[2014] JMSC Civil 108

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2010 HCV 00881

BETWEEN	**JOSHUA JADDOO**	**CLAIMANT**
A N D	**SUGAR INDUSTRY AUTHORITY**	**DEFENDANT**

William Panton and Courtney Williams instructed by DunnCox for the Claimant.

Carol Davis for the Defendant.

Heard: May 5, 7, 8: July 22, 23, 24: November 29, 2013 & July 11, 2014

Employment – Termination of employment contract – Whether is a breach of contract from which damages should flow – Whether is redundancy from which entitlements arises – Whether items not paid pursuant to contract.

Negligence – Employee allege failure to provide safe system of work led to stress causing employee to suffer a stroke.

P.A. Williams, J.

[1] The claimant, Joshua Jaddoo, claims against the defendant, Sugar Industry Authority a statutory body of the government of Jamaica, the following:-

(1) Damages for negligence by reason of the failure to provide the claimant with a safe system of work whereby the unreasonably heavy workload, bullying , stress and anxiety in the workplace eventually led to the claimant suffering a stroke;

(2) Loss of income consequent on the wrongful and/or unlawful termination of contract of employment;

(3) In the alternative damages in respect of redundancy entitlement on dismissal.

(4) Damages in respect of non-payment gratuity pursuant to his contract;

(5) Damages in respect of the non-payment of lunch subsidy to which he was contractually entitled and;

(6) Damages in respect of vacation leave pay; and

(7) Loss of income for twenty-two (22) months consequent upon the defendant's failure to honour the contract with the claimant;

(8) Alternatively, loss of income for nineteen (19) months consequent upon the defendant's failure to keep its promise to retain the claimant services until he reached retirement age of sixty-five (65) years;

(9) Interest on such damages and/or loss of income found to be due from the date of judgment at such commercial rate as the Honourable Court deems just.

[2] The defendant resists the claim by denying any of the entitlements are outstanding and by way of counterclaim says that by mistake it overpaid the claimant while he was absent from work for reasons of sickness. It is therefore seeking that the sums it overpaid be returned. In the event any sum is found to be due to the claimant, it is seeking the same be set off against the sums found to be due to the defendant on the counterclaim.

Factual Background

[3] The claimant describes himself as a sugar technologist and consultant. From September 1, 1974 to August 31, 2001 he was employed to the defendant and the Sugar Industry Research Institute "SIRI" in various capacities, ranging from Sugar Technologist to Director of the division. He separated from his position in

2001, - he says he was made redundant, the witnesses for the defendant says he took early retirement. In any event he elected to return to work for the defendant as a contract officer and was designated Co-ordinator Factory Services Division “SIRI”.

[4] The defendant was established as the regulatory body of the Jamaican Sugar Industry. It was vested with powers to regulate and monitor the industry including the functions of arbitration, planning research and development and marketing of sugar and molasses. Research is undertaken by SIRI which is the technical arm of the defendant and as such has as its main function to research and develop methods to improve agriculture technology as it relates to sugar cane production. There are two (2) sections within SIRI, the Agricultural Services Division and the Factory Services Division. It is the latter that the claimant became co-ordinator for. This division functions generally to assist factories in improving their efficiency and to carry out technical training.

[5] As co-ordinator of the Factory Services Division, the claimant reported directly to the Director of Research. From 1999 to the time his contract was terminated in 2009, the claimant reported to Dr. Earle Roberts who served as Director of Research for that period. Dr. Roberts explained that the Factory Service Division is intended to provide some maintenance services to the sugar factories of the defendant. In particular, it is responsible for the maintenance sampler and the associated core laboratory at each of the factories. When the cane comes to the factory, before it is processed, samples are taken and analyzed. This analysis provide the basis on which payment to growers are assessed and made for the cane they deliver. It was the claimant’s department that was responsible for monitoring the cane sample equipment and instruments in the core laboratories.

[6] Upon the claimant rejoining the defendant in 2001, the first letter exhibited setting out the terms of this re-engagement is dated August 30, 2001. In it, the defendant extended an offer of a one (1) year contract effective September 1, 2001 and set out the terms and conditions of this contract. It therefore detailed

the emoluments, gratuity, leave facilities and medical scheme to be offered. Further, it stated the duties and responsibilities as being that as Co-ordinator, he would have overall administrative and operational responsibility for the Factory Services Division and his responsibility would be to the Director of the Institute. Other duties and responsibilities were to be more fully set out in an attachment to the letter which formed a part of this contract. Finally, it stated that the contract may be terminated at any time by mutual agreement or alternately by three (3) months' notice in writing on either side. The claimant was requested to indicate his agreement by signing and retuning the attached copy of the contract, which he did.

[7] The next contract exhibited is dated August 12, 2002 and was for a two year contract of employment effective September 1, 2002. There was an increase in the emolument being offered but all other terms and conditions were basically the same. Once again, the claimant signed indicating his agreement. Next, followed a letter from the Director, Finance and Administration advising the claimant that his contract which was due to expire at the end of August 2004 would "continue in force for a further three months until November 30, 2004 with the existing terms and conditions."

[8] In December 2004, there was another letter from the Director, Finance and Administration advising that the contract would extend until August of 2005. The salary was increased and all other terms and conditions remained the same. Once more the claimant signed indicating his agreement to the terms and conditions.

[9] The renewal of the contract next came in a letter similar to the earlier two which had outlined the terms and conditions. This was for a further two (2) years effective September 1, 2005. This contract/letter was signed on behalf of the defendant by its Executive Chairman. The claimant again indicated his agreement by signing it.

[10] It was in October of 2005 that the claimant suffered a left side cerebrovascular accident which resulted in a right side hemiparesis (a stroke). He was hospitalized for nine (9) days and discharged on November 2, 2005. He maintains that he was able to manage his department by electronic means working from home, worked from his home in preparing necessary reports and sometimes took brief visits to his office at least once per week. He returned to work on a full time basis on April 17, 2006.

[11] The next contract of employment, which has proven to be the last, is dated July 15, 2009. It is again signed on behalf of the defendant by its Executive Chairman. It was for the period of two (2) years with effect from November 1, 2007. There was another increase in his emolument, also effective from November 1, 2007. All other terms and conditions were again the same. Once again the claimant signed agreeing to the terms and conditions but his time it is dated, seemingly by the claimant - August 20, 2008.

[12] In a letter dated October 27, 2009, the Executive Chairman advised the claimant that in a meeting of the Board of Directors, a decision was taken not to renew his contract. He was then advised that the motor vehicle supplied under his contract would be offered for sale to him if he decided to exercise his option to purchase. The letter ended with this paragraph:

> *"I would also like to reconfirm my suggestion that you consider, for further discussion with SIA, how to continue our relationship outside the ambit of a renewed contract."*

[13] It is in these circumstances that the claimant brought these proceedings. He alleges that the contract was improperly brought to an end. Further, he maintains that during the life of the contract, he was not paid all that he was entitled to. These two issues generally concerns the terms of the contract and the conditions flowing there from. The claimant also blames his falling ill on the failure of the defendant to provide him with a safe system of work - he says he was in effect overworked in a stressful environment. I propose to deal with this

matter by firstly dealing with the matters concerning the contract and then turn to the issue as to the negligence of the defendant.

The Evidence of the Parties concerning the Contract

[14] The claimant does not dispute signing the contracts with which he was presented and thereby seemingly accepting the terms therein. He, however, pointed out that although he gave 'unbreakable' service to the defendant, at times it was without written contracts. This he said was due to the fact that there was always a delay in the issuing of the written contracts. He further said that he worked without any written contracts for as much as two (2) years and eleven (11) months from September 1, 2005 to July 23, 2008.

[15] He tried to explain his signing the contract, for what turned out to be his final contract, for the period November 1, 2007 to October 30, 2009 – this being a period, he describes as inconsistent with the previous contracts which ran from September 1 for a period of two (2) years. He said the Financial Controller of the defendant had explained that "the auditors were on his back" since payments were being made without there being any contract in place. When he pointed out the discrepancy, the claimant said he was assured that nothing had changed. Under cross-examination, he went on to express that he felt forced to sign this contract and that he had in fact signed without reading the details.

[16] Thus, when his contract was terminated, he says it was done unilaterally without his having been given sufficient notice and resulted in his not receiving any payment in lieu of having been given this notice. He argued that he had already completed two (2) months of a new contract which would have covered the period September 1, 2009 to August 31, 2011. Thus he maintains, he should be compensated for the remainder of this contract – 22 months.

[17] The defendant countered these assertions by seeking to rely on the contract in its clear unambiguous terms. The administrative manager of the defendant, Mr. Keith O'Gilvie, in giving evidence in this area pointed out that the last contract

came to an end – the 31st of October 2009. This was then the end of the claimant's employment with the defendant. This contract was not renewed hence, there was no need for notice. Mr. O'Gilvie, however, admitted that there was a period that the claimant worked without there being a contract in place. However, he explained an application was made for the new contract to be done retroactively to the Ministry of Finance and permission was granted. He was not sure of what period this occurred.

[18] The claimant went on to urge that he should get redundancy entitlements. He spoke of the defendant writing to the staff who remained in his department after his termination, inviting them to a discussion relating to redundancy. Under cross-examination, he admitted that he was in fact unable to confirm the truth of the existence of such a letter as he had received information about it from his former secretary. He feels that he should have been treated in the same way as other employees of the defendant who were affected by the decision to close the department. He felt that this decision to close his department had been already taken at the time of his dismissal.

[19] The defendant, again though Mr. O'Gilvie, asserted that no redundancy situation arose. He explained that the position of Factory Service Co-ordinator, which the claimant held, still existed on the establishment list of "SIRI." The position remained vacant while an audit was being done to determine the optimum levels for the defendant and SIRI. The witness admitted that there had been a redundancy exercise affecting persons who remained at the location the claimant had been to December 2009 and whose positions were in fact made redundant. He, however, maintained that the Factory Services Division still exists.

[20] There are two items which are detailed in the contract that the claimant alleges were not honoured. Firstly, he pointed to the issue of his gratuity. The contract explicitly provides for payment of a gratuity of 25% of the emoluments paid at the end of the contract or at the end of each year of the contract. A problem first arose when he received his pay advice for August 31, 2008 when he noticed he

was paid two (2) months gratuity. He made checks, and was advised by the said Financial Controller that it was not a mistake but due to the fact that funds were not available, full payment would be made in the October. This was done and he received twelve (12) months gratuity then. That was the final payment he received. His complaint is that the payment for the period November 1, 2008 to October 20, 2009 remains unpaid and is outstanding.

[21] The defendant does not deny that the amount is outstanding, indeed Mr. O'Gilvie has sought to justify the retention of the sum. Both parties agree that there was some dispute that arose from the report of the Auditor General as to possible overpayments made to the claimant. The defendant therefore is relying on an offer made by the claimant in March of 2009 that consideration be given to withholding his gratuity as part-payment of the amount outstanding. However, the claimant in September of 2009 withdrew the offer and requested that his gratuity be paid on or before October 25, of that year. The defendant responded through the Director, Finance and Administration that the Auditor General did not accept their position of repaying any overpayment from the gratuity. Also, he noted that she would be investigating further the amount of the overpayment. He suggested that having informed the Auditor General's Department of the decision to repay any overpayment from the gratuity, it would not be possible to change it.

[22] The alleged overpayment – what is described as a mistake on the part of the defendant – is the subject of their counter-claim. In their statement of case, they claim the amount overpaid was over three (3) million dollars. When Mr. O'Gilvie gave evidence, he indicated that when the matter came up he was instructed to see how best the calculated overpayment by the Auditor General could be reduced in the claimant's favour. This he did and his calculations as set out in his witness statement, led him to the belief that the claimant was firstly overpaid during the time he was sick for 50 days amounting to $515,000.00. Secondly, for the period he worked part-time for a period of 61 days amounting to $628,200.00.

[23] Mr. O'Gilvie went on to give evidence that he personally took the calculation he had made to the Auditor General's Department and to the relevant Ministry but it was rejected. As far as he was aware, the matter of the overpayment has not been settled as the investigations, to be best of his knowledge has not been completed. He admitted conclusively that the gratuity for 2009 has not been paid.

[24] On the matter of the non-payment of his vacation leave, the claimant claims to be entitled to 49.5 days vacation leave. He claimed for 27 days vacation leave said to have been brought forward to 2009 from previous years and 13.5 days earned vacation leave in 2009 itself. Further, he said he was entitled to six (6) days vacation leave for work done on three (3) weekends in the year 2009 which had been approved by Dr. Roberts and a further three (3) days for departmental leave not taken.

[25] Mr. O'Gilvie took the exercise of calculating the vacation leave entitlements to the leave application forms exhibited and went through them under cross-examination in some detail. He admitted that not many of the forms had been completed as they ought to have been - there were signatures missing as also proper indication of how many days had actually been taken and/or approved. However, he was satisfied that the claimant had been given all that he was entitled to. He confessed that an error had been made in calculating one period and the claimant was paid for an amount for two (2) days with the copy of that cheque exhibited. Mr. O'Gilvie noted that given the nature of the contract, the claimant was employed under; he was not entitled to resort to claiming he had taken sick days beyond the time specified in the contract. If the illness went beyond the time specified it could not properly be considered sick days.

[26] Mr. O'Gilvie took issue with the claimant's assertion that he was entitled to consideration for work he had done on weekends. He said, however, that although the request may well have come from Mr. Roberts that the weekends he worked be added to his leave entitlement, such an arrangement could not be

facilitated. He maintained that the claimant, upon the termination of his working relationship with the defendant was due 23.5 days vacation leave. He was paid for 20 days initially and a payment for the remaining 3.5 days had been made prior to the trial commencing. The final amount found subsequently to be outstanding was paid while the trial was on-going.

[27] Another matter that arises, not flowing directly from the contract but also dealing with the entitlements the claimant is now seeking, is the issue of a lunch subsidy. The claimant stated that in about 2006 he was "going through" the annual reports of the defendant and noted it stated he was being paid a lunch subsidy. Having not received any, he brought the matter to the attention of Dr. Roberts and copied to the Financial Controller, claiming the amounts which he ought to have received from September 2001 to July 31, 2006. He was thereafter advised by the financial Controller that he should resume submitting his claim for lunch subsidy. This he did and the claims were honoured up to the time his services were terminated. He acknowledged under cross-examination, that this entitlement did not arise out of the term of the contracts he had signed.

[28] Mr. O'Gilvie confirmed that the claimant's contracts did not provide for lunch subsidy. He however, acknowledged that the person the claimant referred to as the Financial Controller, did in fact approve the payments in or about 2006 and such payments were made from the time of approval until his contract came to an end. Mr. O'Gilvie, however, expressed the view that this approval was not retroactive and therefore no monies were now due to the claimant.

[29] Under cross-examination he was confronted with the reports that the claimant had referred to that had formed the basis of the claim to this entitlement. The Annual Report (Salaries and Emoluments Senior Executives) for the years 2001, 2003, 2005 and 2006 clearly state that the Factory Services Manager, SIRI had received a lunch allowance. Mr. O'Gilvie said he was not familiar with the reports he was shown, indeed he said he had not seen annual reports through the years.

The submissions on the issue relating to the terms and conditions of the contract

[30] The main thrust of Mr. Panton in addressing the matter of whether there was a breach of contract; was that the claimant's contracts of employment was for a fixed period and was determinable on three (3) months notice. It began on September 1, 2001 and was rolled over continuously on the expiry of each period without a breach, hence the termination of the contract on October 31, 2009 was two (2) months into a new contract period with started on September 1, 2009.

[31] The starting date of the last contract was described by Mr. Panton as being unilaterally charged and the claimant having signed without reading it alleges to have taken steps to address it. Thus in effect, it is being urged that regardless of what is stated in the contract the effective start date of it should be consistent with what had been done in the previous contracts.

[32] Ms. Davis for the defendant countered by relying on the principles of the parol evidence rule. She submitted therefore that oral evidence is not generally permitted to contradict vary, add or subtract from the terms of a written contract. She relied on the text Chitty in contracts – 26th Edition – para 846. Further she argued that there is no principle that prevents parties agreeing to a contract having retrospective effect and backdating of a contract does not make it a nullity.

[33] Support for this argument was found in **Trollope and Colls Ltd. et al v. Atomic Power [1963] 1 WLR 333**. The words of Megaw J at 339 were noted:-

> *"But, so far as I am aware, there is no principle of English Law which provided that a contract cannot, in any circumstances have retrospective effect, or that if it purports to have, in fact retrospective effect, it is in law a nullity".*

In response Mr. Panton refers to the said paragraph in Chitty on Contract but highlighted the provisions as regards to exceptions.

> "*However, the parol evidence rule is and has long been subject to a number of exceptions. In particular, since the nineteenth century, the courts have been prepared to admit*

> *extrinsic evidence of terms additional to those contained in the written document if it is shown that the document was not intended to express the entire agreement between the parties……In* ***Gillespie Bros. & Co. v. Cheny, Eggar and Co,*** *Lord Russell C.J. stated – "although when the parties arrive at a definite written contract the implication or presumption is very strong that such contract is intended to contain all the terms of their bargain, it is presumption only, and it is open to either of the parties to allege that there was, in addition to what appears in the written agreement, an antecedent express stipulation not intended by the parties to be excluded but intended to continue in force with the express written agreement."*

[34] He dismissed the case relied on by Ms. Davis as being easily distinguished from the facts in the instant case. The parties here he submitted were not acting "in the course of negotiations on the undertaking and in the anticipation that, if any whenever a contract were made it would govern what was being done meanwhile'"

[35] Thus, Mr. Panton went on to argue that the claimant was entitled to be paid in lieu of the notice as required in the contract. In any event, Mr. Panton sought to convince the Court that the claimant was to be considered as having been re-integrated into the permanent staff. He referred to the Employment (Termination and Redundancy) Act where at section 3 (5) (b) which provides that where a fixed term contract had continued for more than four (4) weeks after the date to the expiry, it is to be treated as a contract for an indefinite period.

[36] Ms. Davis pointed to the fact that the requirement for three (3) months notice would have arisen only if one or other party required to terminate the contract before the expiry date. The contract came to an end due to effuxion of time, she opined and stated further that it was simply not renewed for a further period.

[37] On the matter of redundancy payments, Mr. Panton began by noting that the claimant had worked continuously since his appointment in September 2001. Further he noted that both Dr. Roberts and Mr. O'Gilvie confirmed that the staff

who had worked with the claimant at the Bernard Lodge Offices was made redundant shortly after the claimant was terminated. The office was closed within months after he had left.

[38] The Employment (Termination and redundancy) Act at section 5 (2) is relied on:-

> "…….an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or partly to –
>
> (a) The fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed or has ceased or intends to cease to carry on that business in the place where the employee was so employed."
>
> "Cease" means cease …..either permanently or temporarily for whatever cause.

[39] From this provision Mr. Panton noted that despite the defendant claiming that the claimant's former position remains part of its establishment, there is no evidence that there has been or continues to be a role for senior sugar technologist or co-ordinator, Factory Services Division of the defendant. A temporary cessation, he opined is enough.

[40] Miss Davis countered that the claimant is not entitled to a redundancy payment firstly because he was not dismissed. She re-enforced her submission that the defendant, as was its right, did not renew his contract. In any event, she further submitted, there was no redundancy situation. The defendant and SIRI continued to exist; the position, formerly held was not filled awaiting the results of the Commission of Enquiry. The post has not ceased to exist.

[41] In response Mr. Panton urged that the Commission of Enquiry has no bearing on whether claimant was made redundant. It was mentioned after the claimant's termination and has still not reported. It must also be noted that Ms. Davis had submitted that the claimant had failed to make a claim for redundancy within the six (6) months provided in the Act; however, Mr. Panton pointed out that this

claim was filed and served within six (6) months of the date of the termination of the contract.

[42] Turning to the matter of the vacation leave pay, both parties argued that their calculation was to correct one. Mr. Panton, however, argued that the defendant's records of vacation leave applied for and actually taken by the claimant cannot be relied on. Indeed he submitted that Mr. O'Gilvie's action since the matter commenced has proved the unreliability of the records. It is urged that the claimant's evidence is more reliable and is to be accepted and that in the circumstances the claimant had proved his claim in so far as since the commencement of this action the defendant has made two further payments in respect of vacation leave entitlement.

[43] Ms. Davis, as could be expected, said it was the careful examination by Mr. O'Gilvie that computed the amounts due. All the sums have been paid and there is now no monies the defendant maintains, owed to him.

[44] On the matter of the lunch subsidy, the argument for the claimant hinges in the defendant's own Annual Report which showed that the claimant was entitled to and was being paid a lunch subsidy each year. Mr. Panton therefore argued that the defendant conceded that the claimant was entitled to the payment in 2006, but have given no reason for not paying it from the start of the contract. The entitlement having come to the claimant's knowledge in 2006 means that any limitation period would not start till then, is the way Mr. Panton viewed the matter. In any event, he opined that since that has not been pleaded the claimant is entitled to the sums for 2001 to 2006 – plus interest and costs.

[45] It is noted that the defendant has conceded, as it were, that the gratuity is owed. Where issue is therefore joined is whether they should be allowed to keep this sum to offset the alleged overpayment made during the life of the contract. Since this therefore is tied up with the question of the counterclaim, discussion on it will be deferred until the issue of the counter-claim is considered.

Discussion and decision in the issues relating to the contract

[46] Was there a breach of contract?

The relationship between the parties after his re-engagement in 2001 is governed by the contracts and the starting point must be an adherence to its terms. The claimant's contention start with his description of this relationship as his being employed in a renewable two (2) yearly rolling contract. Indeed it was further submitted on his behalf that the contract was rolled over continuously on the expiry of each period without break.

[47] An inspection of the documents showing the periods of the claimant's employment reveal that the very first period was for one (1) year commencing in August of 2001. Thereafter came the first two (2) years contract. The next period, expressed in a letter confirming the claimant's employment, was for three (3) months to November 2004. This was followed by another letter for the period to August of 2005. There was then the second (2) two year contract from September 2005. The final contract went for the period November 1,2007 for two (2) years which would take it to October 2009.

[48] The first thing that became apparent after this inspection, was the somewhat haphazard manner in which the periods were documented. Hence it is impossible to say it was consistent such that a pattern is to be discerned and held to be the standard. The contract period ranged from one (1) year in the very first instance to three (3) months with the two (2) year period however being acceptable as the fixed period that seemed to be desired.

[49] For the period September 2007 to November 2007, there is no contract and also missing is any letter or document attesting to the fact that the employment continued. However, it remains curious that in July 2008 the contract the claimant signed did not commence from September 2007 to fill the breach. The claimant maintained that he signed without reading. The claimant struck me as being a meticulous gentleman and for this to go unnoticed by him is certainly surprising.

[50] It is noted that the claimant said that at the specific request of the Director of Finance and Administration the contracts dated September 1, 2005 to August 31, 2007 and September 1, 2007 to August 31, 2009 were signed but not dated and retained. However, he said the copies in his possession were signed and dated. The latter contract referred to is not exhibited thus it is only from November 2007 that a contract for two (2) years is seen to be in place. Indeed this dated by the claimant as at the 20th of August 2008.

[51] Although Mr. Panton dismissed the case relied on by Ms. Davis, **Trollope & Colls Ltd. et al v. Atomic Power Constructions Ltd.** [supra], I find it useful for the pronouncement on the general principle regarding retroactivity of contracts useful. Indeed I accept that such contracts are not to be regarded in and of itself a nullity. The parties in the instant case seemingly had developed and accepted the practice of "backdating" the contracts to give the appearance of the continuity of the employment periods. This is why it becomes even more curious that the claimant would have failed to notice the period stated in the final contract when he signed accepting its terms.

[52] The claimant said he relied on assurances he was given that nothing had changed. However, the question now becomes why it should be viewed that this meant the contract would have been from September. An equally acceptable view of this comment could be that the length of the contract did not change despite when it commenced. Hence the new two (2) year contract would be November 2007 to October 2009.

[53] It is also to my mind very significant that the claimant noted that he received two (2) months gratuity in August of 2008 and upon complaining was assured he would get the full payment by October 2008. At that time he did in fact receive the twelve (12) months gratuity. This signaled an acceptance of October 2008 being the end of that year under the contract. In his complaint that he was not paid for the period November 1, 2008 to October 20, 2009 the claimant is clearly recognizing that the time period had shifted. He had accepted the twelve (12) months payment at the end of October 2008, thus I cannot agree with his now

seeking to suggest in October 2009 he was two (2) months in to another contract period.

[54] It is also significant that in September 2009 the claimant wrote to the Director Administration and Finance enquiring about his vacation leave. He starts by noting that his existing contract ended on October 31, 2009. This express acceptance that he was then in a contract that ended at that time, did not query in any way the fact that given the previous contracts he was, as he now claims, two (2) months into a new one.

[55] In urging the court to use the assurance allegedly given, coupled with the pattern of previous contracts, the claimant has in fact failed to convince me that there was a breach of contract or wrongful and/or unlawful termination of the contract. The period had come to an end. There was no need for notice to bring the contract to an end. Having come to an end, the defendant was at liberty to decide whether to extend an offer of another contract. They choose not to. This cannot be viewed as a breach.

[56] **Is the claimant entitled to redundancy payments?**

The starting point for this consideration is, indeed, the (Employment Termination and Redundancy) Act. Section 5(1) states: "

> *"Where on or after the appointed day an employee who has been continuously employed for the period of one hundred and four (104) weeks ending in the relevant date and is dismissed by his employer by reason of redundancy the employer and any other person to whom the ownership of his business is transferred during the period of twelve (12) months after such dismissal shall, subject to the provisions of this part, be liable to pay to the employee a sum (in this Act) referred to as a "redundancy payment").*
>
> "the relevant date" in relation to the dismissal of an employee means – inter alia – "where he is employed under a contract for a fixed term and that term expires, the date on which that term expires.
>
> Section 5 (5) states: inter alia:-

> For the purposes of this section an employee shall be taken to be dismissed by his employer –
>
> (a) …….
> (b) If under that contract he is employed for a fixed term and that term expires without being renewed under the same contract;
> (c) ……

[57] Both sides are seeming to be arguing the issue of whether the claimant was made redundant against the provisions of the Act at Section 5 (2) [already cited above]. The claimant's position is that there was a temporary cessation in the post he occupied. The defendant's position is that it still exists. In other words the defendant is asserting that there has been no cessation, temporary or otherwise, in the carrying of the business for the purpose the claimant was employed. This position is to my mind, unassailable.

[58] The evidence emerged that operation at the location where the claimant worked had been scaled down from 2001. When he agreed to be re-engaged by the defendant it was with the understanding that he would not than have to move to the main offices located in Mandeville where the majority of the other staff members had been re-located. The division he was co-ordinator for was to have been relocated to Mandeville and it was in those circumstances he had chosen not to move and was made redundant in 2001. Not many persons remained at Bernard Lodge thereafter. The claimant admitted that he remained at Bernard Lodge with some three (3) other full-time employers.

[59] The claimant accepted that part of the Division he was responsible for was removed then to Mandeville. It was the evidence of the defendant that this Division remains in operation. Upon the claimant being dismissed, the persons remained working at Bernard Lodge for another month before they were made redundant. One cannot help but speculate that the operations at Bernard Lodge were facilitated mainly due to the presence of the claimant being there. With him

being dismissed, certain workers would no longer be needed. It seems to me that the dismissal of the claimant cannot be said to be due to redundancy.

Is the Claimant owed for non-payment of vacation leave pay?

[60] The calculation of the vacation leave was systematically explained by Mr. O'Gilvie. From his answers, it became apparent that the process was not easy due to the manner in which the records were kept. The cross-examination of Dr. Roberts also supported the fact that the forms had not been correctly filled out.

[61] However, it appeared to me that much of the dispute surrounded the time the claimant was ill. He seemed to have calculated that although he had earned the vacation leave, once he fell ill that should automatically be calculated as sick leave – even if it was beyond the maximum entitled to under the contract. Another contention was that days spent at the weekend doing office work should have been factored into the calculation. The position taken by Mr. O'Gilvie, to my mind, is the correct one. The days could not be changed from vacation leave to sick leave without more. Further if the amount of sick leave entitled to was exhausted it would have to be deducted from the other days to ensure payment. Finally, unless it was specifically provided for in his contract, I do not find that the claimant could have days spent working on the weekend factored into the calculation.

[62] Although there are admitted errors made by Mr. O'Gilvie in his initial calculations, I am satisfied that he did eventually get it right. Hence the claimant is not entitled to the amount he is claiming.

Is the claimant owed lunch subsidiary for the period 2001 to 2006?

[63] The terms of the claimant's contract did not refer to the payment of a lunch subsidy. The fact, however, is undisputed that in its annual reports the defendant stated that such sums had been paid to him. In approving the payments from 2006, when it came to the claimant's attention, the defendant seemingly

recognized that they were obliged to honour the payment since they were alleging to be making them.

[64] Mr. O'Gilvie agreed that the payments were made after 2006. His argument that the approval was given at that time and was not retroactive does not address the fact that the reports showed that the subsidy was paid. There is no explanation as to why it was not. This then is not a matter of retroactive approval. It would then become a matter of accounting for and making payments alleged to have already been made. In this area therefore, the claimant should receive the monies that were being reported as having been paid to him.

The alternate position that the claimant had a legitimate expectation.

[65] Given the position found in relation to the dismissal of the claimant by way of the termination of the contract period, it is noted that the claimant has also argued that he had a legitimate expectation that his contract would be renewed or extended for a further period. This would give rise to an entitlement to pay for the remainder of the two (2) years.

[66] The claimant's evidence in this regard is that he had written to the Director Finance and Administration regarding his vacation leave and in September of 2009 he had been advised that it was not necessary to take this leave before the end of his contract as it may be taken at any time after. Thus he said the fair and reasonable interpretation of the statement was that the contract would be continued to the end of a further two (2) years.

[67] Further or in the alternative, it is the contention of the claimant that he was led to believe/or it was implied that his employment with the defendant would continue until at least until his retirement in August 2011. The claimant explained that while he was in hospital, following the stroke he suffered, the Executive Chairman visited him and said:

> *"Josh, I am sorry if I had anything to do with this. Don't worry about your future, just try and get well as I will ensure that your future is protected by SIA."*

[68] The argument therefore posited by the claimant is that the fair and reasonable interpretation of the Executive Chairman's statement is that the claimant would be employed until retirement age of 65. This age he would have attained in another 19 months after his dismissal. Hence, he should receive 19 months pay as compensation.

[69] The Executive Chairman has not responded to this allegation, whether by way of evidence or his own or through these officers who gave evidence. Dr. Roberts denied making the statements he was alleged to have made. In any event, he maintained that he did not have the authority to make the sort of promise that the claimant interpreted anything he said to mean. It is the Board of Directors that that it is claimed would have the authority concerning the employment of the claimant.

The law re legitimate expectation and its application to the evidence

[70] There is a concept of legitimate expectation in English law that arises from administrative law. It is known to apply the principle of fairness and reasonableness to a situation where a person has an accepted expectation in a public body or authority acting in a manner consistent with a long standing practice or upholding a promise. It is said that legitimate expectation is a new category of fairness particularly in proceedings for judicial review.

[71] It is perhaps against this understanding of the law that Ms. Davis has submitted that the doctrine is applicable in public law, but has no relevance in private contractual relations.

[72] The cases referred to by Mr. Panton in support of this item are ***R v North and East Devon Health Authority ex parte Coughlan*** [2001] QB 213 and ***Paponette v Attorney General of Trinidad and Tobago*** [2011] 3 WLR 2019. These are cases which deal with expectations of public authorities. Both of these

cases are expanding on the concept as it relates to public administrative law and fails to demonstrate its applicability to labour law in the manner Mr. Panton suggests.

[73] It is of interest to recognise that the concept is not in fact totally unknown in labour laws. In South Africa, the concept of legitimate expectation is said to arise given the specific provisions of their Labour Relations Act. However, there are no such similar provisions in our laws. It is therefore not available to the claimant in these circumstances on which he relies.

Was the claimant's stroke a result of the defendant's negligence?

[74] It is considered best to recognise the law applicable to this area and then consider the evidence and submissions against that backdrop as to what is required to support the law.

[75] It is a well established principle that every employer has a duty at common law to provide certain things for his employee. The basis of the liability of the employer for negligence in respect of any injuries allegedly suffered by his employee during the course of the employee's work would therefore arise from breach of this duty of care which is owed. Among the duties is indeed to provide a safe system of working and a safe place to work.

[76] In **Barker v Somerset County Council** [2004] 2 All ER 385, the House of Lords although reversing the decision of the Court of Appeal approved the exposition of the law expressed therein by Hale L.J. It is therefore from this judgment that the guidance will be sought for a useful expression of the principles applicable. The Court of Appeal's decision is found at ***Sutherland v Hatton et al*** [2002] 2 All E.R. 1. This was a judgment concerning four (4) distinct appeals which were heard together since they all concerned the issue of the liability of employers after their employees had to stop working for them owing to stress-induced psychiatric illness.

[77] At paragraph 18 of her opinion Hale L.J. said:

> *"Several times while hearing these appeals we were invited to go back to first principles. Liability in negligence depends upon three inter-related requirements. The existence of a duty to take care; a failure to take the care which can reasonably be expected in the circumstances and damage suffered as a result of that failure. These elements do not exist in separate compartments; the existence of the duty, for example, depends upon the type of harm suffered. Foreseeability of what might happen if care is not taken is relevant at each stage of enquiry. Nevertheless the traditional elements are always a useful tool for analysis both in general and in particular cases."*

[78] At paragraph 19 on the issue of the duty:

> *"The existence of a duty of care can be taken for granted. All employers have a duty to take reasonable care for the safety of their employees, to see that reasonable care is taken to provide them with a safe place of work, safe tools and equipment and a safe system of working, see* ***Wilson & Clyde Tool Co. Ltd. v English*** *[1938] AC 57."*

[79] At paragraph 23 on the issue of foreseeability:

> *"To say that the employer has a duty of care to his employee does not tell us what he has to do (or refrain from doing) in any particular case. The issue in most if not all of these cases is whether the employer should have taken positive steps to safeguard the employee from harm, his sins are those of omission rather than commission.*
>
> *.... the question is not whether the psychiatric injury is foreseeable in a question of 'ordinary fortitude.' The employer's duty is issued to each individual employee not to some as yet unidentified outsider...."*

[80] Further at paragraph 25:

> *"All of the points to there being a single test: whether a harmful reaction to the pressures of the workplace is reasonably foreseeable in the individual employee*

> *concerned. Such a reaction will have two components: (1) an injury to health which (2) is attributable to stress at work. The answer to the foreseeability question will therefore depend upon the inter-relationship between the particular characteristics of the employee concerned and the particular demands which the employers casts upon him. As was said in* ***McLoughlin v Grovers*** *[2001] EWCA Civ 1743 expert evidence may be helpful although it can never be determinative of what a reasonable employer should have foreseen."*

[81] The judge then discusses some of the factors which are likely to be relevant in determining what should have been foreseen:

i. The nature and extent of the work being done by the employee.

ii. Whether the employer is putting pressure upon the individual employee which is in all the circumstances of the case unreasonable.

iii Whether there are signs that others doing the same work are under..... levels of stress.

iv. Whether there are signs from the employee himself.

[82] At paragraph 31, she summarizes and concludes her discussion in this area by stating:

> *"But in view of the many difficulties of knowing when and why a particular person will go over the edge from pressure to stress and from stress to injury to health, the indications must be plain enough for any reasonable employer to realise that he should do something about it."*

[83] The next area Hale L.J. turned her consideration to, was that of the breach of duty and at paragraphs 32 to 34 she stated *inter alia:*

> *"What then is it reasonable to expect the employer to do? His duty is to take reasonable care. What is reasonable depends, as we all know upon the foreseeability of harm, the magnitude of the risk of*

> *that harm occurring, the gravity of the harm which may take, place the cost and practicability of preventing it, and the justification of running the risk.*
> *....It is essential, therefore, once the risk of harm to health from stresses in the workplace is foreseeable, to consider whether and in what respect the employer has broken that duty. There may be a temptation, having concluded that some harm was foreseeable and that harm of that kind has taken place, to go on to conclude that the employer was in breach of his duty of care in failing to prevent that arm (and that breach of duty caused the harm). But in every case it is necessary to consider what the employer not only could but should have done.*
> *.....it will be necessary to consider how reasonable it is to expect the employer to do this either in general or in particular, the size and scope of its operation will be relevant to this, as will its resources whether in the public or private sector, and the other demands placed upon it. Among those other demands are the interests of other employees in the workplace.*
> *.... moreover, the employer can only reasonably be expected to take steps which are likely to do some good."*

[84] Finally, on the matter of causation; she had this to say at paragraph 35:

> *"Having shown a breach of duty it is still necessary to show that the particular breach of duty found caused the harm. It is not enough to show that occupational stress caused the harm. Where there are several different possible causes, as will often be the case with stress related illness of any kind, the claimant may have difficulty proving that the employer's fault was one of them, see* ***Wilsher v Essex Area Health Authority*** *[1988] AC 1074. This will be a particular problem if, as in Garnett, the main cause was a vulnerable personality which the employer knew nothing about. However, the employee does not have to show that the breach was the whole cause of his ill-health: it is enough to show that it made a material contribution, see* ***Bonnington Castings v Wardlaw*** *[1956] AC 613."*

[85] In ***Barber v Somerset County Council*** [supra] Lord Walker had this to say at paragraph 15:

> *"Every case will depend on its own facts and the well known statement of Sevanwick J in* ***Stokes v Guest, Keen and Nettleford (Bolts and Nuts) Ltd*** *1968 1 WLR 1776 at 1783 remains the best statement of general principle.*
> *The overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know....*
> *He must weigh up the risk in terms of the likelihood of injury occurring and the potential consequences if it does, and he must balance against this , the probable effectiveness of the precautions that can be taken to meet it and the expense and inconvenience they involve. If he is found to have fallen below the standard to be properly expected of a reasonable and prudent employer in these respects, he is negligent."*

The discussion - applying the law to the evidence and the submissions

[86] The claimant asserted that in addition to the unreasonable heavy workload and demands to produce reports at short notice; he was pushed over the edge by bullying from his supervisor that caused severe distress and anxiety. He noted that the staff compliment of the Division, he was co-ordinator for had been reduced from 18 to 11 with those remaining being mainly technicians and trainees. He said this downsizing had taken place in 2000. Thus when he took to accepting the offer of Co-ordinator for the division in 2001, he was well aware that he was the only sugar technologist remaining. His complaint therefore was that even with this skeleton staff, Dr. Roberts demanded and received the same volume and quality of work from the Division.

[87] Further it was known to him that the Information Technology Department had been moved to Mandeville. This fact, he said he found was extremely over-whelming as he had to edit weekly reports with approximately 3000 data points, without the assistance of that department. He pointed out that there was other reduction of staff in other areas which resulted in his being severely hampered in

moving the SIRI Factory Services Division along in vital areas of challenges. He complained that the management styles of Dr. Roberts and Ambassador Derrick Heaven, the Executive Chairman were quite oppressive. According to him, team work was non-existent and his workload increased significantly while Dr. Roberts refused to play an active role in the operation of his division and did not participate in most of the technical meetings or work program.

[88] Dr. Roberts confessed that his competencies did not lie in the area for which the claimant was co-ordinator. He said he had training in organic chemistry and as director of research of SIRI, his duties were largely administrative. The claimant acknowledged knowing that Dr. Roberts was not a sugar technologist. He admitted knowing that Dr. Roberts had little knowledge of sugar factory operations but was of the opinion that he should have become more knowledgeable over the time he worked at SIRI. He ultimately did not agree that Dr. Roberts could not have participated in technical meeting because he did not have the technical expertise. He maintained that Dr. Roberts ought to have at least given him more moral support at some of the seminars and occasions requiring submissions being made by the claimant, in the capacity as sugar technologist.

[89] Under cross-examination, the claimant was asked specifically if the workload he had fell within the scope of his duties between 2001 and 2006 and he conceded that it did but not with the resources that were required. When asked if he had made complaints in writing about the lack of necessary resources, he admitted not doing so in writing but insisted he had put it verbally to Dr. Roberts. The suggestion that he had done no such thing was met with an insistence that Dr. Roberts knew, not that he had told Dr. Roberts.

[90] The claimant said he was required to produce reports in an unreasonable timeframe without assistance from anyone or even without the training required to do so. There was also what he described as short notices to prepare

presentations to be made at high level meetings. Further, he spoke of being appointed to represent the Sugar Association of the Caribbean on a committee – the African Caribbean and Pacific (ACP)/European Union (EU) Technical Research Committee. He was reluctant to accept such an assignment which meant he had to attend meetings in Brussels to make presentations. He, however, when cross-examined accepted that he was honoured at being so selected.

[91] On the matter of getting assistance to do the work, he had to do, he at first said he had made requests in writing of Dr. Roberts for this help. However, when confronted with the documents he had produced in evidence, to show one proving such a request was made, he then said he did not made requests in writing but made verbal requests. Dr. Roberts maintained he was never reluctant to provide the assistance if it had been requested, however, he argued that the claimant held a position which allowed him to get the assistance he needed himself.

[92] The claimant sought to rely on a letter written to Dr. Roberts in October of 2009 as proof of his complaining about the circumstances in which he was forced to work. He, however, could not point to anything pre-dating the time he fell will i.e. prior to October of 2005. In any event, Dr. Roberts was insistent that he never had sight of that letter prior to the matter coming up for trial. All the documents in the claimant's agreed bundle of documents, including those relating to correspondence exchanged between the parties, under the heading negligence – failure to provide a safe system of work/bullying/stress/suffering stroke are dated from 2006 onward. It is important to be borne in mind that the claimant is seeking to establish negligence on the part of the defendant resulting in the stroke he suffered in 2005.

[93] Similarly, it is noted that although the claimant spoke about things that happened between himself and Dr. Roberts after 2007 at which time he said their

relationship began to seriously deteriorate, those matters would not be relevant as to whether they contributed to his ill-health. Also his complaints about what happened when he had to visit Brussels in 2007 would not have any impact on this issue. It is, however, interesting to note that the letters exhibited relative to that trip showed the claimant actively making necessary arrangements e.g. requesting his foreign exchange. No reference or indication is made to any perceived difficulties or problems.

[94] The claimant asserted that his protestations relating to the unreasonableness of his workload were met with bullying from his supervisor. He said he would get letters from the supervisor demanding that he desist from writing about challenges pertaining to his workload and he complained that the supervisor would stamp heavily on the table with his bare knuckles which cause him severe distress, panic attacks and anxiety. The supervisor of which, he speaks, Dr. Roberts denies behaving in this matter. I must also indicate that my observations of Dr. Roberts' demeanour as he gave evidence led me to doubt whether he would have behaved in such a manner.

[95] In any event when asked about the bullying in written communications from the defendant, the claimant pointed to letters written by Dr. Roberts one of which was not even addressed to the claimant himself. Once again all these letters post-dated his suffering the stroke and would not be relevant to the matter being considered.

[96] What event did pre-date the stroke was something the claimant described as an "urgent task" given to him by Ambassador Heaven, he was requested to prepare a paper to be presented to cabinet on October 19, 2005 on 'The way forward for the Jamaican Sugar Industry.' The claimant said he got no help on the project; his request for assistance proved futile as Dr. Roberts told him of his lack of knowledge to do so. The claimant said he did not ask anyone else to

assist because he felt he did not have the authority to request or demand this. It took him seven (7) or eight (8) working days to complete the report.

[97] After the presentation, the claimant said Dr. Carlton Davis, the Cabinet Secretary and Ambassador Heaven met with him and asked that he prepare and attach a preview to the report showing the Sugar Industry's factory profile by Friday, October 21, 2005. This was done and presented on time. The claimant, however, said at this time he had been suffering from excessive stress during the previous months caused by, among other things, the lack of assistance, unreasonable deadline, long hours without sleep to met deadlines and a generally intimidating and demanding work environment. By October 25, he suffered the stroke and was hospitalized.

[98] In answer to the question whether he had indicated to either Dr. Davis or Ambassador Heaven any difficulty he would have in preparing the report in the time required, the claimant admitted that he did not give any such indications.

[99] Dr. Roberts maintained that he never requested the claimant to come in early or work late, nor can he recall the claimant at any time complain about being over worked. He had no knowledge of the claimant presenting any medical certificate to indicate that he should be assigned light duties or that his health was in any way affected by his work. Under cross-examination, he indicated he didn't remember the claimant ever asking to be relieved of any of the responsibilities he had. Further, he pointed out that if the claimant had requested time to prepare any of the reports required of him, it would have been given. He felt the claimant was coping quite well even with the reduction in numbers of skilled staff and workers available in this department. He could not remember the claimant ever indicating he was stressed, nor ever discussing with the claimant details about his blood pressure or the cause for any headache he might have had.

[100] The physician who attended the claimant from 1978, Dr. G.A. Bullock came and gave evidence as to his patient's health. From 1990, he was diagnosed with early diabetes. In February 1993, the claimant was diagnosed with hyperlipidemia and developed severe hypertension rather acutely on the 14th October 2003. He was advised to reduce his work load. In September 2005, he complained about insomnia, and panic attacks which allegedly were as a result of his heavy work load. On the 25th October 2005, he was found to have suffered a stroke. Up to the time the report was prepared in January of 2010, it was the doctor's opinion that the stroke had left the claimant with twenty (20%) impairment.

[101] In his report also the doctor had stated:

> *"Although it cannot be proven conclusively it is highly suggestive that Mr. Jaddoo's heavy workload contributed to his stroke."*

[102] Dr. Bullock under cross-examination explained that high cholesterol is part of the profile for hyperlipdemia. He further went on to explain that there are a number of risk factors that puts a person at risk for the type of stroke the claimant suffered. He agreed that among those factors include one's age, high blood pressure (hypertension), high cholesterol, diabetes and obesity. He concluded that in 2005, the claimant had all these factors. He accepted that other risk factors have been recognised but are not so well established. These factors included stress and a family history of stoke.

[103] Dr. Paul Scott, a consultant physician pulmonologist and critical care specialist was called by the defence. He saw the claimant on April 11, 2012 for the purposes of this matter. He noted the residual weakness on the right side of the claimant's body affecting both his upper and lower limbs. The weakness, he said had presented from the time of the stroke and there is unlikely to be any further improvement in this condition.

[104] He too acknowledged the risk factors for stroke as agreed to by Dr. Bullock. He indicated that "it remains controversial as to whether stress as a risk factor operates independently of the established risk factors or merely has its effects by impacting negatively on these factors."

[105] He concluded his report as follows:

> *"Mr. Jaddoo had hypertension and diabetes as the major established risk factors for stroke. He mentioned the high level of job related stress which was present for two weeks prior to and up to the point of the stroke. It is not possible to say with certainty whether the stress negatively impacted on the control of his hypertension and diabetes but it is likely that it did have some effect. It is unlikely that this effect alone would have been enough to cause the stroke but it is possible that it may have contributed operating by way of the pre-existing established risk factors."*

[106] Under cross-examination, the doctor sought to clarify what was his understanding of the term of stress. He said stress is an event or occurrence to which one is exposed; it is not of itself a risk factor. It may operate as such through how the individual responds to that stress. Further, its effect exists through existing physical condition of the body. He stated that long terms exposure to stress may lead to high blood pressure in that stress may cause one not to sleep well and lack of sleep can cause one to develop high blood pressure. He expressed the view that the term stress is often used fairly loosely and should not be confused with how one looks at stress as an event. He would not agree with there being anything to be measured in one situation of stress being greater than others, as he felt that what matters is how a person reacts to the stress as an event.

[107] In the submissions for the claimant, Mr. Panton urged that the claimant's complains about his heavy workload and unrealistic and unreasonable time-frame within which to complete tasks were not given the consideration as to

whether the work he was undertaking carried a risk of stress related injury. Further, he opined, where the employee actually tells the employer that he cannot cope with the excessive workload etc., it is difficult for the employer to evade liability for the subsequent breakdown where it has failed to take any reasonable steps to reduce the burden on the employee. He also expressed the view that the defendant knew or should have known or must have foreseen that cutting the staff compliment and increasing the claimant's workload would present a serious risk to the claimant's health.

[108] Miss Davis submitted that the defendant's claim should fail for three basic reasons:

(a) The claimant had not proved that the defendant breached its duty of care towards him.

(b) Even if a duty of care was proved (which is denied) the claimant has not proved that the injury was forseeable by the employer.

(c) In any event there is no evidence that the claimant's stroke was caused by the employer.

[109] It is noted by her that many of the instances of alleged overwork given occurred after the stroke. Mr. Panton responded that it was called to show the defendant's general attitude to overwork and the welfare of the claimant. Miss Davis however submitted that there was no evidence that the claimant was exposed to a "health endangering workload" as alleged which caused his stroke.

[110] Further, it is submitted that the defendant was not aware that the claimant was in anyway vulnerable. There is no evidence of any medical report making the defendant aware of his health conditions prior to the stroke. No evidence, it is posited, was given that can lead conclusively to the fact that overwork caused the stroke or was a significant contributor. It is Miss Davis' submission that the evidence of Dr. Bullock that it is highly suggestive that the claimant's heavy workload contributed to his stroke does not meet the required standard of proof.

The decision - was the defendant negligent?

[111] The claimant has not lead sufficient evidence of the working conditions that existed prior to his stroke that to my mind can be described as being excessive of what he had been employed to do. The work in and of itself to my mind does not fall into that category that can be considered stressful. In the case of **Walker v. Northumberland County Council 1994 1 All ER 737,** one of the authorities relied on by the claimant; an example of what the court described as stressful work is given. In that case the plaintiff was an area social services officer. The judge Colman J, opined that:-

> *"In general, the nature of much of the work on the social services is stressful. In particular, it is likely to cause anxiety to those who have difficult and upsetting cases to deal with, notably fieldworkers, and to those who are called upon to participate in decision making as to how particular cases or groups of cases should be dealt with."*

[112] In the instant case, the claimant alleges that he felt ill due to the excessive work, bullying, stress and anxiety. The basic fact is that the evidence he has given tend to describe and prove the situation that existed post-stroke. The matters of reduction in staff and the failure of the claimant to get the resources he needed were indeed known to the claimant from he accepted the offer to continue working with that defendant. On this evidence presented I cannot be satisfied on the balance of probabilities that he claimant was indeed overworked or bullied prior to suffering the stroke.

[113] In any event, the claimant gave evidence that he did not complain about certain things and was unconvincing that he had in fact made verbal complaints to Dr. Roberts, his supervisor. Of greater significance, the claimant admitted that he never complained about the state of his health prior to the stroke. There is no evidence of the defendant knowing that the claimant suffered from any of the issues the doctors agree would be regarded as risk factors for a stroke.

[114] In these circumstances the question of whether the claimant's illness was caused by a breach of the defendant's duty to take care must be answered no. The question of whether it was reasonably forseeable for the defendant to have known that the claimant might become ill because of the stress and pressure of his workload can only also be answered no. The defendant had no knowledge that the claimant considered his workload unreasonable and excessive; and no knowledge of the possible effect that such a workload and stress would have in the claimant given his health which it has not been proven they had knowledge of.

[115] I am compelled to refer to one other portion of the opinion of Hale L.J. on the issue in **Sutherland v. Hatton et al** [supra] where at paragraph 29 she said:-

> "Unless he knows of some particular problem or vulnerability, an employer is usually entitled to assume that his employee is up to the normal pressures of the job. It is only if there is something specific about the job or the employee or the combination of the two that he has to think harder."

[116] In the instant case there is no evidence that there was anything specific about the work or the claimant or the combination of the two made known to the defendant that would cause them be regarded as having been negligent.

[117] In leaving this area, I think it necessary to recognize that much of this case also resolves on issues of credibility. One thing that has caused me to view the claimant's evidence with some concern is his claim for special damages of $3,600,000.00 as medical expenses. In his witness statement he said he had incurred medical expenses of approximately $3,600,000.00 which continues. This was reinforced in the skeleton submission made on his behalf that by reason of his injury and continuing disability he had incurred expenses in excess of that amount which is continuing. In explaining at the commencement of the trial the claimant said he revised the position. He explained that his last medical related bill was $13,000.00 based on what he had paid for filling a prescription.

He therefore justified the amount by saying he had calculated that the cost of prescription drugs from the time of the stroke in October 2005 for another twenty (20) years would be at approximately twenty thousand per month including considerations for devaluations etc.

[118] The bills on which the claimant made these calculations were dated the sixth of January 2010, some five years after the stroke. From the doctors' evidence, it is clear that the claimant had been suffering from some illness prior to the stroke for which he had to be taking medication. There is no evidence he has had to take medication to treat the stroke itself or symptoms arising therefore. It is therefore what I can but regard as unfortunate that the claimant should be seeking to recover these sums in a manner which clearly does not bear any substantial connection to his stroke so as be regarded as having been incurred because of that condition.

The Counter-Claim

[119] It is not without significance that Miss Davis in her submission on the counterclaim stated that "the defendant finds itself in an awkward position with regard to its counterclaim." The foundation for this counterclaim is in the Auditor General's report containing the findings arising from audits of the accounts and financial transactions of Accounting Officers and Principal Receivers of Revenue for the financial year ending 31st March, 2008. It included the accounts of the defendant.

[120] In its particulars the defendant says it overpaid the claimant by mistake. It can be noted that in the report, the Auditor General said that salary and gratuity payments amounting to $3M made to a contract employee could not be substantiated by a contract. The report detailed sums paid to the claimant for the period of sick leave in excess of the fourteen (14) days he was entitled to. This amount was given as $631,577.27. Further there were sums paid for the period he worked – four to six hours a day and received full salary. This amount totaled $620,377.73. Since it was discovered there was no contract during the period

September 2005 to August 2006 the sums he was paid for seven (7) days leave was deemed improperly paid. This amount was $67,581.03. An amount of $460,719.00 was found to have been paid to the claimant for which there was no records to substantiate. Finally it was observed that gratuity payments amounting to $1,297,800.00 for the contract period 2006-2007 could not be verified, as the requisite contract document had not been provided for perusal.

[121] It is from these sums that the defendant made its claim for the sum overpaid by the defendant as set out in the Auditor General's report totaling $3,078,055.03.

[122] At the time the matter came to trial, it was noted by Mr. O'Gilvie that efforts had been made to reduce the amount and in a letter to the claimant the Director of Finance and Administration had indicated that they were continuing to pursue the matter to see if any further reduction could be made. It is also to be remembered that the Auditor General had indicated she had not accepted the position proffered by the defendant and would continue to make investigations.

[123] In her submissions Miss Davis has admitted that the investigations seems not to have been completed. As she put it, the Auditor General had not finalized its position on the matter. She is now asking that the Court determine what, if anything is due to the Claimant as an overpayment. She has indicated that the defendant is seeking two (2) sums – one for the period which he was on official sick leave but was paid and the other for the period when he worked part-time but was paid his normal salary. Thus the counter-claim, without leave to be amended being obtained, is to be reduced from over three (3) million dollars to $1,143,200.00.

[124] However, the calculations and adjustments do not stop there as Miss Davis went on to submit that bearing in mind that the claimant worked part time with the permission of the defendant, he should be paid something for his effort. The appropriate course suggested is that he be paid 50% of the salary for the relevant period amounting to $314,000.00. Hence the sum now being claimed as total overpayment is $829,000.00.

[125] Mr. Panton challenged the counterclaim by pointing to the evidence that the claimant ran his office while sick from home and attended the office on a part-time basis which obviated the need to employ another person in his place. Further he noted that the defendant has not shown that during the period he worked part-time the claimant completed only 50% of his duties. Contrary to this, it is argued that he continued to run his department and carry out his duties under the terms of his contract. Thus Mr. Panton concluded there was no mistake or overpayment.

[126] It is useful to remember that the defendant has pleaded this item as special damages which means it must be expressly pleaded and proved. Hence the first clear failure of the defendant is that he has claimed an amount he has abandoned without seeking to prove and reduced the amount to $829,000.00.

[127] The whole basis of the counterclaim is accepted as being the finding of the Auditor General that there was an overpayment to the claimant. It is the defendant's admitted efforts that led to a reduction in the amount, which in any event was rejected by the Auditor General. It seems to me that any overpayment to be paid must be in keeping with the findings of the source from which the allegations of overpayment came. The settlement the defendant is now proposing cannot guarantee that the Auditor General will approve the finalizing of the matter. It is almost as if the defendant is asking to speculate as to what could amount to overpayment and arrive at a sum therefrom. This means ultimately that the defendant has neither expressly pleaded nor specifically proved that which they seek.

[128] The defendant having failed to make out its claim for this outstanding sum means that they cannot use this reason to justify withholding the gratuity, they have conceded it owed to the claimant.

The conclusion

[129] Having therefore considered the evidence and the law applicable, the claimant has failed to establish that the defendant was negligent and contributed to his suffering a stroke.

[130] Further the termination of the contract of employment was at the time when the contract had in fact come to an end of the fixed period when the parties had agreed it would. Hence there was no wrongful and/or unlawful termination.

[131] In the circumstances which arise in this contractual relationship between these parties the situation of redundancy is not established, hence the claimant is not entitled to seek damages arising therefrom.

[132] The defendant conceded that they have withheld the gratuity to which the defendant is entitled in circumstances found not to be justified. Hence the claimant is to receive the sums due.

[133] The claimant has proven that he was in fact entitled to a lunch subsidy from 2001 to 2006 and the defendants accepted that they had reported in their Annual Report that he had been paid. The payment of the subsidy became due when the claimant became aware of it and remains due and outstanding at this time.

[134] The calculation of vacation leave pay by the claimant is flawed and therefore the explanation of the one done by the defendant is to be preferred. On that basis the defendant have proven that they have paid the claimant all that he was owed for this item.

[135] There was no proof that any promise which could be relied upon was held out to the claimant to retain his services until he reached retirement age. The concept of legitimate expectation cannot be applied in any event, to matters such as this.

[136] It is the claim of the claimant that interest be paid to the sums due from the date of dismissal to the date of judgment at such commercial rate as the court deems fit. In the particulars of claim the interest requested is 25%. The claimant

however did not adduce evidence whether oral or documentary as to what rate would be appropriate. I am also not satisfied that it should be at a commercial rate in any event.

Judgment for the claimant as follows:-

(a) Special damages

(i)	25% - gratuity of annual emolument	- $778,500.75
(ii)	Lunch subsidy 2001-2006	- $183,741.00
	Total	$962,241.75

with interest at 3% from October 31, 2009 to today's date.

(b) Judgment on the counter-claim

No order as to cost.