

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV-2010-03694

BETWEEN

WITHFIELD WEEKES

CLAIMANT

AND

PAN TRINBAGO INCORPORATED

DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE PETER A RAJKUMAR

APPEARANCES

Mr. O. Hinds for the Claimant

Mr. K. Garcia for the Defendant

ORAL RULING

1. The claimants claim is dismissed. The claimants are to pay the defendant's costs in the sum of \$14,000. I find, on a balance of probabilities, that the claimant was not suspended.

2. The evidence with respect to his suspension was not cogent or compelling except to demonstrate that the claimant **believed** that he was suspended. This case appears to be based upon a miscommunication and the conveyance to the claimant of information, (denied by the defendant), that he was in fact suspended.

3. Upon that misconception being clarified, (by letter of January 23rd 2008 and reconfirmed by letter dated March 11, 2008), there was nothing to stop the claimant from attending at the office of the South Central Regional Executive Committee and performing his duties there as Administrative Manager, after that clarification was provided.

4. He was not required by the virtue of his terms of employment to have the exclusive use of the motor vehicle assigned to that region. The evidence is that the office was open during normal working hours and he was not therefore required to have the keys to that office. I find

that nothing prevented the claimant from attending that office and performing his duties as Administrative Manager.

REASONS FOR DECISION

BACKGROUND

5. The claimant Withfield Weekes claimed against the Defendant:
 - a) A declaration that the **decision** of the Central Executive Committee of the Defendant on November 19th, 2007 purporting **to suspend** the Claimant as Chairman of the South/Central Regional Executive Committee was in breach of the Defendant's Constitution, in breach of natural justice, ultra vires and void; and
 - b) Damages for loss of earnings for the period December 2007 to October 2009.

6. His claim was based upon his assertion that he was suspended as chairman of the South/Central *Regional Executive Committee* on November 19, 2007. He claimed that, as chairman, he was entitled to remuneration that amounted to \$4000.00 per month. His suspension lasted until October 26, 2009, the date at which elections were held, and he therefore lost 23 months worth of remuneration.

7. It was contended by the defendant that the position of chairman carried with it no entitlement to receipt of remuneration, and that any remuneration the claimant received was based upon his fulfillment of administrative duties, which required his attendance.

8. They claimed that the claimant absented himself voluntarily, and not based upon any request or action by the defendant.

9. He was not in a position to perform administrative duties, and did not do so, because he placed himself in that position. He was therefore not entitled to receive any payment for the time he was not present.

ISSUES

10.

- a) Whether the Central Executive of the Defendant **suspended** the Claimant from his post as Chairman of the South/Central *Regional Executive Committee* on November, 19, 2007 or at all;
- b) Whether the post of Chairman of the South/Central Region carried with it a salary;
- c) Whether the Claimant was deprived of such salary by reason of his suspension.

FINDINGS

11. The evidence demonstrates that in most cases, with one suggested exception, Chairmen performed administrative duties. The role of administrative manager seems intertwined with that of the role and function of chairman, in most cases, and certainly this was the case with the instant claimant.

12. I find that while it is the case that the claimant was not paid as Chairman, but only paid for performing administrative duties, it would be artificial to contend, (if he were in fact suspended as chairman), that that he would still be able to perform his administrative duties as the office remained open.

13. If I were to have found that the claimant had been suspended therefore, I would necessarily have found that he was precluded from performing his duties as administrative manager. (No one has contended that the defendant made the fine distinction that the claimant was suspended as chairman but not administrative manager).

14. The issue of fact therefore, is **whether the defendant suspended the claimant at all**. Whether as chairman or administrative manager makes no difference in this case. If he were suspended then he would be entitled to lost remuneration as a result. If he were not suspended then he would not be.

15. I find that the claimant was **not suspended**. I find that the evidence demonstrates the peculiar situation where the claimant believed that he had been suspended, as he was told so by members of his executive, after a meeting between the **Central** executive and the South/Central *Regional Executive Committee*, from which he had walked out.

16. No one from the **Central** Executive told him that he had been suspended however, and this was never communicated to him by them, in writing or otherwise.

17. He took a decision, based upon what he had been told by others from the *Regional Executive*, to absent himself from the office of the South/Central *Regional Executive*, and to cease performing administrative duties. In effect, he suspended himself.

18. There had been difficulties between the claimant and other members of the South/Central *Regional Executive Committee*. His absence conveniently solved an ongoing issue between him and the other members of the South/Central *Regional Executive Committee* , who had all threatened to resign if he continued in office, as well as removing the need for a decision by the Central Executive on the developing rift and potential impasse.

19. However, the follow up steps under the defendant's constitution, which would have been required, if in fact the Claimant had been suspended, were never carried out, suggesting that he had not been suspended.

20. At highest, if the word suspension had been used at all by members of the Central executive, no formal suspension occurred under the defendant's constitution, and nothing was done under that constitution, or even otherwise, which would have had the effect of suspending the defendant as chairman / administrative manager, as claimed.

21. The correspondence emanating from the defendant's attorneys at law made this clear and should have put this matter to rest. After the issue of that correspondence, at latest, the claimant had no reason to absent himself.

DISPOSITION

22. In the light of that finding, the claimant's claim is dismissed with costs.

ANALYSIS AND REASONING

BACKGROUND

23. The Claimant was the Chairman of the South/Central Regional Executive Committee of the Defendant. As the Chairman of the South/Central Region, the Claimant also performed duties of Administrative Manager at the offices of the South/Central Region and was paid a salary of Four Thousand Dollars (\$4,000.00) per month. He also had the non exclusive use of a vehicle for that purpose.

24. In or around October 28th, 2007 a report was made to the Defendant, relative to financial impropriety in operations of the South/Central Region of the Defendant. As a result, the Central Executive Committee of the Defendant directed a three (3) man committee to investigate the report. A report was prepared and submitted to the Central Executive of the Defendant.

25. On November 19th, 2007 the Central Executive Committee of the Defendant met with the South/Central Regional Executive Committee where the said reports were discussed. By then, all the other members of the executive committee of the South/Central Region was threatening to resign. The Claimant was asked to relinquish his office. He refused to do so and left the meeting of November 19th, 2007.

26. The Claimant travelled back to San Fernando with Ms. Seecharan and Mr. Sherwood (members of the South/Central Regional Executive Committee) . He was informed by them that the Central Executive had decided to suspend him with immediate effect , and that he would have to hand over the keys to the office and vehicle of the South/Central Region of the Defendant.

THE CLAIM

27. The Claimant seeks to recover loss of earnings. That loss of earnings is alleged to have been caused by the Claimant's wrongful suspension from his position as Chairman of the Defendant's South/Central Executive Committee.

In order to succeed in his pleaded claim, the Claimant had to establish that he was in fact suspended from the position of Chairman on November, 19, 2007.

THE DEFENCE

28. The Defendant's Defence is:

- (a) that the position of Chairman did not carry with it any salary, and
- (b) that the Claimant was never suspended from the position of Chairman.

29. The parties' cases are diametrically opposed. Lord Ackner in the Privy Council decision in **Horace Reid v Dowling Charles & Anor PCA No. 36 of 1987**, at page 6, stated:

“Mr. James Guthrie, in his able submissions on behalf of the Mr. Reid, emphasized to Their Lordships that where there is an acute conflict of evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of the witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses (emphasis added).”

EVIDENCE

WITHFIELD WEEKES – CLAIMANT

30. The Claimant was elected Chairman of the South/Central Regional Executive of the Defendant in 2001 and served in that position until the purported suspension on November 19th, 2007.

31. In November, 2007 a meeting was called between a committee appointed by the Central Executive of the Defendant and four (4) members of the South/Central Regional Executive Committee, inclusive of the Claimant, relative to the accounts of the South/Central Region. Although an investigative committee indicated that no funds were missing from the accounts of the South/Central Region, Mr. Michael Joseph insisted that the Claimant resign as Chairman due to the fact that two (2) former members of the South/Central Region were still signing cheques on the region's behalf. The Claimant refused to do so and sought to explain why that was taking place. Mr. Joseph again insisted that the Claimant resign.

32. On November 19th, 2007 the Central Executive of the Defendant met with the entire executive of the South/Central Region. This meeting was chaired by the Secretary of the Defendant, Mr. Richard Forteau. Mr. Forteau indicated that allowing the former members of the South/Central Region to sign cheques on the region's behalf would have a negative effect on the Region. As such, the Claimant should do the honourable thing and resign. The Claimant refused. Mr. Joseph again tried to force the Claimant to tender his resignation. The Claimant again refused and walked out of the meeting.

33. After the meeting ended, the Claimant was told by both Ms. Lydia Seecharan and Mr. Sherwood, who both attended the meeting and were both members of the South/Central Regional Executive Committee, that he was suspended with immediate effect and that Mr. Bain, the then Vice Chairman of the South/Central Region, was appointed as Acting Chairman.

34. Later that evening at the offices of the South/Central Region, Mr. Darren Sheppard told the Claimant that the Central Executive had decided to suspend him with immediate effect and that Mr. Forteau instructed him to take the keys for the office and the vehicle from the Claimant. Mr. Sheppard accompanied the Claimant to his home where the Claimant handed over the keys

to the office and vehicle of the South/Central Region. The Claimant was never told the reason for his suspension nor was any correspondence sent to him informing of any complaint made against him in accordance with the Defendant's Constitution.

At the time of the purported suspension, the Claimant was paid a salary of Four Thousand Dollars (\$4,000.00) per month by the Defendant.

35. The Claimant accepted several facts as follows:-
- i. He left what he considered to be the serious matter of his alleged suspension at the level of word of mouth;
 - ii. That the correspondence from his lawyers written at the time of his alleged suspension made no mention whatsoever of his alleged suspension;
 - iii. That any salary he received from the Defendant was in relation to the position of Administrative Manager only and not by virtue of his office as Chairman;
 - iv. That insofar as the elected position of Chairman was concerned, he had no right to receive any salary;
 - v. That since the vehicle provided by the Defendant was not for his personal use, and since his not having keys to the Regional Office did not prevent him from entering the office to perform his duties, whether as Chairman or Administrative Manager, nothing the Defendant was alleged to have done, in the way of retrieving the keys to the office or to the vehicle, prevented him from working either as Chairman or Administrative Manager.

I accept the evidence of the claimant. It was forthright, candid and delivered without evasion or exaggeration.

POSITION OF CHAIRMAN AND SALARY

36. Under cross-examination, the Claimant gave the following evidence:

Q –But the salary that you received from 2002 was by virtue of your unelected position as Administrative Manager, correct?

A – Yes

Q- So (as far as) elected position as Chairman was concerned you had no right to receive a salary?

A – That’s correct”

37. The Claimant’s evidence at trial established no right to salary in any position other than Administrative Manager, but I find that the positions of chairman and administrative manager were, in practice, inextricably linked.

*“Q –And in the event, you **never returned to the office** to perform your duties as as Administrative Manager?*

A – No, I did not

Q – Wasn’t the office open on workdays?

A – Yes

Q – So the fact that you didn’t have keys did not prevent you from entering the office?

A – No

Q –you agree that the vehicle was not for your personal use?(for the use of the South/Central Executive office)

*A- **That is correct***

Q –since the vehicle was not for your own personal use, -did not prevent you from working as Chairman or Administrative manager?

A – That is correct.”

38. It was submitted that the evidence establishes that the Claimant was **not prevented** by any actions on the part of the Defendant from performing his duties either as Chairman or as Administrative Manager (as alleged). It is clear that he was not thereby so prevented. (The undisputed evidence was that the Claimant, after November 19, 2007, did not perform duties in either capacity).

39. I find that while it is the case that the claimant was not paid as Chairman, but only paid for performing administrative duties, it would be artificial to contend, (if he were in fact suspended as chairman), that he would still be able to perform his administrative duties merely because the office remained open. If he had been suspended as Chairman, unless he had been specifically told that his duties as administrative manager were to continue unaffected, he could not reasonably be expected to report to perform such duties.

PATRICK ARNOLD – CLAIMANT’S WITNESS

40. Patrick Arnold was the President of the Defendant at the time. The Claimant was paid the monthly salary of Four Thousand Dollars (\$4,000.00) as Administrative Manager up until his suspension in 2007.

41. At the Annual General Meeting of the Defendant in October, 2007 Mr. Milton Austin alleged that there were some irregularities with the accounts of the South/Central Region of the Defendant. He indicated then that an investigation will be made into the said allegation.

42. Early in November 2007 he appointed a committee to examine the books of the South/Central Region.

43. The Central Executive suspended both Mr. Salvador and Mr. Mitchell at an Executive Committee meeting held at the Cove Hotel in Chaguaramas. A meeting was called between the Central Executive and the South/Central Region, and subsequently adjourned. He instructed Mr. Richard Forteau to chair the adjourned meeting as he was unable to attend.

His evidence could not assist on the issue of what occurred at that meeting as he was not there.

44. Mr. Arnold’s testimony under cross-examination was vague, and often inconsistent. He testified that he did not agree with the Claimant’s suspension, yet inexplicably he did not see it fit to exercise his constitutional power to suspend the Claimant’s suspension. In fact , when confronted with this, he made the incredible claim that he had actually suspended the Claimant’s

suspension. Even the claimant does not so contend, and this was clearly a fabrication in the witness box.

LYDIA SEECHARAN – CLAIMANT’S WITNESS

45. Lydia Seecharan served as the Assistant Secretary of the South/Central Region of the Defendant between November 2006 and October 2009. In late 2007 she attended a meeting of the Defendant at its Head Office in Port of Spain. The persons present were Mr. Richard Forteau, Ms. Denise Hernandez, Mr. Allan Augustus, Mr. Anthony Mc Quilkin and Mr. Keith St. Cyr, all of whom were on the Central Executive. The entire executive committee of the South/Central Region were also present.

46. During the meeting, the Central Executive stated that they did not accept the resignations of the executive of the South/Central Region. Instead they wanted the Claimant to resign. The Claimant refused to resign and walked out of the meeting during the discussions.

47. Mr. Forteau then instructed the trustees of the South/Central Region, Mr. Sherwood and Mr. Sheppard, to retrieve the keys for the region’s office and vehicle from the Claimant. Mr. Forteau stated Mr. Bain, then Vice-Chairman of the South/Central Region would act as Chairman as the Claimant is on an indefinite suspension until further notice. It was also stated that the executive of the South/Central Region would continue in office with Mr. Bain acting as Chairman.

48. After the meeting ended, Mr. Sherwood and the witness left with Mr. Weekes and told him what transpired at the meeting. Ms. Seecharan told him that he was suspended, hence the reason for Mr. Sherwood’s request for the keys for the office and the vehicle. Later that evening at the office of the South/Central Region Mr. Sheppard told the Claimant that he was instructed to take the keys for the office and the vehicle from the Claimant.

49. Ms. Seecharan’s testimony of Mr. Forteau’s declaring the Claimant to have been suspended was inconsistent with the contemporary documentary evidence - the constitutional procedures that would have been activated, and the correspondence from both the claimant and

the defendant at the time. I find that while that may have represented her understanding of what transpired, and hence it was what she communicated to the claimant, it is inherently improbable.

RICHARD FORTEAU

50. Mr. Richard Forteau is the Secretary of the Defendant since 1988. He states that according to the Constitution of the Defendant, no member of the Central Executive is compensated by way of salary.

51. On October 28th, 2007 at the Annual General Meeting of the Defendant, Mr. Milton Austin indicated that he felt there were financial irregularities at the South/Central Region and that the Claimant was involved. The then President promised to investigate those concerns. At the next meeting of the Central Executive, a three (3) man committee was appointed to investigate the said complaint.

52. The three (3) man committee investigated the complaint and presented a written report to the Central Executive. The President directed that a meeting be held with the South/Central Regional Executive Committee and the Central Executive to discuss the report and to determine what, if any, further action should be taken. He was asked to chair that meeting which was held on November 19th, 2007.

53. The report of the three (3) man committee was discussed and the Claimant confirmed that the contents of the report were true and correct. Every other member of the South/Central Regional Executive Committee present indicated that they lost faith in his chairmanship and would resign forthwith if the Claimant did not himself resign. In order to avert a “governance crisis in the Region” he asked the Claimant if, in light of the contents of the report and the position taken by the members of the South/Central Regional Executive Committee, he would resign as Chairman of the region. The Claimant did not respond, but asked if it was okay for him to walk out and proceeded to do so. The meeting continued in his absence.

54. Mr. Darren Sheppard, a Trustee of the South/Central Region, then enquired whether the region’s vehicle could be made available for other members to use. He replied *yes*, and reminded

them that the vehicle was for the Association's use, and not for the use of one person in particular.

55. After that meeting, the Defendant did not hear from the Claimant until it received a letter dated 5th December, 2007 from his then Attorney-at-Law.

56. I accept his evidence. It was forthright, candid, and credible.

ANTHONY MC QUILKIN – DEFENCE WITNESS

57. Mr. Anthony Mc Quilkin is the Treasurer of the Defendant and has been since the year 2000.

58. On October 28th, 2007 he attended the Annual General Meeting of the Defendant where Mr. Milton Austin told the meeting he thought there were some financial irregularities at the South/Central Region involving the Claimant.

59. The Chairman of the Annual General Meeting indicated that the complaint would be investigated.

60. At the next meeting of the Central Executive, the then President appointed a three (3) man committee, inclusive of this witness, to investigate the complaint raised at the Annual General Meeting.

61. Following the appointment, a meeting was held on November 16th, 2007 between the said committee and four (4) members of the South/Central Regional Executive Committee. The members of the South/Central Regional Executive Committee present were the Claimant, Mr. Ronald Brereton, Secretary, Mr. Barker, Treasurer and Mr. Darren Sheppard, Trustee.

62. During the meeting discussions were held about former members of South/Central Regional Executive Committee leaving signed blank cheques which were being used by the region, former members of South/Central Regional Executive Committee co-signing cheques for

the region, and the Claimant changing the mandate of the region's bank account to allow any two (2) persons among the Treasurer and Trustees to sign cheques, all in breach of the Defendant's Constitution.

63. Having raised these issues with the Claimant, and the Claimant having indicated he was aware of what was happening, the other members of the South/Central Regional Executive Committee indicated they, and the other South/Central Regional Executive Committee members, would resign if the Claimant continued as Chairman. He informed all present that he would have to report all of these matters to the Central Executive.

64. Based on the contents of the report the Central Executive decided to meet directly with the members of the South/Central Regional Executive Committee. This meeting took place on November 19th, 2007. Mr. Forteau chaired that meeting as the President went to Tobago.

65. Mr. Forteau also told the Claimant that the South/Central Regional Executive Committee planned to resign if he continued as Chairman, and asked whether in those circumstances, the claimant would be willing to step down as Chairman. He also told him that it might be in the best interest for the region's bands for him to resign, as it would be difficult for the South/Central Region to set up a new executive, particularly as Panorama 2008 was fast approaching. The Claimant then asked if it was okay to leave and he left the meeting.

66. At the time, the Claimant was the Project Manager for Panorama 2008 for which he received a monthly stipend. After he left the meeting, he never returned to carry out his functions as Project Manager.

I accept his evidence. It was also candid and forthright without inherent inconsistency.

Whether the Central Executive Committee of the Defendant suspended the Claimant from the post of Chairman of the South/Central Region Executive Committee on November 19th, 2007

67. The Claimant stated that he was told by three (3) officers of the South/Central Regional Executive Committee that he was on suspension and that the Vice-Chairman was appointed to act as Chairman. He was also told that Mr. Sheppard and Mr. Sherwood were instructed to take the keys for the region's vehicle and office from him and Mr. Sheppard did do so later that evening.

68. The Defendant states that the Claimant was not suspended but he abandoned the office held. It was submitted that if one is to believe the Defence witnesses, there was a grand conspiracy by those three (3) officers of the South/Central Regional Central Executive to mislead the Claimant into believing he was suspended.

69. Ms. Seecharan's evidence is also that while she was assisting the Claimant to clear out his office, Mr. Sheppard arrived and also informed the Claimant about his instructions. As it turns out, much depends on her evidence, as I place no weight at all on the evidence of Mr. Arnold.

70. Mr. Forteau stated that he knew that minutes for the November 19th, 2007 meeting were prepared and he saw them during the elections of 2009. However, the Defendant could not locate a copy to disclose nor tender in these proceedings. It was submitted that that after receiving the letter of December 5th, 2007, Mr. Forteau should have taken care to preserve those minutes, especially if it supported the Defendant's case, and that those minutes should have been disclosed, at least to the claimant's counsel, who wrote in December 2007, and to Defendant's counsel, who responded to the letter of December 5th, 2007.

71. It was submitted that the minutes of the meeting of November 19th, 2007 are not available because they do not support the Defendant's case that the Claimant was not suspended. However, having seen and heard the witnesses, I am less inclined to infer anything so sinister

from the failure to locate those minutes. The actions of the defendant are more important than what may or may not be recorded in those minutes.

Suspension

72. The Claimant's evidence was that other persons (Mr. Sherwood, Ms. Seecharan and Mr. Sheppard), told him that he had been suspended.

73. As to Ms. Seecharan's evidence that at the meeting on November 19, 2007 Mr. Forteau stated that "*..Mr. Weekes is on an indefinite suspension until further notice*" (see paragraph 5 of Lydia Seecharan's witness statement), this was denied both by Mr. Forteau himself as well as Mr. Mc Quilkin, both of whom were present at the meeting. Both gave evidence in a calm, deliberate, thoughtful , and candid manner, and their evidence is preferred, especially as it matches the documentary evidence – the defendant's Constitution , and the contemporaneous correspondence.

The Defendant's Constitution

74. Article 13 of the Defendant's Constitution provides that any member who has just cause to believe that an officer has committed an offence may file with the Secretary of the Central Executive Committee a written allegation against the alleged offender setting out the acts complained of, and the Secretary shall prepare the charges upon the order of the President and shall mail a copy of the allegation to the accused officer by registered post within fourteen (14) days after receipt of the said charge.

75. Article 13 further provides that if an investigating sub-committee, appointed by the President, determines that there should be a trial of the alleged offender, the President shall schedule a trial of the alleged offender by the Central Executive Committee, and the Secretary shall give written notice to all interested parties of the time and place of such hearing at least twenty-one (21) days prior to the date thereof.

76. The Claimant received no notice of any allegation made against him, nor did he receive notice of any trial of any allegation made against him.

- a. Under Article 13/Discipline of Officers/Clause C (1) (c), a decision to suspend an officer of the Defendant had to be made by the Defendant's Central Executive **following a trial** of the officer pursuant to Article 13B(6);
- b. The meeting on November 19 at which Mr. Forteau is alleged to have suspended the Claimant was not a meeting **of** the Central Executive. It was a meeting **between** the **Central** Executive and the South/Central **Regional** Executive Committee. A decision to suspend the Claimant could not validly be taken at such a meeting.
- c. No trial of the Claimant was ever scheduled or held.
- d. The correspondence from the Claimant's Attorney at the time did not complain of the Claimant's suspension.
- e. In any event the responses on behalf of the defendant should have quickly clarified that there had been no such suspension.

CONCLUSION

77. By reason of what was told to him by three (3) officers of the South/Central Regional Executive Committee, the Claimant **believed** that the Central Executive purported to suspend him from office.

78. However, even if, as he stated, the keys for the office and the vehicle were taken from him by Mr. Sheppard, the lack of keys did not prevent the Claimant from performing his duties at the office. This is accepted by the claimant himself.

79. Upon receipt of the letters from the defendant's attorneys at law, the Claimant could have arranged to attend at the offices of the South/Central Region by agreement between attorneys at law. If that were not possible then it would have confirmed his belief that he had been suspended. If it transpired that he was free to resume duties then it would have confirmed what the defendant had been saying, namely that it had never suspended him in the first place.

80. This did not occur. Instead the claimant seemed to persist in his belief that he had been suspended, and threatened legal proceedings on the basis of that belief, notwithstanding the defendant's continued denials that it had suspended him or removed from office, or that there was any impediment to his resumption of duties.

81. It is clear that the Claimant was not suspended by the Central Executive on November 19th, 2007. This would have been in breach of the Defendant's Constitution. Further the follow up procedures required by that Constitution were never activated, and the defendant denied, from the very first complaint, that it had done so.

82. The claimant's claim is therefore dismissed with costs to be paid by him to the defendant in the amount of \$14,000.00. While it is arguable that costs should be on the higher amount of \$92,000.00 claimed in the body of the statement of case for loss of earnings, I exercise my discretion and award costs on the basis of the reliefs claimed in the claim form and relief clauses in the statement of case.

Dated this 21st day of January 2013

Peter A. Rajkumar

Judge