

**EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NUMBER: SVGHCV 2010/0399

BETWEEN:

OTTO SAM

CLAIMANT

AND

TYRONE BURKE, CHIEF PERSONEL OFFICER

DEFENDANT

APPEARANCES:

Mr. Jomo Thomas of Counsel for the Claimant/Applicant

Mr. Grahame Bollers of Counsel for the Defendant/Respondent

2015: November 10

2016: December 12

ASSESSMENT OF DAMAGES

- [1] **GLASGOW, M:** The applicant (Mr. Sam) applied to the court on 5th May, 2015 for an assessment of damages following judgment granted by the court on 6th February, 2014. The judgment was given further to Mr. Sam's filing of an application for judicial review of the decision of Mr. Tyrone Burke, Chief Personnel Officer (the CPO) to transfer him from his post as Head teacher at South Rivers Methodist School to the National Emergency Management Office (NEMO). The court found that the decision of the CPO to transfer him was illegal and irrational and issued an order that he is entitled to an award of damages and costs for the conduct of the CPO. This ruling set out the award of damages.

BRIEF BACKGROUND

- [2] Mr. Sam is a trained teacher who has served in several senior posts in the education sector for more than 3 decades. His biography includes a master's degree in educational management and leadership, a certificate in teacher education, educational management and supervision and a bachelor's degree in education administration. On August 17, 2010 while he was serving as the head teacher of the South River Methodist School he received correspondence from the CPO that he was being transferred to NEMO effective August 23, 2010. This decision did not sit well with Mr. Sam as he was of the view that, among other things, he was being transferred to a position for which he was not qualified. Additionally, it would appear that the new post was not at the same level or status as his previous post of head teacher. After he reported to the new post, Mr. Sam complained that he was not given any work or that the work eventually assigned was beneath his rank or qualifications. He viewed his transfer as a form of discipline without a hearing and a demotion. He claimed that the purportedly illegal transfer had caused irreparable harm to his career and exposed him to ridicule and humiliation. The trial judge agreed with him that the transfer was in fact illegal and irrational.

ARGUMENTS ON ASSESSMENT - MR. SAM

- [3] Mr. Sam submits that an applicant for judicial review is entitled to be awarded damages on 2 bases –
- (1) Where a private law claim is brought against a public authority;
 - (2) The claimant establishes that the unlawful action constitutes recognized torts or involves a breach of contract.
- [4] Rules 56.8(1) and (2) of Part 56 of the Civil Procedure Rules 2000 (CPR 2000) are said to underpin these propositions of law. The said rules provide –
- 56.8 (1) The general rule is that, where permitted by the substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that –*
- (a) arises out of; or*
 - (b) is related or connected to;*
- the subject matter of an application for an administrative order.*
- (2) In particular the court may, on a claim for judicial review or for relief under the Constitution award –*

- (a) damages;
 - (b) restitution; or
 - (c) an order for return of property to the claimant;
- if the –
- (i) claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates; or
 - (ii) facts set out in the claimant's affidavit or statement of case justify the granting of such remedy or relief; and
 - (iii) court is satisfied that, at the time when the application was made the claimant could have issued a claim for such remedy.

[5] In his submissions on the assessment, Mr. Sam says that his claim for judicial review establishes the basis for an action for breach of his employment arrangement with the Government of Saint Vincent and the Grenadines (the government). Mr. Sam explains that the conditions of his office as a teacher are covered by a collective agreement between the government and the teacher's union on the island. His illegal transfer amounted to a breach of several rights under the said collective agreement. In particular, Mr. Sam testifies that although he continued to receive the basic pay of a head teacher, he was denied an annual duty allowance of \$800.00 and a travel allowance of \$100.00 per month which were additional benefits attaching to the office of head teacher. The latter sum he would have received had he remained in the travel zone from which his transfer removed him. In his witness statement, Mr. Sam further complains that his working hours were changed from 9 am to 3 pm to 8 am to 4 pm. He wishes to be compensated for the extra two hours of work for 500 days at \$60.00 per hour for a total of \$60,000.00.

[6] Mr. Sam also asks for a vindictory award of the sort granted in the cases of **Fraser v The Judicial and Legal Services Commission and another**¹, **Inniss v the Attorney General**², and **The Prime Minister and Samuel v Sir Gerald Watt**³. The argument is that the court in those cases granted a substantial sum as was stated in **Inniss**⁴

Not to punish the executive but to vindicate the appellant's right and to, some extent at least, act as a deterrent against further breaches

¹ [2008] UKPC 25

² [2008] UKPC 42

³ ANUHCVP 2012/0005

⁴ [2008] UKPC 42 at para. 27

[7] Mr. Sam makes the point that he is similar circumstanced to Sir Gerald in the **Watt** decision. He asserts that the threshold for an award of vindictory damages of something more than nominal award has been made out on the following grounds –

- (1) As in the **Inniss** and **Watt** cases, the CPO's actions amounted to a high handed overreach of authority. While he was not dismissed from his post, it is said that the transfer relegated him to an office and station lesser than the one he previously held. Compounding this action was the fact that the transfer was expressed to be without a terminable date. This action severely affected Mr. Sam's professional, economic, emotional and psychological wellbeing;
- (2) The transfer usurped the powers of the Public Service Commission (the commission). The trial judge ruled that *"no sensible person who considered the tasks to be performed at NEMO would remove a qualified and experienced Head Teacher and assign him to perform such tasks of an indefinite period."*⁵ This ruling underscores the need for an award of substantial damages to *"protest the illegal interference by an administrative head to influence and affect the interest of a lower ranked public officer when the administrative head had absolutely no power to do so."*⁶
- (3) As in the **Watt** case, Mr. Sam does not suggest that a constitutional right has been infringed. Rather both cases involve infringement of rights which have a constitutional element. In this case, the relationship between Mr. Sam and the government is said to be "managed" by the Commission, a constitutional entity pursuant to section 77 of the Constitution of St. Vincent and the Grenadines. Additionally, Mr. Sam's engagement letter on appointment to serve as a teacher informed him that his employment is subject to the regulations of the commission and the civil service orders among other regulations. It was a specific finding of the trial judge that the decision to transfer was illegal since it was not made by the constitutional entity clothed with the power to do so but rather it was made by the CPO.

⁵ Sam v Tyrone Burke (Chief Personnel Officer SVGHCV 2010/0399

⁶ Paragraph 14(b) of Mr. Sam's submissions filed on 12th October, 2015

- (4) Mr. Sam also repeats the fact that he is a well qualified educator of over 30 years' experience who received extensive training abroad before his transfer to South River Methodist School as head teacher, training that was in fact sponsored by the government. The illegal transfer not only besmirched his professional integrity and reputation as a competent educator but it was also an attack on the integrity of the commission's independence and competence to execute its constitutional mandate.

[8] In furtherance of his request for a vindictory award, Mr. Sam gave evidence via his witness statement that when he was transferred he was -:

given no job title, no tools with which to work, no real tasks and responsibilities that were equivalent to my appointed post of head teacher. I was hurriedly uprooted from my post and throw (sic) into an environment for which I had no experience or training.

For the first seven weeks I just sat at a desk without anything to do. I wrote several letters to the Deputy Director (Ag) as well as to the Permanent Secretary of the Ministry of National Security to complain about my plight and frustration. It was almost seven (7) weeks after I was reported at NEMO that Director (Ag) provided me with a task. This was to assist the Training Officer to deliver talks at schools.

I am a well respected principal of many years. It was beyond humiliating and distressing that I was now relegated to a mere assistant to the Training Officer at NEMO, who was two grades below me. To make matters worse my transfer to NEMO had no end date. My letter of transfer did not contain one and neither did the Deputy Director to whom I reported know of any such date even though the letter insisted by letter dated September 23, 2010 that my transfer was temporary

I was given field duties of a nature not equivalent or even close to my role and responsibilities as a primary school teacher. I was total misfit and the Defendant must have known from his position that knew (sic) that I was not the suitable for NEMO. I was forced into a passive and unproductive role which amounted to nothing but a demotion. As far as I am aware, at the time I was not charged with any disciplinary misconduct, found guilty and sanctioned with a demotion. I became the laughing stock of many. I was ridiculed by colleagues and the public at large.

On November 4, 2010, a mere 6 weeks after I was transferred to NEMO I was sent on 90 days vacation leave. I did not request it. My leave took effect 4 days after the country was affected by Hurricane Tomas. To me this made absolutely no sense. I was transferred to an organization a few days before school year started and in short time in my new assignment I was sent on leave for 90 days. This treatment meted out to me deepened my frustration and distress.

- [9] Mr. Sam does not propose any figure for the request for a vindictory award. His request is that the court grants “*substantial damages in the sum to vindicate his constitutional rights...if the court does not find favor for substantial damages, the Claimant seeks damages for distress and inconvenience in addition to that which he was entitled to under his employment contract.*”⁷

THE CPO’S ARGUMENTS

- [10] The CPO agrees that there is no rule that an award of damages flows inevitably from an order that an administrative entity acted unlawfully. For this proposition he relies on the cases of **James v Attorney General of Saint Lucia**⁸, **R(Quark Fishing Ltd v Secretary of State for Foreign and Commonwealth Affairs**⁹ and **R(Nurse Prescribers Ltd v Secretary of State for Health**¹⁰. The CPO also concedes that CPR 56. 8 set out above in this judgment recites the court’s discretion to award damages on a claim for judicial review in the manner circumscribed by the said rules. The CPO however contends that Mr. Sam has not “*set out in his Claim Form or Statement of Claim any claim whatsoever for damages as now specified in his witness statement.*”¹¹ The point is being made that there is no pleading in respect of a claim for a private law action. Additionally, it is argued that the claims for annual duty allowance, travel costs and the difference in wages for additional working hours relate to special damages that ought to be pleaded and proved. The fact that Mr. Sam did not specifically plead for these items of loss now enumerated on his witness statement precludes him from receiving the same as special damages.

⁷ Supra note6 at para. 15

⁸ SLUHCV 2005/0862

⁹ [2005] UKHL 57 at 96

¹⁰ [2004] EWHC 403

¹¹ CPO’s submissions filed on 29th October 2015

[11] In terms of an award of vindictory damages, the argument is that Mr. Sam failed to take into account that his claim is not one for constitutional relief and there is no pleaded breach of the constitution. Relying on the **Fraser** and **Inniss** judgments, the CPO submits that vindictory awards are only granted to “*remedy constitutional wrongs and are not available to an applicant as a remedy for breach of contract*”¹²

ISSUES

- (1) Is a private law claim set out in the pleadings in addition to the claim for judicial review?
- (2) Are the claims for annual duty allowance, travel costs and difference in wages special damages which must be pleaded and proved?
- (3) Is Mr. Sam entitled to compensation for annual duty allowance, travel costs and difference in wages
- (4) Is Mr. Sam entitled to vindictory damages?

FINDINGS AND RULING

ISSUE 1 - IS A PRIVATE LAW CLAIM SET OUT IN THE PLEADINGS IN ADDITION TO THE CLAIM FOR JUDICIAL REVIEW?

THE LAW

[12] There is no dispute and indeed there can be none that the court retains the discretion to award damages on a claim for judicial review. **Halsbury's Laws of England** restates the principle thusly¹³

On an application for judicial review, the court may award damages providing that a claim for damages was included in the application and, if the matter had been brought by an ordinary claim, damages would be available. This provision does not provide for any new substantive right to damages. Rather, it enables a claim for damages to be sought in an application for judicial review where a private law cause of action, such as negligence or false imprisonment, is made out against the public body. A claim for damages cannot be

¹² CPO's submissions filed on 29th October 2015

¹³ 4th edn. Vol. 1 at para. 160. See also section 31(4) of the Senior Courts Act (UK), CPR 54.3(2) (UK) and CPR 56.8(1) (ECSC)

sought alone on an application for judicial review but must be combined with a claim for another remedy such as one of the prerogative remedies or an injunction or declaration

[13] The Civil Court Practice commentary summarizes the law and practice in this manner¹⁴

Under English law, a public law illegality does not in itself give rise to liability in damages. A claim for judicial review may include a claim for damages, though it may not seek damages alone. On a claim for judicial review, the court may award damages to the claimant if:

- (1) he has included in his claim a claim for damages arising from any matter to which the application relates; and*
- (2) the court is satisfied that if the claim had been made in an action begun by the claimant at the time of making his claim, he would have been entitled as a matter of private law to damages.*

These procedural rules are not intended to create any new or additional right but rather serve two purposes:

- (1) to make it unnecessary for a claimant who has valid claims both for judicial review and for damages for breach of a private right, arising out of the same circumstances, to institute duplicate proceedings; and*
- (2) should the claim for judicial review fail but the claim for damages be held to be arguable, to make it unnecessary to begin fresh proceedings under CPR Part 7, and indirectly protect the claimant from any possibility of his claim for damages becoming time-barred during the period when his application for judicial review is under consideration.*

As a general principle, damages will only be recovered from a public body where the claimant can show a recognised tort or breach of contract. The general principles governing tortious and contractual liability apply to public bodies exercising public powers, although special considerations relating to the public nature of the tortfeasor and the

¹⁴ The Civil Court Practice 2016 Vol 1 CPR (UK) 54.3 at page 1324

activity in question may apply. In many cases, it will be appropriate simply to proceed by way of a private law claim as, notwithstanding the public law nature of the alleged wrongdoer, the matter is essentially one of private law. There are, however, certain cases where the private law cause of action arises in a way which is related, either factually or legally, to an independent judicial review claim. It is in these cases that the rule that damages can be awarded on a claim for judicial review is of more practical use.

[14] It is also explained that ¹⁵ –

In order for a claim for damages to be sustainable in judicial review, proceedings not merely must meet the procedural requirements specified by Part 54 but there must also have been a viable cause of action at the time the application for judicial review was made. Assuming there to be a viable claim, the award of damages is discretionary: s 31(4) of the Senior Courts Act 1981; see R (on the application of Bamber) v Revenue and Customs Comrs [2007] EWHC 798 (Admin), [2007] SWTI 1175. Further, the proceedings must truly warrant judicial review; those which relate solely to a private law claim for damages would be liable to be struck out as an abuse of process: see Supperstone and Goudie: Judicial Review, 2nd edn at paragraph 14.37, R v East Berkshire Health Authority, ex p Walsh [1985] QB 152, [1984] 3 All ER 425 and, generally, O'Reilly v Mackman [1983] 2 AC 237; ...Further, the process by which judicial review is sought is not suited to findings of fact, which may be necessary for claims for damages. Thus, a claim for damages may, after a substantive hearing for judicial review, be adjourned with directions to be sought as to the conduct of the claim for damages: see R v Lambeth London Borough, ex p Campbell (1994) 26 HLR 618.

[15] Part 56.8 of our CPR recited above replicates the discretion to award damages in these circumstances.

[16] Is a private law claim set out on the pleadings in addition to a request for judicial review? It would seem to me that if, consistent with the principles and analysis above replicated, Mr. Sam has specifically pleaded the CPO's breach of his employment agreement with the government, the only remaining question would be the type of losses in question and the quantification of the said losses. I disagree with the CPO that the elements of a claim for the breach of the employment

¹⁵ Atkin's Court Forms 2016. Vol 11. See also Baroness Hale in R(Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs [2005] UKHL 57 at para. 96

agreement have not been set out in the pleadings. After recounting the history of his appointment to the teaching service at paragraphs 3 to 5 of the statement of claim, paragraphs 6 to 13 lay out a detailed account of the illegal proclamation of his transfer and the actions which flowed therefrom during his time at NEMO. Paragraph 15 of the statement of claim specifically pleads that his transfer was in contravention or breach of his letter of appointment, the collective agreement and the civil service order. An order for an award of the arrears of damages for the time during which Mr. Sam was removed from his post was sought among the other remedies requested in his prayer for relief. The request for damages is in the nature of a prayer for the return of the emoluments lost by reason of his illegal transfer and he is so entitled to recover the same. The CPO has not provided any arguments on the nature of the losses sought but has rather argued that there is no basis set out for any award. This position has been shown to be incorrect as was stated above.

ISSUE 2 - ARE THE CLAIMS FOR ANNUAL DUTY ALLOWANCE, TRAVEL COSTS AND DIFFERENCE IN WAGES SPECIAL DAMAGES WHICH MUST BE PLEADED AND PROVED?

[17] The CPO has argued that Mr. Sam has not pleaded the loss of the annual duty allowance, travel allowance and the difference in wages. The arguments runs that these losses are special damages that must be pleaded and proved. I believe that the CPO's position is an incorrect assumption about the nature of Mr. Sam's claim. A somewhat similar situation occurred in the case of **McIntyre Paul v the Commissioner of Police**¹⁶. In that case, the claimant was removed from office on the declaration that he had abandoned his post. He applied for judicial review of this decision and among other things, sought a quashing of the order declaring that he abandoned his posts as being one that was ultra vires and an order for general damages and other relief. The trial judge found that the decision to declare that the claimant had abandoned his post was illegal, ultra vires and unconstitutional. He then ordered an assessment of damages for wrongful dismissal. The Court of Appeal ruled that, having found the decision to remove the claimant from office to be unlawful, the legal implication was that the claimant remained in his post and was entitled to an award of arrears of salary and other benefits rather than an award of damages for wrongful dismissal. After examining the cases of **Jhagroo v Teaching Service Commission**¹⁷ and **McLaughlin v His Excellency the Governor of the Cayman Islands**¹⁸, the court observed that¹⁹

¹⁶ DOMHCVAP 2006/0026

¹⁷ (2002) 60 WIR 510

¹⁸ [2007] UKPC 50

A comparison of the **Jhagroo** case and the **McLaughlin** case shows the consequences of making or not making a declaration that a dismissal was invalid, either of which the court may choose to do as a matter of discretion. What emerges is that damages for wrongful dismissal from a public office may be awarded when the court does not make a declaration that the dismissal was invalid, which was the course adopted in **Jhagroo**. Where, however, the court makes a declaration that the dismissal was invalid, as was done in **McLaughlin**, the court will order payment of arrears of salary and not damages.

- [18] The instant case is not one where the question of wrongful dismissal arises but the implication of the Court of Appeal's ruling as set out above is relevant as it was later argued by the defendant in those proceedings that certain special damages should not be awarded as they were not specifically pleaded. The court's posture on that issue is repeated in extenso;

The point the Solicitor General wished to argue was that the appellant made no claim for wrongful dismissal and, thus, no claim for special damages. A claim for special damages must be specifically pleaded, the Solicitor General argued, and if not pleaded the amount that should have been pleaded may not be awarded.

Accepting the proposition to be as stated, which we do purely for the purpose of argument, the peculiar history of this claim, which started off solely as a claim in public law, makes it impossible to apply that rule. It is not the case that the appellant failed to plead special damage when he should have done so; he could not have done so because he never made a claim that could have included an award of special damages... The rule that a claimant must plead special damage applies to private law claims and, until the judge altered the nature of the claim, the appellant claimed only in public law. When the appellant filed his affidavit of damage he gave detailed particulars of the special as well as the general damages he sought and, therefore, we regard the appellant as being compliant with the rule at the time he was required to be.

- [19] In my view the same logic applies to the present assessment. The history of these proceedings indicates that it is a claim in public law to set aside an illegal and irrational order to remove Mr. Sam from office and to transfer him to another post. The natural consequence of the ruling that the decision to remove or transfer was illegal is that Mr. Sam remains in his previous post of head teacher. The further natural implication of the ruling is that he is entitled to receive arrears of salary and other benefits which were not paid to him during the time of his illegal transfer. As was said in **McIntyre**, this is a feature of cases of this nature that do not easily sit with the ordinary rules of pleadings in a private law claim. The award of damages in these circumstances must, perforce, take the unique dimensions of the application into account. As was found by the Court of Appeal in **McIntyre**, I am satisfied that the claim for the lost benefits was properly raised by Mr. Sam on his application for the assessment of damages.

¹⁹ McIntyre Paul DOMHCVAP 2006/0026 at para. 12

ISSUE 3 - IS MR. SAM ENTITLED TO COMPENSATION FOR ARREARS OF EMOLUMENTS AND OTHER RELIEF?

[20] The course of these proceedings demonstrates conclusively that Mr. Sam is entitled to the award of the arrears of emoluments and other relief. When the CPO acted to transfer Mr. Sam without legal authority and without any rational basis, he violated the terms of the employment agreement between Mr. Sam and the government. As was correctly pointed out in the submissions, the terms and conditions of Mr. Sam's employment relationship with the government are governed by, among other things, sections 77 and 78 of the St. Vincent and the Grenadines Constitution which set out the power of the commission to both appoint and dismiss employees of the government²⁰, the commission's rules and regulations, the collective agreement between the union and the government and the civil services rules and regulations. Indeed, at the time of his appointment, Mr. Sam was specifically informed that his service as a teacher was subject to the public service rules and regulation. The trial judge found that the appointment to NEMO was effected by the CPO instead of the commission which is empowered by the constitution to make such appointments. This action was in flagrant contravention of the terms of Mr. Sam's employment agreement with the government and it goes without saying that he has the right to bring a private law claim for the breach of the agreement.

COMPENSATION FOR THE LOSS SUFFERED

[21] In compensating for his loss, Mr. Sam has asked for the lost benefit of his annual duty allowance, travel allowance and the difference in wages due to longer working hours. In regards to items (1) and (2), Mr. Sam has provided the court with the copy of the collective agreement. Article 29 of the collective agreement contains the agreed position on salary and other financial benefits. Of particular relevance to this discourse are Articles 29-2 and Article 29-6 of the agreement –

²⁰ Section 78 of the constitution in particular states that

78. (1) *The power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), and subject to the provisions of section 87 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission*

29-2 Where an employee is transferred to a school or department which is remote from his normal place of residence and which entails significant travel costs or displacement of (sic) an additional \$100.00 per month, compensation shall be granted to the employee.

29-3 An annual duty allowance shall be paid as follows -

...

(b) Principals = \$800.00

ANNUAL DUTY ALLOWANCE

[22] Paragraph 29-2 bestows an unreserved right on the head teacher employed by the government to receive an annual duty allowance of \$800.00 per annum. Mr. Sam was entitled to, was in receipt of and was deprived of the same after his transfer. He must be compensated for the time he was out of pocket in respect of the duty allowance. He asks for the sum of \$800.00 for a period of 2 years, that is, from August 2010 to August 2012. No explanation has been advanced for the period of loss claimed but I have accepted this period as reasonable for the reasons stated below. The award for this loss is therefore \$800.00 x the loss for the years 2010, 2011 and 2012 amounting to \$2400.00.

TRAVEL ALLOWANCE

[23] The reasoning applied to the loss of the annual duty allowance cannot be applied to the claim for travel allowance since the payment of travel allowance is not similarly unqualified. It is contingent on an assignment to a school which is located at a remote distance away from the teacher's home and involves added travel costs or displacement. This provision of the agreement evidently provides for reimbursement of costs capped at \$100.00 per month rather than the conferment of a right to an allowance as part of the general package of emoluments for services. Mr. Sam's transfer would have obviated the necessity for such expenses. At its highest, a claim of such a nature at this point may have resided in a request for unpaid travel expenses, if any, prior to the date of his transfer to NEMO. The odd argument is raised that his transfer "*moved him of the zone in which he would have incurred minimal travel expenses.*"²¹ This is indeed a curious position to advance since if the reasoning is accepted it may, among other outcomes, improperly elevate the right to reimbursement for travel expenses to a right to incur such expenses and to seek

²¹ Supra note 6 at para. 10

reimbursement for the same. This posture, I would humbly posit, only needs to be stated to be rejected as outlandish.

REIMBURSEMENT FOR EXTRA WORKING HOURS

[24] In respect of the claim for reimbursement for extra hours of work, there is no evidence placed before the court with respect to the normal working hours of a teacher or an employee stationed at NEMO other than the assertions made by Mr. Sam in his witness statement at paragraph 5 thereof. I do note that the normal hours of school are between the hours of 9 am and 3 pm. There is no challenge by the CPO to this assertion. I would therefore accept the evidence of the differentiation between the working hours of a teacher and the civil servant stationed at NEMO as reasonable. There is however tremendous difficulty with the claim for loss of \$60.00 per day. No basis has been presented for the sum requested. It certainly behooves an applicant on an application of this sort to inform the court of facts which ought to be readily ascertainable. This loss has therefore not been proven. However the lack of proof of the specifics of the loss does not conclusively dispose of the issue since the failure to prove the loss does not entirely deprive him of redress. In the absence of proof of this loss, I would adopt the learning in the cases of **Greer v Alston's Engineering Sales & Services Ltd**²², **Attorney General of Antigua v Estate of Cyril Thomas Bufton**²³ and **Winter et al v Richardson**²⁴ in considering a nominal award that is, hopefully, not out of scale. In this regard I observe that these authorities admonish that in arriving at an award of nominal damages that is not out of scale, a miniscule grant is not inevitable.

[25] The sum of \$60.00 per day has been rejected as unproven. I take judicial notice of the fact that the minimum wage is \$25.00 per day for some categories of workers²⁵. Taking this figure as a guide I add the sum of \$20.00 on the basis that a head teacher may earn double or nearly double the minimum wage. The request for loss covering 500 day is also somewhat odd. The illegal transfer occurred on August 23, 2010. There is no evidence before the court as to if or when the illegal transfer ended. I observe that it is now more than 6 years since this event occurred. The period of

²² [2003] UKPC 46

²³ ANUHC VAP 2004/0022

²⁴ ANUHC VAP 2006/025

²⁵ See the Wages Regulation (Security Workers) Order 2008

loss of 500 days is not out of scale and it is applied to the loss of \$48.00 per day to give a sum of \$24,000.00.

ISSUE 4 - AWARD OF VINDICATORY DAMAGES

[26] The CPO has argued vigorously that Mr. Sam is not entitled to an award of vindicatory damages on the premise that damages of this sort are only granted in claims for constitutional relief. In this regard, some effort is made to distinguish the cases of **Fraser** and **Inniss** as purely claims for constitutional remedies. Indeed it is contended that a perusal of the claim form filed by Mr. Sam does not include any allegation of a breach of the constitution. I must confess some disappointment that this argument did not address the court of appeal's ruling in the **Watt** case. As with the extant matter, the **Watt** case was not a frontal complaint about breaches of the constitution but was in fact an application for judicial review. Nonetheless it was found that the right violated was in the nature of a constitutional right, despite the fact that it was not entrenched in the constitution. The issue was dealt with thusly²⁶

*There is no suggestion that any constitutional right of Sir Gerald has been infringed. However, this was no ordinary breach of contract. This was a case where a senior barrister, who can be assumed to have met the criterion in the RPA 2001 for his appointment, of his being a person of integrity, and who held a statutorily entrenched position of Chairman of the Commission was summarily dismissed on the basis that the Prime Minister had lost confidence in his performance. I have no doubt that the sustained effort of the Prime Minister to have Sir Gerald removed from office undermined and cast doubt on his integrity and good name and was an improper attack on the independence and impartiality of the Commission. In my view the learned trial judge should not have been hesitant to find the claim for substantial, as compared to nominal damages, to have been made out by these circumstances. The principles established in **Inniss**' case are equally applicable in a public law case of this kind, which by its nature is a protest at an illegal interference by the political directorate of an electoral process which is required by the statute to be free from political interference. The process is one of the bastions of democracy, and any unjustified and illegal attack on it is deserving of vindicatory damages. The right violated here was in the nature of a constitutional right, despite the fact that it was not entrenched in the Constitution. An additional award of damages, not necessarily of greatly substantial size, is needed to reflect the sense of public outrage and emphasise the importance of the principle in preserving the democratic process. I would grant Sir Gerald's appeal on this ground, and leave the assessment of vindicatory damages to the court below.*

²⁶ ANUHCVP 2012/0005 at para. 21

[27] When the foregoing reasoning is applied to this case, it may be more forcefully reasoned that notwithstanding the fact that the claim proceeded by way of judicial review, elements of breaches of a constitutional right feature prominently. It cannot be seriously debated, for instance, that Mr. Sam has a right not to be removed from his office except in the manner prescribed by section 78 of the constitution. The Privy Council²⁷ has long ago determined that constitutional provisions of this nature serve to insulate the public servant from the kinds of arbitrary and unlawful interference with their office of the sort visited on Mr. Sam by the CPO. The trial judge has ruled that Mr. Sam's has been removed from his office and placed into another by an authority other than the commission which is a patent violation of section 78 of the Constitution. The right not to be thus removed from his office having been violated, he is entitled to an award to vindicate '*the sense of public outrage and emphasize the importance of*²⁸' the right in question.

[28] Mr. Sam has not said how much he claims under this head of loss. However, applying the approach of the court in Watt, I would award a sum of \$30,000.00 as vindicatory damages. The sum of \$10,000 was awarded in Fraser for the vindication of the violation of the constitutional rights of a magistrate and the sum of \$50,000.00 was granted in the unique circumstances surrounding the removal of a registrar in the Inniss case. In the instant situation, a highly qualified educator was arbitrarily removed from his office and unceremoniously deposited in another office for which he was not qualified or equipped. He was left for some time to beseech his superiors for the tools and responsibilities of office and was latter assigned tasks not commensurate with his training, qualifications or experience. He was later sent off on 90 days leave for which he did not apply. A fair and substantial sum must be awarded to vindicate the obvious breach of the constitutional rights afforded to him.

FINAL AWARD

[29] Mr. Sam is awarded the following as damages –

- (1) Annual duty allowance of \$2,400.00
- (2) Difference in salary - \$2,4000.00
- (3) Vindicatory award - \$30,000.00

²⁷ 1982] AC 113

²⁸ The Prime Minister and Samuels v Sir Gerald Watts, KCN, QC ANUHCVP 2012/0005 at para.21

(4) Prescribed costs of \$8,520.00

(5) Total award of \$64,920.00 at 5% per annum from today's date.

[30] The delay in the delivery of the fruits of the judgment in Mr. Sam's favour is highly regrettable. Notwithstanding the court's order dated November 10, 2015 granting permission for the parties to file further submissions and for the applicant to file a hearing bundle, the court received the hearing bundle until 20th October, 2016. I thank counsel and the parties for their patience and their helpful submissions and arguments.

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**RAULSTON GLASGOW
MASTER**