YASHNI KANT v CENTRAL MANUFACTURING CO LTD

COURT OF APPEAL — CIVIL JURISDICTION

REDDY P, GALLEN and SMELLIE JJA

22, 30 August 2002

[2002] FJCA 39

Employment — termination of employment — appeal against judgment — action for damages — measure of damages — notice of termination — whether defendant entitled to dismiss the plaintiff — determination of the time of plaintiff's contract of service with defendant — what provision of the contract the plaintiff was dismissed — Employment Act 1965 (Cap 92) s 24.

Yashni Kant (Appellant) was employed in Central Manufacturing Co Ltd (Respondent). He was later dismissed by the general manager who became upset due to an exchange of memoranda. The Appellant brought an action for damages against the Respondent claiming breach of his employment contract. The judge in the High Court dismissed the claim. Yashni appealed said judgment.

Held — (1) The termination clause contained in the terms and conditions of senior management was part of the Appellant's contract of employment. The Respondent was contractually entitled to dismiss the Appellant and dismissed the claim.

(2) The Appellant was never confronted with the allegations. He never had any opportunity to controvert or refute them or even to explain his position. He was given no opportunity to mitigate. There can be no doubt that if an action lies for breach of an implied term to act with fairness in terminating a contract of employment then the Appellant in this case has established a right to recover.

(3) There is an authority that a contract of employment contains an implied term that the parties will act fairly and reasonably with mutual trust and confidence. A failure to do so amounts to breach of contract. This is important in this case because the Respondent relies on the alleged breach against the Appellant. If it applies to one it applies to the other.

Whelan v Waitaki Meats Ltd [1991] 2 NZLR 74, cited.

(4) To dismiss the Appellant without notice and bearing in mind the position he held within the company and the community was a breach of the implied term that the relationship was one of confidence and trust. It can be said that the Appellant suffered from breach.

(5) The Appellant was unemployed for nearly 2 years. Damages of $30,000 in addition to the 3 months' salary already received would provide sufficient recognition and there will be judgment accordingly. The Appellant is entitled to damages.

Appeal allowed.

Cases referred to

Addis v Gramophone Co Ltd [1909] AC 488, not followed.

Delaney v Staples (t/as De Monfort recruitment) [1992] 1 All ER 944; *Gothard v Mirror Group Newspapers Ltd* [1988] ICR 729; *Johnson v Unisys Ltd* [2001] 2 All ER 801; *Malik v Bank of Credit & Commerce International SA (in liq)* [1997] 3 All ER 1; *Martin v Tasmania Development Resources* [1999] FCA 593[1999] 163 ALR 79; (1999) 163 ALR 79; *Stuart v Armourguard Security Ltd* [1996] 1 NZLR 484; *Whelan v Waitaki Meats Ltd* [1991] 2 NZLR 74, cited.

B.C. Patel for the Appellant

J. Apted for the Respondent

Judgment

Reddy P, Gallen and Smellie JJA. The Appellant, who had previously been employed by the Respondent, brought an action for damages against the Respondent claiming breach of his contract of employment with the Defendant. The judge in the High Court dismissed the claim and from that judgment this appeal has been brought.

The Appellant was engaged as an accountant by the Defendant in January 1988 and initially at least the terms of his contract were not reduced to writing.

In March 1989 he was appointed group accountant. In 1991 the Respondent circulated a document headed "Basic Terms and Conditions of Employment for Senior Management".

This included the following paragraph:

> *Termination of Employment Employment may be terminated by giving three months' notice to the other party of his intention so to do. In the event of misconduct, dishonesty or other Act in breach of contract, the employer reserves the right for instant dismissal.*

There is no evidence that the Appellant specifically accepted this document other than that he continued to work in a position which we accept was a part of senior management.

On 28th of November 1991 a letter was sent to the Appellant stating he would be evaluated for suitability for increased responsibility. That letter is in the following terms:

> *CENTRAL MANUFACTURING COMPANY LIMITED*
> *28 November 1991*
> *[CONFIDENTIAL]*
> *Mr Yashni Kant*
> *CMC Limited*
> *NABUA*
> *Dear Yashni*
>
> *Following our discussion yesterday we agreed that due to Steven's imminent departure, you will continue in your present position using the existing office, reporting directly to me on all accounting functions.*
>
> *At the end of March, 1992 you will be evaluated for suitability or increased responsibility taking into consideration, leadership quality, example setting, work interest, extra efforts, eager to learn and job knowledge etc.*
>
> *After March 1992, if there is still shortfall in your standard level then you will be given a further training over a reasonable period.*
>
> *Elevation to Finance Manager/Company Secretary position will require approval of the General Manager, Finance, RHL and the CMC Board after thorough investigation of your suitability for the position.*
>
> *You will have a temporary use of the current Finance Manager's car when it becomes available subject to you refunding in full the car allowance you collected in advance for December, 1991 to March, 1992. A cheque must be handed to me.*
>
> *Yours faithfully*
> *TV RAJU*
> *GENERAL MANAGER*

On the 12 June 1992 a letter was sent to the Appellant in the following terms:

> *CENTRAL MANUFACTURING COMPANY LIMITED*
> *12 June 1992*

[Personal and Confidential]
Mr Yashni Kant
CMC Limited
NABUA
Dear Yashni

Following our talks this morning and subsequent announcement from NZ that recommended, salaries have now been approved effective 1st July, 1992. In your case because of the added responsibilities imposed on you prior to April, your salary increase will be effective from 1st April, 1992.

I am pleased to advise that your 92/93 annual basic salary is reviewed to $F32,000. In addition, you will receive $3000 per annum housing allowance including all fringe benefits as per your Terms and Conditions.

The use of a company car benefit is valued at $7500 per annum based on Hays Consultancy.

I take this opportunity to wish you well in our future progress and thank you for the assistance given to me since you assuming the position of Finance Manager.

Yours sincerely
TV RAJU
GENERAL MANAGER

We note that there is a reference to "fringe benefits as per your terms and conditions," and accept that this refers to the "Terms and Conditions of Senior Management".

On 21st of April 1994 the Respondent nominated the Appellant for consideration for the Fujitsu CBA Young Accountant of the Year Award. The Respondent wrote a letter setting out the achievements of the Appellant. It is unnecessary to include this but it plainly indicates and specifically states that the Appellant had made a major contribution to the Respondent and the community and had bright career prospects.

In 1995 a problem arose. The Appellant held an Australian permanent migration visa. This was about to expire and the Appellant wrote to the holding company of the Respondent. The Appellant indicated he intended to work for the Respondent for a further for 3 years but pointed out if his permanent resident visa was not extended he had no alternative but to resign and migrate to Australia. Rothmans Holding Company wrote to the general manager of the Respondent on 13 of March 1995 in the following terms:

ROTHMANS HOLDINGS LIMITED
13 March 1995
Mr TV Raju
General Manager
Central Manufacuring Company Ltd
Lady Maraia Road
Nabua, SUVA
FIJI
Dear Tom

I confirm our understanding that you wish to extend the period of time Yashni Kant is to be employed in Fiji for an additional two to three years.

I also confirm that Rothmans Holdings Ltd as majority shareholder in your company, agrees that this extension should occur in view of your specific
needs over the coming two to three year period.

Yours faithfully
Grant K. Le Loux

The Respondent paid the consultancy fees incurred by the Appellant in obtaining the resident visa.

In April of 1995 the Appellant received a special bonus reflecting what was seen as an excellent result for the previous year.

In June 1995 the general manager circulated a memorandum relating to attendance at conventions. The general manager of the Respondent in that memorandum (which was copied to other managers) stated that it was not the right of any individual to automatically attend conventions conferences or courses. The Appellant considered the memorandum reflected badly on him and sent to the general manager a memorandum providing an explanation as to why he had attended. This memorandum was couched in relatively strong terms. On 6th of June the Appellant arrived at work to find the general manager already there. On speaking to staff he understood the general manager was upset at the exchange of memoranda and he was to be dismissed. He made arrangements to see the general manager and following his interview with him claimed to have made a diary note of the interview that night. This was subsequently set out by the Appellant's solicitors in a letter dated the 19th December 1995 in the following terms:

YK Morning Mr Raju. I am here to sincerely apologise to you for the memo I have written to you as at the time of writing I was not happy that despite several discussions you wrote to me with a copy to all the other executives.

TVR In a very angry voice:

Yashni I have come to a stage where I just can't work with you. I have worked in this company for the last 33 years and I have pride in myself and you are showing disrespect for me. I can't trust you any more and the staff in your division are also showing disrespect for me. Therefore it is better you leave the company.

YK Mr Raju I have worked in this company for almost 8 years and we have together built this company to this stage and I have always respected you as my elder who has guided me to become the finance manager of the company. I may have said something which could have offended you and I sincerely apologise for it. Could you please let me know what is the real issue, are you not satisfied with my work or is it the memo I wrote to you.

TVR The memo is not a problem but it is very disrespectful and as far as the department is concerned I left to you to run and I have no complaints.

YK In view of my good service to the company I want you to give me one more chance and I will improve on my attitude and work according to your guidelines.

TVR Yashni I think I have made up my mind and it's better that you leave the Company.

Handing a sealed letter he further said:

Here is your termination letter and a taxi is waiting to take you home and you are not to go to your office as the security guard will not allow you to your office.

YK Mr Raju in view of my good service record with the company I will appreciate if you could reconsider your decision as my future will be totally jeopardised. I sincerely apologise for any embarrassment I have caused you and being a young executive I want you to pardon my action.

TVR In view of your pledge I am willing to rethink, however, in the meantime I want you to go home and rest. I may ask you to come to work tomorrow.

YK Thank you, could you please ask the Sales Manager to drop me home.

He referred to this diary note in his evidence. This account was not accepted by the Respondent. The Appellant was handed notice of termination in the following terms:

CENTRAL MANUFACTURING COMPANY LIMITED
PRIVATE
6th June 1995
Mr Yashni KANT
MANAGER FINANCE/COMPANY SECRETARY

CMC
SUVA
Dear Mr Kant
TERMINATION

I write to advise you that your employment as Manager Finance/Company Secretary is hereby terminated with immediate effect.

Your three months' salary in lieu of notice (as per terms and conditions of employment) less money owed to the Company will be credited to your Bank account in the usual manner by KPMG.

Yours faithfully
TV Raju
GENERAL MANAGER

In response to the letter dated 19 December 1995 from the Appellant's solicitors the solicitors for the Respondent replied in the following terms:

SHERANI AND COMPANY
2 January 1996
Mr B C Patel
Level 1 ASB Building
981 Dominion Road
P O Box 27-079
Mr Roskill
Auckland
New Zealand.
Dear Sir
Re: Your Client: Yashni Kant
Our Client: Central Manufacturing Co. Ltd.

We act for Central Manufacturing Company Limited which has handed to us your letter of 19th December, 1995 with instructions to reply. We therefore write to advise you as follows: —

1. *Your client's termination can no way be regarded as wrongful or unjustifiable. The termination was in accordance with the law prevailing in Fiji and in accordance with his terms and conditions of employment.*
2. *Your client's termination can no way be regarded as wrongful or unjustifiable. The termination was in accordance with the law prevailing in Fiji and in accordance with his terms and conditions of employment.*
3. *No reasons are necessary for the termination of Senior Management staff provided that the termination is in accordance with terms and conditions of their employment. In fact it is usual practice and in the interest of senior staff if no reasons for the termination are given. This makes it easier for the staff member to find alternative employment. In this case there is no breach of the terms and conditions by our client. However, to clarify the position some of the reasons why your client was terminated are as follows: —*
   - *(i) Your client was holding a very senior position and was also the Company Secretary. However, his behaviour left much to be desired. He was undermining the authority of the general manager and ridiculing him in the presence of mosts senior managers of the Company.*
   - *(ii) Your client was using Company resources ie staff and computer to maintain accounts of his family business 'Bluebird Printery'.*
   - *(iii) Your client had kept $80,000.00 in undeclared cash for his family business 'Bluebird Printery' in the Company Safe and thereby exposing the Company to substantial risk.*
   - *(iv) At a public place (Fiji Club) your client told the son of a senior executive with 34 years service with the Company that he would terminate his father's employment with the Company.*

(v) Your client was also found to be divulging confidential Company information.

(vi) Your client called a member of the staff of Rothmans Fiji and falsely advised that he was funding the Rothmans operation and he was fully responsible for that company.

(vii) Without the General Manager's prior approval your client joined a fitness club at Company expense and also gave the use of the Company Car to friends and relatives.

4. Most of the facts contained in paragraph 5 of your letter are not true and contain a distorted picture of what happened. At no stage did the General Manager say that he may call your client back to work the next day.

5. As to paragraph 7 of your letter we wish to advise you that the Company has always tried to assist staff members and in this case it did everything possible to assist your client to get an extension of his Australian Residency Visa. This assistance was given to your client on his request. Also the bonus was paid to all managers of the company and all received the same sort of letter ie "for your splendid performance".

6. Our client denies that it or its General Manager has made any libellous statements about your client.

7. Please note that any action taken by your client will be vigorously defended.

Yours truly
Sherani and Co.
Per:
… (sgd.) …
cc The General Manager, Central Manufacturing Co Ltd

In his evidence the general manager stated that on the 3rd of June one of the staff one Diwarkar came to see him. The general manager informed the court he had been told by Diwarkar the Appellant had been making derogatory comments about him. Those comments included a claim that the general manager had gained his position by "sucking up to the white man". The Appellant was supposed to have said the general manager had falsified his expenses, used company funds to refurbish his home, that he was too old, should retire and did not do his job. The general manager indicated that he had discussed the matter with other managers on Saturday morning and claimed that comments of this kind by the Appellant had been confirmed by them and the general manager was told that this sort of comment had been made over a period. Evidence at the hearing was called off derogatory comments which were if not exactly the same as those to which the general manager had referred were certainly similar in kind. Evidence was given by the informant that the Appellant had become "unbearable" as his superior. Evidence was also before the court from the two managers with whom the general manager had discussed the matter. Their evidence was supportive of what the general manager had said. It should be said however that when those allegations were put to the Appellant in cross-examination he denied them.

In the High Court the judge indicated that the issues before the court were:

(1) what was the plaintiff's contract of the service with the defendant at the time that was determined;

(2) under what provision of the contract if any was he dismissed;

(3) was the defendant entitled to dismiss the plaintiff; and

(4) if not what is the measure of damages.

The judge concluded the termination clause contained in the "Terms and Conditions of Senior Management" was part of the Appellant's contract of employment He accepted that the Appellant had fallen into the habit of

denigrating the general manager and in so doing had destroyed the basic trust on which the relationship depended. He concluded the Respondent was contractually entitled to dismiss the Appellant and dismissed the claim.

The rights if any of the Appellant depend upon the terms of his contract of employment.

When he was first employed by the Respondent the terms of his contract were not reduced to writing and at that time any notice of termination would have had to be reasonable having regard to all the circumstances subject of course to the provisions of s 24 of the Employment Act Cap 92 (1965) on which Mr Apted relies and to which we later return.

That could not have been affected by the subsequent unilateral circulation of the "Terms and Conditions of Senior Management". Those became part of the contract only if expressly accepted by the parties for consideration.

In November of 1991 the Appellant was advised of a likely promotion. The terms and conditions were again not spelled out. That appointment was made in June of 1992 and the Appellant advised by letter of 12th June 1992 set out above. That letter advised of salary changes and referred to a housing allowance and in addition contained the words "including all fringe benefits as per your terms and conditions".

Mr Patel submitted that because the letter referred to special conditions applying to the Appellant which differed from those contained in the terms and conditions for senior management the terms and conditions for senior management did not apply. We accept that the Appellant on the evidence took fringe benefits other than those set out in his letter (as the letter itself contemplates) eg club subscriptions, and that being so he cannot pick and choose between terms. He must be held to have accepted the terms and conditions of employment for senior management as varied by his letter which we consider were referred to in the letter as "your terms and conditions". We do not see that any distinction helpful to the Appellant can be drawn between the words "management" and "managers" although some argument was directed at this.

We also reject the Respondent's submission that the contract was an oral one subject to the provisions of s 24 of the Employment Act requiring a notice period of only 1 month. The contract in this case is written, (albeit in more than one document) but even if it were not it would be at least arguable that the words of the section "subject to any specific agreement" would be sufficient to import the terms of the circular applying to senior management. The consideration for the inclusion of the terms including notice was the increased remuneration and the Appellant's acceptance was indicated by his taking up the position.

At that point then we consider the Appellant's contract contained the clause that it could be terminated by three month's notice "of … intention to do so". Mr Patel argued however that subsequently the Appellant and the Respondent entered into an agreement for a fixed term of 3 years. His submission depended upon the correspondence which was exchanged when the Appellant had to make decisions regarding his residence visa.

Mr Patel contended that the Appellant made it plain it was his intention to return to Fiji for 3 years if his visa rights could be preserved and the assistance of and acceptance by the Respondent of this gave rise to a fixed term contract.

We cannot accept this. The Appellant in his letter of 1st of March 1995 to the Holding Company indicated his intention "to return to Fiji and work for Rothman's Fiji and subsidiary companies for a further 3 years". He also stated his

willingness to move from Fiji to other Rothmans Companies. The letter in reply refers to employment "in Fiji for an additional two to three years".

That is all far too indefinite to amount to a 3-year contract nor could it be interpreted as being for 2 years with a possible extension to three. In the context of this case there is simply not enough to justify such a basic change in employment terms.

The Respondent's position is then that the Appellant having received 3 months wages in lieu of notice has no further claim.

The matter is not so simple.

The provision as to notice in the terms and conditions falls into category 4 in the analysis of Lord Brown-Wilkinson in *Delaney v Staples (t/as De Monfort recruitment)* [1992] 1 All ER 944 at 947. In such a case where "without the agreement of the employee the employer summarily dismisses the employee and tenders payment in lieu of proper notice any payment made is a payment in respect of damages for breach, *Gothard v Mirror Group Newspapers Ltd* [1988] ICR 729.

In this case the payment made equating with the wages which would have been paid during the notice period is contended by the Respondent to be all that the Appellant is entitled to by way of damages.

Notice and pay in lieu of notice are not the same thing.

In *Martin v Tasmania Development & Resources* [1999] FCA 593163 ALR 79 at 93 it was pointed out that the employee who receives actual notice will often be in a much better position than an employee who is shown the door. He or she has an opportunity to seek other employment over the notice period and to do so without the opprobrium of immediate dismissal. It follows then that payment of wages in lieu of notice does not necessarily equate with damages payable in respect of breach. Nor does it take into account the loss of fringe benefits.

Before considering the question of damages however it must be considered whether the Appellant has established any other breaches upon which he can rely.

There is authority for the view that employment contracts contain an implied term that procedure leading to termination must be consistent with fairness: *Stuart v Armourguard Security Ltd* [1996] 1 NZLR 484.

Assuming for the moment damages for the breach of such a term can be recovered by a dismissed employee the question arises as to whether any such breach occurred in this case. The concept of fairness with regard to procedures is well developed in various branches of the law. Here the Appellant was never confronted with the allegations upon which the Respondent now relies. He never had any opportunity to controvert or refute them or even to explain his position. He was given no opportunity to mitigate. There can be no doubt that if an action lies for breach of an implied term to act with fairness in terminating a contract of employment then the Appellant in this case has established a right to recover.

There is also authority that a contract of employment contains an implied term that the parties will act fairly and reasonably with mutual trust and confidence and that a failure to do so amounts to breach of contract. See *Whelan v Waitaki Meats Ltd* [1991] 2 NZLR 74. This is important in this case because the Respondent relies on a breach of such terms alleged against the Appellant. If it applies to one it applies to the other.

In *Malik v Bank of Credit & Commerce International SA (in liq)S4* [1997] 3 All ER 1 The House of Lords accepted that in an appropriate case damages could flow from loss of reputation caused by breach of contract as to the conduct of the business and that there was an implied term in a contract of

employment that a relationship of confidence and trust would not be breached. This case did not however arise out of a dismissal.

To dismiss the Appellant without notice bearing in mind the position he had within the company and the community was in our view a breach of the implied term that the relationship was one of confidence and trust.

On the basis of the above authorities it can be said that the Appellant suffered from breach in three ways.

First he was not permitted to work out his term of notice with the consequence that he had no opportunity to seek alternative employment from the security of employment and lost his fringe benefits.

Second he was not treated fairly in that he was neither told of the allegations against him nor given an opportunity to refute them.

Third he seriously suffered in his reputation because his employment was terminated without notice giving rise to suspicion as to the reasons.

All three arise out of the manner of dismissal which raises the longstanding authority of *Addis v Gramophone Co Ltd* [1909] AC 488. That case has long been seen as authority for the proposition that damages arising out of the manner of dismissal cannot be recovered. The authority of that case has been eroded in a number of jurisdictions including New Zealand but it is unnecessary to discuss those authorities since the whole question has recently been analysed in depth in *Johnson v Unisys Ltd* [2001] 2 All ER 801. In that case Lord Steyn was prepared to hold an action for damages lay for breach of an implied condition breached by the manner of dismissal although in the particular case he found against the Appellant on grounds of causation and remoteness.

The majority of the House however concluded that an action would not lie. The majority decision was delivered by Lord Hoffman. He came to the conclusion that the competing arguments were finely balanced but in the final result considered that since parliament had seen fit to legislate on the precise point setting up a legislative system to deal with matters of this kind it was unnecessary for the courts to authorise what would have been a parallel system especially where the rights conferred by legislation were limited.

The question then arises as to what approach the courts in Fiji ought to accept.

Mr Apted contended strongly on grounds largely of public policy that the courts ought to maintain the restrictive regime imposed by the decision in *Addis*.

He contended in summary there would be serious economic effects occasioned by departing from it and that questions of this kind which involve matters of policy ought to be left to parliament to determine since parliament is in a better position than the courts to determine such matters in the overall interests of society.

We consider that it is appropriate in the end to follow the dissenting view of Lord Steyn in *Johnson v Unisys*.

We reach this conclusion for a number of reasons.

First Lord Steyn's analysis of the decision in *Addis* which led him to the conclusion that the case was not in fact authority for the propositions taken from it is persuasive and not seriously questioned by the decision of the majority.

Second the decision of the majority was largely dependant on the fact that an appropriate statutory framework for dealing with such questions had been set up and was subject to limitations to awards. It was held that militated against the courts recognising a separate and perhaps competing right of action.

There has been no such legislation in Fiji but there has been an indication of the view of the legislature in the Fiji Bill of Rights. Article 33(3) under the general heading of "Labour Relations" provides "every person has the right to fair labour practices including humane treatment and proper working conditions". That is not of course decisive of this case and was in any event enacted after any cause of action arose. Nevertheless it is an indication that the Fiji legislature has a concern for fairness in labour relations and one of the implied terms for which the Appellant contends is based on that concept.

Third the recognition of an implied term as to mutual trust and confidence was accepted in *Malik* (above). While not directly in conflict with *Addis* in respect of the type of damages which may be awarded it is in some respects at least inconsistent with the reasoning of it. Once there is a recognition of implied conditions of the kind discussed there ought to be a remedy for breach and it is difficult in principle to see why there should be an exception in respect of manner of dismissal which is likely to be the main area where breach will occur.

Fourthly as Lord Steyn points out the decision in *Addis* has not found support in all academic writings and he referred to Treitel on The Law of Contract, 1999 ed, pp 921–924.

For all those reasons we are of the opinion that in *Addis* no longer stands in the way of the recovery of damages arising from the breach of an implied term of a contract of employment even although the breach arises from the manner of dismissal.

Mr Apted's concern as to the effects of such a conclusion is the equivalent of the Floodgates argument rejected by Lord Steyn in *Johnson v Unisy* where he pointed out the mere fact of dismissal was not enough, and that questions of causation and remoteness would in most cases prevent unacceptable claims. We do not see why if an employer acts in an oppressive or unfair manner that inflicts substantial and unnecessary damage on an employee there is any principled reason to prevent recovery.

It remains to assess damages for the breaches established by the Appellant. These must be assessed in context and it cannot be overlooked that the Appellant was working in a prominent position within a small community where it must very rapidly have become known that he had been dismissed without notice. The staff of the Respondent seems to have been told immediately. He gave evidence that he was unable to find any suitable employment in Fiji and was unable to find any employment at all for nearly 2 years. On the other hand he received 3 months' pay on dismissal and the judge accepted as factual the allegations made against him which ought to be taken into account at least to some extent.

Damages of this kind are not susceptible of precise calculation other than by calculation of notice periods which is not appropriate in this case. If he had been given 3 months' notice rather than immediate dismissal and or given an opportunity to refute the allegations against him he might have found employment much more quickly and perhaps not have had to leave Fiji. On the other hand he clearly contemplated leaving Fiji at some time.

He was unemployed for nearly 2 years when with his qualifications he ought to have expected to obtain another job quite quickly. We do not however consider the loss of earnings for 2 years reflects the circumstances of this case. Taking all in all we consider damages of $30,000 in addition to the 3 months' salary already received would provide sufficient recognition and there will be judgment accordingly.

The appeal is allowed. The Appellant is entitled to damages which we fix at $30,000 together with costs of $2500 with filing fees and other reasonable costs to be fixed by the registrar. The Appellant is also entitled to costs and disbursements in respect of the High Court proceedings which in default of agreement are to be taxed by the registrar.

Appeal allowed.