IN THE SUPREME COURT OF BELIZE A.D.2010

CLAIM NO. 624 OF 2010

BETWEEN

YANCY HABET HARRISON **CLAIMANT**

AND

BRITISH HIGH COMMISSION IN BELIZE

DEFENDANT

Before: Hon. Mde Justice Rita Joseph-Olivetti

Appearances: Mrs. Tricia Pitts- Anderson of Pitts & Elrington of counsel for the Claimant.

Ms. Pricilla Banner of Courtenay Coye LLP of counsel for the Defendant.

J U D G M E N T

Dated: 2013, November 29

(Hearing dates: 2013: July30, September 17, 26.)

[Employment Law- wrongful dismissal- Redundancy- Whether employee properly dismissed on grounds of redundancy or wrongfully dismissed- whether employer's guidelines on redundancy procedures for locally engaged staff impliedly incorporated into contract of employment by custom/ practice so as to become legally enforceable- whether employer acted in breach of those guidelines in terminating Claimant's employment-measure of damages recoverable]

1. **Joseph- Olivetti J**: '**It is just not cricket**.' This well known phrase is apt to sum up Mrs. Yancy Habet- Harrison's complaint here against the manner in which her employment of almost 16 years at the British High Commission ("the BHC") in Belmopan, Belize, Central America was terminated. The BHC denies any liability saying that her employment was properly terminated on the grounds of redundancy, the redundancy guidelines were not legally binding on them and what is more she sued the wrong party.
2. I have considered the pleadings, the evidence and the written submissions and the main issues arising are:-
    i. Is the BHC in Belize an entity known to the law and a proper party to the claim;
    ii. Was Mrs. Habet- Harrison wrongfully dismissed from her employment in that the BHC did not comply with its redundancy guidelines for locally employed staff;
    iii. Is Mrs. Habet- Harrison entitled to the sum of $585.27 representing unpaid vacation leave entitlement?
    iv. Is Mrs. Habet- Harrison entitled to one year's gratuity payment from May, 2009 to April, 2010?

Background Facts

3. Mrs. Habet- Harrison testified herself and called one witness, Mrs. Irene Tuyud-Garcia. The BHC, or should I say the United Kingdom Government in light of the first issue , called Mr. Nick Olmedo. Let me say at once that I was impressed with the candour and dignified manner of these perfectly poised, intelligent and

educated women, Mrs. Habet-Harrison and Mrs.Tuyud-Garcia. Their evidence was comprehensive, comprehensible, credible and logical and that in the main they spoke of matters with which they were fully familiar and of which they had firsthand knowledge.

4. Patently, on the other hand, Mr. Nick Olmedo only knew of the circumstances with which we are concerned based on information he was given; we do not even know by whom, and we are left to presume. This fault cannot be attributed to him but to his employers who must have decided he was fittest to give evidence on their behalf. He had no personal knowledge of the events which took place around the time Mrs. Habet-Harrison's employment was terminated. He was neither office manager, floating management officer, Deputy Commissioner, nor High Commissioner now or at any time but only the estate manager at all pertinent times. And now he is the corporate services manager having attained that position in June, 2010. The bulk of his evidence in chief amounted to little more than a recital of the various correspondences which had been exchanged between Mrs.Habet-Harrison's lawyers and those of the BHC. I therefore prefer their evidence to his wherever they conflict and cannot be reconciled by documentary evidence.

5. Insofar as the facts are not disputed they are as follows. Mrs. Habet- Harrison was employed from 24 June 1994 to 30 April 2010 at the BHC ("the BHC"). She began as a Grade LE IV receptionist and finally attained the post of Consular Officer LE III on 2 November 1998 and continued in that position until her employment was terminated. That she was a highly trained, well regarded and valuable employee cannot be gainsaid. Her responsibilities as consular officer

were manifold. She ran the day to day operations of the consular section which included dealing with visa inquiries and the administration of the information technology system. She was the backup receiver and requisitioner for the electronic accounts system, webmaster, change agent and generally supported staff.

6. On 18 March 2010 the High Commissioner, Hon. Pat Ashworth telephoned her at her home whilst she was on sick leave and asked her to come in. She did so the very next day because of the urgency he expressed. He handed her a letter captioned, '**Notification of Redundancy'** terminating her employment on the ground of redundancy to take effect on 30 April 2010.The letter is terse and bears reproduction in full.

7. "Dear Yancy, (in manuscript)

   '**Notification of Redundancy'**

   I am writing to confirm that, as we discussed earlier today, because of financial pressure and the consequent need to make staff savings in the High Commission, the functions of your job have been combined with other positions to create a completely new slot and on that basis your services are no longer required.

   In accordance with your contract of employment, in which you are to be given at least 30 days notice of termination, your formal last day employed by the High Commission will be 30 April 2010. But you will not be required to work during this period of notice. (Emphasis mine.)

David Baugh will be in contact with you very soon about your salary, terminal gratuity and other administrative matters.

I know you will be disappointed with this news and it gives me no pleasure to deliver it.

I want to thank you for your work with the High Commission since 1994.

Yours sincerely,

'Pat Ashworth' " (In manuscript).

8. As Mrs. Habet- Harrison claims that she was wrongfully dismissed and also unfairly dismissed it is useful to examine in detail the events surrounding the termination of her employment. Some are disputed.

9. Mrs. Habet- Harrison testified and her evidence in this respect has not been challenged, that her job performance had always been more than satisfactory, that this is so is evident from her promotions and the job appraisals she exhibited. However, her troubles began with the advent of Deputy High Commissioner, Ms. Jackie Brown in 2008. Ms. Brown did not show any interest in Mrs. Habet- Harrison's work and although responsible for doing her job appraisals apparently never did any during her tenure with the BHC. Mrs. Habet- Harrison voiced her concerns openly at staff meetings (to her credit one would have thought) and she also raised it with the Officer Manager, Mrs. Irene Tuyud- Garcia.

10. Sometime in 2009 Ms. Brown informed Mrs. Habet- Harrison that she had received several complaints about her but Ms. Brown did not give details when Mrs. Habet- Harrison asked, citing confidentiality. She also remarked to Mrs Habet- Harrison that she, Mrs. Habet- Harrison, thought herself more superior

than she actually was and that her perception of herself must be based on a cultural thing. That meeting was supposed to be an appraisal but Ms. Brown did no appraisal.

11. Mrs. Habet- Harrison was shocked and hurt by these words which she perceived as discriminatory and derogatory. She said she understood Ms Brown to mean that she thought she was better than or superior to other people in Belize because of her fair complexion but that to her (Ms Brown that is) she was nobody. Therefore, after the meeting Mrs. Habet- Harrison again complained to Mrs. Tuyud-Garcia and requested that she inform the High Commissioner about it.

12. Mrs. Tuyud- Garcia's evidence on this supported this her. She testified that as a result of Mrs. Habet- Harrison's complaint she met with Ms. Brown to discuss several matters. At Ms. Brown's request(surprisingly to my mind) a security guard was present at the meeting The matters discussed included Ms Habet-Harrison's complaints and the lack of communication with respect to expenditure incurred or proposed to be incurred by Ms. Brown for which Mrs.Tuyud-Garcia was accountable. She testified that from the response Ms. Brown gave to Mrs.Habet-Harrison's complaint of derogatory remarks that she was denying having made them.

13. Mrs. Tuyud- Garcia also brought the matter to the attention of the High Commissioner and she understood from her meeting with him that Ms. Brown was going to discuss the issues with her and Mrs. Habet- Harrison. Ms. Brown never spoke to either Mrs. Habet- Harrison or Mrs. Tuyud- Garcia again about that issue.

14. On Tuesday 16 March 2010 Mrs. Habet- Harrison had what she believed was a confidential meeting with the Human Resources Officer from the United Kingdom, Ms. Bernie Greene, to determine if the BHC was complying with their "**Investors in People' policy**. She told Ms. Greene of her issues with Ms. Brown. She also told Ms. Greene that the High Commissioner's recent behaviour of slamming his fist on the table and shouting at staff during a staff meeting was demoralizing to staff members and that one staff member ended up in tears after the meeting. She informed Mrs. Greene that she had raised that concern with the floating management officer, Mr. David Baugh.
15. Mrs.Habet-Harrison apprised her too of an occasion when she was giving the staff a usual presentation on her return from a regional conference and that about two minutes into her presentation Commissioner Ashworth made remarks which led her to believe that he was too busy to listen to her presentation. She also told Ms. Greene that she had refused the High Commissioner's invitation to a dinner in her (Ms. Greene's) honour as she was unhappy with the manner in which the staff was treated and she apologized to her.
16. Shortly after that meeting Mrs. Habet- Harrison went home as she was indisposed. Two days later on 18 March 2010 the High Commissioner telephoned her at home and she attended on him the next morning. On her arrival at the premises of the BHC she was not allowed to access her office as usual. When Mr. Ashworth finally saw her he gave her the aforesaid missive dismissing her. She was not allowed to clear her desk and her personal items were returned to her subsequently in a black garbage bag. She also requested a personal student textbook and her copies of her job appraisals but she was refused permission to retrieve them then.

Clearly, the abrupt manner of her dismissal prevented her from even saying goodbye to her friends on staff. She also learnt subsequently that staff had been requested not to make any contact with her. (Thus did godfearing men of yore treat lepers.) Later, before the end of April 2010 she received payment of a gratuity and her salary but she has raised some issues on those here too.

17. Mrs. Habet- Harrison was shocked at her dismissal as since the start of 2010 she had travelled abroad on 3 separate occasions for training in Colombia, El Salvador and Miami, U.S.A and she was scheduled to attend a training session in Mexico City, Republic of Mexico in the beginning of April 2010. What is more pertinent is that this was the very first time she was hearing of any redundancy. She was further upset because she knew that there was a redundancy procedure for local staff in place that the BHC usually followed in cases of redundancy and that was not followed. She testified as to what that procedure usually entailed and exhibited the document containing it which she had downloaded from the official website of the Foreign and Commonwealth Office of the United Kingdom Government ("the FCO").

18. She testified also that it was always the BHC's practice to allow the affected staff member to finish whatever duties he was working on and that a general staff meeting was usually held concerning the redundancy and a listing of changes in posts/ titles distributed to the staff and that it was customary to host a farewell social. Further, that contrary to the guidelines she was not offered the opportunity to take up any other employment with the BHC although they advertised a position shortly after she left and they gave her no assistance to re-locate.

19. Thus, Mrs. Habet-Harrison was aggrieved at her dismissal and filed this suit. After her dismissal she was unable to obtain alternative employment until November 2010when she got a lesser paid post with ABA Rule of Law Initiative but they ceased to operate in June 2012.She has been unemployed since then, again despite her efforts to obtain employment. Needless to say she finds it difficult to meet her commitments
20. Relevant and revealing too is what happened to Mrs. Tuyud- Garcia. She was the office manager having been prompted to that position in September, 2006. She had been employed at the BHC since 16 June, 1997 originally as a temporary accountant then she obtained the substantive post of accountant in 1997 and later that of officer manager.
21. Mrs. Tuyud –Garcia proceeded on maternity leave sometime in 2009 and whilst on maternity leave she too had a confidential interview with Ms. Greene and she related to her all Mrs. Habet- Harrison's complaints. Two days later, that is, on March 19, 2010 Hon. Ashworth also telephoned her. She understood she had no choice but to go in to see him. She did so at about 10:30 a.m on the same day. He then informed her that her position as office manager had been made redundant and he gave her a letter of same date so advising her. Her maternity leave was to end on 20 April 2010. However, her termination was to become effective on 30 April and she was required not to report to work. She too was not allowed to go into her office to retrieve her personal effects; they sent them to her later. She left with only her Princess Diana poster as it had already been removed from her office wall and placed on a wall in the receptionist area.

22. Thus by a few strokes of his pen, with effects as fell as those of a sword, Commissioner Ashworth terminated the employment of those two young women resulting in adverse effects on their livelihood. And, he obviously did not even stop to think of the devastating impact his letter could have had on Mrs. Irene Tuyud –Garcia, a new mother and faithful servant still on maternity leave. In passing I remark that the Labour Act s. 178 prohibits an employer from giving notice of dismissal to an employee during her maternity leave and in any event no right thinking organization would do so, to my mind.
23. Mrs. Tuyud Garcia spoke to of the existence of the guidelines for redundancy of local staff and that they were not observed in relation to her. She also gave evidence of two instances when those guidelines were applied to her knowledge whilst still at the BHC.
24. Mrs.Tuyud- Garcia also explained, and that was not refuted by Mr.Olmedo ,that her position as office manager included preparation of the budget for the BHC and that she would have been informed well in advance, of any budget cuts to be implemented. She had received no information of any budget cuts affecting her position and that of Mrs. Habet- Harrison's.
25. Mrs. Tuyud- Garcia also filed suit against the BHC challenging her dismissal in 2010. However she said her case was dismissed for want of prosecution and that her lawyer had died. (In the interests of justice and as this is an aspect which seems to reflect poorly on our justice system I digressed. I searched the court's records and discovered Claim No 625of 2010 Irene Tuyud-Garcia v. the BHC filed in 2010 by lawyer, Dr. Elson Kaseke, the same lawyer who originally represented Mrs.Habet-Harrison. The written order of 8August 2011(during the

Long Vacation surprisingly) reflects that Mrs. Priscilla-Banner appeared for the BHC and that neither Dr.Elson Kaseke nor his client appeared and that the matter was dismissed by Legall J for want of prosecution and that he ordered costs of $1000.00 to the BHC. Thus the matter was not dealt with on its merits as from the tenor of the cross-examination of Mrs. Tuyud-Garcia one might have been led to believe. A search in the Births and Death records also revealed that Dr. Kaseke died on 6 December 2011.I also ascertained from other court officials that it was well-known that Dr.Kaseke had been terminally ill for some time and seeking medical attention abroad on occasions. One wonders why this information was never brought to the judge's attention by anyone as this is a relatively small jurisdiction with an equally small cadre of practising lawyers).

26. On the question of budgetary cuts which allegedly necessitated the immediate redundancies of two such senior personnel, Mr.Olmedo could only say that he was told by Mr. Ashworth that there were budgetary cuts. The evidence carries little weight as it is hearsay. As already observed, Mr. Olmedo himself was the properties officer at the time and had no input in the budget preparation or implementation and moreover he did not produce any documentation from the FCO advising of the need for any such changes and clearly had not seen any himself.

27. However, Mr. Olmedo relied on a letter from their lawyers dated 20 May 2010 Tab 11 which is revelatory. It states- "...I**n this connection we have again consulted with our client, whose position remains that, in consequence of <u>severe budget reductions imposed by the British Foreign Office</u> and the need for effecting economies, <u>an overall review and complete restructuring</u>**

<u>exercise involving the entire office staff of the High Commission was undertaken</u>, this resulted in the decision to terminate the employment of Mrs. Habet Harrison and Mrs. Tuyud Garcia. ...".

28. Mr. Olmedo testified as to what changes had taken place <u>since the dismissal of Mrs. Tuyud- Garcia and Mrs. Habet- Harrison</u> in respect of their duties. However, the court is not satisfied that those changes really reflected that their offices were rendered redundant. And most telling he said nary a word of this "**overall review and complete restructuring exercise involving the entire office staff of the High Commission"** which allegedly had been undertaken prior to their termination. When was this done, over what period, who carried it out, what members of staff participated? All remains as mysterious to the court as it must have been to Mrs. Habet Harrison and Mrs Tuyud-Garcia. And, it beggars the imagination that such a significant and thorough exercise which could impact adversely on the livelihood of employees would have been carried out clandestinely by undercover agents of the FCO and without the knowledge and assistance of two of the most senior staff holding such key positions at the BHC. It strikes me ironically, that just such a review was contemplated by the redundancy procedure guidelines relied on by both Mrs. Habet Harrison and her witness and that if that had indeed been done as it was clearly not done they would not be here. Now to the specific questions before the court.

Issue 1- Is the BHC an entity known to the law and a proper party to the claim?

29. The United Kingdom Government now takes the technical point that the BHC is not an entity known to the law and that as such it is not a proper party to the action. (See Mr.Olmedo's witness statement para.23.) He alleges there that

Mrs.Habet-Harrison's employer in law was the FCO of the United Kingdom Government, as the BHC is merely a diplomatic mission in Belize administered by the said FCO for the United Kingdom Government[1].

30. I have perused both Mrs. Habet-Harrison's initial letter of appointment dated 24 September 1994 (TB Tab. 8) and her later one of 3 June 1999 which superseded the first. Both are on the letterhead of the BHC, Belmopan. There is nothing on the letterhead itself to indicate that the BHC is a diplomatic mission of the United Kingdom Government.

31. The opening paragraph of letter 1 states: 'I am writing to offer you an appointment as an officer in Grade LEV IV at the BHC, Belmopan with effect from 27 June 1994. That of the second letter is in similar terms.

32. Both letters make frequent references to the BHC from which a new employee could readily be led to believe that he/she were being employed by a legal entity ,the BHC. On the other hand there are a few references to the British Government or Her Majesty's Government. For example, in Letter 2 at paras. 10[2],15[3] and14[4] - These latter the references to the British Government or to her Majesty's Government however could have possibly alerted a more discerning employee

[1] This point, in my judgment ought properly to have been determined as a preliminary point well before trial of the substantive issues. I note that such an order was made by Hafiz-Betram J (as she then was) and that a hearing was actually scheduled but apparently did not come off.

[2] No member of staff is permitted to have outside business interests of a kind which could be furthered by virtue of his or her employment by her Majesty's Government;

[3] 'You must observe strict secrecy regarding all matters connected with your employment with the British Government...'

[4] all computer programmes or system's... developed or generated in official working hours will be the property of the British Government...' .

that the British Government was in charge of the BHC but they would not necessarily lead to the conclusion that the BHC was not a legal entity capable of being sued or that the United Kingdom Government (the British Government I would have thought but that would be contrary to Mr. Olmedo's explanation) was in fact the employer. And neither does the undisputed fact that appraisal forms were headed, 'Foreign and Commonwealth Office'. I note too that the confusion is rife as her very letter of dismissal states, inter alia, 'your formal last day employed by the High Commission will be 20 April 2010.

33. I find that the letters of 24 September 1994 and that of 3 June 1999 are ambiguous in so far as the identity of the employer is concerned and that an employee would be led to believe that he/she was engaged with an entity known as the BHC. If the BHC is only a medium through which the United Kingdom Government operates its diplomatic missions as Mr.Olmedo has said, then this should have been clearly spelt out to Mrs. Habet- Harrison when she commenced working at the BHC. They cannot now be allowed to take advantage of that confusion created by them.

34. Furthermore, I note s.51 (a) of the Labour Act Cap.297 which stipulates that every contract shall contain '**in clear and unambiguous terms**' all that may be necessary to define the rights and obligations of the parties thereto which shall include, **inter alia**, '**the name of the employer or group of employers and where practicable, of the undertaking and the place of employment'.**

35. The court is concerned with doing justice between the parties on the substantive issues and it would be extremely unfair to Mrs. Habet- Harrison if at this stage(after trial) her case were thrown out and she had to start all over again, three years after her dismissal. I bear in mind that the United Kingdom Government have also

defended this claim on its merits. The court has wide powers in the pursuit of the overriding objective which includes the power to amend irregularities. (See CPR r. 23). I consider that amending the name of the Defendant in the claim form to read "the United Kingdom Government" would result in no more than the normal prejudice any defendant to a lawsuit faces.

Issue 2- Was Mrs. Habet- Harrison wrongfully dismissed from her employment?

36. **Claimant's** s**ubmissions.** Mrs. Tricia Pitts- Anderson, learned counsel for Mrs. Habet- Harrison, contends in summary that Mrs. Habet- Harrison's dismissal was wrongful because the procedures set out in the document titled, ' Redundancy Procedures for Local Staff' were not followed upon her termination and that these procedures formed part of her contract of employment although not expressly made a part thereof, whether by incorporation or implication, having regard in particular to the evidence adduced for the Claimant. In addition that Mrs. Habet- Harrison was unfairly dismissed in that the reason advanced, redundancy, was not in reality a redundancy. Further that Mrs. Habet- Harrison had been discriminated against by her employer, a factor which had to be considered in determining the reason for her dismissal. Counsel relied on **Halsbury's Law of England** 4th edn Vol 16 para 451and 75[5]; **Carmichael v. National Power** PLC [1999] 4 AU ER 897; **Riverwood International Australia Ply Ltd v. Mc Cormick** [2000] FCA 889 and **Albion Automotive v. Walker and Ors** [2002] EWCA Civ. 946

37. **Defence submissions**. Learned counsel for the United Kingdom Government, Mrs. Pricilla Banner submitted in essence that Mrs. Habet- Harrison's dismissal was lawful as she was properly terminated on the grounds of redundancy and in

[5] This speaks to incorporation of term into an employment contract from inter alia company **policy statements**.

accordance with clause 3 of her contract which provides that her appointment may be terminated at any time by giving one month's notice by either side and that her notice was generous -1 month and 12 days. Thus there was no breach. Counsel relied on **Yorkshire Engineering Ltd v. Burnham** [19974]I WLR 206 Sir John Donaldson p. 209. Counsel also relied on **<u>Chitty on Contracts 29 Edn Col 1 para 22-047 and 22-050</u>**

38. Counsel submitted further that Mr. Olmedo's evidence established that Mrs. Habet- Harrison's position had become redundant as the transformational changes made had the effect of reducing her job to about 20% of what it was.

39. Further, counsel submitted that 'the Redundancy Procedures for Local Staff' relied on by Mrs. Habet- Harrison were not incorporated into her contract; that they were for informational purposes rather than binding legal provisions and that Mrs. Habet- Harrison had failed to establish a core element of her case which was that this procedure was in fact conducted in respect of other persons made redundant during her tenure."[6]

40. Further, that the provisions for redundancy pay in the Labour Act Cap. 297 s.183 (2) are not as generous as those in her contract and that the doctrine of legitimate expectation does not arise either from the pleadings or the facts. The doctrine only applies to a public authority in Belize which the BHC is not. Counsel cited **<u>R v.</u> Secretary of State for Education and Employment ex p. Begbie** [2000] I WiL

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[6] This tracks the Defence para 3:-**" The ' Redundancy Procedure for Local Staff,' represents mere guidance notes prepared by the Foreign Office and does not purport to be a document legally binding upon the Foreign Office; nor , does it form any part of the Claimant's contract of service or give rise to any entitlement of her part."**

R 1115 at headnote and at p. 1125/10.That last point is correct and no issue is taken on that.

Issue 2- Court's Analysis and Conclusion

41. First the law. **Halsbury's** op.cit para. 451 as cited by Ms. Pitts- Anderson is instructive-

"Meaning of 'wrongful dismissal.'. A wrongful dismissal is a dismissal in breach of the relevant provision in the contract of employment relating to the expiration of the term for which the employee is engaged. To entitle the employee to sue for damages, two conditions must normally be fulfilled, namely ;(1) the employee must have been engaged for a fixed period or for a period terminable by notice and dismissed either before the expiration of the fixed period or without the requisite notice, as the case may be; and (2) his dismissal must have been wrongful, that is to say without sufficient cause to permit the employer to dismiss him summarily. In addition there may be cases where the contract of employment limits the grounds on which the employee may be dismissed or makes dismissal subject to contractual condition of observing a particular procedure, in which case it may be argued that, on a proper construction of the contract,a dismissal for an extraneous reason or without observance of the procedure is a wrongful dismissal on that ground."

I understand that it is the latter part of this excerpt that counsel for Mrs.Habet Harrison relies on.

44. I remark that Sir John Donaldson in **Yorkshire Engineering Ltd** at p. 209 para 41 explained the essence of the action for wrongful dismissal but that he cannot be taken to haven been giving a full expose' of the subject as his remarks were **obiter,**

intended only to distinguish the ruling in **Stocks v. Magna Merchants Ltd** [1973]1 WLR 1505 with which he did not agree. **Yorkshire Engineering** was not a case concerned at all with wrongful dismissal[7].

45. And I turn now specifically to the issue of incorporation implied by custom and practice as this is the nub of Mrs.Habet Harrison's case on this issue. I consider the cases Mrs. Pitts-Anderson cited in particular Albion give useful guidance. At paras 7 and 8 of **Albion** Lord Justice Peter Gibson cited extracts from **Duke v Reliant Systems Ltd** [1982]ICR449 and **Quinn v Calder Industrial Material** Ltd[1996]IRLR126. In **Duke** Lord Browne-Wilkinson said- "**a policy adopted by management unilaterally cannot become a term of the contract on the grounds that it is an established custom and practice unless it is shown that the policy has been drawn to the attention of the employees or has been followed without exception for a substantial period".**

46. And Lord Coulsfield in **Quinn** applied the reasoning in Duke thus .- "**In a case such as the present ,the factors to which Browne-Wilkinson J referred are likely to be among the most important circumstances to be taken into account, but they have to be taken into account along with all the other circumstances of the case. <u>Thus, for example, in our view, the question is not whether the</u>**

[7] **Yorkshire Engineering was concerned with issues of unfair dismissal** under the Industrial Relations Act 1971 -primarily whether the industrial tribunal should have reviewed its decision on compensation to make a deduction in the award for the higher salary the employee subsequently received from alternative employment and should have deducted the redundancy payment from the compensation for unfair dismissal.. The court dismissed the employer's appeal

period for which the policy had been followed is substantial in some abstract sense but whether in relation to the other circumstances it is sufficient to support the inference that that policy has achieved the status of a contractual term. Again, with regard to communication, the question seems to us to be not so much whether the policy has been made or become known directly to the employees or through intermediaries, but whether the circumstances in which it was made or had become known support the inference that the employers intended to become contractually bound by it". My emphasis.

47. Mrs. Habet- Harrison's contract as contained in her second letter of appointment of 3 June 1999 makes no mention of the redundancy procedure document, neither indeed for that matter does the first letter and it is not known whether that document existed at that time. It is therefore not expressly incorporated into her contract. And the only reference to redundancy is contained in clause 7(b) (iii) which provides for the payment of a gratuity on redundancy . I remark too that the Labour Act although making provision for minimum redundancy payments is silent on procedures to be followed and therefore one cannot argue that in the absence of a redundancy procedure in the contract the provisions in the Act would apply. The question therefore is not whether the laws of Belize dictate a redundancy procedure but whether the procedures contained in the document were incorporated by implication into her contract. To determine this we must look to the evidenc**e.**

48. There is no dispute that a document entitled '**Procedure for Redundancy of local staff**' exists and was posted on the official website and that Mrs. Habet- Harrison downloaded it and that both she and Mrs.Tuyud-Garcia were fully aware of its contents and expected the procedure as previously employed by the BHC to two

other employees to apply to them. The document is at TB Tab 10 YHH4.Why would the FCO make such a public posting if it were not meant for the attention and benefit of its employees as well as for its management team?

49. The provisions of this document are nothing if not humane and clearly aimed at the welfare of employees. Clearly the United Kingdom Government were fully cognisant of its obligations at home and of international norms and were anxious to ensure that all staff wherever situated benefited. I do not propose to reiterate its contents. Suffice it to say that it recognizes that redundancy causes severe hardship and that it should be a last resort and that procedures should be adopted to consult with employees as early as possible, to advise them of the criteria for selection and to assist them with obtaining other placement. I construe the intention from the document that the procedures outlined therein are meant to be followed if local law has no similar provisions.

50. I accept the evidence of Mrs. Tuyud- Garcia that in 2006 there was an internal restructuring of locally engaged staff which involved redundancy and that it was the usual practice to follow the procedure in that document. She detailed that such an exercise was conducted in relation to Mr. Miguel Hernandez, Press and Public Officer in the Commercial Section and another. She referred to an email which the then Deputy High Commissioner , Mr. David Spires, sent to her and Mrs. Habet-Harrison as they were both abroad on a training session at that time.

51. The emails, response and query in that order read:-

> **From: Maria Alonzo <yan4drew@yahoo.com**
> **To Daivd.Spires@fco.gov.uk**
> **Sent: Tuesday, June 27, 2006 6:39 PM**
> **Subject: Re: Personal for Yancy Habet**
>
> **Dear DHC,**

Both Irene and I are content for you to inform staff on the result and the impact on us. Can you drop me a line on any other major impact on us (whichever case we can not do anything)

Thanks for asking us.

Yancy

Daivd. Spires@fco.gov.uk wrote:

" Yancy- another quick question for yourself and Irene- I have now received a reply from London on the LE Staff review and was going to wait until you both returned to work before speaking to individuals and the Liaison group about the impact. The reason for this is that as a result of explaining changes affecting some members of staff would need to touch on the impact it would have on both your own jobs and I felt it only correct to speak to you both privately at the same time. If however you are both happy for me to talk to individuals before you return then I will go ahead and do so, limiting as much as I can what I say about the impact on yourselves. If however either of you would rather I wait until you return then I will of course do so. Hope this is clear- if you want to discuss then phone me and the office can pay for the call. David"

52. This to my mind bears out their evidence that in keeping with that document members of staff were consulted as to the impact changes affecting some members of staff would have on other staff members. And it does not matter that Mrs. Tuyud- Garcia did not herself carry out the procedures or was not present throughout. The email of Mr.Spires is sufficient to lead to the reasonable inference that he was conducting the redundancy procedure in accordance with the document and took his task so seriously that he even

contacted the two employees who were abroad at the time. And this also readily leads to the inference that the staff had a reasonable expectation that the procedure would be applied to them and that the employer considered that they were bound to follow the procedure.

53. I note that Mrs. Tuyud Garcia accepted Ms. Banner's suggestion that Mr. Hernandez was not employed by the BHC but again that is of little significance as he too like Mrs. Habet-Harrison was employed by the United Kindgom albeit in another department and the Document clearly applied to him as a member of the local staff engaged by that Government whether to work at the offices of the BHC or elsewhere. So if it applied to him why not to the other localy engaged staff?

54. Having regard to all the evidence and in particular that of Mrs. Tuyud-Garcia's and the efforts she made just before going on maternity leave to have a redundancy procedure in keeping with the document become expressly a part of their contracts I am satisfied that in all the circumstances disclosed that on a balance of probabilities that the document was intended by the United Kingdom Government for the benefit of the staff to which it applied, that they applied the procedure during Mrs. Habet-Harrison's time with them, that she was aware of that practice and that it raised a reasonable expectation that the same procedures would be applied to her if she were to be made redundant. The procedures can thus be deemed to have been impliedly incorporated into her contract and they are bound by them. It is pellucid that Commissioner. Ashworth acted in arrant disregard of those procedures and as a result his Government breached her contract when he dismissed Mrs Habet-Harrison even though they did give her more than the requisite period of notice provided for by the contract.

55. However, the vexed question remains, what damages for breach of those provisions highlighted by her is she entitled to? She is certainly not entitled to reinstatement as contracts of employment do not attract specific performance andso she is only seeking damages. However I am not persuaded on the authorities that she can recover damages for the length of time that she has remained unemployed as that loss is too remote and so cannot be attributed in law to the breach flowing from her contract. However, every breach of contract should attract general damages if loss resulted and special damages cannot be proved. These breaches are serious as they go to the livelihood of a person and certainly the law would be wanting if it can offer no remedy. I therefore propose that an award of general damages be made in the sum of $15,000.00 as Mrs. Habet –Harrison has clearly suffered loss as a result of the non-observance of the procedures.

Issue (iii)- Is Mrs. Habet- Harrison entitled to the sum of $585.27 representing unpaid vacation leave entitlement?

56. Mrs. Habet- Harrison claims that she is entitled to and was not paid $719.24 for vacation leave. She testified how this sum was arrived at in para. 31 of her witness statement. Basically that she was entitled to 22 working days paid vacation leave annually and additional bonus leave if she did not use up all her sick days. That at the time of termination in March 2010, 7.5 vacation days had accrued together with 3.5 days bonus leave making a total of 11 days . She was only paid for 9 days. She was not cross-examined in this respect.

57. Mr. Olemedo made no direct response to this. However, he did put in evidence a copy of the calculation of Mrs. Habet- Harrison redundancy and final salary payments- TB Annex No. 5 but he did not seek to explain those calculations. The submission of the defence on both issues 3 and 4 were to the effect that she was asked to indicate by a certain date if

she did not accept the calculations and that having not done so she cannot now make any claim. This submission is without merit. The only time bar imposed by law for recovering damages or monies due under a contract is 6 years and merely setting a deadline in a letter does not amount to a bar.

58. From Annex No. 5 the court gleans that Mrs. Habet Harrison was entitled to 22 days paid vacation per year. Plus she was awarded ½ day bonus leave for 2009 and 3 days from January – April 2010. In all she was paid for 9 days. This means that her portion of yearly leave for the 4 months was calculated at 5.5 days. This does not strike me as correct as basically she worked for 1/3 of the year and that entitled her to 1/3 of her yearly leave which equates to 7.5 days as testified to by Mrs. Habet- Harrison. I therefore find that she was due payment for 7.5 days plus 3.5 days bonus leave amounting to 11 days. She was paid for 9 days only. She is therefore by my reckoning entitled to the $585.27 claimed.

Issue 4- Is Mrs. Habet- Harrison entitled to one year's gratuity payment from May 2009 to April 2010?

59. In para 32 of her witness statement Mrs. Habet- Harrison says that she was entitled to a gratuity of 3 weeks pay for each year up to 5 years then 1 month's pay for each year in excess of 5 years and that at the time of her termination she had worked for approximately 16 years and was entitled to gratuity for that entire period. She received payment for 15 years only.

60. Again Mr. Olmedo does not speak directly to this but again we have his Annex No. 5. This shows that a gratuity of $57,063.10 was paid to Mrs. Habet- Harrison for 15 years only. Nothing was paid in respect of the additional 1o months that she served.

61. Ms Banner posited that her contract speaks to gratuity for each complete year of service and that accordingly she is not entitled to payment for that time.

62. However, having regard to the manner in which this contract operated with regards to vacation entitlement it is not unreasonable to imply “the word’s, ‘or part thereof’ to import fairness into this contract on the basis that that was how the parties intended them to operate. These accords with common commercial sense in the employment context and humanity. Mrs. Habet- Harrison would otherwise be penalized from being unable to complete a full year of service being short by just 2 months through no fault of hers. If we were to hold other otherwise what is to prevent a Scrooge-like employer from terminating say 2 days short of a complete year? Surely such an intention cannot accord with reasonable minded people in the employment field.. She is therefore entitled to a portion of the gratuity payable for a year. I invite counsel to make that calculation.

63. **Other Issues** .Finally, I must mention that Mrs. Tricia Pitts Anderson raised the issue of unfair dismissal. Alas, this is a statutory remedy[8] and we have no such modern legislation as exist in the United Kindgom e.g the Industrial Relations Act to ensure job security for our employees. So too does her claim for discrimination as we have no legislation to that effect and the ILO conventions cited were not incorporated into our laws according to the International Labour Organization Conventions Act Cap.304:01. The right to work is a fundamental human right and it behoves our Governments to ensure that each person can enjoy that benefit by ensuring that our labour laws are updated and accord with international norms and best practices.

64. **Costs.** Mrs. Habet Harrison is to have her prescribed costs in keeping with the general rule that a successful litigant is to have her costs.

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[8] **The commonlaw action of wrongful dismissal must be considered entirely separately from the statutory action for unfair dismissal.- Halsbury’s op. cit para.451**

65. **Summary of orders**. For the foregoing reasons Mrs.Habet Harrison is awarded $10,000.00 general damages for breach of contract, $585.27 unpaid vacation leave entitlement; gratuity pay apportioned for 10 months and prescribed costs.

66. **.**I thank both counsel for their written submissions and the valuable research undertaken and close with these wise remarks of Lord Nicholls of Brikenhead in **Mahmud v B. C. C.** [1998] A.C. 21 at p. 37 which are as true today as they were then ,perhaps even more so and we may do well to be guided by them- "... Employment, and job prospects are matters of vital concerns to most people. Jobs of all descriptions are less secure than formally, people change jobs more frequently and the job market is not always buoyant. Everyone knows this. An employment contract creates a close personal relationship, where there is often a disparity of power between the parties. Frequently the employee is vulnerable ..."

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Rita Joseph-Olivetti

Supreme Court Judge Ag.

Supreme Court of Belize, Central America