

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0098

BETWEEN:

KEMILIA HAZELWOOD-BRUCE

CLAIMANT

-AND-

ST VINCENT AND THE GRENADINES PUBLIC UNION

DEFENDANT

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances:

Mr. Israel Bruce with him Ms. Kensha Theobalds for the claimant.

Mr. Joseph Delves for the defendant.

2019: Jun. 27

2020: Jan. 16

Feb. 11

Mar. 17

Apr. 6

JUDGMENT

- [1] **Henry, J.:** Mrs. Kemilia Hazelwood-Bruce was employed by the Public Service Union ('the Union') in 2005. She provided secretarial services there until May 2017. She alleged that she was unlawfully and unfairly dismissed. She claimed damages, interest and costs. Mrs. Hazelwood-Bruce contended further that the Union failed to honour its contract to pay her annual increments.

She filed this claim¹ seeking damages for breach of contract, victimization, discrimination, wrongful and unfair dismissal; interest and costs.

[2] The Union has resisted the claim. It contended that Mrs. Hazelwood-Bruce was overpaid the sum of \$22,381.91 and claimed that sum. In its submissions filed after the trial, it decreased that amount to \$5790.00. Alternatively, it sought an order that any sum found to be due and payable to Mrs. Hazelwood-Bruce be set off against its claim, interest and costs.

[3] Mrs. Hazelwood-Bruce denied all liability to the Union. Her claim for is dismissed. The Union is liable to her for wrongful dismissal. The Union's claim for over-payment is made out. The sums due to the Union from Mrs. Hazelwood-Bruce are to be set off against the damages due to her from the Union.

ISSUE

[4] The issues are whether:

1. Mrs. Hazelwood-Bruce was unfairly or wrongfully dismissed?
2. Mrs. Hazelwood-Bruce was victimized or discriminated against by the Union?
3. The Union is liable for breach of contract for failing to pay Mrs. Hazelwood-Bruce annual increments? and
4. To what remedies, if any, is Mrs. Hazelwood-Bruce and/or the Union entitled?

ANALYSIS

Issue 1 – Was Mrs. Hazelwood-Bruce unfairly or wrongfully dismissed?

Unfair dismissal

[5] Mrs. Hazelwood-Bruce began working with the PSU on August 2nd 2004 as a probationary worker in accordance with the terms and conditions set out in an undated letter under signature of then General Secretary Elvis Abbey. It stated among other things that one month's notice would be given in the event of termination of service. By letter dated 17th October 2005, Mrs. Hazelwood-Bruce was confirmed in the position of secretary/clerk/typist, effective 2nd February 2005. She was eventually dismissed on May 15th 2017. In her letter of appointment, the PSU agreed to pay Mrs.

¹ On 14th July 2017.

Hazelwood-Bruce a monthly salary 'at the rate of \$12,564 per annum in the scale of \$12,564 x \$864 – \$17,748'.

- [6] Mrs. Hazelwood-Bruce pleaded and asserted that the salary scale contemplate that the Union would pay her increment and increases and that the PSU breached the employment contract by refusing to pay her the agreed increment, after she was made permanent. She claimed that she decided to pursue legal recourse and was victimized, discriminated against and subsequently wrongly or unfairly dismissed for this.
- [7] She pleaded that because of the breach and in or about 2011 and again in February 2012, she wrote the PSU pointing out that she was owed outstanding increment payments. She asserted that although a meeting was held as a result of those letters, it resolved nothing and she again wrote the PSU in July 2012 seeking clarification about certain discrepancies, and again in April 2015. She claimed that she caused her legal practitioner to write the PSU on December 17th 2015 and in August 2016.
- [8] She pleaded that the PSU's lawyer wrote to her in September 2016 and subsequently by letter dated March 8th 2017. She claimed that in the latter it was alleged that she was overpaid by \$7,783.21 for the period 2009 through 2014. She claimed further that she received another letter on that date directing her to proceed on vacation up to April 12th 2017. She asserted that when she returned to work on April 13th 2017 she was asked to take 19 more vacation days and to return on May 15th 2017 which she did.
- [9] Mrs. Hazelwood-Bruce complained that her employment was terminated with immediate effect when she showed up for work on May 15th 2017. She claimed that the PSU's conduct amounted to breach of contract. She contended that she was thereby wrongly or unfairly dismissed and victimized. She pleaded that she has suffered pain, loss and damage as a result. She testified to this effect. She averred that her termination without any disciplinary action having been initiated against her and without one month's notice constituted a breach of her contract. She asserted that she was not paid severance. She averred that the reason given for her termination was that the PSU was re-organizing and re-structuring its operations. She countered that this could not be so

because while she was on vacation someone was performing the duties which she had previously carried out.

[10] A copy of the termination letter was produced into evidence. The material parts state:

‘The St. Vincent and the Grenadines Public Service Union (PSU Executive Committee has taken the decision to re-organise and restructure its operations to improve efficiency and ensure proper succession planning.

As a result we regret to inform you that your employment with the PSU is hereby terminated effective Monday 15th May 2017.’

[11] It appears from part of her submissions that Mrs. Hazelwood-Bruce abandoned her claim of unfair dismissal. In this regard, she submitted that the issues to be determined are:

1. Whether the PSU breached the terms and conditions of the employment contract when they failed to comply with the salary scale included therein?
2. Whether her termination is unlawful?
3. Whether the PSU is in breach of contract when they dismissed her without notice and without payment in lieu of notice?
4. Whether there was an employment contract which created a binding legal relationship between her and the PSU?
5. Whether the contents including the salary scale outlined in the October 17th 2005 letter from the PSU to her outlines the obligations between the parties?
6. Whether she was entitled to rely on the terms and conditions set out in the offer letter dated October 17th 2005?
7. Whether the PSU is bound by the terms and conditions as are reflected in its offer letter dated October 17th 2005 which she accepted?
8. Whether the PSU is entitled to unilaterally breach the employment contract between the parties?
9. Whether a policy decision by an employer to pay salary increases to its employees can later be determined to have been made in error by the employer providing the amount of the increase is consistent with the agreed percentage increase by the employer?

10. Where she receives increases in her salary consistent with a salary increase as determined by the PSU can it later be said that she was overpaid?
11. Whether a salary increase to her affects the salary scale by which she was contracted and if so how?

[12] Mrs. Hazelwood-Bruce's submissions fixated on the breach of contract element of her claim and did not frontally address her claim that she was unfairly dismissed. The PSU for its part submitted that the narrow question is whether she was paid as set out in her confirming letter of 17th October 2005; whether she was correctly paid, overpaid, or underpaid. On the question of unfair dismissal Mrs. Hazelwood-Bruce submitted that her dismissal without cause contravenes legislative provisions.

[13] **The Protection of Employment Act**² ('the Act') protects employees from unfair dismissal. An employee who claims that she has been unfairly dismissed may initiate proceedings for redress in accordance with the statutory regime outlined in the Act.³ A related issue therefore is whether the Act provides the only avenue for an aggrieved employee to seek redress for unfair dismissal, or whether she may go to the High Court instead. It is an established principle of law that a person's right to move the High Court for an alleged infringement of her rights may only be restricted by clear and unambiguous words in an Act of Parliament.⁴

[14] Part IV of the Act outlines the procedure by which an employee may lodge a complaint for an employer's failure to comply with its provisions in relation to 'unfair' dismissal. The complaint is to the Labour Commissioner, and if necessary to the Minister.⁵ It allows for an appeal to the Tribunal and is final unless an application is made for judicial review.⁶ The procedure is expressed in mandatory terms.

² Cap. 212 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 5 (1).

³ Section 17 (1) of the Act.

⁴ *Pyx v Granite Co Ltd v Ministry of Housing and Local Government* [1959] 3 All E.R. 1 at p. 6 per Viscount Simonds.

⁵ Sections 35 and 36 of the Act.

⁶ Section 41 of the Act.

[15] Mrs. Hazelwood-Bruce's assertions that she was unfairly dismissed invoke sections 5 (1), 17 and 18 of the Act which provide protection against dismissal without good cause. If she wishes to pursue those claims, she must utilize the mechanism outlined in the Act. The High Court is not the forum for such disputes. Those legal principles and the applicable legal provisions were discussed by this court in the case of **Alicia Sardine Browne v RBTT Bank Caribbean Limited**⁷ and are applied to the case under consideration. For those reasons, Mrs. Hazelwood-Bruce's claim for unfair dismissal and for damages for the same is dismissed.

Wrongful dismissal

[16] Mrs. Hazelwood-Bruce argued that her employment was wrongfully terminated because she did not receive the agreed one month's notice. She pointed to the initial offer letter, issued to her before she served the probationary period, which provided for one month's notice. She contended that section 14 of the Act requires an employer to give a minimum period of notice or make a payment to the employee in lieu of notice.

[17] The PSU denied the allegations of wrongful dismissal. Its witnesses did not provide testimony as to the reason for Mrs. Hazelwood-Bruce's termination, or to explain its statement in her termination letter that it was re-organizing and re-structuring its operations. The court accepts that employers may dismiss their workers 'for good cause or no cause, subject only to the issuance of proper notice or payment in lieu, and to the provisions of the (Act)' as argued by the Union. It made no further submissions on the issue of wrongful dismissal.

[18] Section 14 (1) of the Act provides:

'Where an employer wishes to terminate the services of an employee except as provided by sections 7 (3)⁸ and 9⁹, a minimum period of notice in writing or payment made in lieu of such notice shall be given by the employer to an employee in accordance with the provisions of the Schedule.'

⁷ SVGHCV2006/0520.

⁸ Which provides for termination of employment during the probationary period without pay or notice.

⁹ Which provides for termination for misconduct.

The Schedule stipulates that monthly paid workers are entitled to 4 weeks' termination notice or payment of a sum equal to the employee's remuneration and conferral of all other benefits that would have been due to her up to the expiry of the period of notice.

[19] Wrongful dismissal constitutes a breach of the termination clause of an employment contract. It occurs where an employee's contract of employment is terminated by the employer:

1. before the period expires, (in the case of a fixed term contract);
2. without giving the agreed or statutory termination notice, (under a contract terminable by notice);
and
3. without justifiable reasons, (such as serious misconduct,¹⁰ disobedience to lawful orders,¹¹ negligence¹², or incompetence¹³).

[20] If an employee makes out a *prima facie* case of wrongful dismissal, the burden of proof shifts to the employer to prove the reason for her dismissal and also that the termination was justified in all of the circumstances.¹⁴ In the instant case, Mrs. Hazelwood-Bruce did not get a termination notice. She was not subjected to any disciplinary proceedings and no allegations have been made of gross misconduct. In either of those cases, the absence of a termination notice, if justified would have been legally permissible. The PSU has not denied that she was purportedly terminated due to alleged re-organization and re-structuring. I find that this is the reason stated by the Union for the dismissal.

[21] The Union's failure to give particulars of the alleged re-organization and re-structuring is glaring. They have not attempted to discharge the onus to prove this was the reason for the dismissal and that it was justifiable. I accept Mrs. Hazelwood-Bruce's uncontroverted testimony that no such re-organization or re-structuring was being conducted by the PSU when she was dismissed. I find too that she did not receive a termination notice. She has established that she was wrongfully dismissed. I find that she was.

¹⁰ See section 15 of the Act; and *Mercer v. Whall* (1845) 5 Q.B. 447 at 466.

¹¹ *Spain v. Arnott* (1817) 2 Stark 256 and *Pepper v Webb* [1969] 1 W.L.R. 514.

¹² *Jupiter General Insurance Co. Ltd v Shroff* [1937] 3 All E.R. 67.

¹³ *Romford Ice and Cold Storage Co. v Lister* [1955] 3 All E.R. 460 at 464 and 476.

¹⁴ See *Halsbury's Laws of England* 4th Ed., Vol. 16 at para. 328.

Issue 2 – Was Mrs. Hazelwood-Bruce victimized or discriminated against by the Union?

Victimization

[22] At paragraph 4 of her Reply to Defence and Counterclaim¹⁵, Mrs. Hazelwood-Bruce acknowledged that the tort of victimization is not known in Saint Vincent and the Grenadines. By this concession, she is taken to have resiled from her claim to damages or other relief on this admittedly unfounded basis. She led no evidence of victimization and did not pursue this charge¹⁶. In the circumstances, her claim for damages for victimization is not sustainable and is not made out. It is dismissed.

Discrimination

[23] Mrs. Hazelwood-Bruce mentioned ‘discrimination’ once in her pleadings. She pleaded: ‘The Claimant Kemilia Hazelwood-Bruce is from Layou in the Parish of St. Andrew in the State of Saint Vincent and the Grenadines claims against the Defendant St. Vincent and the Grenadines Public Service Union in the State of Saint Vincent and the Grenadines for the following orders and reliefs for personal breach of contract, wrongful dismissal, unfair dismissal, victimization and **discrimination**.’ (bold added).

She did not particularize any allegations of discrimination in the pleadings or by evidence. She also did not address them in her written submissions. For all intents and purposes she abandoned that aspect of her claim.

[24] She has laid no factual, evidentiary or legal basis for a claim of discrimination. I find that it was not pleaded with sufficient particularity and further that there is no evidence of discrimination. Her claim for discrimination and for damages on that basis is therefore dismissed.

Issue 3 – Is the Union liable for breach of contract for failing to pay Mrs. Hazelwood-Bruce annual increments?

[25] Both parties focused their attention and most of their energies on this aspect of the case. Mrs. Hazelwood-Bruce pleaded that her salary scale is to be interpreted to mean that her monthly salary

¹⁵ Filed on 2nd November 2017.

¹⁶ She withdrew that claim orally at the hearing on June 27th 2019.

after confirmation would be \$1407.00 and that the figure of \$17,748.00 mentioned in it would have been the maximum she would have received after a 6 year period.

- [26] She pleaded and reasoned that in order for her to arrive at the maximum, the figure \$864 in the scale would have been added yearly for a period of 6 years, translating to a payment to her of \$72.00 each month. She asserted that the employment contract did not mention salary increases as a measurement for arriving at the maximum. She reasoned that each employment contract is different based on their position within the Public Service Union, however the governing executives would grant the same percentage to each employee across the board whenever there is a salary increase.
- [27] Mrs. Hazelwood-Bruce contended that in the circumstances salary increases were an addition to the contractually agreed salary and therefore could not take her to the maximum because the employment contract stipulated how the maximum would be achieved. She asserted that she never attained her maximum based on the contract because she received only 3 increments and apart payment whereas the contract provided that she would receive 6. She contended that when the Union alleged that she was overpaid this was far from the truth.
- [28] She testified that she was paid in accordance with her salary scale until 2009 when she received \$25.00 part payment of the increment due to her that year. She explained that the PSU's General Secretary told her at the time that the \$25.00 would take her to the maximum of the scale because her position (Secretary/Clerk/Typist) was red-circled in accordance with the re-classification process that was taking place in the government service.
- [29] She averred that in 2011 while she was assisting one of the Union's members who had come to seek representation relating to their salary scale, she realized that the scale was not red-circled as was previously represented by the General Secretary and therefore the misunderstanding by him led to the discontinuance of her increment. She asserted further that her investigations revealed that the 're-classification did not affect the employment agreement and should not as (she) was not a civil servant'. She testified that she wrote to the Union pointing out that there were outstanding increments due to her.

- [30] The PSU pleaded that the scale referred to in the 17th October 2005 appointment letter means that Mrs. Hazelwood-Bruce should have been paid \$12,564.00 per year, or \$1047.00 per month, plus \$72 every month for 6 years, until she reached a maximum of \$17,748.00 (or \$1479.00 per month). It submitted further that the Court must first determine how Mrs. Hazelwood-Bruce was to be paid, (i.e. determine what 12,564 x 864 17,748.00 means as a matter of construction); and the conduct an arithmetic exercise to see if she was paid the amount set out in her confirmation letter. Mr. Elroy Boucher confirmed this in his testimony.
- [31] Mr. Boucher testified that he was the Union's President, its General Secretary between 2008 and 2012, and one of the executive members prior to 2008. He averred that Mrs. Hazelwood-Bruce was the only person being given an increment with a salary scale like hers, while all other workers were paid salary increases from time to time. He explained that they did not have automatic salary increases via increments like Mrs. Hazelwood-Bruce, who he claimed erroneously received increases which were given to the other workers, which meant that her salary was being doubly increased.
- [32] Mrs. Hazelwood-Bruce testified that she had access to the personal files of the other workers and prepared their documents. She claimed that they also received increments and salary increases and that their job letters would say this. She did not produce any documentary evidence of this. I reject her account to that effect. To arrive at such a finding, I must conclude that Mrs. Hazelwood-Bruce was aware of this even when her increases were interrupted and made no protest. This was not asserted by her. I make no finding that the other workers also received increases and increments.
- [33] He stated that this resulted in overpayment of salary to her totaling \$22,530.90. He averred that payments of the increase to Mrs. Hazelwood-Bruce were stopped when it was discovered. He recalled that when he assumed office as President in 2005, Mrs. Hazelwood wrote to him and wanted the matter clarified. He explained that the Union got their auditors involved and obtained reports from Mr. Dominic Sutherland, their external auditor. Mr. Sutherland testified. His evidence was not useful to this court because he was discredited on several occasions under cross-examination when he admitted having made errors in his calculations. His contribution to the case is therefore disregarded except where he provided accurate details about the amounts paid to Mrs.

Hazelwood-Bruce.

[34] Relying on the case of **L'Estrange v E Graucob Ltd**¹⁷ at the dicta of Scrutton LJ where he stated:

'when a document containing contractual terms is signed, then, in the absence of fraud, or, I will add, misrepresentation, the party signing it is bound and it is wholly immaterial whether he has read the document or not'

Mrs. Hazelwood-Bruce submitted that the contract was embodied in the letter signed by the President on the Union's behalf, the terms and conditions of which she accepted when she commenced working. She argued that it appears that there is no dispute by the parties that the figure \$12,564.00 represented her annual minimum salary; that \$864.00 represented increments to which she was entitled and that \$17,748 represented her maximum annual salary.

[35] She submitted that contrary to the Union's position that she would achieve her maximum annual salary by way of the contracted increments and salary increases. She argued that the court should reject the suggestion made by Mr. Boucher and Mr. Sutherland that the contract enabled her to reach her maximum by the application of a combined formula of increments and increases. She contended that instead that the salary increase awarded to her was a discretionary payment for which she could not contend was a breach of contract if the Union decided not to give an increase in a particular year or succession of years.

[36] She maintained that the PSU was contractually bound to pay her 6 installments of increments and in breach of the contractual obligations failed to do so. Mrs. Hazelwood-Bruce cited the case of **Photo Production Ltd v Securicor Transport Ltd**¹⁸ as authority for the proposition:

'Every failure to perform a primary obligation is a breach of contract. The secondary obligation on the part of the contract-breaker to which it gives rise by implication of the common law is to pay monetary compensation to the other party for the loss sustained by him in consequence of the breach.'

¹⁷ (1934) 2 KB 394 at p. 403.

¹⁸ (1980) AC 827.

[37] Mrs. Hazelwood-Bruce referenced the questions put to her in cross-examination where it was suggested that the middle figure \$864 represented not increment but was representative of the amount of money (inclusive of salary increases) that it would pay to her to achieve the maximum salary. She submitted that this is inconsistent with the auditors' reports which are before the court, namely the one prepared by Candice Lewis, internal auditor and Dominic Sutherland in which they both concluded that the \$864 represented an increment payment of \$72 annually to Mrs. Hazelwood-Bruce on the anniversary of her employment as set out in her appointment letter. The court notes that Ms. Lewis did not testify and as noted, Mr. Sutherland's expert account was not helpful.

[38] Mrs. Hazelwood-Bruce referenced a portion of Mr. Sutherland's report where he opined:

'It is our opinion that the Union is modeling its salary policy after that of the Public service. If that position is accepted as being correct, the Union in this matter has a liability to settle for the short payment of increments during the period 2009 – 2014. If this position is incorrect, this should be clearly stated in response to Ms. Hazelwood's concerns and the Union's salary policy stated.'

She submitted that the Union by placing reliance on the expert reports, misapplied itself by concluding that she was indebted to them. She argued that this misapplication was further compounded by the expert (Mr. Sutherland) attempting to re-calibrate his report to accommodate the PSU's new narrative that She owed them \$22, 381.91 instead of the original \$7,783.21.

[39] Mrs. Hazelwood-Bruce invited the court to accept that the Unions is indebted to her 'in keeping with **Flame SA v Glory Wealth Shipping Pte Ltd**¹⁹. and that she has established that she suffered losses due to the breach of the employment contract and would, but for the breach have earned the amount claimed as special damages. She argued that the Union cannot be permitted to claim that it paid the salary increases to her as a mistake, as a result of which she is indebted to it. She contended that the Court cannot accept that although the mistakes were being made from 2005, and despite annual audits the PSU only discovered the mistake in 2015. She submitted that the argument is about saving face and is disingenuous in every respect.

¹⁹ (2013) EWCA 3153.

- [40] The Union accepted that Mrs. Hazelwood-Bruce's salary seems to resemble the salary scale of civil servants. It reasoned that it is her case this means that while she could not receive less than \$12,564.00 or \$1047.00 per month, she likewise could not receive more than \$17,748.00 or \$1479.00 per month. However, the PSU submitted that Mrs. Hazelwood-Bruce's case is that the maximum only applied if she received 'increments', but did not apply when she received 'increases'. For their part, the Union argued that she reached the maximum via increases which were sometimes called 'increases' and sometimes referred to as 'increments'.
- [41] The PSU contended that its position is that while Mrs. Hazelwood-Bruce's salary scale looks like a civil servant, she was not a civil servant and could not expect to be paid like one. This statement is reasonable and appeals to me. Referring to Mr. Boucher's assertion that Mrs. Hazelwood-Bruce's salary was doubly-increased by increments and salary increases and was unlike the other workers, the PSU submitted that this is clear evidence that the effect of her unique salary scale meant that she was supposed to get 'increases' or 'increments', but not both.
- [42] It reasoned that while there was no written salary policy, that evidence shows that it was never its practice to pay both types of increases to her. The PSU submitted that this is what it meant when it wrote that her by letter dated March 8th 2017 that she was not to be treated as a civil servant. The Union argued that her position is that she is entitled to the best of both worlds.
- [43] The Union submitted that having pleaded that she did not insist that she be paid like a civil servant, her evidence runs contrary to that assertion. In this regard the PSU pointed out that while Mrs. Hazelwood-Bruce acknowledged being told that a payment would bring her to her maximum she indicated that that she had been under the impression that classification/reclassification would affect her. The PSU reasoned that this is an admission that she was under the impression that she was being treated as a civil servant; and despite having learnt in 2009 or so that she was not to be treated as a civil servant, she has nevertheless insisted that she receive both an increase like other PSU staff and increments, like civil servants.
- [44] The foregoing submission is compelling and irresistible. It appears to me that Mrs. Hazelwood-Bruce's reasoning is faulty. She has accepted that she is not a civil servant and therefore her salary was not and could not have been red-circled by the government, because its decisions did

not affect her contract. The Union also made similar observations. Mrs. Hazelwood-Bruce did not agree that the salary scale in the confirmation letter implied that a monthly maximum of \$1479.00 was payable to her. She insisted that the executive gave several increases which would have changed her maximum.

[45] She was adamant that she was entitled to receive both increase and increments, based on her formulation. On her interpretation of the contract this could result in payments to her outside of the stated range in her confirmation letter. This defies logic particularly since she did not explain satisfactorily her understanding of the final figure of \$17,748 and why that figure was necessary if her salary would be increased by an increment and also by separate increases.

[46] In this regard, Mrs. Hazelwood-Bruce testified that the confirmation letter refers to increases and increments. She accepted that it did not state that \$864 was an increment. She admitted that the \$864 figure specified what the increase would be and further that her salary was increased in accordance with the terms and conditions of the confirmation letter from the time she started until the time she left. She testified that her last salary when she left in May 2017 was \$1807.00 and that her salary had jumped from \$1307.00 to \$1454.00 in 2008.

[47] The PSU argued that there is no reason why the '864' figure should be treated as an 'increment' but not an 'increase'; and for holding that the maximum can only be achieved by 'increments' and not increases; when this was never the intention of both parties. Mrs. Hazelwood-Bruce did not attest that this was the consensus between the parties when she was confirmed. If this was the case, it would leave askance why she did not challenge the cessation of the 'increase' before she encountered a member of the PSU who was making related inquiries.

[48] The Union submitted that in construing commercial contracts, what is important is not the intention of the parties but what their mutual intentions were as to the legal obligations each assumed via the contractual words in which they sought to express them. The Union contended that the Court looks to ascertain not the intention of the actual parties but the intention of which reasonable people would have had if placed in the situation of the parties. It argued that this intention is ascertained from the language used, considered in the light of surrounding circumstances and the object of the contract, in so far as that has been agreed or proved. It cited in support the text **The**

Interpretation of Contract²⁰.

[49] The PSU submitted that attention must be given to the commercial purpose of contract. It submitted further that this was an employment contract between it (a small employer) and an office worker in circumstances where there were two other persons working in the office as stated by Mrs. Hazelwood-Bruce. The Union referenced the further evidence that its income is such that it would not have contemplated paying Mrs. Hazelwood-Bruce as a civil servant and in the manner that she is claiming. It relied on **Cargill International SA v Bangladesh Sugar Food Industries Corporation**²¹ where the modern approach to construction was expressed to be:

‘... to have regard to the commercial background, the context of the contract and the circumstances of the parties, and to consider whether, against that background and that context, to give the words a particular or restricted meaning which would lead to an apparently unreasonable and unfair result ...’.

[50] The Union argued that in that case, Potter LJ restated the principle that the more unreasonable the result the more unlikely it is that the parties could have intended it, and that if they do intend it the more necessary it is that they shall make that intention abundantly clear. The PSU contended that to accede to Mrs. Hazelwood-Bruce’s view that she should have received both ‘increments’ as well as other ‘increases’ paid to other workers, which translates to her being paid more than the maximum per month, would lead to an apparently unreasonable and unfair result. It submitted that in the absence of clear words, the Court ought not to be inclined to construe the document in the way that she suggests.

[51] It contended further that her interpretation is less sensible and would require an overly technical and semantic approach than is warranted. It cited **Leeward Island Resorts Limited v Charles Hickox**²² as authority for that submission. Placing reliance on the judgment in **Grenada Technical and Allied Workers Union v St. Georges University Ltd**²³, it reasoned that commercial common

²⁰ Lewison, para 2.08. (No further details provided)

²¹ [1998] 1 WLR 461 CA, at page 468

²² AXAHCVP2008/003, paras. 32-35.

²³ GDAHCVP 2014/008.

sense cannot trump the importance of the actual language used and further that the clearer the natural meaning the more difficult it is to depart from it. The Union contended that the language of the 'subject salary term is clear in setting out a maximum and does not import a term' that the maximum can only be obtained by 'increments' as distinguished from 'increases'.

- [52] The Union argued that this is not strictly a commercial contract but a contract of service and therefore guidance may be obtained from the learning of the learned authors Dekin and Morris in their book *Labour Law* where they stated:

'...construing an employment contract is not necessarily straightforward... and the approach taken to commercial agreements may be of little help or even positively misleading.'²⁴

- [53] The PSU submitted that if the Court finds that the language of the subject term is ambiguous, it can look at the employment practice at its workplace. It argued that as stated in **Dunlop Tyres Ltd v Blows**²⁵:

'That practice is self-evidently powerful evidence of the parties' intention to which the court can turn in order to resolve the ambiguity... the practice indicates the proper interpretation of the terms of the contract.'

It contended that the preponderance of the evidence is that its workers did not get both types of increases that Mrs. Hazelwood-Bruce claims; the existence of this practice, which it accepts was not formalized into a written policy, was made clear by Elroy Boucher in his 2017 letter, and, perhaps most importantly, by its continued refusal to pay Mrs. Hazelwood-Bruce's double claim once it realized that there was a problem with her payments.

- [54] The submissions made by the Union regarding the approach the Court takes towards interpretation of contracts set out the correct legal principles by which this court must be guided. I accept that the Union had no written policy governing how its workers 'increases' were to be differentiated. What is apparent however is that it implemented a practice of paying either an increase as agreed periodically by the executive or yearly 'increments' to its employees, but not both to any one

²⁴ *Labour Law*, Simon Dekin and Gillian S Morris, page 261.

²⁵ [2001] EWCA Civ 1032, at para 19.

employee. I accept Mr. Boucher's testimony in this regard. This is reasonable, makes good business sense and is accommodated within the language of the confirmation letter which is expressed to fix a maximum.

[55] The court takes judicial notice that the formulation outlined in it accords with the practice adopted by government and statutory bodies and is interpreted in that way. I also accept the Union's contention that it made an error when Mrs. Hazelwood-Bruce was paid outside of that scale. Mrs. Hazelwood-Bruce accepted this initially which suggests that she likely understood this to be the agreement with the PSU when she was confirmed as an employee. To find otherwise in my opinion would require construing the terms and conditions as to remuneration in a strained and restricted manner.

[56] I find that therefore that the agreement between the parties was for Mrs. Hazelwood-Bruce to be paid annual increments of \$72.00 up to a maximum annual salary of \$17,748 as stated in the confirmation letter. The PSU is liable to pay Mrs. Hazelwood-Bruce for the sums that would reflect that calculation, that result and no more. I make no finding that the PSU is liable to her for breach of contract as alleged.

Issue 4 – To what remedies, if any, is Mrs. Hazelwood-Bruce and/or the Union entitled?

Damages

[57] The relief available to an employee who has successfully prosecuted a claim for wrongful dismissal or breach of contract is damages measured by the earnings and other benefits to which she 'would have been entitled if the employment had been terminated in accordance with the contract'²⁶. This corresponds to the amount which is payable in lieu of notice. In the premises, Mrs. Hazelwood-Bruce is entitled to receive 4 weeks' wages or \$1047.00 as general damages for wrongful dismissal.

Severance

[58] Mrs. Hazelwood-Bruce claimed severance of \$13,474.56 pursuant to section 12 of the Act. She contended that she was made redundant and is entitled to severance in those circumstances.

²⁶ Halsbury's Laws of England (2019) Volume 29; para. 608; *Beckham v Drake* (1849) 2 HL Cas 579; *Lavarack v Woods Ltd* [1967] 1 QB 278; *Bold v Brough Nicholson and Hall* [1963] 3 All ER 849.

Section 12 provides for payment of severance to an employee who has been made redundant by reason that the employer has reduced its work force due to the:

1. modernization or automaton of all or part of its business;
2. sale or disposition of part of its business;
3. re-organization of its business to improve efficiency;
4. dis-continuation of all or part of its business;
5. impossibility or impracticability of the employer to carry out the business operation at its usual level because of an act of God, shortage of materials or breakdown of equipment; or
6. reduction of operation in the business occasioned by economic circumstances.

[59] No evidence has been adduced which hints at or established that Mrs. Hazelwood-Bruce's services were terminated for any of the foregoing reasons. She has failed to establish that she was made redundant. I am satisfied that she was not. She may be entitled to redundancy for unfair dismissal but would have to pursue that route in another forum, if she wishes. I therefore make no award of severance pay for redundancy.

Increment award and miscellaneous

[60] Mrs. Hazelwood-Bruce sought vacation pay of \$ 2415.60 for 24 days. She testified that she is owed this amount. The PSU denied this item. Mrs. Hazelwood-Bruce did not state how this amount and period were arrived at. That sum is therefore not proven and is disallowed. Her claim for \$1675.00 for legal consultations is also disallowed, in the absence of specifics, proof by way of documentation or a legal basis for making such an award.

Counterclaim and set-off

[61] The parties relied on the accounts prepared by Mr. Sutherland and Ms. Lewis which catalogued the payments made to Mrs. Hazelwood-Bruce each month. The Union in its submissions provided a mathematically correct assessment of the overpayments to Mrs. Hazelwood-Bruce. I adopt them. In this regard, the PSU submitted that based on her salary scale in February 2nd 2005 as set out in her confirmation letter, her monthly salary in February 2005 should have been \$1,047.00, and her maximum should have been \$1,479.00. It contended that the document cataloguing her payments, shows that she received \$1047.00 or more beginning in January 2006 when she was paid

\$1,407.00 (any overpayment of \$360.00). It submitted that Mr. Sutherland's report also shows that Mrs. Hazelwood-Bruce reached \$1479.00 per month and was paid that amount or more as at August 2008 when she was paid \$1537.00.

[62] The PSU noted that Mr. Sutherland admitted that his 'salary payable' data as at the confirmation date of February 2005, should have been \$1047.00 and not the \$977.00 he recorded - a difference of \$70.00 per month. The PSU calculated the number of months between Mrs. Hazelwood-Bruce's appointment and the end of her employment to be 148 months and concluded that Mr. Sutherland's error can be measured by multiplying 148 x \$70.00. The Union conceded that its pleaded claim for overpayment of \$22,381.91 must be reduced by \$10,360.00. It pointed out that this equals \$10,360.00 thereby reducing its claim of overpayment to \$12,072.00.

[63] Mrs. Hazelwood-Bruce argued that any part of the Union's counterclaim for overpayment would be statute-barred, if it was over 6 years old. The PSU acknowledged that the **Limitation Act**²⁷ bars actions founded on a simple contract²⁸ or in tort²⁹ after six years. I contended that where however there was a mistake, recovery is postponed to the time thereafter when the mistake is discovered, or could, with reasonable diligence have been discovered³⁰. This is indeed the case. The Union submitted correctly that the claim was brought on July 14th 2017; and accepted that since it cannot reasonably argue that a later date applies, it is unable to recover overpayments accrued prior to July 14 2011.

[64] It submitted further that there were 71 months between July 2011 and May 2017. It averred that 71 months is 47.97% of 148 months (mentioned above); and therefore the overpayment for the last 71 months is \$5790.00, (or 47.97% x \$12,072.00). This is an unassailable calculation. I therefore find that Mrs. Hazelwood-Bruce was overpaid by that amount, and that the PSU is entitled to recover that sum.

²⁷ Cap. 129 of the Laws of Saint Vincent and the Grenadines, Revised Edition, 2009.

²⁸ Section 7

²⁹ Section 4

³⁰ Section 32

Costs

[65] The parties have had mixed results in this matter and has each enjoyed a measure of success. The general rule is that the successful party recovers costs. In the premises, the justice of this case is served by ordering that each party bears her or its own costs.

ORDER

[66] It is declared and ordered:

1. Mrs. Hazelwood-Bruce's claims for unfair dismissal, victimization and discrimination, general and exemplary damages for the same are dismissed.
2. Mrs. Hazelwood-Bruce's claim for special damages of \$1675.00 for legal consultation is dismissed.
3. Judgment is entered for Mrs. Hazelwood-Bruce for general damages for wrongful dismissal in the amount of \$1047.00 being 4 weeks' wages.
4. Mrs. Hazelwood-Bruce's claim for breach of contract for the PSU's alleged failure to pay her annual increments is dismissed.
5. Judgment is entered for the Public Service Union on its counterclaim, for overpayment of \$5790.00 to Mrs. Hazelwood-Bruce.
6. The amounts due to Mrs. Hazelwood-Bruce and the Union respectively are to be off-set against each other.
7. Each party shall bear her or its own costs.

Postscript: Written submissions

[67] By order made on March 17th 2020 at the close of the trial, the parties were directed to file and exchange written submissions and transmit electronic copies to the court office in unscanned editable MS Word format. Both parties filed their submissions within the stipulated timelines. Learned counsel for the PSU, Mr. Delves also provided electronic copies in unscanned editable MS Word format. This facilitated preparation of the judgment in a timely manner. Regrettably,

learned counsel for Mrs. Hazelwood-Bruce failed or refused to comply with the stipulation to transmit the electronic version in unscanned editable format.

[68] The court is grateful for the written submissions. I wish to highlight and record the court's appreciation to learned counsel Mr. Delves for graciously complying with the stipulation to supply the court with an unscanned document. The parties are the ultimate beneficiaries of such compliance, which helps the court tremendously to provide effective, expeditious and efficient service within the constraints of limited resources and in furtherance of the court's commitment to meet litigants' reasonable and realistic expectations of a well-organized, businesslike and seamless justice delivery service.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar