

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 25 of 2022

BETWEEN:

[1] ORLANDO PASCASCIO

Claimant

and

[1] MINISTER OF INFRASTRUCTURE DEVELOPMENT AND HOUSING

[2] CHIEF ENGINEER, MINISTRY OF INFRASTRUCTURE DEVELOPMENT AND HOUSING

[3] ATTORNEY GENERAL OF BELIZE

Defendants

Appearances:

Oscar Selgado for the Claimant

Agassi Finnegan and Alea Gomez for the Defendants

2023: April 17

June 16

November 13

JUDGMENT

[1] **CHABOT, J.:** The claimant, Orlando Pascascio, was employed as an open vote worker with the Ministry of Infrastructure Development and Housing for more than ten years. Mr. Pascascio's employment was terminated in January 2021 without cause. Mr. Pascascio filed this claim alleging that his constitutional rights to the protection of the law and equal

protection of the law were breached by the defendants' failure to place him in an established post despite a favourable recommendation from the Ministry of the Public Service, Energy and Public Utilities. Mr. Pascascio claims that, had he been placed in an established post under the Belize Constitution (Public Service) Regulations,¹ he would have been better protected from arbitrary termination, and would have had a better benefits package.

- [2] For the reasons set out in this judgment, Mr. Pascascio's claim is dismissed. Mr. Pascascio's constitutional rights have not been breached. Mr. Pascascio was paid all of his entitlements under the Government (Open Vote) Workers Regulations² and is owed no more.

Background

- [3] Mr. Pascascio began employment as an Assistant Lowboy Operator with the then Ministry of Works on 16th June 2010. He was later moved to the position of Driver/Mechanic. Mr. Pascascio was employed as an open vote worker under the Government (Open Vote) Workers Regulations. On 28th August 2019, Mr. Pascascio received a copy of a letter from the Chief Executive Officer of the Ministry of the Public Service, Energy and Public Utilities to the Chief Executive Officer of the Ministry of Works recommending that he be placed into a permanent established post under the PSR. The recommendation was for Mr. Pascascio to be employed as a District Technical Supervisor. This recommendation was not actioned.
- [4] On 18th January 2021, Mr. Pascascio was terminated from his employment without cause.
- [5] Mr. Pascascio claims that his termination was unlawful and in breach of his constitutional rights to the protection of the law and the equal protection of the law under sections 3(a) and 6(1) of the Belize Constitution.³ Mr. Pascascio alleges that Government employees in established employment are better protected from arbitrary termination and receive better working benefit packages than open vote workers. He further alleges that the failure

¹ Statutory Instrument No. 59 of 2014 ("PSR").

² Statutory Instrument No. 145 of 1992.

³ Cap. 4 of the Substantive Laws of Belize, Rev. Ed. 2020.

of the Chief Executive Officer of the Ministry of Works to accept the recommendation to have his employment established under the PSR was negligent and amounts to a breach of his constitutional rights since he could not have been terminated without cause under the PSR if he had been an established worker.

[6] The claimant claims the following relief:

1. Damages arising from the unlawful and unjustifiable termination of the claimant's services by the first and second defendants on 18th January 2021.
2. Damages for the breach of the claimant's constitutional right to protection of the law and equal protection of the law by the first and second defendants contrary to section 3(a) of the Belize Constitution.
3. Interest on damages found to be due as a direct result of the unlawful termination and breach of the constitutional rights specified herein at the rate of 6% per annum pursuant to section 167 of the Supreme Court of Judicature Act.⁴
4. Costs.
5. Any further or other relief which the Honourable Court may deem just.

[7] The defendants deny the allegations in the claim. According to the defendants, the claimant did not possess the requisite qualifications for the post of District Technical Supervisor. Under the Government (Open Vote) Workers Regulations, a Head of Department may terminate the services of an employee by giving notice, or wages in lieu of notice. Mr. Pascascio was paid eight weeks' wages in lieu of notice for his period of service. Reasons for the termination were not necessary in those circumstances.

Issues for Determination

[8] The following issues must be determined:

1. Whether the failure of the defendants to comply with the recommendation to be assigned the post of District Technical Supervisor breached the claimant's right to equal protection of the law.
 - a. If so, whether the claimant is entitled to damages.

⁴ Cap. 91 of the Substantive Laws of Belize, Rev. Ed. 2020.

2. Whether the termination of the claimant without reason was unlawful.
 - a. If so, whether the claimant is entitled to damages.

Analysis

Whether the failure of the defendants to comply with the recommendation to be assigned the post of District Technical Supervisor breached the claimant's right to equal protection of the law.

[9] The constitutionality of the open vote system in Belize was the subject of extensive deliberations by Griffith J. in **Melissa Belzaire Tucker v The Minister of Education et al.**⁵ The **Tucker** decision was referred to by the Chief Executive Officer of the Ministry of the Public Service, Energy and Public Utilities in her Memorandum to the Chief Executive Officer of the Ministry of Works recommending that Mr. Pascascio be placed into a permanent established post. **Tucker** is also relied on by Mr. Pascascio in support of his claim that his constitutional rights to the protection of the law and the equal protection of the law have been breached. As such, I find it necessary to begin by analyzing the court's decision in **Tucker**.

[10] Ms. Tucker was dismissed for cause from her employment as a School Feeding Coordinator. At issue in her claim was whether the Government (Open Vote) Workers Regulations had been constitutionally enacted, and whether her constitutional rights to the protection of the law and equal protection of the law had been breached by her having been subjected to the Government (Open Vote) Workers Regulations. On the first issue, Griffith J. found the Government (Open Vote) Workers Regulations to be valid and not *ultra vires* sections 106(1) or 106(3) of the Belize Constitution. Since Mr. Pascascio is not challenging the constitutionality of the Government (Open Vote) Workers Regulations, but their application to his employment relationship with the defendants, it is not necessary to expand on Griffith's reasoning on this point.

[11] Amongst other grounds, Ms. Tucker claimed that her constitutional right to the protection of the law had been breached by the defendants as a result of her continued employment as an open vote worker and the Government's failure to recommend her confirmation to the established post of School Feeding Coordinator. She also claimed that her

⁵ Consolidated claims No. 305 of 2014 and No. 199 of 2015 ("Tucker").

constitutional right to the equal protection of the law had been breached because the Government (Open Vote) Workers Regulations effectively create a “second caste” of public officers to which there attach different and less advantageous terms and conditions of service. She claimed that, by virtue of remaining an open vote worker, she was deprived of the benefits and advantages of permanent public officers such as remuneration, pension, and several other conditions of service and benefits. Mr. Pascascio’s allegations in this claim mirror Ms. Tucker’s in hers.

- [12] Griffith J. rejected Ms. Tucker’s contention that the Government (Open Vote) Workers Regulations violated her constitutional right to equal protection of the law because it creates two “castes” of public officers. According to Griffith J., the creation of open vote positions is justified in light of the Government’s objectives, and the means employed to achieve those objectives are fair and proportionate:

40. [...] In the instant case, it is found that the second category of workers outside the permanent establishment are required for the legitimate purposes of affording Government access to workers required for work that is temporary in nature or period of time, seasonal or of a nature for which no or lesser qualification or skill is required. It is also found that the means of achieving those needs are fair and proportionate, insofar as the Open Vote Regulations provide for important terms of employment such as dismissal, discipline, employment benefits commensurate with the work to be performed and employment safeguards provided generally to privately employed persons under the Labour and Workmen’s Compensation Acts. It is therefore found that there is no violation of the right to equal protection of the law by the existence of the separate classification of open vote workers. The Government Workers (Open Vote) Regulations, 1992 are also affirmed as valid on this ground.⁶

- [13] With respect to the issue of whether the failure to recommend Ms. Tucker for appointment to the permanent establishment breached her right to the protection of the law, Griffith J. found that because the post she occupied had been established some years prior, that there was no substantive appointee to the post, and that Ms. Tucker functioned and was recognized by all as the School Feeding Coordinator, Ms. Tucker’s employment was *de facto* of a permanent nature in respect of an established post. Although Ms. Tucker was not a public officer, she had been improperly classified and treated as an open vote

⁶ Tucker at paras. 39-40.

worker: As a result, Griffith J. declared that Ms. Tucker's constitutional right to the protection of the law had been breached:

73. With respect to the ineffectiveness of an action for wrongful dismissal as redress for the Claimant's circumstances - when stripped to its core, the Claimant was for thirteen years (i.e. from the date of establishment of the post) treated as an open vote worker whilst the employment she performed had been sanctioned by the Legislature as deserving of appointment as a public officer. Additionally, during those thirteen years it was clearly and consistently within the contemplation of the Claimant's superiors that her employment status was irregular, but there was an unfathomable failure to submit the claimant's employment into the hands of the Public Service Commission to be regularised. A clear consequence of this failure was that the Claimant was for thirteen years deprived of the protection and advantages of being a public officer, which include the terms and conditions relating to security of tenure, retirement benefits, vacation, and sick leave. The absence of protection in relation to security of tenure is evident in the circumstances which materialised in the Claimant's dismissal.

[...]

76. Whether the Claimant would have been appointed as a matter of certainty is not the point; whether the Claimant was deservedly dismissed or would nonetheless have been dismissed is not the point. The point is that there was a law which provided that in the Claimant's circumstances she ought not to have been subject to the Open Vote Regulations; and that she ought not to have been subjected to performing in an established post as anything other than a public officer appointed by the Public Service Commission. The Claimant was not afforded that opportunity even after thirteen years of service and the result was exposure to a lesser status than what was intended by virtue of the establishment of the post as a public office. It is therefore concluded that the failure to submit the Claimant for appointment as a public officer when she had been employed for thirteen years in the established post of School Feeding Officer and the accompanying categorisation and purported dismissal of the Claimant as an open vote worker, amounted to a breach of the Claimant's Constitutional right to protection of the law. [emphasis added].⁷

[14] Turning to the facts at issue in this matter, I find that Mr. Pascascio's right to the equal protection of the law has not been breached. Contrary to Mr. Pascascio's submissions, in **Tucker** the court did not find the Government (Open Vote) Workers Regulations to be unconstitutional. As noted above, Griffith J. upheld the constitutionality of the Government (Open Vote) Workers Regulations, finding that open vote positions are justified in light of

⁷ Belzair at paras. 73 and 76.

the Government's objectives, and the means employed to achieve those objectives are fair and proportionate

- [15] I also find that Mr. Pascascio's right to the protection of the law has not been breached. **Tucker** should not be interpreted as declaring that any open vote worker has a right to an established post after working in an open vote capacity for some time. No such right is expressed in the Government (Open Vote) Workers Regulations. Griffith J.'s judgment in **Tucker** was grounded in the particular circumstances of that case. Ms. Tucker had performed the functions of an established post for more than a decade, and she had been repeatedly recommended for appointment as a public officer for that very same post. These facts led to a finding that her right to the protection of the law had been breached because a worker employed under those conditions would normally be considered a public officer under the PSR. Contrary to Ms. Tucker, prior to his dismissal Mr. Pascascio had not been performing the functions of an established post. Mr. Pascascio had been employed as an Assistant Lowboy Operator, and then as a Driver/Mechanic. According to the evidence of both Lennox Bradley, the Chief Engineer at the Ministry of Infrastructure Development and Housing, and George Lotiff, Administrative Officer Grade 1 assigned to the Ministry of Infrastructure Development and Housing, the post of Driver/Mechanic is not an established post. Mr. Pascascio's circumstances are therefore materially different from those of Ms. Tucker.
- [16] While Mr. Pascascio was not in an established post, he was recommended for one on 28th August 2019. In her Memorandum to the Chief Executive Officer of the Ministry of Works, the Chief Executive Officer of the Ministry of the Public Service, Energy and Public Utilities recommended that Mr. Pascascio be placed into the permanent established post of District Technical Supervisor. The recommendation was never actioned. The defendants' position that Mr. Pascascio was not qualified for the post of District Technical Supervisor is supported by the evidence. The defendants exhibited the position description for the post of District Technical Supervisor. The position requires as a minimal qualification a certificate or diploma in civil engineering/construction. It is not disputed that Mr. Pascascio does not hold a certificate or diploma in that field. In his reply to the defence, Mr. Pascascio alleges that "no such pre-requisites have been published by the Ministry of

Works, now the Ministry of Infrastructure Development and Housing and [...] many former holders of those positions merely had on-the-job experience over many years as the Claimant and became qualified for the position". Mr. Pascascio adduced no evidence to prove these assertions.

[17] In his submissions, Mr. Pascascio asserts that the crux of his claim is not whether he was qualified for the post of District Technical Supervisor, but whether he was denied equal protection of the law because he was an open vote worker and although a recommendation had been made, he was never placed in an established post after ten years of continuous employment with the Government of Belize. He further asserts that the recommendation to become established was "deliberately and callously ignored" by his superiors, all of whom had a fiduciary duty to ensure his welfare and that his employment was protected within the government service. Other than **Tucker**, which is distinguishable from the facts of this case, Mr. Pascascio has provided no authority in support of his assertion that the defendants were bound to follow the recommendation of the Chief Executive Officer of the Ministry of the Public Service, Energy and Public Utilities. In addition, the defendants' uncontroverted evidence is that the recommendation was not regular. According to Mr. Lotiff:

[13] Sometime in August 2019, the then CEO Errol Gentle, informed me that the Ministry was in receipt of a Memorandum from the Ministry of Public Service, instructing that the Claimant be recommended for the post of District Technical Supervisor in the permanent establishment considering his expertise in Building Construction. I was then provided with a copy of the Memorandum, and the same was placed on the Claimant's file.

[14] Upon reading the Memorandum I was quite surprised, as at no time prior to the receipt of the Memorandum was any application or request submitted to my office by the Claimant for the upgrading of posts or for the post of Driver/Mechanic to be converted to a permanent post. The accepted practice and procedure within the Ministry is that all such requests are submitted to my office, for onward submission to the CEO of the Ministry for recommendation and thereafter onward submission to the relevant Ministries for the creation of posts and/or approvals and finally submission to the Public Services Commission after the period of probation has been served.

[15] Additionally, I was equally surprised to see the directive contained in the Memorandum as it is not normal for the Ministry of Public Service to interfere or make recommendations for the filling of posts within the specific line

Ministry. The practice and procedure which exists within the Ministry is that the identification of persons to fill vacancies lies with the Chief Executive Officer of the Ministry. Thereafter a review of the relevant file would be carried out by my office to ensure that they meet the requisite qualifications and thereafter a submission is made to the various Ministries for approvals for the creation of posts and/or new employment.

[16] Where the Claimant is concerned, contrary to the assertion made by the Ministry of Public Service that he was qualified for the post, a check of the relevant file revealed that he did not possess the required Associates Degree as outlined in the Terms of Reference established by the Ministry. Further, I have known the Claimant for many years and given his recent application made for the post of Stores Superintendent, I was aware that, contrary to the assertions, he did not have the requisite qualification for the post of District Technical Supervisor. Consequently, given the lack of qualification, the Chief Executive Officer did not offer any recommendation for the Claimant as instructed by the Ministry of Public Service.⁸

[18] Mr. Pascasio also failed to provide any authority showing that he was entitled to be placed in a position for which he did not possess the essential qualifications.

[19] As a result, I do not find any breach of Mr. Pascasio's constitutional rights.

Whether the termination of the claimant without reason was unlawful

[20] As an open vote worker, Mr. Pascasio was subject to the provisions of the Government (Open Vote) Workers Regulations. Regulation 24 provides that an open vote worker can be terminated on notice by the Head of Department, or upon payment in lieu of notice:

24.- (1) Notice of termination of a contract of service for an indefinite time given either by the Head of Department or the worker, shall be of the following respective durations, if the worker has been in the employment of the Department continuously –

[...]

(d) for more than two years – four weeks.

[...]

⁸ Affidavit of George Lotiff dated 16th February 2023.

(3) [...] If the Head of Department 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.

(4) In the event of termination of employment on the grounds of redundancy, a worker who has served a minimum of five years shall be entitled to one week's wages for each year of service as severance pay.

[21] Regulation 24 does not require cause for the termination of the employment of an open vote worker. As is common practice, termination without cause is permitted provided the proper amount of severance and/or notice is provided. It also does not require reasons to be provided.

[22] Mr. Pascascio's employment was terminated in accordance with the Government (Open Vote) Workers Regulations. He was not given notice, but was paid a sum equal to the wages that would have been payable in respect of the period of notice. Mr. Pascascio was employed with the Ministry of Works/Ministry of Infrastructure Development and Housing for ten years and seven months. As such, he was entitled to four weeks' notice. Mr. Pascascio was paid eight weeks' wages in lieu of notice, as well as 20 weeks' severance pay in compliance with Regulation 24. He was also paid wages in lieu of his accrued 7.5 vacation days and 3.5 days overtime. Mr. Pascascio does not challenge the sums paid to him on termination, and in cross-examination he agreed that he was paid all of his entitlements under Regulation 24. He is owed no more.

IT IS HEREBY ORDERED THAT

- (1) The claim is dismissed.
- (2) Costs are awarded to the defendants.

Geneviève Chabot
High Court Judge