



CARIBBEAN COURT OF JUSTICE

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CCJ ORDERS BELIZE GOVERNMENT TO PAY

CCJ, Port of Spain. In *AG of Belize v Dean Boyce, Dunkeld International Investment Ltd and The Trustees of the BTL Employees Trust*, the Caribbean Court of Justice (CCJ) determined the final amount of money that the Government of Belize had to pay to Dunkeld International Investment Ltd and the Belize Telemedia Employees Trust.

The Government of Belize was ordered to pay Dunkeld International Investment Ltd the sum of US\$62,849,799.23 and BZ\$245,155.36. The monies due to the Belize Telemedia Employees Trust were determined to be US\$15,314,006.84 and BZ\$10,300,518.34. The Court ordered payment to be made by 10 November 2017 which was deemed sufficient time for the Government of Belize to make payment.

The matter arose from a Settlement Agreement made between the parties and, by consent, made an order of the CCJ in 2015. The Agreement provided for calculating payment of compensation arising from the nationalization of Belize Telemedia Ltd (BTL) and associated companies. A dispute arose as to the calculation of the amounts of US dollars and Belize dollars that should be remitted to the claimants, though they were to hold the funds provided in Belize dollars on trust to fund projects for the benefit of the Belize people. The parties returned to the CCJ to settle the issue.

Earlier, in 2005 an agreement had been made by the Government of the time conferring tax-free guaranteed returns on a group of investors who acquired, among other investments, shares in BTL. The subsequent Government controlled by the United Democratic Party (UDP) considered that agreement to be invalid and refused to honour it. The Government later acquired the company.

This led Dunkeld to seek compensation in arbitration proceedings under an international investment treaty, while the Trust took legal proceedings up to the CCJ as to the invalidity of the nationalization statutes. Dunkeld was later joined as a party to those proceedings to enable all parties to be bound by the terms of the Settlement Agreement embodied in an Order of the CCJ made by consent of all parties.

The final payments to be made under the Settlement to Dunkeld and the Trust on 28 June 2017 turned upon a determination of the “Dunkeld Liabilities” and the “Trust Liabilities” incurred in connection with the compulsory acquisition of BTL. The CCJ in its consent order had granted liberty to apply to the Court if issues arose as to enforcement of the terms of the settlement.

To determine the final payment, Dunkeld and the Trust unilaterally pushed ahead to appoint a reputable independent auditor to determine their respective actual liabilities as of 28 June 2017, without seeing if all parties could agree on one auditor or have one appointed by the court if there was no agreement. The Belize Government made it clear in March 2017 that it would not accept liabilities other than as agreed by itself. The claimants, however, waited until after the due date before applying to the CCJ.

In all the circumstances when there seemed little purpose in ordering a fresh audit, the CCJ held that no interest should be payable from 28 June 2017 until 10 November 2017 but the amounts due should be determined on the basis of the independent auditor’s certification of Dunkeld and Trust Liabilities as of 28 June 2017.

The CCJ is holding the Government of Belize to tough terms if the payments are not remitted by 10 November 2017. If full payment is not made by then, interest of 8.34% compounded quarterly under the arbitration tribunal’s award will be applied to the remaining amount. Moreover, interest on unpaid interest will also be payable at the rate of 6% compounded monthly under the terms of the Settlement. No order was made as to costs.

The judgment of the Court and an Executive Summary are available on the CCJ’s website at www.ccj.org.

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