IN THE PROVIDENCIALES MAGISTRATES COURT
PROVIDENCIALES
THE TURKS AND CAICOS ISLANDS **NO: 489/03**

IN THE MATTER OF SECTION 43 OF THE EMPLOYMENT ORDINANCE, CHAPTER 136 OF THE LAWS OF THE TURKS AND CAICOS ISLANDS 1998 REVISED EDITION

BETWEEN:-

JOHN RUTLEY, JR.

Complainant

-AND-

TIMOTHY PRUDHOE
CHRISTIAN PAPACRISTOU
MELBOURNE WILSON
STEPHEN WILSON
(SUED AS AND ON BEHALF OF THE PARTNERS OF McLEANS (FORMERLY MCLEAN McNALLY)

Defendants

MR CONRAD GRIFFITHS appeared for THE COMPLAINANT

MR JONATHEN KATAN appeared for THE DEFENDANTS

JUDGMENT AS TO APPLICATION TO STAY/ POSTPONE / ADJOURN

Handed down on: 12th day of December 2003

Background

1. This matter concerns a claim by the Complainant, Mr John Rutley, arising out of a complaint alleging unfair dismissal against the defendant employers, partners in the law firm McLeans. The complaint was filed on 14th October 2003. There is no issue as to whether there was a dismissal. No Defence has been filed in these proceedings which could have been of help in determining the nature of the live issues. However, there is a Defence and Counterclaim in the wrongful dismissal proceedings contained in a bundle before this court and therefore a flavour of the crossover of issues can be deduced. That said, this Court is aware that the two proceedings, although arising out of the same arrangement, are separate and that a number of issues are unique to one set of proceedings and not to the other.

2. These reasons deal solely with the preliminary issue arising from an application made by the Defendants. At the first appointment held on 31st October 2003 Mr Katan made an oral application to stay these proceedings pending the conclusion of wrongful dismissal proceedings arising out of the same contract of employment which had earlier been filed in the Supreme Court on 10th October 2003.

3. The parties were not in a position to proceed on that day. Directions were given and the hearing of this preliminary issue was adjourned until 25th November 2003. In addition, due to the heavy court list and to ensure the securing of the earliest possible dates for the hearing which would be required if the Defendants' application was unsuccessful, the substantive hearing with a time estimate of six days was allocated the provisional dates of 4th, 5th 6th, 9th, 10th and 11th February 2004.

4. Mr Katan and Mr Griffiths filed their written skeleton arguments and authorities on 24th November 2003. At the hearing on the 25th November 2003 submissions were also received from both counsel. I have carefully considered and have regard to all of the content of both oral and written submissions and I do not intend to fully rehearse them herein. The hearing was then adjourned for a written judgment to be handed down.

Jurisdiction

5. The first issue raised was whether this court actually has the jurisdiction to stay the proceedings or make any other order which would have a similar effect. On 25th November 2003, Mr Katan amended his oral application and requested this Court to consider staying, postponing or adjourning the unlawful possession proceedings. Mr Katan contended that this Court had the jurisdiction to stay pursuant to section 118 Magistrate's Court Ordinance. Mr Katan contended that if this jurisdiction was found not to be conferred to the Magistrate's Court then the Court had a statutory power to adjourn or postpone.

6. Mr Griffiths contended that the Magistrate's Court does not have the power to stay proceedings as the inherent jurisdiction and statutory jurisdiction of the Supreme Court is not available to this lower court. Mr Griffiths also contended that Mr Katan should indicate clearly what order he was seeking the Court to make and he submitted that a stay, a postponement or adjournment were three different types of order and that it was wrong for Mr Katan to suggest, armed with standard dictionary definitions, that they all have the same meaning and in effect were the same thing. There was force in this submission in the absence of any detailed cross- referencing of the different phrases to case law and the existing legislation in both England and Wales and this jurisdiction. The Court asked Mr Griffiths if he wanted to apply for an adjournment or whether he required more time to consider the 'newly' phrased oral application but he commendably indicated to the Court that he was content to deal with the application without any further delay.

7. A stay of proceedings in an action is a suspension of them. Sometimes, as in the matter before this Court, a stay will be only for a period and will act as a brake whilst certain matters are dealt with: sometimes the stay will amount to a termination of the action but parties may be able to make a further application to lift the stay where a change of circumstances makes that desirable. While the stay is in operation no steps can be taken in the claim other than an application to remove the stay. If a stay were ordered then either of the parties, after the determination of the Supreme Court matters, would then apply to this Court and the proceedings would continue. It appears, from the case law in England and Wales, that r 11(2)(b) of the Schedule to, the Industrial Tribunals (Labour Relations) Regulations 1974 has been interpreted in such a way as to give the chairman sitting on an employment tribunal a complete judicial discretion to stay, postpone or adjourn proceedings. The section provides:

   " A tribunal may, if it thinks fit.... (b) postpone the day or time fixed for, or adjourn, any hearing."

   If one interprets this rule as granting a power only to stay proceedings and not to postpone or adjourn proceedings then there is no equivalent employment related rule in the Turks and Caicos Islands. In addition there is no statutory or inherent jurisdiction which permits this lower court to grant a stay in employment proceedings as it is not a power or authority conferred under section 118 the Magistrate's Courts Ordinance. However, language used in the abovementioned rule, in the extracts provided by Counsel from Harvey on Industrial Relations, by the Court of Appeal and the Employment Appeal Tribunal when hearing these matters refers to a postponement or adjournment of tribunal cases pending the determination of concurrent High Court Proceedings. The above rule, unfortunately a full copy of the same having not been provided by the parties to the Court, which is partly set out in **Jacobs v Norsalta Ltd (EAT) ICR 1977 at page 191**, appears to give a discretion to adjourn a matter. It is interesting to note that, in the majority of Employment Appeal Tribunal case reports dealing with appeals arising out of issues concerning what one

might ordinarily term an adjournment in a civil court, the word postponement is frequently used.

8. Section 52(2) Employment Ordinance states:

"(2) Subject to the provisions of this section and to any rules of court, the Court shall, on a complaint or reference made to it under this Ordinance, have all the powers and jurisdiction exercisable by the Court in, or in connection with, civil action (notwithstanding any limitation imposed on its jurisdiction by the Magistrate's Court Ordinance) and may make such orders or awards as it thinks fit."

Although the legislators, when drafting this section and section 52(5), may have had in mind that rules similar to those in existence in England and Wales might have been produced to govern the procedure in employment matters, none have been forthcoming. However, it is important to note that an employment tribunal is free to regulate its own procedures within the framework of the Rules of Procedure {ET Regs, Rule 15(1)} and that the Magistrate's Court has wide powers conferred pursuant to the Magistrate's Court Ordinance.

Section 125 Magistrate's Court Ordinance states:

" The Magistrate may in any case make orders for granting time to the Plaintiff or defendant to proceed in the prosecution or defence of the action, and also may, from time to time, adjourn the hearing of any action, in such manner as the Magistrate may deem fit."

These sections clearly give this Court a discretion whether or not to adjourn employment matters in such manner it may deem fit.

9. The less draconian type of 'stay' sought by the Defendants is more akin to a postponement or adjournment as they seek to persuade the Court to put off the hearing to another day which would be after the conclusion of the Supreme Court proceedings. The language used by Mr Katan in his oral submissions supported this contention when he relied upon the overlapping features of a stay, postponement and adjournment. Mr Griffiths disagrees and submitted that they are three distinctly different types of order. Mr Griffiths' argument would have force if the Defendants were seeking the type of stay which would in effect be terminating the proceedings and if the English courts interpreted the Rule 11 2(b) (above) as restricting the power to only granting a stay rather than the wider powers of postponement and adjournment. It is interesting to note that Rules of the Supreme Court (England & Wales) Order 35, r 3 states;-

" The Judge may, if he thinks it expedient in the interest of justice, adjourn a trial for

such time, and to such place, and upon such terms, if any, as he thinks fit."

In the Notes in the 1997 White Book at page 35/3/2 on page 618 there is a recognition that Rule 35 gives a power to adjourn which also means postpone when it states;

" *There is a full power to order a postponement for good cause shown, at any time after setting down."*

This Court has a similarly wide discretionary power in relation to granting adjournments as it may, "*adjourn the hearing of any action, in such manner as the Magistrate may deem fit."* This Court is entitled to consider a postponement and an adjournment as co-existing and as a power available to the Court to exercise in the appropriate circumstances.

10. Having carefully reviewed the skeleton arguments and detailed oral submissions made by both Counsel, I find that the Magistrate's Court does have a discretion to adjourn / postpone the hearing of any action in such manner as it sees fit in unfair dismissal cases. Although I find merit in Mr Griffiths' submissions concerning this Court's lack of jurisdiction to stay proceedings, especially if the effect was to terminate proceedings, I find that the wide statutory power to adjourn, if exercised, would enable this Court to adjourn or postpone the hearing of this matter on the basis that the parties are to apply to fix a date for the hearing to be heard after the determination of the wrongful dismissal proceedings running concurrently in the Supreme Court.

Exercise of the Court's Discretion.

11. Although there are no similar provisions to r. 11 (2) (b) of the Schedule to the Industrial Tribunals Labour Relations) Regulations 1974 in this jurisdiction, the guidance given to the Court in the relevant case authorities as to how to exercise it's discretion in the circumstances of this matter is of considerable value. I am grateful to Counsel for providing the same and for their oral submissions on the same. I am assisted by the excellent guidance given by **Wood J** in **First Castle Electronics v West EAT ICR at para E page 77** when he helpfully stated;-

" *It is a wide discretion which must be exercised judicially and one where we must seek to achieve a fair and just decision, but nevertheless in doing so give reasonable weight to considerations of convenience, expedition and cost. We should not regard this application as in any way an issue of competition between the respective jurisdictions."*

This Court must balance the factors on each side of the scale when considering the facts in this case.

I approach the case authorities with knowledge that the composition and practice of an employment tribunal is different to that of this Court. The rules of procedure applicable in this Court are more rigid than those in a tribunal. An employment tribunal is not bound by the rules of evidence and it is enjoined to conduct the hearing:

' *in such manner as it considers most appropriate for the clarification of the issues before it generally to the just handling of the proceedings.*'

Although a professional judge conducts proceedings in this Court, the tribunal's chairmen are appointed by the Lord Chancellor and must have a seven-year legal qualification and usually have an in depth knowledge of employment law matters. The chairman may sit alone or call a full tribunal.

12. In addition, I have regard to **R. v Kingston-Upon Thames Justices, ex parte Martin {1994} Imm. A.R. 172, Div, Ct** where the following general guidance was given as to what matters should be taken into account when deciding whether or not to grant an adjournment in civil matters:
    a) The importance of the proceedings and their likely adverse consequences to the party seeking the adjournment.
    b) The risk of the party being prejudiced in the conduct of the proceedings if the application were refused.
    c) The risk of prejudice or other disadvantage to the other party if the adjournment were granted.
    d) The convenience of the Court.
    e) The interests of justice generally in the efficient dispatch of court business.
    f) The desirability of not delaying future litigants by adjourning early and thus leaving the court empty.
    g) The extent to which the party applying for an adjournment had been responsible for creating the difficulty which had led to the application

13. It is clear from the authorities that a common sense approach to proceedings is that unfair dismissal actions ought to be heard expeditiously even if there are concurrent High Court proceedings. However, when **Slyn J** attempted to lay down a general principle that an industrial tribunal must hear an application regardless of the existence of High Court proceedings unless there are good reasons or unusual circumstances, his views were not adopted by the Court of Appeal. In the matter of **Carter v Credit Change Ltd {1980} 1 All ER, Stephenson LJ said;**

" *I would deplore any attempt to take from the chairmen of industrial tribunals the discretion which the rule gives them to decide what is best to do in each individual case in all the circumstances when faced with an application to postpone.... But, in*

my judgment, it is for the industrial tribunal chairman in every case to consider the nature and the object of the High Court or other proceedings for which he is asked to postpone the hearing of an application to the tribunal, and any abuse of postponement proceedings is something which in my judgment, industrial tribunal chairman cane be trusted to deal with robustly and clear-sightedly."

14. **Philips J** presiding over the Employment Appeal Tribunal said in **Jacobs v Norsalta Ltd {1977} ICR 189** at **191;**

" We accept, of course, that the power under rule 11(2)(b) must not be used arbitrarily or capriciously. It must certainly not be used in order to defeat the general object of the legislation. But subject to that, it seems that the industrial tribunal has a complete discretion, so long as it exercises it judicially, to postpone or adjourn any case provided there is a good, reasonable ground for so doing."

Philips J went on to say **at 191;**

" We are also impressed by the point that, ordinarily speaking, a claimant before an industrial tribunal is entitled to have his claim quickly disposed of in what is intended to be a simple, readily available form of proceedings; and it is not desirable, except in unusual cases, to have to delay or postpone the hearing in order to await the outcome of other proceedings."

15. **Wood J** presiding over the **Employment Appeal Tribunal in First Castle Electronics v West (E.A.T) ICR at 78** set out some of the factors to be taken into Consideration when the tribunal is considering whether to exercise its discretion to postpone the hearing;
    a) Whether the issues in the wrongful dismissal action will cover those in the unfair dismissal proceedings.
    b) Whether these issues are extremely complicated and will be subject to expert evidence.
    c) The weight of the documentation.
    d) Is the case one where a running transcript could well be sought.
    e) That findings of fact by the tribunal on issues coming before both proceedings in the High Court could prove embarrassing to the trial judge in the High Court.
    f) That clear findings of fact in a judgment from a High Court judge could well prove helpful to a tribunal at a later hearing.
    g) That the damages, which could be awarded to the applicant, in the High Court proceedings, are vastly in excess of what could be awarded by way of compensation for unfair dismissal.
    h) That there may be problems about documentation for which one side or the other may wish to claim privilege in the High Court where the rules of evidence are more stringent that at the tribunal.

i) The fact that the excessive informality before the tribunal may lead to injustice to one side or the other.
j) The delay in receipt of compensation and the resultant financial hardship.
k) Delay in seeking an order in restitution.
l) That the applicant's professional integrity and competence would be at stake for longer if the tribunal proceedings are adjourned.

16. Mr Katan sets out from para 2.2.1 to 2.2.9 in his skeleton argument the issues upon which he submits that this court will have to make findings of fact in the unfair dismissal proceedings. Mr Katan sets out in the same document from para 2.4.1 to 2.4.7 the issues which the Supreme Court will have to consider in the wrongful dismissal proceedings.

17. Mr Katan contends in his skeleton argument:
a) That the issues between the parties are complex and serious. In particular when this Court may have to consider the issue of mitigation of loss.
b) That issues that would need to be decided in the Supreme Court would shorten the proceedings in this Court. Mr Katan submits that the conclusion of the unfair dismissal hearing before this court will not necessarily shorten the Supreme Court proceedings
c) That this Court would be assisted by having a reasoned judgment of the Supreme Court.
d) That issues of fact decided by this Court would bind the Supreme Court due to the doctrine of issue estoppel. This, Mr Katan contends, would limit the Chief Justice's discretion as to the resolution of serious issues between the parties.
e) That, although there will be some delay, matters are heard sooner in the Supreme Court compared to similar High Court proceedings in England and Wales. Mr Katan states that this is not a case where delay would be prejudicial to Mr Rutley as he is not seeking reinstatement and because he can claim interest on any compensation due to him.
f) That the Supreme Court proceedings were not issued by the defendants and that it therefore could be alleged that they had been issued to cause delay in the unfair dismissal proceedings. It is right to say, to some extent, that any delay in bringing the Supreme Court proceedings to trial is controllable by Mr Rutley who has the carriage of the action and can push for it to come to trial more or less quickly.

18. Mr Griffiths correctly contends that any power is discretionary and that the principle to be applied is one of justice and convenience. Counsel submits that a case must be made out for disturbing the natural course of events before a stay will be ordered. The Court was referred to the notes to the Supreme Court Act – section 49 which indicates that a second action will not be stayed unless the issues are the same as in

the first and that a second action dealing with the same events as the first action, but alleging a different contract but with different terms will not be stayed. I note and to an extent am guided by these general helpful propositions. However, they do tend to indicate a general principle not dissimilar to the one proposed by **Slyn J** on 27th June 1979 when he presided as chairman to the employment appeal tribunal in **Credit Change Ltd v Carter and others**. When the matter came on appeal before the Court of Appeal their Lordships rejected the concept of adopting such general principles which might fetter the tribunal's discretion . Although I feel it important to have regard to these contentions I find that English case precedent indicates that such general principles should not strictly apply to employment cases.

19. Mr Griffiths submits that a review of the skeleton arguments and the oral submissions made on behalf of the Complainant shows that there is no substantive basis on which the discretion should be exercised in favour of the defendants. Mr Griffiths contends that there are not a number of serious and complex factual issues to be decided in the Supreme Court which will either determine or shorten the proceedings in this Court. It is further contended that even if there are such issues there is no reasons why the proceedings in the Magistrate's Court would restrict the Supreme Court. Mr Griffiths further argues that few if any estoppel issues will arise and even if they do that no harm will flow from them. Mr Griffiths highlights the different approaches to be taken and the different findings to be made by the two courts in relation to the separate proceedings before them.

20. This is not a case in which the Complainant seeks re-engagement or reinstatement and, having regard to section 48 Employment Ordinance, this Court will have to consider if any and what award for ~~damages~~ compensation should be made. Mr Griffiths rightly indicates that the basic award involves a simple calculation. This is so because the complainant does not request the Court to consider any commission payments as a part of the basic salary and that the contract clearly shows what the basic salary was. Mr Griffiths disagrees that this Court would have a problem determining the compensatory award and that, if written reasons were given, then the Supreme Court could take into account this Court's findings. However, I note that it is clear that any sum recovered by way of compensation before this Court could not be set off against damages in the Supreme Court (see **Bowater Plc V Charlwood (E.A.T) (1991) page 804 para B).**

21. Mr Griffiths forcefully contends that if this Court is to consider the conduct of the Complainant then all matters which were alleged post dismissal were waived and should not be considered as there was an offer of continued employment on different financial terms. Mr Katan produced to the court a letter from McLeans to Misick & Stanbrook dated September 16, 2003. In that letter Mr Prudhoe stated; *"Your client ("JR") was dismissed principally because of his refusal to accept new contractual terms following the expiration of his original contract of employment."* Mr Prudhoe

then goes on to state, "*As part of the negotiations, JR made it a pre-condition to any new terms and conditions of employment that he be made an exception to the above harmonization. The making of such an exception and/or this firm's willingness to negotiate more favourable terms than those offered by it was precluded for the following reasons:.*" Mr Prudhoe then goes on to list ten allegations in relation to Mr Rutley's alleged misconduct. The Defence and Counterclaim at Tab 2 of the Defence bundle shows that these allegations of misconduct are relied upon as a defence to the wrongful dismissal claim. The Supreme Court will have to make findings in relation to those allegations. One issue that this Court will have to consider is how relevant the allegations are to matters to be determined in the unfair This Court is unable to
determine these points at this barely pubescent stage of the proceedings.
What is clear is that the allegations of misconduct are very much disputed. There is a clear risk that this lower court may well have to make findings of fact which would restrict His Lordship the Chief Justice's options when he has to consider the same. I respectfully disagree with Mr Griffiths' oral submission and written submission that the Chief Justice's discretion would not be fettered by findings of fact. **Sir Ralph Kilner Brown** stated in **Automatic Switching Ltd v Brunet (E.A.T.) {1986} at p545 para C-E:**

"The real difficulty in our minds is that, as the Court of Appeal have said over and over again, findings of fact by an industrial tribunal, unless they are legally perverse, are sacrosanct and cannot be disturbed, either by the appeal tribunal or the Court of Appeal..., if this industrial tribunal finds facts which may border on the perverse but are not perverse, and if Green v Hampshire County Council {1979} ICR 861 is right then a High Court judge would be put in a straitjacket and find it impossible to come to a conclusion on fact, however much he would wish to do so, which differed from that already reached."

Having regard to the first part of the quotation, I note that an appeal shall lie to the Supreme Court on a question of law arising from any decision under this Ordinance under The Employment Ordinance on a question of law (see section 52(4)).

22. It would be wrong for me at this stage to review or attempt to assess the strength of the respective parties evidence that may be called at trial. The Defence contends that the reason for dismissal was principally because of Mr Rutley's alleged refusal to accept new contractual terms after his previous contract had expired. The Defence contends that the proposed standard terms in the new contract, a copy of which has not been provided to this Court, could not be altered or varied to terms more agreeable to the Complainant due to Mr Rutley's alleged misconduct. This Court may, if it finds that Mr Rutley did refuse to sign a new contract, have to consider whether the terms were reasonable in light of findings (if any) of misconduct on his behalf. To do that this Court will have to make findings in relation to the allegations of misconduct.

23. There is nothing in writing before this Court as this stage to indicate that although the misconduct is pleaded as a defence in the Supreme Court proceedings that it is being relied upon as the ground for dismissal in the unfair dismissal proceedings. However, Mr Katan in his oral submissions made it clear that the alleged misconduct would be relied upon as a reason for dismissal and also for the reasonableness of the dismissal.

24. The reason for dismissal is the set of facts known to the employer or beliefs held which caused the dismissal (**Abernethy v Mott Hay & Anderson [1974} ICR 323**). The Defendants will have to show that their belief in that reason was genuine. Of course the decision to dismiss must be based on reasonable grounds and after reasonable investigation – but these will not be for them to prove as the burden of proof is neutral. When the notice of dismissal was given on July 17, 2003, the Defendants' reason would have to have been determined by both the reason for giving notice to terminate and by reference to the reason when the dismissal occurs. The reasons throughout the notice period (either 21 days contended by the Complainant, 28 days contended by the defendants) must be considered. This Court will be bound to consider events between the notice of dismissal and the date when the dismissal actually took effect in determining whether the Defendants acted reasonably in the circumstances as treating it as sufficient reason for dismissal.

25. I do not accept Mr Katan's 'broad brush' oral submission that, "*post dismissal issues would give ground for dismissal.*" Subsequent matters of which the employer was ignorant at the time of dismissal are usually irrelevant (W **Devis & Sons Ltd v Atkins {1977} ICR 662)** although there are three exceptions, namely:
    a) subsequent matters may be relevant to the question of compensation
    b) events between dismissal and expiry of any notice given may be relevant
    c) subsequent events may prove corroboration although care should be taken as the dividing line between corroboration and relying on subsequent events is extremely fine.

    It appears to this Court, on the limited information currently disclosed, that a number of the matters related to alleged misconduct as they were set out in Mr Prudhoe's letter of September 16th 2003 were therefore known to the Defendants at the time of the notice. However, despite the above, Mr Katan raises, when addressing Supreme Court issues in 2.4.3 of his skeleton argument, the spectre of post dismissal conduct existing which he contends would entitle a dismissal for gross misconduct. Mr Katan raised the same issue in his oral submissions relating to conduct in the unfair dismissal proceedings and makes the same reference in relation to this Court The issues of law that will need to be addressed at trial in this Court concerning the relevance or irrelevance of post dismissal conduct to the reasons for dismissal, findings in relation to that alleged conduct may well prove to be important, assuming that the complaint was upheld, when considering the level of compensation. Despite the references by Mr Katan to paragraphs 15, 16 and 17 of

the Defence and Counterclaim filed in the Supreme Court, Mr Griffiths forcefully states, "*Unparticularised post dismissal discovery of facts is with respect thin at best.*" However, to determine the validity and strength of some of the claims of misconduct claimed in paragraph 17 there may need to be expert accounting evidence given in an attempt to establish the allegations.

26. The importance of the allegations of misconduct is whether there will be the same live issues before both courts which would require both courts to make important findings. There is a concern that any findings as to conduct made in this court may well fetter the Supreme Court's ability to consider and make findings on the same in the Supreme Court where they are clearly an issue. If the Chief Justice was to hand down a written judgment which inevitably contain findings of fact in relation to the alleged misconduct then that would prove beneficial in shortening the proceedings before this Court and would reduce a number of issues that would need to be addressed in oral evidence.

Conclusion

27. There are a number of issues in the wrongful dismissal action which will cover those in the unfair dismissal hearing. I have already outlined in detail the Court's concerns about the issue of misconduct. There are other issues such as the implied terms of the contract that forms the basis of both proceedings and also the actual commencement date of employment. There is an issue of mitigation of loss in relation to both sets of proceedings.

28. The Defendants contend that they will be relying upon detailed expert evidence in both sets of proceedings. This expert evidence, will go towards attempting to establish some areas of alleged misconduct by the Complainant and also towards the issue of mitigation of loss. This may still be required despite the Defendants' concession that they will not seek the commission to be included in this Court's considerations. However, findings by the Supreme Court having received this detailed evidence will be very beneficial to this Court and will again narrow issues as to liability and if required as to ~~damages~~ remedies.

29. The fact that findings of fact, in particular to the issue of alleged misconduct, by this Court coming also before proceedings in the Supreme Court could prove embarrassing to His Lordship the Chief Justice. In addition, assuming that Mr Rutley succeeded in the Magistrate's Court, it may make things difficult and uncertain for the High Court to have to bring into consideration, in an assessment of the amount of the financial remedies to be awarded in that action, the amount of compensation awarded by this Court.

30. Clear findings of fact in a judgment from the Chief Justice would inevitably prove helpful to this Court in the unfair dismissal proceedings and may shorten a hearing that is currently listed for six days as some of the current issues will be resolved.

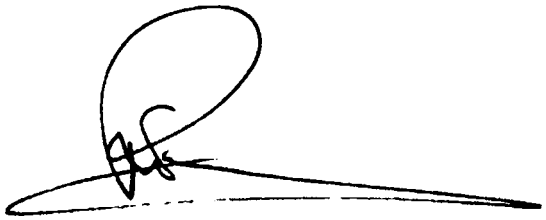
31. The financial remedies which can be awarded to the Complainant in the Supreme Court Proceedings are greatly in excess of what can be awarded in this Court.

32. I have regard to the fact that the Supreme Court proceedings were issued by the Complainant and that they cannot be said to have been filed by the Defendants in a bid to delay the unfair dismissal matters. The Complainant, as he has carriage of the wrongful dismissal action, may be in a better position than the defendant to ensure that those proceedings are brought to trial without undue delay. I have regard, when I consider the authorities, to the fact that the delay in matters coming to trial in the Supreme Court in this jurisdiction will be shorter than those being endured for High Court matters in England and Wales. This is not a case in which Mr Rutley seeks reinstatement or re-engagement which could be affected by any delay

33. I balance the above conclusions with my concern about the delay that any postponement would have on Mr Rutley. Unquestionably Mr Rutley's professional integrity and competence will be at stake for a longer period if there is a delay. I pay particular regard to this concern and to the fact that he is an attorney within a small jurisdiction. Having regard to the nature of the jurisdiction I also have regard to potential immigration and work permit difficulties that Mr Rutley may encounter if unemployed. I am very conscious that any postponement will delay the receipt of possible compensation for the Complainant and the resultant financial difficulties that may occur.

34. This is a complex matter which is evidenced not only by the nature of the issues but by the fact that it is estimated that a full six days of court time is required to enable the issues to be fully addressed. Balancing all the above factors, although recognizing that an adjournment will delay matters, I find that the delay is an acceptable one, because on the whole it will result in greater simplicity to the proceedings in this Court and will ensure that the Supreme Court proceedings can continue with the Chief Justice being able to consider the evidence unfettered by any findings that may be made by this lower Court.

35. Having considered all of the above and carried out the requisite balancing exercise, I find that the proceedings before this Court should be adjourned pending the hearing of the wrongful dismissal action in the Supreme Court.



Richard N Williams
Resident Magistrate, Providenciales

10th December 2003