

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2020-04530

BETWEEN

RABINDRANATH RAMSAROOP

Claimant

AND

THE UNIVERSITY OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: 5 April, 2022.

Appearances:

1. Mr. Glen Bhagwansingh, Attorney-at-law for the Claimant.
2. Mr. Steven Singh instructed by Ms. Amanda Adimoolah, Attorneys-at-law for the Defendant.

ORAL DECISION REDUCED INTO WRITING

1. Before the Court for its determination is the Claimant's Claim Form and Statement of Case filed on 27 December 2020 wherein the Claimant sought the following reliefs:
 - a. General damages for breach of contract;
 - b. The sum of \$327,676.75 representing the loss of income for the remainder of the Claimant's contract of employment;
 - c. Interest pursuant to Section 25A of the Supreme Court of Judicature Act Chap. 4:01 from the date of dismissal to the date of judgment;
 - d. Costs;
 - e. Such further and/or other reliefs as the Court may deem just.

The Claimant's Facts:

2. The Claimant has been in the employ of the Defendant since 2006 as a lecturer for a three year contract which was renewed several times. The last contract entered into on 30 September 2016 (“the 2016 contract”), provided for a three year term, was due to terminate on 31 August 2019. As per the contract the Claimant received a gross monthly salary of \$19,845.00 with additional allowances such as, *inter alia*, vehicle/travel allowance, medical coverage, housing allowance, cellular phone.
3. It was a term of the 2016 contract that the Defendant could terminate the contract at any time due to “unforeseen changes in its operational requirements”.
4. The Claimant pleaded that in May 2018 the Defendant issued a letter of termination by reason of redundancy and subsequently paid \$150,535.20 as termination benefits representing salary up to 30 June 2018 and severance pay. It is the Claimant’s case that redundancy is not an unforeseen change in the operational requirements of the Defendant. Under the contract the Claimant pleaded that he would have been entitled to receive the sum of \$478,211.95 and as he was paid the sum of \$150,535.20 as termination benefits, he is claiming \$327,676.75.

The Defendant's Facts:

5. The Defendant disputes the Claimant’s position and has pleaded that at the time the 2016 contract was entered into the Defendant was unaware that its budgetary allocation would be severely cut for the 2016/2017 and 2017/2018 academic periods. As a result, the Defendant took action to reduce expenditure and consequently, the Claimant and 58 other academic staff were retrenched. All staff members were notified of the challenges faced by a number of memorandums.
6. With respect to the Claimant’s retrenchment, the Defendant pleaded that he was afforded 45 days’ notice of retrenchment. The Defendant pleaded that the Claimant was advised of

the Defendant's decision to offer severance in the amount of \$152,771.16 and he was also paid his full salary for 1 May 2018 to 5 July 2018.

7. The Defendant stated that the reduction in its budgetary allocation was due to economic factors which were beyond its control and this resulted in the termination of the Claimant's contract. Further, the Defendant asserts that the Claimant was for 161.22 accrued vacation days from prior contracts as well as 37 vacation days accrued up to 5 July 2018 and he was also reimbursed for medical expenses claims made up to 31 July 2018.

The Evidence:

8. During the trial for the matter, the Court heard evidence from the Claimant and Mr Dayle Connelly.

The issues:

9. The Court had to determine the primary issue as to whether the operative circumstances which led to the termination of the Claimant's contract could be viewed as falling under the rubric of "unforeseen changes in the UTT's operational requirements" as referenced in the 2016 contract.

The Law:

10. The overarching principle applicable to this case was stated by the Court of Appeal in **Civil Appeal No. P012/2014 Richard Callender v Trinidad and Tobago National Petroleum Marketing Company Limited** at page 21 as follows:

"... when the Defendant has a right to terminate the Contract before the end of the term, damages should only be awarded to the end of the earliest period at which the Defendant could have so terminated the Contract": Marsh v. National Autistic Society [1994] ICR 453 at 31-013.

11. In relation to the construction of the words of the contract, "unforeseen changes in its operational requirement", the Court had regard to **Sirius International Insurance**

Company v FAI General Insurance Ltd. & others [2004] UKHL 54 where Lord Steyn at paragraph 18 stated:

“The aim of the inquiry is not to probe the real intention of the parties but to ascertain the contextual meaning of the relevant contractual language. The inquiry is objective: the question is what a reasonable person, circumstances as the actual parties were, would have understood the parties to have meant by the use of specific language. The answer to that question is to be gathered from the text under consideration and its relevant contextual scene”

12. In considering the length of notice for termination of an employment contract under common law, the general rule is that the intention of the parties as revealed in their contract will fashion the period that constitutes reasonable notice: **Chitty on Contracts 30th ed. (2008) Vol II para 39-155 at page 1110.**

Resolution of the Issues:

13. There is no dispute on the factual matrix before the Court insofar that it is accepted by both sides that the Claimant's services was in fact terminated and the contract of employment specifically provided under the general heading "*Termination of Contract/Dismissal*" at Clause 6.12.3 that "the University at any time during the remaining of the life of the contract due to unforeseen changes in its operational requirements". The contract provides to terminate the contract subject to the invocation of the clause for the provision of 1 month's written notice.
14. The issue the Court has to determine in this case is whether the operative circumstances which led to the termination of the Claimant's contract could be viewed as falling under the rubric of "unforeseen changes in the UTT's operational requirements." When the Claimant's services were determined the Claimant was informed that his position had become redundant. The provisions of the Retrenchment and Severance Benefits Act Chap.

88:13 (RSBA) does not apply where the affected person is employed under a fixed term contract .

15. Mr Connelly, for the Defendant, testified that since the inception of the UTT in 2004 budgetary allocation was never an issue and that the first time monetary concerns arose was for the financial year 2016/2017. His evidence revealed that the Claimant's was effected prior to the decrease in the Defendant's budgetary allocation.
16. This witness's uncontradicted evidence satisfied the Court on a balance of probabilities that there was a substantial decrease of nearly 100 million dollars in the budgetary allocation. This was a circumstance over which the UTT had no control nor is it reasonable to conclude that the Defendant could have foreseen or anticipated the reduction in its financial allocation. That decision fell entirely within the remit of the Ministry of Finance and once the budget was approved by the Parliament all State funded organisations had to adjust to their new financial realities.
17. While the state of the economy and the general decline in oil and natural gas prices was a circumstance which the general public would have been aware of, it cannot be said that the UTT could have predicted or determined what quantum of funding would have been provided for the relevant time period. When faced with the reality of the reduction in its budgetary allocation, its survival then depended upon the effecting of the organizational changes. This Court is firmly of the view when one applies the natural and ordinary meaning of the words used at Clause 6.12.3 of the contract and bearing in mind that the Court cannot rigidly stick to the dictionary meaning of words but must interpret the words in the provision of the contract in the manner in which they generally would have been understood, that the reduction of its funding was an unforeseen circumstance which materially impacted upon its operational requirements.
18. Faced with the reality of its financial position, the Court is of the view that it was reasonable and necessary for the Defendant to prune its operations and to terminate certain contracts so as to ensure that its operational requirements could be funded.

19. The Court holds the view that the termination of the Claimant's employment fell squarely within the definition or the circumstances which were envisaged when the contract was formulated and was a circumstance which was unforeseen as it relates to the operational requirements of the University. Consequently, the termination of the Claimant's employment was justified and accorded with the provisions as outlined in the 2016 contract. The adopted course was unfortunate but it was necessary having regard to the unforeseen change in the Defendant's financial position and its obligation to ensure that its operations could continue.
20. Though faced with the evident and unexpected challenges, the Court is of the view that the UTT displayed empathy and compassion towards its fixed termed contract academic staff as it elected to treat with them as workers. Based on the wording of the contract and even in accordance with the case law as outlined by Mendonca JA in *Callender* (supra) had there been a strict adherence to the termination provision, all that the Claimant would have been entitled to was the requisite notice period and one month's salary.
21. However, the Defendant to its credit voluntarily used the provisions of the RSBA as a guide. Consequently, the Claimant upon his departure from the University was paid a sum in excess of his 2016 contractual entitlement as his payment was premised upon his number of years service although he was not a worker under the RSBA. The Claimant was fortunate and he benefited from the gratuitous application of the provisions of the RSBA where his number of years with the University was considered and he received the sum of \$152,771.16 as a severance benefit together with his accrued medical expenses at the time.
22. This gratuitous position adopted by the University is one for which it should be congratulated given that there was no legal obligation to do so as the termination of the Claimant's fixed contract was effected in accordance with the 2016 contractual provisions which empowered the Defendant to terminate contracts based upon unforeseen changes in its financial position and the resultant impact upon its operating requirements.
23. In the circumstances, the Claimant's claim is completely devoid of merit and same is hereby dismissed. The Court will however adjust the usual costs order and hereby orders

that the Claimant is to pay to the Defendant 50% of the prescribed costs calculated on the value of the claim. Accordingly, costs shall be paid in the sum of \$33,575.00 and there shall be a stay of execution of 42 days on the payment of costs.

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FRANK SEEPERSAD

JUDGE