

IN THE SUPREME COURT OF BELIZE, A.D. 2015

CLAIM NO. 91 OF 2015

BETWEEN:

(AMY ROCHES CLAIMANT

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(AND

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(The Belize Agricultural Health Authority DEFENDANTS

(The Attorney General of Belize

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mrs. Nazira Espot Myles of Myles and Co. for the Claimant

**Mr. Nigel Hawke, Deputy Solicitor General, along with Ms. Marcia Mohabir, Crown Counsel
for the Defendants**

D E C I S I O N

The Facts

1. This is a claim for damages for unlawful termination of employment, in addition or in the alternative the appropriate declarations and orders as would secure and enforce the rights of the Claimant as guaranteed by Section 15 of the Constitution of Belize, plus interest and costs. The Claimant, Dr. Amy Roches, was employed under the Agricultural Services Program which was a project funded by the Inter-American Development Bank (IDB) with the Government of Belize, through the Ministry of Natural Resources and Agriculture. She was employed on a contractual basis as a Consultant Veterinary Officer from January 1st,

2013 until December 31st, 2013 and was assigned primarily to operate from the Orange Walk Belize Agricultural Health Authority (BAHA) where she worked under the direct supervision of Dr. Joe Myers. Under the terms of her contract, the renewal of the Claimant's contract was dependent on whether she received a successful performance evaluation and whether there was any objection from the IDB. An appraisal of her performance was conducted on December 20th, 2013 by Dr. Miguel DePaz, the Head of the Animal Health Department and she received a total of 33.5 points out of 45 points. The Defendant asserts that since they were not satisfied with the Claimant's performance, her contract was not renewed for an additional year. Due to the short notice period, BAHA gave the Claimant a three month contract from January 1st, 2014 until March 31st, 2014. The Claimant refused to sign the second contract, and says that her contract period was for two years as stated in the Terms of Reference from January 2013 to December 2014. She also claims that since she passed her performance appraisal and there was no objection from IDB, her contract should have been renewed for a year. She says that her contract was not renewed because she made reports of sexual harassment by her supervisor Dr. Myers on April 4th, 2014 to the police in Orange Walk. She alleges that she was unlawfully terminated from her employment, while BAHA claims that her contract came to an end by effluxion of time.

Issues

2. 1. Was there a contract for the period 1st January, 2014 to 31st March, 2014?
2. Did the said contract expire by effluxion of time on the 31st March, 2014?
3. Is this Claim an abuse of process of the Court?

Legal Submissions on behalf of the Claimant

3. Mrs. Nazira Espat Myles had orally indicated to the court on September 19th, 2017 that she would be seeking an extension of time to file her written submissions on behalf of the Claimant as she had been unable to comply with the timeline set by the court due to health issues. At the conclusion of this trial, the Court had requested that written submissions be filed by Counsel on behalf of the Claimant and Defendant by January 9th, 2017. Counsel for the Defendant duly handed in submissions within the timeline set by the Court, while the submissions for the Claimant were only filed yesterday, the day before decision was due to be delivered. The Court has reluctantly agreed to consider these extremely late submissions based on Mrs. Myles' written apology (copied to Counsel for the Defendant) as well as Mrs. Myles' plea that her client not be penalized for her failure to produce the legal submissions on time.

Mrs. Nazira Espat Myles has submitted that the Claimant's employment was terminated and that her dismissal was not for good and sufficient cause but because Dr. Roches filed a complaint against Dr. Meyers. She argues that the Defendant has failed to prove that the Claimant committed any act of gross negligence that required her termination. There is no evidence that the Claimant was ever given a warning letter or punished for any wrongdoing on the work sites. On the contrary, there is evidence that the Claimant fulfilled all her duties to the best of her ability and passed the evaluations done of her.

Due to lack of good and sufficient cause to terminate the Claimant, the Defendant has focused its defence on the Claimant's failure to produce a Masters Degree which the

Claimant claimed to hold at a meeting with BAHA's personnel. There is no term in the contract that states that the Claimant must have a Masters Degree; the qualification term in the contract speaks only to a First Degree.

Most importantly, the Defendant's proposition that the contract ended by effluxion of time must also fail. Mrs. Myles argues that the contract between the parties is unclear as to the period for which the contract is to last. The contract sets out a period of one year but leaves room for evaluation and continuance of the contract. This is mirrored by the Terms of Reference attached to the contract which clearly states that the period of the contract is for two years from January 2013 to December 2014. When the terms and conditions discussed between parties are reduced into writing, the court should interpret the contract and enforce the expressed terms of the contract. However, where there is some ambiguity in the terms of the contract, then the court, after examining the expressed terms, should assess the parties' intentions objectively and read the contract with common sense and not in a pedantic way *Investors Compensation Scheme v West Bromwich Building Society* [1997] UKHL 28.

The Claimant's position is that the contract was for a period of two years initially and after each year an evaluation is to be conducted. The Defendant conducted the evaluation process and there were necessary recommendations for the next year extension. If the Defendant intended to provide the Claimant with just a one year contract, then no evaluation or recommendations would be made. The three month's extension offer, which was not accepted by the Claimant as she did not sign or act on it, was not a mere extension

but the Defendant's notice to the Claimant for not honoring their representations to her for two years employment. The Claimant's employment was terminated without sufficient cause and did not end by effluxion of time.

Section 39 of the Labour (Amendment) Act 2011 states:

(1) An employer who dismisses or wrongfully terminates an employee before the expiration of the time definitely specified by a contract of employment shall pay to the worker the sum equal to the wages that would have accrued to the worker in respect of the remainder of the time specifically agreed upon.

In conclusion, Mrs. Myles submits that although there is no certainty that the Claimant would have become permanent staff at the end of the two years evaluation, at the very least the Defendant should make payment to the Claimant for the remainder of the contract, that is, to December 2014.

Legal Submissions on behalf of the Defendants

4. Ms. Agassi Finnegan on behalf of the Defendants submits that there was a fixed term contract between the Claimant and the First Defendant which expired on the 31st day of March, 2016. She cites *Halsbury's Laws of England* 4thEd. Volume 16 at para. 280 as follows:

"Termination Without Dismissal

Termination by expiry. As the ordinary law of contract is applicable to contracts of employment, the parties who enter the contract may also stipulate how it is to end.

Thus, certain untypical contracts of employment may be worded or otherwise

constructed in such a way that the contract terminates by expiry of performance, in which case, unless statute intervenes, there is no dismissal. Such contracts fall into the following categories:

(1) ...

(2) ...

(3) A contract may be stated to last for a set period of time, in which case it is considered to be a fixed-term contract and at the end of the relevant period it terminates by expiry.”

5. Learned Counsel for the Defendants also relies on the case of ***Ian Charles v. The Board of Governors H. Leivity Stoutt Community College*** 2010 unreported OECS (BVI) where the Claimant was first employed as a Graphic Artist in the Desktop Publishing Department of the Defendant college. His contractual appointment took effect from 17th October, 2005 for a period of two years with an option to renew (“the First Agreement”). The First Agreement came to an end by effluxion of time and the Claimant was paid his full salary and allowances. By letter dated 9th January, 2008, the Defendant offered the Claimant the position of Manager, Desktop Publishing (“the Second Agreement”) and he accepted the offer. The Second Agreement took effect from October 17th, 2007 and was for a period of two years. It contained no renewal clause. The agreement contained a termination clause that the employment may be terminated without cause by three month’s notice on either side. Nine days before the Second Agreement was to automatically terminate by effluxion of time, the Defendant informed the Claimant that his contract will not be renewed. Harriprasad Charles J. said:

“A fixed term contract is a contract of employment for a specified period of time, i.e., with a defined end: Wiltshire County Council v. National Association of Teachers in Further and Higher Education and Guy. As a general rule, such a contract cannot be terminated before its expiry date except for gross misconduct or by mutual agreement. However, a contract can still be for a fixed term if it contains within it a provision enabling either side to terminate it on giving notice before the term expires. Dixon and another v. British Broadcasting Corporation. If a fixed term contract is not renewed on expiry that will not amount to a dismissal at common law, because the contract has been terminated automatically by effluxion of time.”

The claim was dismissed on the basis that the contract expired by effluxion of time. The Ian Charles case is also authority for the proposition that a legitimate expectation cannot be created in circumstances where a previous contract was in place but was not renewed. In the case at bar, the contract was clearly a fixed term contract and was not renewed. Ms. Finnegan submits it was dismissal at common law as in the Ian Charles case. She also submits that the fact that a performance appraisal is satisfactory does not necessarily mean that a contract must be renewed since a contract is founded on the principle of freedom to contract. Learned Counsel urges the Court to dismiss this claim with costs to the Defendant.

Decision

6. Having reviewed the evidence and the written submissions filed on behalf of the Defendant, I am of the view that Dr. Roches’ contract expired due to effluxion of time. The contract was

for a fixed term of one year as stated in Clause 2 of the Contract captioned "Agreement Period" as follows:

"The Executing Agencies shall engage the services of the Consultant for the duration of one (1) year from January 1st, 2013 to December 31st, 2013. BAHA in conjunction with the Co-Executing Agencies will review the Consultant's performance based on the results of the satisfactory evaluation and the Bank's no-objection, a subsequent contract will be offered."

Clause 12 of the contract also provides for early termination of the Agreement by the Executing Agencies (BAHA) giving the Consultant four weeks notice in writing, while Clause 13 provides that the Consultant may also terminate the Agreement by giving four weeks written notice to the Director of Animal Health and copied to the Project Director of the PEU. I also agree that satisfactory performance appraisal does not guarantee that the contract will be renewed by the employer, as the contracting parties enjoy freedom of contract. I note that a perusal of the performance appraisal from itself reveals in paragraph 2 captioned "*Quality of Work*" that BAHA had some concerns regarding Dr. Roches' "*reliability and thoroughness*" which were drawn to her attention at the time of her evaluation. BAHA has also cited the Claimant's failure to produce her Masters Degree as a basic requirement that she did not fulfill; however, I find that the Terms of Reference for the position Dr. Roches held required that the academic qualification is a Bachelors Degree and not a Masters Degree. Clause VII in the Terms of Reference reads as follows:

“The Veterinary Officer will have a First Degree in Veterinary Medicine and Surgery. The Veterinary Officer will be a registered veterinary surgeon in Belize (current) with excellent experience in epidemiology, diagnosis, treatment, control of diseases in the livestock industry and additional experience in monitoring of disease and traceability. The Veterinary Officer will be fluent in English and computer literate with knowledge of GIS and GPS.”

In relation to the allegations of sexual harassment made by Dr. Roches against her supervisor Dr. Joe Myers, the Court has noted the grave allegations against Dr. Joe Meyers contained in the Claimant’s email of complaint to BAHA personnel dated February 10th, 2014. I find that the Claimant was unable to prove at trial on a balance of probabilities that those allegations were the basis on which her contract with BAHA was not renewed. The evidence shows that her complaint against Dr. Myers was made to the police on April 4th, 2014, four months after BAHA informed her of its decision not to renew her contract. However, this Court condemns in the strongest possible terms the exploitation and degradation of women by predatory male behavior in the workplace. Dr. Roches recounted her ordeal in her email in harrowing detail, and I find that BAHA has an obligation to not sweep these grave allegations under the rug. I urge that there should be a serious investigation into the conduct of Dr. Joe Meyers to determine the authenticity or otherwise of these allegations, and to duly penalize such behavior if substantiated, in keeping with Belize’s national and international obligations to protect the rights of women and children from sexual exploitation under treaties such as the Convention on the Elimination of All Forms of Violence and Discrimination Against Women.

Having found that the first contract came to an end due to effluxion of time January 1st, 2013 to December 31st, 2013 and the second contract lasted from January 1st, 2014 to March 31st, 2014 when it also expired due to effluxion of time, I find that there was no breach of contract. I therefore dismiss the claim in its entirety. Each party to bear own costs.

Dated this Friday, 13th day of October, 2017

**Michelle Arana
Supreme Court Judge**