

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2011-01388

BETWEEN

TRICIA BISSOON

Claimant

AND

THE ATTORNEY GENERAL

Defendant

Before The Hon. Madam Justice C. Gobin

Appearances:

Mr. I. Ali for the Claimant

Ms. M. Davis for the Defendant

REASONS

1. On the 10th July 2012 I struck out a certain portion of paragraph 6 of the claimant's reply after hearing the objection of the defendant. The relevant facts are as follow:

- (1) In her statement of case the claimant claimed she was appointed by the Ministry of Education as a Teacher III on the 23rd May 2003 and began her assignment as such at a salary of \$6,235.00 per month, which increased to \$11,430.96 per month over a five year period.
- (2) On the 21st November 2008 she received a letter from the Service Commissions Department which stated she had been permanently appointed a Teacher II at a reduced salary scale. She nevertheless remained in her post as a Teacher III

receiving her usual salary until 27th March 2009. She was notified by the ministry that she would receive the proper Teacher II salary and on the 31st March 2009 her salary was reduced.

- (3) She was later informed of her alleged indebtedness to the Government in the sum of \$111,088.29 because of the overpayment for the period 2nd March 2003 to 28th February 2009 when she received the salary of a Teacher III.
- (4) The claimant claimed that the Ministry breached its contract of employment with her some 6 years after its initial assessment of her qualification for the post of Teacher III and wrongfully deprived her of the sums of \$111,088.29. She claimed reimbursement of the sum.
- (5) In its defence the Ministry claimed that the 23rd May 2003 the letter erroneously stated that the claimant was successful for employment as a Teacher III. That post requires the applicant to have a Bachelors degree in an area of speciality from a recognized university.
- (6) It said that since 11th February 2003 the claimant was informed that she had been reassessed as a Teacher II (English) on the basis of transcripts of an incomplete degree. That on 26th November 2003 and on 2nd March 2004 she was informed her salary was that of a Teacher II but that she was mistakenly paid as a teacher III for a period of 2nd September 2003 to 28th February 2009. The defendant insists that the claimant never performed as a Teacher III, had no contract as such and has never been qualified to fill the position of Teacher III.

2. Specifically, paragraph 8 of the Defence said:

“The defendant admits paragraph 5 in so far as the claimant was paid a commensurate salary of Teacher III (Secondary). By letters dated 26th November 2003 and 2nd March 2004, which are annexed as “B”, the claimant was informed that her commensurate salary was that of a Teacher II (Secondary). The defendant states that the

claimant was mistakenly paid salary as Teacher III (Secondary) for the period 2nd September 2003 to 28th February 2009.”

3. In its reply and in response to this paragraph the claimant claimed to have no knowledge that any error had been made in her appointment as Teacher III and that she continued to receive the salary of such until February 2009. She then went on to state the following (which was struck out):

In reliance on the assumption and continued representations from the Ministry that she occupied the post of Teacher III, and in the absence of any indication from the Ministry that there had been an error, the claimant proceeded to purchase a vehicle based on the salary she had been earning, which was the salary of a Teacher III Secondary. This vehicle was a used 2003 Toyota Rav 4, for which the claimant obtained financing from First Citizens Bank in the sum of \$124,612.56, which she was required to repay in 36 monthly installments of \$3,461.46 each. A true copy of a letter dated March 7, 2012 from First Citizens Bank confirming this purchase is hereto annexed and marked “F”.

4. State Counsel objected that this part of the reply appeared to introduce a new claim for damages. I too had the impression that that is what the claimant intended.

5. Counsel for the claimant then clarified the position. He indicated that this was not about damages but was intended to provide the factual basis for an estoppel argument that the claimant hoped to mount at the trial. When he was asked why this was not included in the statement of case which was filed well over one year before, counsel candidly indicated he did not settle the original statement of case and now considered it an issue to be argued.

6. This explanation suggested that was an attempt to include in a reply, a matter which ought properly to have been included in the statement of case. It was not pleaded in response to any matter raised in the defence.

7. It was recognized that no prejudice would result if the claimant were allowed at this stage to amend the statement of case, had such an application been made, but under the current rule this is not permissible.

Dated this 9th day of August 2012

CAROL GOBIN

JUDGE