

employees of the defendant, namely, Nelson Young, Enrique Monima and Andy Sutherland. On 27 February 2007 the claimant herself was also terminated from her employment in the defendant company.

These proceedings are about her termination. The claimant instituted proceedings against the defendant claiming that her termination from her employment was unlawful and seeks a number of orders, including reinstatement to her job in the defendant company. In the meantime, she has applied for an interim order to re-instate her to her position as Technician Grade 6 in the defendant company until trial of her claim or further order. She further seeks an interim order that she be paid her full salary and benefits from 27 February 2007 until trial of her claim or further order.

This ruling concerns only the issue as to whether or not the two interim orders sought should be granted.

The grounds in support.

In support of the claimant's application for the interim orders, five (5) grounds are advanced, namely;

1. The Claimant's basic rights as an employee are protected by section 4 of the Trade Unions and employers' Organizations (Registration, Recognition and Status) Act, Chapter 304 of the Laws of Belize, R.E. 2000 (the Act).
2. The Defendant, is prohibited by section 5(2) of the Act from terminating the employee because of the employee's exercise of any rights conferred by the Act, the Belize Constitution, any other law governing labour and employment relations or any collective bargaining agreement.

3 On the 27th February, 2007 the defendant unlawfully terminated the Claimant from her employment, contrary to sections 5(1) and 5(2) of the Act.

4 By section 11(2) of the Act the employer shall have the burden of proving that the act complained of does not amount to a contravention of any of the provisions of section 5(2) which is the basis of the complaint.

5 By section 11(3) and (4) of the Act, the court is empowered to direct the reinstatement of the employee and may make such other orders as it may deem just and equitable taking into account the circumstance of the case.

I bear in mind that the Court is not asked to deal with the merit of the claimant's substantive claim in this application. Rather simply put, whether it is just and proper that she should be put back into her previous position in the defendant company, with her full entitlements and benefits, pending the determination of her case. This, in my view, entails not only as a matter of law but also as a matter of practical consideration in the light of the circumstances of the case as demonstrated by the materials now before the Court.

The cases for the Claimant and Defendant

In a nutshell, the claimant's case in the present application is that she had worked for the defendant company for 17 years and was terminated from her employment for no good cause. Ms Young Barrow of Counsel for the claimant contended that the only reason why the defendant terminated the claimant's employment was because of her involvement in the BCWU activities. The defendant has confirmed that the termination of the claimant's employment was

not for cause and as such, says Counsel, there is no reason why the claimant should not be reinstated to her job until her case is determined.

The power to order reinstatement is in section 11 of the *Trade Unions and Employers' Organisations (Registration, Recognition and Status) Act* (Cap.304). In particular, Counsel makes particular reference to subsection (3) of section 11 which empowers the Supreme Court to order reinstatement of the employee if the Court finds that the employee was dismissed in contravention of the subsection (2) of section 5 of the Act. Counsel submits that the Court can exercise its power under this provision and make an interim order of reinstatement as sought by the applicant. This is very much so, since the provision also allows the Court to make "such other orders" as it may deem just and equitable.

Again, in a nutshell, the case for the defendant is that the termination of the employment of the claimant was not for any "cause." It was done because the defendant "decided that she should no longer work for the company," as stated in the affidavit of Dean Boyce. Consequently, the defendant had paid the claimant all her entitlements and benefits upon her termination.

In support of the defendant's decision not to continue employing the claimant, Mr. Boyce says in his affidavit that the claimant had not been in good terms with the management of the company for some time; that she no longer had the trust confidence in the management of the company; that her immediate supervisor found it difficult to manage her work; that her contribution to the internet department was limited and failed to make reports; that she was very insupportive of training initiatives; that she had negative attitudes; that other employees felt threatened by her; and that managing her was a "heavy task" because she frequently challenged straightforward issues. In short, what the defendant is saying is that the claimant was a difficult and uncooperative employee.

The first stand taken by Mr. Marshalleck of Counsel for the defendant is that the claimant, if she is relying on the suggestion that her termination was due to her Union activities, does not have the standing to come to the Court with her claim since the BCWU was not registered as a Trade Union as required by law. Reliance is made on section 13 (2) of the Act.

On the question of the power to order interim reinstatement, Mr. Marshalleck suggests that the Court does not have the power to make such an order. Section 11 (3) and (4) of the Act, argues Counsel, only apply after the Court “finds” that there has been a breach of the section 5 (2) which is at the hearing of the substantive claim. Thus at this stage of the case, the Court does not have jurisdiction to make an order of an interim reinstatement.

In his submission, Counsel for the defendant suggests that it would not be right to reinstate the claimant, even temporarily. This is because, as Counsel suggests, the power to reinstate does not impinge on the right to terminate. Thus even if there is an order of reinstatement, the defendant “can turn right around, follow the correct procedure and terminate,” to use Counsel’s words.

The Starting Point

For our present purpose, the starting point, of course, must be the provisions of the Trade Unions and Employers’ Organizations (Registration, Recognition and Status) Act (Cap. 304) of the Laws of Belize. Section 11 of that Act, upon which the application is based, provides:

“(1) Any person who considers that any right conferred upon him under this Part has been infringed may apply to the Supreme Court for redress.

(2) Where a complaint made under subsection (1) alleges that an employer or an employers organization, association or federation has contravened any of the provisions of subsection (2) of section 5, the employer, employers' organization, association or federation shall have the burden of proving that the act complained of does not amount to a contravention of any of the provisions of subsection (2) of section 5 which is the basis of the complaint.

(3) Where the Supreme Court finds that an employee was dismissed in contravention of subsection (2) of section 5, it may make an order directing the reinstatement of the employee, unless the reinstatement of the employee seems to that Court not to be reasonably practicable, and may further make such other orders as it may deem just and equitable, taking into account the circumstances of the case.

(4) Without prejudice to the Court's powers under subsection (3), where the Supreme Court finds that a complaint made under subsection (1) has been proved to its satisfaction, it may make such orders in relation thereto as it may deem just and equitable, including without limitation orders for the reinstatement of the employee, the restoration of benefits and other advantages, and the payment of compensation.

As that section is to be read together with section 5 of the same Act also, I set out the provisions of section 5 which provides;

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

(2) The activities referred to subsection (1) are:

a) requiring the employee or person seeking employment not to join a trade union or a federation of trade unions or to relinquish his membership therein as a condition precedent to the offer of employment, or as case may be the continuation of employment;

b) discriminating or engaging in any prejudicial action, including discipline, dismissal or, as the case may be, refusal of employment because of the employee's exercise or anticipated exercise, or the person seeking employment's anticipated exercise, of any rights conferred or recognized by this Act or any Regulations made hereunder, the Belize Constitution, any other law governing labour and employment relations, or under any collective bargaining agreement;

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;

d) threatening any employee or person seeking employment with any disadvantage by reason of exercising any rights conferred or recognized by this Act or any Regulations made hereunder, the Belize Constitution, any other law governing

labour and employment relations, or under any collective bargaining agreement;

e) promising any employee or person seeking employment any benefits or advantages for not exercising any rights conferred or recognized by this Act or any Regulations made hereunder, the Belize Constitution, any other law governing labour and employment relations, or under any collective bargaining agreement;

f) restraining or seeking to restrain any employee or other person seeking employment, through a contract of employment or otherwise, from exercising any rights conferred or recognized under this Act or any Regulations made hereunder, the Belize Constitution, any other law governing labour and employment relations, or under any collective bargaining agreement.

(3) Any contractual provision made pursuant to subsection (2)(f) shall be void, whether it was made before or after the commencement of this Act.

(4) Nothing in subsection (2) shall be read and construed as prohibiting an employer from lawfully dismissing or disciplining any employee.

The language of the two sections of the act mentioned above, demonstrates the intention of the legislature to put in place employment standards laws, as well as affording employees protection against unlawful termination. Statutorily, they set the employment standards to be observed by the employers, something of an extension of the common law position. Where a breach of those statutory provisions is alleged, section 11 (2) of the Act throws the evidential burden on the

employer, and in this case, the defendant, of proving that the action of the defendant, does not contravene section 5(2).

Mr. Marshalleck has argued that the burden under section 11 (2) does not shift to the defendant in an interim application of this nature. I accept Counsel's argument if the interim application is severed from the main action. However, under the provisions of the law under consideration, the burden is clearly imposed on the defendant to justify its action of terminating the claimant's employment and it remains on the defendant throughout the entire trial of the action from the start to finish. It thus gives rise to the presumption in favour of the claimant throughout the case, a presumption upon which the Court can exercise its discretionary power to grant an interim order, such as the one sought in this case.

The power of this Court to grant interim remedy cannot be doubted. It has inherent jurisdiction to do so. Our own Court Rules, *Supreme Court (Civil Procedure) Rules 2005*, makes the point firmer by providing in Rule 17 that the Court can grant an interim remedy in relation to proceedings that have commenced or before they are issued.

In any case, the authorities are clear that the Court has power to grant interim or interlocutory relief based on a substantive cause action before the Court and as an ancillary to a final order. See *Channel Tunnel case* [1993] AC 334.

This view of the provisions of section 11 of the Act strengthens the case for the applicant in this interim application. I agree with the submission of Counsel for the claimant that in as much as the Court is empowered to grant a substantive order of reinstatement, it can also exercise that power to grant an interim reinstatement. The Court is not deprived of the jurisdiction to do so, as contended for by Counsel for the defendant. The application of section 11 (3) at this interim stage, would enable the claimant to be restored to her former status in the interim while, at the same time give the defendant employer the

opportunity to establish its case, thereby discharging the burden required of it when the substantive case comes to be determined.

With regard to the argument on behalf of the defendant that the claimant has no *locus standi* to bring the claim in this case because BCWU is not registered, it is obvious that the argument cannot stand. By law BCWU has been registered as a Trade Union under section 13 of the Act (Cap. 304). A certificate of registration has been produced and which conclusively established the fact of registration of BCWU as a Trade Union.

The bulk of the submissions by Counsel for parties and the case law authorities cited are helpful but they are more relevant to the main case. I will say no more on those submissions. The short point at this stage for the Court to determine is, as has been earlier stated, whether or not the interim order sought ought to be granted.

Matter of Law and Practice

On the application of section 11(2) and (3) of the Act, it seems to me that, as a matter of law, an interim order as sought by the claimant ought to be made. At this stage the basis of her complaint has not yet been displaced and so in the interim, the provisions of section 11 must operate in her favour.

In terms of the law, the claimant must be presumed, at this stage, to have been terminated in contravention of section 5 of the Act. She is therefore entitled to her position in the Internet Department as a Technician Grade 6 with all her employment entitlement and benefits until the trial of her claim in this case.

In terms of the practicality of an interim order such as that of re-instatement of a dismissed employee, subsection (3) empowers the court, at this stage, to make

other orders as it may deem “just and equitable” without limiting to orders for re-instatement.

The court understands that another employee has been placed in the claimant’s post. The Court is told that another person has been put in the position previously occupied by the claimant the day after the claimant’s termination. The Claimant has been with the defendant company for over 16 years and more than three (3) years in her post of Technician Grade 6 before she was terminated. While the suggestions made by Mr. Boyce in his affidavit on the claimant’s situation in the company may play some part in the decision to terminate her employment, they are simply assertions which are yet to be established. In contrast, the claimant asserts in her affidavit that she had a cordial working relationship with those who work in the internet department. In any case, the claim by the defendant that she did not have cordial working relationship with her workmates and management cannot override the presumption in her favour under section 11 (2).

The defendant company is a large operation and I have no doubt the management would come to some practical arrangements to ensure that the interim order of the Court is complied with.

Order:

An interim order is granted directing the defendant to re-instate the Claimant with her full employment entitlements and benefits from 27 February 2007 until trial or further order of the Court.

Costs in the cause.

Hon Justice Sir John Muria

