

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Commercial and Labour Division

2016/COM/lab/00026

BETWEEN

LEON PALMER

Plaintiff

-AND-

THE ATTORNEY-GENERAL
OF THE COMMONWEALTH OF THE BAHAMAS

Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Kahlil Parker and Ms. Roberta Quant of Cedric L. Parker & Co.
for the Plaintiff
Mr. Kirkland Mackey and Ms. Raquel Whyms for the Defendant

Hearing Dates: 22 February 2021, 17 May 2021

Civil – Breach of contract – Whether the Defendant owes the Plaintiff contractual gratuity- Whether the Plaintiff was interdicted – Implied Contract - Whether the Plaintiff had an unwritten contract after 26 August 2012 – Legitimate expectation – Not pleaded - Is the Plaintiff entitled to be redeployed or reemployed after contract ended – Damages (if any)

The Plaintiff was initially employed as a trained teacher with the Ministry of Education from about September 2006 to September 2007 and then, on two subsequent contracts, the last ended on 26 August 2012. The Plaintiff continued working without a formal written contract until 23 January 2013 when he was allegedly interdicted by the Ministry of Education after being arrested and charged for rape. He was to receive one-half (1/2) of his salary during his interdiction but, although a letter was prepared for his interdiction, it was never signed nor dispatched to the proper authority or given to the Plaintiff. Consequently, he continued to be paid his full salary until end of October 2013 when the Ministry stopped payment. In the meanwhile, the Plaintiff did not return to work after 23 January 2013 as he was advised not to. On 30 November 2015, the Plaintiff was acquitted on the rape charge. The Plaintiff was not paid his gratuity for the contract which ended on 26 August 2012. He claimed breach of contract. He also alleged that the Defendant failed to re-

deploy him and refused to pay his emoluments and salary, inclusive of increments applied during such period which has been unlawfully withheld from October 2013 to the present date.

The Defendant conceded that the Plaintiff is owed gratuity from 11 September 2009 to 26 August 2012. However, the Defendant denied that it breached any contract alleging that from 27 August 2012, the Plaintiff was on a month-to-month contract and as such, his discharge from duty in October 2013 did not result in a breach of his contract of employment. The Defendant also alleged that the Plaintiff was not interdicted.

HELD: Finding that the Defendant owes the Plaintiff salary and emoluments up to 25 August 2014 (bearing in mind that the Plaintiff was paid up to October 2013) inclusive of 15% gratuity for this contractual period with interest thereon at the statutory rate of 6.25% per annum. In addition, the Defendant shall pay its portion of NIB payments to the National Insurance Board up to 25 August 2014. The Defendant shall pay costs of \$24,000 to the Plaintiff.

1. It is conceded that the Defendant owes the Plaintiff gratuity and interest thereon for the contract period 11 September 2009 and ending 26 August 2012. Interest will commence from 1 September 2012 to the date of judgment.
2. On a balance of probabilities, the Court finds that the Plaintiff was not interdicted by the Defendant even though a letter was prepared to that effect. The Court further finds that the letter was not signed and forwarded to the Plaintiff via the Principal of the School or even directly. He did not sign and return the attached copy as stipulated in the letter. The letter was also not sent to Accounts which explains why the Plaintiff continued to receive his full salary until October 2013. It is a policy of the Defendant that interdicted public officers receive one half of their salary during the currency of their interdiction. At best, the Defendant contemplated interdicting him but did not follow through with that process.
3. It is incontrovertible that the Plaintiff continued to work after 26 August 2012 when his previous contract had expired. On 30 March 2012, the Plaintiff applied for a renewal of his contract for two years. It is incontestable that the Ministry had, on at least two previous occasions, been tardy in responding to the Plaintiff's request for a further contract but permitted him to continue to work, with the formal execution of the contract taking place many months after. In my judgment, the Defendant, by permitting the Plaintiff to work after his contract has ended on 26 August 2012, had tacitly agreed to a renewal of his contract for another two years (in accordance with his application for renewal on 30 March 2012). The Plaintiff had every reason to infer that his application for a further two year contract was renewed when he continued to work until his arrest and subsequent charge of rape. The suggestion by the Defendant that the Plaintiff continued to work on a month-to-month contract is disingenuous in light of all of the evidence. The Plaintiff ought to be paid all of his salary and emoluments associated with the unwritten contract which was for a fixed term of 2 years as previous contracts and consistent with his application (bearing in mind that he was paid up to October 2013). In addition, the Plaintiff is entitled to 15% gratuity for this contract with interest at the statutory rate of 6.25% per annum from the date of judgment to the date of payment.
4. The Plaintiff did not plead legitimate expectation and is therefore bound by his pleadings. Even if he had pleaded the principle of legitimate expectation, he would have failed as contractually, he has no right to be re-appointed. His unwritten contract of employment was for a fixed term until 25 August 2014 and upon expiration by effluxion of time, the

Defendant was under no legal obligation to re-employ him. His hope to be re-appointed did not rise to level of legitimate expectation. Legitimate expectation is not the same as an unqualified right. It is a factual situation in which a public authority has caused a person to believe on reasonable grounds that he or she would enjoy some advantage: per Lord Sumption in **Harding v Attorney General of Anguilla** [2018] UKPC 22. **Darling v Attorney General of the Commonwealth of The Bahamas** [1995] BHS J. No. 5 distinguished.

5. The Defendant did not fail to act in accordance with the Public Service Commission Regulations nor did it breach any duty for failing to redeploy or re-employ the Plaintiff. There is no legal obligation on an employer to re-engage an employee after his contract has ended.

JUDGMENT

Charles J:

[1] This is essentially a claim for damages for breach of contract. The Plaintiff, Leon Palmer (“Mr. Palmer”) claims:

1. Payment of salary unlawfully withheld from October 2013 to the date of his acquittal on 30 November 2015 and continuing including such increments and further emoluments issued during the said period and interest thereon;
2. Payment of gratuity and interest thereon for his contract period 11 September 2009 and ending 26 August 2012;
3. Payments to the National Insurance Board (“NIB”) so as to ensure that Mr. Palmer’s NIB contributions are current and continuing, pending the lawful conclusion of his employment;
4. An Order that he be redeployed as a Trained Teacher by the Defendant;
5. Damages for breach of contract regarding the Defendant’s failure to redeploy him and/or pay his salary upon receipt of his said Certificate of Acquittal in relation to the charge of rape to which he was interdicted by the Defendant; and
6. Interest and costs.

Background facts

- [2] Most of the background facts are agreed. To the extent that there may be any departure from the agreed facts, then what is expressed, must be taken as positive findings of facts that I made based on the evidence and the contemporaneous documentary evidence tendered during the trial.
- [3] Mr. Palmer commenced his employment with the Ministry of Education (“the Ministry”) as a Trained Teacher on a temporary month-to-month basis on or about September 2006. The letter, dated 8 November 2006, which confirmed his month-to-month appointment, had no commencement or termination date but was subjected to the Rules and Regulations of the Public Service. Mr. Palmer was posted to the San Salvador High School.
- [4] On 12 March 2007, the Ministry advised Mr. Palmer that his month-to-month contract was for a period of one year and that if he wished to continue in the service beyond, he must request re-employment in writing and submit a medical form through his Principal by 30 May 2007. The letter further advised that his request must state the type of re-employment (temporary or contractual) and the length of time (1-3 years).
- [5] On 23 May 2007, Mr. Palmer applied for re-employment with the Ministry.
- [6] On 13 June 2008, the Ministry approved his re-employment on contract for the period 11 September 2007 to 10 September 2009. A formal Agreement was entered into between the parties on 24 June 2008. Clauses 2 to 4 of that Agreement state:

“2. The salary of the person engaged shall be \$25,900 per annum plus 15% gratuity based on satisfactory completion of service.

3. In accordance with Section 15(1) of the Public Service Act, Chapter 39, gratuities are only paid for a continuous period of not less than two years in any public office”

4. This Agreement is subject to the conditions of service set forth in the annexed Memorandum of Conditions of Service on contract in The

Bahamas and the said Memorandum shall be read and construed as a part of the Agreement. [Emphasis added]

- [7] By effluxion of time, that contract expired on 10 September 2009. Prior to the end of that contract, Mr. Palmer applied for re-employment. By letter dated 14 April 2010 which was forwarded to Mr. Palmer on 2 July 2012, Mr. Palmer was again re-employed as a Trained Teacher, Level 1, Scale S12A, on contract, at a fixed salary of \$28,700 per annum, without change of status, for the period 11 September 2009 to 26 August 2012. His employment was, at all times, governed by Regulation 25(1) of the Public Service Commission Regulations (“the PSC Regulations”). Despite the fact that Mr. Palmer had successfully completed the said contractual employment, the Attorney General, sued pursuant to section 12 of the Crown Proceedings Act (“the Defendant”), has failed to pay his gratuity for that period. There is no evidence that Mr. Palmer had not satisfactorily completed the contract.
- [8] On 30 March 2012, Mr. Palmer once again applied for continued employment for a further period of two years. His application was supported by a letter dated 4 April 2012 by Ms. Virginia A. Romer, Principal of the San Salvador High School. No doubt, she was impressed with his performance. In the letter, she stated “*Mr. Palmer has executed his duties as a teacher of Mathematics extremely well and is therefore highly recommended for re-employment*”.
- [9] His contract having ended on 26 August 2012, Mr. Palmer continued to work with the Ministry without a further written employment contract. It appears that such a practice was not unusual. This is evident that the Ministry continued to pay his monthly salary.
- [10] On 22 January 2013, Mr. Palmer was arrested and charged with rape contrary to section 6 of the Sexual Offences Act.
- [11] By letter dated 1 March 2013, Mr. Palmer was allegedly interdicted by the Permanent Secretary, Department of Education with effect from 21 January 2013

on the grounds that criminal proceedings had been instituted against him. The letter, which was not signed, reads:

“In accordance with Regulation 37(1) of the Public Service Commission Regulations, and in the exercise of powers delegated to me under the Public Service (Delegation of Powers) Order, I hereby interdict you from the exercise of powers and functions of your office as Trained Teacher with effect from 21st January, 2013 on grounds that criminal proceedings are being instituted against you.”

Please note that in accordance with Regulations 39(1) of the Public Service Commission Regulations you shall not leave the Bahama Islands without that (sic) permission of the officer who interdicted you or of any supervisor officer having authority over you.

During the period of interdiction you will receive reduced emoluments of one half (1/2) of your annual salary.

Kindly sign and return to the Permanent Secretary, the attached copy of this letter. [Emphasis added]

Yours sincerely

**Donella Bodie (Mrs.)
Permanent Secretary.”**

- [12] Despite the March 2013 letter, Mr. Palmer continued to receive his full salary until October 2013.
- [13] On 15 July 2013, Ms. Romer wrote to Mr. Palmer. She applauded him for his outstanding performance during the 2012-2013 school year. She thanked him for his contributions and stated, in the concluding paragraph, *“We look forward in anticipation to your soon return, taking your rightful place and continuing to make your contributions to this institution.”*
- [14] In or about September 2013, the Ministry informed Mr. Palmer that payment of his salary would be coded at the end of October 2013 even though the criminal charge was still extant before the Court. No explanation was given.
- [15] Since 23 January 2013, Mr. Palmer has not returned to work as he was advised that he could not work while the criminal charge was pending against him.

[16] On 30 November 2015, Mr. Palmer was acquitted by a Jury following his trial for rape before Bethell J (as she then was). An acquittal certificate dated 2 December 2015 was provided to the Ministry.

[17] Mr. Palmer has not been redeployed within the school system nor was he re-employed. He has not been paid any salary after October 2013.

The issues

[18] The following issues arise for determination:

1. Does the Defendant owe Mr. Palmer contractual gratuity?
2. Was Mr. Palmer interdicted?
3. Did the Defendant breach its contract with Mr. Palmer?
4. Did Mr. Palmer have a contract with the Defendant after October 2013?
5. Is Mr. Palmer entitled to be redeployed/paid salary? and
6. Is Mr. Palmer entitled to any of the relief sought?

The evidence

Leon Palmer

[19] Mr. Palmer testified on his own behalf. He relied on his witness statement which was filed on 26 November 2020. He maintained that the contents of his witness statement are true and correct.

[20] Mr. Palmer was cross-examined very briefly by Mr. Mackey, Counsel for the Attorney General. Under cross-examination, he stated that he received his full salary until October 2013. He insisted that he received the interdiction letter from the school principal. It stated that he would be receiving half of his salary. He did not notify anyone that he was still receiving full salary because he was preoccupied with his criminal matter. Under re-examination, he attempted to clarify this and stated that when he received the cessation letter in October 2013, he was of the

opinion, that *“I would have been overpaid for those first few months and this cessation or cease and desist letter would have been a case of balancing the books, so to speak, as I would have been overpaid for those months leading to October when I actually received the cessation letter.”*

The Defendant’s witnesses

Donella Bodie

[21] The Defendant’s first witness was Mrs. Donella Bodie. She filed a witness statement on 26 November 2020. She is presently the Permanent Secretary at the Ministry of Public Service and National Insurance. Mrs. Bodie was the Permanent Secretary at the Ministry of Education from 2012 to 2013. She stated that, on or about 2012, it was reported to the Ministry that Mr. Palmer was arrested and charged with rape of a resident of San Salvador.

[22] She stated that the Ministry at first contemplated interdicting Mr. Palmer but instead, he was taken off the job during the currency of his employment. She stated that Mr. Palmer’s written contract came to an end in August 2012 but he was nonetheless paid a salary until October 2013. She was also advised that Mr. Palmer had not reported to work with the Ministry since he was charged with rape.

[23] Under cross-examination by Ms. Quant who appeared for Mr. Palmer, Mrs. Bodie indicated that she is familiar with the PSC Regulations. She confirmed that teachers are public officers and that the appointment of some teachers are made by way of an order made by the Governor-General in accordance with the advice of the Public Service. Others are appointed outside the Public Service by the Ministry of Public Service. She acknowledged that Mr. Palmer’s employment is governed by the PSC Regulations. She understood “interdiction” to mean that *“a person is interdicted because the individual have (sic) been charged before the court, that is one reason. If a person is interdicted, then that person is issued a letter advising them that they are relieved of their duties and the salary is reduced to half pay during that period.”*

- [24] She stated that it is a part of the policy of the Public Service that a person who is interdicted would receive half of their salary. However, she accepted that Regulation 37(2) seems to be saying that a person does not necessarily have to be placed on half pay but, in her 30 plus years in the Public Service, it has always been the practice that interdicted public officers receive half pay and she has not seen any instance where it went beyond that.
- [25] Mrs. Bodie admitted that once a teacher applies for renewal of his contract, that teacher works continuously with the Ministry until his contract is renewed. She also admitted that it may take about a year for the teacher to receive that renewed contractual agreement.
- [26] She stated that she does not recall whether Mr. Palmer received a cessation letter in 2013 that the Ministry would stop his salary in October 2013 but she would have to check her file. When questioned as to the basis for the stoppage of Mr. Palmer's salary in October 2013, she stated that his contract expired at some point in 2012 and the Ministry continued to pay him until October 2013. She clarified that once his contract came to an end, he would have been on a month-to-month contract and thus, the employer could give him one month's notice but if he did not get that notice in writing, that would have been an error.
- [27] According to Mrs. Bodie, there is no evidence of a notice of termination of his employment or a non-renewal of his contract and he was advised not to report to work.
- [28] With respect to the payment of gratuity for the period September 2009 to August 2012, Mrs. Bodie acknowledged that, in accordance with the law, Mr. Palmer should have been paid his gratuity for that period as there is no evidence on file that he had not successfully completed that contract.
- [29] Mrs. Bodie was interrogated with respect to a letter written by Ms. Romer on 15 July 2013 to which she said that she cannot speak to its contents. However, when questioned as to whether the Defendant advised Mr. Palmer that he was expected

to return to work upon the successful resolution of the criminal matter, Mrs. Bodie stated that Ms. Romer would be a better person to answer that question as the Ministry has over five thousand teachers and therefore, she could only give a response based on what is written in black and white on the file.

- [30] When questioned again as to whether the Defendant advised Mr. Palmer on the 15 July 2013 that he was expected to return to school upon successful resolution of his criminal matter, Mrs. Bodie correctly answered that the letter does not state that. Just to clarify this point, the letter, penned by Ms. Romer, in its concluding paragraph states: *“Thank you for all you have done in the pass (sic) and will continue to do. We look forward in anticipation to your soon return, taking your rightful place and continuing to make your contributions to this institution”*.
- [31] Under cross-examination, Mrs. Bodie stated that, although Mr. Palmer’s contract expired in August 2012, he continued to work for the Defendant. She was asked whether Mr. Palmer would have had a legitimate expectation that his application for another contract would have been granted, the Court observed that this is a legal issue which ought to be pleaded.
- [32] Under further cross-examination, when asked whether the PSC Regulations prohibit the termination of a public officer when a criminal charge is pending against that officer, Mrs. Bodie stated that *“our policy also indicates though that if I reach the mandatory retirement age then that automatically cancels out my employment with the government. So, there are exceptions not written in law but just policy. In this case his contract ceased in writing, it ceased in August 2012 granted he applied but it ceased in August 2012”*.
- [33] She however indicated that Mr. Palmer worked beyond the contract period: between August 2012 and 22 January 2013 which was prior to his charge of rape. According to her, since he was being paid, he was an employee and, in her lexicon, he was on a contract that was unwritten. She admitted that there is no evidence

on Mr. Palmer's file that (i) he was given a letter rejecting his request for renewal of contract and (ii) a termination letter from the Defendant.

Ethelyn Adderley

[34] The next witness for the Defendant was Ethelyn Adderley. She filed a witness statement on 23 November 2020 which stood as her evidence in chief. She is currently a Finance and Accounting Officer employed with the Public Treasury and she has been in that position since 2009. She has been redeployed to the Ministry of Education with responsibility as Supervisor of the Payroll Section. She asserted that Mr. Palmer received a fixed salary of \$28,700 per annum for the period 11 September 2009 to 26 August 2012 and that he continued to receive his full salary up to October 2013. A stop notice was forwarded to the Public Treasury on 29 October 2013 but no funds were returned from the Bank of The Bahamas to the Public Treasury.

[35] Under cross-examination, she too confirmed that Mr. Palmer was not paid his gratuity for the period September 2009 to August 2012. She was unable to say whether Mr. Palmer received the letter of interdiction although it was written to him. She stated that, based on the letter, Mr. Palmer should have received half pay but he received full pay. She was unable to discern whether that was an overpayment to him as the accounting department did not receive that letter.

Virginia Romer

[36] Virginia Romer was the last witness for the Defendant. She filed a witness statement in this matter on 23 November 2020. She is presently the Principal of the A.F. Adderley Junior High School but was the Principal of San Salvador Central High School from 2010 to 2014. She averred that when she learnt that Mr. Palmer was arrested and charged for rape, she brought it to the attention of her District Superintendent. She was advised that Mr. Palmer could not work while the criminal charge was pending and she informed him of that. She did not give Mr. Palmer an interdiction letter.

- [37] Under cross-examination, she stated that she was aware that Mr. Palmer was questioned in relation to an allegation of rape and, so long as he was not charged, he was permitted to work. Despite the fact that she was aware of the rape allegation against Mr. Palmer, she still recommended the renewal of his contract in 2012. She said that she was directed that Mr. Palmer could not work whilst the rape charge was pending before the Court and she advised him of the same. She did not recall giving him an interdiction letter. She was not directed to give Mr. Palmer a termination letter nor a letter rejecting his request for renewal of his contract. Ms. Romer stated that she was never advised that Mr. Palmer's application for renewal of contract was denied. She confirmed that she gave Mr. Palmer a letter dated 15 July 2013 waiting in anticipation to his return.
- [38] During re-examination, Ms. Romer stated that the 15 July 2013 was a letter that she wrote to Mr. Palmer in her capacity as the Principal. Notwithstanding her comment that "*we look forward in anticipation to your soon return, taking your rightful place and continuing to make your contributions to this institution*", she does not have the capacity to re-employ.

Discussion

Issue 1: Does the Defendant owe Mr. Palmer contractual gratuity?

- [39] There is no evidence before the Court that Mr. Palmer had not satisfactorily completed his contract. Despite his "*successful completion of service*", Mr. Palmer had not been paid the gratuity owed to him for the contractual period of 11 September 2009 to 26 August 2012. This is unfortunate. On the first day of the trial, the Court pointedly asked Mr. Mackey, representing the Attorney General, whether he would concede that Mr. Palmer is owing gratuity, Mr. Mackey was left with no alternative but to do so.
- [40] The Defendant, having conceded that it owed Mr. Palmer 15% gratuity for the contractual period 11 September 2009 to 26 August 2012, the Court made an order that that sum be paid with interest from 26 August 2012 to the date of payment at the statutory rate of 6.25% per annum.

Issue 2: Was Mr. Palmer interdicted?

[41] Mr. Palmer says that he was interdicted. The Defendant says that Mr. Palmer was not interdicted.

[42] A convenient starting point to address this issue is Regulation 37 of the PSC Regulations which deals with interdiction. It states:

“(1) Where the authority empowered to dismiss any public officer considers that the interests of the public service require that such public officer should cease forthwith to exercise the powers and functions of his office, the authority may interdict him from the exercise of those powers and functions, if disciplinary proceedings for his dismissal are being taken or are about to be taken or if criminal proceedings are being instituted against him.

(2) An officer who is interdicted shall, subject to the provision of regulation 38, receive such emoluments, not being less than one half, as the authority empowered to dismiss him thinks fit.” [Emphasis added]

(3) Where any disciplinary proceedings mentioned in paragraph (1) do not result in the dismissal of the officer or in the award against him of any punishment, the whole of any emoluments withheld from him shall be restored to him when the final decision is made; but where any punishment, not amounting to dismissal, is awarded against him, there shall be restored to him such proportion, if any, of any emoluments withheld from him as in the opinion of the authority is justified in the circumstances of the case”.[Emphasis added]

[43] During his testimony, Mr. Palmer maintained that he received the interdiction letter dated 1 March 2013 from Ms. Romer. At paragraph 8 of her witness statement, Ms. Romer stated “*I did not give the Plaintiff an interdiction letter*”. During cross-examination, she stated that she does not recall that an interdiction letter was sent to her and she also does not recall giving Mr. Palmer such a letter. However, when pressed with this question, she nonchalantly stated “*I don’t recall but if he got it from me then I guess I did but I don’t recall*”.

[44] Mrs. Bodie was the author of the interdiction letter which, according to her, was written but it was not sent. She stated that, since Mr. Palmer was charged with rape, he would have been instructed by the Defendant to cease teaching during

the period of his interdiction. She further stated that there is no signed letter to indicate that Mr. Palmer was interdicted. The letter dated 1 March 2013 which Mr. Palmer relied upon, is unsigned, which meant that it was prepared but there is no evidence on the file that it was sent and received by Mr. Palmer because it states “*Kindly sign and return to the Permanent Secretary, the attached copy of this letter*”. In addition, there is no evidence that the letter was sent to Accounts because Mr. Palmer continued to receive his full salary. She stated that it is not the policy of the Ministry to pay full salary to interdicted public officers.

[45] It is not disputed that Mr. Palmer received his full salary until October 2013. He did not notify anyone that he was still receiving full salary because, according to him, he was preoccupied with his criminal matter. Under re-examination, he attempted to clarify this and stated that he believed that the Defendant was merely correcting its overpayment error by the coding of his salary. This makes no sense. I therefore reject his evidence that he received an interdiction letter.

[46] Shortly put, the evidence of the Defendant’s witnesses particularly Mrs. Bodie and Ms. Adderley is more plausible than that of Mr. Palmer. I therefore find, on a balance of probabilities, that Mr. Palmer was not interdicted by the Defendant even though a letter was prepared to that effect. I also find that the letter was not signed and forwarded to Mr. Palmer or Ms. Romer or even directly to Mr. Palmer. He did not sign and return the copy as stipulated in the letter. The letter was also not sent to the Treasury (Payroll, Accounts) which explains why he continued to receive his full salary until October 2013. It is a policy of the Defendant that interdicted public officers receive one half of their salary during the currency of their interdiction. At best, the Defendant contemplated interdicting Mr. Palmer but did not follow through with that process.

Issues 3-6: Breach of contract/redeployment/relief

[47] These issues are inter-related and are subsumed under this sub-head. In his Statement of Claim filed on 14 March 2016, Mr. Palmer claims, among other things, (1) payment of salary unlawfully withheld for the period October 2013 and

the date of his acquittal, and continuing including such increments and further emoluments issued during the said period and interest thereon; (ii) payments to the National Insurance Board (“NIB”) so as to ensure that Mr. Palmer’s NIB contributions are current and continuing, pending the lawful conclusion of his employment; (iii) an Order that he be re-deployed as a Trained Teacher by the Defendant; and (iv) damages for breach of contract regarding the Defendant’s failure to re-deploy the Plaintiff and/or pay his salary upon receipt of his said Certificate of Acquittal in relation to the charges pursuant to which he was interdicted by the Defendant.

[48] Learned Counsel Ms. Quant argued that by virtue of Regulation 37(3) of the PSC Regulations, as Mr. Palmer was acquitted on 30 November 2015, the interdiction had fallen away by operation of the law. Consequently, Mr. Palmer ought to have had the salary withheld from him prior to his acquittal restored to him by the Defendant upon provision of his Certificate of Acquittal and all the other consequential damages flowing from a breach of contract which is continuing up to today.

[49] Regulation 33 of the PSC Regulations provides that:

“Where criminal proceedings are instituted against a public officer in any court, proceedings for his dismissal upon any grounds involved in the criminal charge shall not be taken until the conclusion of the criminal proceedings and the determination of any appeal therefrom.
[Emphasis added]

[50] Regulation 34 provides that:

“No disciplinary action of any kind shall be taken against any public officer in respect of any conduct, or any conduct raising, in the opinion of the Attorney-General substantially the same issues as conduct in respect of which he has been acquitted in a criminal court”.

[51] Ms. Quant submitted that, in light of the above Regulations, Parliament entrenched an obligation on the part of the Defendant not to reduce Mr. Palmer’s emoluments “by *less than one half*”; not to “dismiss” him, “*upon any grounds involved in the*

criminal charge until the conclusion of the criminal proceedings"; and that "no disciplinary action" shall be taken by the Defendant against Mr. Palmer in respect to "substantially the same issues as conduct of which he has been acquitted in a criminal court". According to her, the Defendant has clearly breached its said statutory duty, as it coded Mr. Palmer salary without explanation or reasonable or lawful justification in October 2013 during the course of criminal proceedings with respect to which Mr. Palmer was not acquitted until 30 November 2015. Any purported disciplinary action or proceedings against Mr. Palmer by the Defendant during the said period would have been instituted in contravention of the PSC Regulations.

[52] Ms. Quant next submitted that the Defendant breached its duty and failed to act in accordance with the PSC Regulations upon receipt of Mr. Palmer's Acquittal Certificate. The Defendant also failed to redeploy Mr. Palmer and refused to restore his emoluments and salary, inclusive of increments applied during such period, which have been unlawfully withheld from October 2013 to the date hereof.

[53] On the other hand, the Defendant relied on **The Bahamas Human Resource Policy Manual revised on 31 March 2017 (Extract from the Memorandum dated February 1994, Reference File DPS38/24 Page 99 of 154)** which was in force during Mr. Palmer's employment. It provides selectively:

"Officers on interdiction at the date when services come to an end

The contract of an officer having expired (i.e. mandatory retirement, resignation, death, etc.), the interdiction ceases as he is no longer employed with the Government. The payment of gratuity and/or pension benefits is conditioned upon good and efficient service. Any act that gives rise to criminal charges during the period of service raises a question about the quality of that service having regard to the alleged act. Admittedly an officer is not to be presumed guilty until a determination is made of this.

A decision on the matter (payment of gratuity and/or pension benefits) must await the court's ruling in the case. The officer should be paid all other monies (e.g. vacation leave accumulated prior to the interdiction) due to him up to the time of the expiration of his contract.

Contract means: Officers on contract, pensionable or temporary terms.”

- [54] Ms. Quant argued that there is no evidence before the Court that this Policy Manual formed a part of Mr. Palmer’s contract. This appears not to be so as the contractual agreement (only one that Mr. Palmer provided) clearly deals with the Policy Manual in Clause 4 but eventually nothing substantial turns on this point as I have already found that Mr. Palmer was not interdicted. I found as a fact that although the Defendant considered interdicting Mr. Palmer, the Defendant did not carry through with that decision. Otherwise, he would not have received his full salary.
- [55] The Defendant contended that when Mr. Palmer’s contract came to an end on 26 August 2012, he was re-employed on a month-to-month contract and the Ministry stopped paying his salary and discharged him from his month to month contract at the end of October 2013.
- [56] It is incontrovertible that Mr. Palmer continued to work after 26 August 2012 when his previous contract had expired. On 30 March 2012, Mr. Palmer applied for a renewal of his contract for two years. It is incontestable that the Ministry had, on at least two previous occasions, been tardy in responding to Mr. Palmer’s request for a further contract but permitted him to continue to work, with the formal execution of the contract taking place many months after.
- [57] In my judgment, by permitting Mr. Palmer to work after his contract has ended on 26 August 2012, the Ministry had tacitly agreed to a renewal of his contract for another two years (in accordance with his application for renewal on 30 March 2012). Mr. Palmer had every reason to infer that his application for a further two year contract was renewed when he continued to work until his arrest and subsequent charge of rape. Put another way, if the charge of rape had not materialized, he would have been employed for two years as he had already commenced the tour of duty associated with that unwritten contract which the Defendant admitted, sometimes takes months to formalize and execute. Therefore, any suggestion by the Defendant that, after Mr. Palmer’s contract came

to an end on 26 August 2012, he continued to be employed by the Defendant on a month-to-month contract is disingenuous. Mr. Palmer is entitled to be paid his salary and emoluments up to 25 August 2014 (the date when the fixed term unwritten two year contract would have expired by effluxion of time) and not up to the date of his acquittal on 30 November 2015 (since he was not interdicted).

[58] I will therefore order that Mr. Palmer be paid his salary and emoluments up to 25 August 2014 including any increments (if any) (bearing in mind that he was already paid up to October 2013). He is also entitled to 15% gratuity for this contract and interest thereon at the statutory rate of 6.25% from the date of judgment to the date of payment.

[59] In paragraph 11 of his Statement of Claim, Mr. Palmer alleged that he is entitled to return to work which the Defendant has unreasonably failed to facilitate. He seeks a declaration to this effect.

[60] According to Ms. Quant, Mr. Palmer had a legitimate expectation that his contract would be renewed and, if I understood her well, perpetually. In other words, up to today. In that light, she distinguished the case of **Harding v Attorney General of Anguilla** [2018] UKPC 22 relied upon by the Defendant and stated that Ms. Harding refused to adhere to the defined procedure of re-applying for her position and she was not employed as Registrar at that time. Instead, she relied on **Darling v Attorney General of the Commonwealth of The Bahamas** [1995] BHS J. No. 5, a judgment of Osadebay J (Acting (as he then was)). At para 40, the learned judge stated:

“,,In my judgment, the available evidence discloses that the appellant was interdicted only in respect of the criminal charges and the interdiction should have ceased when the charges were dismissed. Thereafter, no justification has been established for the withholding of his emoluments.”

[61] A significant distinguishable feature of this case and the **Darling** case is that Mr. Darling was not a contractual employee. He was the Senior Auditor General with many years of service. There is a marked difference between a permanent and

pensionable employee who is interdicted and an employee who is on a two year contract (who was not interdicted).

[62] In **United Policyholders Group and others v The Attorney General of Trinidad and Tobago** [2016] UKPC 17, Lord Neuberger (with whom the other members of the Board agree), in dealing broadly with the principle of legitimate expectation, said at paras [37] to [38]:

“37. In the broadest of terms, the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. Some points are plain. First, in order to found a claim based on the principle, it is clear that the statement in question must be “clear, unambiguous and devoid of relevant qualification”, according to Bingham LJ in *R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, 1569, cited with approval by Lord Hoffmann in *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2009] AC 453, para 60.

38. Secondly, the principle cannot be invoked if, or to the extent that, it would interfere with the public body’s statutory duty - see eg *Attorney-General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629, 636, per Lord Fraser of Tullybelton. Thirdly, however much a person is entitled to say that a statement by a public body gave rise to a legitimate expectation on his part, circumstances may arise where it becomes inappropriate to permit that person to invoke the principle to enforce the public body to comply with the statement. This third point can often be elided with the second point, but it can go wider: for instance, if, taking into account the fact that the principle applies and all other relevant circumstances, a public body could, or a fortiori should, reasonably decide not to comply with the statement”.

[63] In the present case, the first hurdle that Mr. Palmer faces is he did not plead the principle of legitimate expectation and he is bound by his pleadings. Secondly, even if he had done so, he would have failed. Contractually, he has no right to be re-appointed. His unwritten contract of employment was for a fixed term of 2 years and it expired, by effluxion of time on 25 August 2014. The Defendant was under no legal duty to re-employ him. His hope to be re-appointed did not rise to level of legitimate expectation. Legitimate expectation is not the same as an unqualified right. It is a factual situation in which a public authority has caused a person to believe on reasonable grounds that he or she would enjoy some advantage: per

Lord Sumption in **Harding v Attorney General of Anguilla** [2018] UKPC 22. Nothing done by the Ministry had caused him to believe on reasonable grounds that he would be employed for another contractual term and/or indefinitely. The glowing tribute by Ms. Romer does not rise to that level as she was not his employer.

[64] Therefore, the Ministry/Defendant was under no obligation to continue to employ Mr. Palmer after 25 August 2014.

[65] Although **Harding** is not on all fours with the present case, it bears closer similarity than **Darling**. Mrs. Harding was a contractual officer. Like Mr. Palmer, Mrs. Harding also complained that she ought to be re-appointed. In delivering the Judgment of the Board, Lord Sumption stated at para 5 that “...*Contractually, she had no right to be reappointed. Her appointment was for a limited term...*”

[66] At para 6, Lord Sumption continued:

Mr. Fraser, who appeared for Mrs. Harding rather tentatively proposed that his client had a relevant procedural legitimate expectation, but had some difficulty in explaining what that expectation was. In principle, it would have to be an expectation as to the procedure by which the appointment process would be conducted as the expiry of her term approached. However, the only aspect of the procedure which he could point to as conflicting with her expectation was the requirement that she should attend for the interview. She refused to do that because she considered that she was entitled as of right to be reappointed. If she had been entitled to reappointment as of right, she would no doubt have been justified in refusing to be interviewed for the job. But if not, she could properly be required to submit to any requirement which it was reasonable to impose on candidates generally, including an interview. It therefore follows from the Board’s conclusion that she had no substantive legitimate expectation of reappointment, that she had no relevant procedural legitimate expectation either.”

[67] In my judgment, the Defendant did not fail to act in accordance with the PSC Rules nor did it breach any duty for failing to redeploy or re-employ Mr. Palmer. Simply put, Mr. Palmer’s contract came to an end on 25 August 2014 by effluxion of time. Mr. Palmer did not apply for a further renewal of the unwritten contract and even if

he had done so, the Ministry was under no obligation to re-engage Mr. Palmer after his fixed term contract came to an end.

Conclusion

[68] This is an unfortunate case. By all accounts, Mr. Palmer was an exceptionally hard-working and talented teacher. Had it not been for the allegation of rape, to which he was eventually found not guilty, he might have still been employed by the Ministry.

[69] That being said, he was not interdicted by the Ministry. He continued to work until the allegation of rape when he was advised not to return to work. That was about five months into the unwritten two-year contract. It is a fact that the Ministry hires teachers and sometimes takes months or even up to a year to formally execute their contractual appointment. Mrs. Bodie conceded that this had occurred in the past and may still be occurring. However, the Defendant is under no legal duty to continuously re-engage an employee after his fixed term contract has expired. After it comes to an end, an employer is at liberty to decide whether or not that employee would be re-employed. The Defendant chose not to continue with the services of Mr. Palmer but they should have paid him up to the expiration of the two year unwritten contract which ended on 25 August 2014. He is also entitled to 15% gratuity on this contract which I so order.

The Order

[70] This Court makes the following orders:

1. Mr. Palmer is to be paid his salary and emoluments from November 2013 to 25 August 2014 (including any increment) as well as 15% gratuity for this two year unwritten contract with interest thereon from the date of judgment to the date of payment;
2. The Defendant as well as the Plaintiff are to pay their respective portion of payments to the National Insurance Board up to 25 August 2014;

3. Interest at the statutory rate of 6.25% from the date of judgment to the date of payment and;
4. Costs.

Costs

[71] Mr. Palmer claims costs in the sum of \$27,000 in the event of him being successful. The Defendant was prepared not to seek costs in the event of their success. Mr. Palmer was not successful on every point and, therefore, I will make an award in the amount to \$24,000. This represents fair and reasonable costs.

Gratuity

[72] On the first day of the trial, I ordered that the Defendant pays to Mr. Palmer his gratuity of 15% for the contract period (11 September 2009 to 26 August 2012) with interest thereon at the statutory rate of 6.25% per annum from 1 September 2012 to the date of payment. I understand that the Defendant is yet to comply with this Order. This is disconcerting.

Dated this 21st day of January, 2022

**Indra H. Charles
Justice**