

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA

REGULAR JURISDICTION

CIVIL JURISDICTION

2017-HC-DEM-CIV-SOC-434

BETWEEN:

EARL DANIELS

Claimant

-and-

GUYANA REVENUE AUTHORITY, a Corporate
Body established by the Guyana Revenue Act,
Chapter 79:04, Laws of Guyana.

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Patrice Henry for the Claimant

Ms. Fiona Hamilton for the Defendant

Delivered February 27th 2019

DECISION

The Claimant was employed by the Defendant by a contract of employment on July 11th 2016 for a term of three years as an Assistant Commissioner.

The Claimant was directed by the Defendant to proceed on administrative leave on July 12th 2017 pending the outcome of an investigation into alleged impropriety committed by the Claimant in the course of his employment.

The Claimant was then summarily dismissed by the Defendant on July 26th 2017.

The Claimant's claim is for damages for anticipatory breach of his contract of employment by the Defendant.

The Defendant contends that the Claimant was dismissed lawfully for serious misconduct in accordance with the terms of his contract of employment.

It appears as though the Claimant's claim for damages for anticipatory breach of contract is based on the proposition that the Claimant's contract is for a period that ends on July 10th 2019, a date that is in the future.

This is a misconceived proposition for the simple reason that it is an undisputed fact that the contract of employment was terminated on July 26th 2017 when the Claimant was dismissed by the Defendant.

Notwithstanding this, based on the evidence the Court will assess the claim as though it is a claim for breach of contract as a result of a wrongful dismissal.

The Defendant asserts that it carried out a proper and sufficient investigation of an allegation that the Claimant was involved in a scam to defraud the State of revenue, which it contends is misconduct that is sufficiently serious to warrant his dismissal if the allegation is proven true.

To say that such conduct, if proven, is "*sufficiently serious*" to warrant dismissal is indeed putting it very mildly.

The Defendant contends that on completion of the investigation it was concluded that the Claimant had engaged in activity that amounted to misconduct that was sufficiently serious to warrant his dismissal and so he was dismissed.

ISSUE

Was the Defendant justified in dismissing the Claimant?

LAW

In making a determination as to whether an employer (the Defendant) was justified in dismissing an employee (the Claimant) for serious misconduct, the Court is not concerned with whether the Claimant is in fact guilty or innocent of the misconduct/ offence alleged by the Defendant.

The question for the Court is whether the Defendant entertained a **reasonable belief** that the Defendant was guilty of the misconduct/ offence alleged at the time of the dismissal.

The nature and extent of such a review by the Court was succinctly set out, as follows, by the Hon. Justice Arnold sitting in the United Kingdom Employment Appeal Tribunal in British Home Stores Ltd v Burchell [1978] IRLR 379:

“What the tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.”

“It is not relevant , as we think, that the tribunal would itself have shared that view in those circumstances.”

Though this approach was set out in the United Kingdom Employment Appeal Tribunal it was approved by the Court of Appeal in Weddel and Co Ltd v Tepper [1980] IRLR 1996 and confirmed again in Foley v Post Office; HSBC Bank PLC (formerly Midland Bank PLC v Madden [2001] 1 All ER 550.

The principle that what is relevant to the Court in considering whether the decision to summarily dismiss an employee was wrongful is the evidence that the employer had in its possession and relied upon in deciding to summarily dismiss was also propounded by Chang J.A. in Michael Scotland v Guyana Electricity Corporation [2001 - 2002] GLR 337 @ 348.

FACTS

Clause 4 (2) of the contract of employment between the Claimant and the Defendant provides;

In any serious disciplinary matter inclusive of any infringement of the GRA’s policies, rules, Employee Code of Conduct, Conflict of Interest, Post Employment Code, acts of gross misconduct, engagement in any criminal activity, engagement in any activity which the GRA deems to be wrongful or detrimental to its name and business, or violation of any of the provisions of this agreement, the GRA, at its option and sole determination, shall have the right to terminate this agreement immediately without any prior notice or warning and without liability for compensation or damages.

The Claimant's evidence is that he received a letter on July 12th 2017 [**Exhibit "F"**] directing him to proceed on administrative leave pending the outcome of an ongoing investigation into alleged improprieties during the course of his duties.

He complied, proceeded on administrative leave, and then on July 19th 2017 he wrote to the acting Head of the Human Resource Management Division [**Exhibit "G"**], since this was the person that authored the letter of July 12th 2017, requesting information about the alleged improprieties.

On the same date, July 19th 2017 he received a reply to his letter [**Exhibit "H"**] informing him that the investigation was still in progress.

He then received a letter of dismissal on July 26th 2017 [**Exhibit "J"**].

The Claimant is contending that whatever the allegations of misconduct were, they were never told to him and as further he was never given a hearing or a chance to respond to any allegations.

The Claimant testified, **under cross examination**, that he met with Mr. Fitzroy Corlette, however, Mr. Corlette simply told him that there were allegations against him. He did not inform him of the specific nature of the allegations.

He testified, *"When he told me there were allegations I asked him about the allegations but he did not specify. I even wrote HR asking about the allegations and Ms. Abbensetts responded."*

Brian Wilson testified that during June 2017 he was the Manager of the Internal Affairs Division of the Defendant and during that month he conducted an

investigation into allegations that the Claimant accepted a bribe from a business owner to assist her to avoid customs duty and taxes on a certain goods.

He testified that he made numerous efforts in July 2017 to contact the Claimant to interview him about the allegations how ever he was unsuccessful as calls to the Claimant's cellular and home telephone numbers went unanswered.

As a result he contacted the Claimant's immediate superior, Mr. Fitzroy Corlette, requesting that he contact the Claimant and inform him that the Internal Affairs Division wanted to meet with him in relation to the allegations levelled against him.

Claudette Hutson testified that in June 2017 she was attached to the Internal Affairs Division of the Defendant and she was part of an investigation that was conducted into allegations that the Claimant accepted a bribe from a Chinese business owner by the name of Junyi Huang.

During the investigation she interviewed and took a statement from the said Junyi Huang.

Lyndon John testified that during the month of March 2017 he was employed with the Defendant and the Claimant was his superior.

He testified that during that month he received instructions from the Claimant to collect a package from Junyi Huang at a Chinese restaurant in Kitty, Georgetown.

He testified that when he collected the package, it contained money and he took it directly to the Claimant's office and delivered it to him.

During the course of the ensuing investigation he realised that he had carried out an instruction to commit an unlawful act.

ANALYSIS

The Court finds the Claimant's testimony that he was sent on administrative leave for alleged improprieties and it took him an entire week to write requesting details of the alleged improprieties to be outright incredible.

In July 2017, the Claimant was an Assistant Commissioner of the Defendant and in this light, the Claimant's apparent serene acceptance of being sent on administrative leave for **alleged improprieties** is incomprehensible.

The Court does not believe the Claimant's testimony that he met with his superior, Mr. Corlette, Mr. Corlette told him there were allegations and despite the fact that he asked Mr. Corlette about the allegations, Mr. Corlette did not specify.

The fact that evidence of this meeting only came to light under cross examination makes the Court suspicious that the Claimant was attempting to hide the fact that he had a meeting with Mr. Corlette.

Based on the evidence of Brian Wilson, the inference is very strong that the meeting was at the invitation of Mr. Corlette which therefore begs the question, why would Mr. Corlette not inform the Claimant of the allegations against him. There really could be no other purpose for the meeting.

The Claimant certainly did not testify that he met with with Mr. Corlette for any other reason.

The Court found that the evidence of Brian Wilson and Claudette Hutson with respect to the investigation was reasonable, consistent and logical.

This coupled with the evidence of Lyndon John, which was accepted by the Court as truthful is damning against the Claimant.

CONCLUSION

Based on the foregoing the Court finds that the Defendant had carried out such investigations into the allegations as was reasonable in the circumstances set out and further having carried out such investigations became seised of evidence that was sufficient to entitle it to reasonably come to the conclusion that the allegations against the Complainant were well founded.

In the circumstances the Court finds that the Claimant's contract of employment was properly terminated and the Claimant was not wrongfully dismissed.

Based on the quantum claimed by the Claimant, the Court awards costs to the Defendant in the sum of \$1,930,600.00.

Justice N. A. Singh