

IN THE SUPREME COURT OF BELIZE A.D.2001

ACTION NO: 309 OF 2001

BETWEEN: JOSE L. REYES
 AND OTHERS

PLAINTIFFS

AND

 JOHN ZABENEH
 MAYA KING LTD

DEFENDANTS

Ms Antoinette Moore for the claimants.
V.H. Courtenay, S.C., for the defendants.

AWICH J.

10.7.2009

J U D G M E N T

1. *Notes: Labour Law: Claim of right of a worker to join trade union-ss: 4, 5 and 11 of the Trade Unions and Employers Organisations (Registration, Recognition and Status) Act, Cap. 304. Claim that the claimants were dismissed for mobilizing co-workers to join a trade union. Claim raised question of constitutional fundamental human rights and freedoms of association generally, and of belonging to a trade union – s: 13 of the Constitution. Assessment of damages for breach of constitutional rights and freedoms. The Constitution of the International Labour Organisation 1919, and ILO Conventions, No. 87 of 1948 and No. 98 of 1949.*

2. This case file is one of two that were misplaced and now found.

3. On 18.6.2001, the six claimants filed an urgent application for interlocutory injunction order. They requested that they make the application *ex parte*. The application papers included the substantive claim as required. I directed that notice be given to the respondents - defendants eventhough it would be only a very short notice. Learned counsel Mr. W. H. Courtenay SC, appeared for the defendants and applied for adjournment so that he would have time to adequately prepare the respondents' opposition to the application. He gave undertaking on behalf of the defendants that they would not proceed with the act complained about until the adjourned date, 23.7.2001, when the application would be heard *inter partes*. The application was hard fought. On 31.7.2001, I rendered a written decision granting the application, and made the interlocutory injunction order.

4. While the injunction order lasted and parties proceeded with the case, five of the claimants were detained and deported by the Immigration Department of Belize to Honduras. The huts in which they lived on the second defendant's farm were quickly demolished. Eventually the Christian Workers Trade Union interceded, and the claimants were able to return to Belize.

5. Next, on 3.6.2004, a preliminary objection which raised a point *in limine* that could dispose of the claim was raised before Denny Barrow Acting Judge. He heard submissions and directed that, the application be made in written form, written submission be filed, and the application be listed before Awich. J (myself). Again the application was hard fought. It was contended by the applicants, the defendants, that the claimants did not qualify as members of a trade union and therefore had no standing to bring a claim of rights under the Trade Unions and Employers Organisations (Registration, Recognition and Status) Act. In a written decision I rejected the contention and overruled the preliminary objection. I do not intend to repeat the reasons for my ruling which I adopt in this judgment.

6. ***The Facts.***

The six claimants: Jose Reyes, Oscar Orlando Maradiaga, Julio Carceres Hernandez, Cornelio Rubio Guitierrez, Emilina Bautista Rivera and Rigoberto Maldonado were employed on the citrus and banana farms of the second named defendant, Maya King Limited. The first defendant was a director of the second. In June 2001, the

employment of the claimants were terminated. That is the complaint in this claim.

7. At the close of evidence for the claimants an application for an order of no case for the first defendant to answer was made by Mr. Courtenay SC. Learned counsel Ms. Antoinette Moore, for the claimants, conceded. Whatever the first defendant did was done in his capacity as director on behalf of the second defendant. I ruled that there was no case for the first defendant to answer. The claim proceeded against the second defendant only. I shall refer to it simply as the defendant.

8. All the claimants had been employed by the defendant on its farms for long periods before the events giving rise to this claim. Jose Reyes had been employed for 8 years and eleven months, Oscar Maradiaga for 13 years, Julio Hernandez for 19 years, Cornelio Gutierrez for 7 years and 1 month, Emelina Rivera the wife of Gutierrez for 6 years, and Rigoberto Maldonado for 3 years. They were employed together with a large number of other employees.

9. In June 2001, each of the claimants was individually informed that his or her employment was terminated the same day. They made a joint claim alleging that they were dismissed for joining and participating in trade union activities, and for mobilizing co-workers to join a trade union, the Christian Workers Trade Union. They grounded their claim on ss: 4(1), 5 (1), (2) (a), (b) and (c) of the Trade Unions and Employers Organisations (Registration, Recognition and Status) Act, Cap. 304, Laws of Belize. They pleaded that their constitutional and statutory rights to associate, and to join and participate in trade union was violated by the defendant. They sought the reliefs specified in s: 11 of the Trade Unions and employers Organisation (Registration, Recognition and Status) Act.

10. The reliefs provided in s: 11 of the Act are: reinstatement of a successful employee claimant in his job, restoration of benefits and advantages attached to the job, compensation, and or any other relief that, “the court may deem just and equitable”. In their testimonies the claimants stated that they did not wish to return to work for the defendant. Five have since been employed by other employers; the remaining one Gutierrez, is self employed. He said that he was afraid

to go back to Maya King farms and live there again because of the way he had been treated. So the only reliefs that were pursued at trial were compensation and or any other relief that the court may deem just and equitable.

11. ***Determination.***

The evidence to support the claim was extensive, and the record of it voluminous. In the end, however, the defendant did not contest the central facts, namely, that all the six claimants were employees who had joined the Christian Workers Trade Union, addressed rallies intended to persuade other workers to join the trade union, and in one way or another worked towards recruiting workers into the trade union. In the case of two of the claimants, the defendant contended that their union activities interfered with their work or were a distraction. The contention was of no use because the defendant's defence was not that it dismissed the two claimants because their union activities interfered with their work or were a distraction. Had the defendant pursued that line of defence, it would have been required to prove that before the dismissal, it had offered to the two

employees, opportunities to answer the charge. There has been no evidence of that.

12. The case for the defendant was that the company did not terminate the employment of the claimant because of their participation in the unionisation of workers on the defendant's farms, rather because the defendant had been making losses over a few years; termination of the employment of the six claimants was part of the policy of the defendant to lay-off workers and downsize the farming operations to a level that the defendant would begin to make profit again. The defendant led evidence that proved the losses, and that upto 24 employees were laid off. It also testified by its director that, it was in favour of its employees joining trade union, and it assisted in transporting them to union rallies.

13. Although I have found that the defendant proved that its farming operations had been making losses, I do not believe that it dismissed the six claimants simply in a lay-off exercise. If that was the case, employees would have been informed about the intended lay-off months before. The termination of their employment here was

effected the same day they were informed. It was by word of mouth of group captains. It was just a few days after the trade union recruitment rally held on 27 May 2001. All the six claimants dismissed had assumed some leadership role in the recruitment exercise. After the dismissal there have been no trade union activities on the farm. I accept the submission by Ms. Moore that a more probable conclusion was that the termination of the employment of the claimants was dismissal aimed at silencing trade union members and thwarting unionisation of workers on the defendant's farm. It was undoubtedly union bashing, in my view.

14. It is my conclusion from the evidence that the six claimants were dismissed by the defendant because they joined a trade union and in particular, because they assumed leadership role in mobilizing fellow workers on the defendant's farms to join a trade union. That is a direct contravention of *ss: 4 (1) and 5(1) and (2) (b) and (c) of the Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*. Accordingly the claimants are entitled to the reliefs under *s: 11 of the Act*.

15. The dismissal is also a breach of constitutional fundamental human rights and freedoms spelt out in **s:13 of the Constitution** which states:

“13.-(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests or to form or belong to political parties or other political associations.”

16. So, s: 13 of the Constitution says, it is a constitutional fundamental right and freedom to generally assemble and associate. It also says, it is a constitutional fundamental right and freedom to form or associate in a trade union. **Sections 5,4 and 11 of the Trade Unions and Employers Organisations (Registration, Recognition and Status) Act** are therefore an effective way of implementing the provisions of **s: 13 of the Constitution**. For ease of comparison I set out the relevant parts of **ss:4 and 5 of the Trade Unions and Employers Organisations (Registration, Recognition and Status) Act:**

“4.-(1) Subject to section 13 of the Belize Constitution, every employee shall have and be entitled to enjoy the basic rights specified in subsection (2).

(2) The basic rights referred to in subsection (1) are:

(a) taking part in the formation of a trade union;

(b) freely deciding whether to be a member of a trade union or a federation of trade unions;

(c) taking part in any lawful trade union activities;

(d) holding office in any trade union or a federation of trade unions;

(e) taking part in the election of any union representative, shop steward or safety representative or offering himself as a candidate at such election;

(f) acting in the capacity of a union representative, shop steward or safety representative if elected as such;

(g) exercising any other rights conferred on

employees by this Act or any Regulations made hereunder, the Belize Constitution, or any other law governing labour and employment relations, ...

5.-(1) It shall be unlawful for an employer, or an employers' organisation or federation, or a person acting for and on behalf of an employer or an employer's organisation or federation, to engage in the activities specified in subsection (2) in respect of any employee or person seeking employment.

(2) the activities referred to in subsection (1) are:

...

(b) discriminating or engaging in any prejudicial action, including discipline, dismissal ...

(c) discriminating or engaging in any prejudicial action, including discipline, dismissal or, as the case may be, refusal of employment against the

*employee or person seeking employment by reason of trade union membership or anticipated membership, or participation or anticipated participation in lawful trade union activities;
...”*

17. It is clear that ***section 13 of the Constitution of Belize*** and ***ss: 4, 5 and 11 of the Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*** do protect the rights and freedoms of workers to form or belong to a trade union. Those rights and freedoms are recognized internationally. They are set out in ***the Constitution of the International Labour Organisation, 1919, (in the preamble)***, and in the ***ILO, Freedom of Association and Protection of the Right to Organise Convention, No. 87 of 1948, at articles 1 and 2***; and in the supplemental convention, ***the Right to Organise and Collective Bargaining Convention, No. 98 of 1949***. It may well be that the Constitution of Belize adopted in 1981, and the Trade Unions and Employers Organisations (Registration, Recognition and Status) Act were inspired or informed by the ILO Constitution and the two

conventions. Belize is a member of the ILO, and has ratified the 1948 and the 1949 conventions.

18. ***The Relief***

The only relief that I see just, given the fact that the claimants do not wish to be reinstated in their jobs, is compensation. An award for compensation in a case for breach of constitutional fundamental right and freedom where no specific loss and consequential damages have been proved is usually based on stress and inconvenience – see ***Clement Wade v Maria Roches, civil Appeal No. 5 of 2004 (Belize)***, and also ***Ramesh L. Maharaj v Attorney General 30 WIR 310 (Trinidad & Tobago)***, a case in which an attorney was committed to prison for six days, without having been informed of the particulars of the act of contempt.

19. Compensation that a judge will award for denial of a right in a particular circumstance of denial of right and freedom is usually a fair estimate, but an estimate nonetheless. In ***Maria Roches***, the Court of Appeal reduced the sum of \$150,000.00 awarded by the learned Chief Justice to \$60,000.00, against the Catholic Church for dismissing an

unmarried teacher who got pregnant. Personally I would have preferred the figure awarded by the Chief Justice or only a little less. Litigants in trial courts in Belize seem to regard breach of constitutional right as a grave matter. I think trial courts are entitled to take judicial notice of that. Of course, the view of the Court of Appeal of Belize must be taken as the correct and final view unless altered on further appeal to the Privy Council in the United Kingdom. Further appeal to the Privy Council is hardly practical, except to a handful of corporations and internationally supported organisations.

20. In this claim, I start my assessment at \$60,000.00 which is the guiding award by the Court of Appeal, for a breach of fundamental human right under the Constitution. I then take into account the erosion of the value of money since *Roches Case* in 2004. Further, I consider it appropriate to add a small sum to convey the message that employers must not disregard with impunity, the fundamental right and freedom of workers to associate in a trade union. The just sum, given the economic level of Belize, in my view, is \$70,000.00 (seventy thousand). I enter judgment for each of the claimants for \$70,000.00.

The total compensation is \$420,000.00. Interest at 6% will accrue from today until payment in full.

20. In addition, the defendant will pay costs to the claimant, to be agreed or taxed.

21. Pronounced this Friday the 10th day of July 2009
At the Supreme Court
Belize City

Sam L. Awich
Judge
Supreme Court