, courts in New Zealand and Australia have equated suspension from office with expulsion; and have held that natural justice is required equally in both cases: see ***Birss v. Secretary for Justice 1984 1NZLR513 and Dixon v. Commonwealth 1981 55 FLR 34***.

13. The argument for a fair hearing before suspension is in accordance with the general principle, that where a public authority having legal authority to make decisions affecting the rights of individuals, the public authority is required to observe the principles of natural justice when exercising that authority; and if it fails to do so, the purported decision is a nullity: see ***AG v. Ryan 1980 AC 718***. Suspension on half pay can affect the rights of an individual and most likely could incur hardship and injure the reputation of the individual concerned. Suspension of a public officer engenders disgrace and dishonour; and even if eventually the officer should be cleared of the allegations made against him, the social stigma caused by the suspension may

never be eradicated from the minds of his fellow workers and members of his community.

14. It seems therefore to me that fairness requires that the individual concerned should be granted a hearing before a decision of suspension is made against him. Such a hearing before suspension, may result in the authorities, having heard the individual concerned, not going forward with the suspension. Such a hearing may simply involve calling the officer and stating the allegation against him, and giving him a chance to respond; and making it clear to the officer that if a decision is made to suspend him, a further hearing of any charge against him will follow.

15. Moreover Regulation 37 states:

> "37. (1) Where the Services Commission is informed of an alleged act of misconduct by an officer and the Services Commission is of the reasonable opinion that the public interest or the reputation of the Service requires it, the Services Commission may suspend the officer from duty by notice in writing until further notice."

Hearing the officer can contribute to the reaching of a reasonable opinion. The regulation could not have intended, when it used the term "reasonable opinion," that the Commission must hear only one party to the dispute, and not the officer against whom the allegation

was made. The term "reasonable opinion" indicates that there must at least be good reasons for the opinion, and hearing all the parties, is consistent with that process which, I am of the view, is the intention of regulation 37. So in my view under the common law and regulation 37, the claimant has a right to be heard, before suspension, which right was violated by the Commission.

Reasons for Decision

16. Neither the Commission nor the Council gave the claimant specific reasons for their decisions that she contravened the above regulations, which resulted in her dismissal, and to dismiss her appeal respectively. Did the Commission and the Council have a legal duty to give reasons to the claimant for their decisions? Learned counsel for the respondent says there is no duty to give reasons. Regulation 33 above states that the record of proceedings of the Commission shall contain reasons for the findings of the Commission. But this Regulation does not state that the reasons must be given to the claimant. Even though the regulation is silent on this point, the intention of the regulation could not have been that the reasons must be kept away from the claimant, in the record, because regulation 34 states that the Commission shall inform the officer of its findings and his right to appeal the findings. The officer would not be in a good position to exercise his right of appeal if he is not given reasons for the decision to be appealed against. In my view, the intention of regulation 33 and 34 is that the Commission has a duty under the regulations to give to the officer reasons for its findings or decisions.

17. But apart from the regulations 33 and 34, the common law is moving in the direction requiring public authorities to give reasons for their decisions. Professor Wade in his Administrative law 8th Edition at p 516, gave impressive reasons why there should be a general rule that reasons should be given for decisions by public authorities. "Unless," Professor Wade writes, "the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not and he may be deprived of the protection of the law. A right to reason is therefore an indispensable part of a sound system of judicial review.". Though at present there is no general duty requiring the giving of reasons, the House of Lords in ***R v. Home Secretary exp Doody 1994 1 AC 531 at p 561*** says that there is a trend towards an insistence on greater openness and held, in the context of the case, that where it was unjust not to give reasons, reasons must be given. In ***R v. Civil Service Appeals Board Exp Cunningham 1991 4 AER 310***, the Court of Appeal held that natural justice demanded a giving of reasons for deciding that a dismissed prison officer's dismissal was unfair.

18. The appeal provisions of the regulations, namely, that a record of the proceedings has to be prepared, and the officer concerned has to be informed of his rights of appeal, may be an implied intention of the regulations of an obligation to give reasons for the decision. A duty to give reasons not only can improve and strengthen the appeal process, but it seems to be consistent with the doctrine of fairness. Where the statute has provisions for appeal against the decisions of the body; or if there is a judicial character to the work of the statutory body; or if

decisions of the body is susceptible to judicial review, these are factors pointing to the conclusion that reasons may be required to be given by the statutory body. In ***Reg v. Secretary of State for the Home Department***, ***Exparte Doody 1991 1 AC 531 at p 565; Lord Mustill*** regarded susceptibility to judicial review as indicative that reasons are to be disclosed, especially where it was important for there to be an effective means of detecting the kind of error which would enable the court to intervene by way of judicial review.

19. Further, the existence of a right of appeal has been considered as a factor pointing towards a requirement for the giving of reasons. In ***Northern Tool Co. Ltd. V. Tewson 1972 ICR 505*** a requirement to give reasons was identified on the grounds that otherwise the parties would in effect be deprived of their right of appeal on a question of law. Moreover, the giving of reasons is a factor which makes it possible for an officer, on a disciplinary charge, to exercise usefully the right of appeal conferred on him by the legislation.

20. The Commission has wide powers under the regulations. These powers include discipline of public officers, such as dismissal, retirement and suspension from duty. The Council has the power to dismiss appeals against dismissals. Thus both bodies effectively have the power to take away the right to work from a public officer. This power can adversely affect the livelihood of the individual. The individual ought to know the reasons of the Commission and the Council for taking away his livelihood and the right to work as a

matter of fairness and justice. Lord Denning in ***Breen v. Amalgamated Engineering Union 1971 2 Q.B. 175*** said:

> "Then comes the problem; ought such a body, statutory or domestic, to give reasons for its decision or to give the person concerned a chance of being heard? Not always, but sometimes. It all depends on what is fair in the circumstances. ….. But if he is a man whose property is at stake, or who is being deprived of his livelihood, then reasons should be given why he is being turned down, and he should be given a chance to be heard. I go further. If he is a man who has some right or interest, or some legitimate expectation, of which it would not be fair to deprive him without a hearing, or reasons given, then these should be afforded him, according as the case may demand. The giving of reason is one of the fundamentals of good administration."

21. In ***R v. Civil Service Appeals Board exparte Cunningham***, above Lord Donaldson MR said that there was basis for holding that the Civil Service Appeals Board should have reasons for their award, and that there was "a general rule of the common law, if that be different, a principle of natural justice, that a public authority should always or even usually give reasons for its decision." In ***Alexander Machinery v. Crabtree 1974 1 CR 70*** Donaldson P said:

> "In the absence of reasons it is impossible to determine whether or not there has been an

> error of law. Failure to give reasons therefore amounts to a denial of justice and is itself an error of law."

22. The Commission and the Council are not required to give their reasons in a form similar to a judgment of a court. In giving their reasons for a decision, a brief statement of the facts, and a concise statement of the way in which they arrived at their decision are enough: see ***Exparte Cunningham*** above. The point to be borne in mind is to give to the claimant, and resulting possibly along the process to the court, a brief idea of the thinking of the Commission and the Council in arriving at their decisions in the matter before them. The giving of reasons for decisions by public authorities affecting the right to work of individuals, is not only fair and just, but goes to some extent to prevent notions of arbitrary, or discriminatory, or abusive or a biased exercise of power by the authority concerned, which in turn engenders public confidence in the system of administrative justice. In my view, the failure by the Commission and the Council to give reasons for their decisions breached the claimant's right to be heard.

23. The claimant made several other submissions in support of the application to quash the decisions of the Commission and the Council, including the failure of the Commission to inform the claimant of her right to appeal; the alleged failure or refusal of the Commission to call certain witnesses for cross-examination; the alleged refusal of the Council to grant an oral hearing to the claimant, and the submission,

which I think is misconceived, that the Commission acted contrary to the separation of powers doctrine. But in the light of my finding above that the claimant's right to be heard was violated, it is not necessary for this decision to further consider these other submissions.

Reinstatement

24. The most difficult part of this case is to decide whether or not the claimant should be reinstated in her position as immigration officer III. In ***Chief Constable of North Wales Police v. Evans 1982 3 A.E.R***. 141, the House of Lords held that although, on the facts of the case before the court, an order for reinstatement was the only satisfactory remedy in consequence of the unlawful acts of the Chief Constable in dismissing the appellant without a hearing, it would be impractical, as it might border on a usurpation by the court of the powers of the Chief Constable. It was also said in ***Evans*** that if the Police Force had the dismissed constable forced on members of the force by order of the court, there would be an obvious danger that ill feelings would affect his future relations with his superiors in the Force. The view seems to be that where an employer loses confidence and trust in an employee it is not in the best interest of the parties to force the employer to work with that employee. There are other examples of the court refusing to grant orders for reinstatement on the basis of the above reasons: see ***Clement Johhson v. The Attorney General CA 21 of 1992, and Edgar Aaron CA No. 41/1997 (unreported)*** (Guyana).

25. On the other side of the coin is the Privy Council's decision of ***Dr. Astley McLaughlin v. Governor of Cayman Islands 2007 UK PC 50.*** In this case, Dr. McLaughin was in effect dismissed from his government position, and applied to the court by motion for a declaration that the decision to dismiss him and his dismissal were void. He also applied for reinstatement to the office he held before the dismissal; and alternatively, damages. At first instance, his application was dismissed. On appeal, the Court of Appeal set aside the first instance judgment and granted a declaration that the decision to dismiss Dr. McLauglin and his dismissal were void, and the Court of Appeal remitted the case below for the assessment of damages and declined to order reinstatement.

26. On appeal to the Privy Council, the court was urged to consider the argument that the Court of Appeal's decision had an apparent inconsistency, because if the dismissals were void, then reinstatement ought to follow, since it was settled law that a decision declared by a court to be void is a nullity and of no effect: see ***Ridge v. Baldwin 1964 AC 40 at p 80***. Moreover, by declaring Dr. Mclaughlin remedy in damages, whilst the status of employment continued to subsist was, it was argued, at odds with the courts declarations that the dismissal was void. In other words, since the decision to dismiss and the dismissal were void, Dr. McLaughlin's tenure of office in the public service did not end. He remained a public officer and entitled to his remuneration as such.

27. The Privy Council took a practical approach and held that it was reasonable for the Court of Appeal to decline to order reinstatement, because Dr. McLaughlin had not been on the job for nearly four years, from the date of his dismissal. But the Privy Council further held that if the Court of Appeal meant by making the declaration that the dismissals were void, that Dr. McLaughlin was no longer holding his office in the government, it erred in recognizing the legal effect of declaring a dismissal as void. Lord Bingham stated:

> "It is a settled principle of law that if a public authority purports to dismiss the holder of a public office in excess of its powers, or in breach of natural justice, or unlawfully (categories which overlap), the dismissal is, as between the public authority and the office-holder, null, void and without legal effect, at any rate once a court of competent jurisdiction so declares or orders. Thus the office-holder remains in office, entitled to the remuneration attaching to such office, so long as he remains ready, willing and able to render the service required of him, until his tenure of office is lawfully brought to an end by resignation or lawful dismissal. These propositions are vouched by a large body of high authority which includes ***Wood v. Woad 1874 9 Ex 190, at 198 (Kelly CB) and 204 (Amphlett B)***; ***Vine v. National Dock Labour Board 1956 1 QB 658 at 675-676*** (***Jenkins*** **LJ); Ridge v. Baldwin 1964 AC 40, 80-*81 (Lord Reid)***.

28. The Privy Council allowed the appeal before it and made a declaration not specifically reinstating Dr. McLaughlin. The Privy Council ruled that:

> "Dr. McLaughlin is entitled to recover arrears of salary since 1 April 1999, and to the payment of pension contributions on his behalf, making allowance for his earnings in the United States, until he resigns or his tenure of office lawfully comes to an end."

29. In the local case of ***AG v. Cardinal Smith No. 438 of 2000 (Belize Supreme Court) unreported***, the applicant applied for certiorari to quash the decision of the Commissioner of Police to retire the applicant, who held the rank of Assistant Inspector of Police, from the Belize Police Department, on the ground that the decision was in breach of the rules of natural justice. The court found that, on the facts of the case, the decision of the Commissioner to retire the applicant was void; and contrary to the principles of natural justice. The court then proceeded to direct the Commissioner of Police to reinstate the applicant in the Belize Police Department. But from the judgment, it does not seem that submissions on the question of reinstatement were presented to the court, and considerations directly relevant to the issue of reinstatement, such as were advanced in **Evans** above were not addressed by the court.

30. Though the claimant's dismissal was unlawful it has to be remembered that there was a de facto removal of the claimant from the job since 21st July, 2008. Perhaps her position was replaced by

someone else, and administrative procedures concerning her remuneration and conditions of her work may have been altered or changed since her removal. The fact that the court declares that a claimant purported dismissal was void or unlawful, it does not necessarily follow that by that declaration the claimant is automatically inserted back in her official position. It would take, it seems to me, a reinstatement order to reverse that de facto removal and insert her back in her office.

31. Though the court has jurisdiction to order reinstatement in suitable cases, an order for reinstatement is not normally made in cases of dismissal, for the reasons stated in ***Evans***. It would take appropriate facts and circumstances to order reinstatement. In this case, a minimum of facts was given in evidence. It was alleged that the bag in which the money was found was in the possession of the claimant; but was it on her person, or on property on which she was present. Did she respond orally or in writing to the allegations, and, if so what was her explanation? It must be remembered that she was charged jointly with another person for the offence charged. In other words, what specific role did the claimant play, if any, in the alleged commission of the offence or disciplinary offence? There is no evidence of these matters.

32. Then the magistrate found her not guilty, but there is no evidence of the reasons for the finding. Was the not guilty verdict on the basis that the elements of the charge were not proved at the trial by the prosecution, or was it primarily because of non-appearance of vital

witnesses for the prosecution? It was also shown above that neither the Commission nor the Council gave reasons for their decisions. In a nutshell, the court is not fully aware of the role the claimant played in the alleged commission of the offence or disciplinary offence, which is important for the purpose of the exercise of the power of the court to take the unusual step to order reinstatement.

33. Further, the Director of Immigration and Nationality service, under whose authority the claimant worked, recommended in a letter dated 14th April, 2009 that the claimant be dismissed because her "integrity was called into question." There is a loss of faith and trust in the claimant by the head of her department. Still further, I have no evidence of the state of the requirements in the Immigration Department for personnel, and the capacities required. The claimant has been off the job since 21st July, 2008. It was also a part of the evidence that the claimant was not confirmed in her post as Immigration Officer III. Moreover, reinstatement might border on an usurpation by the court of the powers of the Commission, or the powers of the claimant's head of department, a matter considered in ***Evans*** above. The burden is on the claimant to prove on a balance of probabilities that she is entitled to reinstatement. On the facts of this case, and the considerations above, I am not so satisfied. For all of the above reasons, I do not consider reinstatement of the claimant in her post as Immigration Officer III as a remedy which the court should, in this case, grant.

Damages

34. The claimant claimed damages for wrongful dismissal. I have no evidence of the amount of salary attached to her post. She has a duty to mitigate her loss resulting from her dismissal, but I have no evidence whether she has obtained other employment; and if so with effect from what date. There is evidence that she received 50% of her salary from 21st July, 2008 to 23rd November, 2009. There is also no evidence of the age of the claimant. I have no evidence of her academic qualifications and skill; but she must have possessed some academic qualifications and skill to have been employed by the government in the Immigration Department.

35. The claimant's dismissal was wrongful and in breach of her contract of employment. Though the claimant was a public officer, she was a servant of, and held a contract of employment with, the government, which was breached. Damages for breach of contract are compensation to the claimant or plaintiff for the damage, loss or injury suffered by her because of the breach. The claimant is, as far as money can do it, to be placed in the same position as if the contract had been performed. See ***Golden Strait Corp. v. Nippon 2007 2 AC 353; and AG v. Blake 2001 AC 268***.

36. In the case of ***Wesley McDonald v. Attorney General Civil Appeal No. 66 of 2000 Guyana (unreported)*** the claimant, who was a Lance Corporal in the Police Force, was charged for unlawful possession, following a search of his person at the airport. The charge was subsequently dismissed. He was later discharged or removed from the

Force; and he brought a claim in the Supreme Court claiming that his removal was unconstitutional, null and void. The court at first instance held that his dismissal was wrongful and awarded damages in the sum equivalent to six month salaries and allowances. On appeal on the question of damages to the Court of Appeal, the court considered his duty to mitigate his loss and how long it would have taken the dismissed officer to obtain comparable employment, considering the social conditions existing at the time of his dismissal. The court proceeded to compute damages on the basis of such duration of time. The court proceeded to award 18 months as reasonable time for the claimant to have obtained comparable employment and awarded damages for unlawful dismissal equivalent to 18 months salary and allowances calculated as at the date of his discharge from the Police Force.

37. The claimant in this case before me had a duty to mitigate her loss that resulted from her unlawful dismissal from her office, by seeking and obtaining comparable employment on such salary and allowances that were attached to the lost office. On the evidence in this case, I am of the view that the period of 6 months is a reasonable period for the claimant to have obtained comparable employment; and I award damages to her for wrongful dismissal for that period of time based on her salary and allowances.

38. Before concluding this judgment, it may be mentioned that learned counsel for the defendant exhibited in his written submissions, dated 19th November, 2010, after the hearing had concluded, a letter dated

9th January, 2007 that the claimant was employed on probation for one year from 9th January, 2007; and a document showing the minutes of the meeting of the Commission concerning the disciplinary charge against the claimant. Neither the letter nor the document was tendered in evidence at the hearing; and therefore, would not, in the interest of fairness to the other side, be considered by the court.

Conclusion

39. The claimant's right to be heard was breached by the Commission and the Council, and her dismissal was unlawful. The court would not exercise the power of reinstatement, because the immediate employer on the evidence, has lost confidence and trust in the claimant and reinstatement could result in ill feelings which would affect her relationship with her supervisors in the Immigration Department. The claimant has a duty to mitigate her loss and the court therefore hold that a period of six months is a reasonable time for the claimant to have obtained comparable employment.

40. I therefore make the following orders:

(1) The claimant was unlawfully dismissed by the Public Service Commission because of breach of the rules of natural justice.

(2) The Belize Advisory Council acted unlawfully when it dismissed the claimant's appeal without giving reasons for the dismissal.

(3) The claim for reinstatement of the claimant to her post as Immigration Officer III is refused.

(4) The defendants shall pay to the claimant damages for unlawful dismissal equivalent to six months salary and allowances applicable to the post of Immigration Officer III with effect from, and calculated as at, the date of her dismissal – 25th November, 2009.

(5) The defendants shall pay the claimant interest on the amount of damages calculated under (4) above at the rate of 6% per annum from 25th November, 2009 until the amount is fully paid.

(6) The defendants to pay costs to the claimant to be agreed or taxed.

Oswell Legall
JUDGE OF THE SUPREME COURT
29th November, 2010