



**BARBADOS**

**IN THE EMPLOYMENT RIGHTS TRIBUNAL**

**Case: ERT/2016/047**

**ARLETTA ONITA OXLEY**

**CLAIMANT**

v.

**BCQS INTERNATIONAL/SANJAY AMIN**

**RESPONDENT**

**DATES:** March 22<sup>nd</sup> 2021

<b>Before:</b>	The Hon. Mr. Justice (rtd) Christopher Blackman GCM	<b>Chairman</b>
	Frederick Forde, Esq GCM	<b>Member</b>
	Edward Bushelle Esq	<b>Member</b>

**Appearances:** Mr. Philip McWatt, Attorney-at-law for the Claimant  
Ms. Faye Finisterre, Attorney-at-law for the Respondent

## DECISION

1. By letter dated October 24, 2016, the Chief Labour Officer pursuant to the provisions of sections 19 (2) (b) and 44 (1) of the Employment Rights Act (the Act) referred for the consideration of the Employment Rights Tribunal (the Tribunal) the dispute between the Claimant and the Respondent over concerns by the Claimant that there were changes in respect of her employment contract, specifically her pay. The particular complaint was that the Respondent had failed to pay at any time the \$4000.00 net salary specifically stipulated in the employment contract dated February 9, 2009.
2. In her Witness Statement dated December 28, 2016 the Claimant said that her employment with the Respondent commenced February 9, 2009 as Secretary/Executive Assistant and that she was still in the employ of the Respondent. The Claimant is still in the employ of the Respondent.
3. The Claimant's case turns on paragraph 5 of the contract, under the heading **Remuneration** which stated:

“As remuneration for her services hereunder, the Company shall pay the Employee a gross salary at the rate of BDS \$4,000.00 (Four thousand Barbados Dollars) per month. Subject to satisfactory performance, this salary will be **reviewed** after 3 months and the Employee will be paid a **net salary** (emphasis added) of BDS \$4,000.00 (Four thousand Barbados Dollars) per month.

4. It is common ground that no review took place at the three-month interval or indeed for several years. On November 16, 2015 Mr. Sanjay Amin as a Director of BCQS, wrote the Claimant, stating (inter alia) *“it is recognised that your salary has not been reviewed since 2009 and we have therefore agreed to give you a 10% increase effective 1 December 2015. In view of the above, we are pleased to review your employment contract dated 9 February 2009 regarding your employment as a Secretary of BCQS International Limited whereby this agreement replaces your agreement dated 9 February 2009 in accordance with the terms and conditions set out below.”*
5. At paragraph 5 of the November contract, under the heading **Remuneration** it was stated that “As remuneration for her services hereunder, the Company shall pay the Employee a gross salary at the rate of BDS \$4,400.00 (Four thousand, four hundred Barbados Dollars) per month.”
6. By letter dated December 14, 2015 to Mr. Amin, the Claimant advised that she was not in agreement with the terms of the foregoing letter. In a later letter dated March 24, the Claimant stated her refusal of the proposed salary increase was based on the fact that no consideration was taken of the terms of the February 9, 2009 contract, detailed at paragraph 3 above.
7. The Tribunal has taken note of the repeated assertion by the Claimant that her original contract dated February 9, 2009 is the matter in issue. In that context the Tribunal takes the view that as the Tribunal only came into being on proclamation of the Act on April 15, 2013 the Tribunal has no jurisdiction to consider a contractual dispute going back to 2009. Indeed, the Tribunal asserts that save in matters of unfair dismissal and the provisions of the **Fifth**

**Schedule** to the Act which recognises the period of employment whenever it started, the Tribunal has no jurisdiction to consider the Claimant's dispute.

8. The Tribunal declines to consider the merits of the claim, or the submissions made as to limitation or substitution of parties. However, we think it helpful to opine that a contractual commitment to **review** is not a commitment or obligation to amend any conditions of the contract. We are fortified in this conclusion having regard to one of the definitions of the word **review** in the **Concise Oxford Dictionary** as "a formal assessment of something with the intention of instituting change if necessary." In the context of a business, the word **possible** may well be substituted for the word **necessary**.
9. The dispute referred to the Tribunal on October 24, 2016 by the Chief Labour Officer is therefore dismissed as the Tribunal has no jurisdiction to consider a dispute which predates the creation of the Tribunal.

Dated this <sup>11</sup> day of June, 2021



Christopher Blackman, GCM  
Chairman



Edward Bushell, Esq  
Member



Frederick Forde, Esq GCM  
Member