

given for the dismissal was that the claimant wrongfully and contrary to standing instructions issued two licences for the importation of certain prohibited soft drinks.

3. The claimant made a claim by judicial review for which permission had been granted on 21.7.2006. After the claim had been filed parties reached out of court settlement of the claim. The terms were said to be that, the claimant would be reinstated, but he would then resign immediately, and be paid whatever would be due under the Constitution (Public Services Commissions) Regulations on resignation. He tendered his resignation in a notice dated 31.10.2007. Payments due under the Regulations were made upon the resignation, but based on 21.3.2006, as the date of resignation.

4. The claimant says the correct date of his resignation should be 31.10.2007. The Solicitor General, for the defendant, fixed it on 21.3.2006, the date on which the claimant's appeal to the Belize Advisory Council was dismissed. The difference in dates meant some loss of pay for 19 months and 10 days to the claimant, and loss of the period as a factor in the calculation of other benefits due on

resignation. The claimant has asked that his case may proceed despite the settlement agreement, and that only the one issue, namely, which date should be taken as the date of resignation, be determined.

5. The settlement agreement was admitted by the defendant. Unfortunately it was not a written agreement, although evidence of it was in a letter dated 25.9.2007, written by the Solicitor General to Financial Secretary, and the affidavit of Mr. Justin Palacio, the director of the Services Commissions. It would have been a simple matter of interpretation of the agreement had it been in writing.

6. In my view, the best way to solve the question as to which date should be taken as the date of the resignation of the claimant is for the court to first decide the question as to whether the dismissal of the claimant was lawful or not. If the dismissal was lawful, then the court will not take the date of the notice of resignation given by the claimant, 31.10.2007, as the effective date for calculating salary and benefits payable according to the Services Commissions Regulations. The claimant will have to accept the date offered by the Solicitor general or he will get nothing. It will be a case of take it or leave it. If the

dismissal was unlawful, then the claimant will be deemed to have continued in the public service until he voluntarily resigned on 31.10.2007, although the voluntary resignation was part of the settlement agreement. I therefore proceed to determine first, whether the dismissal of the claimant was lawful or not.

7. Before the dismissal of the claimant, two letters both dated 10.6.2005, signed for the Chief Executive Officer (CEO), Ministry of Health, were sent to the claimant. The first letter informed him that, he had wrongfully issued two licences for the importation of certain soft drinks; he was required to give explanation; and was informed further that in the meantime he was suspended from duty with effect from that date until further notice. The second letter informed the claimant that he had been written to and asked to explain why he had issued two licences for the importation of prohibited soft drinks, and contrary to the policy of the Ministry. He was further informed that the Ministry had decided to pursue disciplinary proceedings in which dismissal was intended. He was asked, “to show cause”, why he should not be dismissed.

8. The claimant reacted by writing to the CEO a letter dated 13.6.2005. The letter did not answer whether his actions were not contrary to regulations regarding prohibited soft drinks, or the policy of the Ministry. Instead the claimant went to town about so many gross infractions and incidents of corruption by senior officers and the CEO himself.
9. What the claimant stated in his letter may have been true and required more urgent attention than the incidents that he was accused of, however, those wrongs and incidents of corruption were not justification and defence for the infractions by the claimant. They could not exonerate him. His own complaint against senior officers and the CEO might have been taken up with the Minister responsible, or he could have resigned and voiced his complaints at other fora. In my view, the claimant failed at that stage, to answer the charge against him. He was given opportunity at that stage, to answer the charge. He misused it.
10. The reaction of the CEO to the letter of the claimant was to summarily dismiss the claimant. In his letter dated 22.6.2005, the CEO stated: “

This notice is consequently to inform you of your dismissal from your employment as Price Control Officer, Supplies Control Unit, with immediate effect according to Public Service Commission Regulation 27 (1) (2) and (3)”. He was wrong; he had no power to summarily dismiss the claimant or at all. The power belongs to each of the relevant Services Commissions. I shall outline the law in the Services Commissions Regulations, regarding dismissal.

11. Regulation 27 of the Belize Constitution (Services Commissions Regulations) provides as follows:

“27. (1) An officer whose appointment has been confirmed may be dismissed at any time on the grounds of misconduct, insubordination or gross inefficiency at work.

(2) An officer who is dismissed shall be entitled to payment of salary in lieu of all vacation leave accrued to him.

(3) An officer who is dismissed forfeits all claims to retirement benefits”.

12. These provisions do not state who may dismiss an officer, “at any time”, on the grounds of misconduct, insubordination or gross inefficiency. The CEO took it that the power to dismiss at any time on the grounds of misconduct, insubordination or gross inefficiency was given to CEOs. No attempt was made to explain the basis of the assumption. Further, the CEO assumed that the expression: “may be dismissed at any time”, meant that the officer could be summarily dismissed.

13. In my view, both assumptions were wrong. The Regulations read as a whole, do not allow for summary dismissal, or for CEOs exercising disciplinary power other than by delegation under regulation 24, in respect only of persons appointed to the post of office assistant, and in respect of abuse of government vehicles. There has been no evidence to show that the claimant held the post of office assistant. Moreover, the penalty that a CEO may impose is limited and does not include dismissal. Further, his limited power is subject to review by the relevant Service Commission at the request of the officer who is the subject of the disciplinary action.

14. Directly contrary to the assumption that a CEO may carry out disciplinary action against an officer for serious inefficiency or misconduct for which the appropriate penalty is dismissal, are the provisions of regulation 23 which outline the disciplinary procedure leading to dismissal. The provisions state as follows:

“23. (1) The power to discipline Public Officers is vested in each of the Services Commissions seized with the matter; provided that where there is a law which provides the necessary means of dealing with disciplinary offences in the case of any member of the Public Service, proceedings shall be taken under such law. In all other cases the Services Commissions shall deal with cases of discipline at their discretion.

(2) An officer aggrieved by a decision of a Service Commission may apply in writing to the relevant Service Commission for a review of the Service Commission’s decision, within twenty-one days of the notification of such decision, stating in his application the grounds on which the review should be made”.

15. Following on from *regulation 23* are regulations for disciplinary procedure for minor misconduct, and disciplinary procedure for serious misconduct as in this case. The latter is in *regulation 29*. The procedure leaves no doubt that it is the relevant Service Commission that has the power, and carries out the disciplinary process. I set out *regulation 29* for ease of reference:

“29. (1) In case of serious inefficiency or misconduct for which dismissal or retirement may be considered the appropriate penalty, the following procedures apply:-

(a) the officer shall be notified in writing of the grounds upon which it is intended to dismiss him and he shall be given full opportunity of exculpating himself;

(b) the Head of Department shall forward to the relevant Service Commission a copy of the allegation and the officer’s explanation together with the Head of Department’s own report on the matter, and such other reports

as the Head of Department considers relevant to the matter;

(c) where the officer fails to respond, or acts in such a manner as to obstruct the matter, the Head of Department may advise the Service Commission accordingly in his report;

(d) upon receipt of the report, the Service Commission may cause further investigation to be made into the matter with the aid of the Head of Department or such other person as the Service Commission may appoint;

(e) if the Service Commission is satisfied that sufficient investigation has already taken place, it may institute disciplinary proceedings;

(f) the officer may, if he wishes, request that he appears before and be heard by the Service Commission with or without a Union Representative, an attorney-at-law or some

*other person to assist him at the hearing,
and such request shall be granted;*

.....”

16. So, disciplinary process in a charge which is punishable with dismissal is entirely the responsibility of the relevant Service Commission. The CEO's, part is only a supporting one. He is a head of department, he may prepare the charge and inform the officer; and he is required to send the charge and the report to the relevant Service Commission. He then waits for further instruction, if any, from the Commission.

17. In this case the CEO assumed power over the entire disciplinary process, including imposing the penalty of dismissal. By so acting he cut out the relevant Service Commission completely, and cut out the appeal process to the Service Commission, and the right of the claimant to representation by his trade union representative or an attorney. Those consequences of the assumption of the power to dismiss are what learned counsel Mr. Oscar Sabido SC, for the

- claimant, described in his submission as rights that were denied to the claimant.
18. The CEO acted *ultra vires*, that is, without power, see ***Council for Civil Service Union v Minister for the Civil Service [1985] AC 374***.
The dismissal of Mr. John Banner from the Public Service, by the CEO in his letter dated 22.6.2005, was unlawful.
 19. It follows that the court must accept that Mr. Banner must be regarded as having remained in his post until 31.10.2007, when he gave notice of his resignation. He is entitled to all payments and benefits based on the resignation date of 31.10.2007.
 20. Judgment is entered for the claimant accordingly. Only one half of the costs of these proceedings are awarded to the claimant, in view of the part settlement agreed to by the defendant.
 21. Delivered this Wednesday the 7th day of July 2009
At the Supreme Court
Belize City

Sam L. Awich
Judge

