

THE EASTERN CARIBBEAN SUPREME COURT
INT THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2007/1086

BETWEEN

GILROY SATNEY

Claimant

AND

SAINT LUCIA AIR & SEA PORTS AUTHORITY

Defendant

Appearances:

Dr. Kenny Anthony for Claimant
Mr. Mark Maragh for Defendant

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2008: October 27
November 25
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JUDGMENT

[1] Cottle J: Having received leave, Gilroy Satney filed a fixed date claim form wherein he sought certain relief. He sought:

- (1) *An order of Certiorari to remove into the High Court and quash the decision of the Defendant to dismiss the Claimant from his post as Director of Human Resources and Administration;*
- (2) *A Declaration that the decision to dismiss the Claimant is unlawful, in breach of natural justice and as between the Defendant and the Claimant null, void and without legal effect;*

(3) A Declaration that the Defendant, in dismissing the Claimant because of his political opinion and affiliation treated the Claimant in a discriminatory manner contrary to section 13 (2) of the Constitution of Saint Lucia, S. I. 1978 No.1901;

(4) A Declaration that the Claimant remains in his post, entitled to remuneration attaching to his post in accordance with the terms of his contract since he is willing and able to render the service required of him

[2] Up to 27th April 2007, Mr. Satney was employed with the Defendants as its Director of Human Resources and Administration. He had been first appointed to a position with St. Lucia Air and Sea Ports Authority (SLASPA) on a fixed term contract for three (3) years. This contract ended in 2001. Thereafter he entered into a two (2) year contract to 2003 and a three (3) year contract to 2006

[3] On May 12 2006, he accepted a new three year contract.. Clause 10.1 of that Contract provided as follows

“The Authority may at any time terminate the engagement of the Director of Human Resources and Administration on giving him three (3) months notice in writing, or on paying him three (3) months salary in lieu of notice. He shall, however, be eligible for any vacation leave with full salary which he may have earned plus such proportion of his gratuity as may be due to him at the end of the three (3) months”.

[4] By letter dated 16th April, 2007, the Chairman of SLASPA wrote to Mr. Satney, advising him that his services as Director of Human Resources and Administration were terminated with effect from 27th April 2007. He was paid three (3) months salary in lieu of notice.

[5] Before he was terminated Mr. Satney was not afforded any opportunity to be heard. No reasons were advanced for the termination of his contract of employment. Mr. Satney says that the consistent practice of the Defendants led him to have a legitimate expectation that he would have been heard prior to dismissal.

[6] It is important to note that the remedies that the Claimant seeks are public law remedies.

[7] Dr. Anthony for the Claimant has helpfully distilled the applicable law which governs the dichotomy between public law and private law. If it turns out that the Claimant's remedies; if any, lie in the realm of private law, the present action must fail.

[8] On the face of it, Mr. Satney's complaints have to do with a contract of employment. Lord Donaldson M.R. in R. V. East Berkshire Health Authority ex p. Walsh {1985} QB 152, reviewed several cases.

[9] He concluded that it is the existence of statutory provisions which injects the needed element of public law. However he added:

"The ordinary employer is free to act in breach of his contracts of employment and if he does so the employee will acquire certain private law rights and remedies....."

[10] Dr. Anthony also examines regional authorities and authorities from this court. From his analysis two points emerge.

[11] First judicial review may be denied if alternative domestic remedies are available and adequate and secondly, where no contractual protection exists then administrative law remedies may be invoked.

[12] Applying these standards to the instant case Dr. Anthony urges that:

- (a) *Alternative private law remedies are exceedingly limited in Saint Lucia;*
- (b) *Saint Lucia has no law of unfair dismissal on its statute books*
- (c) *In Saint Lucia, an employer, under common law principles can still dismiss employees without a reason and without procedural fairness*

(d) *This glaring absence of a remedy in private employment law is even more catastrophic since the only legislation which seeks to regulate contracts of service in general, the Contracts of Service, Act, Cap 16:03, provide little or no protection to employees of public authorities.*

[13] In his evidence before the court Mr. Satney makes several telling admissions. He admits that Clause 10 appeared in all of his successive contracts of employment. At the end of each contract he was free to negotiate fresh terms and conditions. He did re-negotiate certain terms but was content to abide by Clause 10 as he did not consider it necessary to re-negotiate it.

[14] SLASPA is statutorily empowered to appoint staff at such remuneration and on such terms and conditions as it considers necessary for the proper carrying out of its functions under the statute.

[15] Another line of Authorities cited by Dr. Anthony is instructive. There are the Canadian cases of Knight v Board of Education of Indian Head School Division No. 19 [1990] Sask R. and Dunsmuir v Brunswick 2w8 Can. Sus. Lexis 10.

[16] In Knight's case, having been dismissed on three (3) months notice, Knight challenged his dismissal as wrongful and unlawful alleging the absence of procedural fairness. The court in Knight felt that:

“The duty to act fairly does not depend on doctrines of employment law, but stems from the fact that the employer is a public body whose powers are derived from statute, powers that must be exercised according to the rules of Administrative law”.

[17] Knight's case was distinguished in Dunsmuir's case. The court held:

“While the majority opinion in Knight properly recognized the important place of a general duty of fairness in administrative law, in our opinion, it incorrectly analyzed the effects of a contract of employment on such a duty. “The majority in knight proceeded on the premise that a duty of fairness based on public law applied unless expressly excluded by the employment contract or the state (p. 681), without consideration of the terms of the contract with regard to fairness issues”.

and added

“Where a dismissal decision is properly within the public authority’s powers and is taken pursuant to a contract of employment, there is no compelling public law purposes for imposing a duty of fairness”.

[18] Dr. Anthony distinguishes the position in Dunsmuir from the present case. He argues that Dunsmuir is applicable where the public employee is protected from wrongful dismissal by contract. It is only then, he says, that a Claimant should be restricted to his remedies in private law. Dr. Anthony goes on to add the rider that if as well there exists no protection by statute, if the public employee can be dismissed at pleasure, then that employee is entitled to a general duty of procedural fairness and administrative, law remedies are available to him to enforce the performance of that duty.

[19] He also examines the case of Martin v Vancouver (city) {2008} BC. Lexis 864. This case examines the impact of Dunsmuir case on the decision in Knight. In Martin the Vancouver City Council dismissed all the members of a Board without notice, hearing or a cause. The Chairman of the Board contested the dismissal, claiming that the Board members were entitled to procedural fairness. The court in Martin concluded that:

“.....the procedural fairness principles articulated in Knight continue to apply to non contractual employment relationships....”

The court also went on to hold that Martin was not entitled to procedural fairness but did so for reasons which are not relevant to the present case.

[20] After considering these authorities I have arrived at the conclusion that Mr. Satney was not entitled to procedural fairness. He was a contracted employee.. He enjoyed contractual protection not in the sense that his contract specifically had provisions aimed at preventing wrongful dismissal but in the sense that he voluntarily agreed to a contract whereunder he could be dismissed without cause, upon three (3) months notice. That is the contractual protection he agreed to. Any perceived breaches of his contractual rights can be vindicated by application of the relevant private law remedies which are available to Mr. Satney.

[21] The outcome of my determination that Mr. Satney's remedies, if any, lie in the realm of private law is that this claim for administrative relief must fail. The claim is dismissed. Under Civil Procedures Rules 2000 part 56.13 (6) I make no order as to costs.

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BRIAN COTTLE
High Court Judge