

INDUSTRIAL COURT OF TRINIDAD AND TOBAGO

Meet with the Court Symposium 5

The Legal Impact of Short Term Contracts in Trinidad and Tobago

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FIXED TERM CONTRACT - DEFINITION

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- It was the common law of contract that every contract not expressly limited as to duration was prima facie **permanent and irrevocable**.
- The party asserting that the contract was not perpetual has the burden of showing either some expression in the contract itself, or something in the nature of the contract, from which it could reasonably be implied that the contract was subject to determination.

FIXED TERM CONTRACT - DEFINITION

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- This conception of termination did not apply to contracts of employment.
- In the absence of any express stipulation as to duration or expiry, every contract of is treated as determinable by reasonable or, if greater, the statutory minimum period of notice.
- The crucial feature of the fixed term contract is that it has date of termination.

FIXED TERM CONTRACT - DEFINITION

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- “In order to qualify as a fixed-term contract, the date of termination must either be stated or must be ascertainable from the context or the other terms of the contract....” *Ian Charles v The Board of Governors* (ECSC (May 30, 2011) per Hariprashad-Charles J. at [21])
- Fixed term contracts are therefore not intended to be permanent but rather temporary.

FIXED TERM CONTRACT - Effluxion of time

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- Fixed term contracts end, not by express termination by either of the parties, but automatically by effluxion of time.
- Therefore there is technically no dismissal of the employee.
- **GIGWU v Northwest Regional Health Authority (TD 44/2005) June 11, 2007, p. 6**
- “The worker’s employment was temporary and for fixed terms. This was understood and acknowledged by the worker when , in January 2004, she wrote the Employer asking fro a continuation of her employment byopnd the fixed term then about to end by effluxion of time....”

RATIONALE FOR FIXED TERM CONTRACT: MANAGERIAL PREROGATIVE VS WORKERS' RIGHTS

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The rationale for the employer using the fixed term contract was stated by the Court in the case

BIGWU v Tobago House of Assembly (TD 21/2015 August 17, 2015) para 12-13, quoting Pitt on *Employment Law*.

“Sometimes an employer may have a genuinely short-term need for workers and in these circumstances will wish to employ the worker for that specified period only.”

Examples

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- Specific project.
- *CWU V Telecommunications Services of TT (ESD 57 & 63/2009)*
July 31, 2014 para 6, 8
- “In the circumstances, I am of the view that the Workers clearly knew and accepted that the nature of their employment was temporary and that it was for a specific project.”
Referred to in THA case. para 12

PRESENCE OF A CLAUSE ALLOWING TERMINATION BY NOTICE

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- But well-drafted fixed term contracts have a clause or clauses that permit termination before the expiry of the fixed term.
- ***BIGWU v North-West Regional Health Authority (ESD-TD 52/2013 - October 24, 2014) p.4***
- *These clauses must as a matter of contract be strictly observed (id. p.8)*

PRESUMPTION OF INDEFINITE CONTRACT: ONUS OF PROOF

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“The onus was on Company to prove that it had engaged the affected workers on a fixed term basis and had informed them of this condition upon their engagement.”

***NUGFW v Capital Signal Company (RSBD 11/1002
February 2, 2005) p. 12***

REBUTTING PROOF OF FIXED-TERM CONTRACT: ONUS OF PROOF

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- But even when the company has a contract document as proof the case law has shown that this is not sufficient. The court in Trinidad and Tobago has liberally allowed extrinsic evidence to counter the contractual document. This seems contrary to the parole evidence rule so fundamental in the common law of contract.
- The onus lies on the party, usually the worker, alleging that it is in fact not a fixed term contract, once the Company has discharged its burden. **PSA V Airports Authority of TT pp.9-10**
- Why?

FIXED TERM CONTRACT APPROACHES OF THE INDUSTRIAL COURT OF TT

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Two theories govern the approach to fixed term contracts in TT

1. PREVENTING ABUSE

- THA case para 13 - dressing up as fixed-term

FIXED TERM CONTRACT JURISPRUDENCE OF THE INDUSTRIAL COURT OF TT

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2. THE TRANSCENDENCE OF THE IRA

- A. s. 2(1) Definition of “Dispute”
- B. S. 2(1) Definition of “Worker”
- C. S. 10(3), (5) Power of the Industrial Court
- D. S.40 Compulsory Recognition and duty to Treat

s. 2(1) Definition of “Dispute”

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- ***Trinidad and Tobago Airline Pilots’ Association v Caribbean Airlines*** (ESD IRO 1/2015)
- **BIGWU v THA** para 16-18
 - Reliance on fixed term contract seen as an attempt to oust the jurisdiction of the Industrial Court (para 19)

S. 2(1) Definition of “Worker”

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- *PSA v Tobago Regional Health Authority (ESD 12/2016) May 8, 2017 p.13, 15*
- Contractual arrangement for business expediency cannot circumvent IRA standards. All workers contract subject to the Act.
BIGWU V Antilles Credit Union Co-operative Society

S. 10(3), (5) Power of the Industrial Court

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- ***BGWU v Home Mortgage Bank*** (TD 140/1997) March 3, 1998
- Even where notice can terminate the fixed term contract, employer must give reason for the termination. P
- ***PSA v Tobago Regional Health Authority*** p 8-

S.40 Compulsory Recognition and Duty to Treat

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- **TT Airline Pilots Association v Caribbean Airlines**
(ESD IRO 1/2015) July 29, 2016
- Establishes that the system of collective bargaining established under the IRA limits management's ability to enter fixed term contracts even under the imperatives of business efficiency. **BIGWU v Antilles Credit Union**

Negligence and Compliance with Guidelines

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- **BIGWU v North-West Regional Health Authority (ESD 52/2013)**
October 24, 2014
- Negligence as a defence

“The Authority claimed in its Evidence and Arguments that its decision to terminate the services of the Worker was due to a failure on its part to follow the established process for recruitment and the resultant unavailability of funds to meet the additional expenditure.”

OWTU v Chief Personnel Officer, Min of Education (TD 384/2010)
May 16, 2017

BIGWU v Tobago House of Assembly

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- Genuine fixed term - role of the court to uncover (para 23 et seq.)
- Communication - made plain at the beginning
- Role of Appraisals - **OWTU v Chief Personnel Officer, Min of Education (TD 384/2010) May 16, 2017 p.8**

BIGWU v Tobago House of Assembly

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- Multiple contracts - cf single contract *CWU v Mr Cooper*; *GIGWU v North West Regional Health Authority* (two terms + acknowledgement)
- Breaks in contract
- Legitimate Expectation
- Role of the written contractual document *GIGWU v North West Regional Health Authority*

**BIGWU v Antilles Credit Union Co-operative
Society (TD 154/2004) June 30, 2005**

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**Commitment to Collective
Bargaining Regime
Transcends all other
Arrangements and
Imperatives.**