

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

CLAIM NO.: SLUHCV2025/0312

BETWEEN:

SAINT LUCIA DEVELOPMENT BANK

Claimant

-and-

VINCENT BOLAND

Defendant

Before the Honourable Mr. Justice Alvin Shiva Pariagsingh

Appearances:

Mr. Leevie Herelle for the Claimant
Mr. Horace Fraser for the Defendant.

2026: March 24– Trial
April 21 – Decision

Judicial review – Decision of Labour Tribunal – Wrongful termination – Award of damages – Fixed-term contract – Contractual notice period – Effect of statutory regime on common law right to terminate on notice – Sections 4 and 129 of the Labour Act Cap 16.04 – Failure to provide material evidence.

JUDGMENT

INTRODUCTION:

[1] This is claim for judicial review of the decision of the Labour Tribunal (“the Tribunal”) dated 24 June 2025 and registered as a judgment of the High Court on 27 August 2025 (“the Tribunal’s Decision”) pursuant to section 448 of the **Labour Act**.¹

¹ Cap. 16.04 of the Revised Laws of Saint Lucia (2023) (“the Act”)

[2] In its Fixed Date Claim Form, the Claimant originally advanced five grounds on which it alleged the Tribunal erred in law. However, at the trial, counsel for the Claimant confined its case to the last two grounds, namely that:

- 1) the Tribunal having determined that the termination of the Defendant was unlawful, misdirected itself on the legal principles for determining the award of damages and made an award which was wrong in law and erroneous; and
- 2) the Tribunal, in the making of its award to the Defendant, failed to consider, take into account or give credit to the fact that the Claimant had paid the Defendant the sum of \$71,904.00 as payment in lieu of notice upon his termination.

[3] I therefore proceed on the basis that the Claimant's claim is confined to the Tribunal's approach to damages and its treatment of the payment of \$71,904.00.

[4] The Claimant's case, put simply, is that the Tribunal ought not to have awarded compensation by reference to the unexpired balance of the contractual term. Instead, it should have confined any recovery to the notice period provided for in the contract of employment between the Claimant and the Defendant. This is three months' salary in lieu of notice, which has already been paid to the Defendant. The Claimant therefore seeks an order quashing and setting aside the Tribunal's Decision.

[5] The Defendant resists the claim. It contends that the Tribunal's Decision is sound in law. It argues that, with the advent of the **Labour Act**, employers can no longer terminate employment by invoking a contractual notice provision.

THE DECISION OF THE LABOUR TRIBUNAL:

[6] The Tribunal found that the Defendant entered into a contract of employment with the Claimant on 29 April 2021. He was employed as Managing Director for a term of three years, expiring on 30 April 2024. This was his second consecutive three-year contract.

His monthly remuneration totalled \$19,000.00. This comprised salary, a housing allowance, and an entertainment allowance.

- [7] The Tribunal also found that, by letter dated 19 November 2021, the Claimant terminated the Defendant's employment. It did so without giving the required notice under the contract. The reason given was that the Claimant required leadership aligned with its revised strategic direction. The Board had concluded that those attributes were "less than optimal in the current leadership". The Tribunal further noted that the Defendant received severance benefits totalling \$71,904.00. This included three months' pay and vacation pay, less tax deductions.
- [8] The Tribunal held that the **Labour Act** applied to the relationship between the parties. It found that, by virtue of **section 4**, the contract of employment could not exclude or limit the operation of the Act, as it provided no greater benefit. It further found that no valid reason was given for the Defendant's termination under **section 129**. The Claimant had also failed to comply with **section 136**. It did not notify the Defendant of any unsatisfactory performance or give him an opportunity to respond or improve. The Tribunal therefore held that the dismissal was wrongful.
- [9] The Tribunal held that the general measure of damages is to place the Defendant in the position he would have been in had his contract not been unlawfully terminated. It relied on **Michel Magloire v Attorney General**², which followed **Angela Innis v Attorney General of St Christopher and Nevis**³, and **Jerome Jules v National Utilities Regulatory Commission**.⁴
- [10] It concluded that, where a party is engaged under a fixed-term contract, the measure of damages is the wages that would have been received during the unexpired portion of the contract. It also held that an award may include both compensation for unfair dismissal and damages.

² HCVAP2008/019 (unreported).

³ [2008] UKPC 42.

⁴ SLUHCV2021/0243 (unreported).

[11] Accordingly, the Tribunal awarded \$557,138.44 for the unexpired portion of the contract and \$30,000.00 for the manner of dismissal. The total award was \$587,138.44, together with interest and costs.

THE CLAIMANT'S EVIDENCE AND SUBMISSIONS:

[12] In his affidavit, Mr. Cornelius Sidonie states that the Tribunal failed to apply the correct principles in assessing damages. He says the Defendant should have been placed in the position he would have been in had the contract not been breached. He further states that, where there is a specific termination clause, damages are limited to the notice period in that clause.

[13] The affidavit also states that the contract allowed either party to terminate early by giving three months' written notice. It adds that, under **section 155** of the Act, the Claimant could pay in lieu of notice. The Claimant says it has already paid the Defendant \$71,904.00 as payment in lieu of notice.

[14] In its submissions, the Claimant argues that there was no lawful basis for the Tribunal to award the unexpired balance of the contract term. It seeks to distinguish the authorities relied on by the Tribunal.

[15] The Claimant submitted that the cases relied on by the Tribunal to award damages on the basis of the unexpired term of the contract concern public law principles on the dismissal of public officers by public authorities. It further submits that **Jerome Jules** does not depart from the established common law rule. That rule is that damages for wrongful dismissal are limited to what the employee would have received if termination had been carried out in accordance with the contract.

THE RESPONDENT'S EVIDENCE AND SUBMISSIONS:

[16] In response, The Defendant states in his affidavit that the Tribunal did not err in law when awarding compensation. He contends it was guided by the Court of Appeal decision in **Michel Magloire** and the High Court decision in **Jerome Jules**. He further states that the common law right to terminate by giving notice no longer applies in Saint

Lucia following the enactment of the Labour Act. He adds that the Tribunal acknowledged the payment of \$71,904.00, which must be deducted from the award.

[17] In its submissions, the Defendant argues that the Tribunal correctly treated the employment as a fixed-term contract. It says the Tribunal properly awarded compensation and damages on that basis, in line with **Michel Magloire, Angela Inniss, Jerome Jules, and Horace Fraser v The Judicial and Legal Service Commission et al**⁵. These authorities, it submits, establish that the measure of damages is the balance of remuneration and benefits due under the contract, rather than damages limited to the notice period. The Defendant further submits that the payment of \$71,904.00 was expressly acknowledged by the Tribunal. It says this discloses no error of law and should simply be deducted from the award.

ISSUES:

[18] The issues for determination are as follows:

- 1) Whether, on the evidence before this Court, the Labour Tribunal misdirected itself in law by awarding compensation and damages by reference to the unexpired term of the contract, rather than the contractual notice period; and
- 2) Whether, on the evidence before it, this Court can properly conclude that the Labour Tribunal failed to consider or give credit for the payment of \$71,904.00.

THE APPLICABLE LAW:

[19] **Section 448** of the Act entitles a party to apply to the High Court for judicial review of a decision of the Labour Tribunal. One ground is that the decision is erroneous in law.

[20] **Section 449** of the Act sets out the orders the Court may make. These include quashing the Tribunal's decision, remitting the matter with directions, directing a new hearing, or dismissing the application.

⁵ [2008] UKPC 25.

[21] **Section 4** of the Act is of particular importance. It provides that any provision in an agreement that seeks to exclude or limit the operation of the Act is void. The exception is where the provision gives greater or higher benefits than those set out in the Act.

[22] The decision in **Jerome Jules** makes clear that a contractual term allowing termination without cause limits **section 129** of the Act. **Section 129** requires a valid reason for termination. The Court therefore held that such a clause is void under **section 4**. It reasoned that the statutory requirement of a valid reason provides a greater benefit, namely job security.

[23] The Court also made clear that the “greater benefit” exception in **section 4** is not satisfied by a longer notice period. **Section 129** is not concerned with notice. It requires a valid reason for termination. To ignore that requirement would defeat the purpose of the Act.

[24] The Court further held that, where a tribunal wrongly treats a contract as validly terminated under such a clause, it will also err in its award. If the clause is void, it cannot be used to assess damages.

[25] The Court held that, in a fixed-term contract, the general measure of damages is to place the employee in the position he would have been in had the contract not been terminated. This is usually the wages and benefits for the unexpired term. It also confirmed that, under **section 442** of the Act, an award may include both compensation for unfair dismissal and damages.

[26] It is therefore not correct to say that a notice clause always limits recovery to the notice period. If such a clause allows termination without a valid reason, it may be void under **section 4**, as it limits **section 129**. However, a termination clause may remain valid if it is consistent with the Act and does not reduce its protections. In that case, it may be considered in assessing whether it provides greater benefits. The application of **Jerome Jules** depends on whether the contractual term complies with the Act.

ANALYSIS:

Ground 1 – Measure of damages, Remainder of Contract period v Notice period.

[27] It is not the function of this Court, on this application, to re-try the labour dispute or to resolve contested facts afresh. The Court's task is to determine whether an error of law appears on the record before it.

[28] The Claimant's complaint rests on the contract of employment. It says the contract allowed either party to terminate on three months' notice. It also says payment could be made in lieu of notice. On that basis, it argues that recovery should have been limited to the notice period. It therefore contends that the Tribunal's award was wrong, as it was based on the unexpired term of the contract.

[29] That may or may not be correct. However, in light of **Jerome Jules**, it is not enough for an employer to rely on the existence of a notice clause. The clause must be examined in the context of the contract as a whole. The Court must consider whether **section 129** is engaged and whether **section 4** renders the clause void or preserves it. Only then can the proper measure of damages be determined. The outcome therefore depends on the evidence, particularly, the contract itself.

[30] The difficulty for the Claimant in this case, on this ground, is that the necessary evidence is not before this Court. The contract of employment and the termination letter have not been adduced in evidence.

[31] Additionally, there is no transcript or notes of the proceedings or documents presented before the Tribunal. The only document in evidence is the Tribunal's Decision. That decision refers to only part of the termination letter. It quotes provisions of the Act, but gives no detail of the alleged termination clause, save for paragraph 6, which states:

"On November 19, 2021, the Board of the Respondent terminated Mr. Boland's employment without giving the required notice as provided in the Contract."

[32] The Court is therefore asked to assess the Tribunal's award by reference to contractual and factual matters that are asserted in affidavits and submissions but not proved by evidence.

[33] It is well established that submissions, however forceful, are not evidence. To review the Tribunal's Decision on this material would require the Court to speculate about the terms of the contract, the arguments before the Tribunal, and the evidence, including the termination letter, that was before it.

[34] If the Claimant seeks to show that the Tribunal's conclusion on quantum was plainly wrong, it was required to place the necessary evidence before this Court. This includes the contract of employment and the termination letter. It has not done so.

[35] To borrow the language of the Caribbean Court of Justice in **Ashmidphraque David Sheermohamed et al v S.A. Nabi and Sons Ltd**⁶, the Court is "starved of evidence". It has not been provided with the documents needed to determine whether the Claimant's case can succeed. On this ground, the claim fails.

Ground 2 – Treatment of the payment of \$71,904.00.

[36] I now turn to the Tribunal's treatment of the payment of \$71,904.00. In its decision, while it is acknowledged that this payment was made, there is no clear explanation of how it is to be reconciled with the award. In particular, the Tribunal does not state whether this sum is to be deducted from the awards made.

[37] Counsel for the Claimant submitted that this sum represents the correct amount that ought to have been awarded in the first place. For the reasons set out above, I am unable to reach that conclusion on the evidence before me.

[38] Counsel for the Defendant, quite frankly and openly, accepted that, given the acknowledgement of this sum, it must be deducted from the awards made by the Tribunal. In my view, that submission is correct, and I agree. On this issue, the Claimant must succeed.

⁶ [2011] CCJ 7 at para [7].

CONCLUSION:

[39] In relation to ground 1, the Claimant bore the burden of establishing a reviewable error of law. In my view, it has not discharged that burden. While the Claimant may have grounds to challenge the quantum awarded, this Court cannot determine that issue fairly or judicially on the material before it. Accordingly, the claim must fail.

[40] In relation to ground 2, there was no dispute that the sum paid must be deducted from the final award.

CLAIMANT'S FILING ON 26 MARCH 2026 AFTER JUDGMENT WAS RESERVED:

[41] At the hearing, during the submissions of learned counsel for the Claimant, I asked counsel to point me to the contract that he was referring to in the evidence before me. It became obvious that the contract on which submissions were being made was not before the Court.

[42] That did not prompt counsel to immediately make an oral application to supplement his evidence by tendering a copy of the contract. Counsel instead proceeded to complete his submissions and close his case as did the Defendant, before judgment was reserved.

[43] After judgment was reserved counsel for the Claimant filed a "Supplemental List of Exhibits" indicating on a cover sheet: "These exhibits marked "Exhibits SLDB 1- SLDB2 are supplemental to the Trial Bundle filed on 23 March 2026."

[44] I have not considered these documents in my determination of this case for the following reasons:

- 1) The Claimant's case was closed.
- 2) No application was made by the Claimant to reopen its case and lead further evidence.
- 3) There being no application to move the Court, it would be improper for the Court to move itself, descend into the arena and mitigate any prejudice to

the Defendant by re-opening the Claimant's case and permitting further evidence.

- 4) Exhibits are annexed to evidence, either a witness statement or an affidavit, in this case an affidavit. Trial bundles do not have exhibits so the filing in any event is procedurally improper.
- 5) The Court could not properly consider any prejudice to the Defendant as there had been no proper application filed permitting the Defendant to oppose the inclusion of the additional evidence.

COSTS:

[45] The general rule is that costs follow the event. This is a judicial review application under the **Labour Act**. It is a review on specific statutory grounds and is not subject to prescribed costs. The applicable regime is therefore assessed costs.

[46] In exercising my discretion, I take into account that the Claimant has failed on ground 1 and that ground 2 was conceded. Although the Claimant succeeded on ground 2, I am not minded to reduce the costs payable.

[47] I therefore order the Claimant to pay the Defendant's costs on ground 2. There was no evidence of compliance with the Pre-Action Protocols. Given the Defendant's concession, compliance could have avoided litigation on this issue altogether.

[48] The effect of compliance with pre-action protocols was considered by the Board in **Vijay Singh v Public Service Commission**⁷. Compliance with pre-action protocols is an important factor in costs decisions, but it is not decisive. It is the normal and reasonable course. The Court will consider any failure as part of the parties' overall conduct⁸.

[49] Non-compliance does not automatically result in a costs penalty. The Court considers whether the failure caused unnecessary proceedings or additional costs, and whether

⁷ [2019] UKPC 18

⁸ See para 3.3 of PD 2 of 2023 (Pre-Action Protocols)

a costs order would place the innocent party in the position it would have been in had the protocol been followed⁹.

[50] In this case, the failure to issue a pre-action protocol letter likely led to avoidable litigation. There was no dispute that the sum paid had to be deducted. In my view, this justifies departing from the usual rule that costs follow the event in relation to ground 2.

[51] Accordingly, the Claimant shall pay the Defendant's costs of this claim. If not agreed, the costs are to be assessed within 21 days in accordance with the detailed assessment procedure.

ORDER:

[52] For these reasons, I make the following orders:

- 1) Ground 1 of the Claimant's claim for judicial review of the Labour Tribunal's Decision is dismissed and the orders of the Labour Tribunal are affirmed.
- 2) Ground 2 being conceded, the sums paid by the Claimant to the Defendant shall be deducted from the sums payable to the Defendant.
- 3) The Claimant shall pay the Defendant's costs of this claim, such costs to be assessed following the detailed costs assessment procedure, if not agreed within 21 days of today.

**Alvin Shiva Pariagsingh
High Court Judge**

By the Court,

Deputy Registrar of the High Court

⁹ See para 3.4 of PD 2 of 2023 (Pre-Action Protocols).