

IN THE SUPREME COURT OF BELIZE, A.D. 2007

CLAIM NO. 459

SHAROLE SALDIVAR

Claimant

AND

THE BELIZE CITY COUNCIL

Defendant

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Anthony Sylvestre for the claimant.
Mr. Darrel Bradley for the defendant.

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JUDGMENT

The claimant in these proceedings, Ms. Sharole Saldivar, was on the 4th December 2006, following a recruitment process, appointed by the defendant, The Belize City Council, to the position of City Administrator with the defendant. However, after some nine months in her new position Ms. Saldivar, while on approved sick leave, received a letter from the defendant informing her that as from 24th September 2007, her services would no longer be required. Ms. Saldivar was to have resumed work on 24th September 2007

2. The position of City Administrator is statutorily provided for by section 13 of the Belize City Council Act – Chapter 85 of the Laws of Belize, Revised Edition 2000. The claimant’s appointment was after a recruitment process that involved interviews between the defendant and other applicants. Ms. Saldivar was however, appointed to the position of City Administrator by a formal letter under the hand of the Mayor of Belize City, dated 8th December 2006. Attached to this letter was the “Job Description” of the position. This document together with the contents of the letter of appointment was expressly stated to “constitute written portion of the employment agreement between the Council and you” (that is, the claimant) – see **Exhibits SS1 and 2** of the first affidavit of Ms. Saldivar.

3. The claimant states that since her appointment, she performed her duties as City Administrator diligently, efficiently and professionally and had never received any oral or written reprimand or the like regarding her job performance from the Council or its representatives: see para. 6 of Ms. Saldivar’s first affidavit.

4. However, Ms. Saldivar’s employment did not last long. She was, on 12th September 2007, while at home on sick leave, handed a letter of dismissal from her position as City Administrator. The claimant was then on approved sick leave from the defendant Council which was to last from 5th September 2007 to 24th September 2007. But her letter of dismissal, signed by all the councilors, including the Mayor, stated that her services with the Council were no longer required as of 24th September 2007, when her sick leave was to have expired.

5. But this letter stated no reason for Ms. Saldivar's dismissal nor made any allegations of misconduct in the course of her work with the Council against her: it was just a terse and peremptory dismissal letter with notification of her entitlement to benefits due her with an enclosed cheque in the amount of \$7,884.83 to cover these – see **Exhibit SS4** to Ms. Saldivar's first affidavit.
6. It is to be observed that the defendant's letter to Ms. Saldivar offering her the position of City Administrator, expressly stated that it was 'a permanent appointment' with a given compensation package and other benefits: see **Exhibit SS1** referred to above.
7. However, as a result of the termination of her employment, Ms. Saldivar launched the present proceedings for judicial review of the defendant's decision. She claims the following relief:

- i. An Order of Certiorari to quash the decision of the Belize City Council [contained in a termination letter addressed to the Claimant dated 12th September, 2007] terminating the employment of the Claimant as City Administrator for the Belize City Council, with effect from Monday, 24th September, 2007 and to quash the said letter;*

- ii. A Declaration that the decision of the Belize City Council is unlawful and illegal because the Council never held a hearing*

before purportedly dismissing the Claimant from the office of City Administrator, never informed the Claimant of any charges against her (if any) and never afforded the Claimant an opportunity to show cause why she should not be dismissed, and never afforded the Claimant the opportunity to be heard in her defence, thereby breaching the rules of natural justice (the right to be heard) as against the Claimant;

iii. Damages for the unlawful termination of the Claimant's employment as City Administrator without cause, including full benefits from the date of the purported dismissal to the date of order granting same;

iv. Any other order which the Court thinks just in the circumstances of this case, including an order that the Defendant pay the cost of this claim.

8. At the trial of the claim both sides relied on the affidavits filed and these were taken as witness statements.

Issues for Determination

9. The legal issues for determination in this case can be put in a short compass: was the claimant's dismissal by the defendant lawful or not? For Ms. Saldivar, Mr. Sylvester argued and submitted that her dismissal by the letter to her from the defendant, dated 12th September 2007, (**Exhibit SS4**) was unlawful, contrary to her written contract of employment and in breach of her right to natural justice in that no opportunity was afforded her to make representation as to why she should not be dismissed and in fact no allegation or cause for dismissal was made against her.
10. It should be noted that this termination letter was dated and delivered during the period when the claimant was on sick leave and to become effective on the day she was to resume work. That is 24th September, 2007.
11. For the defendant on the other hand, it was argued and urged by Mr. Darrel Bradley, that the claimant's services were validly terminated because she accepted employment as City Administrator with defendant orally and that pursuant to section 40(1)(b) of the Labour Act – Chapter 297 of the Laws of Belize, Revised Edition 2000, the letter of dismissal of 12th September to be effective 24th September 2007, contained more than the requisite period of one week notice she would be entitled to on the termination of her contract of service of an indefinite time. Therefore, it was submitted, Ms. Saldivar's services were lawfully terminated.
12. This is really the heart of the defendant council's case. Section 40(1)(b) so far as is material provides as follows:

“40(1) Notwithstanding any agreement to the contrary, notice of the termination of the contract of service for an indefinite time, given either by the employer or the worker, shall be of the following respective duration, if the worker has been in the employment of the same employer continuously

(a) ...

(b) for more than six months but not more than one year one week

(c) ...”

13. It is common ground between the parties that Ms. Saldivar's employment with the defendant was relatively short: over six months and not over a year. In fact, the period of her employment was from 4th December 2006 to 24th September 2007 when the defendant purported to terminate her employment (see **Exhibit SS 4** already referred to in para. 5 above).

14. Therefore, it is contended on behalf of the defendant that Ms. Saldivar was properly terminated with the requisite one week notice stated in section 40(1)(b) of the Labour Act. The letter of termination was dated 12th September 2007 and was said to be

effective as of 24th September 2007: a period clearly more than the one week provided for in section 40(1)(b).

15. After due consideration however, I don't think that in the circumstances of this case, section 40(1)(b) is at all applicable.
16. In the first place, it is to be observed that section 40 falls under **Part VI** of the Labour Act. It is expressly provided in section 36 of this part that it *“shall apply to oral contracts of service”* (Emphasis added). The indisputable evidence in this case is that Ms. Saldivar's employment with the defendant council far from being oral, was in fact reduced in writing from the defendant to Ms. Saldivar formally informing her of her engagement as the City Administrator. This was contained in a letter dated 8th December 2006, from the defendant.
17. This letter on the Council's letterhead stated materially as follows, among other things:

“Dear Ms. Saldivar,

Re: City Administrator Post

*Thank you for coming recently to discuss the
aforementioned post.*

*Following our recruitment process, the Belize
City Council is now pleased to appoint you to
the post of City Administrator with the City of
Belize with effect from Monday 4th December,*

2006. This offer is a permanent appointment with a compensation package of BZ \$48,000.00 per annum and benefits as set out below:

- i. Annual vacation grant of \$4,000.00;*
- ii. transportation allowance of \$2,400.00 per annum;*
- iii. phone allowance of \$1,800.00 per annum; and*
- iv. medical insurance for self ONLY.*

A description of the post is attached.

The contents of this letter and the attached job description constitute written portions of the employment. Any information contained in these documents is subject to change upon mutual agreement between the Council and you." (Emphasis added)

Attached to this was the formal job description (**Exhibit SS 2**).

18. It is therefore clear beyond doubt that the claimant's engagement with the defendant Council was outside the ambit of **Part VI** of the Labour Act and, in particular, section 40. I find the argument and submission on behalf of the defendant in this regard wholly

unsustainable. I find on the contrary, that Ms. Saldivar had a **written** contract with the defendant Council.

19. **Secondly**, the post to which Ms. Saldivar was appointed, the City Administrator, is one expressly created by the parent Act of the Council, namely The Belize City Council Act as I have mentioned at para. 2 above. Section 13 of this Act provides in terms:

“13.(1) The Council shall appoint a suitably qualified person as City Administrator who shall be the chief executive officer of the Council and shall be responsible for the day to day affairs of the Council.

(2)The Council may appoint such other suitably qualified officers and servants as it thinks necessary for the efficient administration of the affairs of Belize City.

(3) The power to remove, promote, or take disciplinary action against officers and servants of the council, including the City Administrator, shall be and is hereby vested in the Council.”

20. This section as I have noted above, statutorily created the post of City Administrator. Subsection (3) clearly vests in the Council the power to remove, promote or take disciplinary action against its officers and servants, including the City Administrator. From this the facile inference or conclusion can be made, as it was

contended for on behalf of the defendant Council, that it had the power to remove the claimant by its letter of 12th September 2007 to her. However, subsection (3) itself, apart from vesting the power in the Council to remove, promote or take disciplinary action against its officers and servants sets out no procedure or process for these purposes.

21. To be sure, the grant of the powers by subsection (3) is wide. But in my view, it is a grant of powers from a statute and must therefore be exercised reasonably and not irrationally or whimsically. In particular, I am of the settled view that the grant of the coercive powers to remove or discipline its officers conferred by subsection (3) on the Council can only be exercised **for cause**. The Council cannot, as seems to have happened in the case of Ms. Saldivar, **without any cause**, at least made known to her, remove her.
22. As I have remarked at para. 5 above, her letter of termination from the defendant Council, was terse and peremptory, it stated no cause or reason. This letter dated 12th September, 2007 and signed by the Mayor and deputy Mayor of the Council and all the other councilors, and written on the Council's letterhead simply stated, in its relevant first paragraph as follows:

“Dear Ms. Saldivar,

Please be informed that resulting from a meeting held on Wednesday, September 12 2007, the Belize City Council agreed that your services

*with the Council are no longer required as of
September 24, 2007.”*

23. No reason, allegation or cause was stated; nor was an opportunity afforded Ms. Saldivar to hear her own side of the story, if any, or to try to dissuade the Council from dismissing her.
24. What must have been distressing, no doubt, for Ms. Saldivar in the circumstances of her dismissal, was not only the loss of her employment, but perhaps equally wounding was the fact that the letter was dated 12th September 2007, and to take effect on the 24th September 2007, the very day she was to have resumed work from an approved sick leave.
25. Implicit in the grant of the powers to the Council of removal and disciplining of its servants and officers including the City Administrator, as Mr. Anthony Sylvestre for Ms. Saldivar correctly submitted, are substantive procedure of fairness and natural justice: the grant to a public body like the defendant City Council to proceed or take action against its employees, must be exercised only for cause with an opportunity afforded to the affected employee to be heard.
26. I find the statement of Lord Reid in **Malloch v Aberdeen Corporation** (1971) 1 WLR 1578 at p. 1582, relevant and instructive in the context of this case:

“An elected public body is in a very different position from a private employer. Many of its servants in the lower grades are in the same

position as servants of a private employer. But many in higher grades or ‘officers’ are given special statutory status or protection. The right of a man to be heard in his own defence is the most elementary protection of all, and, where a statutory form of protection would be less effective if it did not carry with it a right to be heard, I would not find it difficult to imply this right. Here it appears to me that there is a plain implication to that effect ...” (Emphasis added).

27. I accordingly, find and hold that implicit in subsection (3) of section 13 of the Belize City Council Act, are the requirements of procedural fairness and the requirements of natural justice. In particular, the need for an employee to know why he is being dismissed and to be afforded an opportunity to be heard.

28. This I find, was woefully lacking in this case: Ms. Saldivar, the substantive City Administrator while on sick leave was simply told in cold print that her services were no longer needed as from the date she was to have resumed work. I accordingly find that the defendant Council’s action in terminating her employment without any cause or reason other than “... *resulting from a meeting held on Wednesday September 12, 2007, the Belize City Council agreed that your services with the Council are no longer required ...*” was so egregiously flawed as to be utterly unsustainable. This is so in the light of the statutory establishment of the post of City Administrator in section 13(1) of the Act governing the Council:

“13.(1) The Council shall appoint a suitably qualified person as City Administrator who shall be the chief executive officer of the Council and shall be responsible for the day to day affairs of the Council.”

Surely it cannot be the contemplation or intention of the Legislature that a person appointed to this vital office in running the Council’s affairs, could be so cavalierly dismissed without cause, as happened in Ms. Saldivar’s case, especially after the recruitment process attendant on her appointment and the express provisions of her letter of appointment.

29. I am unable to accept the point of view as deposed by Ms. Laura Esquivel in her affidavits on behalf of the defendant Council that Ms. Saldivar was employed by an oral contract of service: this plainly flies in the face of **Exhibit SS 1** (the **written** contract of employment between the Council and the claimant).

I also find the reason of “flexibility” to terminate employees of the defendants provided it gave the requisite notice as provide for in the Labour Act, quite unsustainable in the circumstances of this case (see para. 4 of Ms. Esquivel’s affidavit filed on 1st April 2008). “Flexibility” whatever else this may mean, would, in the circumstances of this case, simply mean the power to arbitrarily terminate the claimant’s employment, without any cause or an opportunity to the claimant to be heard before the termination of her employment. This I find to be untenable.

30. For all these reasons, I find that the purported termination of Ms. Saldivar's appointment as the City Administrator, by the Council, was unreasonable and unlawful in the circumstances.

Judicial Review of the defendant's decision and the case for the claimant

31. However, it was also argued and urged by Mr. Bradley for the defendant, the Belize City Council, that the claimant, Ms. Saldivar, should not have brought her claim by way of judicial review. This contention, if valid, is one that should have been advanced at the permission stage when Ms. Saldivar launched her claim for judicial review of the defendant's decision to terminate her employment.
32. The defendant however, in its application dated 1st April 2008, did make an unsuccessful rearguard action to have the permission granted to the claimant *"to be set aside, withdrawn or struck out"*. But it never raised the issue of the appropriateness of judicial review as the form to ventilate the claimant's case. In the event however, the defendant's application was not successful.
33. In any event however, the contention by the defendant is no answer in the circumstances of this case to Ms. Saldivar's claim. I am satisfied, that given the statutory underpinning of the position Ms. Saldivar occupied, that of the City Administrator of Belize City and the defendant's decision purporting to terminate her employment, that there is sufficient public law element in her claim regarding the defendant's action, to make her claim a proper and clear case for judicial review. The defendant, it should be remembered, is a public body which appointed the claimant to a position expressly provided for in section 13 of its parent Act.

34. It is therefore my considered view that the decision of the defendant in purporting to terminate the claimant's employment in the way and manner it was done is eminently susceptible to judicial review.

Relief claimed by the Claimant

35. I have set out at para. 7 of this judgment the relief claimed by Ms. Saldivar. These are briefly: i) **certiorari** to quash the decision of the defendant to terminate her employment; ii) a Declaration that the defendant's decision is unlawful and illegal; iii) Damages for the unlawful termination of her employment and iv) any other order that is just in the circumstances of the case including an order of costs against the defendant
36. In view of my findings and determination on the defendant's decision to terminate Ms. Saldivar's employment, I ineluctably grant an order of **certiorari** quashing the defendant's decision and I also **declare** that that decision was unlawful and illegal.
37. It is to be observed however, that Ms. Saldivar did not seek an order of reinstatement to her former employment as the City Administrator of the defendant City Council. This is rightly so, and if it is an unintended concession it was properly made. This is so because, in all the circumstances, I do not think there would be much joy or satisfaction on either side to order a reinstatement. Ms. Saldivar's employment though statutory, is after all one of personal service. In any event, from the express wording of her relief for damages, I get the clear impression that Ms. Saldivar has resigned herself to her fate of being terminated by the defendant, though unlawfully.

38. She therefore claims as well **damages** for her unlawful termination. These damages include full benefits from the date of (her) purported dismissal to the date of the order granting her claim for damages.
39. However, the way the claim for damages is pleaded in the Claim Form (Statement of Case for the Claimant), apart from the reference to full benefits sounds more like damages at large: there are no **particulars** of the damages claimed whether general or special.
40. I have no doubt, however, that Ms. Saldivar is entitled to damages for the unlawful termination of her employment by the defendant.
41. I have critically and anxiously considered the issue of damages in this case and I cannot help but note that Ms. Saldivar is only claiming damages for her wrongful dismissal *“from the date of the purported dismissal to the date of the order granting same”*. This ordinarily would be from 24th September 2007 to the date of this judgment.
42. Mr. Sylvestre for Ms. Saldivar however, paradoxically sought to rely on the recent decision of the Privy Council in the case of **Dr. Astley McLaughlin v His Excellency the Governor of the Cayman Islands** delivered on 23rd July 2007, particularly the statement by Lord Bingham of Cornhill in delivering the unanimous opinion of the Board at para. 14 of the judgment:

“14. 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 2045 (Amphlett B); Vine v National Dock Labour Board [1956] 1 QB 658 at 675-676 (Jenkins LJ) and [1957] AC 488 at 500 (Viscount Kilmuir LC), 503-504 (Lord Morton of Henryton, 506-507 (Lord Cohen); Ridge v Baldwin [1964] AC 40, 80-81 (Lord Reid), 139-140 (Lord Devlin); Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147, 170-171 (Lord Reid), 195-196 (Lord Pearce), 207 (Lord Wilberforce); Malloch v Aberdeen Corporation [1971] 1 WLR 1578, 1584 (Lord Reid), 1598-1599 (Lord Wilberforce); F Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry [1975] AC 295, 365 (Lord Diplock); Calvin v Carr [1980] AC 574, 589-590 (Lord Wilberforce for the Board); Zainal bin Hashim v Government of Malaysia

[1980] AC 734, 740 (Viscount Dilborne for the Board); Boddington v British Transport Police [1999] 2 AC 143, 154-156 (Lord Irvine of Lairg LC); Wade and Forsyth, Administrative Law, 9th ed (2004), pp 300-301."
(Emphasis added).

43. I say paradoxically because Ms. Saldivar's claim for damages as advanced is different from the claim in Dr. McLaughlin's case, who was regarded as employed for the full period after his purported dismissal from the service of the Cayman Islands public service. Here, Ms. Saldivar has limited her claim for wrongful dismissal from the date of her purported dismissal to the date (that is today's date) of the Court granting her dismissal as unlawful.
44. In her second affidavit filed on 11th March 2008, Ms. Saldivar detailed her unsuccessful attempts to secure suitable employment, her efforts to make ends meet and some of the hardships entailed for her and her family as a result of the unlawful termination of her employment by the defendant. But I find myself constrained by the express terms of her claim for damages. Hence the paradox I referred to. Explicitly her claim for damages for her unlawful dismissal is limited to the period of the date of that purported dismissal to the date of the order of this Court holding that dismissal to be unlawful.
45. Moreover, in the instant case before me, I am also mindful of the fact that Ms. Saldivar had worked for less than a year in her position as City Administrator before her unlawful termination and also the fact that no term limit was stated in her contract and at the time of her purported termination she was relatively young. All these factors weighed with me in not completely following, with

respect, the full import of the Pricy Council's decision in **McLaughlin** to grant damages as their Lordships ordered in that case. But the settled principle of law propounded by the Board on the wrongful dismissal of a public officer by a public authority is, however undoubted.

46. I have had to rely on the formal letter of employment dated 8th December 2006, from the defendant to Ms. Saldivar, for the assessment and computation of the damages that I think are appropriate and fair in the circumstances of this case and as advanced for Ms. Saldivar. This letter sets out her annual salary and the quantum of her benefits per annum. This works out as follows in the light of Ms. Saldivar's claim for wrongful dismissal:

- i) Annual Salary: \$48,000.00 per annum x 21 months 15 days = **\$85,965.60**.
- ii) Annual vacation grant of \$4,000.00 per annum x 21 months 15 days = **\$7,163.81**.
- iii) Phone allowance of \$1,800.00 per annum x 21 months 15 days = **\$3,223.71**.
- iv) Medical insurance for Ms. Saldivar only. Although no figure or premium cover per annum is stated, I think an award of **\$895.50** representing \$500.00 annual premium for a period of 21 months 15 days would be appropriate.

The 21 months 15 days is the period from the wrongful termination of Ms. Saldivar's employment to the date of this judgment.

47. This gives a grand total of **\$92,248.62**. I accordingly, award and order this sum as damages against the defendant for the unlawful termination of Ms. Sharole Saldivar's employment as City Administrator. This sum is to bear interest at the rate of 6% per annum from today's date until payment.
48. I also award the sum of \$15,000.00 as costs for these proceedings to be paid by the defendant to the claimant.

Conclusion

In conclusion, I find and declare that the decision to terminate Ms. Saldivar's employment as City Administrator by letter dated 12th September 2007, from the defendant, Belize City Council, was unlawful.

I further grant an order to **certiorari** to quash the said decision.

I award the sum of **\$92,248.62** as damages to Ms. Saldivar for the unlawful termination of her employment as City Administrator by the defendant. This sum to bear interest at the rate of 6% per annum from 7th July 2009 until payment.

I also award the costs of these proceedings in the sum of \$15,000.00 to the claimant to be paid by the defendant.

A. O. CONTEH
Chief Justice

DATED: 7th July 2009.