

IN THE SUPREME COURT OF BELIZE, A.D. 2005

CLAIM NO. 85

BETWEEN

BELIZE NATIONAL TEACHERS UNION

Applicant

AND

1st MAUD HYDE as Chief Education Officer

2nd FRANCIS BAIZAR as General Manager of Government
Schools

3rd CLEMENT WADE as and representing Managing
Authority of Catholic Public Schools

4th REVD. LLOYD A. NEAL as and representing the
Chairman of the Board of Governors of the
Anglican Cathedral College

5th THE ATTORNEY GENERAL OF BELIZE

Defendants

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Ms. Lois Young Barrow for the claimants.

Mr. Elson Kaseke for the 1st, 2nd and 5th defendants.

Mr. Philip Zuniga S.C. for the 3rd defendant.

Mr. Derek Courtenay S.C. for the 4th defendant.

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JUDGMENT

Introduction

This case comes against the background of the difficult times that confronted the country in the first half of 2005. There were strikes and calls for strikes, involving mostly workers in the public sector, which

included members of the Public Service Union (PSU) and some members of the Belize National Teachers Union (BNTU), the claimant in the present proceedings. At the same time also, members in the principal company that provided telephony services in the country, the Belize Telecommunications Ltd. (BTL), downed their tools and went on strike for several days. Fortunately, these actions did not last for too long.

2. These developments, in so far as this case is concerned, should be set in the matrix of two agreements between the Government of Belize and the unions. The first of these agreements involved the Government of Belize on the one hand, and the BNTU, the PSU and the Association of Public Service Senior Managers, on the other and was signed on 26th February 2003. In this agreement styled "Collective Bargaining Agreement", certain commitments were agreed upon relating to among other things, increase in salaries and pension in phases, with additional increase linked to the country's Gross Domestic Product (GDP) growth; improved benefits and a revision of the country's tax structure. Later, there was some dissatisfaction about the pace and rate of implementation of this agreement, especially as it related to the increase in salaries. The proposed revisions in these in January 2005 were rejected by the BNTU with the support of the National Trade Union Congress of Belize (NTUCB). The applicant in these proceedings, the BNTU, is a member of the NTUCB, which is an umbrella organization comprising major individual trade unions in Belize. The NTUCB then presented the government with wide-ranging proposals and recommendations on 10th and 31st January 2005. In the meantime there was growing impasse between the Government of Belize and the unions. Then, on 20th January 2005, the NTUCB called for a nationwide strike. Teachers then went on strike from 20th January until 4th February 2005: see in particular paragraphs 12 and 13 of Mr. Anthony Fuentes' affidavit filed on 20th May 2005 for the applicant. Mr. Fuentes is the president of the BNTU, and annexed to his

We have met with and gotten the co-operation and understanding of Managing Authorities. We also met earlier today, Wednesday, January 19th at the BNTU's Head Office with the Hon. Francis Fonseca, Minister of Education to discuss the issue.

The issues at hand are very serious and includes our concerns and call for better management, accountability, transparency and the necessary reforms, along with proper arrangements for the payments of our 5% (Senior) and 8% (Junior) Salary Increase as due for April, 2005.

The BNTU thus calls on all teachers country-wide at all levels to support our Strike Action. For Belize District teachers and students (Secondary and Tertiary), a Protest March will take place on Thursday, January 20th, 2005 at 8:30 a.m. from the Memorial Park in Belize City.

(A BNTU RELEASE)

Motto: Service, Security, Success

AF 7 '2'



President: Anthony Fuentes Phone: 223-4811
Secretary: Lois Barber Fax: 223-5233
Admin. Sec: George Frazer P.O. Box 382
Belize City, Belize
Central America
E-mail: bntu@btl.net

January 22, 2005

BNTU PRESS RELEASE

*The BNTU's Council of Management met on Saturday, January 22, 2005 to assess the Strike Action held on Thursday and Friday last, in conjunction with the NTUCB and the response of the Prime Minister and Government. BNTU as an affiliate of the NTUCB, re-iterates the need for the necessary Reforms to be put in place for better management of the Public Sector (Government) and for **NO NEW TAXES**. BNTU, PSU and APSSM are also insisting on our 5% and 8% Salary Increase for April 2005.*

We are not satisfied with Government's response to date, and thus our Council and teachers have decided that we must continue our campaign. To this end, BNTU's Council has decided that the Strike Action will resume on Monday, January 24, 2005.

All teachers are again called upon to give their full support and not to report to school. In this respect, we are hereby informing the parents, Ministry of Education and Managing Authorities of this decision and advise parents to keep children (students) at home for their own safe keeping.

(A BNTU RELEASE)

Motto: Service, Security, Success"

3. It is important to note here that no action was taken by the defendants in respect of this strike action which I shall call the first strike action which is not the subject of complaint.

In the meantime, negotiations between the government and the NTUCB continued even in the middle of simmering discontent among the unions, including the applicant.

Eventually, an agreement was reached on 11th February 2005, between the Government of Belize and the NTUCB. But there still remained some disquiet, especially over the perceived failure or tardiness over the implementation of this agreement by the Government of Belize – see in particular, paragraphs 24, 25, 26, 27, 28, 29, 30 and 31 of Mr. Fuentes' affidavit.

Then, on 25th April 2005, the applicant BNTU wrote the Chief Education Officer in the Ministry of Education the first defendant, to give formal notice of strike action effective Tuesday 26th April 2005. Again, I believe it is helpful to reproduce this notice.

Belize National Teachers' Union



National Trade Union Congress of Belize (NTUCB) signed on the 11th February, 2005.

The BNTU and PSU to date, have still not received the proper/authentic certificates for our 480,000 “B” shares and 87,666 “C” shares in BTL held in trust by GOB.

We also stand in support of the call of the NTUCB in its letter to the Prime Minister dated 17th April, 2005 registering our loss of confidence in the leadership of the Prime Minister and his government caused by the long list of mismanagements, sales and give aways of public assets over the past few years, heading to the very precarious state of public finances, high and increasing taxes, rising unemployment and crisis situation of our country.

We trust that you will understand and respect the call of our union as per our constitutional and legal rights, including those afforded us by ILO Conventions 87 and 98.

We need to stand up for our country. This is a National Issue.

Respectfully yours,

*Sgd. George Frazer
George Frazer
Executive Secretary*

*c.c. - Minister of Education
- Cabinet Secretary
- Labour Commissioner
- General Managers, School Boards*

4. Perhaps, as a preventive measure in the face of the still simmering discontent and impasse, the first defendant, directed a Memorandum dated 21st April, 2005, to the second defendant, as General Manager of Government Secondary Schools, and other School managers, including the third and fourth defendants, bringing to their attention the provisions of Rule 102 of the Education Rules, 2000. More on this later. It is also helpful to reproduce this memorandum here:



MEMORANDUM

Ref: Ref: 10/01/18/05(91)

To: **General Managers, Local Managers, Principals and Teachers of Primary and Secondary Schools**

From: Chief Education Officer, Ministry of Education

SUBJECT: UNAUTHORIZED ABSENCE OF PRINCIPALS AND TEACHERS

Date: APRIL 21, 2005

*In the face of the current climate in the country, principals and teachers are strongly encouraged to make every effort to ensure that classes remain uninterrupted and students continue to receive their education in a **secure environment**.*

The Ministry of Education calls on Managing Authorities to ensure that where principals and teachers choose to absent themselves from classes without proper authorization, such absences will be considered as engagement in a strike action. The attention of principals and teachers is drawn to the following provisions of Chapter I Section 2 # 102 (1) to (4) of the Education Rules 2000:

- (1) If a trade dispute results in industrial action by teachers or other members of staff, salaries and wages of persons undertaking such action may not be paid for any day or portion of a day during which they are on strike.*
- (2) Teachers and other members of staff not on strike shall report to work unless circumstances beyond their control prevent them from so doing.*

(3) *It shall be the duty of the Managing Authority to maintain a record of those teachers not present at school during the period of the strike and to determine the reasons for their absence.*

(4) *It shall be the duty of Managing Authorities to take necessary measures to ensure that schools are open for classes and to ensure that there is safety of students and members of staff present at school.*

It is reiterated that salaries for principals and teachers will not be paid for any day or portion of a day during which they engage in strike action.

The Ministry of Education is committed to ensuring that the law is upheld in the best interest of all parties affected, particularly the children of Belize.

Let us continue to work collaboratively in the interest of providing all our children a sound education.

***cc: District Education Managers
President, BNTU
Chairperson, NCE***

5. This memorandum was on 22nd April 2005, followed by one from the General Manager of Government Schools, the third defendant, to principals and teachers of government schools. I reproduce here as well the text of this memorandum:



MEMORANDUM

Ref: **Ref: 10/01/18/05(92)**

To: **Principals and Teachers of Government Schools**

From: *for General Manager, Government Schools*

**SUBJECT: CONTINUED UNAUTHORIZED ABSENCE OF
PRINCIPALS AND TEACHERS OF
GOVERNMENT SCHOOLS**

Date: April 22, 2005

Teachers who are currently absent from school without due cause and proper authorization are duly informed that they are engaging in an illegal activity. Whereas those who have absented themselves since Thursday, April 21, 2005 face loss of wages, those teachers who continue to absent themselves effective Monday, April 25, 2005 risk their services being terminated.

Please ensure that all teachers on your staff are made aware of the contents of this memorandum and fully appreciate the consequences which can result from continued participation in all illegal action and disruption of educational services.

**c.c. Chief Education Officer
Local Managers Government Schools**

6. However, on 29th April 2005, the teachers' strike action was called off. But on 11th May 2005, several teachers had money deducted from their April salary for the days during which they had participated in the BNTU strike. This was the second strike action by teachers.

Judicial Review Proceedings

7. It was against this background that the applicant launched the present proceedings by way of judicial review. On 9th June 2005, the BNTU was granted permission by this court to apply for judicial review by way of **Declarations**, Orders of **Certiorari** to quash the decisions of the defendants made on 21st April 2005, and sometime during April 2005 that principals and teachers be not paid salary for each day or portion of a day in which they had engaged in strike action; and Order of **Mandamus** directed to the third and fourth defendants to return such salary as was deducted; and that the defendants or by their servants or agents be restrained from further implementing the decisions complained of until the hearing and completion of these proceedings or further orders of this court.

8. The grounds of the application were stated as follows:
 - (i) The decision of the first defendant dated 21st April 2005 was ultra vires sections 15 and 16 of the Education Act and Rule 93 of the Education Rules 2000 (S.I. No. 92 of 2000) and unlawful.
 - (ii) The decisions of the third and fourth defendants made in April 2005 were made in violation of Rule 93(2)(a) of the Education Rules, and unlawful.
 - (iii) The decisions of the defendants were in violation of the applicant's members rights under section 4(c) and (g) of the Trade Unions and Employers' Organizations (Registration, Recognition and Status) Act 2000, and unlawful under section 5 of the said Act, read in conjunction with Article 4 of ILO Convention 151 under the International Labour Organization Conventions Act, Cap. 304:01 of the Laws of Belize R.E. 2000.

- (iv) The said decisions were in any event unreasonable.

Issues in the Application

9. In my considered view, the principal issues agitated by this application may be stated briefly as follows:

- i) In the context of this case was there a trade dispute?
- ii) Is there in law including ILO conventions incorporated into the laws of Belize, a right to strike?
- iii) If there is a right to strike, must an employer, in the instant case the Government of Belize, pay striking workers (teachers) even for the days the workers were on strike?
- (iv) Is the deduction of pay of teachers for the days they were on strike a disciplinary measure?

10. I shall now take these issues in turn.

1. Was there a trade dispute in the circumstances of this case?

From the affidavit evidence in this case, it is evident that the relationship between the Government of Belize and teachers had been for quite some time an uneasy one, at least in so far as the teachers are represented by their union, the BNTU, the applicant in this case: see generally the affidavit of Mr. Anthony Fuentes filed on 20 May 2005, in particular, paragraphs 2, 4, 5, 6, 7 and passim; and that of Ms. Maud Hyde, the first defendant, filed on 24 June 2005, in particular, paragraphs 2, 3 and 5.

The Government of Belize, for all practical purposes, can be said to be the employer of teachers in Belize: it pays the salaries for principals and teachers in Government schools as well as those of grant aided schools (see in particular, paragraph 8 of Ms. Hyde's affidavit and paragraph 9 of Mr. Clement Wade, the third defendant's affidavit of 7th July 2005).

11. On 26th February 2003, the BNTU together with the PSU had entered into a collective bargaining agreement with the Government of Belize. In this agreement among other things, pay increases were agreed for the teachers to be phased over time as well the payment of increased benefits and pension (see paragraph 3 of Mr. Fuentes' affidavit).

12. In January 2004, through the Financial Secretary, there were attempts by the government to vary some of the terms of the collective bargaining agreement of 2003. This however, did not find favour with the BNTU. This happened at a time when the Government of Belize decided to present the national budget in January. There was general debate in the country over some proposals in the budget; and the NTUCB of which the applicant, BNTU, is a member, joined in this debate. The debate and some of the demands by the unions became acrimonious at times. The NTUCB finally presented the government with a set of written proposals on 31st January 2005; and the government responded on 1st February. (It was in the midst of all this that the NTUCB called for a nationwide strike on 20th January 2005. Teachers as I had said earlier went on strike from 20th January until 4th February 2005). Negotiations however, continued between the NTUCB, including the BNTU, and the government. It must be said that some of the unions' proposals were of a socio-political and economic nature. However, an agreement was eventually arrived at between the government and the unions on 11th February 2005. But there were still differences between both sides as the agreement itself records in its third preambular paragraph. It was in the wake of this that the BNTU

on 25th April 2005 gave formal notice to the first defendant (in effect the government) of a strike action effective 26th April 2005, the second strike action.

13. The claimant maintains in this case that there was a “trade dispute” between it and the government, hence the strike action. Ms. Lois Young Barrow S.C., the learned attorney for the claimant, submitted that there was a “trade dispute” within the meaning and contemplation of section 2 of the Trade Disputes (Arbitration and Inquiry) Act – Chapter 299 of the Laws of Belize, Revised Edition 2000. This section defines “trade dispute” to mean:

“any dispute or difference between employers and workmen, or between workmen and workmen, or between employers and trade unions, connected with the employment or non-employment, or the terms of the employment, or the condition of labour, of any person, or trade union recognition.”

This is ipsissima verba, the same definition in the Trade Unions Act – Chapter 300.

14. The government on the other hand maintains that there was no trade dispute between it and the unions and that the real cause for the strike, according to Mr. Elson Kaseke the then Solicitor General, was the alleged mismanagement of the country and support for the strike action then being carried out by workers of BTL.
15. Admittedly some of the proposals by the unions, including the BNTU, the claimant in these proceedings were, far ranging and, some would say, of a socio-political character. But this does not make the proposals any the less matters for legitimate concern for the unions. For example ILOLEX

Digest of Decisions 1996 on the Freedom of Association, Collective Bargaining and Industrial Relations at paragraph 479 it says:

“The occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers.”

Also at paragraph 480 it states:

“Organizations responsible for defending workers’ socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living.”

16. I am however prepared to hold that in the context of the relationship then subsisting between the government and the unions, including the BNTU, there were differences between them which could not simply be said to be unrelated to “the condition of labour” of the members of BNTU. True, some of the proposals were clearly not of the nature of a trade dispute, such as the call for the dismissal of the Contractor General and the Ombudsman and for the resignation of the Prime Minister. But genuine differences existed between the parties, for example, those concerning the proposed variation of the payment of the increases in salaries agreed upon in the collective bargaining agreement of 2003.

As Lord Denning stated in Beetham and Another v Trinidad Cement Ltd. (1960) 1 All E.R. 274, in context of legislation very much on all fours with Belize's Trade Disputers (Arbitration and Inquiry) Act – Chapter 299:

“By definition, a trade dispute exists wherever a “difference” exists, and a difference can exist long before the parties become locked in combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening” at 278.

17. From the evidence in this case, in particular the affidavit of Mr. Fuentes at paragraphs 2, 3, 4, 5, 6 and passim, I am satisfied that there were differences between the government and the unions including the BNTU, to lead me to the conclusion that at the time there existed a trade dispute.
18. I now turn to the next issue in this case:

2. The strike action – is it a right?

The strike action is perhaps the most potent weapon available to workers or a trade union in pursuing their objectives such as securing a collective bargaining agreement or ensuring its implementation. It essentially involves a group of workers or members of a trade union agreeing to cease work or heeding a call, usually by union officials, to stop work. This action because it invariably involved two or more persons was for sometime overshadowed by the crime and tort of conspiracy. However, in Crofters Hand Woven Harris Tweed Co. Ltd. and others v Veitch and Another (1942) 1 All E.R. 142 the House of Lords in England cleared trade unions officials of conspiracy for an embargo they had effected on the export of tweed from the mainland into the island of Lewis in Scotland. Lord Wright stated:

“Where the rights of labour are concerned the rights of the employer are conditioned by the rights of the men to give or withhold their services. The right of workmen to strike is an essential element in the principle of collective bargaining” at pp. 158-159.

And at p. 159, Lord Wright cited with approval Lord Bramwell in **Mogul SS Co v McGregor, Gow and Co. (1892) A.C. 25:**

“... a combination of workmen, an agreement among them to cease work except for higher wages, and a strike in consequence was lawful at common law; perhaps not enforceable inter se but not indictable” at p. 47.

19. It is the case today that in Belize the strike action by trade unions is statutorily recognized and protected thereby giving rise to a right to strike. This right to strike is as well confirmed in international treaties to which Belize has subscribed. By the International Labour Organization Conventions Act – Chapter 304:01 several ILO Conventions were expressly incorporated into the laws of Belize. Among these conventions are Convention 87 on **Freedom of Association and Protection of the Right to Organize** and Convention 98 on **Right to Organize and Collective Bargaining**.

20. The right to strike is therefore generally regarded today as a normal trade union activity. By section 4(c) of the Trade Unions and Employers’ Organizations (Registration, Recognition and Status) Act – Chapter 304, every employee is granted the right to take part in lawful trade union activities. This section provides as far as is material in terms as follows:

“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) ...

(b) ...

(c) taking part in any lawful trade union activities

(d) ...

(e) ...

(f) ...

(g) ...

21. I am therefore persuaded by the submissions of Ms. Young Barrow S.C. for the applicant that there is in law a recognized right of workers to strike.

3. *Must the government pay teachers for the days they were on strike or are Striking Teachers entitled to be paid?*

This issue, I dare say, is at the heart of these proceedings. Ms. Young Barrow plausibly argued that it was unlawful for the government to penalize in anyway the teachers who engaged in the strike action. She relied for support for this contention in section 5(1) and 2(b) and (c) of the Trade Unions and Employers’ Organizations (Registration, Recognition and Status) Act, 2000. She also prayed in aid the Labour Relations (Public Service) Convention 151 of 1978, which was incorporated into Belizean law by Chapter 304:01 – The International Labour Organizations Act, in particular Article 4.

22. After some anxious reflection however, I am unable to agree with Ms. Young Barrow's arguments on this score for the following reasons:

In the first place what section 5 of Chapter 304 does, in my view, is to protect an employee from discrimination or prejudicial treatment which may include discipline or dismissal by an employer by reason of the employee's membership of a trade union, exercising any rights conferred by the Act itself, or participating in lawful trade union activities. In my view to withhold the salary of a striking worker pursuant to statutory power is neither discriminatory nor prejudicial treatment.

23. Secondly, I find that the salaries of the teachers who were on strike were withheld pursuant to a valid law, namely Rule 102 of the Education Rules (S.I. No. 92 of 2000) made pursuant to the Education Act – Chapter 36 of The Laws of Belize, Revised Edition 2000. This Rule in terms states:

“102. (1) If a trade dispute results in industrial action by teachers or other members of staff, salaries and wages of persons undertaking such action may not be paid for any day or portion of a day during which they are on strike.

(2) Teachers and other members of staff not on strike shall report to work unless circumstances beyond their control prevent them from so doing.

(3) It shall be the duty of the Managing Authority to maintain a record of those teachers not present at school during the period of the strike and to determine the reasons for their absence.

(4) It shall be the duty of Managing Authorities to take necessary measures to ensure that schools are open for classes and to ensure that there is safety of students and members of staff present at school.”

24. I find that there is nothing in this Rule that could be said to be antithetical to the right to strike by teachers. It expressly recognizes the possibility of a trade dispute which may result in industrial action (synonym for strike) by teachers or other members of staff. It then provides what may happen in that case. It does not prohibit a teachers' strike. If fully implemented, as it simply confers a discretion as to whether to dock or not the pay of striking teachers, it may not be conducive to the full exercise of the right to strike by teachers. But I find nothing wrong in this. It would to my mind defy logic and common sense to require an employer to continue to pay a worker who voluntarily stays away from work or to pay her for the days she absents herself from work on strike. Such a policy would, in my view, undermine the very foundation of any employment.
25. **Thirdly**, I am not persuaded by the argument of Ms. Young Barrow S.C. that the Education Rules should be read up to conform with Belize's treaty obligation, that is, Article 4 of ILO Convention 151 on Labour Relations (Public Service) and sections 4 and 5 of Chapter 304. I find there is nothing in Rule 102 of the Education Rules that can be said to be derogatory of any rights teachers may have.

The issue of deducting pay for days of strike had engaged the attention of the Committee on Freedom of Association of the International Labour Organization and in its publication, **ILO Principles Concerning the Right to Strike**, (ILO Office, Geneva, 1998) it concluded in its body of

principles as follows: “K. Legal Provisions regarding wage deduction for days of strike give rise to no objection.”

26. Fourthly, I think with respect, the Tranz Rail Ltd. v Rail and Maritime Transport Union case from the Court of Appeal of New Zealand (1999) NZCA 63, which Ms. Young Barrow S.C. sought to rely on for the proposition that striking employees should not be penalized afterwards by their employer for having struck, is different from the effect of Rule 102. In the New Zealand case, it was the denial of bonus to striking employees that was held incompatible. Here Rule 102 is extant and part of an existing law and could be said to be a part of the contract of employment of teachers or at least subject to it.

27. I therefore accept the submissions of both Mr. Derek Courtenay S.C. for the fourth defendant and of Mr. Philip Zuniga S.C. for the third defendant, as well as Mr. Kaseke the former Solicitor General, that the right to strike which members of the applicant union undoubtedly have, does not however, confer as well the right to be paid their salaries for any period they absent themselves from the classroom in exercise of their right to strike.

4. Is the deduction of pay of teachers for the days they were on strike a disciplinary measure?

28. Ms. Young Barrow S.C. submitted that the deductions from the salaries of the teachers who undertook strike action was a form of disciplinary measure. She relied, in particular on Rule 93(1)(b) and (c) which provides as follows:

“(b) where the person fails to perform his lawful duties or willfully disobeys legal orders given by those duly authorized to give such orders:

(c) for repeated neglect of duty or failure to observe regulations and requirements under the Act, these Rules and approved school rules.”

Therefore, she submitted, as Rule 93(2) prescribed the procedure to be followed before implementing any disciplinary measure and this was not in this case, the decision to dock the salaries of striking teachers was ultra vires and unlawful.

I must however point out that Rule 76 addresses the manner in which absence from work may be dealt with by the Managing Authority of a school. And sub-rule (5) provides that claims for salary for any unapproved absence may be disallowed; and sub-rule (6) provides that any teacher or member of staff who absents herself from duty without permission shall be liable to disciplinary action.

29. I do not feel able however to accept the contention that the deduction from teachers' pay was a disciplinary measure in the circumstances of this case within the contemplation of Rule 93. This Rule in my view provides an extensive list of faults which can properly be the subject of disciplinary proceedings; and it provides in sub-rule (2)(a) and (b) an elaborate code compliant with natural justice, as to how disciplinary proceedings may be instituted.

Also, where the Rules allow or permit for the institution of disciplinary action against a teacher or staff member they so say expressly. Thus Rule 76 (6) which provides that absence from duty without permission renders a teacher or staff member liable to disciplinary action; in which case Rule 93(2) will come into play. Rule 97 spells out the measures which may be taken against a teacher or other staff member against whom a disciplinary charge is established. Paragraphs (d) and (f) provide

for suspension without pay or on half pay, and a fine or loss of salary. These could be any of the measures which may be taken, for example, against a teacher or staff member proceeded against under Rule 76(6).

On the other hand, deduction from salary in respect of any period of absence which is not approved is sanctioned by Rule 76(5). This unapproved absence may be for purposes of strike action. But disallowing the claim for salary for the unapproved period is not disciplinary in nature. This is in line with action under Rule 102 which gives the discretion not to pay teachers or other staff members salaries and wages for the day or portion of a day during which they are on strike. This I hold is not disciplinary proceedings provided for in Rule 93(1) nor is it as such a disciplinary measure within the contemplation of Rule 97.

30. I therefore do not find that Rule 102 constitutes a disciplinary measure, subject to the regime of Rule 93. I accept however as correct that a Managing Authority has by Rule 102 a discretion not to withhold the salary of a teacher who has engaged in a strike.

Conclusion

31. In conclusion, on the facts of this case, I am unable to find anything unreasonable in the decisions the applicant has complained against in these proceedings. There is nothing in any of the decisions that begins to approach Wednesbury level (Associated Provincial Picture House v Wednesbury Corp. Ltd. (1948) 1 KB 223 “*as so absurd that no sensible person could even dream that it lay within the powers of the authority*” per Lord Green MR at p. 229.

There was a statutory responsibility and a societal obligation on the authorities to ensure the schools remain open for the education of children.

32. In sum, in the light of findings and conclusions I have set out here I find and declare that
- i) The strike called by the applicant for 24th April 2005 was not unlawful.
 - ii) The memorandum dated 22nd April 2005 from the General Manager of Government Schools, the second defendant, was not in violation of section 5 of the Trade Unions and Employers Organizations (Registration, Recognition and Status) Act – Chapter 304 of the Laws of Belize, Revised Edition 2000.
 - iii) The Order for Certiorari to quash the decision of the first defendant dated 21st April 2005 that “*salaries for principals and teachers will not be paid for any day or portion of a day during which they engage in strike action*” is denied.
 - iv) I deny as well an Order of Certiorari to quash the decisions of the second, third and fourth defendants to make deductions from the April salary of teachers who participated in strike actions on 24 April 2005.
 - v) The Order for Mandamus directed at the third and fourth defendants to return money to those teachers from whose salaries such deductions were made is refused.

I make no order as to costs.

A. O. CONTEH
Chief Justice

DATED: 3rd April 2007.