

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

Antigua and Barbuda

Claim No: ANUHCv2019/0414

BETWEEN:

VASBERT DRAKES

Claimant

and

CRICKET WEST INDIES

Defendant

Appearances:

E. Ann Henry KC and Ralph Thorne KC and Mandi Thomas of counsel for the Claimant

Kendrickson Kentish of counsel for the Defendant

2022: April 22nd

2023: March 29th

JUDGEMENT

- [1] **Drysdale, J:** Before the Court is a claim for breach of contract for services which the Claimant contends was unlawfully terminated.

BACKGROUND

- [2] The Claimant filed these proceedings seeking damages for breach of contract. The Claimant states that the contract between the Defendant and himself existed partly in writing, partly orally and partly by the conduct of the parties. The effect of which was to extend his engagement until the end of August 2019. However, on 10th April 2019 the Defendant unlawfully terminated his contract. The Defendant argues that the contract expired by effluxion of time on 11th March 2019.

THE EVIDENCE

- [3] Only the Claimant presented evidence in support of his claim. The Defendant relied on three witnesses namely, Jonathan Grave, Rawle Lewis and Roland Holder. A synopsis of their evidence necessary to resolve this matter is contained below.

The Claimant

- [4] The Claimant started his career in Cricket as a professional player and eventually became an accredited level three coach in the sport. The Claimant was also a long-standing friend and colleague of Richard Pybus who was the Head Coach of the West Indies Cricket Team.
- [5] On or about 29th December 2018 the Claimant received a telephone call from Richard Pybus asking him to consider being his Assistant Coach. That he was informed that this was to be for the series against England, through the World Cup in England and through the series against India at the end of August 2019. The Claimant was informed that a recommendation to that effect would be made to the Defendant.
- [6] The following day he was congratulated on his appointment by the Director of the Defendant. Subsequently via email he was welcomed to the team. He was also added to their WhatsApp chat group which was set up to allow management and the coaching team to communicate.
- [7] On or about 11th January 2019 he commenced work as part of the Coaching Team. As part of his duties he practiced with the team at Kensington Cricket Ground leading up to the test match in Barbados. About ten days after he commenced employment he received an email with attached a document titled "Contractor Agreement". It was a contract for employment but stipulated a much shorter term to that which he had previously agreed to with Richard Pybus. He inquired about the term from Richard Pybus and was assured that it was until the end of August 2019. He signed the agreement but treated it as only a partial expression of his entire contractual arrangement with the Defendant
- [8] The tour of England ended in St. Kitts on 11th March 2019. No one told him that his engagement had ended and the entire Coaching Team and Administration functioned as if his engagement was continuing. He upon the directions of Richard Pybus conducted research on the opponents in the World Cup and also did rehabilitative work with a senior team member. He was scheduled to travel to Antigua to join the remainder of the Coaching team for a camp in preparation of the tours to Ireland, the World Cup in England and India and in the Caribbean. In that vein he on 2nd April 2019 attended the last planning meeting with Management and the Coaching team ahead of the scheduled camp.
- [9] During that meeting he profited the opportunity to inquire about his contract and was told by Rawle Lewis that the contracts were prepared and were in the process of being delivered. He continued to work with the understanding that it would be until the end of August 2019. Prior to that meeting on 19th March 2019 he

received a letter asking him to confirm his blazer and clothing size for upcoming tours. He provided the requested information.

[10] On 10th April 2019 he participated in a conference call with the Chief Executive Officer of the Defendant. He was informed that there was a change in the establishment which resulted in a change in the coaching staff. He was informed that his contract was terminated. He immediately consulted his attorney who wrote to the Defendant asking that the Defendant communicate its intention in a formal manner. Later that day he received a letter from the Defendant advising that his 'services will not be required as part of the Management Team to the upcoming ICC Cricket World Cup.' On 16th April 2019 the Defendant issued a further letter stating amongst other things that the term of his contract was 16th January 2019 to 11th March 2019.

[11] On cross examination the Defendant admitted that the only assurances he received concerning his continued employment were from Richard Pybus. He also stated that although it was not the norm for coaches to have an agent, he had an agent who negotiated his terms with the Defendant.

[12] When questioned about his rehabilitation work with a senior member he could not recall whether this work was for the Defendant. He admitted that these rehabilitation works were not in preparation for an upcoming match but was natural rehabilitation. He also could not recall whether that team member was selected for the upcoming tour.

[13] Regarding the assertion that research was conducted on the opposing teams scheduled to participate in the World Cup, the Claimant suggested that although the Defendant's had employed analysts that no one was performing this task.

[14] The Defendant was challenged on his assertion that he was invited to attend the training camp in April 2019. He also admitted that he was not copied on the initial email which set the dates for the tours and on any email concerning the camp but stated that this was nonetheless an invitation to attend the camp.

[15] The Claimant also admitted that he was aware that Roland Holder was responsible for contract negotiations and as such his question to Rawle Lewis was only a general question. He reiterated that when he signed the contract that it was on the understanding that the term was from January 2019 to August 2019 and that further he was informed that he had been terminated.

[16] The Claimant admitted that when he was informed that there had been a change in establishment that he understood that to mean that there was a change in the Board.

The Defendant

Rawle Lewis

- [17] The witness deposed that he was the Senior Men's Manager for the Defendant. That as part of the preparation for scheduled cricket activities including training camps and tours, the Operations Department contacts both players and support staff to provide some information on the upcoming event in case they are selected. This action is standard practice in the department which allows for better preparation when making the necessary arrangements.
- [18] The witness highlighted that it is important to send information to persons who were involved in the last tour in case they are selected or re-appointed to the upcoming tour. However, he insisted that this is not any indication that a person has been selected to play for or to be part of the management of Cricket West Indies.
- [19] That at the end of the England series, everyone was fully aware that the Ireland Tour and Cricket World Cup would be the upcoming events for the West Indies men's team. As the person responsible for disseminating information to the squad, he decided to share some information with the support staff of the recently ended England series in three separate emails. This Information highlighted the schedule of matches and other information relating to the World Cup. No guarantee was given to either player or support staff at this early stage of communication. This was merely an information sharing exercise. This has been a standard practice of Cricket West Indies' preparation for forthcoming tours for several years.
- [20] The witness testified on cross examination that he was engaged in the operational functions concerning the upcoming tours to Ireland and England. He stated that he was not involved in contract negotiations and or strategic planning, the latter of which was done by the Head Coach. He also vehemently denied discussing a contract with the Claimant or informing him that Roland Holder would be delivering it. He stated that contracts were the purview of the Human Resources Department which department would send contracts to coaches and management. He denied that there were circumstances where coaches and team players executed their contract after the start of a game. He also denied the assertion that the same happened to him when he was a player.
- [21] He agreed that part of his function as Operational Manager was to outfit the teams. He explained that the time frame to produce a blazer was three weeks. Thus, he routinely took the measurements of all persons who were part of the previous tour to keep on file in the event they were selected for the upcoming tour.
- [22] He stated that he copied emails to inform the Claimant as a current member of staff, as member of the previous tour group and having a reasonable anticipation that he would be part of the upcoming tour. He admitted that when he wrote the email that there were no other coaches.

- [23] He also agreed Floyd Reifer was appointed as the Head Coach that would be attending the World Cup. As such he was required to start making preparations for the departure to the World Cup. To that end there was a zoom meeting in preparation for the tour, which meeting the Claimant was a part of and participated therein. That meeting was post March 11th.
- [24] He denied that there was a camp planned for 20th April 2019 and stated that there were mere discussions. He admitted to becoming aware that the coaching staff was changed and that Richard Pybus, the Claimant and the two other Assistant Coaches were removed.

Roland Holder

- [25] The witness deposed that at the material time he was the Senior Manager, Cricket Operations for the Defendant. That he had communication during the course of his duties, with Will Quin who is the agent for Claimant and whom the Claimant had advised was authorized to negotiate his contract for the West Indies versus England series in 2019.
- [26] On January 8, 2019 at 08:20 hours he sent a WhatsApp message to Mr. Quin enquiring if he was free to chat. Mr. Quin responded at 18:56 hours apologizing for his tardiness and indicating that he had been flying all day and asking if this could take place in 5-6 hours. He responded advising him that he wanted to chat about the Claimant's contract and proceeded to outline the offer the Defendant was making to him. That offer clearly stipulated the term to be from 16th January 2019 to March 11, 2019.
- [27] Mr. Quin responded that he was taking off in 10 minutes and that we would chat the next day. At the same time, he enquired as to the Claimant's situation post March 11. It was explained to him that the Defendant was offering short-term contracts only. The conversation ended at that point. Later he received a message from Mr. Quin on January 9, with a request for an increase in the daily rate offered by Defendant. He responded indicating that it was a tour-by-tour contract and making a counter offer to his increase in his daily rate.
- [28] Mr. Quin responded that it was a tour-by-tour contract ending on March 11, 2019 and that there was no certainty for Mr. Drakes being contracted for Ireland and the World Cup.
- [29] On January 11 Mr. Quin indicated that he had just spoken to the Claimant and was hoping to hear back from him soon. The next day, Mr. Quin sent a message for the Defendant to share the initial 55-day contract and shared the view that the Claimant will accept the terms of the offer.
- [30] On January 16 there was a reminder from Mr. Quin to share the initial contract which was sent to him. The Claimant signed the contract and returned it to the Human Resources department.
- [31] There was no further communication with either the Claimant or Mr. Quin as it relates to contracting the Claimant after March 11, 2019.

- [32] The witness also commented on two paragraphs of the witness statement of the Claimant as it related to the assertions of him training a player and the disputed camp. In relation to the first issue, the witness stated that in a situation where the Defendant asks to work with a player, necessary arrangements which included contacting the Barbados Cricket Authority to ensure the facilities are available and arranging the associated costs would have to be made. No such costs ever came to the attention of the Defendant and as such it was highly unlikely that the Defendant authorized any such training.
- [33] The witness also indicated that any arrangements for team travel or to gather for a camp would first come through him. This was because a budget dealing with all the expected expenses would have to be prepared and agreed. No budget was ever done and thus there could not have been any camp.
- [34] On cross examination the witness deposed that if the Claimant was working with a player as alleged then the Barbados Cricket Authority as their agent would have sent the Defendant a bill as they always did. No such bill was received. The witness agreed that the Claimant's evidence is that Richard Pybus instructed him to work with the player and not the Defendant. He was unable to confirm that Richard Pybus gave the Claimant those instructions.
- [35] He deposed that next to Jimmy Adams he is the most senior person that deals with contracts. That further contracts were prepared by the Human Resources Department and that contracts were sent out by email. That he was copied on all contracts relative to his position. He denied that a contract was ever prepared for the Claimant post 11th March 2019.
- [36] He stated that the coaching staff was "moved on" after the installation of a new Board of Directors in April. He stated that sometime in April 2019 the Claimant not being on contract was told that he was not likely to go to the World Cup in England.
- [37] When asked about whether any players were receiving training during the period 10th March 2019 to 11th April 2019 he stated that he was unaware of any training being undertaken as no financing for this had been provided. He stated that preparations were made for all eventualities but that everything was contingent upon their being an approved budget. No such budget being approved there was no camp in April 2019.
- [38] Finally, the witness agreed that the Claimant came to the Defendant upon the recommendation of Mr. Pybus. That the two were close and had worked together previously when Richard Pybus was Director of Cricket. That the Head Coaches were given an opportunity to select their team and as such he assumed that the Claimant came when Pybus came and went when Pybus went. However he stated that the Claimant and Richard Pybus had been at the Defendant on other occasions and have not left at the same time. He agreed that Richard Pybus was a casualty of the West Indies First Policy which was a policy to put everything in place to ensure that West Indies comes first.

- [39] Finally, that he wrote to the Barbados Cricket Authority informing them that the Claimant could resume his duties upon the instruction of the Board of Directors. This instruction came after the installation of the new Board of Directors.

Jonathan Grave

- [40] The witness was the Chief Executive Officer of the Defendant. The witness deposes that Richard Pybus was on an acting appointment and he had no authority to hire anyone for Cricket West Indies. Secondly, all of the communication which the Defendant exchanged with the Claimant prior to the World Cup and Ireland tours were standard precautionary steps. These steps, such as taking measurements for team blazers for anyone who might be under consideration for a forthcoming tour were nothing new to the Defendant and it was always known within the institution that this was neither an offer nor a commitment for the forthcoming tours.
- [41] On 16th April 2019 he wrote to the attorney at law for the Claimant in response to his letters of 10th and 11th April 2019. In that letter he explained the position of the Defendant. That if the Claimant performed any work for the Defendant after the expiration of his contract that the Defendant has always been willing to pay him.
- [42] In a lengthy cross examination, the witness deposed that he did not participate in the hiring of the Claimant. He stated that the interim Head Coach Richard Pybus made a recommendation to hire the Claimant as an assistant Head Coach along with two others. This recommendation was accepted and the Claimant as well as the other two persons recommended as Assistant Coaches were all hired. He signed off on the contract for the Claimant but was not involved in any negotiations. The witness stressed that Mr. Pybus had no authority to hire anyone.
- [43] He also stated that he did not hire the Claimant upon the natural end of his contract and as such any work allegedly done must have been gratuitous. However, the witness explained that whilst he did not believe that any work was done for the Defendant if mistaken, the Defendant would be willing to compensate the Claimant accordingly.
- [44] Regarding the issue of the blazers, the witness explained that the Defendant does not keep blazers in stock and that there is a six week wait time for them. He explained further that the request for measurement is a precautionary measure in case they were needed for further tours. Later he admitted that requesting a blazer size meant that that the Claimant was under consideration future tours if Mr. Pybus remained as Head Coach.
- [45] He also denied that the Claimant was engaged in any meaningful work for and on behalf of the Defendant. He asserted that being copied on an email is not tantamount to being actively involved or providing any

meaningful work. He also stressed that he as Chief Executive Officer was unaware of the Claimant being retained to do any work for the Defendant and as such any work the Claimant performed post 11th March he reasoned must have been gratuitous. He expressed that had the Claimant attended any review meeting for the Defendant, then the Defendant would have been prepared to pay him. However, he never received any information that the Claimant was actively involved in any work for the Defendant.

- [46] The witness denied that there was a camp in Antigua and explained that camps are done in preparation for tournaments. The witness stated that although Mr. Pybus wanted a camp, ultimately there was no need for one as there were no scheduled tournaments necessitating this. He however stated that had the camp taken place that he would have expected the Claimant to be part of it.
- [47] The witness further deposed that subsequent to there being a change in the Board of Directors, that a new West Indies First policy was adopted. This policy mandated that preference should be given to West Indians for coaching positions. As a result, Richard Pybus who was not from the region returned to his substantive post. The witness disagreed that the fate of the Claimant was linked to Mr. Pybus as the Claimant was West Indian. He suggested that if the new Head Coach had made a recommendation to keep the Claimant, then he would have been rehired once there were no performance issues. Later he agreed with the suggestion that if Pybus went so did the Claimant.
- [48] Finally, the witness denied that Rawle Lewis was involved in the contract preparation. He explained that this was a function of the Human Resources Department. He agreed however that it was the practice that Ronald Holder would deliver the contracts once prepared.

THE ISSUES

- [49] The issues upon which this case will be determined concerns the following:
1. Whether the oral representations and or course of conduct of the Defendant gave rise to an implied contract between the Claimant and Defendant.
 2. Whether the oral representations and or course of conduct of the Defendant gave rise to a legitimate expectation of a contract of engagement terminating on 30th August 2019.

ANALYSIS AND THE LAW

Whether the oral representations and or course of conduct of the Defendant gave rise to an implied contract between the Claimant and Defendant.

- [50] Contracts may be categorized as either express or implied. Express contracts are those in which there are clear and unequivocal terms which communicate a promise that the parties have made to one another.

Implied contracts are contracts which are not in writing and are based on the parties conduct which gives rise to the assumption of the existence of a contract. The Learned authors of Chitty's on Contract¹ in a more expansive statement on the law articulate the following:

'Contracts may be either express or implied. The difference is not one of legal effect but simply of the way in which the consent of the parties is manifested. Contracts are express when their terms are stated in words by the parties. They are often said to be implied when their terms are not so stated, as, for example, when a passenger is permitted to board a bus: from the conduct of the parties the law implies a promise by the passenger to pay the fare, and a promise by the operator of the bus to carry him safely to his destination. There may also be an implied contract when the parties make an express contract to last for a fixed term and continue to act as though the contract still bound them after the term has expired. In such a case the court may infer that the parties have agreed to renew the express contract for another term. Express and implied contracts are both contracts in the true sense of the term, for they both arise from the agreement of the parties, though in one case the agreement is manifested in words and in the other case by conduct. Since, as we have seen, agreement is not a mental state but an act, an inference from conduct, and since many of the terms of an express contract are often implied, it follows that the distinction between express and implied contracts has very little importance, even if it can be said to exist at all.'

[51] In order to determine the existence of an implied contract an objective rather than a subjective view must be taken. The learned authors on Chitty on Contracts² advise that its starting point is the manifestation of mutual assents by two or more persons to one another. They agree that 'agreement is not a mental state but an act, and as an act, is a matter of inference from conduct. The parties are to be judged, not by what is in their minds, but by what they have said or written or done.'

[52] Later they³ go on to state:

¹ 28th Edition Volume 1 paragraph 1-034

² 28th Edition Volume 1 1-004

³ Chitty on Contracts 28th Edition Volume 1 paragraph 2-028

‘Where an offer or an acceptance or both are alleged to have been made by conduct, the terms of the agreement are obviously more difficult to ascertain than where the agreement was negotiated by express words. The difficulty may be so great as to force the court to conclude that no agreement was reached at all. But sometimes the court can resolve the uncertainty by applying the standard of reasonableness or by reference to another contract (whether between the same parties or between. One of them and a third party), or even to a draft agreement between them which had never matured into a contract.’

[53] The Court believes that this is a correct restatement of the law and will utilize it in determining the issue at hand. In order to resolve this case, it will be necessary to determine amongst other things whether the parties conduct including any oral representations gave rise to an implied contract that the Claimant’s engagement would continue until 30th August 2019.

[54] The question has also arisen on whether Richard Pybus was an agent of the Defendant. For context an agent is one who is endowed legally with the power and authority to conduct business for or on behalf of another person. The relevant law on agency was restated in the Court of Appeal case of **Applewaite Lake v Barbara Hardtman**⁴ where Learned Justice of Appeal Baptiste stated as follows:

‘Where a person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf. He is bound by the acts of that other person with respect to anyone dealing with him as an agent on the faith of any such representation, to the same extent as if such other person had the authority that he was represented to have, even though he had no such authority.’

[55] At the material time Richard Pybus was the Head Coach of the Defendant. Whilst that position affords some level of power and privilege this does not extend to the engagement of staff. In fact, the Claimant’s pleadings and evidence seem to acknowledge this as the Claimant consistently states that Richard Pybus indicated that he would make a recommendation for his hire to the Board of Directors. Moreover, an examination of the Statement of Claim does not yield any pleading that Mr. Pybus had the requisite authority to act for and or bind the Defendant. There being no representation and or evidence that Mr. Pybus was the agent of the Defendant, this issue must be resolved in favor of the Defendant.

⁴ [2022]1 ECSC J0322-2

- [56] Moving onto the issue of oral representations, the Claimant pleaded that Richard Pybus informed him that he would recommend him to the Board of Directors of the Defendant for the position of Assistant Head Coach from January 2019 to end of August 2019. Immediately thereafter the Claimant at paragraph 3(b) pleaded that '[I]n the same conversation the Claimant accepted the office of the appointment as the Assistant Coach to the West Indies Test Team.' On cross examination the Claimant admitted that Richard Pybus was the only person who had made any representation or gave any assurance of continued engagement post 11th March 2019. In order to satisfy this Court that there were oral representations which formed part of the overall contract, the Claimant must demonstrate that Richard Pybus had the requisite authority to offer him the position and or set any terms of an engagement. Having previously determined that Richard Pybus was not the agent of the Defendant, the Claimant cannot rely on any alleged statements to establish an implied contract.
- [57] The Claimant relies on inter alia various congratulatory telephone calls and other calls of introduction to assist with communication prior to his engagement as evidence that his engagement was to expire at the end of August 2019. Any alleged statement made by Richard Pybus, Jimmy Adams or any employee concerning the duration of the Claimant's proposed engagement is at best a mere non-binding representation. I pause here to note that this evidence is hearsay however no application challenging this was made. Notwithstanding, the Claimant knew that any decision concerning his engagement was subject to the Board of Directors consideration. This suggests that any representation was not definite as it was contingent upon the decision of the Board. Further the parties executed a contract relatively soon thereafter and admittedly the Claimant saw that the same was until 11th March 2019 and agreed to the same. Given the circumstances, a clear and unequivocal contract subsequently agreed to by the parties effectively trumps any prior communication. Furthermore there is no evidence that there was a collateral contract. Having examined the totality of the evidence, I am of the opinion that any statements made by employees possessing no power to bind the Defendant did not amount to a binding contractual promise to act in parallel to the written agreement.
- [58] However, the conduct of the parties after the determination of the written contract may if proved give rise to an implied contract. Thus, the conduct of the Defendant next comes into focus. The Claimant alleges that on the 11th March 2019 upon the conclusion of the tour that he was not informed that his contract had ended. He therefore attended a management briefing to discuss plans for the World Cup. He was also given instructions by Richard Pybus. The court takes note that the Claimant's written contract was stated to end on 11th March 2019. Although the Claimant bemoans that he was not informed that his contract had come to an end, clearly this is not the obligation of the Defendant. The parties signed a contract which reflected the end date. Further there is no stipulation in the contract or otherwise that the Defendant was

obligated to remind him of the same or that such failure would result in an automatic renewal of the contract. Thus, the Defendant's conduct in failing to advise him of the termination date of the contract is not acceptance by itself of the continuance of the contract.

[59] As it relates to the management meeting held that date, the Claimant when challenged admitted that this course of conduct was normal for the coaching staff to meet and discuss performance. Further even if I were to accept that this meeting concerned plans for the World Cup the Claimant's inclusion as a then member of the coaching staff is not indicative of an intention to extend the contract to end of August or renew the Claimant's contract in any shape or form. At best this only demonstrates prudent planning by the Defendant for an important event which was scheduled to take place later in the year. The Claimant had just concluded a tour as Assistant Head Coach and was still a member of staff. His observations and input on the player's performance on the just concluded tour and or any recommendations may have been valuable to improve performance moving forward. This is not indicative of an intention to continue the contract until August 2019.

[60] The Claimant then makes heavy weather of him working with Kemar Roach and doing analysis of other teams scheduled to attend the World Cup as proof that he continued to work for the Defendant. Respectfully it does not. The Claimant who has the burden of proving his case could not recall whether this work was done on behalf of the Defendant. Further he also admitted not having any discussion and being aware of how and what amount he was to be paid. According to the Claimant's evidence, terms which are essential to the formation of a contract such as parties, intention to create legal relations and consideration were not established. Thomas J in the case of **Next Level Engineering v The Attorney General**⁵ reiterated that even with an implied contract the fundamentals of a contract must be present. Thus, the mere instruction of Richard Pybus whom it has been determined was not the agent of the Defendant does not meet the requisite burden to establish an implied contract.

[61] The Claimant submits that during the period post March 11th, 2019 until 10th April that he was part of other works in anticipation of attending the World Cup. He references being copied on two emails concerning a proposed training Camp in Antigua ahead of the Cricket World Cup. For context it is important to note the following; the first email dated 15th March 2019 which discussed the issue of attending camp was sent by Roland Holder to Richard Pybus and did not copy the Claimant; a second email dated 19th March 2019 from Richard Pybus to Rawle Lewis followed. The Claimant as well as 4 others who did not form part of the original communication was copied on that email. Later that day Rawle Lewis replied to the Pybus email and the same persons who had been copied on the second email were again copied. Being copied on an

⁵ [2007] ECSCJ No. 82

email differs to being the recipient to whom the email is directed. It does not call for any action on the part of the person to whom the message is copied. Whilst the intent of being copied is essentially to keep relevant persons informed, it not tantamount to being actively involved. Additionally it is important to note that Richard Pybus, was the longtime friend and colleague of the Claimant. Whilst he may have desired for the Claimant to continue as his Assistant Coach neither he nor Rawle Lewis had any authority to make any decisions concerning whom would be selected for the upcoming camp and tours. Moreover the person who initiated the email did not include the Claimant as part of the stream of communication. Thus when considered in the round simply being copied on an email is not conduct sufficient to infer an implied contract.

[62] The Claimant also submits that he attended a zoom meeting after 11th March 2019. Rawle Lewis in his cross examination agrees with this. Aside from stating that it was a preparatory meeting for the World Cup no pertinent information about the meeting such as who convened the meeting; who was in attendance and whether any representations were made has been submitted to the Court. Additionally, none of the other managers for the Defendant who gave evidence at trial seemed to be aware of this. Thus, there is simply not enough information for this Court to deduce that the Claimant's attendance was at the invitation or behest of the Defendant as a member of staff.

[63] The Claimant attempts to draw a nexus between the change in the Board of Directors and as he asserts his termination. It is not disputed that sometime in April 2019 there was a change in the Board of Directors with a new President and Vice President being appointed. Additionally a new policy dubbed the West Indies First Policy was implemented. This resulted in amongst other things a change the Coaching staff with Richard Pybus returning to his substantive position and eventually being allowed to terminate that contract early. The Claimant submits that this change in establishment resulted in his termination. He relies on the statement of witness Roland Holder that 'when Pybus came Drakes came and when Pybus goes Drakes goes.' However that witness also stated that the Claimant had been engaged previously without Mr. Pybus also being engaged and had also ended his engagement at a time different to Richard Pybus when they were both engaged. This seems to be in keeping with what transpired here as from the outset the Claimant executed a contract which provided for an end date in March 2019 well ahead of the World Cup. In contrast Richard Pybus' contract with the Defendant was due to end several months after the Claimant's contract. Additionally the new policy clearly did not apply to the Claimant as he was from Barbados and thus West Indian unlike Richard Pybus who was South African. Further as indicated there were instances where the Claimant worked independent of Richard Pybus. The Defendant is governed by a particular corporate structure. Hence any musings by a member of staff simply does not have sufficient weight to find an implied contract.

- [64] The Claimant also focused on a letter written by Roland Holder to the Barbados Cricket Authority. The Claimant focused on the date of the letter and the fact that it was written at the behest of the Board of Directors. The Claimant suggests that this was evidence of his termination. The letter which is a mere 4 lines simply informs that the Claimant was able to resume his duties with that authority. The Defendant's evidence which I accept, is that contracts were issued on a tour-by-tour basis. Given that the Claimant was on secondment and there was no intention to utilize him for upcoming tours it is reasonable for the Defendant to simply advise the Claimant's employer of this, which it did. I do not find that this is demonstrative of the Claimant being terminated.
- [65] Finally, the Claimant suggests that the request for his blazer size post 11th March 2019 is indicative of there being an implied contract. Much ado has been made about the statement of a witness Rawle Lewis who agreed that this request was made to all current members of staff. However, this witness from the inception of his evidence highlighted repeatedly that he is the Operations Manager and not responsible for contracts. Therefore, it is likely that given his position unless formally informed that he would not be privy to the exact date of determination of the Claimant's contract. It is not challenged that there is a delay of several weeks in obtaining an official West Indies Blazer. I accept therefore that the email concerning the blazer size was a precautionary measure. Given the delay, and the Claimant being a member of the previous team it was only prudent to obtain such information and keep on file if required in the future events.

Whether the oral representations and or course of conduct of the Defendant gave rise to a legitimate expectation of a contract of engagement terminating on 30th August 2019.

- [66] Although the Claimant pleaded that he had a legitimate expectation of being retained until the end of August, this issue seemed to either be abandoned or not canvassed vigorously by him. This may well be because legitimate expectation is not justiciable in private law. Regard is given to the persuasive authority of **D. Wren International Ltd. and another v. Engineers India Ltd. and others**⁶ wherein the court rejected the contentions of the petitioner that it had legitimate expectation in contract law of making supply of loading arms. In that case the petitioner had submitted a bid and participated in detailed negotiations. Its offer was initially accepted but subsequently rejected by the defendant. It was held that the doctrine of legitimate expectation could not be applied in a contract law. At paragraph 148 of the judgement Justice Sinha stated:

⁶ AIR1996Cal424

‘The principles of legitimate expectation cannot apply in a contractual field in view of the fact that a procurement contract when granted cannot stand on a higher pedestal than a legitimate expectation. As soon as a contract becomes concluded, the expectation, if any, comes to an end; where after, the parties will be bound only by the terms thereof. If the doctrine of legitimate expectation is invoked in the matter of enforcement of condition of contract, the same would result in an absurdity, as it is well known that this Court cannot grant a decree for specific performance of contract. Legitimate expectations does not confer a right... No person can have a legitimate expectation that his tender shall be accepted. He has merely a right to be considered fairly...’

- [67] The Claimant being fully cognisant that the stated termination date was much earlier than he expected entered into a contract with the Defendant, thereby binding him to the agreed terms of the contract. Further the Claimant has failed to demonstrate a policy, promise or practice which in any event would lead to the conclusion that the contract had been varied to extend its end date. Legitimate expectation which is a discretionary administrative law remedy cannot be used cannot in these circumstances as a tool to alter or vary the terms of that contract.
- [68] Having examined the totality of the evidence, the Claimant has not satisfied this court that his contract of engagement was due to expire on 30th August 2019 and was unlawfully terminated by the Defendant.

ORDER

- a. The claim by the Claimant for breach of contract and legitimate expectation is dismissed.
- b. The Claimant shall pay the Defendant Prescribed Costs in accordance with CPR 65.11
- c. Interest

Jan Drysdale

High Court Judge

By The Court

Registrar