IN THE SUPREME COURT OF BELIZE A.D. 2009

CLAIM NO. 142 of 2007

BETWEEN

CHRISTINE PERRIOTT **CLAIMANT**

AND

BELIZE TELECOMMUNICATIONS LIMITED **1ST DEFENDANT**
BELIZE TELEMEDIA LIMITED **2ND DEFENDANT**

CORAM: Hon Justice Sir John Muria

11 June 2010

Mrs. Antoinette Moore SC for the Claimant
Mr. Andrew Marshalleck SC and *Mrs. Naima Barrow-Badillo* for the Defendants

JUDGMENT

MURIA J: The claimant's claim as amended on 4 March 2008 is for the following relief pursuant to section 11 of the ***Trade Unions and Employer's Organizations (Registration, Recognition and Status) Act*** (Cap. 304 of the Laws of Belize) ("**TUEO Act**"):

(1) A Declaration that on 27th day of February 2007 the first Defendant unlawfully terminated the Claimant from her employment.

(2) An Order directing the reinstatement of the Claimant to her job by the first Defendant or the second Defendant, as the case may be.

(3) An Order restoring the Claimant's benefits and other advantages as an employee for the first Defendant or the second Defendant, as the case may be.

(4) An Order for payment of compensation to the Claimant by the first Defendant or the second Defendant, as the case may be, to compensate the claimant for:

    (1) Loss of base salary at the rate of $41,160.00 per year for 2008, and thereafter increasing according to salary increase

    (2) Loss of BTL increments

    (3) Loss of appraisal increments

    (4) Los of negotiated salary increases

    (5) Loss of call out and overtime

    (6) Loss of year-end bonus

(7) Loss of passage grant

(8) Loss of other benefits

(5) Severance Pay amounting to $14,062.94.

(6) Notice Pay amounting to $4, 963.38.

(7) Exemplary damages and or aggravated damages.

(8) Interest on any award of compensation, and exemplary and or aggravated damages, at eight percent per annum from the 27th day of February 2007 until payment.

(9) Costs.

2. The claimant does not seek the relief sought in paragraph 2, namely, an order for reinstatement. With regard to notice pay of $4,545.07 and severance pay of $14,062.92 which were said to have been withdrawn, they are factors that the court can take into account in assessing overall compensation payable to the claimant if she succeeds in her claim.

Brief Background circumstances

3. The claimant initially brought these proceedings against the first defendant, Belize telecommunications Limited ("BTL"). The second

defendant, Belize Telemedia Limited ("Belize Telemedia") subsequently took over the undertaking of the first defendant and now stands in the shoes of BTL in this case. I shall therefore refer to them conveniently as the defendant in these proceedings.

4. The claimant was, up to 27 February 2007, employed by the defendant company, as a Technician Grade 6. She first joined the defendant in 1990 as an Assistant Technician and worked in various departments of the company. At the time of her termination, the claimant was working at the defendant's Internet Department. She had over 16 years of service in the defendant's company.

5. Apart from her position in the defendant company, the claimant was also a member of the Belize Communication Workers Union (**BCWU**) and holding the position of General Secretary of BCWU. The Claimant and others who are employed by the defendant are members of the BCWU.

6. As General Secretary of BCWU, the claimant had been actively engaged in bringing the interest of the employees and members of BCWU to the attention of the defendant, including pursuing the matter

of the termination of the three 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. The claimant brought these proceedings because of that termination.

Reinstatement.

7. It's important that I should point out to the parties at this stage of this judgment that in the light of the decision of the Court of Appeal in this matter in ***Belize Telecommunication Limited and Belize Telemedia Limited –v- Christine Perriott*** (20 June 2008) Civ. Appeal No. 33 of 2007, the reinstatement of the claimant ordered by this court was set aside. The claimant therefore remained terminated from her employment as from 27 February 2007.

8. The reinstatement was, in law, ineffective and consequently, no claim can be brought by the claimant or counter-claim by the defendant, arising from her reinstatement between 5 April and 9 November 2007. Very properly the claimant withdrew her claim for constructive dismissal which was alleged to have occurred on 9 November 2007.

9. By the same reasoning, no amount of allegations and reliance on the claimant's work performance between April and November, 2007 can be of any relevance to her termination on 27 February 2007. This judgment is therefore concerned with the legality and consequence of that termination.

Claimant's case

10. The claimant's case is that her termination was unlawful for contravention of section 5 of TUEO Act. Primarily her case is grounded on the allegation that the defendant terminated her, on 27 February 2007 because of her union activities. Consequently, she says that her termination was in breach of Section 5(1) and (2) of the ***TUEO Act***.

11. The relief sought by the claimant in this case stems from the allegation that her termination was unlawful, being in contravention of Section 5 of ***TUEO Act***, which prohibits termination of employment of an employee on the ground of trade union membership and union activities. The case for the claimant is that she was terminated from her

employment because of her union activities. That, if proved, would clearly make the termination of her employment unlawful.

12. Understandably, since no direct factual basis evidencing that the defendant terminated her employment by reason of her union activities, the claimant seeks to rely on the circumstances arising out of a series of events which occurred in the months leading up to her termination. These series of events were set out in paragraphs 70 through to 91 of the Claimant's First Affidavit sworn to and filed on 23rd March 2007 and are repeated in the claimant's amended statement of claim.

Defendant's case

13. The case for the defendant, on the other hand is that the claimant was lawfully terminated pursuant to sections 40 and 43 of the ***Labour Act (Cap. 297)***, as well as under the clause 13.5 of the Collective Bargaining Agreement (CBA). The argument for the defendant being that the claimant was terminated 'without cause' and the provisions of the Act and CBA permit such termination to be done.

14. Against the claimant's case, the defendant's position, as evidenced by their letter of 27th February 2007, is that they terminated the claimant's employment because her "*services are no longer required*" by the company. I will come to the terms of that letter later in this judgment.

15. In their Amended Defence, the defendants averred that the claimant's employment was lawfully terminated and that no relief is available to the claimant under the Act. It is also the defendant's position that the claimant was not terminated in contravention of section 5(1) and (2) of the TUEO Act.

Termination of employment under the Labour Act

16. Before I deal with the issues in dispute, let me briefly deal with the issue of termination of employment under the Labour Act.

17. Mr. Marshalleck helpfully referred to the circumstances under which an employee can be terminated from employment in Belize. Counsel suggested that termination of employment can be done in two ways, namely for '*good and sufficient cause*' under section 46 or '*without cause*' under sections 40 and 43 of the Labour Act. In this case, the defendant chose to terminate the claimant under the latter method.

18. It would be helpful to set out the provisions referred to and I do so. Section 40 provides as follows:

> *40(1) Notwithstanding any agreement to the contrary, notice of the termination of a contract of service for an indefinite time, given either by the employer or the worker, shall be of the following respective durations, if the worker has been in the employment of the same employer continuously-*
>
> *(a) for more than two weeks but not more than six months-three days;*
>
> *(b) for more than six months but not more than one year – one week;*
>
> *(c) for more than one year but nor more than two years-two weeks for more than two years – four weeks.*

Section 43 states as follows:

> "*Where a worker under an oral contract of service for an indefinite time fails to give notice as in accordance with this Part, he shall be liable to pay to the employer a sum equal to half the wages that would be payable in respect of the period of*

notice. Where the employer fails to give the said notice, he shall be liable to pay to such worker a sum equal to the wages that would be payable in respect of the period of notice."

Section 46 provides:

"*Notwithstanding the foregoing provisions of this Part, an employer may dismiss the worker and the worker may abandon service of the employer, without giving notice and without any liability to make payment as provided in sections 43 and 44 if there is good and sufficient cause for such dismissal or abandonment of service*:

Provided that an employer may not set up as a good and sufficient cause that the worker at the time of the dismissal was a member of a trade union."

19. It is important to see, as a starting point, the letter of termination of the claimant's employment issued by the defendant. That letter dated 27 February 2007 is in the following terms:

"*Dear Mrs. Perriot,*

We write to inform you that your services are no longer required by Belize telecommunications Limited (the "Company"). Consequently, your employment with the Company is hereby terminated with immediate effect.

A payment for the sum of $19,846.81 is being made to you by the Company and will be deposited in your bank account in accordance with the established payment mechanism. This sum represents $4,545.07 in lieu of notice, $3,181.55 as accrued holiday pay, and $12,120.19 as an ex-gratia payment. Your acceptance of the sum of $19,846.81 constitutes your acknowledgment of the receipt of these funds in full and final settlement of all obligations owed to you by the Company pursuant to your contract of employment.

The Chairman of the Board of Trustees of the Belize Telecommunications Limited Staff Pension Scheme is being informed of your leaving and has been requested to release contributions paid by the Company as your employer, together with interest accrued thereon, in addition to your personal contributions to the scheme.

You are required to return forthwith and before leaving the Company's offices today, all Company property in your possession, including your Company identification card, medical insurance cards, computer, and other equipment.

We thank you for your services to the Company and wish you well in your future endeavors.

Yours sincerely,

Martha Vasquez Molina (Mrs.)
Head - Human Resources & Sales"

20. On the plain reading of it, that letter does not state any cause for terminating the claimant's employment. Rather she was terminated because her "*services are no longer required*" by the defendant company. In such a case, I accept the submission of Mr. Marshalleck of Counsel for the defendant, that the provisions of sections 40 and 43 of the ***Labour Act (Cap. 297)*** apply, requiring the defendant to give the required notice of termination or payment in lieu of notice.

21. In so far as the claimant's position is concerned, that required notice is "four weeks" as stated in section 40(1)(d) of the ***Act***. Failure to give that required notice, section 43 provides the consequence, namely, that the employer must pay to such worker a sum equal to the wages that would be payable in respect of the period of notice. It is said that the defendant fulfilled that in this case.

22. It will be observed also that the Collective Agreement between the BCWU and the defendant does provide for notice before resignation by employees, as well as termination of employment by the defendant. Article 13.5 of that Agreement states as follows:

> *"Employees who resign from the company in accordance with the Labour Laws of Belize, are required to give notice of their intention to resign. Notice of terminations of contract of service from the Employer shall be of the respective durations in schedule 4."*

23. Schedule 4 to the Agreement provides that resignation or termination notice, in respect of employees who have been in the defendant's employment for more than five years service is six weeks.

24. Mr. Marshalleck's submission is that the termination of the claimant "without cause", complied with sections 40 and 43 of the ***Labour Act***, as well as Article 13.5 of the Collective Agreement between the BCWU and defendant. On the evidence before the Court, I have to accept as contended for by Mr. Marshalleck, that the termination of the Claimant's employment was 'without cause' and that it was in accordance with sections 40 and 43 of the ***Labour Act***, as well as Article 13.5 of the Collective Agreement.

25. That is not the end of the matter because the Claimant's case is that she was terminated from her employment by the defendant in violation of Section 11 of the ***TUEO Act***. The argument, being that the defendant terminated the Claimant's employment because of her Union activities, and not in accordance with Sections 40 and 43 of the ***Labour Act*** as relied upon by the defendant. That being the case, says the claimant, her termination was unlawful.

26. Although arguments have been raised on the ways in which an employee can be terminated, namely "for good and sufficient cause" and "without cause", there has no challenge as such, as to the defendant's right to terminate the claimant's employment under either form of termination. Thus, central to the claimant's case, is the issue of whether the defendant terminated her employment because of her union activities, contrary to Section 11 of the ***TUEO Act***.

Onus of Proof

27. The law recognizes that employers have a right to terminate workers. There is no automatic right to employment for life. In Belize, the right to work under Section 15 of the Constitution is a qualified right, the protection of which arises as soon as a person "freely chooses or accepts" the opportunity to work. The qualifications are set out in Subsections (2) and (3) of Section 15.

28. Having said that, let me briefly deal with the onus of proof in this case. It would be helpful to set out the provisions of sections 5 and 11 which are the statutory provisions relied on by the claimant. Section 5 states:

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 employers' 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:

(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 recognised 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 right."

Section 11 provides as follows:

11. (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 organisation, association or federation has

contravened any of the provisions of subsection (2) of section 5, the employer, employers' organisation, association or federation shall have the burden of proving that the act complained of does not amount to a contra-vention 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."

29. In the general run of employment cases, the burden of proof lies on the claimant. However, in a claim for unlawful termination, as in this case, based on violation of a statute, the onus of proof shifted to the employer to establish that the employment of the claimant was not terminated for an unlawful reason or reasons that include an unlawful reason: ***Rojas v Esselte Australia Pty Limited (No. 2)*** [2008] FCA 1585 (24 October 2008). In Belize this reversal of the onus of proof, is statutorily provided for under Section 11(2) of the ***TUEO Act***.

30. The defendant in the present case bears the burden of proving that the claimant was not terminated from her employment by reason(s) of her union activities. Mr. Marshalleck of Counsel for the defendant very properly concedes that the defendant bears the burden. See also

David's Distribution Pty Ltd – v – National Union of Workers [1999] FCA 1108, 91 FCR 463. In the case of ***Maritime Union of Australia – v – Geraldton Port Authority*** [1999] FCA 899; (1999) 93 FCR at 68, Nicholson J explained the reasoning behind the reversal of proof as follows:

> *'If the applicant proves the conduct and alleges that the conduct was carried out for a prohibited reason; it is for the respondent to prove, on the balance of probabilities, that it was not motivated by an impermissible reason… The reversal of the onus in respect of proof of the reasons for the conduct is a recognition that "the circumstances by reason of which an employer may take action against an employee are, of necessity, peculiarly with the knowledge of the employer'.*

31. The Court in the Canadian case of ***Seiuwest. ca –v- Chinook School Division No. 211*** (2009) SKQB 289 has this to say also on the point.

> *"The seriousness with which the legislature regards conduct of this kind is indicated by the fact that the onus rests on the*

employer to show that trade union activity played no part in the decision to discharge or suspend an employee."

32. Additionally, as stated in ***Seymour – v – Saint Gobain Abrasive Pty Ltd*** [2006] FCA 1452, it is also necessary that the employer (defendant in the present case) provide an "*explanation of the real reason*" for the termination.

33. However, section 11(2) of ***TUEO Act***, does not relieve the claimant of the need to establish the facts which she said were the basis for the defendant's action to terminate her employment because of her Union activities. The claimant will still have to prove the "act complaint of" (the 'objective facts' in ***Rojas – v- Esselte***) while the defendant bears the onus of proof that the act complained of does not amount to contravention" of Section 5(2). This position is similarly noted in ***Rojas – v – Esselte*** by Moore J. when he remarked that the reverse onus of proof "*does not obviate the need for the applicant to prove the existence of objective facts which are said to provide the basis for the respondent's conduct*." See also ***CFMEU – v – Coal and Allied Operations Pty Ltd*** [1999] 140 IR 131.

34. Having, thus, stated the respective burdens of proof, I shall now turn to the evidence and its impact on the burden on the claimant to prove the "objective facts" complained of.

Events prior to 27 February 2007

35. There is little dispute that between the period March 2005 and March 2007 the BCWU was actually pursuing the idea of purchasing 20% shares in the defendant's company on behalf of the worker's trust. It was also during this that litigation had been brought before the Court over control of the defendant's company, BTL, the Government's ownership of majority shares in BTL and the changing of the top management of BTL.

36. In or about September 2006 the re-negotiation between BCWU and defendant's company on the Collective Bargaining Agreement (CBA) began. The claimant was one of the lead negotiators for BCWU seeking to protect the interest of its members employed in the defendant's company.

37. On 30th January 2007, while negotiations between BCWU and defendant for a new CBA were still in progress, the defendant terminated with immediate effect, three of its employees, Nelson Young, Andy Sutherland and Enrique Monima, who were also Liaison Officers of BCWU. That termination added another twist to the ongoing CBA negotiation between the parties.

38. The same date, the claimant together with BCWU executive members sought a meeting with Mr. Dean Boyce who in effect refused to meet with them. Instead, the claimant and BCWU Executive were directed to raise issues with Mrs. Martha Molina.

39. On 31st January, 2007 the claimant as General Secretary of BCWU, sent an email to Mrs. Molina, expressing the Union's outrage over the termination of the three Liaison Officers. Similarly, on the same date the President of BCWU, Mr. Paul Perriott, wrote to Mr. Boyce expressing the Union's grave concern over the termination of the three employees/Liaison Officers.

40. On 2nd February, 2007 the Claimant, as the General Secretary of the BCWU, sent a Notice, as required by the Settlement of ***Disputes in Essential Services Act***, to the Attorney General and Minister of Education and Labour, of BCWU's intention to proceed with industrial action within 21 days. This, the Union said, was because the Defendant refused to consult with the BCWU on the question of the terminations of the three employees/Liaison Officers. The Union alleged that the termination of the three employees was in contravention of the CBA and the Memorandum of Understanding.

41. In addition, on the same date, BCWU called on its members to work-to-rule and go-slow.

42. On 6 February 2007, the Minister responded to the Notice sent by the claimant. The Minister urged "*both parties to fully exhaust"* the framework for dialogue and consultation contained in the CBA and the Memorandum of Understanding.

43. Subsequently, on the 8th day of February 2007 the Defendant issued an *Employee Bulletin* stating its willingness to meet with the BCWU to

discuss the recent terminations of the three Liaison Officers, and that the defendant was commitment to follow the grievance procedure in the CBA.

44. There was some suggestion by the Union of anti-union actions by the defendant. So on 9 February 2007 the claimant as the General Secretary of the BCWU, wrote to Mrs. Molina to complain that certain managers had engaged in anti-union actions by threatening, intimidating and pressuring workers to not support the BCWU.

45. On 9 February 2007, Mr. Jeffery Prosser who claimed to have owned 30% of the defendant's shares and one (1) Special Share, giving him control of the Board of Directors, called a meeting of the Board of Directors of the defendant for Friday the 16th February, in the boardroom at the defendant's premises. The notice was also publicized countrywide through television and radio. Obviously the basis for Mr. Prosser's actions were decisions by the Supreme Court and Court of Appeal in Claim No. 38 of 2005 and Civil Appeal No. 6 of 2005, which were respectively in his favour.

46. Because of the interest of the employee members of the Union in the scheduled Board Meeting, BCWU informed its members on 12 February of the said Board Meeting.

47. On 13 February 2007, BCWU called a Union meeting to discuss the upcoming board of directors' meeting and to update members on the Minister's response to the trade dispute.

48. On the same date, the defendant issued an *Employee Bulletin* which stated that management was given a copy of the email from the BCWU to union members dated February 12th 2007 which attached a purported notice to requisition a BTL Board meeting on February 16th 2007. The defendant's Bulletin made certain accusations against the BCWU.

49. A meeting to be convened by the Acting Labour Commissioner, Mr. Adelfino Vasquez, was arranged for 19 February 2007 to deal with the dispute between BCWU and the defendant. Prior to the meeting, the Acting Commissioner of Labour wrote to the defendant on 15 February requesting time off for the BCWU negotiating team which comprised of Mr. Paul Perriott, President, Mrs. Christine Perriott, General Secretary, Mr. Charles Sawers, Mr. Dwight Gentle, and Mr. Mark Gladden.

50. The scheduled meeting took place on 19 February 2007 at which the claimant led the presentation on behalf of BCWU. Four persons serving on its negotiating team represented the defendant. Mr. Boyce did not attend this meeting.

51. On 21 February 2007 the defendant issued an *Employee Bulletin* to say that the "BCWU Executive have been issuing statements to staff and have been circulating correspondence from ICC that suggests that the current BTL Management Team have not been correctly appointed, and that the BTL owners have not appointed the current management team". It would appear that this followed an email sent by BCWU to its members, informing them of a public statement from Jeffery Prosser's Innovative Communication Company LLC's (ICC) web site entitled "*U.S. Company Threatened Again over Board Meeting*" of threats made against Mr. Prosser over his attempt to convene a board meeting of the defendant.

52. On 21 February 2007, Mr. Boyce wrote to the Minister insisting that the BCWU submit to the grievance procedure in the CBA. In his letter,

Mr. Boyce remarked that the defendant noted that the criminal penalties attached to a worker striking when prohibited by the Settlement of Disputes in Essential Services Act, and a hope that the defendant would not find it necessary "to take any steps to apprehend any illegal action by workers in contravention of the provisions of the Act." Mr. Boyce copied this letter to BCWU, the Labour Commissioner, the Board of Directors and "BTL Staff".

53. On 22 February 2007, the Acting Labour Commissioner informed the President of the BCWU that the Minister was satisfied that a *Trade Dispute existed* between the BCWU and the defendant.

54. On 23 February 2007, the Claimant wrote to the Minister to express amongst other things, BCWU's *profound dissatisfaction at the Company's threat to its workers* contained in its letter of 21 February 2007 to the Minister, copied to the Union as well as to all BTL staff.

Events on 27 February 2007

55. Four days later, on 27 of February 2007, the defendant wrote to the claimant terminating her employment without cause. The defendant gave no reason for terminating the claimant's employment, other than that her services were "no longer required" by the defendant.

56. On the same date, 27 February 2007, upon receiving her termination letter, the claimant filed a grievance complaint pursuant to Article 14 of the CBA. The complaint is in respect of a deduction made by the defendant of half day's pay from her salary because of her absence from work on 15 February 2007 to attend to urgent business. See claimant's ***Exhibit CP37.***

57. The complainant also filed, on the 27 February 2007, a grievance complaint because the engineer in the department where she worked threatened her because of her union activities. See ***CP37(A).***

Events shortly after 27 February 2007

58. The next day, 28 February 2007, the BCWU filed a grievance complaint pursuant to the grievance procedure in Article 14 of the CBA

in respect of the termination of the claimant's employment while a Trade Dispute in which she was one of the lead negotiators was still current. The complaint seeks her immediate reinstatement to the post of Technician in the Internet Department. See ***CP38.***

59. In response to the grievance complaint, the defendant wrote on the 2 March 2007 to the President of the BCWU stating that the defendant did not the claimant's grievance complaint as covered under ***Art. 14, CBA***. The defendant further stated that the complainant must pursue her remedies in Court. See ***CP39.***

Minister of Labour order Investigation into termination of Christine Perriott

60. As part of the events after 27 February 2007, it would be helpful also to know of the actions taken by the Labour authorities in respect of the claimant's termination.

61. On the 5 March 2007, the Minister of Labour referred the trade dispute to an Essential Services Arbitration Tribunal because he concluded that the possibility of a negotiated settlement was exhausted. In the same

letter the Minister condemned the claimant's dismissal as being an act of "*utmost bad faith*".' See ***CP40***

62. Also on 5 March 2007, the Minister wrote the President of the BCWU to inform him that the dispute between the BCWU and the defendant regarding termination of the three Liaison Officers had been referred to an Essential Services Arbitration Tribunal. The Minister also informed that the Ministry of Labour's position was that the claimant's termination can only be viewed as an act of bad faith in light of the ongoing trade dispute and notice of intended industrial action. In addition the Minister informed the BCWU that he had ordered an investigation to be done by the Acting Labour Commissioner on the claimant's termination. See ***CP.40(A).***

63. The defendant, through Mr. Boyce, wrote on 6 March 2007 to the Minister and purported to scold the Minister for expressing his opinion on the claimant's termination and requesting the Minister to withdraw his comments. See ***CP.40(B).***

64. The Minister responded on the same day to Mr. Boyce and repeated his views on the defendant's bad faith actions and informing Mr. Boyce that he had instructed "*T*he Ag. Labour Commissioner to carry out a thorough investigation into the termination of Mrs. Christine Perriott by BTL. This is to be concluded by 16th March 2007. Please be assured that It will be a fair and balanced investigation." See ***C.P.40(C).***

65. The next day, 7 March 2007 Mr. Boyce wrote to the Minister and demanded to know the Minister's authority for carrying out an investigation into claimant's termination, and accused the Minister of seeking to make political capital out of the situation. Mr. Boyce copied this letter to the Prime Minister, the Leader of the Opposition, the BCWU, the NTUCB, the Labour Commissioner and the Board of Directors. See ***C.P.40 (D).***

66. On 8 March 2007 the Minister responded to Mr. Boyce reiterating his position on the issues concerned and expressing his regret at the arrogance represented in Mr. Boyce's letter which undoubtedly, the Minister felt, was of "*a kind which finds its roots in ones own sense of economic and racial superiority."* To avoid confrontation with BTL,

the Minister advised that Mr. Boyce should direct all his future correspondence to the Labour Commissioner. See ***CP.40(E).***

Press Releases from the Public

67. The claimant's termination quickly captured public attention. Press releases were issued on 28 February 2007 by three Unions, BCWU, PSU and BNTU, as well as by a body called Vision Inspired by the People. Even political sentiments had been released by representatives of UDP and PUP Lake Independence, Collet and Albert areas, voicing their displeasure at the defendant's action. The press releases viewed the defendant's action as one of bad faith calculated to weaken the resolve of the members of BCWU, as well as an act of "Union busting".

68. Since the claimant's termination several organizations have issued press releases condemning the defendant's action as being an act of bad faith calculated to weaken the resolve of the members of the BCWU, and as blatant union busting.

69. Copies of press releases from the BCWU, the PSU, the BNTU, the Vision Inspired by the People, (all dated 28th February 2007), the

United Democratic Party and the PUP Lake Independence, Collet and Albert representatives (both dated 4th March 2007), are together produced and marked. See ***C.P.41.***

Press Release from the Defendant

70. In response to the public media releases, the Defendant also issued a press release. On the 28th February 2007 the Defendant published a Statement in the Amandala Newspaper, the Claimant was terminated because she expressed personal views and actions concerning the management team and the Company as a whole which indicate that she was "not happy working as an employee of BTL within the current operating environment. The Company considers that Ms. Perriott had not been adding value to the Company for some time, and indeed has been completely counterproductive." See **CP.*42.***

The evidence of the Claimant

71. Having set out the factual background somewhat *in extenso*, I shall now consider the evidence adduced by the parties.

72. The claimant has been a member of the BCWU since November 1993. She was elected as the Treasurer of the BCWU in 2002 and in 2004 she

was elected as the BCWU's General Secretary. The claimant is also the head of the BCWU's Grievance & Discipline Body. See paragraph 14 of the first affidavit of Chrisitne Perriott dated 23 March 2007.

73. The claimant started work with the defendants in 1990 and had been so employed until she was terminated on 27 February 2007. At the time of her termination she held the position of Technician Grade 6 at the Internet Department in the defendant's company.

74. In her evidence, both as contained in her affidavits and given orally in court, the claimant stated that as General Secretary at BCWU, she handled many grievances on behalf of the workers. She had been active in union matters since 2002, including dealing with termination by the Defendant of 80 workers since 2002.

75. The claimant also testified that between 2003 - 2005 BCWU became involved with the defendant in negotiation over the ownership management and the Union's interest in purchasing shares in the defendant company. The BCWU Executive was actively involved in the negotiations over the matters.

76. It appears that the negotiations were not proceeding fruitfully as anticipated. As the claimant's evidence shows, a civil unrest erupted in 2005 during which the BCWU members were locked out from the defendant's premises and there was picketting.

77. According to the claimant most of the discussions and negotiations between BCWU and defendant were concerned more with the proposed interest by BWCU to purchase 20%. BCWU was also pursuing its negotiation with the Defendant on the matter of CBA.

78. Again it is the claimant's evidence that whilst the Union was still negotiating with the defendant on the said matters, the defendant terminated their employees who were Union liaison officers. That resulted, as we have seen, in a trade dispute being referred to the Minister of Labour with a 21 days notice of industrial action given by BCWU.

79. The claimant who was one of the lead negotiators, had discussion with the defendant over the termination of the three Union liaison officers and on the proposed strike action by members of the Union. However, while the negotiation and the strike notice by BCWU was still current,

the defendant terminated the claimant's employment on 27 February 2007. That undoubtedly, added more fuel to the fire.

Evidence of Mr. Dale Trujeque

80. Mr. Trujeque worked for the defendant for about three years and three months. He held a senior management position as a Human Resources (HR) Manager.

81. In the years that he was employed in the defendant's company he said he saw the changes of ownership in BTC going from Lord Ashcroft to Mr. Prosser and back to Lord Ashcroft. He also witnessed the change in the Executive leadership of BCWU.

82. Mr. Trujeque also testified that in 2002-2003 the Union was very active in insisting that the provision of the CBA must be complied with by the Union and BTL. As HR Manager, he had to deal with matters concerning CBA before they went to Mr. Boyce.

83. In the course of his duty as HR Manager, Mr. Trujeque dealt with the claimant on very many occasions in connection with grievances brought by employees. Mr. Trujeque also handled appeals from the claimant

over appraisals. In his view, the appraisals were very subjective. The claimant's score was a 3. On appeal she was given a 5.

84. He testified also that on 4 October 2005 he exercised his right to be a member of the Union. Two days later on 6 October 2005, he was terminated from his employment.

Evidence of Mr. Ramon Carcamo

85. As secretary to the Tripartite Body and Secretary to the Registrar of Trade Unions, under the ***TUEO Act***, Mr. Carcamo testified, among other things, that prepared the Registrar of Trade Unions, and Employers Organizations. Included in the 'Register' was BCWU.

86. According to Mr. Carcamo, what was needed to be done was to issue certificates under the ***TUEO Act*** to all Trade Union and Employers Organizations which had been registered and appeared on the Register that had already been prepared. Mr. Carcamo agreed in cross-examination that he did not issue a certificate to any Trade Union, including BCWU, because the draft certificate was not in order, and also, the Regulations were drafted but not yet approved.

87. In his affidavit, Mr. Carcamo deposed to the fact that BCW had met all the requirements and was in good standing and remains on the Register.

The evidence on behalf of Defendant from Mr. Jose Riveroll

88. Mr. Riveroll was the IT Manager of the defendant and from mid 2005-2007, he was Supervisor at the Internet section in the Switching Department. There were technicians under his supervision at the time, one of them was the claimant, Christine Perriott.

89. Among his evidence, Mr. Riveroll testified that the claimant was a difficult worker to deal with. So much so that he had to complain to his Manager of the difficulty he faced in dealing with the claimant.

90. Mr. Riveroll stated that the claimant was not giving him the necessary information requested, failed to meet timeline on tasks and the claimant routinely challenged his authority to give her instructions on what to do. In addition, he said that the claimant had not put in her weekly or monthly reports.

91. Mr. Riveroll agreed that he 'indirectly' recommended the claimant's termination. He, however, denied that his actions had anything to do with the claimant's Union activities.

92. In cross-examination, Mr. Riveroll reiterated that his complaint about the claimant was to do with her work performance and not her Union activities. Also, as her supervisor, he had discussions with the claimant about her work and concerning her appraisals (2006 Appraisals).

93. Mr. Riveroll also confirmed in cross-examination that for the most part of 2006, the claimant was away on maternity leave. The claimant was diagnosed with a high-risk pregnancy.

94. Asked if he knew the claimant as a lead negotiator or vocal Union member, Mr. Riveroll said that he did not know. But he 'certainly' knew that the claimant was vocal at work with him and "challenging everything I would say." Mr. Riveroll reiterated that the claimant had a bad attitude to work. Again, asked if that was reflected in her appraisal, Mr. Riveroll said that he could not recall if it was.

Evidence of Mr. Winston Aspinall

95. At the time the claimant's employment was terminated, Mr. Winston Aspinall was the Manager of the Internet Department in the defendant's company. He was therefore the claimant's manager. In addition to the matters raised in the four affidavits that he gave in this case, Mr. Aspinall's oral evidence in court highlighted two concerns about the claimant. The first is that he found it difficult to manage the claimant because she insisted on her own interpretation of her tasks in the Department. The other is, that the claimant's failure to complete tasks assigned to her with prescribed time or at all.

96. However, despite the difficulties he stated, Mr. Aspinal accepted in is examination-in-chief that the claimant had some enthusiasm to get things done in the Department. In answers to questions put to him by Mrs. Moore of Counsel for claimant, Mr. Aspinall stated that the claimant was a "*good employee*" and that the quality of her work "*meet company standards,*" appraisal dated 20 October 2006. The said appraisal was signed by the appraiser, Mr. Riveroll and endorsed by the counter signing manager, Mr. Aspinall. The same appraisal also gave the claimant a high 3% grading measuring 63 points. On the ***Overall***

Assessment on her work performance, the claimant was given a category "**B. fully acceptable**". Only category "A" was above her, which was for performance well above that normally accepted.

97. On the ***Performance Appraisal***, the claimant was awarded 12 points for her **Quality of Work,** translated to mean that her "*performance meets fully the standards of the job*." On her work outputs or **Results**, the claimant scored 12 points demonstrating that her work output was "*Normally what is expected, tasks completed on time.*" As to her **Initiative and Judgment**, the claimant was given 6 points with the comment, "*Good- addresses potential operation problems, and exhibits enough knowledge of the job to carry on specific tasks assigns.*" On **Team Work**, the claimant scored 9 points which shows that the claimant was "*very cooperative, helpful and supportive in achieving departmental objectives through group work.*" On **Customer Awareness**, the claimant scored 12 points which demonstrated that the claimant was "*Aware of customer needs. Regularly contribute extra time and effort to resolve customer queries and commitment.*" On **Attitude and Commitment**, the claimant scored 12 points showing

that her attitude and commitment were "*Better than normally expected. Willingly does extra work when needed.*"

98. When one consider the above assessment, appraisal and comments on the claimant's work performance, it is hardly surprising that Mr. Aspinall referred to the claimant as a "*good employee*."

99. The above assessment and appraisal were made by the appraiser, Mr. Riveroll and counter-signing Manager, Mr. Aspinall, who both swore affidavits and gave sworn evidence in this trial stating that the claimant was a difficult employee to deal with, failed to complete tasks within time or at all, and had unacceptable conduct at work, as well as disruptive influence on the Internet Department. (See also paragraphs 4, 5, 6, 10 and 11 of Mr. Aspinall's first affidavit dated 23 April 2007 and paragraphs 4 to 13 and 18 of Mr. Riveroll's first affidavit dated 23 April 2007.

100. I have to say that, either Mr. Riveroll and Mr. Aspinall were not being honest and truthful to themselves when they prepared and signed the claimant's 2006 Appraisal Form or they were not being forthright in what they stated in their affidavits, as well as before this court. In

either case, their evidence must be viewed with circumspection. The evidence of Mr. Aspinall that the claimant showed a "repetitive lack of commitment and completion of tasks within prescribed time periods" and Mr. Riveroll's evidence that he had "serious concerns about her (claimant's) conduct at work and her disruptive influence on the Department" simply do not measure up to the assessment approval they gave to the claimant.

Mrs. Martha Molina's Evidence

101. Mrs. Martha Molina was the Head of the Human Resources Department in the defendant's Company. She gave five affidavits as well as gave sworn oral evidence at the trial of this matter. I do not need to go through the five affidavits of Mrs. Molina and her oral testimony in court since the general tenor of her evidence is captured in the following paragraphs of her second affidavit dated 10 May 2007:

> *"31. Based on the employment history above, it is clear to me that Mrs. Perriott's records prove that she has consistently been a very difficult employee to work with, both before and after being elected as the Secretary General of the BCWU. Her pattern of behaviour during this time shows that Mrs. Perriott has consistently broken Company policies and challenged authority.*

> *32. Mrs. Perriott has bee defiant. As this affidavit demonstrates, her attitude has not gone unchecked by her supervisors and managers who have always drawn it to her attention. Although Mrs. Perriott has objected to these criticisms, she has eventually signed off on each of her appraisals.*
>
> *33. In my opinion, the employment history set out above has shown that Mrs. Perriott did not change her attitude after becoming actively involved in the BCWU and the Company likewise did not change its approach to disciplining her. The issue in relation to Mrs. Perriott's employment have always been there. I verily, however, that what has changed, is that any attempt by the Company at disciplining Mrs. Perriott following her appointment as an Executive of the BCWU became characterized by her as an attempt by the Company as "union busting." I verily believe that this is not the case."*

102. The employment history referred to by Mrs. Molina stated that between 5 November 1990 and July 1993, during which period the claimant worked in the defendant's Business Systems Department as Assistant Technicians, the claimant was issued with five letters of reprimand for various reasons including, leaving work without permission from her

supervisor, failing to report to work, for bringing stranger unto the defendant's company premises, for insubordination and irresponsible behaviour and for being careless in not securing the Defendant's valuable equipment.

103. Mrs. Molina went on to add that between 19 July 1993 and 1 November 2001 the claimant worked in the Switching Department. It was said that the claimant had to be moved to the Switching Department because of the deteriorating relationship between the claimant and her supervisors. Thereafter, she said the claimant received further five letters of reprimand in the November 2003. Mrs. Molina said that in June 1998 the claimant was discipline for absent from work. Again, on 28 February 2001 the claimant was reprimanded for being negligent in performing her duties. Her letter of reprimand stated, among oher things, as follows:

> *"After due diligence, our investigations have revealed that you were negligent in performing your duties and thus was directly responsible for this incident.*

The incidence has caused great inconvenience and in some cases loss of revenue to our customers. In addition it has cost the Company additional expense in the form of advertisement and having employees working overtime to rectify the embarrassing situation.

Our Company has suffered extreme loss of goodwill which we have worked tirelessly to build and maintain with our customers and with the public."

104. I can only say that, it would appear that those disciplinary measures taken against the claimant must have had a positive impact on her because by October 2006, her appraisal Report and Assessment, as I mentioned earlier in this judgment, clearly showed a high positive assessment and remarks on the claimant's work performance. Yet, Mrs. Molina still would have liked to use the past history of disciplinary measures taken against the claimant to build a case against the claimant in order to justify terminating her employment on 27 February 2007. It is not clear whether reliance on the claimant's past disciplinary history is for the purpose of displacing any suggestion that the claimant was

terminated due to her union activities or simply to justify terminating her on 27 February 2007.

105. Whichever reason it is, in my view, it is of little help to the defendant in this case. The past disciplinary history of the claimant can hardly be the reason to justify the termination of the claimant's employment when the evidence simply do not support the case that is being constructed to justify the defendant's action in terminating the claimant on 27 February 2007.

Mr. Boyce's Evidence

106. I need only refer to one other evidence, that is, from Mr. Dean Boyce who was the Chairman of the Board of the Defendant's Company. Mr. Boyce did not give oral evidence in court but his three affidavits have been admitted into evidence by consent of both parties.

107. In basic terms, Mr. Boyce's evidence is that having been advised by the Defendant's departmental managers, it was clear to him that the Claimant was not happy working with the management

of the Defendant Company. He believed that the continued employment of the Claimant was detrimental to the interest of the Defendant Company and therefore, she should be terminated. The position is set out in paragraphs 7 and 8 in Mr. Boyce's first affidavit, as follows:

"7. Although the Company did not rely on any 'cause' when terminating Christine Perriott, choosing instead to pay her full notice entitlements, in the context of the current application it is important to set out the reason why the Company decided she should no longer work for the Company. It had been clear to me as a member of the Board of Directors of the Company for some time that, on a personal level, Christine Perriott had not been happy working with the management of the Company. She had made a variety of statements both within the Company and externally in the media that demonstrated her beliefs were completely contrary to the management and the shareholders of the Company. She made entirely clear that she no longer trusted the management of the Company

and did not have any confidence in the management to act in the best interests of the Company. Moreover, I am informed by Mr. Jose Riveroll that, on a day to day basis, it had become increasingly difficult to manage Christine Perriott's work, her contribution to the Internet Department was limited, she failed on a regular basis to provide required weekly and monthly reports, she was very unsupportive of new training initiatives, she was unsupportive of the Internet Department as a whole, her attitude was often negative, other employees felt threatened by her and that managing her was a 'heavy task' as she frequently challenged what should be straightforward issues."

8. *In this sense, I verily believe that the relationship between the Company as employer and Christine Perriott as employee had broken down and her continued employment was becoming detrimental to the interests of the Company. Her services were terminated for this reason."*

108. In paragraph 9 of his same affidavit, Mr. Boyce reiterated that the claimant was not terminated because of her union activities. That was the official position of the defendant, and which was also published in the Company's public statement referred to earlier in this judgment.

Mr. Boyce's evidence is crucial in this case because he sets out "the reason" why the Company decided that Mrs. Perriott should no longer work for the Company. It is also crucial in view of the fact that the claimant's claim is based on section 11 of the ***TUEO Act*** which imposes the onus of proof on the employer.

Submission and Determinations

109. In addition to the skeleton arguments, Mrs. Antoniette Moore of Counsel for the Claimant concentrated her closing submission on two issue, namely, the registration status of the ***BCWU***, and the reason for the termination of the Claimant's employment. Mrs. Moore did not make any submission on the right of the Defendant to terminate any of its employees including the Claimant, "without cause" under the ***Labour Act***.

110. As it is shown in this judgment, under S***ection 40 & 43 of the Labour Act***, an employer is entitled to terminate the employment of an employee "without cause" and quite properly, Mrs. Moore did not see the need to dwell on that issue. Counsel, however, concentrated on the two live issues in her submissions.

111. On the first issue relating to the registration of BWCU under section 13(2) of the Act, Mrs. Moore submitted that the Claimant's case is not depended on the registration of ***BCWU***. In other words, the registration status of the Union is not critical to the Claimant's case. Section 13(2) under Part III of the Act and provides:-

> "13(2) *Only trade unions and employers' organisations registered under this Act shall enjoy and be entitled to the rights, benefits and advantages conferred on them and their members by this Act, and no trade union or employers'organisation which is not registered under this Act shall be legally recognised as such.*

112. Counsel further submitted that section 13(2) of the ***TUEO Act*** is concerned with ensuring that Trade Unions and employers organizations are registered so that they can enjoy the rights, benefits and advantages conferred on them and their members under the Act. The language used in that provisions is directed at "*Trade Unions and their members*". The words used in section 11 are at "*any person*" and "*employees*" and the present case is brought under section 11. As such Mrs. Moore contended the claimant's case is not depended on ***BCWU*** being established that it is registered. Mrs. Moore referred to the case of ***Reyes & Ors v. Zabaneh*** (reference see below) to support her argument.

113. Mr. Marshalleck, on the other hand, was adamant that ***BCWU*** is not duly registered as a Trade Union under section 13 of the Act. As such Counsel submitted that the claimant is unable to bring a claim against the defendant in respect of the rights benefits and advantages conferred by the Act.

114. Having considered the submissions by both Counsel on the point I have to say that I accept without hesitation the argument advanced by Mrs. Moore of Counsel for the Claimant. I do not have the slightest doubt

that the Claimant's claim brought under section 11 is not dependant on ***BCWU's*** registration status as required by section 13(2) of the Act.

115. The languages employed by the draftsman is the two provisions are different, distinct and unambiguous and they are meant to apply to different situations. In section 13(2) the language used is meant to convey the intention of the provisions, namely, to ensure that Trade Unions are registered so that they "shall enjoy and be entitled to the right, benefits and advantage conferred on them and their members." Some of such rights benefits and advantages are set out in section 16.

116. The language which the draftsman used in section 11 is deliberately drafted to cater for a different situation. Section 11(1) uses the words "*any person*" and in subsections (2), (3) and (4) the word used is "*employee*". Section 11 also makes it clear that it is concerned with the rights conferred on a person or employee under "this Part" that is, Part II of the Act.

117. The rights are personal to the claimant or any employee or prospective employee: See ***Jose Luis Reyes et Al –v- John Zabaneh & Another***

(14 June 2004) Supreme Court Action No. 309 of 2001 where Awich J held:

> "*It is my view that the rights declared is S. 4 and 5 are personal to an employee or even prospective employee; they are not rights of employees' trade unions. The redress in S: 11 are to the employee not to his trade union."*

118. Thus any person or employee who alleges that he or she has been terminated contrary to section 5(2) of the Act, may bring an action to the Supreme Court for redress. Membership of a registered Trade Union is not a condition precedent for commencing an action under section 11 of the Act. Any person or employee can bring an action under section 11 of the Act whether he is a member of a registered Trade Union or not. If it were so, it would be a perfect recipe for tyranny in employment industry since those who do not have the helping hands of registered trade unions would be left without recourse against their masters.

119. Where an employee (like the claimant in this case) is a member of a Trade Union, then an employer (such as the defendant) is prohibited

from terminating the employee's employment for any of the reasons set out in section 5(2) of the Act. Likewise, a person seeking employment cannot be refused employment for any of the reasons set out in section 5(2) of the Act.

120. Section 13(2) of the Act has no use in the present proceedings nor has the confirmation or non-confirmation of the certificate of Registration of BCWU so heavily relied upon by the defendant in these proceedings has any bearing on the claimant's case. The argument is rejected.

121. The second issue and the more fundamental one, is to ascertain the reason or reasons why the defendant terminated the claimant's employment on 27 February 2007. This must be done having regard to all the evidence before the court. See ***Rojas v. Essette*** (above).

122. I have earlier in this judgment observed that section 11(2) does not obviate the need for the claimant to establish the objective facts which are said to provide the basis for the defendant's action. I must say that there is no dispute whatsoever on those objective facts, including the fact that she was an active union member in position of General

Secretary to the BCWU. I am satisfied that the claimant has discharged that onus. See ***Seymour v. Saint-Gobain*** (above).

123. Again, as I have said earlier in this judgment, that the legislature has statutorily reverse the onus of proof to be on the defendant in proceedings brought under section 11 of the ***TUEO Act,*** despite the staunch and able argument by Mr. Marshalleck who contended that the defendant was under no obligation to give reasons for terminating the claimant's employment. The defendant terminated the claimant's employment "without cause" and it now bears the burden of proving the "real reason" for so terminating the claimant on 27 February 2007 from her employment.

124. The submission by Mr. Marshalleck on behalf of the defendant on this issue is two-fold, namely, that the claimant is lawfully terminated and that she was not terminated for her union activities. I will deal with the first argument very briefly.

125. I agree with Mr. Marshalleck that it was open to the defendant to terminate and did indeed terminate the claimant's employment "without

cause" under section 40 and 43 of the ***Labour Act***. However, that termination would only be lawful if it was not done for any of the prohibited reasons set out in section 5(2) of the ***TUEO Act***.

126. In my view, the legislature in Belize recognized the legal position of the employer that has the right to hire and fire and that the employer can terminate the employee's employment for "cause" or "without cause" and so doing, it enacts provisions such as sections 5 and 11 of the TEOU Act to protect workers from the harsh and unjust consequences flowing from the exercise by employers of their given powers under provisions such as sections 40 and 43 of the ***Labour Act***. Sections 5 and 11 of the ***TUEO Act*** come to the aid of an employee, such as the claimant, to ensure that what the defendant did outwardly as lawful was not driven or motivated by an impermissible reason. See ***Martime Union of Australia v. Geraldton Port Authority*** (above).

127. Not only that the defendant was obliged to give the explanation for terminating the claimant's employment because of these proceedings, as Counsel for the defendant put it, but also as required by section 11(2)

of the TUEO Act. The explanations came from both oral testimonies as well as affidavits from witnesses for the defendant.

128. By their evidence, the defendant's witnesses carefully avoided any suggestion that the defendant terminated the claimant's employment because of her union activities. There is one message that rings loud and clear when the evidence of Mr. Riveroll, Mr. Aspinall, Mrs Molina, Mr. Novelo and Mr. Boyce are put together. That message is that the claimant was a thorn in the side of the management. Even the evidence on behalf of the claimant confirmed that the claimant was indeed not the favourite of the defendant's management team.

129. The reason why the claimant was a thorn in the side of Management is, on the evidence, not because of her poor work performance or bad attitude toward work or being incooperative to achieving work objectives or lack of commitment to work. Final appraisal of the claimant's work performance and development report tells the exact opposite of what Mr. Riveroll, Mr. Aspinall and Mr. Novelo presented to this court.

130. The crunch of the defendant's case on the explanation for the "real reason" for getting rid of the claimant is clearly revealed in Mr. Boyce's first affidavit, particular, paragraphs 7 and 8 and public statement referred to earlier in this judgment. It could not have been due to the claimant "not adding value to the Company" nor could it be because she had been "completely counter-productive," as was to the public by the defendant's public statement.

131. The "real reason" for terminating the claimant from her employment was because she was too active and vocal, both within and outside her work place on behalf of herself and union members whom she represented. She was vocal about the Management, as well as the "current operating environment" of the defendant company. She was the most appropriate person, as General Secretary of BCWU, to voice the concern on behalf of the employee union members. The most effective means to put a stop to that, was to silence the claimant by removing her from the Defendant's employment. That the defendant did on 27 February 2007.

132. Lest it may be doubted, employees are entitled to raise complaints about their work environment and the way they are treated by their employers. In a unionized work place, a spokesperson such as the General Secretary, like the claimant, would be the ideal person to air the grievances of the employees. The law prohibits retaliatory actions such as termination, by employers in such cases.

133. It is also in my view, important in the present case to consider the circumstances in which the claimant was terminated. The claimant was part of the team of negotiator with the defendant over the matter of the CBA. Included in that negotiations was the issue of the Union's interest to purchase 20% shares in the defendant's company.

134. Then there was the termination of the three union employees of the defendant. Their termination led to a trade dispute. In accordance with the agreed CBA process, negotiation was conducted over the termination of the three employees, with the claimant as the lead negotiator on behalf of the Union in the dispute.

135. Whilst the claimant was actively pursuing the case of the three employees, and the negotiation was still on foot, she was terminated with immediate effect. Very conveniently that was done, in my view, for the purpose of removing the claimant from her union obligation. On such a conduct, the Supreme Court of Canada in ***Adam v. Daniel Roy Ltée*** [1983] 1SCR 683, had this to say:

> *"The unlawful dismissal of a union representative during the negotiations leading up to the conclusion of an initial collective agreement is ipso factor an act presumed to be intended to interfere with the progress of negotiations and the speedy conclusion of an agreement."*

136. Another factor in this case, is that whilst the three employees' case was allowed to go through the CBA process, the claimant was told instead to resort to the court. The obvious implication is to avoid the claimant's influence in the CBA process. Put another way, the defendant simply wanted the claimant out of its management's sight.

137. When all these factors and circumstances are put together, the reasons now advanced by the defendant to justify terminating the claimant have air of **artificiality about them**. Thus the defendant, in my view, has failed to provide the "real reason" for terminating the claimant consistent with its claim that it did not do so. The defendant has not discharged the burden statutory onus placed upon it by section 11(2) of the ***TUEO Act***. Accordingly, I am satisfied that the defendant terminated the claimant for the prohibited reason in section 5(2) of the TUEO Act, namely by reason of her union activities.

Remedies

138. Having found that the claimant was terminated from her employment in contravention of section 5(2) of the TUEO Act, the court is empowered by section 11(3) and (4) of the Act to make certain orders including reinstatement where practicable, restoration of benefits and other advantages, and payment of compensation. In the course of these proceedings, the claimant had confirmed that she is not seeking reinstatement. The claimant had also indicated that she is not pursuing her claim for severance pay. She is seeking compensation for her unlawful termination.

139. Relying on the case of ***Skinners' Co.-v. Knight*** [1891] 2 QB 542 CA, it is submitted on behalf of the claimant that she is entitled to compensation for the lost ability to earn as an employee of the defendant, as well as for the injury to her feelings, humiliation, family life and similar matters. ***Skinners'*** case, however, is concerned with s. 14 of the ***English Law of Property Act 1881*** where Lord Justice Fry at p. 545 stated in relation to compensation that "compensation under the section in question is to be measured by the same rule as damages in action for the breach.

140. Counsel also referred to the cases of ***Norton Tool Co., Ltd –v- Tewson*** [1973] 1 WLR 45; ***Johnson -v-Unisys*** [2003] 1 AC 518; and ***D.C. DSouza –v- London Borough of Lambeth*** [1997] UKEAT 1206/95/0910. In ***Norton Tool***, the court said that only financial loss could be compensated. In ***Johnson*** the House of Lords (per Lord Hoffman) said that ***Norton Tool*** interpreted the word "loss" too narrowly. Lord Hoffman felt that it should include a sum by way of compensation for distress, damage to family life and similar matters. Thus the claimant in the present case seeks compensation for unlawful dismissal in a sum equal to the remaining years that the

claimant would be reasonably expected to remain employed in the defendant company under normal circumstances plus compensation for distress, damage to family life.

141. On the other hand Mr. Marshalleck acknowledged that the claimant is entitled to the relief stated in section 11(4) of the Act. In summary, Mr. Marshalleck argued that in the event the court finds that the claimant was unlawfully terminated, the claimant had already been paid her due in the sum of $15,301.22 which represents her six weeks notice pay, accrued leave of three weeks and *ex gratia* payment equivalent to six weeks.

142. Counsel for the defendant submitted that the claimant is not entitled to compensation for injury to feeling, distress or damage to family life not is the claimant entitled to exemplary or aggravated damages. Counsel cited the cases of ***W. Deirs & Sons Ltd –v- Alking*** [1977] ICR 662 for the proposition that an award of compensation must be just and equitable in all the circumstances of the case; ***BUSM Co. Ltd –v- Clarke*** [1978] ICR 70 for the proposition that where the claimant is unfairly dismissed, the tribunal must proceed to assess the compensation based on the loss suffered by the claimant and not

to punish the employer; ***Rookes -v- Bernard*** [1963] AC 1129 for the proposition that exemplary damages are not available to oppressive action by private corporation; and ***Dunachie -v- Kingston Upon Hill City Council*** [2004] 1RLR 727 for the proposition that aggravated damages for injured feelings cannot be awarded in unfair dismissal.

143. In the light of the case law authorities cited, Mr. Marshalleck submitted that the claimant is not entitled to the compensatory award she is claiming.

144. On the issue of interest, the claimant claims 8% interest per annum on any award granted. The defendant suggested that the appropriate is 6% per annum, if granted any award of compensation.

145. Finally, Mr. Marshalleck submitted that in the event the claimant was found to be unlawfully terminated the defendant counter-claims for $2,220.28 which represents the amount still owing to the defendant after off-setting her salary during the period 5 April 2007 to 21 November 2007.

146. Having considered the submissions by counsel fro the claimant and defendant and having held that the claimant was terminated for reasons of her union activities, I find that the claimant is entitled to damages by way of compensation. The next issue must therefore be: what is the measure of that compensation?

147. I agree with Mr. Marshalleck that the ***TUEO Act*** provides no guidance as to how the compensation should be assessed. Nevertheless, it would seem to me that the nature and measure of compensation for breaches of section 5(2) of the Act, are governed by section 11 which permits any person or employee to seek redress from the Supreme Court for any such breach or breaches.

148. It is also worth noting that sections 5 and 11 come under Part II of the Act which clearly recognizes and makes provisions for the further protection of the right guaranteed by section 13 of the Constitution of Belize, namely, the right to freedom of association. The prohibited activities set out in section 5(2) are therefore, in my view, designed by the legislature to buttress the protection of the

guaranteed right of a person seeking employment or employee as well as to ensure that the relationship between the employer and an employee is cemented in good faith. Thus, section 5(2) of the Act expressly prohibits certain form of bad faith conduct on the part of the employer.

149. The ***TUEO Act***, in my respectful view; represents the modern labour law regime in Belize. As such *"great care must be taken in reflecting upon the applicability of common law principles to a comprehensively statutory regime such as the one that governs modern labour relations:"* See the Canadian case of ***Tillicum Haus Society (Tillicum Haus Native Friendship Centre) – v - British Columbia Nurses Union and the Business Council of British Columbia*** BCLRB No. B728/2000.

150. In the present case, the claimant seeks redress under section 11 of the Act which gives this court the power to order reinstatement, restoration of benefits and other advantages; and compensation; and to make such other orders as the court may deem just and equitable. There is very little limitation on the court's power as to the orders it

can make under section 11 as long as a breach of section 5(2) has been established.

151. In my judgment, the measure of compensation under section 11(3) and (4) is at large, taking into account the circumstances of the case. The court is therefore entitled to take into account not only the employment entitlements of the claimant, but also matters that affects the gravity and seriousness of the conduct of the defendant. Thus aggravated damages are very relevant and "just" to make in cases of this nature. I would not go so far as to include punitive elements in this case, although it would be, in my view, open to this court to impose punitive damages. However, that would be an exception rather than the rule. This is because the general rule is that damages are designed to compensate for injury rather than punish the wrongdoer. See ***Vorvis – v- Insurance Corporation of British Column*** (1989) 58 D.L.R (4th) 193.

152. In ***Rojas –v- Esselte***, the Federal Court of Australia awarded pecuniary damages as a penalty on the employer for dismissing the applicant because he was a member of the NUW in breach of s. 792

of the ***Workplace Relations Act 1996 (Ch.)*** In that case, however, it is expressly provided in the Act that the court may make an order imposing a pecuniary penalty on the defendant.

153. Save for the issue of pecuniary punitive damages, the case law authorities have clearly established that in a case such as the present one, the claimant is entitled to compensation for lost pay loss of employment benefits and other advantages, severance pay, notice may and aggravated damages. See ***D'Souza –v- London Borough of Lamberth*** [1997] UKEAT 1206/95/0910***; Harvey –v- The Institute of the Motor Industry*** [1995] 1RLR 416; ***the Attorney General of Trinidad and Tobago –v- Siewchand Ramanoop*** (23 March 2005) Privy Counsel Appeal No. 13 of 2004; ***Harrison –v- Kent cc*** [1995] 1CR 434; ***Tillicum Haus Society –v- British Columbia Nurses Union & Anor*** (above); ***Vorvis –v- Insurance Corporation of British Columbia*** (above); ***McFadden –v- Brookville Carriers Inc.*** (23 June 1998) 201 N.B.R. (2^{nd}) 361 and the cases referred to in that case.

154. On the claim for compensation for injury to feelings, mental distress and loss of future employment, the cases of ***Tillicum Haus Society*** and ***D' Souza*** are authorities on the point that they can be claimed.

155. The more difficult question is that of the quantum. It is here that creditable evidence is required in order to make informed determinations on the amount of compensation to be paid to the claimant.

156. The claimant sets out projections of her salary and other benefits as an employee of the defendant for the next 17 years. In her fifth affidavit, Mrs. Molina stated that the claimant's salary and benefits as projected would exceed BZ$2,502,171.00. Let me say that since she is entitled to be compensated for the lost of her employment entitlements and benefits, if there is evidence to establish the amount projected, this court will be slow to deprive her of her entitlements and benefits as projected.

157. There is, however, some merited in Mrs. Molina's evidence concerning the actuality of the projections calculated by the

claimant. While there is no dispute that the claimant has 17 years (from February 2007) before reaching the retirement age of 55, Mrs. Molina stated that there can be no guarantee to the claimant for a "job for life". That, in my view, is no defence to the claimant's right to her entitlement for loss of future employment. It is, however, a factor to be taken into account when the quantum of the entitlement is considered.

158. On severance benefits, Mrs. Molina said that the defendant does not pay severance benefits for employees including the claimant since a pension plan is in place into which the defendant makes regular payment. I feel that this criticism of the claimant's severance benefits projection ignores the fact that pension scheme is not the same thing as severance pay. By its nature, severance pay is granted to an employee when his services to the employer is terminated, and it is contingent on a number of things including the length of service and the employee's level in the employer's company.

159. The claimant's projection on severance benefits is for BZ$135,866.00 for the remaining 17 years. Whilst the claimant is

entitled to severance pay, there is little evidence to justify the amount claimed. Since severance pay is contingent on a number of things, it would rarely be given for the entire projected remaining years of the claimant's working life. In effect it is an *exgratia* payment based on the concept of reasonable notice given to an employee in a particular case having regard to the nature of his employment, the length of service, the age of the employee and availability of similar employment to the employee, having regard to his experience, training and qualifications: ***Bardal –v- Globe & Mail Ltd.*** (1960) 24 D.L.R. 140 (Ont. H.C.) at P 145.

160. A number of Canadian cases have demonstrated the principles stated in ***Bardal's*** case. In ***Bishop -v- Carleton Co-operative Ltd.*** (1996) 176 (2nd) NBR 206, (NBCA), the Court of Appeal allowed 24 months severance pay to an employee with 27 years service in the company, earning $20,000 per year. In ***Donovan –v- New Brunswick Publishing Co.*** (1996) 184 NBR (2nd) 40, the court allowed 28 months severance pay to an employee, executive editor earning $46,000.00 per year with 36 years of service. In ***Waters –v- MTI Canada Ltd.*** (1996) 19 CCEL (2nd) (Ont.) the CEO Sales

Manager and Director earning $100,000.00 per year, was dismissed without cause, with 6 1/2 years service in the company. He was allowed 15 months severance pay. In ***McFadden –v- Brookville*** (above), Mr. McFadden age 46, was the Chief Financial Officer and Vice President of Finance of Brookville Transport in 1994, with a salary of $130,000.00 per year when he was dismissed unfairly and without cause in September 1997. For his 3 ½ years service, Mr. McFadden received 15 months severance pay. As it will be noted, each of the above cases depended on its own circumstances.

161. In our case at Bar, the claimant was aged 37 when she was dismissed, earning $41,163.12 per annum, with over 16 years of service in the defendant company. In my judgment, in the circumstances of this case and in Belize, I feel it would be appropriate to award 36 months severance pay and I so grant it.

162. Thus the compensation to which the claimant is entitled is calculated as follows:

Salary (including increase of $1,329.43)	$4,759.69 p.m.
Fixed Line Phone Credit	$150.00 p.m.
Cellular Phone credit	$50.00 p.m.
Free DSL Interest Access	$100.00 p.m.

Pension 4% of salary		$190.38 p.m.
30 hrs. Monthly Credit Dial-up Internet Service @ $3.00 per hour		$90.00 p.m.
Total per month		$5,340.07 p.m.
$5340.07 x 36 months		$192,242.52
Bonus 4%	$1646.52	
Performance Bonus Oct. '06	$53.18	
Annual Passage Grant 1,100 p.a. x 3	$3,300.00	
Overtime Wages (3yrs.)	$38,823.53	
Medical Bills	$260.00	
	$44,083.23	
Sub-total		$236,325.75
Annual Leave 21 days $3,181.55 x 3		$9,544.65
Insurance (Life, health, dental, vision) (not disputed but no figure suggested) A nominal amount of $15,000.00 awarded		$15,000.00
Total		**$260,870.40**

163. Thus the total amount comes to $260,870.40. This sum includes the amount already paid to the claimant. In addition, the court also ordered the sum by way of compensation for breach of the claimant's rights and freedom guaranteed by the Constitution and furthered by sections 5 and 11 in Part II of the TUEO Act, must be awarded. In ***Reyes & Ors. –v- Zabaneh*** (above) the court awarded

$70,000.00 for such breach. This case in my view has more serious and aggravating factors than the ***Reyes –v- Zabaneh*** case. The appropriate award in this case should be **$90,000.00** which sum is to be added to the $260,870.40 giving the claimant her compensation award of $350,870.40 in total.

164. The total award to the claimant is therefore **$350,870.40** and I so order.

165. The claimant shall also have her costs of this claim.

Orders:

(1) The termination of the claimant on 27 February 2007 was unlawful.

(2) The defendant to pay compensation in the sum of $350,870.40 to the claimant.

(3) Costs to the claimant to be taxed, if not agreed.

Sir John Muria
Justice of Supreme Court

Post Script (Not part of judgment):

1. *Mrs. A. Moore, counsel for the claimant and Mr. A. Marshalleck, lead counsel for the defendants have both been elevated to the rank of Senior Counsel (S.C.) since the conclusion of the trial in this claim. The court acknowledges the senior status of counsel by adding the "S.C." after their names at the front of the judgment.*
2. *The ownership and management of the defendants have changed since the conclusion of the trial in this matter.*