

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Common Law and Equity Division**  
**2022/CLE/gen/00167**

**B E T W E E N**

**HUGH PATRICK ROLLINS**

Plaintiff

**AND**

**BAHAMAS POWER AND LIGHT COMPANY LIMITED**

Defendant

**Before:** The Hon. Chief Justice Sir Ian R. Winder

**Appearances:** Ferron Bethell KC with Camille Cleare for the Claimant  
Raynard Rigby KC with Asha Lewis for the Defendant

**Hearing date(s):** 31 October 2023, 1 November 2023, 25 and 26 January 2024

**JUDGMENT**

## **WINDER, CJ**

[1.] This is an employment law dispute in which the Plaintiff (“Rollins”), a former Executive Director of the Defendant (“BPL”), alleges that he was unfairly and unlawfully terminated in the course of the performance by him of a fixed term contract of employment.

### **Background**

[2.] BPL is a wholly owned subsidiary of the Bahamas Electricity Corporation (BEC) which operates under the *Electricity Act, 2015*. The Board of BEC is appointed by the Minister charged with the administration of the *Electricity Act, 2015* and the *Electricity Rate Reduction Bond Act*. The Board of BEC appoints the Board of BPL. In practice, it appears that the Boards of both BEC and BPL have been comprised of the same individuals.

[3.] On 1 July 2017, Rollins was appointed the Deputy Chairman of BPL’s Board and served in that capacity until his resignation from the position on 14 August 2018. While a member of BPL’s Board, Rollins entered into a written contract of employment with BPL on 20 July 2018 (the 20Jul18 Contract) employing him in the capacity of Executive Director at BPL for a three-year term commencing on 1 July 2018. Rollins succeeded Deepak Bhatnagar (Bhatnagar) in the position and received a contract in virtually the same terms as him. Rollins’ primary responsibility was to act as Project Sponsor for Large Technical Projects.

[4.] The appointment of Rollins as Executive Director was expressed in the 20Jul18 Contract to be “on the advice and approval of the Minister of Works”. In reality, BPL was “informed” of Rollins’ appointment by the then-Minister of Public Works and Deputy Prime Minister, T. Desmond Bannister (Bannister), at a Board meeting on 4 July 2018. A subsequent letter from the Acting Permanent Secretary in the Ministry of Public Works dated 11 July 2018 (the “11Jul18 Appointment Letter”) advised of the appointment. The job description for the position was sent by the Acting Permanent Secretary in the Ministry of Public Works under cover of a letter dated 13 July 2018. Rollins had known Bannister since approximately 1997 when he engaged him as his attorney in a matter.

[5.] The 20Jul18 Contract, which took the form of an offer letter signed by BPL’s then-Chief Executive Officer, Whitney Heastie (“CEO Heastie”), and which was countersigned by Rollins, contained the following material terms and provisions:

1. Position: Executive Director
  - a) The position of Executive Director of BPL is a full-time position, the execution of which will require the devotion of the full business and professional time and attention to the Executive Director’s duties under this contract.
  - b) The specific duties of Executive Director are set out on the fact sheet hereto attached and deemed to be incorporated herein.

2. Term of Contract: Three (3) years
3. Effective Date: July 1, 2018
4. Salary: One hundred and eighty thousand (\$180,000.00) per annum for term of contract
5. Benefits:
  - a) 15% of salary payable annually which shall be paid on each year of the contract commencing [sic] after its first anniversary.
  - b) Use of a BPL vehicle (inclusive of gas and maintenance)
  - c) Group Medical Insurance for Executive Director
6. Vacation: Five (5) weeks per annum
7. Termination: This contract and all the provisions hereof shall be terminated in any of the following circumstances:
  - a) If the Board shall determine that the services of the Executive Director ought to be terminated for cause and in that case, the Chairman shall so advise the Minister of the cause for such determination;
  - b) If the Executive Director shall give to the Chairman three (3) months' notice of his intention to resign from the position.

[Emphasis added]

[6.] On 28 June 2021, shortly before the expiry of the stipulated term of the 20Jul18 Contract, Rollins entered into a second contract of employment with BPL dated 12 May 2021 (the “12May21 Contract”) employing him in the capacity of Executive Director for a further three-year term commencing on 1 July 2021. Bannister had requested that Rollins’ contract be renewed for three years. The terms, conditions and emoluments contained in the 12May21 Contract mirrored those contained in the 20Jul18 Contract. It had been proposed by Bannister that, on the renewal of Rollins’ contract, his annual remuneration ought to be increased from \$180,000 to \$189,000 and that he should receive annual increments of 4% per annum over the life of the contract, but these increases were rejected by BPL’s Board.

[7.] In September 2021, there was a parliamentary General Election in The Bahamas which resulted in the Progressive Liberal Party (PLP) forming a new majority Government and ousting the former Government led by the Free National Movement (FNM), which had been in office from 10 May 2017.

[8.] On 22 November 2021 the then-Minister of Works and Utilities under the new PLP Government, the Honourable Alfred Sears KC (“Minister Sears”), announced a new Board of Directors of BPL at a press briefing at BPL’s headquarters. Pedro Rolle (“Chairman Rolle”) was appointed the Chairman of the Board of BEC by Minister Sears and was subsequently appointed Chairman of BPL’s Board by the Board of BEC.

[9.] The first meeting of BPL's new Board (the "First New Board Meeting") took place on Thursday, 20 January 2022. At that meeting, BPL's Board resolved and agreed to terminate Rollins' employment by providing three months' pay in lieu of notice effective 21 January 2022.

[10.] The following day, i.e, 21 January 2022, Rollins was summoned to a meeting with Daniel Ferguson ("Deputy Chairman Ferguson"), the Deputy Chairman of BPL's new Board, who advised him that his services were no longer needed by BPL's Board. Deputy Chairman Ferguson presented Rollins with an envelope enclosing a cheque in the amount of \$67,077.33, which Rollins did not accept, and a termination letter signed by Chairman Rolle dated 21 January 2021 (the "21Jan21 Termination Letter"). That letter informed Rollins that his services were no longer needed, provided a breakdown of the sum of \$67,077.33 and explained that BPL would continue Rollins' existing medical insurance coverage until 30 April 2022.

### **The pleadings**

[11.] The essence of Rollins' claim is set forth in his Amended Statement of Claim as follows:

13. In purporting to terminate Mr. Rollins' Second Contract of Employment by the provision of three (3) months pay in lieu of notice, BPL breached the aforesaid Second Contract ~~and wrongfully dismissed him~~ by failing to provide sufficient compensation for the remainder of his fixed term of employment. As a consequence thereof, Mr. Rollins has suffered loss and damage.

#### PARTICULARS OF LOSS AND DAMAGE FOR BREACH OF CONTRACT ~~WRONGFUL~~ DISMISSAL

- i) Salary for remainder of the fixed term (29 months) \$435, 000.00
- ii) Annual gratuity of 15% of salary (x 3 years) \$81,000.00
- iii) Vehicle Allowance (29 months at 600.00 p/m) \$17,400.00
- iv) Accrued Vacation (206.88 hours) \$20,277.33
- v) Cost of Premiums for replacement  
Medical Insurance (26 months at \$1,782.73 p/m) \$46,350.98

14. The manner in which Mr. Rollins was dismissed and the reasons for the dismissal were unfair, unreasonable, unlawfully discriminatory and unconstitutional, the particulars of ~~unreasonableness and unfairness~~ which are as follows:

#### PARTICULARS OF UNFAIRNESS, UNLAWFULNESS AND UNCONSTITUTIONALITY DISMISSAL

- i) Mr. Rolle informed Mr. Rollins on 30<sup>th</sup> December 2021 that it was the desire of the current PLP Cabinet to terminate him because of his perceived political affiliation to the Hon. Desmond Bannister, a member of the former FNM Cabinet;
- ii) The Board of BPL allowed the Government to dictate the implementation of a discriminatory practice of removing key management employees who were affiliated with the FNM;
- iii) The Board of BPL failed to act independently in the exercise of their fiduciary duties to BPL and failed to consider whether Mr. Rollins' termination was in the best interest of BPL;

- iv) The Board of BPL discriminated against Mr. Rollins solely on the basis of his perceived political affiliation and/or opinion by dismissing him;
- v) Prior to terminating Mr. Rollins, and before any formal meeting of the new Board, the Chairman indicated that he would not honour the full terms of the Second Contract by asking Mr. Rollins what he was “willing to accept” in order to leave;
- vi) The Chairman further sought to influence and pressure Mr. Rollins to accept less than he is legally entitled to under his contract by intimating that BPL, at the behest of “certain people in Cabinet,” would seek to delay and frustrate any resolution of his dispute through the Court system;
- vii) Mr. Rollins was subjected to work at BPL and continue to carry out his functions as Executive Director in good faith for just under four (4) weeks, with full knowledge of his impending termination solely on the basis of his perceived political opinion and/or affiliation;
- viii) When Mr. Rollins did not get back to Mr. Rolle with what he was “willing to accept”, he terminated Mr. Rollins and offered him significantly less than he was contractually entitled to by way of compensation.
- ix) Mr. Rollins was subjected to humiliation and degradation merely because of his perceived political affiliation with the FNM and without being afforded an opportunity to be heard on the continuity of his contract.

15. In light of the above particulars of unfairness leading to his termination, Mr. Rollins, aged sixty (60) at the date of his termination, seeks:

- a) a basic award of compensation in the amount of nine (9) weeks salary in accordance with section 46(1) of the Employment Act,
- b) compensatory damages for the loss of insurance cover and additional expense for replacement cover attributable to the termination, as set out at paragraph 13v) above;
- c) vindictory damages amounting to twenty-four (24) months, gross salary for breach of Article 26(2) of The Constitution;
- d) and/or in the alternative compensatory damages and/or aggravated damages for unlawful discrimination in breach of Section 6 of the Employment Act Ch. 321A;
- e) compensatory damages for injury to feelings including loss of congenial employment;

16. Mr. Rollins is entitled to interest at such rate and for such period as to the Court may seem just pursuant to the Civil Award of Interest Act.

AND the Plaintiff claims:

- (1) Damages for breach of contract
- ~~(2) Damages for wrongful dismissal;~~
- (2) Damages for unfair dismissal
- (3) Exemplary Vindictory Damages;
- (4) Aggravated Damages;
- (5) Interest;
- (6) Costs;
- (7) Further or other relief.

[12.] The material aspects of BPL’s defence are set forth in its Defence as follows:

6. The Defendant contends that the [contracts] of employment were intended and did amount to the Plaintiff’s continuous employment and were not intended to create fixed term employment. The Defendant avers that the Plaintiff’s employment was permanent and therefore it was capable of

being earlier terminated by either the Defendant or by the Plaintiff and by the Defendant summarily for cause as defined in the Employment Act.

...

8. The Defendant avers that at all material times the parties, the Plaintiff and Defendant, agreed and always understood that the Plaintiff's contracts of employment were subject to termination by the Defendant for cause and notice and that the provisions of the Employment Act were applicable.

...

13. The Defendant contends that the spirit and intent of the employment contracts were such that the Defendant could terminate by notice of three months. It is further averred that the parties agreed and did intend to agree that the Plaintiff and the Defendant would have corresponding rights as to termination by notice and that the Defendant would have a right to terminate for cause.

14. The Defendant avers that the parties did not agree to oust the jurisdiction and application of the provisions of the Employment Act from the terms of the employment agreement.

15. The Defendant denies that the Plaintiff had and that it was intended to advance to him a fixed term contract as alleged or at all and that in the circumstances the Plaintiff's employment was continuous as from 20<sup>th</sup> July, 2018.

16. The Defendant denies the particulars of loss and damages for breach of contract as alleged in the Claim or at all and contends that the Plaintiff received adequate compensation arising from his termination.

17. The Defendant denies paragraph 14 of the Claim and the particulars thereof and puts the Plaintiff to strict proof thereof. The Defendant contends that the decision to disengage the services of the Plaintiff was in fact not a political one or motivated by politics but rather a decision following an assessment of the company alongside its core objectives to meet the demands of the consumer public.

18. Furthermore, the Defendant was satisfied that the role and duties of the Plaintiff were capable of being carried out and were easily carried out by the Chief Executive Officer of the company and that the Plaintiff held no special or peculiar qualifications to warrant his continued role.

19. The Defendant further contends that its Board of Directors had the power and authority to assess the position held by the Plaintiff and in so doing considered and determined that the duties were best aligned to that of its Chief Executive Officer. The Board of Directors also considered and determined that its executive management team should have clear reporting lines to the Chief Executive Officer, who would then report to the Board.

20. The Defendant denies that it discriminated against the Plaintiff as alleged or at all. The Defendant treated the Plaintiff will [sic] all professionalism and arrived at a decision to terminate him based on a valued [sic] assessment of its key objectives and considering what is in the best interests of the company.

21. The Defendant avers that it treated the Plaintiff as a professional and did not humiliate and/or degrade him because of any such perceptions of his political affiliations and acted as a prudent employer considering the best interests of the Defendant company.

...

23. The Defendant contends that the Plaintiff received fair and above-industry compensation and his pay in fact exceeded the compensation of other senior executives of the Defendant and he was expected to carry out far less work than that of the Defendant's Chief Executive Officer.

24. The Defendant further avers that the appointment of the Plaintiff was a part of the controversy that led to the termination or resignation of a previous Board of the Defendant which was then chaired by Darnell Osborne and it was therefore accepted that his appointment may have been obtained in questionable circumstances, potentially amounting to a conflict as he was then the Deputy Chairman of the Board.

25. The Defendant contends that the Plaintiff could not and did not expect an employment which was long lasting and that his skills or competencies afforded equal opportunities to source alternative employment in the energy sector or otherwise.

26. The Defendant avers that in all of the circumstances it ensured that the Plaintiff was treated humanely and that its decision to terminate his service was in the best interests of the company and its industrial relations.

27. In light of the matters aforesaid, the Defendant had a reasonable basis to believe that the Plaintiff's continued employment was repugnant to the fundamental interests of the company and that the trust and fidelity required in the employment relationship were eroded.

[13.] Rollins filed a Reply which it is unnecessary to recite in any detail.

### **Evidence**

[14.] At trial, Rollins and CEO Heastie gave evidence in support of Rollins' claim. Chairman Rolle and BPL's in-house counsel and Corporate Secretary, Samantha Rolle ("Attorney Rolle"), gave evidence in support of the defence. Given the nuanced nature of some of the evidence and the fact that the witnesses' evidence differed on important points in material respects, it is necessary that I set out in some detail the evidence adduced by them.

[15.] Before I do so, however, I ought to briefly comment on the witnesses. I found Rollins to be a fair witness but there were inconsistencies in his evidence and I was persuaded that he exaggerated the circumstances surrounding his termination. I found CEO Heastie to be sometimes reliable but I formed the view that he tailored his evidence to benefit Rollins and most likely overstated the case for Rollins' continued relevance by January 2022. Chairman Rolle and Attorney Rolle both came across as impressive witnesses but some of their evidence was simply difficult to accept.

[16.] I ought also to record that the Court had before it four bundles of documents which were agreed between the parties by the close of the evidence, to wit, (i) an "Agreed Bundle of Documents" filed on 21 March 2023; (ii) a "Supplemental Agreed Bundle of Documents" filed on 22 March 2023; (iii) an "Unagreed Bundle of Documents" filed on 21 March 2023; and (iv) an unfiled "Defendant's Bundle of Supplemental Documents".

### Rollins' evidence

[17.] Rollins described himself as a qualified electrical and computer engineer who received his qualifications from the University of Alabama. Rollins related under cross-examination that he had been employed at Batelco before completing his university studies and worked there after university until he started his own business in 2000. Rollins continued in that business until he was made Deputy Chairman of BPL's Board in 2017 and joined BPL as an employee in 2018. Rollins said that he resigned from BPL's Board in 2018 because the Board had become dysfunctional.

[18.] Rollins accepted under cross-examination that he was appointed Executive Director while he was still a member of BPL's Board. He believed that he had been employed pursuant to the direction of Bannister. Rollins admitted that he never applied for the position of Executive

Director. He said he had been asked in July 2018 by CEO Heastie, then a fellow Board member, and Bannister, whether he would like to assume the responsibility. When asked during cross-examination what factors would have led Bannister to conclude he would be a “good special projects person”, Rollins offered that he was one of the two technical members on BPL’s Board during his tenure who provided technical guidance to BPL.

[19.] Rollins said that, when he was hired as Executive Director in July 2018, the senior management of BPL included a CEO, Chief Operating Officer, Chief Financial Officer and a number of different technical directors. Rollins said that the Chief Operating Officer was in charge of all the Family Islands, procurement and “the technical organization”. Rollins said that there was no one person responsible for overseeing technical projects at BPL. Projects would go into whatever internal division of BPL the project fell under and that division would be responsible for executing it. Rollins said that *“[d]ue to the size and the time sensitiveness and the complexity of projects, it was felt that these should be taken out of the organization and the Chairman ought to determine or establish that we implement these projects”*.

[20.] Rollins described his responsibilities as Executive Director in his witness statement as including “oversight for all major projects of BPL” including “the executive oversight of the installation of new generators in Station A, which was urgently needed to replace Station C which had been extensively damaged by fire”. Rollins said that Station A came “on stream” on or about 13 December 2019. When asked during cross-examination what other technical projects he was assigned to, he identified the proposed LNG plant at Clifton Pier, the installation of a “Battery Backup System” at Baillou Hill Road and filling in for the CEO and assisting him wherever needed. Rollins said that he was assigned projects by the CEO or the Board through the CEO. Rollins said that he reported to the Chairman of the Board because that is how Bhatnagar’s contract had been structured.

[21.] Rollins said that BPL drafted and presented both of his employment contracts to him and he did not have any input into changing the terms or conditions presented to him. When asked in cross-examination whose decision it was to mirror his contract with Bhatnagar’s contract, Rollins said that his employment contract was sent from Bannister to CEO Heastie, and he added a couple of lines to the contract. Rollins accepted that his employment terms were primarily decided by Bannister and/or CEO Heastie when it was put to him. Rollins also accepted that Bhatnagar’s role on BPL’s Board as Executive Director was different from his role, which was more of a technical nature.

[22.] Rollins explained that Bhatnagar, who had been employed on contract with a term from 1 November 2015 to 31 October 2018, was concerned primarily with monitoring the execution of the PowerSecure contract. Rollins clarified in re-examination that PowerSecure was the management company that the Government of the day had brought in to run BPL during the



“transition from BEC to BPL”. Rollins said that BPL’s Board came to realize that PowerSecure was not providing “value for money” and consequently terminated their contract with the approval of the Government. Bhatnagar’s contract was terminated in early December 2017 as a result of this. Rollins led the termination of Bhatnager. Bhatnagar was paid out the remainder of his contract.

[23.] Rollins said that, on 28 June 2021, just before the 20Jul18 Contract was due to expire, he entered into a second, written, three-year fixed term contract of employment with BPL dated 12 May 2021 for the position of Executive Director. The 12May21 Contract commenced on 1 July 2021 and contained identical terms, conditions, emoluments to the 20Jul18 Contract. Rollins confirmed his remuneration and benefits under the 12May21 Contract and the termination provisions of the 12May21 Contract in his evidence.

[24.] In his witness statement, Rollins recounted what allegedly transpired at the December 2021 meeting with Chairman Rolle (pleaded to have occurred on 30 December 2021), stating:

11. Sometime in December 2021, I went to see Chairman Rolle in his office regarding the Board’s approval of the Wartsila contract extension because the initial term was due to expire at the end of the year. During the course of that conversation, Chairman Rolle informed me that “*certain people in Cabinet were asking for your head and CEO Heastie’s head because, you know, you are Desmond’s boy*”. ... Mr. Rolle went on to say to me “*I need you to let me know what you are willing to accept because if it goes to Court, it will take a long time to resolve. Think about it and get back to me because we are not prepared to pay the balance of your contract out.*” I was taken aback by this last comment, and saddened, given the effort and industry that I had put into BPL these past several years.

[25.] When asked about the allegations made in connection with the meeting during cross-examination, Rollins:

- (i) noted he knew some members of the Board (Chairman Rolle and Deputy Chairman Ferguson). Rollins said that he and Chairman Rolle “go back” as they both grew up Adventists and (though Chairman Rolle did not know this fact at the time) he and Chairman Rolle’s wife graduated high school together.
- (ii) said the meeting between himself and Chairman Rolle took place “two weeks before the end of the year”. Rollins mentioned the Wärtsilä contract was due to expire and he wanted to find out from Chairman Rolle what was happening as the contract needed the Board’s approval.
- (iii) said that Chairman Rolle commented that he was “Desmond’s boy”, asked him whether he and CEO Heastie got along and told him that “Cabinet is asking for your head”. Rollins took this to mean that the Cabinet was “coming to get him”.
- (iv) accepted that the phrase he was “Desmond’s boy” might be a positive statement, as “boy” can be used as a term of endearment, but said he did not think it was used by Chairman Rolle positively in the context of the meeting.
- (v) accepted that the phrase he was “Desmond’s boy” might have been a reference to the fact that he was appointed by Bannister.

- (vi) said that Chairman Rolle did not say at the meeting who in the Cabinet was trying to get him removed from his position. Chairman Rolle is not himself a member of the Cabinet.
- (vii) said that the comments made by Chairman Rolle were made by him after they had engaged in casual conversation (they were “just talking all over the place”) and the conversation shifted to Rollins’ future with BPL. Rollins said that Chairman Rolle asked him what he was doing at BPL and Rollins spoke to him about the projects he was working on. Chairman Rolle did not share any views on the projects other than in relation to the Wärtsilä contract.
- (viii) said that, at the end of the meeting, Chairman Rolle told him that BPL was not willing to pay the balance of his contract out and it was in that context that Chairman Rolle asked him what he would be willing to settle for.
- (ix) quoted Chairman Rolle as having said something to the effect of, “you know something Patrick, if this goes to Court, this gen take a while to resolve. so you should think about what you willing to settle, what you willing to accept. Get back to me.”
- (x) said that Chairman Rolle had told him BPL had gotten an opinion from the Attorney General on his contract, paused, and then said they were not prepared to pay him out.
- (xi) said that he apprised Chairman Rolle that CEO Heastie was out sick for a few months as he had an eye surgery and Chairman Rolle seemed unaware of this.
- (xii) admitted that he did not send Chairman Rolle an email indicating his views about what Chairman Rolle had told him and he did not immediately share what had happened with CEO Heastie (who was on sick leave at the time) or anyone else at BPL. Rollins said that CEO Heastie went to see Chairman Rolle when he returned in January but he was not present at that meeting between them.
- (xiii) accepted that he had “constant back and forth” between himself and Chairman Rolle after the meeting between December 2021 and January 2022. Rollins said that he was acting CEO at the time and he sought Chairman Rolle’s opinion or approval on different matters. Rollins accepted the two men had a cordial working relationship.

[26.] Rollins explained in re-examination that the Wärtsilä contract (which he went to see Chairman Rolle on) was essential to BPL at the time because Wärtsilä were the only ones who could operate Station A and Station A provided 130 megawatts of power, which is on some days three quarters of the power needed to run New Providence.

[27.] Rollins said under cross-examination that, after the alleged meeting with Chairman Rolle, he went back to his office, “just said ‘wow’” and continued working. Rollins said he continued to work at BPL in good faith, advancing the projects that he was overseeing, in the knowledge that the new Board of BPL was, at some unknown time, going to terminate his contract prematurely, refuse to pay out the balance of his contract and protract any legal challenge based on “some obscure political vendetta”. Rollins said that this state of affairs was “intolerable” for him and he “vacillated between depression and anxiety”. Rollins also said that Chairman Rolle’s threat that, unless he agreed to accept a less than the balance of his contract, he would have to wait a long time

to have his dispute resolved through the courts, “resonated in his mind”. Rollins complained that he was the subject of speculation and ridicule on social media and that his staff did not provide him with their usual level of service. However, Rollins provided few details and undermined some of these comments during cross-examination.

[28.] Rollins said in cross-examination that he did not have any impression from his conversations with Chairman Rolle that “*there was an issue*” until the “*day before the first board meeting*” (in January 2022), when Chairman Rolle was distant in conversation with him and kept telling him that he would be on leave the following week when he was attempting to arrange a meeting in connection with the Wärtsilä contract. In addition, when questioned by Counsel for BPL about the “*obscure political vendetta*” that he mentioned, Rollins could only say that him being terminated as a result of a political vendetta was the “*logical conclusion*” following what had happened to him. Rollins accepted, however, that most terminations are not as a result of political vendettas, accepted that Chairman Rolle had never asked him about his political affiliations, accepted that Chairman Rolle had not told him he could not work with him because he was “*Desmond’s boy*” at their impromptu meeting in January 2022, accepted that Chairman Rolle never said he personally wanted Rollins’ head and acknowledged that the two men had worked together harmoniously for a period of time.

[29.] Rollins said in his witness statement that he felt embarrassed and extremely humiliated at the First New Board Meeting when all of BPL’s executives were required to introduce themselves to BPL’s new Board and to tell the Board what they were working on and what their roles in the organization were. Rollins said in cross-examination that all executives were invited to the meeting one at a time. Rollins’ witness statement suggested his feelings of embarrassment and humiliation were immediate and had to do with the background of his head being “*on the chopping block*”. Under cross-examination, Rollins elucidated that he felt embarrassed by the perfunctory treatment he received from the Board after he was terminated. Rollins said the Board had no questions for him despite the fact that the Board was a new Board, and he was only at the meeting for somewhere between ninety seconds and three minutes. Rollins gave no evidence of any overt acts on the part of the Board or any particular member of it to humiliate or degrade him. Rollins also gave no evidence to the effect that other executives were treated differently at the meeting.

[30.] In his witness statement, Rollins described the events on 21 January 2022 leading up to his termination from BPL, and his actual termination, thusly:

13. On Friday morning, 21<sup>st</sup> January 2022, I was summoned to a meeting with Mr. Daniel Ferguson, the Deputy Chairman of the BPL Board together with Whitney Heastie, the CEO. Prior to the meeting that morning, I was reviewing the Warsila Performance Report for Station A for 2021, and determined that because of parameters included in the liquidated damages clause of the Wartsila O&M Agreement, which was aggressively negotiated with Wartsila, BPL can submit a claim to Wartsila for approximately \$2,000,000.00. Upon entering the CEO’s office to meet with Mr. Ferguson, I gave both Mr. Ferguson and Mr. Heastie the good news that we had just saved \$2M

from the liquidated damages clause of the Wartsila contract. Mr. Ferguson said, “*very good, we can surely use the money*” he then told me that the purpose of the meeting was to advise me that “*the Board has decided that your services are no longer needed*”. He then presented me with an envelope. It contained a letter of termination, dated 21<sup>st</sup> January 2022, signed by Chairman Rolle and a check in the amount of \$67,077.33. I asked him how long did I have to remove my personal items from the office, his response was “*this must be done immediately*”. He also directed me to leave the company’s vehicle on the property. I left the CEO’s office and went to my office and quickly packed my personal effects and called my daughter to arrange transportation from the office.

14. The termination letter stated that, effective immediately, my services as Executive Director were no longer required and enclosed a check in the amount of \$67,077.33, which was stated to comprise three (3) months basic pay in lieu of notice as well as other benefits as follows:

i) three (3) months basic pay	\$45,000.00
ii) Total Vacation Owed (206.88 hours)	\$20,277.33
iii) Vehicle Allowance	\$1,800.00

15. The letter also stated that BPL would continue to provide existing medical insurance coverage for me until 30<sup>th</sup> April 2022. I handed the check back to Mr. Ferguson and said “*that’s your check*” meaning that I rejected the amount that was proffered.

[31.] Rollins confirmed in cross-examination that CEO Heastie was at the Termination Meeting and had invited him to the meeting. Rollins believed that CEO Heastie had been aware of the decision to terminate him based on comments he made when inviting him to the Termination Meeting. Rollins said that the Termination Meeting lasted about ten minutes. Rollins admitted that Deputy Chair Ferguson did not say anything to him about him being “*Desmond’s boy*” or his supposed political affiliations during the Termination Meeting. Rollins said that he (Rollins) did not say anything about his termination other than handing BPL back its cheque. Rollins never replied to the 21Jan2022 Termination Letter. In re-examination, Rollins confirmed that BPL did not give him any reasons for his termination and he was never consulted about the alleged redundancy of his position before he was terminated. Rollins said that, when he was terminated, he had twenty-nine months left to work on his contract unless he was terminated for cause or he decided to give notice of resignation.

[32.] Rollins said that, at the time of his termination, he was working on “*several important projects for BPL*” comprising the renewal of the Station A Operation and Maintenance contract (the Wärtsilä contract), the Shell LNG project, an environmental study for the Baillou Hill Road battery backup system (the BST project/battery storage facility/ BESS project), an environmental study of the LNG project at Clifton Pier and a proposed Station D power plant at Clifton Pier. Rollins gave evidence consistent with this when asked in cross-examination what special projects he was working on in September 2021, when the PLP came to power. Rollins accepted that, other than Station A, the projects were at “*the embryonic stages of design*”.

[33.] Rollins accepted during cross-examination that a change in Government could bring about a change in priorities. Rollins said that it had not been announced that there was a change in

priorities under the new PLP Government before he was terminated from BPL but he candidly admitted that that was what they were waiting for. Rollins thus acknowledged that there would likely be some changes in BPL's technical focus as a result of the PLP coming to power. Rollins accepted that, if the PLP changed policy and decided not to proceed with the special projects he was working on, it "*possibly*" would have resulted in there being no special projects in his portfolio. Rollins accepted that special projects could fall within BPL's Chief Operating Officer's responsibilities depending on the scope of budget cuts. Rollins also accepted that, in terms of BPL's corporate structure, he and CEO Heastie were "*perhaps more on a parallel level*".

[34.] Rollins complained in his witness statement that in the approximately two years since his termination from BPL, he had not been employed in the engineering field. Rollins said that he found the job of Executive Director particularly enjoyable and fulfilling as the projects he worked on were dynamic and interesting and he was able to use his engineering qualifications to make decisions and to guide projects to completion. In cross-examination, Rollins said that, since his termination, he had been approached by a few people who were interested in hiring him for a job, but when they learned about his proceedings against BPL, they stopped pursuing him. Rollins candidly admitted when asked by Counsel for BPL that he had not himself sought work since he was terminated.

[35.] Rollins stated in his witness statement that he obtained two quotes to replace his medical insurance when he was terminated. The first quote was from RMS Insurance Agents & Brokers, who offered premiums for two similar options to what he had at BPL with premiums of \$560.28 and \$1510.55. Rollins said the RMS plan with the more expensive premium was most similar to the coverage he had while at BPL. The second quote was from Star General Insurance, who offered plans to convert his existing CG Atlantic plan to an individual plan with either a \$1782.73 premium or \$1,430.73 premium. Rollins said that, after his insurance with BPL expired, he opted to "*go without*" as the average premium was \$1500 per month and he could not afford it at the time. Rollins admitted under cross-examination that he had not pursued a suggestion from an insurance agent to seek quotes from Bahama Health and Colina who offered lower rates.

[36.] In his witness statement, Rollins said that his termination was perceived on social media to be a political termination of a FNM appointee and this was deeply embarrassing for him and his family. Rollins admitted under cross-examination that he took no responsive action to what was circulated on social media. Rollins exhibited an article from *The Gallery* to his witness statement dated 21 January 2021 discussing his and another employee's termination from BPL as an example of the "many" articles speculating about his termination and ridiculing him. While it was mostly accurate, so far as it pertained to him, Rollins' main issue with it appeared to be that it referred to him as a "*political appointee*" and therefore, in his view, it questioned his professional integrity. In questioning by the Court, Rollins defined a "*political appointee*" as someone who is appointed

to a job who has no qualifications for it. Rollins accepted, however, that the term might also mean someone appointed by a political director.

#### CEO Heastie's evidence

[37.] CEO Heastie described himself as an engineer of some 30 years' experience, a former appointee to the Boards of BEC and BPL and the former CEO of BPL, hired pursuant to a written five-year contract of employment dated 16 October 2017 which was set to expire on 16 October 2022. In supplemental questioning during his evidence-in-chief, CEO Heastie said that he worked for BPL's Board from 1 July 2017 to 15 August 2018 as its technical chair and as a director. In cross-examination CEO Heastie said that he, Mr. Bethell KC, Rollins, and others resigned from BPL's Board in August 2018 at the request of Bannister. CEO Heastie served as the CEO of BPL until 21 April 2022 when he was paid out the remaining six months of his contract. Between November 2021 and January 2022, he had been "in and out" at BPL with medical issues.

[38.] In his witness statement, CEO Heastie recounted that, in or about December 2017, BPL's Board terminated Bhatnagar's contract of employment as Executive Director and paid out the remaining eleven months of his contract. CEO Heastie said that Bhatnagar had served as Executive Director from the incorporation of BPL in 2015 under the former PLP administration. CEO Heastie said he was later given Bhatnagar's contract by BPL's Board (of which he was a member at the time) to use as a template to draft Rollins' employment contract, which he said in cross-examination he did not negotiate. CEO Heastie said in cross-examination that he did not have any discussions with Bannister and was not aware that the Minister was keen to appoint Rollins in 2018. CEO Heastie did not wish to say that Rollins' appointment appeared to have been directed by Bannister. CEO Heastie provided no satisfactory answer as to how he could not say how Rollins' appointment came to BPL's Board.

[39.] CEO Heastie, who ultimately executed the contracts on behalf of BPL's Board, said he did not change any of the terms or conditions of Bhatnagar's contract of employment save for increasing the responsibilities in the "*Job Description*", and there was no intent to align Rollins' contract with other executives' contracts. CEO Heastie said that BPL never agreed with Rollins that BPL would have any right to termination by notice under Rollins' contracts. CEO Heastie said that Rollins' contracts made express provision for termination for cause and, in the absence of cause, Rollins' contracts were intended to continue until the expiration of their terms. Such was the position under Bhatnagar's contract, and CEO Heastie said in cross-examination that he was not given any directives to make changes to Bhatnagar's "*template*", which he followed "*chapter and verse*" pursuant to the relevant directive he received from BPL's Board. This was so notwithstanding that CEO Heastie accepted under cross-examination that there was a difference in the role played by Bhatnagar and Rollins, in that Bhatnagar was a member of the Board who was responsible for "*watching*" PowerSecure whereas Rollins was a full-time employee responsible for special projects.

[40.] In his evidence-in-chief, CEO Heastie responded to Attorney Rolle's evidence that there were employees in BPL who could carry out the oversight and management of the technical projects Rollins had within his portfolio as Executive Director. CEO Heastie said that it is standard industry practice around the world that an executive person is made responsible to the Board for executing large-magnitude capital projects, and he referred to his personal experience at Grand Bahama Power. CEO Heastie explained that, by their nature, such projects typically require resources outside of the normal day-to-day running of the business. CEO Heastie said that BPL's technical team would be responsible for technical projects that fell within the company's operating budget for the fiscal year but not capital projects which fell outside the operating, approved budget approved by the Board. CEO Heastie thought that, in light of the state of BPL, it would have been "*virtually impossible*" for anyone inside BPL to participate in a large capital project.

[41.] In his evidence, CEO Heastie acknowledged that BPL's Board would sometimes get approval for large projects from the Cabinet but rejected the suggestion that BPL's projects were "*guided*" by the Government. He said that "*it all resides at the board level*", in that the Board was the one that approved the actual projects and the funding of the projects, though he did acknowledge in his evidence that sometimes the Board would make presentations to Cabinet for approval for projects.

[42.] In his witness statement, CEO Heastie challenged BPL's case that Rollins was made redundant because BPL was streamlining roles and there was overlap between Rollins and himself. Heastie said that his role as CEO was quite different from the role of Executive Director because, while he had responsibility for the day-to-day operations of BPL and all of the executives reported to him and he, in turn, reported to the Chair of the Board, the Executive Director spearheaded, oversaw and ran special infrastructure projects and reported directly to the Chair of BPL's Board. (During cross-examination, Heastie said that, in terms of BPL's corporate structure, Rollins had a "*solid line*" to the Chairman and a "*dotted line*" to him at the executive level.) CEO Heastie exhibited a copy of his former Job Description as CEO to his witness statement to highlight the difference between his role and the role of Executive Director. CEO Heastie said that, during the time Rollins served as Executive Director, he found him to be "extremely competent and reliable". In cross-examination, CEO Heastie suggested that Rollins had been qualified for the role, which was in the nature of a project management role, due to his experience in business and his experience at BTC.

[43.] CEO Heastie said that, in early January 2022, Chairman Rolle met with him so that he could bring him (Chairman Rolle) up to speed on BPL's operations and challenges. CEO Heastie said that Chairman Rolle had told him that he had earlier met with Rollins and "*apprised him of the desire to end his role with BPL as Executive Director*". CEO Heastie said in cross-examination that Chairman Rolle had had meetings with him regarding whether Rollins should still be at BPL. CEO Heastie said that at no time during the January meeting, nor at anytime thereafter, did

Chairman Rolle ever inform him that there would be a streamlining of reporting lines or that he would take on Rollins' role and duties, and he was never consulted about whether he could do so. CEO Heastie added that he was never consulted about Rollins' competence or capability or about whether Rollins' duties and responsibilities were best aligned with his duties as CEO. CEO Heastie also said that he was never asked to suggest someone to take on Rollins' duties and responsibilities.

[44.] CEO Heastie said that, after Rollins was terminated, he was not given any of Rollins' previous responsibilities and there was no way for him or anyone else involved in the day-to-day operations of BPL to carry out those responsibilities, in addition to their own. CEO Heastie said that the projects Rollins was working on languished after Rollins' termination until he (CEO Heastie) was paid out the remaining six months of his contract on 21 April 2022. According to Heastie, "*things fizzled as the Board was trying to make decisions on all the special contracts that Mr. Rollins was working on such as the Shell LNG...Power Project, which was a \$200 to \$300 million dollar project, and included the construction of another power station at Clifton Pier (Station D)*". CEO Heastie said that the projects "*fell by the wayside*", no replacement was hired and no new executives who reported to Heastie assumed any of Rollins' previous responsibilities. Heastie admitted he never asked Chairman Rolle who would handle Rollins' responsibilities.

[45.] When asked by Counsel for BPL what technical projects were underway at BPL when the PLP came to power in September 2021, CEO Heastie identified the battery storage facility, Station D, the environmental impact assessment for the battery storage facility and the environmental impact assessment for Station D and the LNG project. CEO Heastie accepted Station A had been completed and was operational by December 2019 although it was not a perfect product. CEO Heastie appeared to accept that, while the environmental impact assessments were "up and running", none of the other projects had reached an advanced stage.

[46.] CEO Heastie said that the change in Government did not automatically affect the projects Rollins was working on and work continued at BPL in anticipation that the rate reduction bond (which was the "impetus to fuel the projects" in his words during cross-examination) would move forward. CEO Heastie did not deny the rate reduction bond was eventually not proceeded with, but said that, at the time, BPL was working with various vendors on moving the projects forward without additional funding, as there was already funding in place for the work they were doing, until such time as a decision was made to "*put the fence down*".

[47.] CEO Heastie suggested there was never a clear-cut decision to "*put the fence down*". CEO Heastie said that there were "*a number of individuals in the Office of the Prime Minister*" who suggested that the rate reduction bond was dead but there were others who indicated that the funding was operational in January 2022. CEO Heastie could not recall a clear document or e-mail informing him that BPL's special projects were not going to continue. However, when asked



if he got an indication from the Board that the projects were in a stalled or stop position, he said that Chairman Rolle had told him in January 2022 that “*there seemed to be no movement*” and the Government was still in discussions relative to the rate reduction bond.

[48.] Inasmuch as (on his evidence) CEO Heastie had gotten an informal indication that the projects might not proceed because the rate reduction bond might not be proceeded with, CEO Heastie did not accept that the negative fate of the rate reduction bond necessarily impacted Rollins’ work as Executive Director. According to CEO Heastie, the battery storage facility had already been funded and it required someone of Rollins’ “magnitude”. CEO Heastie believed that just one large capital project alone would be enough to occupy an executive person according to industry standards. CEO Heastie said that he never spoke about industry standards with Chairman Rolle; Chairman Rolle had simply asked him about whether Rollins was needed at BPL and his evidence was that he told Chairman Rolle that, as the projects were continuing, BPL would need someone at the executive level to “*run interference*” and Rollins served that purpose.

[49.] CEO Heastie could not say who managed the battery storage facility project after Rollins was terminated and could not say whether an internal person took responsibility for it. CEO Heastie accepted that there was a Chief Operating Officer at BPL when he was CEO of BPL. CEO Heastie also accepted that the Chief Operating Officer was a technical engineering post and that the post was responsible for managing and overseeing directors of a technical nature and junior staff workers. However, CEO Heastie did not accept that the Chief Operating Officer would be responsible for dealing with projects of a capital nature outside of BPL’s approved annual budget. CEO Heastie thought that it would have been “impossible” for them to do so in addition to their day-to-day responsibilities. CEO Heastie testified that there had not been special projects at BPL of a magnitude comparable to what Rollins had been assigned, for some twenty years.

[50.] CEO Heastie said in cross-examination that he never attended any meeting with Rollins and Chairman Rolle where Chairman Rolle called Rollins “*Desmond’s boy*” or questioned whether Rollins should continue to be employed at BPL. CEO Heastie also said he was not privy to any conversation with Chairman Rolle or any member of BPL’s Board to the effect that Rollins was to be terminated because of his political persuasion. CEO Heastie said that he was never told by Chairman Rolle or any member of BPL’s Board that they had a political vendetta against Rollins. CEO Heastie claimed that he attended the First New Board Meeting (although, confusingly, he could not recall being present at a meeting where the senior executives were asked to introduce themselves to the Board.)

[51.] CEO Heastie denied that he was aware of BPL’s Board’s decision to terminate Rollins prior to the Termination Meeting. CEO Heastie admitted that he never made any inquiries as to why Rollins was terminated after Rollins was terminated.

### Chairman Rolle's evidence

[52.] Chairman Rolle is an executive with a background in economics and accounting. Chairman Rolle said that he was appointed Chairman of BPL on 22 November 2021. Chairman Rolle said that his role is to chair all Board meetings and to provide directives, where appropriate, to the CEO to ensure the smooth and efficient operation of BPL. In cross-examination, Chairman Rolle explained that he is not a technical person and is not responsible for BPL's day-to-day operations; as Executive Chairman, his mandate was to ensure Government policy was adhered to by BPL.

[53.] Chairman Rolle said that when he assumed his role as Chairman of BPL's Board, BPL had "*incredible debts*" and there were ongoing challenges of generation, an aging plant and staff morale. Chairman Rolle said that he "*immediately*" sought to get an overall assessment of the role of each member of the executive management team and to better understand how BPL worked, from "the experts". As part of this exercise, Chairman Rolle held a series of meetings with CEO Heastie and met with the executive team (including Rollins) and each of the roles of the team members were discussed and suggestions and determinations were made.

[54.] Chairman Rolle said that he was introduced to Rollins, as Executive Director, through CEO Heastie in November 2021. (Chairman Rolle admitted in cross-examination that he knew Rollins prior to his appointment). According to Chairman Rolle, at that time, CEO Heastie informed him that Rollins directly reported to him and his role was to oversee matters assigned to him by the CEO which usually meant matters which fell under the purview and in the remit of the CEO. Chairman Rolle said that he tried to better understand Rollins' role and how he brought value to BPL but struggled to understand why BPL in essence required two CEOs at an annual cost of \$500,000.

[55.] Chairman Rolle said that BPL's Board took it as its "*first mandate*" to correct the perception that they were going to perform their roles and duties in a cavalier and unprofessional manner. Chairman Rolle admitted he met with Rollins in December 2021 and they discussed his functions and responsibilities at that meeting. However, Chairman Rolle strenuously denied in cross-examination that he advised Rollins that certain members of the Cabinet were calling for his and CEO Heastie's termination and he asserted Rollins was lying. Chairman Rolle also denied asking Rollins to indicate what he would willingly accept as a severance package. Chairman Rolle maintained in cross-examination that he never spoke to Rollins about him leaving BPL and testified that no member of the Cabinet had ever asked him as Chairman to have any member of BPL's executive team removed or to have anyone appointed as executive. Chairman Rolle denied he also requested CEO Heastie's removal after Rollins' termination. He said it was a Board decision because the Board was not satisfied with the direction BPL was going in.

[56.] Chairman Rolle stated that, at the First New Board Meeting, BPL's Board discussed the financial implications of having CEO Heastie as CEO and Rollins as Executive Director and

decided that there was no need for BPL to have the role of Executive Director. As a result, the Board decided to make Rollins redundant under the terms of the *Employment Act*, as it was in BPL's best interests. Chairman Rolle said in cross-examination that no one person decided to terminate Rollins and that the Board made the decision to terminate him after consulting CEO Heastie on who was needed, valuable or contributing. Chairman Rolle also stated that BPL's Board was of the view that it had the right to decide on the right team to lead BPL and, according to Chairman Rolle, Rollins did not add value to the team and "in many respects" was redundant. Chairman Rolle said it would have been a bad business decision to continue to employ someone whose contributions were diminished or no longer needed.

[57.] Chairman Rolle admitted that he did not consult with anyone other than CEO Heastie about Rollins' functions and responsibilities. Chairman Rolle suggested in his evidence that CEO Heastie was in "100%" alignment or concurrence with Rollins' termination. Chairman Rolle said that he would be surprised to learn that CEO Heastie had given evidence in the proceedings that he had told Chairman Rolle that Rollins was needed to carry out the functions he was performing. Chairman Rolle suggested that Heastie had changed his position. Chairman Rolle said that he would never have supported a board decision to remove personnel the CEO insisted there was a need for. Chairman Rolle himself could not speak to the details of the projects Rollins worked on. The following exchange occurred between Counsel for Rollins and Chairman Rolle in cross-examination:

Q. What were the special projects or functions that Mr. Rollins was overseeing?

A. There were some general projects, but the one in particular I think occupied most of his potential would have been a project that we were doing on Station A, but there may have been other functions assigned to him or he was related to as per the CEO. I cannot give you specifically all of the functions that he was engaged in.

Q. Why is that, sir? Why can't you give me all of the functions if you made a determination that his services were no longer required to perform those functions?

A. The conclusions that were drawn as it relates to Mr. Rollins' role at BPL, was done in consultation and in conjunction with the CEO who got an overview of the individual responsibilities.

[58.] Chairman Rolle was cross-examined about some of the projects that Rollins had under his portfolio. Chairman Rolle said he did not inquire of CEO Heastie about what the LNG project was all about or how far advanced it was or about the BST Project (which Chairman Rolle acknowledged was one of the projects Rollins was involved in). When asked about the AMI project, Chairman Rolle said that he inquired with CEO Heastie:

"Only to the extent from the board perspective. We discussed the viability of certain projects, the capability of BPL to undertake those projects, and the projects that were discontinued, such as this one, was discontinued because of funding, as a result of funding."

[59.] Mr. Bethell KC challenged Chairman Rolle in cross-examination on the quality of the Board's alleged decision to dismiss, which led to the following exchange between them:

Q...Now, the only conversation you have had regarding Mr. Rollins was a purported conversation with Mr. Heastie, wherein you say that Mr. Heastie stated that Mr. Rollins really wasn't required. Is that the basis that you came to the conclusion that he should be made redundant?

A. It wasn't on the basis of a single conversation. It was on the basis that in the period of time that the board was in place, and they took a look at the management, and they assessed what was going on – And in conversation I spoke with Mr. Heastie. It was not the only conversation me and Mr. Heastie had on this matter. So the board itself determined in analyzing the roles of persons such as Mr. Rollins; what were they contributing; what was the value that was being given, and on that basis, they made a decision. That's what I'm saying.

Q. It's just that, Mr. Rolle, your board was in place for a little over 60 days, and yet you were able, your opinion, to analyze the functions and responsibilities of Mr. Rollins without exploring what exactly he did not with respect to LNG and how advanced that was; the AMI and how far that was; or the BST project, but you were nevertheless able to conclude that his services were not required?

A. Some of the projects that you were mentioning, the board quickly determined that they were not projects that were going to be continued at least in this interim. The LNG project was not something that was going to be. These contributed to the major works that Mr. Rollins was doing. The board made a determination.

Q. What about the rate reduction bond?

A. What about it?

Q. That was discontinued as well?

A. That's correct.

[60.] Chairman Rolle's evidence was that the LNG project and the AMI project had been discontinued and that the BST project had continued under internal management.

[61.] Chairman Rolle insisted that Rollins was not terminated due to any political affiliations he had and that he (Chairman Rolle) was personally unaware of Rollins' political affiliation and never inquired of him to disclose that political affiliation. Chairman Rolle had had sight of the 11Jul18 Appointment Letter but he did not accept in cross-examination that Rollins' appointment to the position of Executive Director was politically motivated. He limited himself to remarking that it seemed "*unusual*" for an appointment to be made at the company level by someone other than the Board. Chairman Rolle maintained that Rollins' termination was done fairly, lawfully and without discrimination.

[62.] In cross-examination, Chairman Rolle could not recall whether BPL ever requested or obtained a written legal opinion from the Office of the Attorney General before terminating Rollins but admitted that he had "discussions" about Rollins' contract. He said that, in deciding what to pay Rollins on his termination, BPL followed its own policies contained in its "*Executive Handbook*", which he had had no reason to believe did not comply with the law. He said there was no reason Rollins was not offered prorated gratuity other than that Rollins' termination was done on the basis of what was "*allowed*" in the Executive Handbook. He did not attempt to ascertain

what the legal position was on a termination or redundancy apart from following the Executive Handbook. He said that the 21Jan21 Termination Letter (which did not give reasons for the dismissal) was drafted on the advice of BPL's HR director and there was no ulterior motive or sinister reason in the letter not giving a reason for Rollins' dismissal.

#### Attorney Rolle's evidence

[63.] Attorney Rolle joined BPL in December 2017 as its in-house Counsel and the Corporate Secretary to BPL's Board. She was BPL's Director of Legal Affairs at the time of trial. She said that her primary duty was to address legal matters for BPL and this included employment related matters.

[64.] Attorney Rolle stated that she is familiar with Rollins. She noted that he was a member of BPL's Board during the period 1 July 2017 to August 2018 which was chaired by Darnell Osborne. That Board was "dismissed" on 14 August 2018 (the Board in fact resigned) and a new Board was appointed on 17 August 2018 which did not include Rollins. Attorney Rolle stated that the only member of the Board appointed on 1 July 2017 who was "reinstated" on the subsequent Board constituted on 17 August 2018 was Mr. Bethell KC. Attorney Rolle stated she only became aware of Rollins' appointment as Executive Director on 13 November 2018 when Mr. Bethell KC brought it to the Board's attention. She subsequently became aware of the 11Jul18 Appointment Letter. In cross-examination, she asserted Rollins' employment as Executive Director, which she accepted was managerial in nature, was continuous and not for a fixed term.

[65.] Attorney Rolle said that BPL's senior management structure included a CEO, Executive Director, Chief Operating Officer and Chief Financial Officer, and that was the structure when Rollins was engaged as Executive Director. Attorney Rolle gave hearsay evidence that when Bhatnagar served as Executive Director, his role was to address complex financial matters for BEC/BPL as well as to monitor milestones alongside the national energy policy. He was not responsible for special projects of an engineering nature like Rollins. Traditionally, those matters were handled by the CEO, the Chief Operating Officer, the Director of Engineering and project engineers. Rollins was the first person to be appointed Executive Director of Special Projects at BPL. She accepted during cross-examination that there was a "*political nature*" to his appointment.

[66.] Attorney Rolle explained that, to her knowledge, Rollins' contract was not an ordinary one for BPL's employees and did not reflect the usual terms included in the CEO's contract. She said in cross-examination that Rollins' form of termination clause was not ordinarily included in BPL's contracts of employment. Attorney Rolle gave hearsay evidence that Bhatnagar was a member of BPL's Board while Executive Director at BPL and that his contract of employment specifically addressed his treatment as a Board member by limiting the circumstances in which he could be terminated while serving as a Board member. That rationale did not apply to Rollins because he resigned from BPL's Board in August 2018. According to Attorney Rolle, when Rollins became a

full-time employee, his termination was to align with that of other senior managers of BPL, i.e. there were to be “*reasonable notice terms, any other term that apply to the executive management*”.

[67.] Attorney Rolle said that, as far as she was aware, BPL could render Rollins redundant and there was no prohibition in Rollins’ contract from doing so. Attorney Rolle said that she would be surprised if Bannister would have gone so far as to subject BPL to “*such egregious terms without the right to make [Rollins] redundant*”. This was explored in cross-examination, where Attorney Rolle stated:

My basis for saying that is because there have been several projects throughout the course of the time that I have been in there, that were abandoned, and Mr. Rollins was principally there for a particular project, then to have a contract that only allowed for specifically or expressly on the grounds of the termination in those circumstances that are contained in there [in the contract], I find it very – I’d be surprised that that was the intent.

[68.] Attorney Rolle stated that, at the First New Board Meeting, Chairman Rolle discussed the downsizing of the management team and the duplication of the roles of CEO Heastie as CEO and Rollins as Executive Director. BPL’s Board formed a position on the financial implications of having both a CEO and an Executive Director and Rollins was offered compensation under the terms of the *Employment Act*, which he refused. Attorney Rolle could not identify the particular provision of the *Employment Act* which entitled Rollins to the three months’ pay that BPL proffered.

[69.] Attorney Rolle said that, as far as she was aware, there were employees at BPL who were competent to carry out the Executive Director’s oversight and management of technical projects. Attorney Rolle provided the Job Description of the Chief Operating Officer when Rollins was appointed. Attorney Rolle gave hearsay evidence that, historically, in-house technical teams would handle technical projects. Attorney Rolle gave as examples during cross-examination the Wilson City Power Station in Abaco and Station C at Clifton Pier, which were handled by BPL’s engineering division. Attorney Rolle thought that CEO Heastie’s evidence about the need for a special projects manager was wrong, “*historically speaking*”.

[70.] Attorney Rolle stated that, when Chairman Rolle was appointed to BPL’s Board, the special projects underway at BPL were paused pending guidance from the Government. Attorney Rolle stated that the BESS project continued, the LNG Project in its previous form was in abeyance, the rate reduction bond was cancelled and the Wärtsilä Operation and Management Agreement came to an end.

[71.] Attorney Rolle confirmed that she believed Rollins had been made redundant and said that the reason for his redundancy was that the projects that Rollins headed were no longer “on stream” and there was no decision made as to whether they would be brought back “on stream”. She denied

the suggestion that Rollins' redundancy was a "complete sham", and "made up after the fact". She was not aware of whether Rollins had been given any reason for his redundancy and could not recall whether she had advised BPL about effecting the redundancy.

[72.] Attorney Rolle acknowledged she would have reviewed the 21Jan21 Termination Letter in the course of her professional duties, although she said Rollins' termination was dealt with by CEO Heastie and the Director of HR. She could not recall the letter speaking to redundancy or giving a reason for the redundancy but, after reading it, suggested that the phrase that Rollins' services were "*no longer required*" indicated redundancy.

[73.] When questioned about the minutes of the First New Board Meeting, Attorney Rolle said she could not recall the details about what Director Simms' specific concern about terminating Rollins was or the Board discussion which ensued. She offered that the Board's discussions were in line with continuing a contract at Rollins' level when considering other factors such as the role and what was being done and the fact that several projects had come to an end. Attorney Rolle could not recall who advised Chairman Rolle that three months' notice pay should be offered to Rollins when terminating him but appeared to recall it was discussed that it would be reasonable to terminate Rollins by offering him three months' pay.

[74.] Attorney Rolle confirmed that the Board took into account that BPL was in a poor financial state but could not say whether the decision not to pay Rollins the balance of his contract on termination was purely based on the financials of the company. Attorney Rolle was not certain whether the Board's position was that they could not afford to pay Rollins out. Attorney Rolle could not recall any discussions in which the Board was informed that the Cabinet wanted Rollins removed from his post.

[75.] When questioned by the Court, Attorney Rolle could not recall whether Rollins negotiated the 12May21 contract, only that the subject of extending Rollins' contract had come up. Attorney Rolle was not aware of whether Rollins was paid the 15% gratuity under his contract every year during the course of his engagement at BPL, but she accepted that, ordinarily, if someone is entitled to gratuity at BPL, they would get it every year.

### **Submissions**

[76.] Counsel for Rollins lodged written opening submissions dated 5 September 2023 and written closing submissions dated 25 January 2024. Counsel for BPL lodged written opening submissions dated 7 September 2023 and written closing submissions dated 26 January 2024. A summary of the parties' respective written submissions is set out below.

#### Rollins' Submissions

##### *Wrongful dismissal*

[77.] Counsel for Rollins submitted that the burden of proof to show that Rollins was not wrongfully dismissed is on BPL. Neither of Rollins' three-year fixed term contracts contained a term whereby BPL could terminate it earlier on notice, without cause. BPL breached Rollins' contract by unilaterally terminating it twenty-nine (29) months prior to its expiration, and without cause, by tendering a cheque comprising three months' basic pay, 206.88 hours of accrued vacation, vehicle allowance for three months and continuing coverage for three months. This was not something Rollins agreed to.

[78.] Counsel for Rollins rebuffed the "conjunction" that there was an implied term permitting BPL to terminate Rollins on three months' notice. Counsel drew the Court's attention to the fact that the Minutes of the First New Board Meeting referred to Rollins being "offered" 3 months' notice pay which is not the language of entitlement. In addition, a term can only be implied where it is necessary to give meaning to the presumed intention of the parties (**Shirlaw v Southern Foundries Ltd** [1939] 2 All ER 113) or where it appears reasonable in the circumstances to do so to give business efficacy to the contract (**Liverpool City Council v Irwin** [1977] AC 239).

[79.] Mr. Bethell KC submitted that Rollins' fixed term contract was subject to the provisions of the *Employment Act*. However, **section 4** of the *Employment Act* contains a proviso for better terms and conditions for the employee. That BPL had no ability to terminate without cause under the contract negotiated between the parties was a better term or condition of the contract for Rollins than the minimum rights prescribed by the Act and therefore the Act cannot derogate from the contract in such circumstances. In any event, BPL failed to pay Rollins in accordance with **section 29** of the *Employment Act* if Rollins' contracts were continuous as alleged by BPL in its Defence.

[80.] Counsel for Rollins submitted that BPL knowingly and purposely failed to provide sufficient compensation for the remainder of Rollins' contract and therefore, based on the loss and damage he has proven, Rollins is entitled to recover \$592,951.63 comprising (i) salary for the remainder of the fixed term of the 12May21 contract (\$435,000), (ii) annual gratuity of 15% of salary for 3 years (\$81,000), (iii) vehicle allowance for 29 months at \$600 per month (\$17,400), (iv) accrued vacation of 206.88 hours (\$20,277.33) and (v) cost of premiums for replacement medical insurance at \$1,510.55 per month or \$16,419.07 per annum (\$39,274.30).

#### *Unfair dismissal*

[81.] Rollins' unfair dismissal claim was premised on the fact that his termination was allegedly motivated by his perceived political affiliation with the former FNM Government and therefore in contravention of **section 6** of the *Employment Act* and "grossly unfair".

[82.] Counsel for Rollins submitted that Rollins had a discernable political association, having been appointed by Bannister instead of BPL's Board, and was perceived as being closely associated with Bannister. Counsel submitted, citing **Lee v Ashers Baking Company Ltd** [2018]



IRLR 1117 and **Gill v Northern Ireland Council for Ethnic Minorities** [2001] NICA 30, that “political opinion” used in **section 6** of the **Employment Act** should be construed to encompass association with a particular political party or ideology. Counsel submitted that, without that perceived or actual affiliation, Rollins would not have been terminated.

[83.] Relying on **Cartwright v US Airways** [2016] 1 BHS J. No. 96, Mr. Bethell KC submitted that the Court must assess whether Rollins’ dismissal was unfair looking at all the circumstances of the case and by arriving at a decision based on the substantial merits of the case. Mr. Bethell KC further submitted, relying on **BMP Limited d/b/a Crystal Palace Casino v Ferguson** [2013] 1 BHS J. No. 135, that the dismissal does not have to fall within **sections 36, 37, 38 and 40** of the *Employment Act* in order to be unfair.

[84.] Counsel for Rollins submitted that **sections 33 to 36** of the *Employment Act* place the legal burden of providing the reason for the dismissal on the employer. Relying on **Maund v Penwith District Council** [1984] IRLR 24, Mr. Bethell KC submitted that if the employer cannot satisfy the Court as to the reason for which the employee was dismissed, the dismissal must be regarded as unfair. Counsel submitted that if either of BPL’s pleaded reasons were “made out”, Rollins would have to produce evidence casting doubt upon the reason in order to “reinstate” the burden to prove the reason on BPL.

[85.] Relying on **Nagarajan v London Regional Transport** [2000] 1 AC 501, Mr. Bethell KC cautioned the Court that direct evidence of a decision to discriminate will seldom be forthcoming and therefore the grounds of the decision will have to be deduced or inferred from the surrounding circumstances. Counsel submitted that the unfairness of Rollins’ dismissal was evident in all the circumstances, because his dismissal was for no genuine reason other than because he had been appointed Executive Director by the FNM. Counsel invited the Court to find the reason of redundancy was an invention and, relying on **Royal Mail Group Ltd v Jhuti** [2020] ILR 129, submitted the Court was duty-bound to “penetrate through the invention”.

[86.] In support of Rollins’ unfair dismissal claim, Counsel for Rollins drew the Court’s attention to the following matters, among others:

- (i) no reason for Rollins’ dismissal was given in the 21 January 21 Termination Letter or by Deputy Chair Ferguson or CEO Heastie at the Termination Meeting.
- (ii) Chairman Rolle admitted that he met with Rollins once to discuss his role and it may have been when Rollins raised the issue of whether to renew the Wäertsilä contract. He denied the particulars of the conversation that Rollins gave, however, Chairman Rolle was aware Rollins had been appointed by Bannister and was aware Rollins had 2.5 years left in his contract with no early notice of termination provision.
- (iii) there is no evidence in any assessment document or any Board minutes of any assessment of BPL “alongside its core objectives to meet the demands of the consumer

public which resulted in the Board determining that Rollins held no special or peculiar qualifications to warrant his continued role”. The minutes of the First New Board Meeting did not reflect a reason or Rollins’ dismissal at all.

- (iv) redundancy, specifically, BPL’s decision that there was no need for it to have the role of Executive Director, was advanced as a reason for Rollins’ dismissal for the first time in Chairman Rolle’s witness statement and was directly controverted by CEO Heastie’s evidence.
- (v) Chairman Rolle stated in cross-examination that he could not have determined whether Rollins was needed except by asking CEO Heastie and that CEO Heastie completely concurred with the determination and told him on several occasions that Rollins was not needed. However, CEO Heastie came to court to give evidence on behalf of Rollins and CEO Heastie’s evidence was that he felt Rollins was still needed, even after he got an informal indication in January 2022 that the rate reduction bond was not going to proceed.
- (vi) CEO Heastie’s evidence was that Chairman Rolle indicated to him that he met with Rollins and apprised him of the desire to end his role yet CEO Heastie’s evidence was that he was not consulted on the streamlining of Rollins’ role. This was because Cabinet also wanted CEO Heastie’s head and CEO Heastie was terminated in April 2022.
- (vii) the assertion that Rollins’ termination was a redundancy was exposed as a sham because BPL’s witnesses admitted that none of the indicia of a termination for redundancy were met – the payment to Rollins was not sufficient to meet **section 26** of the *Employment Act* due to the length of Rollins’ employment, Rollins was not consulted, the Minister of Labour was not consulted and redundancy was not given as the reason for dismissal in Rollins’ termination letter.

[87.] Mr. Bethell KC submitted that **BMP Limited d/b/a Crystal Palace Casino v Ferguson** [2013] 1 BHS J. No. 135 sets out what damages can be awarded in a case of unfair dismissal. The basic award is calculated in accordance with **section 46** of the *Employment Act* and a compensatory award is calculated in accordance with **section 47** but **section 48** puts a limit on the amount of compensation that may be awardable. The combined award under the two heads should not exceed twenty-four months’ pay in the case of a supervisory or managerial employee.

[88.] Counsel for Rollins expounded calculations in favour of a basic award for unfair dismissal in the amount of \$35,826.94 and submitted that the maximum amount of damages should be awarded for the compensatory award. Counsel requested that the compensatory award be awarded for the period, to start from the end of Rollins’ contract, had it not been terminated early, and to continue for twenty-four months thereafter, i.e. until 30 June 2026, so there is no deduction or set off between the damages for wrongful dismissal and the compensatory award.

#### Discrimination claims

[89.] Mr. Bethell KC invited the Court to award compensatory and vindictory damages pursuant to **Article 26(2)** of *the Constitution*, taking into consideration any amount already awarded for compensatory damages for unfair dismissal, so as to vindicate Rollins' right not to be unlawfully discriminated against for his political opinion. Rollins also advanced an alternative claim for compensatory damages in the amount of \$461,238.14 relying on **section 6** of the *Employment Act* alone.

[90.] Mr. Bethell KC proffered **Daleon Brown v The Attorney General** 2019/CLE/gen/FP/00110 (5 February 2021), a case involving a breach of **Article 19** of *the Constitution*, as an instructive case in which \$40,000 was awarded as vindictory damages. Counsel noted the Court could, in its discretion, make the compensatory award for unfair dismissal sufficient to cover this aspect of the damages sought by Rollins.

#### BPL's Submissions

##### *Rollins failed to discharge the burden of proof*

[91.] Relying on **sections 82 to 84** of the *Evidence Act*, **Gardiner v Emerald Bay Resort Limited** [2009] 1 BHS J. No. 25, **Lockhart and Munroe v Mutsui Sumitomo Insurance (London Management) Limited** [2010] 3 BHS J. No. 38, **Colco Electric Co v Gold Circo Co** [2003] BHS J. No. 53 and an extract from **Halsbury's Laws of England** (Volume 11, 2015), Counsel for BPL submitted that Rollins failed at trial to discharge the burden of proof to prove the claims he alleged in the action on a balance of probabilities and, in particular, failed to show that his termination was wrong in law, motivated by political bias and unconstitutional.

##### *Rollins was made redundant*

[92.] Mr. Rigby KC submitted on behalf of BPL that BPL provided cogent and reliable evidence that Rollins was dismissed on the ground that his position was redundant. In this connection, Mr. Rigby KC relied on **sections 26 and 27** of the *Employment Act* and **Eversmyer v February Point Resort Estates** [2013] 1 BHS J. No. 25, a case in which a construction supervisor was found to have been terminated for redundancy when he was terminated because a decline in business and a decline in requests for the construction of new homes diminished the need for his position.

[93.] Counsel for BPL submitted that Chairman Rolle and Attorney Rolle provided "consistent and reliable" evidence that Rollins' position had become redundant and was no longer needed because the projects that Rollins was in charge of were mostly discontinued and Rollins was Executive Director with responsibility for special projects. Counsel submitted that the "clear inference" is that Rollins was no longer required to manage the projects to which he was assigned because they were not continuing. As Rollins had "no other assigned duties", "it was incumbent on [BPL] to render him redundant". Counsel submitted it was irrelevant that Rollins' termination letter did not indicate he was being rendered redundant but, in any event, the termination letter used the phrase "no longer required", which is capable of indicating redundancy. Counsel submitted that Rollins' contract of employment did not expressly limit the right to dismiss for

redundancy and, as the contract did not address redundancy, the parties did not intend to limit the scope of the *Employment Act*. Such a limitation would not make no business sense in the circumstances of how Rollins was employed and the role he was appointed to perform.

*Rollins was not dismissed for his political affiliation*

[94.] Mr. Rigby KC submitted that Rollins was not terminated for his political views or subject to political discrimination during his employment at BPL. Rather, Rollins was terminated because BPL's Board completed an assessment of the roles at management level and determined that Rollins' role was no longer required.

[95.] Counsel for BPL submitted, relying on **McConkey v The Simon Community** [2009] UKHL 24, that, even if it is true that Rollins was referred to as "Desmond's boy", that reference does not fall within the definition of "political opinion". Counsel further submitted that the reference could be positive, could have simply been a reference to who was responsible for Rollins' hiring, and should not be linked to the reasoning for Rollins' termination.

[96.] Mr. Rigby KC submitted that, based on the evidence, Rollins was not terminated due to his political affiliation or views and invited the Court to reject Rollins' claims of political discrimination and victimization. Mr. Rigby submitted the totality of the evidence showed there was no political bias against Rollins after the PLP came to power in September 2021 or by BPL's new board. Mr. Rigby drew attention to the following (which retains his characterization of the evidence):

- (i) Rollins admitted he had a mostly cordial relationship with Chairman Rolle, who is the person whom Rollins claims fired him for his political views;
- (ii) CEO Heastie admitted that he had no knowledge of the Chairman or other Board members having a political vendetta against Rollins;
- (iii) Rollins and Chairman Rolle both acknowledged the capital projects under Rollins' remit were halted by the PLP;
- (iv) Chairman Rolle explained how BPL's Board came to the decision how Rollins was no longer required and that his position had become redundant;
- (v) Attorney Rolle's evidence was that BPL did not need to hire someone specifically at the corporate level to handle capital projects; and
- (vi) both Rollins and CEO Heastie acknowledged the similarity of their roles.

*Rollins was not wrongfully dismissed*

[97.] Counsel for BPL submitted that Rollins was not wrongfully dismissed but was dismissed in accordance with the provisions of the *Employment Act* on the ground of redundancy. Relying on **Island Hotel Company Limited v John Fox** IndTribApp. No. 54 of 2017, Counsel submitted that to establish wrongful dismissal an applicant must show that the employer did in fact terminate the contract without notice or with inadequate notice and that the employer was not justified in

doing so. Counsel submitted that Rollins was not wrongfully dismissed as Rollins was dismissed for redundancy under the *Employment Act*. Counsel submitted that Rollins was paid in accordance with the requirements of **section 26** of the *Employment Act* and that Rollins was not a manager or supervisor because, as a matter of fact, he had no employees, citing **Commonwealth Brewery Ltd v Patrice Ferguson** IndTribApp. No. 86 of 2021.

[98.] Mr. Rigby KC, relying on **Ian Charles v The Board of Governors of H. Lavity Stoutt Community College** Claim No. BVI HCV 2010/0049 and **Howard v Benson Group Inc. (The Benson Group Inc.)** [2016] ONCA 256 submitted that Rollins did not have a fixed term contract because the fixed term contract contained express terms for its early termination and was absent express words that sought to remove the chance of early termination. Mr. Rigby KC submitted, in the alternative, that if Rollins had a fixed term contract, it was still capable of early termination by cause and by redundancy. Mr. Rigby KC went on to submit that the Court should imply a term that the parties intended the contract to be terminable by three months' notice, citing **Geys v Société Générale, London Branch** [2013] 1 AC 523.

[99.] In addressing whether Rollins was entitled to be paid out the remainder of his contract, Counsel for BPL submitted that **Howard v Benson Group Inc.** is “wholly distinguishable” because Rollins does not have a fixed term contract but one that could be terminated with reasonable notice or with cause. Alternatively, the Court should find that, even if Rollins has a fixed term contract, the common law presumption of reasonable notice on termination remained as Rollins' contract contained an early termination clause. By including a termination clause, the parties intended to make it possible for the employment contract to be terminated early. Such a clause limits BPL's liability at termination to the period of notice set out in the contract or alternatively reasonable notice according to legal standards per **Howard v Benson Group Inc.**

#### *Unfair dismissal*

[100.] Counsel for BPL referred to **BMP Limited d/b/a Crystal Palace Casino v Ferguson** [2013] 1 BHS J. No. 135 as providing a broad overview of what may constitute unfair dismissal and referred to **Edwards v Chesterfield Royal Hospital NHS Foundation Trust** [2011] UKSC 58 at para [40] as providing a “concise exposition of examples of unfair dismissals”. Counsel submitted that Rollins was not unfairly dismissed because his theory of case that he was subject to humiliation and degradation because of his political affiliation and not paid out the balance of his contract was flawed because Rollins was terminated for redundancy and Rollins did not have a fixed term contract (or if he did, it made a provision for its lawful early termination because his contract contained a clause that allowed for its early termination).

#### **Issues**

[101.] The parties did not agree on a list of issues for the Court's determination and the issues separately presented by them were not identical. Having reviewed both parties' Statements of Facts and Issues, I shall adapt the more comprehensive list provided by Rollins, but I will consolidate

the issues for convenience's sake and I will address the distinct issues raised by BPL when dealing with the consolidated issues. In my view, the issues that require determination (with my modifications) are:

- (i) Was Rollins dismissed in breach of contract in all the circumstances of the case and, if so, to what compensation is he entitled?
- (ii) Was Rollins unfairly dismissed in all the circumstances of the case and, if so, to what compensation is he entitled?
- (iii) Was Rollins discriminated against on the basis of political opinion contrary to **section 6** of the *Employment Act* or **Article 26(2)** of the *Constitution* and, if so, to what compensation is he entitled?

### Discussion and analysis

[102.] In the paragraphs that follow, I discuss and analyse the issues that I have identified above in the order that I have identified them. I make the findings of fact that I do on the balance of probabilities, having considered the evidence of all of the witnesses and observed their demeanor under cross-examination, and having studied all of the agreed documents.

*Issue 1: Was Rollins dismissed in breach of contract in all the circumstances of the case and, if so, to what compensation is he entitled?*

[103.] It is a breach of contract for an employer to terminate an employee prematurely (which expression I use to include termination without notice or with inadequate notice in the case of indefinite employment) without just cause. At common law, the measure of damages for premature termination yields different results depending upon whether the contract at issue is one for a fixed term or one for an indefinite term. In **Gunton v Richmond-Upon-Thames London Borough Council** [1981] Ch 448, a wrongful dismissal case, *Brightman LJ* said at page 473:

An employee's remedy, if he is unlawfully dismissed by his employer, is damages. He cannot obtain an order for specific performance because it is not available to compel performance of a contract of service against an unwilling employer. He cannot sue for his salary or wages as such. By necessity his remedy is confined to damages. An unlawful dismissal is ex hypothesi a premature dismissal. The damages recoverable, having regard to the plaintiff's duty to mitigate his damages, are the moneys needed to compensate the plaintiff for his net loss of salary or wages during the period for which the defendant was bound by his contract to employ the plaintiff. In the case of a fixed term contract, the assessment will extend over that fixed term. In the case of a contract terminable by notice, the assessment will extend over the period which would have had to elapse before the defendant could lawfully have dismissed the plaintiff: see McGregor on Damages, 13th ed., paras. 884 to 888.

[Emphasis added]

[104.] In **Howard v Benson Group Inc. (The Benson Group Inc.)** [2016] ONCA 256, the Ontario Court of Appeal at paras [20] to [22] considered the amount of compensation payable on the wrongful termination of a contract of employment and distinguished between the compensation

due under a contract terminable upon the provision of reasonable notice and the compensation due under a fixed term contract which does not specify a predetermined notice period:

[20] There is a common law presumption that every employment contract includes an implied term that an employer must provide reasonable notice to an employee prior to the termination of employment. Absent an agreement to the contrary, an employee is entitled to common law damages as a result of the breach of that implied term: *Bowes v. Goss Power Products Ltd.*, [2012] O.J. No. 2811, 2012 ONCA 425, 351 D.L.R. (4th) 219, at para. 23. This presumption can only be rebutted if the employment contract "clearly specifies some other period of notice, whether expressly or impliedly": *Machtinger v. HOJ Industries Ltd.*, 1992 CanLII 102 (SCC), [1992] 1 S.C.R. 986, [1992] S.C.J. No. 41, at p. 998 S.C.R.; *Ceccol v. Ontario Gymnastic Federation* (2001), 2001 CanLII 8589 (ON CA), 55 O.R. (3d) 614, [2001] O.J. No. 3488 (C.A.), at para. 45. The question, then, is whether the motion judge erred in holding that the employment contract, without clause 8.1, failed to rebut that presumption by clearly specifying some other period of notice, expressly or impliedly.

[21] In my view, the motion judge erred in so holding. Where an employment agreement states unambiguously that the employment is for a fixed term, the employment relationship automatically terminates at the end of the term without any obligation on the employer to provide notice or payment in lieu of notice. Such a provision, if stated unambiguously, will oust the implied term that reasonable notice must be given for termination without cause: *Lovely v. Prestige Travel Ltd.*, [2013] A.J. No. 901, 2013 ABQB 467, 568 A.R. 215, at para. 135; *Ceccol*, at para. 25.

[22] Of course, parties to a fixed term employment contract can specifically provide for early termination and, as in *Bowes*, specify a fixed term of notice or payment in lieu. However, and on this point the appellant and the respondent agree, if the parties to a fixed term employment contract do not specify a predetermined notice period, an employee is entitled on early [page 683] termination to the wages the employee would have received to the end of the term: *Lovely*, at para. 136; *Bowes*, at para. 26; *Canadian Ice Machine Co. v. Sinclair*, 1955 CanLII 44 (SCC), [1955] S.C.R. 777, [1955] S.C.J. No. 56, at p. 786 S.C.R.

[Emphasis added]

[105.] The proposition that damages for the premature termination of a fixed term contract are to be assessed over the remainder of the term of the contract was accepted by *Osadebay Sr J* (as he then was) in **Ingraham v Ruffin's Crystal Palace Hotel Corp.** [2000] BHS J. No. 23. There he said at para [36]:

36 The general principle governing the calculation of damages in cases of wrongful dismissal is that the measure of damages will be that which is necessary to put the injured party, and in this case the Plaintiff, in the position he would have been in had the contract been duly performed as intended. Where the injured party is engaged under a fixed term contract the measure of damages will be the wages the injured party would have received during the unexpired portion of the fixed term.

[Emphasis added]

[106.] In **Gunton**, *Brightman LJ* remarked that "the first inquiry" which has to be made in a case such as this is whether the employee was serving under a fixed term contract, or a contract determinable by notice, or some other type of contract. This depends entirely on the intentions of

the parties, as ascertained from the contract and the surrounding circumstances. In determining whether a contract is a genuine fixed term contract, a court is entitled to look at the substance or reality, rather than the appearance, of the relationship. It will be recalled that, in this case, somewhat unusually, BPL denies Rollins was ever intended to have “fixed term employment”.

[107.] In **Ian Charles v The Board of Governors of the H. Lavity Stoutt Community College** Claim No. BVIHCV2010/0049, *Hariprashad-Charles J* (as she then was) defined a fixed term contract at para [18] in the following terms:

[18] A fixed-term contract is a contract of employment for a specified period of time, i.e. with a defined end: *Wiltshire County Council v National Association of Teachers in Further and Higher Education and Guy*. As a general rule, such a contract cannot be terminated before its expiry date except for gross misconduct or by mutual agreement. However, a contract can still be for a fixed term if it contains within it a provision enabling either side to terminate it on giving notice before the term expires: *Dixon and another v British Broadcasting Corporation*.

[Emphasis added]

[108.] With respect to the circumstances in which Rollins came to be hired and whether Rollins’ employment was “fixed term employment” or “permanent employment”, I preferred Rollins’ evidence and CEO Heastie’s evidence to Chairman Rolle’s evidence and Attorney Rolle’s evidence as both Rollins and CEO Heastie were directly involved in the relevant events and the evidence that Chairman Rolle and Attorney Rolle gave, when not consistent with Rollins’ and CEO Heastie’s evidence, appeared to be inconsistent with the documentary evidence and calculated to support BPL’s position.

[109.] On the evidence, I find that, while still a member of BPL’s Board, Rollins entered into a written contract of employment with BPL (i.e. the 20Jul18 Contract) on 20 July 2018 employing him in the capacity of Executive Director at BPL, reporting to the Chairman of the Board, from 1 July 2018 until 30 June 2021. Rollins was employed on the direction of Bannister and his engagement via BPL’s Board and CEO Heastie was essentially a *fait accompli*. Rollins was a “political appointee” in the sense that his employment was directed by a political actor. I make no finding regarding Rollins’ actual political affiliation, as to do so would be to speculate on the evidence.

[110.] Rollins’ employment was controversial given the manner in which he came to be employed. Rollins was not appointed by BPL to fill a well-defined role, as evidenced by the fact that his functions were under review at the Board level in November 2018. Rollins was engaged primarily to oversee all major technical projects at BPL (a project management function) although his job description included other matters. Rollins was not appointed to replace an outgoing Executive Director responsible for special projects. Traditionally those projects were handled by the CEO, the Chief Operating Officer, the Director of Engineering and project engineers. Rollins was the first person to be appointed Executive Director of Special Projects at BPL. He was assigned



projects by the CEO or the Board through the CEO and sometimes filled in for the CEO and assisted him wherever needed.

[111.] When Rollins was hired as Executive Director under the 20Jul18 Contract, BPL used the employment contract it had used to employ Bhatnagar as Executive Director as a template for Rollins' contract. Bannister or BPL's Board gave CEO Heastie Bhatnagar's contract as a template to follow when drafting Rollins' contract and CEO Heastie was provided a Job Description for the position from the Ministry of Works. CEO Heastie faithfully followed Bhatnagar's contract and made minor modifications to the Job Description which resulted in the 20Jul18 Contract. Rollins had no input into changing the contract terms or conditions he was presented with.

[112.] The 20Jul18 Contract provided for employment in the capacity of Executive Director for a specified term of three years from its effective date of 1 July 2018 unless Rollins was terminated for cause or chose to give three months' notice. Bhatnagar had earlier served as BPL's Executive Director from the incorporation of BPL in 2015, under the former PLP Government, until December 2017, when a Board appointed under the FNM Government terminated his employment. BPL treated his employment contract as a fixed term contract, as it paid him out for the remainder of his contract when he was terminated. BPL chose to mirror Bhatnagar's contract and not another executive's contract when settling the terms of the 20Jul2018 Contract and, therefore, the termination provisions contained in it must be taken to have been intentional.

[113.] Around the time that the 20Jul18 Contract was expiring, Bannister requested that the 20Jul18 Contract be renewed for a period of three years with annual increments. This was discussed with Bannister and, on 7 June 2021, CEO Heastie forwarded proposed new contract terms to Mr. Bethell KC as the HR Chair of BPL's Board for approval. BPL's Board agreed to offer Rollins a three-year extension to his contract as Executive Director but refused the proposed annual increments because of (i) BPL's dire financial position, (ii) the fact that BPL was on the cusp of serious union negotiations which would further tax its financial resources and (iii) there was a salary freeze in the public sector. The renewal or extension of the 20Jul18 Contract does not appear to have been a foregone conclusion, as it would have been if Rollins was truly a permanent employee.

[114.] On 28 June 21, BPL and Rollins entered into the 12May21 Contract. The 12May21 Contract made no reference to the 20Jul18 Contract but the two contracts were basically identical. Rollins had no input into changing the contract terms or conditions once the 12May21 Contract was presented to him by BPL. The key terms of remuneration in the 12May21 Contract were (i) a salary of \$180,000 per annum, (ii) gratuity comprising 15% of the annual salary under the contract payable annually on 10 August of each year of the contract commencing after its first anniversary, (iii) use of a BPL vehicle (inclusive of gas and maintenance) and (iv) group medical insurance.

[115.] The 12May21 Contract provided for employment in the capacity of Executive Director for a specified term of three years from its effective date of 1 July 2021 unless Rollins was terminated for cause or chose to give three months' notice. Rollins retained the title of Executive Director despite the fact that BPL's Board had resolved to change his job title to "Senior Director, Special Projects" in February 2019. BPL chose to replicate the 20Jul18 contract's termination provisions in the 12May21 Contract and not to model the termination provisions on the termination provisions contained in another executive's contract. Accordingly, the termination provisions contained in the 12May21 Contract must be taken to have been intentional. This is particularly so because, if the 20Jul18 contract terms were not considered to be reflective of BPL's true intentions, the 12May21 Contract provided a prime opportunity to rectify matters.

[116.] BPL's Defence pleads that Rollins was subject to *inter alia* BPL's Executive Employee Handbook. Rollins' closing submissions accepted that the Executive Employee Handbook was in evidence but it is not clear what the basis of that concession was as, while the Executive Employee Handbook was disclosed by BPL as part of its disclosure in these proceedings, it was not exhibited to any witness statement, it was not included in any of the bundles the parties agreed and Chairman Rolle made only peripheral mention of its contents. Regardless, I accept Rollins' submission that there is no evidence the Executive Employee Handbook was ever formally implemented, ever provided to Rollins or ever brought to Rollins' attention and, therefore, in the absence of any express incorporation of the Executive Employee Handbook in the 12May21 Contract, I do not find that Rollins was subject to its terms.

[117.] Applying the definition of a fixed term contract supplied by *Hariprashad-Charles J* in **Ian Charles**, I am of the view that both of Rollins' contracts were genuine fixed term contracts. For this reason, I am unable to accept BPL's submission that the Court should imply a term that the parties intended the 12May21 Contract to be terminable by three months' notice on the basis that this was the "spirit and intent" of the contract (as the point is put in BPL's Defence). The law on the implication of terms was neatly set out by the Judicial Committee of the Privy Council in **Hallman Holding Ltd v Webster** [2016] UKPC 3 at para [14] and the relevant criteria are not satisfied here. A right to terminate upon notice without cause would conflict with the written terms of the contract: **Dexter Ducreay v Dominica Water & Sewerage Co Ltd** Civil Appeal No. 20 of 2004 at para [5].

[118.] Equally, with the benefit of the decision of the Judicial Committee of the Privy Council in **Reda v Flag** (2002) 61 WIR 118, I am unable to accept that the common law presumption of reasonable notice on termination applied to the 12May21 Contract. The common law position is not that all contracts of employment are subject to an implied term that they may be terminated on reasonable notice. The true position is that the common law implies such a term into contracts which contain no express provision for their determination as, otherwise, such contracts cannot be determined at all in the absence of a repudiatory breach. This rule is not specific to contracts of

employment. There is no need for the law to imply such a term into fixed term contracts because such contracts will determine without more on the expiration of the term. There is even less reason for the law to imply such a term into a fixed term contract where the parties have addressed their mind to the circumstances in which the contract may be terminated beyond the mere effluxion of time.

[119.] BPL's submissions that (i) the 12May21 contract remained capable of early termination by by redundancy, (ii) Rollins was made redundant and (iii) Rollins was paid in accordance with **sections 26 and 29** of the *Employment Act*, require that I briefly treat with the *Employment Act*. Were BPL's application of the *Employment Act* correct, Rollins would not be entitled to the wages and benefits he would have received under the remainder of the term of the 12May21 Contract but would only be entitled to more limited compensation calculated on the basis of the notice periods prescribed by **section 26B** and/or **section 29** of the Act.

[120.] **Section 3** of the *Employment Act* defines the Act's ambit as follows:

(1) Subject to this Act, the provisions of this Act shall apply in relation to any employee employed in any form of employment in The Bahamas including any such employment by or under the Crown in right of the Government of The Bahamas or by a local government authority or by any body corporate established by law for public purposes:

Provided that this Act shall not apply to service or employment, or to persons serving or employed, in a disciplined force and for this purpose "disciplined force" has the meaning given to that expression in paragraph (1) of Article 31 of the Constitution.

[Emphasis added]

[121.] **Section 4** of the *Employment Act* contains a savings provision for more favourable rights, benefits and terms of employment than are conferred by the other provisions of the Act:

4. The provisions of this Act shall have effect notwithstanding any other law and notwithstanding any contract of employment, arrangement or custom (being a contract of employment, arrangement or custom made or in being whether before or after the commencement of this Act) so, however, that nothing in this Act shall be construed as limiting or restricting –

(a) any greater rights or better benefits of any employee under any law, contract of employment, arrangement or custom;

(b) the right of any employee or trade union to negotiate on behalf of any such employee, any greater rights or better benefit; or

(c) an employer from conferring upon any employee rights or benefits, that are more favourable to an employee than the rights or benefits conferred by this Act.

[Emphasis added]

[122.] **Section 29(1)** of the *Employment Act* prescribes a minimum amount of notice, or pay in lieu of notice, and severance pay, that an employer must provide to an employee in order to terminate their contract of employment without cause. It has been held by the Court of Appeal that

**section 29** provides a “minimum code” to facilitate termination without cause: see **Leon Cooper v Grand Bahama Power Company Ltd** SCCivApp No. 178 of 2017 at paras [32] and [33].

[123.] **Section 26B(2)** of the *Employment Act* prescribes a minimum amount of notice, or pay in lieu of notice, and redundancy pay, that an employer must provide to an employee in the event of redundancy in order to lawfully terminate their contract of employment because of redundancy. The identically worded predecessor to **section 26B(2)** was interpreted by the Court of Appeal in a fashion akin to **section 29** in **West Bay Management Limited v Pierre** [2008] 5 BHS J. No. 68 at paras [25] and [26] because it prescribed a notice period.

[124.] In **Leon Cooper**, at paras [21] to [30], *Longley P* discussed the interaction between **section 4** of the *Employment Act* and **section 29** in the context of the specific industrial agreement at issue in that case. However, **Leon Cooper** did not concern a fixed term contract with no express provision permitting termination without cause by the employer. Nor have subsequent decisions of the Court of Appeal applying **Leon Cooper**’s discussion of the relationship between **section 4** and **section 29** (or, at the very least, none that I have found).<sup>1</sup>

[125.] In **Russell v. Freeport Concrete Company Limited** [2008] 2 BHS J. No. 51, *Evans J* (Ag) (as she then was) held that **section 29** of the *Employment Act* does not apply to fixed term contracts and awarded the plaintiff, who had been terminated two months into a one-year long contract, damages assessed for the remainder of the contract term. *Evans J* (Ag) said at para [57]:

57 It is clear that section 29 of the Employment Act, 2001, makes provision for the minimum period of notice required to be given by an employer to terminate the contract of employment of an employee. However, in my view, by the nature of fixed term contracts, the provisions of section 29 of the Employment Act would not apply to them, and I so find.

[126.] In **Deandra Prabhu v Famguard Corporation et al** 2016/COM/lab/00066, *Charles J* (as she then was) held that a plaintiff who had been employed pursuant to a one-year long contract was only entitled to compensation pursuant to **section 29** of the *Employment Act*. However, **Prabhu** concerned a contract under which either party could terminate the contract without cause upon giving a days’ notice.<sup>2</sup> *Charles J* said at para [43]:

43. In my opinion, it would be irreconcilable with legal principles if Ms. Prabhu is awarded damages for the unexpired portion of her contract of employment in the light of an express provision for early termination.

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<sup>1</sup> More particularly, **Bridgette Hanna v J S Johnson & Company Limited** [2021] 2 BHS J. No. 18, **Jacklyn I. Conyers v Central Bank of The Bahamas** SCCivApp No 123 of 2022 and **Paradise Enterprises Limited v Tyrone Morris** IndTrib App No. 130 of 2022.

<sup>2</sup> Notably, *Charles J* referred to the case of **King v The National Museum of The Bahamas** SCCivApp & CAIS No. 193 of 2013, which also concerned a fixed term contract terminated in accordance with its terms. On the basis of **King**, *Charles J* declined to follow *Evans J*’s view that **section 29** does not apply to fixed term contracts by their very nature.

[127.] In **Kayla Ward v The Gaming Board for The Bahamas** [2020] 1 BHS J. No. 6, *Charles J* (as she then was) awarded two “Contractual Plaintiffs” damages for the remainder of their contracts with The Gaming Board after finding (at para [146]) that their fixed term contracts were prematurely terminated on the ground of redundancy. *Charles J* said at para [150]:

[150] In my opinion, if Sherry Roberts and Julia Thompson were not made redundant, they would probably have been able to continue until their respective contract ends. Therefore, they should both be paid for the remainder of their contract i.e. from 28 November 2017 to 31 August 2018 including any benefits that they would have been entitled to (including gratuity, if any).

[128.] **Eversmyer v February Point Resort Estates** [2013] BHS J. No. 25, a first instance case relied on by BPL, is distinguishable as it concerned ill-defined employment “on a month-to-month basis or at the most for a period of three months”.

[129.] There can be no doubt that the *Employment Act* applies to fixed term contracts of employment. So much is made clear by the wide language of **section 3(1)** and the specific requirements imposed by **section 5(1)(d)**. Nevertheless, in the absence of a Court of Appeal decision precisely on all fours with the present case, relying on **section 4(a)** of the *Employment Act*, I will follow **Russell** and **Kayla Ward** and hold that Rollins is entitled to damages for breach of contract at common law assessed by reference to the future wages and other benefits he would have earned during the remainder of the term of the 12May21 Contract.

[130.] In essence, I accept Rollins’ submission that the fact that no notice period to terminate the 12May21 Contract before the expiry of its term was negotiated between the parties amounts to a better term or condition of the contract for Rollins than the minimum rights prescribed by the *Employment Act*.<sup>3</sup> There is no evidence that Rollins would have been terminated for cause but for his premature termination. Nor is there any basis for a deduction for failure to mitigate; while Rollins made admissions in cross-examination capable of raising the issue, insufficient evidence was led to enable me to make any deduction to Rollins’ compensation.

[131.] In the premises, I find that Rollins is entitled to the following relief in relation to this aspect of his claim:

(i)	Salary for the remainder of the fixed term (29 months)	\$435,000
(ii)	Annual gratuity of 15% of salary (for 3 years)	\$81,000
(iii)	Vehicle allowance (29 months at \$600 per month)	\$17,400 <sup>4</sup>

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<sup>3</sup> In light of my conclusion, I need not deal with whether Rollins was made redundant in discussing this issue. Redundancy would not diminish Rollins’ entitlement to be paid out for the remainder of the 12May21 Contract.

<sup>4</sup> The 12May21 Contract did not specify a monetary value for the vehicle allowance it conferred but the figure of \$600 per month was used in 21Jan22 Termination Letter and there was no indication its inclusion was intended to form an *ex gratia* component of the payment tendered to Rollins.

(iv)	Accrued vacation (206.88 hours)	\$20,277.33 <sup>5</sup>
(v)	Cost of premiums for replacement medical insurance (26 months at \$1510.55 per month)	\$39,274.30 <sup>6</sup>
	Total	\$592,951.63

[132.] On the question of interest, I am prepared to find that BPL knowingly failed to provide the full compensation due to Rollins when it terminated him<sup>7</sup> considering Bhatnagar’s different treatment, the fact that BPL had taken legal advice on Rollins’ contract before terminating it and the fact that Director Simms specifically raised “...the risk associated with termination in the absence of a termination clause without clause” at the First New Board Meeting. In light of this finding, I will order that simple interest run on the above sum of \$592,951.63 from the date of Rollins’ termination to the date of judgment at the rate of 2% pursuant to **section 3** of the *Civil Procedure (Award of Interest) Act*.

*Issue 2: Was Rollins unfairly dismissed in all the circumstances of the case and, if so, to what compensation is he entitled?*

[133.] **Section 34** of the *Employment Act* confers a right on every employee not to be unfairly dismissed by his employer. **Section 35** of the *Employment Act* provides that, subject to **sections 36 to 40** of the *Employment Act*, “...the question whether the dismissal of the employee was fair or unfair shall be determined in accordance with the substantial merits of the case”.

[134.] It is not necessary for a case to fall within **sections 36 to 40** for the dismissal to be unfair. The categories of unfair dismissal are not closed: **Bahamasair Holdings Limited v Omar Ferguson** SCCivApp No. 16 of 2016 at para [17]. In **B.M.P. d/b/a Crystal Palace Casino v Yvette Ferguson** [2013] 1 BHS J. No. 135, the Court of Appeal confirmed that the substantial merits of the case are the “touchstone” for determining whether a dismissal is fair or not under the *Employment Act* where **sections 36 to 40** do not apply, as they do not here.

[135.] The statutory direction to determine whether the dismissal was fair or unfair “in accordance with the substantial merits of the case” requires the Court to conduct a factual inquiry, to look at the case in the round, at all of the circumstances of the case, and to make an assessment based on the substantial merits of the case: **Cartwright v U.S. Airways** [2016] 1 BHS J. No. 96 at para [40]. An assessment of the “substantial merits of the case” will include an evaluation of the circumstances of the dismissal and its reasonableness (or otherwise) and an overall assessment of

<sup>5</sup> This figure was included in the 21Jan22 Termination Letter and referred to as “Total vacation owed”. There was no indication its inclusion was intended to form an *ex gratia* component of the payment tendered to Rollins.

<sup>6</sup> I accepted Rollins’ evidence that the Emerald Plan offered by New Providence Life Insurance Company Limited was most like the coverage he had while at BPL. BPL did not attempt to controvert this.

<sup>7</sup> There is no pleaded allegation in these exact terms but the Amended Statement of Claim does allege that Chairman Rolle indicated to Rollins that he would not honour the full terms of the 12May21 Contract before he was terminated, which imports the same thing.

the fairness or unfairness of the dismissal: **Major v FirstCaribbean International Bank (Bahamas) Ltd** (2022) 100 WIR 1 at para [140].

[136.] In **Edwards v Chesterfield Royal Hospital NHS Foundation Trust** [2012] 2 AC 22, *Lord Dyson* discussed circumstances which might make a dismissal unfair at para [40]. He said:

... A dismissal may be unfair because it is substantively unfair to dismiss the employee in the circumstances of the case and/or because the manner in which the dismissal was effected was unfair. The manner may be unfair because it was done in a humiliating manner or because the procedure adopted was unfair inter alia because the agreed disciplinary procedure which led to the dismissal was not followed. It may be unfair because defamatory findings were made which damage the employee's reputation and which, following a dismissal, make it difficult for the employee to find further employment. ...

[137.] There are important differences between our *Employment Act* and the English legislative regime for unfair dismissal. This point was made by the Court of Appeal in **Major** (supra). By reason of those differences, I respectfully do not regard the case of **Maund v Penwith District Council** [1984] IRLR 24 as being helpful. The *Employment Act* does not require an employer to show that the reason for a dismissal was one of several permitted reasons in order for the dismissal to be fair. In accordance with the *Evidence Act*, the ultimate burden rests on a dismissed employee to demonstrate that their dismissal was unfair. If the employee leads credible evidence which establishes a case to answer, the dismissal will be unfair if the employer cannot justify it, which may involve providing a reason for the dismissal.

[138.] If the true reason for a dismissal is disputed, it is a fact in issue like any other and the Court must determine it. I accept direct evidence of a decision to discriminate on the basis of a protected characteristic will be rare and that, if discrimination lies behind a decision, it will usually have to be deduced or inferred from the surrounding circumstances: **Nagarajan v London Regional Transport** [2000] 1 AC 501 at page 511. I also readily accept that "...if a person in the hierarchy of responsibility above the employee...determines that for reason A...the employee should be dismissed but that reason A should be hidden behind an invested reason B which the decision-maker adopts, it is the court's duty to penetrate through the invention rather than to allow it to also infect its determination": **Royal Mail Group Ltd v Jhuti** [2020] 3 All ER 257 at para [60].

[139.] In the present case, the competing reasons for Rollins' dismissal are his perceived political affiliation with Bannister and redundancy. "Political opinion" for the purposes of **section 6** of the *Employment Act* and **Article 26(3)** of the *Constitution*, can be defined as "...an opinion relating to the policy to government and matters touching the government of the state": **McConkey v The Simon Community (Northern Island)** [2009] IRLR 757 at para [59]. Redundancy has a specific meaning under the *Employment Act* contained in **sections 26(2)** and **26(3)** which has been

considered in several cases.<sup>8</sup> The courts have long been alive to the possibility of “sham” redundancies being used as pretext to get rid of an employee: **Timex Corporation v Thomson** [1981] IRLR 522.

[140.] I accept that, as BPL submitted, reference to Rollins being “Desmond’s boy” does not fall within the definition of what is meant by “political opinion” (as defined above), but “political opinion” would be engaged to the extent that Rollins was singled out on the basis he was a FNM supporter. It is necessary to make a broader point here. **Section 6** of the *Employment Act* and **Article 26(3)** of the *Constitution* do not, on their respective plain and ordinary meanings (in particular, through their use of “his or her...political opinion” and “their respective descriptions by...political opinions”), protect against “associative discrimination”. Associative discrimination refers to the situation where A treats B less favourably on the basis that another person associated with B, C, has a protected characteristic.<sup>9</sup> I have not been addressed on whether the provisions protect against “perception discrimination”. Perception discrimination refers to the situation where A treats B less favourably on the basis that B has a protected characteristic when B in fact does not.<sup>10</sup> I do not need to decide whether the provisions do so based on my relevant findings of fact, to which I will now turn.

[141.] On the evidence, I find that, about two weeks before the end of December 2021, Rollins went to see Chairman Rolle in his office regarding the Board’s approval of the Wärsilä contract extension because the initial term was due to expire at the end of the year. Rollins and Chairman Rolle engaged in casual conversation as the two men knew each other and they discussed Rollins’ role and the projects he was working on. But Chairman Rolle did not advise Rollins that certain people in the Cabinet were asking for his head because he was “*Desmond’s boy*”. Nor did I accept that Chairman Rolle went on to say to Rollins “*I need you to let me know what you are willing to accept because if it goes to Court, it will take a long time to resolve. Think about it and get back to me.*”

[142.] I believed Chairman Rolle over Rollins. In weighing Chairman Rolle’s evidence against Rollins’ evidence, I took into account the matters identified in Rollins’ closing submissions in support of his unfair dismissal claim, but I placed greater weight on the inherent improbability that an experienced businessman would tell a senior executive what it is alleged was said, the incongruity of the allegations with Rollins’ own subsequent conduct, Rollins’ hyperbole elsewhere in his evidence (as revealed in cross-examination), and the lack of wider evidential support for the theory that Rollins’ dismissal was politically motivated.

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<sup>8</sup> E.g., **Neely v Credit Suisse** [2009] 1 BHS J No 10.

<sup>9</sup> E.g., here, were Rollins to have been treated less favourably simply on the basis that he was friends with Bannister, who is a member of the FNM.

<sup>10</sup> E.g., here, were Rollins to have been treated less favourably on the basis that he was an FNM supporter when he in fact was not one.



[143.] I find that, after the meeting between Chairman Rolle and Rollins in December 2021, Rollins continued to work at BPL without issue. At this time, Rollins was working on several major projects comprising the renewal of the Wärtsilä contract, the Shell LNG project, an environmental study for the battery storage facility project and an environmental study of the LNG project at Clifton Pier and a proposed Station D power plant at Clifton Pier. Other than Station A, which had been completed in December 2019, the projects were, by Rollins' own admission, at the design phase. Rollins also acted as interim CEO in CEO Heastie's absence for medical reasons. In that capacity, Rollins had "constant back and forth" with Chairman Rolle. Chairman Rolle never asked Rollins for his political affiliation or political opinions and never said he personally wanted Rollins' head. Chairman Rolle did not know Rollins' actual political affiliation and politics was not an issue between the two men which obstructed them working together. Rollins did not have any impression that "there was an issue" until the day before the First New Board Meeting, which he was apparently only able to identify with the benefit of hindsight.

[144.] I find that, at the First New Board Meeting, the Board discussed the downsizing of BPL's management team and a perceived duplication of roles between CEO Heastie and Rollins and the Board formed a position on the financial implications (\$500,000 annually) of having both CEO Heastie and Rollins as part of the management team. (I believed Chairman Rolle over CEO Heastie insofar as Chairman Rolle testified that CEO Heastie had told him that Rollins reported to him and oversaw matters assigned to him by him.) It was by this point more likely than not also clear to the Board that the rate reduction bond would not be proceeding as a result of change in priorities by the PLP Government, although nothing had been formally announced, and therefore, most (but not all) of the special projects within Rollins' portfolio would not be proceeding.

[145.] I find that the Board determined, after taking into account the financial position of the company, that there was no need for BPL to have the role of Executive Director and the role ought to be eliminated. Chairman Rolle first raised the issue of Rollins' contract, Director Simms raised concern about liability on the part of BPL if BPL terminated Rollins' contract prematurely without an early termination clause, and, after discussion amongst the Board, Director Storr moved to terminate Rollins' contract on 3 month's pay in lieu of notice. There is no evidence that Rollins' political affiliations were mentioned at the First New Board Meeting. There is, more broadly, no convincing evidence that anyone on the Board was motivated by political animus. Even if Rollins' evidence about his discussion with Chairman Rolle in December 2021 had been accepted, Rollins' dismissal was a joint decision of the Board and there is no persuasive evidence that other members of BPL's Board were informed of the Cabinet's wishes, that they were accustomed to act on the Cabinet's wishes, or that they were accustomed to unthinkingly act on Chairman Rolle's direction.

[146.] I find that the 21Jan21 Termination Meeting was held and proceeded as Rollins described it. After Rollins was terminated, CEO Heastie was not given any of Rollins' responsibilities, no replacement Executive Director was hired and no new executives who reported to CEO Heastie

assumed any of Rollins' previous responsibilities. The Wärtsilä contract came to an end, the rate reduction bond was cancelled, the LNG project and AMI project were discontinued, and the battery storage facility was continued under internal management.

[147.] There is no compelling evidence that the Board of BPL allowed the Government to dictate the implementation of a discriminatory practice of removing key management employees who were affiliated with the FNM, which is a very serious allegation. The evidence adduced by Rollins does not bear out that there was a "witch hunt" at BPL for FNM-appointed executive management (whomever that set of people may consist of). The only other dismissal that is explicitly linked to political motives on Rollins' evidence is that of one other employee, who is not before this Court, and that is based on an article in *The Gallery* upon which reliance cannot reliably be placed. (CEO Heastie did not characterize himself as a "political victim".) There is, in the same way, no compelling evidence that the Board failed to act independently in the exercise of their fiduciary duties to BPL and failed to consider whether Rollins' termination was in the best interests of BPL. There is also no compelling evidence that Rollins was subjected to humiliation and degradation because of his perceived political affiliation with the FNM. Rollins' evidence of humiliation and degradation was gravely undermined during cross-examination.

[148.] In all the circumstances, despite the attractive way in which Rollins' case was framed and presented, I find that Rollins' dismissal was wholly or mainly attributable to the fact that the requirement for Rollins to carry out work of a particular kind (managing special projects) had diminished or was expected to diminish at BPL. With the moribund fate of the rate reduction bond, which was, in CEO Heastie's words, the impetus to fuel the majority of Rollins' special projects, the requirements of BPL's business no longer required an Executive Director. In my view, Rollins' pleaded case of unfair dismissal has not been made out and, therefore, it fails.

[149.] For the avoidance of doubt, I believed CEO Heastie when he said that he was never informed he would take on Rollins' roles and duties, never consulted about doing so or asked to suggest someone to take on Rollins' duties and responsibilities. I also accept that BPL did not adhere to **Part VI** of the *Employment Act* in terminating Rollins, did not mention redundancy as the reason for Rollins' dismissal in the 21Jan21 Termination Letter, did not produce any assessment document and failed to fully articulate its case on redundancy before trial. However, none of these matters seems to me to preclude a finding of a genuine (albeit unlawful and slipshod) redundancy.

[150.] Had broader particulars of unfairness been given, standing back and looking at the matter in the round, on the substantial merits of the case, I would have found that Rollins' peremptory dismissal was unfair.<sup>11</sup> Rollins was a senior employee who had been in BPL's service for several

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<sup>11</sup> I acknowledge that the Amended Statement of Claim pleads in one of the particulars of unfairness, unlawfulness and unconstitutionality that "Mr. Rollins was subjected to humiliation and degradation merely because of his perceived political affiliation with the FNM and without being afforded an opportunity to be heard on the continuity of his contract" but I do not think this single particular can encompass the several grounds of unfairness I have identified.

years with no record of misconduct, relatively few years of his working life left to anticipate. Yet, no advance notice of BPL's intention to make him redundant was given to him, BPL knowingly failed to pay out Rollins' contract (treating him differently from Bhatnagar where no justification was provided for doing so) and failed to consult the Minister responsible for Labour on Rollins' redundancy as required by the *Employment Act* (a factor that may be taken into account). I would not have awarded Rollins a compensatory award, however, as Rollins demonstrated no financial loss attributable to his termination not already compensated for by the award for breach of contract.<sup>12</sup>

*Issue 3: Was Rollins discriminated against on the basis of political opinion contrary to section 6 of the Employment Act or Article 26(2) of the Constitution and, if so, to what compensation is he entitled?*

[151.] The next issue to consider is whether Rollins was discriminated against on the basis of political opinion contrary to **section 6** of the *Employment Act* or **Article 26(2)** of the *Constitution*. Because of the findings of fact I have made, this issue is strictly academic and there is much to be said for saying nothing about it. However, I will address this aspect of Rollins' claim briefly, in the event I have erred in my assessment of the evidence or in my reasoning above.

[152.] Though it was not the subject of argument before me, applying the principles articulated in **X v Bedfordshire County Council** [1995] 2 AC 633 at page 731, I am content to accept that a breach of **section 6** of the *Employment Act* gives rise to a cause of action in tort on the part of the discriminated against person for breach of statutory duty. As it is a claim founded in tort, compensatory damages for injury to feelings and aggravated damages can be awarded for breach of the statutory duty not to discriminate in appropriate cases: compare **Commissioner of Police of the Metropolis v Shaw** [2012] ICR 464.

[153.] Mindful of cases such as **Merson v Cartwright** (2006) 67 WIR 17, I am likewise content to accept that a breach of **Article 26(2)** of the *Constitution* may give rise to a claim for compensation under the *Constitution* and that the constitutional redress awarded may include vindicatory damages in an appropriate case. **Article 26(2)** of the *Constitution* prohibits "...any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority" from treating anyone in a discriminatory manner. It was not argued by BPL that it is not such a person. I will therefore take it to be so in these proceedings.

[154.] Notwithstanding the foregoing, in my view, Rollins failed to discharge the onus on him to demonstrate that his dismissal was solely caused by his political opinions (as required by **section 6** of the *Employment Act*) or that his dismissal was wholly or mainly (i.e. primarily) caused by his

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<sup>12</sup> In **Clarkson International Tools Ltd v Short** [1973] IRLR 90, *Sir John Donaldson* remarked at page 91 of the corresponding provision of the English employment legislation then in force that "...the purpose of assessing compensation is not to express disapproval of industrial relations policy. It is to compensate for financial loss."

political opinions (as required by **Article 26(3)** of the *Constitution*) in light of the evidence that came out at trial, which provided a persuasive non-discriminatory explanation for the termination of Rollins' contract.

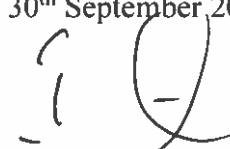
[155.] In any event, I am not satisfied that Rollins has demonstrated that there is no adequate means of redress which are or have been available to him under any other law, such that a last resort could be had to the Constitution. (See the Proviso to **Article 28(2)**)

### **Conclusion**

[156.] For the foregoing reasons, it is my determination that Rollins is entitled to damages for breach of contract in the amount of \$592,951.63 with simple interest (i) accruing from the date of Rollins' termination to the date of judgment at the rate of 2% and (ii) accruing from the date of judgment to the date of payment at the rate of 6.25%. Rollins failed to establish his pleaded case of unfair dismissal, discrimination contrary to **section 6** of the *Employment Act* or breach of **Article 26(2)** of the *Constitution*.

[157.] Rollins is entitled to the costs of the action. The costs of these proceedings are governed by the regime under the *Rules of the Supreme Court, 1978*. I propose to fix the costs on the papers unless objection is made to that proposed course within three (3) days of this decision. My directions, subject to no objection being made, are that Rollins is to lodge and serve a statement of costs within fourteen (14) days, BPL is to lodge and serve any representations in response within seven (7) days and Rollins shall have a right of reply within seven (7) days thereafter.

Dated the 30<sup>th</sup> September 2024



Sir Ian R. Winder  
Chief Justice