

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV2005/0758

BETWEEN:

HUGGINS NEAL NICHOLAS

Claimant

and

**(1) ATTORNEY GENERAL OF ST. LUCIA
(2) TEACHING SERVICE COMMISSION**

Defendants

Appearances :

Mr. B. Stephen & Mr. G. Charlemagne for the Claimant
Mrs. B. Portland Reynolds for the Defendants

2008: February 18, 29;
March 14.

JUDGMENT

[1] **COTTLE, J.:** The Claimant was employed as a teacher by the Government of St. Lucia. In March 1997 he was arrested and serious criminal charges were laid against him. Upon being charged he was suspended from duty and given half pay effective March 10th, 1997. This was reduced to no pay effective October 1st, 1998. On April 3rd, 1999 the criminal charges were dismissed.

[2] Consequent on this dismissal of the criminal charges the Claimant ought to have been recalled to work from suspension. The arrears of salary due to him ought to have been paid. This was not done. It is not difficult to discern the reason behind the reluctance of his employers to reinstate the Claimant. The criminal charges were of a serious nature. The dismissal was not as a result of a trial. It appears that the virtual complainant failed to testify. No reasons for this are apparent from

the record. The Claimant decided to pursue further studies. He left St. Lucia for the UK in 1999 during the month of August. Prior to that he had written to his employers seeking study leave with pay. When no response was forthcoming he wrote seeking study leave without pay. He received no written response. When cross examined he said that this meant he got no response in writing. I find that he received no response at all.

[3] The Claimant wrote to the Ministry of Education seeking to have his arrears of salary paid. This was not done.

[4] Meanwhile the Claimant completed his studies abroad. He qualified as an attorney at law and commenced private practice in 2002. He is still at the private bar.

[5] In 2005 the Claimant brought the present claim. He seeks damages for breach of contract. He seeks aggravated damages for the disgrace, humiliation, inconvenience and embarrassment caused by the breach. He seeks his salary withheld to date, and continuing monthly. He seeks gratuity and pension payments as well as interest. The Claimant's position is that he is still a teacher. He has never resigned his post. The Defendants have refused to reinstate him consequent on his acquittal of all relevant criminal charges.

[6] I shall deal with the issue of breach of contract below but it is convenient to state at the outset that the Claimant's contention that he is still a teacher is at odds with the facts as I have found them.

[7] The Claimant left the state in 1999. He did so without the permission of his employers. He commenced reading law and went into private practice in 2002. This is inconsistent with his claim to still be a teacher. I conclude that the Claimant abandoned his employment as a teacher in August 1999 when he commenced his legal training.

[8] I am reinforced in my conclusion when I consider that the Claimant has led no evidence of his earnings from his practice over the last five (5) years. He does not say I have sought to mitigate my losses and have earned this money to survive and maintain my family pending my reinstatement as a teacher.

[9] From the evidence before the Court it is clear that the Defendants were wrong to refuse or fail to reinstate the Claimant. They were wrong to refuse to pay him the arrears of salary due to him after his period of interdiction from duty should have ended. The issue which remains to be determined is what compensation if any, is due to the Claimant to redress his injury.

[10] The Claimant has urged the Court to consider the decision of the Privy Council in **Mc Laughlin v AG** a decision delivered on July 23rd, 2007 on appeal from the Cayman Islands Lord Bingham at para 14 says this:

"It is a settled principle of law that if a public authority purports to dismiss the holder of a public office in excess of its powers, or in breach of natural justice, or unlawfully (categories which overlap), the dismissal is, as between the public authority and the office-holder, null, void and without legal effect, at any rate once a court of competent jurisdiction so declares or orders. **Thus the office-holder remains in office, entitled to the remuneration attaching to such office, so long as he remains ready, willing and able to render the service required of him, until his tenure of office is lawfully brought to an end by resignation or lawful dismissal.**

[11] I am in full agreement with this restatement of the law.

[12] Applying this principle to the facts of this case, the Claimant is entitled to all the remuneration attaching to his post up to August 1999 when he resigned by his voluntary act of leaving the state and embarking on his unauthorized course of

study. As I have noted above, despite the protestations of the Claimant to the contrary, his actions were inconsistent with his continued employment.

[13] Issues of prescription also arise at this stage.

[14] Article 2122 of the St. Lucia Civil Code of St. Lucia Code prescribes claims for wages due by the passage of 3 years. That period of time begins to run at the moment the entitlement to those withheld wages accrues. Each pay interval that those wages are withheld creates a new cause of action. But at the very latest time would have started to run in August 1999 when the Claimant resigned. He then had full knowledge of his entitlement to his wages. He knew that he was terminating his employment when he embarked on his legal studies abroad without leave. In order for him to succeed he must have brought his claim within 3 years of that date. This claim was filed on October 14th, 2005, well outside the prescription period. Even if the Claimant seeks to frame his claim in contract he is still too late. The evidence shows that the Claimant ought to have been reinstated by May 5th, 1999 at the very latest, when the Claimant informed the Defendant that his criminal charges had been dismissed. Actions for breach of contract are prescribed by 6 years under Article 2124 of the Civil Code. This period expired before the instant claim was filed. The effect of this is stipulated in Article 2129 of the Civil Code . . . **“the debt is absolutely extinguished . . .”** (See for example Michele Stephenson et al v Lambert James-Soomer SLUHCV2003/0138 a judgment of Edwards J. (As she then was) applying Walcott v Serieux Civil Appeal No. 2 of 1975.

[15] As the Claimant can maintain no action his claim must fail. The claim is thus dismissed with costs to the Defendants. At an earlier stage proceedings against the second Defendant were struck out with costs to the second Defendant to be determined at trial.

- [16] In his amended statement of claim, the Claimant sought to recover \$386,220.63 in unpaid salary and gratuity. He also sought \$1,292.19 in pension per month. He wished as well to be awarded general damages for breach of contract and aggravated damages for the disgrace, humiliation inconvenience and embarrassment caused by the breach.
- [17] I propose to award prescribed costs on the sums claimed by the Claimant as the value of this claim. For ease of calculation, I disregard the claim for pension. Prescribed costs on \$386,220.63 amounts to \$60,122.06.
- [18] For the second Defendant who would not have been liable to pay salaries I value the claim at \$50,000.00. Prescribed costs would be 55% of \$14,000.00, that is, \$7,700 as this matter as far as the second Defendant is concerned ended at case management.
- [19] A word in closing: As is clear from my reasoning above, had this Claimant acted promptly the result may well have been different. The Defendants having wrongfully withheld the Claimant's salary may well find it in themselves to forego the costs I have awarded them.

BRIAN S. COTTLE
HIGH COURT JUDGE