

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 171 of 2022

BETWEEN:

MICHAEL BONNELL

Claimant

and

PROJECT MANAGEMENT SERVICES

Defendant

**Appearances:**

Orson J. Elrington, for the Claimant  
Yogini Lochan-Cave, for the Defendant

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2023: March 14  
April 18  
September 19  
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**JUDGMENT**

- [1] **CHABOT, J.:** The claimant, Michael Bonnell, was dismissed from his employment with the defendant, Project Management Services (“PMS”). Mr. Bonnell claims damages in an amount of \$48,062.67, plus interest and costs, against PMS.
- [2] For the reasons outlined in this judgment, the claim is dismissed. PMS has met its burden of proving that Mr. Bonnell’s dismissal for gross misconduct was justified.

## Background

- [3] PMS is engaged in the business of the production and export of bananas from Belize. PMS ships its products out of Belize from the Big Creek Port (the “port”), which is controlled by Banana Enterprises Limited. At the time of his dismissal, Mr. Bonnell held the position of cold chain supervisor and earned \$3,292.69 monthly. His duties included monitoring and supervising containers, and monitoring the placement of security seals on all banana containers.
- [4] According to PMS, container seals are a legal requirement of the Big Creek Port, customs, agriculture, and health authorities. The bill of lading and shipping documents include the container seal number for verification by port authorities, port customs, and the customer receiving the cargo. The usage of container seals is also a part of C-TPAT (Customs-Trade Partnership Against Terrorism) requirements. PMS states that if a container arrives at its destination with any change, damage, or evidence of any tampering, smuggling, or contraband, PMS and the port would suffer serious legal and financial consequences.
- [5] PMS alleges that Mr. Bonnell was dismissed on 28<sup>th</sup> October 2019 for gross misconduct in the execution of his duties. According to PMS, on or around the 26<sup>th</sup> or 27<sup>th</sup> October 2019, Mr. Bonnell removed the seals from various containers in PMS’s shipment at the port and placed them on other containers. PMS alleges that Mr. Bonnell’s actions of tampering with the seals are directly related to his employment because Mr. Bonnell’s duties included the monitoring and the placement of the seals. PMS also alleges that Mr. Bonnell’s actions had a detrimental effect on PMS’s business. PMS considers that Mr. Bonnell’s behaviour constituted a repudiatory breach of his employment and a breach of the implied terms of trust and confidence necessary for an employer-employee relationship. These actions gave PMS good and sufficient cause to terminate Mr. Bonnell’s employment, and allowed PMS to summarily dismiss Mr. Bonnell in accordance with section 43 of the Labour Act.<sup>1</sup> PMS argues that Mr. Bonnell is not entitled to the payment of any severance allowance, payment in lieu of notice, or terminal benefit.
- [6] Mr. Bonnell alleges that a coworker by the name of Juan Ardon informed him that he had improperly placed seals on containers. Mr. Bonnell undertook to correct the seals. Shortly thereafter, Mr. Bonnell

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<sup>1</sup> Cap. 297 of the Substantive Laws of Belize, Rev. Ed. 2020.

was dismissed from his employment. Mr. Bonnell alleges that he was denied natural justice as he was not given an opportunity to answer the allegations against him.

- [7] The only issue raised by the parties in this matter is whether Mr. Bonnell is entitled to severance, vacation pay and payment in lieu of notice and, if the court so determines, in what sum. In resolving this issue, the court will consider whether Mr. Bonnell was dismissed in breach of his natural justice rights.

### **Analysis**

- [8] As there was no written employment agreement between Mr. Bonnell and PMS, the Labour Act governed the parties' employment relationship. Pursuant to section 43 of the Labour Act, an employer is entitled to summarily dismiss an employee who engages in gross misconduct:

43.-(1) An employer is entitled to dismiss summarily without notice or without payment of any severance or redundancy allowance or terminal benefit, any worker who commits an act of gross misconduct.

(2) The gross misconduct referred to in sub-section (1), is restricted to that conduct which is directly related to the employment relationship and has a detrimental effect on the business and is based on the operational requirements of the enterprise of such a nature that it would be unreasonable to require the employer to continue the employment relationship.

- [9] "Gross misconduct" is defined in section 2 of the Labour Act as "misconduct that is such that the employer cannot reasonably be expected to take any course other than to terminate the employment of the worker". The onus is on PMS to prove gross misconduct.<sup>2</sup>

- [10] I find that PMS has met its burden of proving that Mr. Bonnell engaged in an act of gross misconduct within the meaning of the Labour Act. The uncontroverted evidence is that 28 seals were tampered with on or around 27<sup>th</sup> October 2019. I am satisfied that it is Mr. Bonnell who tampered with the seals. In his witness statement, Mr. Bonnell admits that he changed the seals on some containers, but explains that he did so after Mr. Ardon had told him he had improperly placed seals on some containers and Mr. Bonnell took it upon himself to correct the seals. In written submissions, Mr. Bonnell reiterates that "while he did change seals it was in attempt to help not sabotage". However, in cross-examination, Mr. Bonnell initially denied tampering or changing any seals on the containers. Pressed on the issue, he

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<sup>2</sup> Belize Sugar Industries Limited v Francisco Rejon, Claim No. 230 of 2016 at para. 42 ("Rejon").

eventually admitted to having been caught on port cameras changing the seals. Mr. Bonnell's evidence is contradictory. These contradictions, coupled with Mr. Bonnell's general evasiveness and lack of candour in cross-examination, put his credibility into question. I note that, while Mr. Bonnell mentions in his witness statement that one Jarett Garbutt overheard his conversation with Mr. Ardon, Mr. Garbutt was not called as a witness in these proceedings. I draw an adverse inference from that fact.

[11] Mr. Ardon was called by PMS as a witness in this matter. Mr. Ardon denied the conversation where he allegedly said to Mr. Bonnell he had improperly placed seals on some of the containers. According to Mr. Ardon, on 26<sup>th</sup> October 2019 he went to work at around 6:30 a.m. to take temperature readings and place seals on containers. He left at around 9:30 a.m. When he went back to work the next day at 6:30 a.m., he noticed that some temperature sheets were missing and others were not as he had left them the previous day. When he went to take temperature readings, he saw Mr. Bonnell behind some containers writing in a book. Mr. Ardon asked Mr. Bonnell about the temperature sheets, but Mr. Bonnell raised his voice and denied having anything to do with the missing sheets. When he went to take temperature readings, Mr. Ardon noticed that the booking list in which the seals assigned to the containers were documented had been tampered with. Alarmed, Mr. Ardon went to check the seals on the containers. The first container he checked had a different seal than the one that had been assigned to it. After reporting the discrepancy to the port technician and the chief of port operations, Mr. Ardon continued checking seals and found more discrepancies. Vessel loading operations had to be stopped, and some of the containers that had been loaded on the vessel had to be offloaded to verify the seal numbers. Some had wrong seal numbers.

[12] Mr. Bonnell's counsel centered his cross-examination of Mr. Ardon on the acrimonious relationship between Mr. Bonnell and Mr. Ardon. I will return to this later. For now, I note that Mr. Ardon denied counsel's suggestion that he lied to Mr. Bonnell by making him believe he needed assistance to fix the seals properly, and that he knew the cameras would catch Mr. Bonnell swapping seals. The implication is that Mr. Ardon wanted to get Mr. Bonnell into trouble.

[13] Mr. Bonnell's narrative is not supported by the evidence. As mentioned, Mr. Bonnell's version of events is contradicted by Mr. Ardon's testimony, and Mr. Bonnell failed to call as a witness Mr. Garbutt who allegedly heard Mr. Ardon ask for assistance. In addition, PMS entered into evidence a video purportedly showing Mr. Bonnell changing seals on some containers. The video is short – 1:26. The

video shows a number of containers sitting on a dock. There are empty pallets in the foreground. A man appears on the right side of the screen, walking towards one of the containers. The man looks around and removes something which I assume to be the seal from the front of the container. He walks over to the next container and does the same thing. In total, the man removes the seals from nine containers. Once the nine seals are removed, the man turns around and places the seals back on the nine containers. He does that quickly, without looking at any of the seals before placing them back on the containers. Given what I have heard about the importance of matching the right seal to the right container, I would have expected that if Mr. Bonnell had taken upon himself to fix the seals wrongly placed by Mr. Ardon, as he alleges he did, Mr. Bonnell would have taken care to at least look at the seal numbers and at the container numbers to ensure that they matched. He would likely have had some list with him to cross-check the information. The operation would have taken much longer than a few seconds. What the video depicts is a man in a hurry who acted carelessly. The story simply does not add up.

[14] I note that, despite having been disclosed in evidence and included as an exhibit to the witness statement of Thiago Oliveira Da Silva, PMS's former country manager, Mr. Bonnell chose not to comment on the video. He does not deny that he is the man in the video. He did not cross-examine any of the witnesses about the contents of the video. I therefore accept that the video shows Mr. Bonnell, and based on what I have observed, I am satisfied that it supports PMS's allegation that Mr. Bonnell tampered with the seals on some of the containers.

[15] The evidence also points to a motive for Mr. Bonnell's actions. Mr. Bonnell worked for PMS for 21 years before being summarily dismissed. By all accounts, Mr. Bonnell's work during those 21 years was satisfactory. There is no evidence that Mr. Bonnell misconducted himself in the past. In 2018, Mr. Ardon was promoted to reefer assistant supervisor. Mr. Bonnell became Mr. Ardon's supervisor. The relationship between Mr. Bonnell and Mr. Ardon was difficult from the outset. According to Mr. Ardon, Mr. Bonnell refused to train him and to have any contact with him. Mr. Bonnell denied Mr. Ardon access to his office, and bullied him. Mr. Bonnell accused Mr. Ardon of wrongdoing, including changing the temperature settings on containers. In mid-October 2019, Mr. Bonnell was placed on vacation following an incident where Mr. Bonnell blamed Mr. Ardon for setting the wrong temperature on a container.

- [16] This is denied by Mr. Bonnell. In cross-examination, Mr. Bonnell resisted any suggestion that he had a difficult working relationship with Mr. Ardon. Yet, Mr. Bonnell admitted attending two meetings with Mr. Millinsted, the manager of port operations, and Mr. Da Silva, then country manager, to address the issues between him and Mr. Ardon. Mr. Bonnell also admitted having reported that Mr. Ardon had set the wrong temperature on containers. Despite Mr. Bonnell's denial of a difficult working relationship with Mr. Ardon, Mr. Bonnell's admissions tend to corroborate Mr. Ardon's allegations and further damage his own credibility.
- [17] Mr. Ardon's version is further supported by the testimony of Mr. Da Silva. I note that Mr. Da Silva is no longer employed by PMS in Belize, and as such had no incentive to lie to this court. In his witness statement, Mr. Da Silva testified that after Mr. Ardon became reefer assistant supervisor, Mr. Da Silva started receiving reports that Mr. Bonnell bullied Mr. Ardon and shouted at him. Mr. Da Silva confirmed that Mr. Bonnell refused to train Mr. Ardon as he was instructed. Mr. Da Silva was required to have several meetings with Mr. Bonnell and the manager of port operations in order to mediate the tense work situation. According to Mr. Da Silva, there were a few instances of temperature settings on the containers being inaccurate. Mr. Bonnell always blamed Mr. Ardon.
- [18] In mid-October 2019, another situation arose where the temperature settings on the containers were wrong. Mr. Da Silva requested a meeting with port management, including the port mechanic and the port operations manager. Mr. Bonnell was present as well. At the meeting, Mr. Bonnell declared that Mr. Ardon was responsible for the discrepancy. According to Mr. Da Silva, "this placed [him] in an awkward position and embarrassed the Defendant as this was an issue that the Port was responsible for". After the meeting, Mr. Da Silva met with Mr. Bonnell and the manager of port operations. Mr. Bonnell was informed that the difficult relationship with Mr. Ardon had to stop. He was told that he should proceed on a vacation to allow for tensions to calm and the relationship to improve after Mr. Bonnell's return. The parties dispute whether Mr. Da Silva asked Mr. Bonnell to take a one or a two-week vacation, or if Mr. Bonnell decided to return to work after one week in defiance of Mr. Da Silva's instructions. I do not place much weight on this. Whether Mr. Bonnell was supposed to be at the port on 27<sup>th</sup> October 2019 or not, I am satisfied for the reasons discussed above that he tampered with the seals without authorization. I also find that Mr. Bonnell's motive to do so was related to his difficult relationship with Mr. Ardon.

[19] The next point to address is whether Mr. Bonnell was summarily dismissed in breach of his natural justice rights. It is common ground that Mr. Bonnell was dismissed on 28<sup>th</sup> October 2019. Mr. Da Silva testified that he was informed on 27<sup>th</sup> October 2019 that as a result of his tampering with the seals, Mr. Bonnell had been banned by the port. On 28<sup>th</sup> October 2019, Mr. Da Silva attended a meeting with one Gustavo Carillo, manager for the port of Big Creek, who informed Mr. Da Silva that Mr. Bonnell's actions could have caused serious loss and damage for both PMS and the port, and that Mr. Bonnell had been denied access to the port. Mr. Da Silva entered into evidence an email from Mr. Carillo confirming that "security has been advised not to grant Mr. Bonnell access to the Port Facility". On that same day, Mr. Bonnell called Mr. Da Silva to report that he was not allowed to go to the port anymore.

[20] Mr. Da Silva testified that as a result of Mr. Bonnell's actions, he no longer trusted Mr. Bonnell to discharge his responsibilities in the best interests of PMS. He viewed Mr. Bonnell's actions as a direct attempt to damage the company. Further, it was obvious that Mr. Bonnell could no longer discharge his responsibilities to PMS as he was banned from the port where he was required to perform his duties. Mr. Da Silva was of the view that Mr. Bonnell's actions constituted an act of gross misconduct and he had no choice but to summarily dismiss Mr. Bonnell.

[21] Later on 28<sup>th</sup> October 2019, Mr. Da Silva scheduled a meeting with Mr. Bonnell and Mr. Millensted, PMS's manager of port operations. At that meeting, Mr. Da Silva explained to Mr. Bonnell that he had been caught on camera tampering with the container seals, and being denied access to the port it was difficult to see how Mr. Bonnell could continue discharging his responsibilities towards PMS. Mr. Da Silva presented Mr. Bonnell with a letter dated the 28<sup>th</sup> October 2019 advising him of his dismissal. According to Mr. Da Silva, "the Claimant did not say anything at all and accepted the letter".

[22] The evidence is inconclusive as to whether or not Mr. Bonnell was given an opportunity to be heard at the 28<sup>th</sup> October 2019 meeting. In his witness statement, Mr. Bonnell alleges he was not given an opportunity to explain himself before being summarily dismissed. In cross-examination, Mr. Bonnell testified that he said "something" at the meeting, but was not given an opportunity to elaborate during cross-examination. Mr. Da Silva, on the other hand, was cross-examined as to whether he gave Mr. Bonnell a chance to answer the allegations against him in writing. Mr. Da Silva testified that he informed Mr. Bonnell orally of that opportunity, but admitted he did not provide a notice in writing giving Mr. Bonnell an opportunity to respond to the letter. Mr. Da Silva further testified that he gave Mr. Bonnell

an opportunity to explain himself at the meeting, but Mr. Bonnell did not say a word. In re-examination, Mr. Da Silva added that Mr. Bonnell did not ask for more time to answer the allegations against him. According to Mr. Da Silva, Mr. Bonnell did not say a word.

- [23] Neither the common law, nor the Labour Act requires an employer to give an employee an opportunity to be heard before dismissing them summarily. This was made plain by Young J. in **Rejon**, a case both parties rely on:

43. Summary dismissal is founded on the employee's repudiatory breach of the employment contract. Such breach according to the Labour Act is confined to those related to the employment relationship and which could be detrimental to the business. Neither the Labour Act nor the common law requires the employer to follow any particular procedure for summary dismissal. The employee is not required to be heard nor is natural justice required to be complied with.<sup>3</sup>

- [24] The House of Lords elaborated on the rationale for this principle in **Malloch v Aberdeen Corporation**:<sup>4</sup>

The argument that, once it is shown that the relevant relationship is that of master and servant, this is sufficient to exclude the requirements of natural justice is often found, in one form or another, in reported cases. There are two reasons behind it. The first is that, in master and servant cases, one is normally in the field of the common law of contract inter partes, so that principles of administrative law, including those of natural justice, have no part to play. The second relates to the remedy: it is that in pure master and servant cases, the most that can be obtained is damages, if the dismissal is wrongful: no order for reinstatement can be made, so no room exists for such remedies as administrative law may grant, such as a declaration that the dismissal is void.

- [25] Therefore, nothing turns on whether Mr. Bonnell was given an opportunity to be heard before being summarily dismissed by PMS. The law does not afford Mr. Bonnell this right.

- [26] Finally, Mr. Bonnell submits that a summary dismissal was unwarranted given his "unblemished record of employment with the company stretching over twenty one (21) years". That is not so. In **Henry v Mount Gay Distilleries Limited**,<sup>5</sup> a security guard was summarily dismissed after 46 years of service following a single incident where he did not report a break-in to the police. The Privy Council upheld the summary dismissal despite the long service, stating as follows:

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<sup>3</sup> Rejon at para. 43.

<sup>4</sup> [1971] 1 WLR 1578 at 1595.

<sup>5</sup> [1999] Lexis Citation 2002.

It is well established that summary dismissal is only justifiable where there has been a breach of one or more duties of the employee and such breach constitutes a repudiation of the contract of employment as being inconsistent with the continued employment of the employee. Thus a single act of carelessness or negligence can provide grounds for summary dismissal if the negligence itself or the circumstances surrounding it show that there has been a deliberate flouting of the essential contractual conditions. [emphasis added]

[27] There is no doubt in my mind that the unauthorized swapping of the seals constituted a deliberate flouting of the essential contractual conditions of Mr. Bonnell's employment. Both Mr. Bonnell and Mr. Da Silva confirmed that PMS's standard operating procedures require that a high security seal be placed on containers, and that the placement of the seals is a legal requirement. Mr. Bonnell acknowledged that his duties included the monitoring and the placement of the seals, a task he had been performing since 2008. Mr. Bonnell was therefore well aware of the importance of placing the right seals on the right containers, and understood that his duties included the monitoring and placement of seals on containers. The unauthorized swapping of the seals, which resulted in the wrong seals being placed on the wrong containers before their loading into the vessel, was done in deliberate breach of Mr. Bonnell's contractual duties.

[28] In summary, I find that PMS has proven that it was entitled to summarily dismiss Mr. Bonnell under section 43 of the Labour Act because Mr. Bonnell engaged in an act of gross misconduct. I am satisfied that on or around 27<sup>th</sup> October 2019, Mr. Bonnell swapped the seals on some containers without authorization. The act was caught on camera. The act was directly related to Mr. Bonnell's employment relationship with PMS, and it had a detrimental effect on the business of PMS. While the wrong seals were caught and corrected before the departure of the vessel, the containers had to be unloaded and reloaded. Had the wrong seals not been detected before the containers were shipped to the customers, it could have had economic and reputational implications for PMS and for the port. As a result of his actions, Mr. Bonnell is banned from the port. Being present on site at the port is a requirement of the position of cold chain supervisor. Mr. Bonnell also lost the trust and confidence of PMS. Based on operational requirements, it would be unreasonable to require PMS to continue its employment relationship with Mr. Bonnell. The conditions in section 43 of the Labour Act have been met.

[29] Under section 43 of the Labour Act, an employee who is summarily dismissed is not entitled to notice or payment of any severance, redundancy allowance, or terminal benefit. Mr. Bonnell was paid \$3,501.33, which represented his salary and unpaid vacation on termination. He is not entitled to more.

[30] The claim is dismissed with costs to PMS.

**IT IS HEREBY ORDERED THAT**

- (1) The claim is dismissed.
- (2) The claimant shall pay prescribed costs to the defendant.

**Geneviève Chabot**  
High Court Judge