

IN THE HIGH COURT OF BELIZE, A.D. 2023

CLAIM No. 394 of 2021

BETWEEN

BELIZE NATIONAL TEACHERS UNION

1st CLAIMANT

MARIO LANZA RODRIGUEZ

2nd CLAIMANT

AND

**CELIA USHER AS AND REPRESENTING THE MANAGING
AUTHORITY OF CATHOLIC PUBLIC SCHOOLS**

**1st DEFENDANT/
ANCILLARY CLAIMANT**

MINISTER OF FINANCE

**2nd DEFENDANT/
1st ANCILLARY DEFENDANT**

ATTORNEY GENERAL OF BELIZE

**3rd DEFENDANT/
2nd ANCILLARY DEFENDANT**

DECISION OF THE HONOURABLE MADAM JUSTICE PATRICIA FARNESE

HEARING DATE:

7th February, 2023

APPEARANCES:

Mr. Darrell Bradley, Counsel for the 1st Claimant.

Ms. Magalie Perdomo, Counsel for the 2nd Claimant.

Mrs. Samira Musa Pott with Mrs. Melissa Balderamos - Mahler, Counsel for 1st Defendant.

Mr. Douglas Mendes, S.C. and Ms. Iliana Swift, Counsel for 2nd and 3rd Defendants.

DECISION AFTER TRIAL

Introduction:

[1] This case arises from the Government of Belize's decision to reduce the salary of many Public Officers, including teachers, by 10% in response to the financial exigencies caused by COVID-19. Mr. Rodriguez is a teacher and Vice-Principal at St. Ignatius Primary School, a school operated by Catholic Public Schools (CPS). His salary was reduced by 10% without his consent despite having a contract with CPS that specified his annual salary to be \$41,961.00. Mr. Rodriguez seeks declarations related to the lawfulness of the Defendants' actions and damages for breach of contract.¹

[2] The CPS argues that they ought not to be liable for any breach of Mr. Rodriguez's contract because they were not involved in either the decision to reduce the salary or its implementation. The Minister of Finance and the Attorney General (the Government Defendants) also deny liability. The Government Defendants argue that the mandated 10% reduction in salaries only applied to teachers at government-run schools. The CPS is not a government-run school. CPS received a 10% reduction in the annual grant-in-aid they receive from the Government. The Government Defendants argue that the CPS, in effect, chose not to honor Mr. Rodriguez's contract when their grant was reduced. CPS could have made cuts elsewhere or found other funds to meet their contractual obligation.

[3] After a careful review of the *Education and Training Act*,² the *Education Rules*,³ and Mr. Rodriguez's contract, I find that Mr. Rodriguez's contract was not breached. His contract with CPS guaranteed that he would be paid based on the legislated pay scale. Mr. Rodriguez was paid according to the position on the legislated pay scale specified in the contract. Interpreting his contract as guaranteeing the amount listed as his annual salary would violate the applicable regulations and would render the contract unlawful. The Claim and Ancillary Claim are dismissed.

Issues:

¹ The 1st Claimant did not make separate submissions.

² Cap. 36.01 of the Substantive Laws of Belize, Rev. Ed. 2020 [*E&T Act*].

³ Cap. 36 of the Subsidiary Laws of Belize, Rev. Ed. 2020 [*the Rules*].

[4] After reviewing the evidence and submissions at trial, I find that the Claim and Ancillary Claim raise two (2) issues:

- 1. Was Mr. Rodriguez’s contract breached?**
- 2. If the contract was breached, who is liable for that breach?**

Background:

[5] There are very little facts in dispute. In 2021, Mr. Rodriguez was a teacher and Vice-Principal at St. Ignatius Primary School. The Parties agree that Mr. Rodriguez held a permanent position and was properly appointed following the procedure outlined in Rule 70 of the *Rules*. On June 1, 2021, Mr. Rodriguez’s salary was reduced by 10% without his consent and not restored until July 1, 2022. Many Public Officers received a 10% salary reduction at the same time.

[6] Mr. Rodriguez’s salary reduction was facilitated through the Government’s Smart Stream payroll system without CPS’ involvement. On May 28, 2021, the Chief Education Officer wrote to the CPS and informed them that the 10% salary reduction for teachers would be implemented on the “advice and instruction” of the Ministry of Finance. A week after the salary reduction occurred, the Financial Secretary of the Ministry of Finance released Circular No. 3 of 2021 on June 8, 2021. Circular No. 3 outlined the new pay scales for Public Officers, including “teachers”. The change to pay scales was implemented through the enactment of the *Belize Constitution (Public Service Emoluments and Allowances) (Reduction) Regulations*.⁴

[7] On July 6, 2021, the Chief Education Officer wrote to CPS and explained that their grant-in-aid would be retroactively reduced by 10.7% from April 1, 2021, in response to the National Assembly decision to reduce the budgetary allocations to the Ministry of Education. The July 6th Memorandum also outlined:

“For those primary schools that government acts in an agency capacity by facilitating the schools’ salary payments to their teachers through the Government’s Smart Stream program, the reduction in allocations was reflected in salaries paid as at the June 1, 2021.”

⁴ S.I. No. 59 of 2021.

The Government Defendants assert that the July 6th Memorandum was released to correct the Chief Education Officer's mistake of including grant-in-aid schools in Circular No. 3. With this clarification, the Government Defendants admit that they are not authorized to direct the CPS to reduce the salary of its teachers. The July 6th Memorandum, however, does not explicitly state that it is a correcting or rescinding the instruction to reduce the salaries by 10%. Rather, the letter says that any teacher paid through the Smart Stream payroll system has already seen their salary reduced.

Submission of the Parties:

[8] All contracts for employment as a teacher in Belize must be approved by the Teaching Services Commission before they take effect.⁵ Mr. Rodriguez's contract was so approved. As a result, Mr. Rodriguez argues that the Defendants are liable for breach of contract because they unilaterally changed the salary term of his contract. It matters not to Mr. Rodriguez whether this Court finds that liability for this breach occurred directly by CPS' actions or indirectly when the Government Defendants directed the alleged breach to occur.

[9] The Parties agree that St. Ignatius Primary School is a government-aided school and that CPS is the Managing Authority authorized to operate the school. The *E&T Act* distinguishes between a "government school" that is fully-funded by the Government and a "government-aided schools" that receives a "grant-in-aid" from the Government.⁶ The *Rules* further distinguish between grant-aided schools and a specially-assisted schools. Rule 10(4)(b) categorizes "Grant-aided Schools" as "schools which receive full grant-in-aid from the Government" and "Specially-assisted Schools" as those which "do not have full grant-aided status but which receive grant-in-aid from the Government through the Ministry of Education under a special agreement with the Minister."⁷

[10] CPS urges this court to either find that they did not breach their contract with Mr. Rodriguez or that they are entitled to be indemnified by the Government Defendants. The CPS is required by Rule 70(4) to offer a contract to teachers using a standard form contract prescribed in

⁵ Rule 70(1).

⁶ *E&T Act* at s 2.

⁷ The *Rules* at s. 10(4)(c).

Schedule 3 of the *Rules*. The contract identifies “St. Ignatius R.C. Primary” and “Catholic Public Schools” as the employer. Despite being expressly named as the Employer, CPS argues that the Government Defendants are responsible to pay Mr. Rodriguez’s salary because they dictate the terms of the contract. The Government Defendants disagree and maintain that the terms of the contract cannot be enforced against them because they are not a party to the contract.

[11] Although few details were provided about the specific grant-in-aid received by the CPS, the Parties do not dispute that the annual amount provided prior to the spring 2021, was sufficient to meet CPS obligations to pay salaries to teachers at rates specified by the *Education Rules*. In particular, Rule 55 establishes the rate CPS must pay teachers:

“55. Teachers of Government and Government-aided schools shall be paid in accordance with salaries for public officers on pay scales designated according to a classification scheme for teachers based on that teacher’s academic and professional qualifications.”

The CPS argues that they are entirely reliant on grant-in-aid to fund salaries and had no choice or involvement in the decision to reduce Mr. Rodriguez’s salary.

The provision of grant-in-aid is regulated by Rule 103, which provides:

“103.-(1) Schools with government-aided status shall receive grant funding on an annual basis for recurrent and/or capital expenditure according to such schedules and under such conditions as may be established by the Minister, in consultation with the Council.
(2) Notwithstanding the foregoing, the payment of all grant-in-aid shall be subject to the provision of the necessary funds by the National Assembly.
(3) The Minister may at any time change the schedule for determining grant-in-aid to schools, provided that grants may not be decreased by such changes without one year’s prior notice.
(4) The Minister may at any time change the criteria for eligibility for grant-in-aid, provided that grant-in-aid may not be discontinued to a school by such changes without one year’s prior notice.”

CPS also relies on (4) to assert that they should be indemnified for any finding of breach of contract because they were not provided with 1 year notice for the change to grant-in-aid. The Government Defendants, however, argue that (2) outlines that all grant-in-aid is conditional on an allocation from the National Assembly.

Analysis:

Was Mr. Rodriguez's contract breached?

[12] Mr. Rodriguez's contract was not breached as he was paid in accordance with that pay scale as lawfully amended by the National Assembly. Although the contract language could be more explicit, I find that the legislated pay scale is expressly incorporated into the contract. I further find that it is Mr. Rodriguez's position on the pay scale, and not the amount listed as an annual salary, which is binding between the Parties.

[13] To decide if the contract has been breached, I must interpret the Parties' intentions when the contract was formed. The Supreme Court of Canada, quoting from the House of Lords, provide a thorough description of that process:⁸

"[47]...the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine "the intent of the parties and the scope of their understanding" (Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada, 2006 SCC 21, [2006] 1 S.C.R. 744, at para. 27, per LeBel J.; see also Tercon Contractors Ltd. v. British Columbia (Transportation and Highways), 2010 SCC 4, [2010] 1 S.C.R. 69, at paras. 64-65, per Cromwell J.). To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning:

No contracts are made in a vacuum: there is always a setting in which they have to be placed. . . . In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.
(Reardon Smith Line, at p. 574, per Lord Wilberforce)

⁸ *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 (CanLII), [2014] 2 SCR 633.

[48] *The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement (see Moore Realty Inc. v. Manitoba Motor League, 2003 MBCA 71, 173 Man. R. (2d) 300, at para. 15, per Hamilton J.A.; see also Hall, at p. 22; and McCamus, at pp. 749-50). As stated by Lord Hoffmann in Investors Compensation Scheme Ltd. v. West Bromwich Building Society, [1998] 1 All E.R. 98 (H.L.):*

The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. [p. 115]”

[14] The Parties do not dispute that the contract between Mr. Rodriguez and CPS was entered into within a context where the terms and conditions of employment are largely set by the National Assembly. This reality is reinforced by the evidence that the Government Defendants and the 1st Defendant were in negotiations in 2021 about the pending pay scale reductions without CPS’ involvement.

[15] Rule 55 mandates that CPS pay its teachers according to a comprehensive pay scale that applies to all teachers in government and grant-in-aid schools. Rule 64(1) also outlines that:

“The employment of all members of staff of any school shall be in accordance with these Rules and any other laws made governing the employment of such staff.”

The legislated pay scale was referenced in the standard form contract CPS was required to sign with Mr. Rodriguez. As an experienced teacher in Belize, I find Mr. Rodriguez would have understood that his salary was based on the legislated pay scale for teachers set by the National Assembly. But even without this experience, Mr. Rodriguez’s contract contained the following terms which explicitly reference the *E&T Act*, the *Rules*, and the existence of a pay scale:

“AND WHEREAS the Employee is able and willing to provide this said service; NOW, THEREFORE, it is hereby agreed as follows:-

- 1. the Employer agrees to engage the services of the Employee subject to the terms and conditions herein contained.*
- 2. The Employee agrees and undertakes that he will diligently and faithfully perform assigned duties for the period of his engagement and will act in all respects in accordance*

with the Education and Training Act, 2010 and the Education Rules 2012 and accordingly to legal instructions given to him by persons duly authorized to do so.

3. *This Agreement is subject to the conditions set forth in the Schedule hereto annexed, and the Schedule shall be read and construed as an integral part of this Agreement.”*

The Schedule to the contract specifies that Mr. Rodriguez’s Pay Scale is 16 which entitles him to an annual salary of \$41, 961.00.

[16] An interpretation of the contract that entitles Mr. Rodriguez to the annual salary amount and not to **be** paid at the state pay scale directly conflicts with the Rules. Rule 70(4) (d) provides the salary listed in the contract is an “entry point” and not meant to fix the amount of salary:

“(d) the salary scale and entry point at which the teacher is to be paid, approved by the Ministry, in accordance with Government salary scales for teachers;...”

While this entry point is typically the base of one’s salary, amendments to reduce salaries, while rare, are not precluded by the *E&T Act* and the *Rules*.

[17] Furthermore, adopting an interpretation of the contract that guarantees the annual salary specified in the contract would have the unintended effect of precluding Mr. Rodriguez from benefitting from any amendments to increase the salary scale and the normal career progression up the pay scale through the award of annual increments and special awards. Fixing the annual salary amount would render the detailed provisions for increments and special awards in the *Rules* moot and defeat the purpose of having a legislated pay scale.⁹

[18] Adopting a common sense approach that is alive to the context within which Mr. Rodriguez and CPS entered into the contractual relationship supports the finding that the pay scale and not the annual salary amount is the binding contractual term. Any other interpretation would be a clear violation of the *Rules* and would render the contract unlawful. As the Court has been given no reason to believe that the amendments to the pay scale were not validly enacted, Mr. Rodriguez’s contract was not breached. He was paid according to his position on the legislated pay scale as specified in his contract with CPS.

⁹ See Rules 88 and 91.

If the contract was breached, who is liable for that breach?

[19] In light of my finding that the contract was not breached, I decline to address this issue. A finding on this question has the potential to have broad application and is best decided when there is a live issue before the Court.

Disposition:

[20] For the reasons discussed, Mr. Rodriguez's Claim is dismissed. The Defendants are entitled to their costs from the Claimants as agreed or assessed. CPS' Ancillary Claim is also dismissed without a finding therefore each party will bear their own costs.

Dated April 3, 2023

Patricia Farnese
Justice of the High Court of Belize