

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2017 – 00638**

**BETWEEN**

**ASHA BRIDGLAL**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

Before the Honourable Mr Justice Ronnie Boodoosingh

**Appearances:**

Mr Brian Busby for the Claimant

Mrs Tinuke Gibbons-Glenn and Ms Svetlana Dass for the Defendant

**Date:** 14 November 2018

**JUDGMENT**

1. The claimant worked as a Case Management Officer III at the Family Court of the Judiciary of Trinidad and Tobago for a period including May 2009 to February 2013. Before and after that she worked in different departments of

the court system. She sued for arrears of salary due to her for part of the period she worked at the Family Court.

2. The trial of this claim was fixed for 27 June 2018. On the day before the trial, an email was sent to the court and copied to the claimant's attorney that the sum of \$61,642.92 would be paid into her account on 28 June 2018 as arrears of salary less deductions. The trial was adjourned for the claimant to consider if she would be willing to accept that sum as being an accurate account of what was owed.
3. On 25 July 2018 her attorney indicated to the court that the sum would be accepted as the arrears but that she would be pursuing her claim for interest to be paid as claimed in her Claim Form.
4. The court ordered the parties to file submissions if they were not able to agree this issue.
5. It is not disputed that interest may be awarded at the court's discretion in an appropriate case. The defendant sought to make a distinction with a situation where the claim is settled as opposed to a judgment being awarded. Section 25 of the Supreme Court of Judicature Act speaks of interest in a debt or damages. The instant case is one of a debt due. In any event parties may be free to settle part of a claim such as the amount due in arrears of salary but not agree on another aspect. Here, the claimant sought interest and costs in her claim form. Thus, even though the claimant may have agreed to accept a

particular sum, this did not disentitle her to pursue her claim for an award of interest and for costs to be paid.

6. Interest may be awarded for salaries due. The several cases cited by the claimant's attorney showed that the court has ordered interest in different types of matters and circumstances, including for arrears of salary. In fact interest is invariably awarded where a claimant is kept out of money which ought to have been paid earlier. No authority has been advanced to me that under any legislation the State is exempted from paying interest on arrears of salary.
  
7. The question therefore is whether this is a fit and proper case for an award of interest. This was income the claimant worked for and was entitled to receive for her work going back to 2013. She was made to wait for it for over 5 years. She had to bring a claim against the State in 2017 for this payment. Had she not brought a claim she may still have been waiting. This is evident from the position adopted even in the witness statement filed by the defendant.
  
8. This claim was case managed and it was only on the eve of the trial that payment was made. I ascribe no blame to the attorneys for the State who at all times acted with commendable understanding and showed willingness and commitment to try to get the claim settled. However, they could only do so with proper instructions from the appropriate source.

9. In her witness statement the claimant listed a number of other officers at the Family Court who were paid their increases in salary during this time (see paragraph 12). However, for some reason she was not paid. No denial that others were paid during this period was made in the defendant's case.
  
10. In the witness statement filed on behalf of the defendant, it was stated that the claimant was paid all that was due to her for the period 2004 to 2009 (see witness statement of Shantie Bhimull, para 13). This was never an issue raised by the claimant. However, the position was less categorical regarding the period for which she claimed. In fact, no position was taken on this. This also appeared to be contradictory to the position being taken by the Judiciary in its correspondence with the Chief Personnel Officer (see letter of 18 July 2016 by Ms Bhimull). In her witness statement Ms Bhimull stated in September 2013 the Department of Court Administration wrote to the CPO requesting advice as to whether the claimant would be entitled to the increase in the special allowance. The CPO responded in October 2015 requesting information. The Judiciary responded in July 2016. As noted, there was no denial by the Judiciary that the increase was paid to other officers.
  
11. The claimant in her witness statement detailed the various efforts she made to have this matter resolved and the number of enquiries and attorney letters she had to send seeking her payments. The claimant's experience has been the quintessential run-around. As stated before, it was only the day before the trial that the indication was made that the claimant was owed money and would be paid. This was no doubt achieved through the persistence of the claimant's attorney, and the State attorneys' resolve in this matter to avoid having to defend the indefensible.

12. The claimant has therefore been kept out of what was due to her for this extended period of time. The delay in paying her can be said to be both unreasonable and unjustified especially since other persons were paid. The main purpose of an award of interest is to compensate a party for being kept out of money to which the party was earlier entitled to. This is more than a fit case for interest to be awarded in all of the circumstances.

13. The next matter concerns the rate of interest. It is well accepted that the interest rates being earned in recent times has been lower than obtained some years ago. The courts have tended to award interest on the lower end of the scale in keeping with the prevailing low market rates. Interest will therefore be awarded for the period 19 February 2013 to the date of payment 28 June 2018 at the rate of 3% per annum. Statutory interest will be payable from 25 July 2018 to the date of payment.

14. This is a fit case for prescribed costs to be paid based on the sum paid together with interest up to 28 June 2018. The claim was resolved at trial. It was resolved in the claimant's favour. The claimant had sent a pre-action letter and there was no adequate response up to the date the claim had to be filed to ensure she was within the limitation period. The claimant had to prepare her case right up to trial engaging every step in the litigation process. Nothing sufficient has been advanced for the court to depart from the rule that costs should follow the event.

15. I would conclude by observing that the claimant's case is all too familiar. There are many cases that come before the court where persons claim that moneys

due to them for service in the public service is not paid in a timely manner. These have been cases where salaries, allowances and pensions are delayed, sometimes for years, causing grave hardship to persons who have given many years of dedicated service. The administrative inefficiencies and malaise that cause this must be addressed. The least the court can do here for the claimant is to award a modest amount of interest on the sum due.

Ronnie Boodoosingh

Judge