

**IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION**

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

**CCJ Appeal No BZCV2025/002
BZ Civil Appeal No 5 of 2023**

BETWEEN

**ERVEN MARIN
LORNA LONGSWORTH
ANDREW ARNOLD
LOWELL BROOKS
LOIS GARBUTT
LORNA MARTINEZ
RUTHLYN AYUSO
MAILIN VASQUEZ
GUADALUPE ESCALANTE
CURTIS KELLY**

**FIRST APPELLANT
SECOND APPELLANT
THIRD APPELLANT
FOURTH APPELLANT
FIFTH APPELLANT
SIXTH APPELLANT
SEVENTH APPELLANT
EIGHTH APPELLANT
NINTH APPELLANT
TENTH APPELLANT**

AND

BELIZE TELEMEDIA LIMITED

RESPONDENT

Before:
**Mr Justice Anderson, President
Mme Justice Rajnauth-Lee
Mr Justice Barrow
Mr Justice Jamadar
Mr Justice Eboe-Osuji**

Date of Judgment: 5 November 2025

Appearances

Mr Eamon H Courtenay, SC, Ms Pricilla J Banner, SC and Ms Alyson G Courtenay for the Appellants

Mr Fred Lumor, SC and Mrs Melissa Balderamos Mahler, SC, for the Respondent

Employment – Labour law – Severance pay – Retirement benefits – Pension schemes – Collective Bargaining Agreement – Whether severance payments are payable to persons who retire mandatorily and voluntarily – Labour Act, Cap 297, s 183.

Statute – Interpretation – Purposive approach – Social justice legislation – Labour Act, Cap 297, s 183.

SUMMARY

This is an appeal from the Court of Appeal of Belize, in the case of ten former employees of Belize Telemedia Ltd ('BTL') who claimed entitlement to severance payments under the Belize Labour Act ('Labour Act').

There are two main ways in which the Labour Act is of interest in this appeal. The first is that s 183 of the Labour Act entitles an employee who retires after 60 years of age to certain minimum severance benefits, as long as that employee worked for a continuous period of 10 years. But an employee who is younger than 60 years will still be entitled to that severance payment if the employer terminated that employee before age 60. Notably, retirement by the employee and termination by the employer are not the only ways that the Act imposes an obligation to pay terminal benefits to an employee who is less than 60 years: an employee who simply resigns is entitled to 'gratuity' that is equivalent to severance pay.

The second main way that the Labour Act is of interest to the case is that s 194 requires employers to ensure that severance payments that accrued to employees are accounted for in any pension plan that may be in place in the workplace.

The appellants in this case had either compulsorily retired at age 55 pursuant to the Collective Bargaining Agreement ('CBA') between the BTL and its employee's union or voluntarily retired under individual voluntary retirement agreements with BTL. All the appellants had served BTL for over ten years.

Following the amendment of the Labour Act in or around 1995, BTL transitioned from the regime of severance payments to a pension plan, on the hypothesis that the pension plan had legally displaced BTL's statutory severance obligations. As part of that transition, all employees (including the appellants) were paid the statutory severance up to 1994; thus clearing the way for the pension plan as the only terminal benefits scheme that BTL recognised for its employees.

The appellants' claim is that the pension payments they received either did not account for the severance pay mandated by the Labour Act or that BTL has not shown that to be the case.

At first instance, the High Court ruled in favour of all claimants, including a third group of resigners, finding that they were all entitled to severance or 'gratuity' equivalent to severance pay. The trial judge held that mandatory retirement under the CBA amounted to termination by the employer, and that voluntary retirement was effectively a resignation, both of which qualified for severance under s 183 of the Labour Act as noted earlier. The trial judge also found that BTL had failed to prove that severance was accounted for in the pension benefits under s 194 of the Labour Act and declared that a clause in the voluntary retirement agreements purporting to waive severance as void under s 190 of the Labour Act which has that effect.

The Court of Appeal partially overturned the High Court's decision. It upheld the claims of the resigners but not those of the mandatory and voluntary retirees. The appellate court reasoned that retirement under the CBA or individual voluntary retirement agreements was not termination by the employer but rather a bilateral agreement, and thus did not trigger severance entitlements under s 183. It also held that the voluntary retirees did not qualify under the resignation provision of s 183(2), and instead of nullifying the retirement agreements, it severed the clause that purported to waive severance.

On appeal to the Caribbean Court of Justice ('CCJ'), the central issues were whether the appellants' retirements constituted termination by the employer under s 183 of the Labour Act, and if the answer is yes, whether the appellants are still entitled to severance pay under s 183 notwithstanding that the appellants received payments under the BTL Pension Plan. In the Court's lead judgment, Eboe-Osuji J adopted the purposive approach to the interpretation of the Labour Act. According to that approach, he considered that the general aim of the system of severance entitlement is not to punish employers or employees for severing the employment relationship. It is, rather, to cushion the employee from the shock of being put out to the pasture of life without remunerative work after years (particularly 10 years or more) of continuous paid employment and without the financial security enjoyed up to then. Hence, for purposes of severance payment under the Labour Act, mandatory retirement under the CBA effectively amounts to termination by the employer which the employee accepted, and voluntary retirement was functionally equivalent to resignation. Therefore, both groups were entitled to severance under s 183.

Eboe-Osuji J also examined s 194 of the Labour Act, which preserves an employee's entitlement to severance even where a pension scheme exists, provided that the severance was not accounted for in the pension benefits. He considered the concession by BTL's counsel that severance had not been subsumed within the pension benefits. Beyond that concession, Eboe-Osuji J found in substance that BTL's pension scheme, a defined contribution plan with equal contributions from employer and employee, did not clearly account for severance. BTL's failure to demonstrate that the severance payment was clearly comprised within the pension payments meant that BTL's statutory obligation remained undischarged.

Utilizing the social justice interpretation framework espoused in the *CGI Consumers' case* [2025] CCJ 11 (AJ) BB, Jamadar J, asserted that the Belize Labour Act is social justice legislation, referencing (i) the Belize Constitution; the Preamble affirms principles of social justice and prohibits the exploitation of labour, and *Section 15* protects the right to work, and (ii) Belize's ratification of international commitments that demonstrates a commitment to protecting workers' rights. Thus, Jamadar J found that the severance pay provisions were not merely transactional but are part of a remedial and protective constitutional scheme.

Applying a purposive, teleological, generous and pragmatic approach in interpreting section 183 of the Labour Act taken within its social context, he concluded that both the Retirees and the Voluntary Retirees [the Appellants] fell within the categories of employees entitled to severance. Furthermore, Jamadar J applied s 190 of the Labour Act and opined that it invalidates any agreement that purports to exclude statutory severance entitlements. This applied both to the CBAs and the voluntary retirement agreements.

In conclusion, the CCJ unanimously allowed the appeal, holding that all the appellants were entitled to severance payments under s 183 of the Labour Act, ordering that the severance payments be calculated according to the High Court's judgment and awarded costs to the appellants.

Cases referred to:

A-G v Prince Ernest Augustus of Hanover [1957] 1 All ER 49; *A-G of Barbados v Joseph* [2006] CCJ 3 (AJ) (BB), (2004) 64 WIR 37; *Arjoon v New Building Society Ltd* [2024] CCJ 7 (AJ) GY; *Bank of Nova Scotia v Comptroller of Inland Revenue* [2025] CCJ 14 (AJ) LC; *Barclays Mercantile Business Finance Ltd v Mawson* [2005] 1 AC 684; *Belize Telemedia Ltd v Marin* BZ 2024 CA 3 (CARILAW), (20 May 2024); *Birch v University of Liverpool* [1985] IRLR 165; *CGI Consumers' Guarantee Insurance Co Ltd v Stevenson* [2025] CCJ 11 (AJ) BB; *Commissioner of Police v Alleyne* [2022] CCJ 2 (AJ) BB, [2022] 2 LRC 590; *Heydon's Case* (1584) 3 Co Rep 7a, 76 ER 637; *Igbo v Johnson Matthey Chemicals Ltd* [1986] IRLR 215; *Marin v Belize Telemedia Ltd* BZ 2023 SC 29 (CARILAW), (4 January 2023); *McEwan v A-G of Guyana* [2018] CCJ 30 (AJ) (GY), (2019) 94 WIR 332; *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36; *R v Cousins* [1982] QB 526; *Reference Re Public Service Employee Relations Act (Alberta)* [1987] 1 SCR 313; *Rizzo v Rizzo Shoes Ltd, Re* [1988] 1 SCR 27; *Smith v Selby* [2017] CCJ 13 (AJ) (BB), (2017) 91 WIR 70; *Uber BV v Aslam* [2021] 4 All ER 209.

Legislation referred to:

Belize – Interpretation Act, Cap 1, Labour Act, Cap 297, Trade Unions and Employers' Organisations (Registration, Recognition and Status) Act, Cap 304, Trusts Act, Cap 202.

Treaties and International Materials referred to:

International Labour Organisation (ILO), Convention (No 29) concerning Forced or Compulsory Labour, as Modified by the Final Articles Revision Convention, 1946 39 UNTS 55 (entered into force 1 May 1932); International Labour Organisation (ILO), Convention (No 87) concerning Freedom of Association and Protection of the Right to

Organise 68 UNTS 17 (entered into force 4 July 1950); International Labour Organisation (ILO), Convention (No 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, as Modified by the Final Articles Revision Convention, 1961 96 UNTS 257 (entered into force 18 July 1951). International Labour Organisation (ILO), Convention (No 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value 165 UNTS 303 (23 May 1953); International Labour Organisation (ILO), Convention (No 105) concerning the Abolition of Forced Labour 320 UNTS 291 (entered into force 17 January 1959); International Labour Organisation (ILO), Convention (No 111) concerning Discrimination in Respect of Employment and Occupation 362 UNTS 31 (entered into force 15 June 1960); International Labour Organisation (ILO), Convention (No 138) concerning Minimum Age for Admission to Employment 1015 UNTS 297 (entered into force 19 June 1976); International Labour Organisation (ILO), Convention (No 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 2133 UNTS 161 (entered into force 19 November 2000).

Other Sources referred to:

Bailey D and Norbury L, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn, LexisNexis 2020); Belize, *Hansard*, House of Representatives, (Friday, 23 June 1995); Corthésy N and Harris-Roper C, *Commonwealth Caribbean Employment and Labour Law* (1st edn, Routledge 2014); Doorey D J, *The Law of Work*, (3rd edn, Emond Publishing 2024); Garner B A (ed), *Black's Law Dictionary* (12th edn, Thomson West 2024); Marquit M, 'Retirement 101: Defined benefit vs Defined Contribution Plans: The Burden has Shifted from Employer to Employee' (Encyclopedia Britannica, 9 June 2025) < www.britannica.com/money/defined-benefit-vs-defined-contribution > accessed 3 July 2025; 'Our Corporate History' (Belize Telemedia Ltd) < <https://livedigi.com/about-digi/> > accessed on 10 October 2025; West India Royal Commission, *Report of the West India Royal Commission (the Moyne Report)* (Cmd 6607, 1945); Williams E E, *Capitalism and Slavery* (University of North Carolina Press 1944).

JUDGMENT

Reasons for Judgment:

Eboe-Osuji J (Anderson P, Rajnauth-Lee, Barrow and Jamadar JJ concurring) [1] – [97]

Jamadar J (Rajnauth-Lee, Barrow and Eboe-Osuji JJ concurring) [101] – [148]

Barrow J [149]

EBOE-OSUJI J:**I. Overview**

- [1] This is an appeal against the judgment of the Court of Appeal of Belize. The main issues are: (i) whether employees who *retire* (mandatorily or voluntarily) before attaining the minimum age of statutory severance payment are still entitled to that severance payment although *termination* by the employer is a prerequisite for the severance entitlement; and, (ii) whether an employer's obligation to pay *severance* remains an enduring obligation where an employee's *pension* benefit did not clearly account for the statutory severance payment.
- [2] The Appellants are 10 former employees of the Respondent Belize Telemedia Ltd ('BTL'). They claim that BTL failed to pay them—or show that it has paid them—the minimum severance entitlement that the Labour Act of Belize¹ guarantees for employees who qualify for such severance payments at the end of their employment.
- [3] Right up to the hearing of the appeal, the Respondent BTL had maintained that it owed no such severance payment to the Appellants because: (a) the Appellants were not qualified for the statutory severance pay on a correct interpretation of the applicable provisions of the Labour Act; and, (b) even if they did, the Appellants had benefitted from the company's employee pension plan which had subsumed the entitlement to severance pay.
- [4] However, in a surprising turn of events at the hearing before this Court, counsel for the Respondent BTL conceded that the circumstances of the pension payment rendered unsustainable BTL's original contention that the severance payments were subsumed within the pension benefits. He maintained, nevertheless, that the

¹ Cap 297.

Appellants were not otherwise entitled to severance payments within the meaning of the applicable provisions of the Labour Act.

- [5] We are thus tasked with determining the correct interpretation of the relevant provisions of the Labour Act in the context of the issues set out above.
- [6] A central aspect of the case concerns the interpretation of s 183 which stipulates that an employee who *retires* at age 60 is entitled to a higher level of severance pay if the employee had also worked for BTL for a continuous period of more than 10 years. It is possible under the provision for an employee to become entitled to that higher level of severance pay if he or she leaves the company before the age of 60. Even then, it must be the case that his or her employment was brought to an end by reason of either *termination by the employer* or by reason of ill-health; he or she was constrained to abandon post in circumstances of constructive dismissal; or, he or she was employed under a fixed-term contract, which came to an end with no (or less favourable) provision for severance pay. In any event, he or she must have served the minimum continuous period of 10 years, to be entitled to the higher level of severance pay.
- [7] That provision thus provokes a primary question in this case: whether *mandatory retirement* at the mandatory retirement age of 55, pursuant to the Collective Bargaining Agreement ('CBA'), still entitles the employees of BTL to the higher rate of severance: on the theory that *mandatory retirement* pursuant to the CBA amounts to effective *termination by the employer*, provided the employee has also put in the requisite 10 years of continuous service.
- [8] The foregoing is the broadest overview of the legal questions presented. As with the facts, I have, at this stage, avoided cluttering the picture with details of the legal issues to be resolved. I shall engage those details in the analysis below.
- [9] There is a certain dimension to the circumstances of the original claimants that must be kept in mind at the outset. At the beginning of this litigation, three groups of former BTL employees had made claims. The first comprises five employees who

compulsorily retired at the age of 55 (the ‘Mandatory Retirees’) pursuant to the CBA that their workers’ union had agreed to with the Respondent BTL. The second group comprises five employees who voluntarily retired (the ‘Voluntary Retirees’) pursuant to individual voluntary retirement agreements with BTL. And there was yet a third group comprising five employees who, on their own accord, had simply resigned (the ‘Resigners’) from their employment with the Respondent BTL. The Appellants in this appeal belong to the first two groups. The third group ended their litigation journey following their success at the Court of Appeal.

[10] The trial judge ruled that all three groups were entitled to the statutory minimum severance pay, which BTL did not prove on a balance of probabilities that it had paid, and, so, must pay. BTL appealed. The Court of Appeal upheld the judgment in relation to the Resigners, but overturned it in relation to the Mandatory and Voluntary Retirees.

[11] The five Mandatory Retirees and five Voluntary Retirees appealed the judgment of the Court of Appeal to this Court. Before this Court, the Respondent BTL neither appealed nor otherwise contested the correctness of the judgment of the Court of Appeal in relation to the Resigners. Consequently, the Resigners are not parties in this appeal.

[12] In the substance, then, this judgment deals only with the Court of Appeal’s judgment in relation to the Mandatory and Voluntary Retirees. Although the frame of analysis necessarily includes the case of the Resigners—solely to present the reasoning in stark profile—the object of this judgment is not the Court of Appeal’s judgment in relation to the Resigners.

II. Factual Background

[13] Evidence in the case shows that the Respondent BTL had historically paid severance to its employees. There is evidence on record that BTL settled a series of trust deeds—notably in 1982, 1991 and 2017—which established a contributory

pension plan for its employees. Both the 1991 and the 2017 trust deeds pointed to 1989 as their effective date.

[14] On or about 1995, the parliament of Belize, amended the Labour Act, to address employees' entitlement—and employers' correlative obligation—to severance payments. Following that amendment, the Respondent BTL received legal advice, on the basis of which it transitioned away from the regime of severance payments. It did so on the hypothesis that its contributions to its employees' Pension Plan displaced its liability to pay severance under the Labour Act as amended. To kick off its new regime, the Respondent BTL paid to all its employees the statutory severance that accrued to them as of 1994. The Appellants were amongst the recipients of that pay out.

[15] The Respondent BTL's transition away from the severance pay dispensation was, it appears, further reflected in the CBAs. The later CBAs that preceded this litigation—notably those for the periods 1993–1995 and 2016–2019 are all silent about entitlement to severance payments. It appears that the last CBA that provided for severance payments was the 1991–1993 CBA.²

[16] The evidence suggests that the Appellants' retirements occurred on various dates.³ There is no claim, however, that any of the Appellants was not paid all the benefits due under the Pension Plan. As noted earlier, the sole claim is that the Respondent

² Article 12 of the 1993–1995 CBA provided as follows:

ARTICLE 12 - TERMINATION OF SERVICE, SEVERANCE PAY

The Union and the Company agree that severance payment will be made to the employees whose services are no longer required due to:

- 12.1 Redundancy
- 12.2 Ill Health
- 12.3 Death
- 12.4 Retirement at 55 years of age.

Payment will be based on the conditions in Schedule 4.

...

SCHEDULE 4

4.1 SEVERANCE PAY

Payment will be calculated on the following basis:

- 4.1.1 One week pay per each year of service after completion of five years of service.
- 4.1.2 Two weeks pay per each year of service after completion of ten years of service.
- 4.1.3 Three weeks pay per each year of service after completion of fifteen years service.
- 4.1.4 60 weeks maximum for employees with 20 or more years of service.

³ The Mandatory Retirees retired as follows: Ms Lorna Longsworth (16 March 2007), Ms Lois Garbutt (17 August 2012), Mr Andrew Arnold (1 August 2016), Mr Lowell Brooks (19 October 2019), and Mr Erven Marin (19 June 2020). The Voluntary Retirees retired as follows: Ms Lorna Martinez (31 May 2019), Ms Mailin Vasquez (30 June 2019), Ms Ruthlyn Ayuso (also 30 June 2019), Ms Guadalupe Escalante (15 May 2020), and Mr Curtis Kelly (30 June 2020).

BTL either did not pay them the minimum statutory severance payments or has not shown that it did so. On that claim, the payments that the Appellants received pursuant to the Pension Plan could not displace the obligation of severance payments that the Labour Act provides.

Judgments Below

The High Court

- [17] The case was tried by Young J at the High Court. In her judgment delivered on 4 January 2023, she found in favour of all the claimants, who at the time comprised the ten Appellants and the third group of five Resigners.
- [18] She considered that for purposes of s 183 of the Labour Act, the cessation of the Mandatory Retirees' employment relationship with BTL amounted to 'termination by the employer' on grounds of age; because they were compelled to retire at age 55 under the CBA. She reasoned that it would lead to an 'absurdity' if employees who were obligated to retire at 55 were left in a worse position than those who resigned at the same age, given that s 183(2) had specifically obligated employers to pay 'gratuity' that is equal to severance pay to employees who resigned, with no requirement upon such resigners to show that they were terminated by the employer. For the Voluntary Retirees, the trial judge found that by accepting an early retirement package, they had in fact 'resigned' on 'mutually agreed terms'. As they had all served for more than ten years, they, too, were entitled to a gratuity equal to severance pay under s 183(2) of the Labour Act.
- [19] Having established an entitlement to severance for all claimants, the trial judge then addressed the Defendant BTL's central defence, which at the time was based on s 194 of the Labour Act. That defence was that its own contribution to the pension fund was an alternative that subsumed the statutory obligation to pay severance. The learned trial judge was not persuaded. In her view, s 194 does not readily allow a pension plan to replace the statutory obligation to pay severance. Instead, it requires that severance pay '... be taken into consideration in ascertaining such

pension or benefit.’ It was thus not enough for an employer to have a pension plan in place; the employer must show that severance was factually accounted for regardless of payment of benefits under a pension plan. The learned trial judge was particularly perturbed by the fact that BTL’s pension plan involved equal contributions from both BTL and the employee, with no evidence to suggest that BTL’s contribution included an additional amount to account for severance. She thus concluded that BTL had ‘failed to prove that severance had been provided for, accounted for and included in the pension benefit.’

[20] Finally, the trial judge considered the validity of the individual Voluntary Retirement Agreements signed by the Voluntary Retirees, which included a clause purporting their acknowledgement that severance was included in BTL’s pension contribution. The judge found that this clause was an attempt by the Defendant BTL to prove satisfaction of a legal obligation through an agreement rather than in fact. It was an unlawful attempt, held the trial judge, to circumvent the law that imposed an obligation on BTL to pay severance. As such, she declared the agreements null and void by virtue of s 190 of the Labour Act, which invalidates any agreement that purports to exclude the operation of the Act’s severance provisions.

[21] Consequently, the learned trial judge ordered BTL to pay the claimed severance to all fifteen claimants, with the amounts adjusted for any severance that had already been paid for the period up to 1994.

The Court of Appeal

[22] BTL then appealed the judgment of the trial judge. In its own judgment delivered on 20 May 2024, the Court of Appeal partially overturned and partially upheld the trial judge. It overturned the trial judgment in relation to the Mandatory Retirees and the Voluntary Retirees, while upholding the judgment in relation to the Resigners.

[23] Regarding the Retirees, the Court of Appeal held that the trial judge erred in deeming their retirement at age 55 to be ‘termination’ by the employer. Instead, it

viewed the retirement as the outcome of a ‘bilateral agreement’ captured in the CBA, according to which the concerned employees had agreed to retire at age of 55. The Court of Appeal also disagreed with the trial judge’s finding that it would be absurd for these retirees to receive what was effectively the same severance that was given to the Resigners. In that regard, the Court offered a different view of the purpose of severance pay: it was ‘to cushion the hardship arising from an *unanticipated* or permanent cessation of work.’ (emphasis added). Retirement at 55 pursuant to the CBA, being a planned and agreed-upon event, fell outside that statutory purpose.

[24] Regarding the Voluntary Retirees: unlike the trial judge who treated their departure effectively as a resignation, the Court of Appeal, disagreeing, held that the Voluntary Retirees were not entitled to severance in the first place, because their employment did not cease under any of the specific circumstances outlined in s 183—including under the rubric of resignation, which is distinctly recognised as such in s 183(2). In the circumstances, the Court of Appeal handled the effect of their retirement agreements differently. Instead of annulling the entire agreement for illegality on grounds of s 190, it simply severed the clause that purported to acknowledge the payment of severance.

[25] In the event, the Court of Appeal held that the Mandatory and Voluntary Retirees were not entitled to the severance payment set out in s 183.

[26] The Appellants have now appealed to this Court.

IV. **The Issues**

[27] The appeal thus presents the following main questions: (i) whether Appellants’ retirements are to be deemed ‘termination’ by the Respondent BTL for purposes of s 183 of the Labour Act, notwithstanding that the first group (the Mandatory Retirees) were required by the CBA to retire at age 55 and the second group (the Voluntary Retirees) retired of their own volition; and, (ii) if the answer to the first issue is yes, the further question remains whether the Appellants are still entitled to

the severance pay mandated by s 183, notwithstanding that they were paid benefits under the BTL employee Pension Plan.

V. Discussion

The Severance Scheme of s 183 of the Labour Act

[28] Under the Belize Labour Act, entitlement to severance pay is set out in the basic framework of s 183. It provides as follows:

183: — (1) Where a worker who has been continuously employed by an employer for a period of,

(a) five to ten years and,

(i) his employment is terminated by the employer; or

(ii) the worker retires on or after attaining the age of sixty years or on medical grounds,

that worker shall be paid a severance pay of one week's wages in respect of each complete year of service; or

(b) over ten years and his employment is,

(i) terminated by the employer for reasons, which do not amount to dismissal,

(ii) abandoned by the worker pursuant to section 41 of this Act;

(iii) contracted for a definite period and the employment is terminated on the expiration of such period and the contract either makes no provision for or makes less favourable provisions for severance pay; or

(iv) ended because the worker retires on or after attaining the age of sixty years or on medical grounds,

that worker shall be paid a severance pay of two weeks' wages in respect of each complete year of service.

(2) A worker with a minimum of ten years' continuous service who resigns his employment shall be eligible for a gratuity equal to severance pay computed in accordance with this section.

(3) Notwithstanding subsection (1)(b) of this section, where an employee has completed over ten years of continuous employment, the severance pay shall be computed as follows:

(i) for the period served before 31st day of December, 2011, at the rate of one week's pay for each complete year of service; and

(ii) for the period served after the 31st day of December, 2011, at the rate of two weeks' pay for each complete year of service.

...

(9) Acceptance of severance pay by an employee shall terminate the continuous period of employment.⁴

[29] To set the stage for the interpretation of s 183, it is perhaps helpful to make two preliminary observations. First, with limited exceptions—such as dismissal for cause⁵ or abrupt abandonment of post when not justified by good and sufficient cause amounting to constructive wrongful termination⁶—the severance payment obligation is a no-fault system. The general aim of the system is not to punish employers or employees for severing the employment relationship. It is, rather, to cushion the employee from the shock of being put out to pasture of life without remunerative work after years (particularly 10 years or more) of continuous paid employment and without the financial security enjoyed up to then. As this Court recently observed in *Arjoon v New Building Society Ltd*:

The purpose of a severance payment is not to punish an employer; it is to reward an employee for the service they gave to the employer and compensate them for the loss they have suffered by the termination of their employment, whether wrongfully or not—whether fairly or unfairly.⁷

[30] In the same vein, the following consonant observations of the Supreme Court of Canada may be noted:

⁴ It may be noted in passing that although some or all the employees concerned in this litigation had accepted mid-employment severance payments in 1995, BTL's case did not proceed on the footing that those severance payments had, pursuant to s 183(9), terminated the continuous period of the payees' employments for purposes of the obligation BTL to pay them severance on the eventual parting of ways that resulted in their claims in this litigation.

⁵ See s 183(1)(b)(i).

⁶ See s 183(1)(b)(ii) read together with s 41.

⁷ [2024] CCJ 7 (AJ) GY at [55].

Severance pay recognizes that an employee does make an investment in his employer's business—the extent of this investment being directly related to the length of the employee's service. This investment is the seniority that the employee builds up during his years of service. ... Upon termination of the employment relationship, this investment of years of service is lost, and the employee must start to rebuild seniority at another place of work. The severance pay, based on length of service, is some compensation for this loss of investment.⁸

[31] A strong signal of that no-fault severance system is sufficiently clear in s 183(2)—and it is pivotal to the settlement of the first issue in this appeal. It says that a worker who *resigns* from his or her employment after 10 years of continuous service is still entitled to a 'gratuity' equal to the severance payment calculated in accordance with s 183. Hence, a worker who resigns after 10 years (regardless of the employer's continuing need for her skills or services) is still effectively entitled to the same severance as the worker who retires, is laid off, or is otherwise terminated because the employer desired to see her go. And the case at bar virtually spans the gamut of the circumstances that s 183 covers. The litigation engaged the claims of workers who resigned of their own volition, the claims of workers who retired voluntarily, and the claims of workers compelled to retire pursuant to a collective bargaining agreement between their employer and their union.

[32] The second preliminary observation relates to the approach to statutory interpretation that should guide the resolution of this case. In *Bank of Nova Scotia v Comptroller of Inland Revenue*,⁹ this Court gave a decisive endorsement to purposive interpretation. As explained in that case, the technique requires judges to (a) discern the purpose of the statute that they are interpreting, (b) ascertain the nature of the transaction under consideration in the case, and, then (c) apply the provisions sensibly to the actual circumstances of the case if they reasonably fall within the statutory regime—notwithstanding manageable infelicities in words and phrases, which, in any event, do not dislocate the provisions' legislative orientation.

⁸ *Rizzo v Rizzo Shoes Ltd, Re* [1988] 1 SCR 27 at [26].

⁹ [2025] CCJ 14 (AJ) LC.

- [33] Although *Bank of Nova Scotia v Comptroller of Inland Revenue* concerned the interpretation of a tax statute, it remains the case that tax legislation is just one of the areas of the law lately and unambiguously to be brought under the full domain of the doctrine of purposive interpretation. As the House of Lords (as it then was) explained in a persuasive reasoning, the case law that affirmed purposive interpretation in the realms of tax law did not ‘introduce a new doctrine operating within the special field of revenue statutes. On the contrary, ... it rescued tax law from being “some island of literal interpretation” and brought it within generally applicable principles.’¹⁰ In other words, the application of the doctrine of purposive interpretation to tax legislation gives a stronger reason to apply it to employment standards legislation whose purpose is the protection of vulnerable workers. Indeed, there is persuasive authority to that effect in *Re Rizzo v Rizzo Shoes Ltd*,¹¹ a Canadian leading case on employment severance payments. There, the Canadian Supreme Court held that the interpretation of employment standards legislation does not rest exclusively on statutory words and phrases. Rather, those words and phrases are to be read in their entire context and harmoniously with the legislative purpose. I agree.
- [34] In explaining why the legislative purpose of employment standards legislation must always be kept in mind, Professor David Doorey observed in his leading text on the law of work:

Over the decades, politicians have looked out at the world that results when individual workers have been left to bargain their own working conditions with employers within the common law regime and not liked what they saw. They saw employers exploit their superior bargaining power to impose unacceptably poor working conditions on workers, including very low wages, long working hours, and extremely dangerous workplaces. ... As public opposition to these practices grew, politicians responded by passing regulatory standards legislation to protect workers, who were perceived to lack the bargaining power necessary to protect themselves.¹²

¹⁰ See *Barclays Mercantile Business Finance Ltd v Mawson* [2005] 1 AC 684 at [33].

¹¹ *Rizzo* (n 8) at [21].

¹² David J Doorey, *The Law of Work* (3rd edn, Emond Publishing 2024) 277. See also *Rizzo v Rizzo Shoes Ltd, Re* [1988] 1 SCR 27 42. See also *Uber BV v Aslam* [2021] 4 All ER 209 at [71].

- [35] The purposive approach eschews disharmony, inconsistency or lack of coherence in the application of the given statute. In a foremost text on statutory interpretation, the relevant principle is stated as follows: ‘It is a principle of legal policy that law should be coherent and self-consistent. This principle forms part of the context against which legislation is enacted and, when interpreting legislation, a court should take it into account.’¹³ The principle is further explained in terms that ‘[t]he law should be coherent and as simple and straightforward as possible. The courts will therefore tend to prefer a construction that avoids inconsistency, overlapping rules or arbitrary distinctions.’¹⁴
- [36] In light of the purposive approach to the interpretation of employment standards legislation, a golden rule may then be stated as follows. A comparatively liberal standard of employee protection provided in the statute for any employee will be considered the baseline of protection for all employees to whom the statute is generally applicable; except where there is either a clear and intentional preclusion of other workers from that standard of protection or other generally understood reason of principle (such as objective variations in job descriptions, pay grades, longevity of service, etc) to preclude them from the protection in question. Purposive interpretation will not favour ‘arbitrary distinctions’—or unjustifiable discrimination—in the treatment of workers in the same employment boat merely because of apparently imprecise, halting, or uneven legislative language.
- [37] The purposive approach to statutory interpretation as outlined above will guide the interpretation of the provisions of the Labour Act that apply in this case.
- [38] For easier appreciation of the reasoning, it will be more convenient to address the circumstances of the claimants in this litigation in the reverse order of their treatment in the judgments of the Court of Appeal and the High Court. Let us begin with the Resigners. As indicated earlier, although they are no longer parties in the appeal at this level, the treatment of their circumstances during their participation

¹³ Diggory Bailey and Luke Norbury, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn, LexisNexis 2020) s 26.8.

¹⁴ *ibid.*

in the Court of Appeal and the High Court makes it necessary to still consider their case—purely for comparative or contrasting analysis.

The Resigners

- [39] The circumstances of the Resigners, though pivotal to this judgment, does not require extensive discussion. The trial judge determined that the Resigners who worked continuously for BTL for 10 years or more were entitled to payment of gratuity equal to severance calculated in accordance with s 183, notwithstanding that their resignations were purely volitional. The Court of Appeal agreed with the trial judge. So, do we. The correctness of the united determinations of the Court of Appeal and the trial judge on the point is borne out by the words of s 183(2) of the Labour Act, which, as noted earlier, says: ‘A worker with a minimum of ten years’ continuous service who resigns his employment shall be eligible for a gratuity equal to severance pay *computed* in accordance with this section.’ (emphasis added). It must be noted especially that the one purpose that the reference to s 183 serves for the Resigners is *computation* of the contemplated gratuity. The other requirements laid down in s 183 (particularly the minimum age of 60 years) do not appear to be prerequisite hurdles for the Resigners.

The Voluntary Retirees

- [40] But if an employee in his or her 50s (or younger) who *resigns* after 10 years of continuous employment would be entitled effectively to the same severance pay prescribed in s 183 (but styled differently as ‘gratuity’), what then would it be for a worker of the same age grade who *retires* after the same 10 years of continuous employment with BTL? The trial judge saw no material difference between volitional resignation and voluntary retirement. So, the trial judge held that BTL also owed the Voluntary Retirees the severance payment that no one disputes to be the entitlement of volitional Resigners. The Court of Appeal disagreed, reasoning that since the departure of the Voluntary Retirees was pursuant to an agreement with BTL, they were not entitled to the severance payment stipulated in s 183; because they were not *terminated*, their departure resulted rather from ‘entirely bi-lateral’

agreements with BTL to retire before age 60.¹⁵ It helps to recall that one way in which those who end their employment before age 60 would be entitled to severance under s 183 is if their employment was terminated by the employer. Since the Court of Appeal disagreed with the trial judge's conclusion that those who retired at age 55 were terminated by BTL (more on this below), the Court of Appeal concluded that the Voluntary Retirees met none of the statutory preconditions for severance pay set out in s 183.

[41] Notably, the Court of Appeal side-stepped the trial judge's reasoning that there was no material difference between resignation and voluntary retirement such as would justify denying to the Voluntary Retirees essentially the same severance payments that were mandated for the Resigners under the description of 'gratuity.' Presumably driven by the shared description of their departures as 'retirement,' the Court of Appeal did not sufficiently consider the Voluntary Retirees (the circumstances of whose departures were memorialised in individual agreements between BTL and each of those Voluntary Retiree) as warranting separate legal consideration from the Mandatory Retirees (whose departures at age 55 were directly compelled by the CBA between BTL and the employees' union). The Court of Appeal evidently treated both groups together as 'the Retirees,' who ultimately were not entitled to the severance payments stipulated for employees whose employments are 'terminated by the employer.' In that regard, the Court of Appeal reasoned that 'retirement' by an employee before age 60, pursuant to either a collective bargaining agreement, or individual agreement, with the employer is not unilateral 'termination' by the employer entailing an obligation upon the employer to make the minimum severance payment stipulated in s 183.¹⁶

[42] In my respectful view, the Court of Appeal was mistaken in their failure to give the Voluntary Retirees a separate consideration from the Mandatory Retirees. It is certainly true that voluntary retirement pursuant to an agreement between BTL and a former employee is an exercise in volition on the part of that former employee. It

¹⁵ *Belize Telemedia Ltd v Marin* BZ 2024 CA 3 (CARILAW), (20 May 2024) at [20].

¹⁶ *ibid* at [20]–[24].

is nevertheless difficult to see how that exercise in volition is so different from the Resigner's exercise in volition, such that the Resigner who served for 10 years or more should be entitled to gratuity equal to severance pay which must be denied to the Voluntary Retiree of the same workplace longevity. In the light of the purpose of the legislation and the significance of severance payments as explained above, I agree with the trial judge that the legislature cannot be presumed to have intended that the mere word 'retirement' should produce such a disparate legal impact.¹⁷ She was correct, in my view, to find that the legislative purpose for severance payments under s 183 compels treating voluntary retirement as jurally synonymous with resignation. The Voluntary Retirees are thus entitled to the same measure of severance to which the Resigners are entitled in the name of gratuity.

- [43] In that regard, the *Rizzo* case offers a helpful analogy. The Employment Standards Act of Ontario created an entitlement for severance and other outstanding payments to employees terminated 'by the employer.' In that case, the employer went bankrupt, resulting in loss of employment for its employees as of the date of the receiving order in bankruptcy. Those employees filed claims for severance and other outstanding payments that were due to them as of the date of the receiving order. The trustee in bankruptcy rejected the claims, on the argument that loss of jobs due to bankruptcy didn't amount to loss of jobs due to termination 'by the employer.' The trial judge overruled the trustee in bankruptcy; but the Court of Appeal, in turn, overruled the trial judge and restored the conclusion of the trustee in bankruptcy. On further appeal, the Canadian Supreme Court disagreed with the Court of Appeal and found an absurdity with the trustee's conclusion. The absurdity would be that employees who lost their jobs a day before a receiving order in bankruptcy would have valid claims against the estate of the bankrupt for severance and other outstanding payments, but those who lost their jobs the day after the receiving order would have no valid claims at all to the same payments. That outcome, held the Supreme Court, would be inconsistent with the protective legislative purpose of employment standards legislation said to recognise the claims

¹⁷ *Marin v Belize Telemedia Ltd* BZ 2023 SC 29 (CARILAW), (4 January 2023) at [23].

of the employees who lost their jobs the day before the receiving order. The better approach is that an interpretation of employment standards legislation that ‘extends its protections to as many employees as possible, is to be favoured over one that does not.’¹⁸

- [44] Although the facts and the issues in *Rizzo* are not on all fours with those in the case before us, I am confident that the principles distilled in that case sufficiently shed persuasive light on the resolution of the issues before us.

The Mandatory Retirees

- [45] The case of the Mandatory Retirees invites the more involved analysis, in comparison with that of the Voluntary Retirees. A fundamental disagreement between the Court of Appeal and the trial judge turned on the case of the Mandatory Retirees. They were *compelled* to retire at age 55. But it is helpful to ask this: Whose imperative was that compulsion? Was it the company’s or its workers’ union’s? That mandatory retirement is captured in the Agreed Statement of Facts and Issues as follows: ‘The retirement age for employees of the Defendant is 55 years.’¹⁹
- [46] I am not persuaded by the trial judge’s peremptory characterisation of the BTL employees CBAs as the *unilateral* imposition by the Respondent BTL merely because the agreements contain a provision *requiring* BTL’s employees to retire at 55. The difficulty with that characterisation arises, not only in light of the multiple instances in which the Belize Labour Act acknowledges rights and obligations in CBAs,²⁰ but also because the Belize Trade Unions and Employers’ Organisations (Registration, Recognition and Status) Act makes CBAs binding ‘on the trade union and the employer who are parties to the agreement, and unless stated otherwise, on every employee who is a member of such trade union or who is a member of the bargaining unit in respect of which the trade union is certified as the bargaining

¹⁸ See *Rizzo* (n 8) at [24].

¹⁹ See Record of Appeal, ‘Agreed Statement of Facts & Issues’ at [2].

²⁰ See Belize Labour Act, Cap 297, s 37(3)(a) (notice period for voluntary termination of employment), s 42(1)(f) (unfair dismissal), s 126 (average pay), s 131(4)(c) (sick leave pay), s 194(2) and (3) (pension scheme).

agent.’²¹ Indeed, the latter statute deems the terms of the CBA ‘to be incorporated into the employment contract of each employee to whom the agreement applies.’²² That statute requires that ‘the employer or the employers’ organisation and the trade union shall collectively negotiate in good faith, and shall make every reasonable effort to conclude a collective bargaining agreement.’²³ Such agreements can thus not be summarily dismissed as *unilateral* imposition by the employer.

[47] It is, of course, a different matter whether a particular CBA is found lacking in validity by reason of either the non-fulfilment of the prerequisites listed in s 41(1) of the Trade Unions and Employers’ Organisations (Registration, Recognition and Status) Act or because of the non-derogation imperatives of s 190 of the *Labour Act* (discussed below). But those questions will be considered on their own merits in any case where they arise.

[48] That said, the complexities (some of them dizzying) that can beset life at many stops along a timeline of history, which are often insufficiently explored (if explored at all) in the average litigation, will often not permit a judge to come to firm conclusions about stories told in the case. Through their evidence, counsel make what is often their best effort (generally with integrity) to tell the stories that present their clients’ cases in the best light. And then, occasionally, an evidential flotsam bobs up, looking seemingly insignificant at first glance. In many cases it will be just that: a piece of unhelpful material that deserves no second look. But, in some instances it could be a humble clue that signals more to the story than that told by the showier pieces of the evidence.

[49] The 55-year mandatory retirement age at BTL is an acute feature of the case. The genesis of that mandatory retirement age is important, as signalled by the analytical question posed above about whose imperative it truly was. The impression is left in the submissions of counsel on both sides—and in the reasoning of the courts below—that the mandatory retirement age is a feature of successive CBAs between

²¹ See Belize Trade Unions and Employers’ Organisations (Registration, Recognition and Status) Act, Cap 304, s 42(1).

²² *ibid* s 42(2).

²³ *ibid* s 33(2).

the Respondent BTL and its employees' union. The Agreed Statement of Facts and Issues stipulated to that mandatory retirement age as a recurring term²⁴ in the CBAs from 1991 to 2018. When questioned about how that mandatory retirement age found its way into the CBAs—was it BTL or was it the workers' union that wanted it there?—Mr Lumor, SC (counsel for BTL) did not know and was rightly reluctant to speculate.

- [50] However, buried deep in the records of the case is an interesting clue. In 1982, the Belize Telecommunication Authority (as the Respondent BTL was then known²⁵) settled a pension fund trust deed for the benefit of its management staff, pursuant to the 'determination' of the company to establish the pension plan.²⁶ Instructively, Clause 1 of the rules of the pension fund provided that the 'subscribers to the fund shall be members of the management staff of the Belize Telecommunication Authority (hereinafter called 'the Authority'.)'²⁷ And Clause 5 crucially speaks to the 55-year mandatory retirement age:

All subscribers shall be entitled to a pension at the age of fifty-five years, and *shall retire* from the service of the Authority at that age unless by special agreement with the Authority such subscriber *is allowed to remain* in such service.²⁸

- [51] The foregoing provision shows BTL requiring that the employee 'shall retire' from service at 55; unless, by special agreement, the employee 'is allowed to remain' in service beyond that age. There is no indication that, that mandatory retirement age *resulted* from any CBA between BTL and its workers' union as of 1982. In the absence of evidence to that effect, it cannot be taken for granted that the mandatory retirement age of 55 years was merely a recurring attribute of collective bargaining agreements between BTL and its workers' union; rather than a company policy which the Respondent BTL had an interest in entrenching as a term of the CBAs.

²⁴ See Record of Appeal, 'Agreed Statement of Facts & Issues') 669 at [3]–[6].

²⁵ See 'Our Corporate History' (Belize Telemedia Ltd) < <https://livedigi.com/about-digi/> > accessed on 10 October 2025.

²⁶ Record, 478.

²⁷ *ibid* 483.

²⁸ *ibid* (emphasis added).

- [52] Then again, the evidence of the trust deed to the foregoing effect will still not comfortably accommodate the learned trial judge's stark conclusion that the CBA (to the extent that it contained a mandatory retirement age of 55 years) was a *unilateral* imposition by the Respondent BTL upon its employees. But it allows it to be considered that there may be more to the story of the mandatory retirement age than its attribution without more to the CBAs.
- [53] Equally unpersuasive is the Court of Appeal's similarly stark conclusion that the mandatory retirement resulted simply from a consensual agreement between the Respondent BTL and its employees, effected through the CBAs. It is neither necessary nor desirable to negate here the value of CBAs negotiated and signed by workers' union. On the other hand, it is not wise to overstate the legal significance of the CBA in the context of the BTL workplace, by insisting that it is only a contract of service between the employer and the individual employee, even though he or she did not actually sign it. There is no need in this case to embark upon an extended discussion on the point. It is enough to accept, as a matter of law (as noted earlier) that the Belize Trade Unions and Employers' Organisations (Registration, Recognition and Status) Act deems the terms of the CBA 'to be incorporated into the employment contract of each employee to whom the agreement applies.'²⁹ But, that does not resolve the legal question facing us.
- [54] The protective purpose of s 183 of the Labour Act favours the interpretation that 'termination by the employer' remains substantively that: notwithstanding that the employee accepted the termination under the terms of a CBA. Therefore, as the provision requires 'termination by the employer' as a prerequisite to the employee's entitlement to severance pay, the correlative obligation to pay it continues to encumber the employer where the employee accepts, through an agreement, the employer's termination of the contract of employment.
- [55] Furthermore, there is the matter of reduction of the retirement age. Notably, s 183 does not stipulate 60 years as the mandatory age at which employees *must* retire. It

²⁹ Trade Unions and Employers' Organisations (Registration, Recognition and Status) Act, Cap 304, s 42(2).

only contemplates two related situations of interest to the present analysis. First, it *allows* that an employee may work beyond age 60. And second, it prescribes the minimum severance payment that the employer must make to an employee who retires after age 60—providing, of course, that all the other conditions (particularly continuous service for 10 years) are met. But what the Respondent BTL’s mandatory retirement age of 55 does is *compel* an employee to retire five years earlier: thus forcing the employee to leave the workplace long before the minimum statutory age needed to qualify for severance.

- [56] The question thus arises: where an employer has a wholesale policy that compels every employee to retire at age 55, should that employer so easily escape the obligations that the legislature has mandated for the protection of vulnerable employees who must work beyond age 60 before they are entitled to a certain level of severance pay? The answer to that question is no. Indeed, the *very least* that such employer must still do is to provide the minimum severance that s 183 mandates for the minimum retirement age of 60 years, assuming that the required 10-year continuous period of employment is met. And it is really the ‘very least’ that the employer must do, because an employee who is compelled by company policy (though reflected in a bargaining agreement) to retire at 55 may lose much more than the minimum severance set out in s 183. To begin with, it is almost certainly the case that the statutory minimum severance payment accruing upon retirement at age 55 will be less than the combination of continued regular remuneration until age 60 *in addition to* the severance payment which accrued upon retirement at that later age. What is more, there are more benefits to work than are readily quantifiable in monetary sums. As Dickson CJ once observed at the Supreme Court of Canada:

Work is one of the most fundamental aspects in a person’s life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person’s employment is an essential component of his or her sense of identity, self-worth and emotional well-being.³⁰

³⁰ *Reference Re Public Service Employee Relations Act (Alberta)* [1987] 1 SCR 313 at 368.

- [57] I agree. And I hasten to add in the context of the present case that an employee who finds his work fulfilling or identity-defining would have continued to enjoy that sense of self-worth and emotional well-being—and the corollary mental health benefits—in the five additional years between ages 55 and 60.
- [58] This brings us to the lingering question of ‘absurdity’ on which the Court of Appeal overruled the trial judge. As may be recalled, the trial judge considered it an absurdity that the Resigners are effectively entitled to receive the severance pay that s 183 prescribes, but those who voluntarily retired in the same circumstances as the Resigners, let alone those compelled to retire, would not receive the equivalent severance pay. The Court of Appeal saw no such absurdity—on their view of the purpose of the s 183 regime. That purpose, according to the Court of Appeal, was ‘to cushion the hardship arising from an unanticipated or permanent cessation of work.’ Retirement at 55 pursuant to the CBA, being a planned and agreed-upon event, held the Court of Appeal, fell outside that statutory purpose. That reasoning is unpersuasive. It is difficult to see how retirement at 60, as contemplated under s 183, would qualify for the ‘cushion of hardship arising from an unanticipated or permanent cessation of work’, but an earlier retirement at 55 pursuant to the CBA would not. In my view, purposive interpretation of s 183 bears out the trial judge’s view of absurdity more than it does the Court of Appeal’s view of purpose. As indicated earlier, if the purpose of s 183 is to maintain vulnerable employees in a protection regime that is not based on fault, there is then evident absurdity in extending that protection to an employee that voluntarily resigned (as in the case of Resigners), while denying it to a similarly situated employee who either also voluntarily retired or was compelled to retire pursuant to a CBA.
- [59] We may recall the earlier agreement with what the Supreme Court of Canada said in *Rizzo*: that it was absurd to reject outstanding claims of a bankrupt company’s employees who were terminated immediately upon the receiving order of bankruptcy, where similar claims of other employees of the same company were accepted as valid because those employees were terminated a day before the receiving order.

Non-Derogation of Severance Entitlements

- [60] Let us now consider the implications of s 190 of the Labour Act, in appraising the effects of both the CBAs that required the Mandatory Retirees to retire at age 55, as well as the agreements pursuant to which the Voluntary Retirees retired, before reaching age 60 to qualify for the statutory minimum severance.
- [61] Section 190 provides: ‘Any agreement between an employer and the worker which purports to exclude the operation of any of the provisions of this Part shall be null and void.’
- [62] Evidently, the provision is a non-derogable mechanism. It operates against any agreement—whatever its circumstances—that is inconsistent with the regime laid down in s 183. The evident value of s 190 is the emphasis it gives to the purpose of the minimum severance regime established under s 183, which is to protect vulnerable workers, in obvious recognition of what Professor Doorey correctly described as unequal bargaining power between employers and employees.
- [63] In my view, that mechanism against derogation from the minimum severance entitlements is just as strong when the derogation results from the necessary implications of an agreement, as it is against explicit contracting out. This is because the mischief that preoccupies s 183—ie the vulnerableness of disempowered workers—remains the same regardless of its guise. And the equity of the corrective looks, as always, at substance and not form.
- [64] The easier cases of non-derogation would be purported individual ‘voluntary’ agreements between employers and employees, such as those that governed the circumstances of the Voluntary Retirees in this case. The more difficult cases would be provisions of collective bargaining agreements, which are meant to lessen the incidence of unequal bargaining power between employers and employees. But the asymmetry presented by CBAs, in contrast with the individual voluntary agreements, is not beyond the judicial function of sensible statutory construction, keeping in mind the overall technique of purposive interpretation that must be

brought to bear. That function will require judges to construe the statute as a whole: and in doing so must reconcile the non-derogable imperatives of s 190 with the statutory recognition of collective bargaining agreements under s 194; when such agreements provide for—say, pension—benefits that must still account for the minimum statutory severance set out in s 183. Even then, the terms of s 194 (as we shall soon see) do not readily accept the circumvention of the employer’s obligation to pay minimum statutory severance, merely because of the entrenchment of a pension plan in a CBA.

[65] In my view, s 190 invalidates the individual agreements of the Voluntary Retirees to the extent that those agreements purport to preclude the severance payments mandated by s 183. Regarding the seeming inconsistency—from the perspective of s 190—of CBAs that mandated the retirement of the Mandatory Retirees at age 55, s 194 affords the more appropriate resolution. That resolution will become clear in the fuller analysis of s 194 conducted below.

[66] For now, it is important to register a cautionary note for the fuller appreciation of the analysis of the non-derogation regime of s 190. The effect of that provision in the circumstances of this case is not understood as nullifying the entire (individual or collective) agreement that effected retirement before age 60. That would give the provision the effect of guaranteeing employment until age 60. That is not the object of the scheme reflected in s 183: it is rather to ensure that a worker who works until age 60 is entitled to the prescribed minimum severance pay. Hence, an agreement that purports to exclude that *severance* scheme is null and void only to that extent. In that regard, the word ‘agreement’ in s 190 need not encompass the entire contractual document containing the impugned term. Indeed, the Appellants in this case make no such broader claim. It is enough that a discrete provision in an omnibus contractual agreement can also be a discrete “agreement” on the point. That is the extent of the judgment that need be rendered here.

[67] In conclusion, subject to the further analysis conducted below as to the import of s 194, the mandatory retirees are sufficiently accommodated within s 183(1)(b)(i),

which imposes the obligation to pay severance upon termination by the employer for reasons which do not amount to dismissal. Having resolved the question on that footing, it is not necessary to consider also the applicability of s 183(1)(b)(iii) regarding contract ‘for a definite period and the employment is terminated on the expiration of such period ...’. Given the finality of the judgment of this Court, any analysis under s 183(1)(b)(iii) will take the claims of the Appellants no further.

Entitlement to Severance under s 194 of the Labour Act

- [68] Section 194 of the Labour Act comprises an important plank in this appeal in two main ways. Primarily so because of the need to reconcile the minimum severance payment obligation created under s 183 with any pension benefits plan recognised under s 194. But also because of the need to reconcile the non-derogation imperatives of s 190 with any collective bargaining agreement that entrenches a pension benefits plan recognised under s 194 (as seen in the discussion above). Section 194 provides as follows:

- (1) A worker, who becomes entitled under any law to a pension, age benefit, retirement benefit or benefit under a scheme to which his employer is required to contribute, other than the contributions payable under the Social Security Act, Cap. 44 and regulations made thereunder, *shall nevertheless be entitled*, if he thereafter ceases work in the circumstances set out in section 183 of this Act, *to severance* pay in respect of any period which was served by him prior to his becoming entitled to such pension or benefit and which is not taken into consideration in ascertaining such pension or benefit.
- (2) A worker, who becomes entitled under any law to a pension, age benefit, retirement benefit or benefit under a scheme to which his employer is required to contribute, other than the contributions payable under the Social Security Act, Cap. 44 and regulations made thereunder, *shall nevertheless be entitled*, providing he fulfils any requirement therein contained, *to any benefit* he would have been entitled to under any collective agreement or other contract of service in respect of any period which was served by him prior to his becoming entitled to such pension or benefit and which is not taken into consideration in ascertaining such pension or benefit.
- (3) For the avoidance of doubt it is hereby declared that the liability of the employer to pay the severance pay arises on the date of the cessation of work by the employee in the circumstances set out in section 183 of this Act or in any collective agreement or contract of service. (emphasis added).

[69] The aim of s 194(1) is to retain the employee's entitlement to the minimum *severance pay* that accrued under s 183: if there is a risk that a payment under a *legally enforceable pension plan* would not fully have accounted for the entire period for which severance under s 183 had accrued to the employee. By way of a study aide, it may help to cut through the provision's thicket of complex syntaxes by thinking of s 194(1) as a *full severance* retaining mechanism—regardless of the existence of a pension plan. That is to say, the focus of s 194(1) is to ensure full *severance* retaining mechanism—regardless of the existence of a pension plan. That is to say, the focus of s 194(1) is to ensure full payment of accrued severance, undistracted by any available pension plan. See Figure 1 below. For its part, the object of s 194(2) is to retain an employee's entitlement to *pension* or other benefit *under a CBA*, which may not fully have accounted for the entire period for which that benefit accrued to the employee under the CBA. Again, it may help to think of the provision as a *full pension* benefit retaining mechanism. The focus of s 194(2) is on ensuring that an employee is paid his earned pension benefits in full. See Figure 2 below.

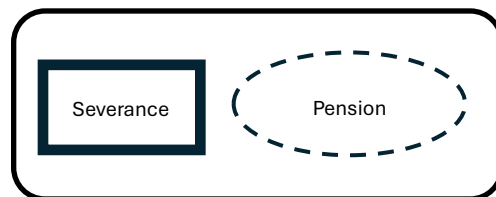


Figure 1: Section 194(1): Full Severance Retaining Mechanism



Figure 2: Section 194(2): Full Pension Retaining Mechanism

[70] In any workplace with a pension plan, both s 194(1) and s 194(2) will work together for the benefit of an employee; in ensuring that she is not only fully paid her minimum severance entitlements accruing under s 183; but also that she is fully paid her earned pension benefits pursuant to any available pension plan (as a stream of benefit separate from s 183).

Entitlement ‘under any law ...’

- [71] For purposes of s 194(1) of the Labour Act, the expression ‘entitled under any law,’ even as guided by the definition of ‘laws’ in s 3(1) of the Belize Interpretation Act, is obviously wide enough to accommodate entitlements under statute law, entitlements under the common law, or entitlements under any other source of applicable law. I see no basis to limit the expression to entitlements under statute law exclusively. I am, however, satisfied that entitlement under statute law is a sufficient basis to resolve the issues in the present case. I agree with the reasoning of the learned trial judge that the Trusts Act of Belize extends statutory anchorage to the BTL employee Pension Plan, with no further need to trouble the common law with the inquiry.
- [72] In that regard, s 3 of the Trusts Act³¹ provides: ‘Subject to the provisions of this Act, a trust is valid and enforceable in Belize.’ Reiterating that message, s 7(1) provides: ‘Subject to the provisions of this Act, a trust shall be valid and enforceable in accordance with its terms.’ Hence, an entitlement under the Pension Plan is an entitlement under the Trusts Act.
- [73] Similarly, s 42(1) of the Belize Trade Unions and Employers’ Organisations (Registration, Recognition and Status) Act, as noted earlier, makes a CBA ‘binding on the trade union and the employer who are parties to the agreement, and unless stated otherwise, on every employee who is a member of such trade union or who is a member of the bargaining unit in respect of which the trade union is certified as the bargaining agent.’ And s 42(2) of the same statute provides that ‘[t]he terms of the collective bargaining agreement are and shall be deemed to be incorporated into the employment contract of each employee to whom the agreement applies.’ Hence, an entitlement to pension or other retirement benefit entrenched in a CBA is to all intents and purposes an entitlement under the Belize Trade Unions and Employers’ Organisations (Registration, Recognition and Status) Act.

³¹ Cap 202.

[74] Therefore, the BTL employee pension benefits are entitlements under the (statutory) law of Belize within the meaning of s 194(1) of the Labour Act.

The Accrual of Severance Relative to a Pension Scheme

[75] The next question concerns the immediate value of s 194 to the particular circumstances of the Appellants. In addressing that question, Mr Courtenay, SC submitted that '[s]ection 194 is intended to protect employees from losing any severance *benefits* they have *earned prior to the introduction of the pension plan*. Section 194 is *backward looking, not forward looking*, and it should not be construed to mean that severance benefits are an alternative to pension benefits.'³²

[76] There is force to the argument that pension benefits are not alternative to severance pay. A close examination of both subsections (1) and (2) of s 194 supports that argument. They respectively preserve an employer's liability to make good on any shortfall in severance and pension payments, with no words of limitation indicating that the one type of benefit is an alternative to the other.³³

[77] It is also obvious that s 194 protects severance pay obligations that accrued *prior* to the *introduction* of a pension plan. There is, however, a need to clarify that the provision does more than that. It is apparent on close examination that the provision's aim is to protect severance entitlements that accrued to the employee '*prior to his becoming entitled to ... pension or benefit* and which is not taken into

³² See 'Speaking Notes of the Appellants' Counsel' at [9]. (emphasis added). Also repeated in oral submissions.

³³ It helps to recall that s 194 provides as follows:

(1) A worker, who becomes entitled under any law to a pension, age benefit, retirement benefit or benefit under a scheme to which his employer is required to contribute, other than the contributions payable under the Social Security Act, Cap. 44 and regulations made thereunder, shall nevertheless be entitled, if he thereafter ceases work in the circumstances set out in section 183 of this Act, to severance pay in respect of any period which was served by him prior to his becoming entitled to such pension or benefit and which is not taken into consideration in ascertaining such pension or benefit.

(2) A worker, who becomes entitled under any law to a pension, age benefit, retirement benefit or benefit under a scheme to which his employer is required to contribute, other than the contributions payable under the Social Security Act, Cap. 44 and regulations made thereunder, shall nevertheless be entitled, providing he fulfils any requirement therein contained, to any benefit he would have been entitled to under any collective agreement or other contract of service in respect of any period which was served by him prior to his becoming entitled to such pension or benefit and which is not taken into consideration in ascertaining such pension or benefit.

(3) For the avoidance of doubt it is hereby declared that the liability of the employer to pay the severance pay arises on the date of the cessation of work by the employee in the circumstances set out in section 183 of this Act or in any collective agreement or contract of service.

consideration in ascertaining such pension or benefit.’(emphasis added). The legislative aim is thus not limited to the protection of severance entitlements earned ‘prior’ to the ‘introduction’ of the pension plan, and which is not taken into consideration in ascertaining such pension benefit. *Entitlement to pension* payment under a pension scheme is an idea appreciably different from the *introduction* of that pension scheme.

- [78] Section 194(1) comes into play at the point of payment of benefits when the employment relationship ends. If there is an employee pension scheme, s 194(1) will prompt the following question: ‘Did the pension payment that the employee actually received fully account for the severance payment that s 183 mandates for the employee—from the beginning until the end of his or her employment?’
- [79] The foregoing interpretation is amply supported by s 194(3). It is a guide to the interpretation of the preceding subsections. As may be recalled, it declares for the avoidance of doubt that ‘the liability of the employer’ to pay the severance pay ‘arises on the date of the cessation of work by the employee’ in the circumstances set out in s 183 or in any collective agreement or contract of service. Hence, the ‘date of the cessation of work by the employee’ is clearly the reference date that engages the continuing ‘liability of the employer’ to make up any shortfall in severance pay that accrued under s 183. That reference date is not the date of ‘introduction of the pension scheme.’ Therefore, the determinant question is not: ‘Did the pension payment fully account for the severance that s 183 prescribed for the employee up until the *introduction* of the pension scheme?’ It is rather about ensuring that severance payments that the employee is qualified to receive from the beginning to the end of employment is fully accounted for in any pension payment she or he received—notwithstanding the date of introduction of the pension scheme.

Did BTL's Employee Pension Scheme Subsume Statutory Severance?

- [80] The foregoing train of reasoning now brings us to the dispositive question in the case, which is whether the Respondent BTL's contributions to its employee Pension Plan had the effect of discharging it from any further obligation to make the severance payments that s 183 commands.
- [81] There is no dispute that the Appellants received their entitled payments under the BTL Pension Plan. The Appellants' claim rather is that it remained unclear that the pension payments they received had fully accounted for their entitled severance payments under s 183. The concern, presumably, is that lurking behind that opacity is the probability that the pension payment did not fully account for the severance pay that s 183 prescribed for the Appellants—the very mischief that s 194(1) aims to prevent.
- [82] The trial judge and the Court of Appeal were effectively persuaded by that claim on its own merit. This is notwithstanding that the Court of Appeal's finding on the point held value only for the Resigners, because the Retirees (Mandatory and Voluntary) were, according to the Court of Appeal, not entitled to severance under s 183, on the reasoning that the agreements pursuant to which they retired before age 60 foreclosed their claim of having been 'terminated' by the Respondent BTL. As indicated above, the precepts of purposive interpretation constrain me to disagree with the Court of Appeal's determination that the agreements in question disqualified the Retirees from essentially the same severance to which the Resigners were entitled in the name of 'gratuity'.
- [83] As noted earlier, at the beginning of the hearing of this appeal, Mr Lumor, SC, counsel for the Respondent BTL conceded that his client's original position 'that severance is "subsumed" under pension payment is wrong.'³⁴ He did not elaborate on that concession beyond his admission in an answer to a question from the Bench that the equality of pension contributions by the Respondent BTL and the

³⁴ See 'Speaking Notes of Respondent' (30 June 2025) at [5].

employees during the period material to this litigation undermined BTL's original position that the severance pay was subsumed within BTL's contributions to the employees' Pension Plan. According to Mr Lumor, SC, the Respondent 'BTL should not have gone down [the] route' of not itemising 'the specific sum that constitute[d] severance, and the amount that constitute[d] pension' such that severance could not 'be discerned.' Rather, 'BTL ought to have itemised severance' so that it was clearly distinguishable from the part of the payments that constituted pension payments.³⁵

- [84] Mr Lumor's concession is significant in at least two ways. For one thing, it immediately resolved the question of burden of proof that is inherent in the Appellants' claim (based on lack of clarity that the pension payments they received had fully accounted for their entitled severance payments under s 183). The concession thus avoided extended discussion on who bears the evidential or persuasive burden of proof and whether it was discharged.
- [85] Regarding the substance of Mr Lumor's concession, I accept that an employer's contributions to employees' pension plan cannot displace the employer's obligation to pay minimum severance accruing under s 183, where an employee's terminal benefits do not specifically account for the statutory severance pay that accrued to the employee.
- [86] Indeed, the position goes well beyond the concern that the Respondent BTL's pension contributions were equal to the employee's contributions at all times material to this litigation. It should not be assumed that even an employer's higher pension contributions to an employees' defined contribution plan (explained below) would necessarily translate into the reality that the pension payment took into consideration the severance pays mandated by s 183. This remains the case even in circumstances where the employer's contribution to the pension plan is greater than the figures that result from the arithmetic of s 183. Common sense may urge the

³⁵ See video recording of hearing on YouTube, at timecode point 12:00 – 15:13: 'Hearing of the Appeal - BZCV2025/002 Erven Marin and Others v Belize Telemedia Limited' (1 July 2025) <<https://www.youtube.com/watch?v=nuEOKk70ueg>> accessed 10 October 2025.

conclusion that where the employer's own contributions were equal to, or greater than, the figures that would result from a calculation based on s 183, the employer should be taken as having discharged the minimum severance payment obligations imposed by that provision. That may well be so in most cases. However, as will be explained presently, the peculiarities of pension schemes models present a significant obstacle to that urge of common sense.

Models of Pension Scheme

- [87] Generally, pension schemes come in two models: the defined benefit ('DB') pension plan and the defined contribution ('DC') pension plan. Under a DB plan, the amount the employee would receive in pension upon retirement is known ahead of time. It may, for instance, be expressed as a certain percentage of last salary. It is in that sense that the pension *benefit* is said to be 'defined.'
- [88] Under the DC plan, for its part, the only thing that is 'defined' are the *contributions* that the employee and the employer are required to make towards the plan. The BTL employees' Pension Plan is in the classic DC model. Notably, clause 16 of the BTL Staff Pension Scheme Rules (attached as a schedule to both the 1991 and the 2017 Pension Trust Deeds) stipulate for both the Respondent BTL and each of its employee a monthly pension contribution of 3% of the employee's monthly salary.
- [89] Under the DC pension plan, the employees' and employer's pension contributions are invested in a managed pension fund. The result is that the employee's pension payment, unknown ahead of time, now depends on the performance of the pension fund investment. Additional variables that may affect the amount of pension benefit actually received are the costs and liabilities of the pension fund. Those costs and liabilities are typically deducted from what is actually paid out to the pensioner. These are distinct features of the BTL staff Pension Plan. Notably, clause 19 of the BTL Staff Pension Scheme Rules (attached as a schedule to both the 1991 and the 2017 Pension Trust Deeds) provides as follows:

Every employee shall at the date of his retirement from service of the Company receive in accordance with the provisions of the Trust Deed and

these Rules, a retiring pension equal to the amount of his contribution added to that of the Company's contribution plus interest at the rate earned by the pension fund less his proportionate share of the expenses incurred in working the pension scheme and any outstanding obligations to the pension fund.

[90] A general concern with DC pension plan models is that the risk of the fund's underperformance or maladministration is transferred to the employees. As one commentator put it: 'A pension plan can become a massive liability on a company's books and may become underfunded over time, putting both the company and its retirees at risk. Over the past few decades, most companies have chosen to shift the market-return liability to employees.'³⁶

[91] The inherent concerns of DC plans as explained above are enough of a hazard to the mathematical assumption that the employer's pension contributions that equal or exceed severance figures should discharge the employer from further obligation to make severance payment pursuant to s 183. Under-performance or mismanagement of the pension fund or a collapse of the stock market can affect pension benefits in ways that may result in payments that are lower than the severance payments mandated by s 183, if at all.

[92] And the mathematical assumption indicated in the preceding paragraph is further confounded by certain peculiarities of the BTL pension scheme revealed in the BTL's CBAs. This entails the possibility that an employee may, in certain circumstances, receive pension benefits that are less than the severance payments set out in s 183. For instance, it is provided in article 12 of the 1993–1995 CBA:

12.1. An employee whose services are terminated after five (5) years of continuous service, at the initiative of the company *on grounds of redundancy* shall receive payment for notice irrespective of whether or not notice was given, and will also receive both contributions from the pension scheme.

12.2. An employee who resigns from the company *in good grace* and has served the company for more than seven (7) continuous years but less than *eleven (11)*

³⁶ Miranda Marquit, 'Retirement 101: Defined benefit vs Defined Contribution Plans: The Burden has Shifted from Employer to Employee' (Encyclopedia Britannica, 9 June 2025) < www.britannica.com/money/defined-benefit-vs-defined-contribution > accessed 3 July 2025.

years, shall receive his/her pension contribution and 50% of the company's contribution to the pension scheme.

If the employee has served the company for *eleven (11) continuous years* or more, he/she shall receive 100% of both contributions to the pension scheme; *provided the employee resigned in good grace.*³⁷

[93] In article 16.4 of the 2016–2019 CBA, slight (though material) variation is made to what is broadly the same provisions:

16.3. An employee whose services are terminated after five (5) years of continuous service, at the initiative of the Company *on grounds of redundancy*, shall receive payment of both contributions from the Pension Scheme.

16.4. An employee who resigns from the Company *in good grace* and has served the Company continuously for:

16.4.1. Five (5) years but less than seven (7) continuous years *shall receive his/her pension contribution and 50% of the Company's.*

16.4.2. More than seven (7) years but less than ten (10) continuous years *shall receive his/her pension contribution and 75% of the company's contribution to the Pension Scheme.*

16.4.3. For ten (10) continuous years or more, he/she shall receive 100% of both contributions to the Pension Scheme.³⁸

[94] Interesting features of the scheme set out in the two examples above include but are not limited to the following:

- an employee who is terminated after five years would receive 100% of the employer's contribution only when the termination was due to redundancy; and,
- an employee who, according to the 2016-2019 CBA, resigned after five years but less than 10 years would receive only 50% of the company's pension contributions—provided the resignation from the company was 'in good grace.' The equivalent provision in the 1993-1995 CBA indicated resignation after seven years but less than 11 years.

³⁷ See Record of Appeal, 'Collective Agreement between BTL and its Workers Union (1993–1995)' 292–293. (emphasis added).

³⁸ See Record of Appeal, 'Collective Agreement between BTL and its Workers Union (2016–2019)' 323. (emphasis added).

- [95] Whether or not the outcomes of these formulae bear out the imperatives of s 183 of the Labour Act remain to be seen in particular cases. But the possibility of formulae of this kind in pension plans is enough to undermine confidence that pension payments would fully account for the statutory minimum severance payments imposed by s 183 of the Labour Act—if what the employee could be left with as retirement benefits at the end of employment is only or mostly his or her own contributions to the pension plan.
- [96] The foregoing reasons sufficiently obscure the value of the employer's contribution to the employees' pension plan, as a substitute for the minimum severance obligations laid down in s 183. It is for that reason that the obligation must be retained on the employer at all times (as provided in s 194): to the effect that the employer must show that the minimum severance pay that accrued for employees under s 183 has been fully accounted for in the employer's own contributions to any available pension plan that generated benefits that the employee *actually* received at the end of employment.
- [97] As the pension benefits that the Appellants received did not show that full accounting for the severance pay that accrued under s 183, I agree with the trial judge—and with the Court of Appeal to that extent—that BTL did not discharge the obligation imposed by s 194(1). It was wise of the Respondent BTL's counsel to concede the point.

Disposition

- [98] For the foregoing reasons, I find (i) that all ten Appellants are entitled to the severance payments set out in s 183(1) of the Labour Act; and, (ii) that the Respondent BTL's obligation to make those severance payments remains an enduring obligation to the extent that the pension benefits paid to the Appellants did not clearly account for the statutory severance payment.
- [99] In respect of each Appellant, the quantum of severance payment is to be calculated in the terms set out in the judgment of the trial judge.

[100] Costs are awarded to the Appellants:

- i. in this Court in the sum of USD23,892.83 based on the agreed value of the appeal;
- ii. in the Court of Appeal to be assessed, if not agreed, certified fit for one senior counsel and one junior counsel; and
- iii. in the High Court, as agreed in the High Court between the parties.

JAMADAR J:

‘The fight is never about grapes or lettuce. It is always about people...’

- attributed to Cesar Estrada Chavez

Introduction

[101] I have read the judgment of Eboe-Osuji J, and I concur. I write separately to underscore how this matter may serve as a practical affirmation of the principles this Court recently articulated for the interpretation and application of social justice legislation in the joint opinion of Rajnauth-Lee, Barrow and Jamadar JJ, in *CGI Consumers’ Guarantee Insurance Co Ltd v Stevenson*.³⁹

[102] The appeal before us concerns the entitlement of long-serving employees to severance pay under the Belize Labour Act, Cap 297 (‘Labour Act’). It is exactly the kind of matter for which the purposive interpretative approach articulated in the CGI case, and that may conveniently be labelled as the Social Justice Legislation Interpretation Framework (‘SJL Framework’), can be aptly applied.

[103] This appeal therefore demonstrates how a self-conscious Caribbean jurisprudence, that is context-sensitive, generous, principled, purposive, and pragmatic, can and

³⁹ [2025] CCJ 11 (AJ) BB.

should be applied to give full effect to laws enacted to protect persons and groups made vulnerable, and in cases such as this one, so as to address historical and persisting imbalances of commercial power. Which is not to say that the approach taken is limited to Caribbean jurisprudence, as it can no doubt have much wider implications.

Core Factual Matrix

- [104] The Appellants are ten former employees of Belize Telemedia Limited ('BTL'). They claim entitlement to severance payments under the Labour Act. Their employments ended at various points between 2006 and 2020, after substantial periods of continuous service (10+ years).
- [105] The Appellants fall into two categories. The first comprises five employees who were compulsorily retired at age 55 ('the Retirees') under successive Collective Bargaining Agreements ('CBAs'), negotiated between BTL and the Belize Communication Workers' Union. The second group comprises five employees who accepted early retirement packages ('the Voluntary Retirees'), according to which they signed Voluntary Retirement Agreements and received ex gratia payments in addition to their pension benefits. A third group of employees, 'the Resigners', had also brought claims, but their contentions are no longer in issue before this Court.
- [106] BTL had historically paid severance alongside operating a contributory pension plan. Trust deeds in 1982, 1991 and 2017 established the scheme, with both employer and employee contributing. Following amendments to the Labour Act in 1995, however, BTL obtained legal advice and adopted the view that its pension contributions displaced its statutory obligation to pay severance. Thus, it paid severance to all employees (including the Appellants) up to the end of 1994 but made no such payments thereafter. The CBAs that followed, those covering the periods 1993–1995 and 2016–2019 among them, were silent on severance entitlements.

[107] It is common ground that upon the cessation of their employment, each Appellant received pension benefits under BTL's scheme. Their collective claim is that these pension payments did not extinguish BTL's enduring statutory obligation to pay severance under Pt XV, s 183, of the Labour Act.

[108] At first instance, the High Court (Young J) found that all claimants, including the Retirees, Voluntary Retirees, and Resigners were entitled to severance. On appeal, the Court of Appeal upheld the Resigners' entitlement but set aside the judgment in favour of the Retirees and Voluntary Retirees. It is that part of the Court of Appeal's judgment concerning the Retirees and Voluntary Retirees that is now before this Court.

The Labour Act as Social Justice Legislation

[109] At the outset, it is beyond question that the severance pay provisions of the Labour Act are a quintessential form of social justice legislation. The history of labour law in the Caribbean is one that evolved from a legacy of colonial exploitation and power asymmetries. Protective statutes like the Labour Act were not enacted in a vacuum; they are the legislative embodiment of a long struggle for workers' rights and economic security. They represent a deliberate policy choice to create a social and economic safety net and to codify specific protections for employees, who have historically been, and are still too often invariably, the weaker party in transactional employment relationships. To be clear, this struggle for the recognition of workers' rights is not unique to the Caribbean, and is indeed a feature of many, if not most, 19th and 20th Century colonial societies.

[110] In *Arjoon v New Building Society Ltd*,⁴⁰ this Court explained the purpose of severance payments [in Guyana] as follows:

[55] The purpose of a severance payment is not to punish an employer; it is to *reward an employee for the service they gave to the employer and compensate them for the loss they have suffered by the termination of their employment, whether wrongfully or not – whether fairly or unfairly*. At

⁴⁰ *Arjoon* (n 7) at [55] (emphasis added).

common law, there was no obligation to make a severance payment and it developed as a practice of good employment relations. The practice having become standard in employment contracts, the legislature decided to put it on a statutory footing and make it obligatory as a matter of general fairness ...

[111] The character and provisions of the severance framework in the Labour Act echo these sentiments. Indeed, its anti-avoidance provision in s 190, which voids any agreement purporting to exclude the Labour Act's protections, is a clear indicator of its protective and enabling purposes.

[112] Recognising the Labour Act as social justice legislation is the crucial first step. It is this recognition that triggers the specific juridical approach to interpretation and application that this Court has committed to developing. This is an approach that moves beyond the legalistic and formalistic application of legal conventions and lends itself to recognising and responding to Caribbean social context realities and to the real purposes behind social justice legislation.

Interpretation of Social Justice Legislation ('SJL')

[113] In *CGI*, a joint majority of this Court outlined four integrated and interconnected principles for purposively interpreting social justice legislation. These are:⁴¹

- First, that such legislation must be understood and applied within its unique *Caribbean social and constitutional contexts*, recognising the power dynamics and historical realities that shape our societies.
- Second, that a *first principles methodological approach* is required, one that is informed, yet unburdened, by precedent and that looks through and interprets constitutional and legislative language and purpose, to achieve stated and aspirational goals in practical and legislatively legitimate ways.

⁴¹ *CGI* (n 38) at [77], and [93]-[97].

- Third, that such legislation must be given a *purposive, teleological, and generous interpretation* to afford the fullest remedial protection to its intended beneficiaries. Alignment with relevant constitutional values and principles, and where appropriate applicable territorial international instruments, is also apt.
- Fourth, social justice legislation should, when possible, be interpreted and applied *practically, pragmatically, and with a fair measure of juridical common sense*, carefully alive to current Caribbean contextual social, institutional, and economic realities.

Caribbean Social and Constitutional Contexts

[114] Applying the SJL Framework to these circumstances, we must first have regard to the primacy of social and constitutional context. The Labour Act does not seek to simply regulate a commercial transaction between two parties of equal bargaining power in a vacuum. It is a piece of social justice legislation, born out of a history of colonial and capitalist labour exploitation and the subsequent, often difficult, struggle for workers' rights across the Caribbean.⁴²

[115] From a constitutional perspective, examining the Constitution of Belize as a whole, the spirit of safeguarding the rights of workers is evident. Firstly, the Preamble⁴³ at (b) and (e) recognises, affirms, and asserts: 'WHEREAS the people of Belize... (b) respect the principles of social justice and therefore believe that ... labour should not be exploited ...; (e) require policies of state which protect and safeguard ... the right to work ...; (and) which prohibit the exploitation of man by man or by the state ... '. Secondly, s 15 (1) of the Belize Constitution specifically provides that: 'No person shall be denied the opportunity to gain his living by work which he freely chooses or accepts, whether by pursuing a profession or occupation or by engaging in trade or business, or otherwise.'⁴⁴

⁴² See Eric E Williams, *Capitalism and Slavery* (University of North Carolina Press 1944); West India Royal Commission, *Report of the West India Royal Commission (the Moyne Report)* (Cmd 6607, 1945); Natalie G S Corthésy and Carla-Anne Harris-Roper, *Commonwealth Caribbean Employment and Labour Law* (1st edn, Routledge 2014) 5-7.

⁴³ *A-G of Barbados v Joseph* [2006] CCJ 3 (AJ) (BB), (2004) 64 WIR 37.

⁴⁴ The marginal note states: 'Protection of the Right to Work'.

[116] Thus, the severance pay provisions in Pt XV of the Labour Act are a core component of this constitutional protective scheme intended to achieve social justice, prevent the exploitation of labour, and protect the right to work under fair and just conditions. Their purpose is not punitive, but remedial and this leads us to a first principles perspective. That is, the underlying purpose behind severance and its legislated provisions in Belize is to provide a financial cushion, a reward for long service and compensation for the loss of employment, for workers who have dedicated a substantial portion of their lives to an enterprise.⁴⁵ These provisions render labour contracts such as the ones under review, more than merely transactional commercial relationships entered into between consenting parties. The statute places its constitutionally informed policy imprimatur on them, which serves as a primary interpretative lens.

[117] In addition, Belize has since its independence in 1981 ratified international conventions which deal with (i) Freedom of association and collective bargaining⁴⁶, (ii) Elimination of forced and compulsory labour⁴⁷, (iii) Elimination of discrimination in respect of employment and occupation⁴⁸, and (iv) Abolition of child labour⁴⁹, which all demonstrate the State's commitment to a decolonial approach to employment and labour. Indeed, the Hansard Records show that on the Second Reading of the 'Labour (Amendment) Bill 1995', the mover of the Bill (the Minister of Home Affairs and Labour, the Hon Mr E Urbina) stated: '... these amendments are in keeping with ILO Conventions and our Parties met

⁴⁵ *Arjoon* (n 7) at [55].

⁴⁶ International Labour Organisation (ILO), Convention (No 87) concerning Freedom of Association and Protection of the Right to Organise 68 UNTS 17 (entered into force 4 July 1950) (ratified in 1983); International Labour Organisation (ILO), Convention (No 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, as Modified by the Final Articles Revision Convention, 1961 96 UNTS 257 (entered into force 18 July 1951) (ratified in 1983).

⁴⁷ International Labour Organisation (ILO), Convention (No 29) concerning Forced or Compulsory Labour, as Modified by the Final Articles Revision Convention, 1946 39 UNTS 55 (entered into force 1 May 1932) (ratified in 1983); International Labour Organisation (ILO), Convention (No 105) concerning the Abolition of Forced Labour 320 UNTS 291 (entered into force 17 January 1959) (ratified in 1983).

⁴⁸ International Labour Organisation (ILO), Convention (No 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value 165 UNTS 303 (23 May 1953) (ratified in 2000); International Labour Organisation (ILO), Convention (No 111) concerning Discrimination in Respect of Employment and Occupation 362 UNTS 31 (entered into force 15 June 1960) (ratified in 2000).

⁴⁹ International Labour Organisation (ILO), Convention (No 138) concerning Minimum Age for Admission to Employment 1015 UNTS 297 (entered into force 19 June 1976) (ratified in 2001); International Labour Organisation (ILO), Convention (No 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 2133 UNTS 161 (entered into force 19 November 2000) (ratified in 2001).

commitments to uphold the dignity and rights of the Belizean workers.’⁵⁰ These wider international outward-facing policies and commitments, made on behalf of all Belizeans, are also an important interpretative context for the Labour Act. Where there may be uncertainty or ambiguity, Belize’s international commitments and representations are a legitimate aid to interpretation.⁵¹

[118] To interpret the Labour Act through a narrow, literalistic lens is to ignore these fundamental contexts. As found by the High Court and as submitted by the Appellants, such an interpretation can lead to an absurd result, inconsistent with the purpose of the Labour Act. For example, with such an approach, the Voluntary Retirees would be in a worse position than persons who resigned or who were terminated at 55 (BTL’s age of retirement).⁵² This would not only frustrate the protective purpose of the Labour Act but, in these circumstances, such a literalistic approach treats the Labour Act as if it were divorced from one of the inherent social realities it was designed to address, the protection of and provision for workers. Thus, we must view the Labour Act as legislative policy in action, intended to achieve fairness and social justice for a group in society historically exploited and made vulnerable. We achieve this by applying the SJL Framework, and by adopting a purposive, teleological and generous interpretation of pt XV of the Labour Act, as well as what is referred to in the *CGI* case as a pragmatic approach with a fair measure of juridical common sense.

Purposive, Teleological, Generous and Pragmatic Approaches

A. Are the Retirees Entitled to Severance Under s183(1)(b)(i)?

⁵⁰ Belize, *Hansard*, House of Representatives, (Friday, 23 June 1995) dealing with, among other things, ‘provisions relating to severance pay payable on redundancy and to provide for the payment of gratuity to workers who resign after ten years of continuous service and to provide for matters connected therewith and incidental thereto.’

⁵¹ *Commissioner of Police v Alleyne* [2022] CCJ 2 (AJ) BB, [2022] 2 LRC 590 at [25]: ‘Thus, two principles of statutory interpretation emerge for states which exist in the context of constitutional supremacy. Methodologically, a) respect for fundamental rights and basic deep structure principles, and b) formal international treaty commitments are both lenses through which all statutes must be viewed, interpreted, and applied so as to adhere to and be consistent with, so far as is appropriate, those core values, principles, and commitments.’; *McEwan v A-G of Guyana* [2018] CCJ 30 (AJ) (GY), (2019) 94 WIR 332 at [44]: ‘Thirdly, application of the clause may result in placing the State on a collision course with its treaty responsibilities and it is a well-known principle that courts should, as far as possible, avoid an interpretation of domestic law that places a State in breach of its international obligations.’

⁵² *Marin* (n 17) at [22]–[23].

[119] Adopting a purposive, teleological, and generous interpretation, the purpose behind s 183 is to ensure that longstanding employees (5-10 years) are properly ‘compensated’ or provided for in the event of the termination or ending of their employment. Applying the mischief rule,⁵³ s 183 effectively codified severance payments as a matter of fairness and just dealings, derived from the practice of good employment relations. This was done legislatively as the common law did not require any such payments to be made. Taking such an approach, the true remedy which was intended by s 183 was to provide longstanding employees with a cushion/compensation in the event of the termination or ending of their employment.

[120] Additionally, guided by the rules of statutory interpretation adopted by the CCJ and enunciated in cases such as *Smith v Selby*,⁵⁴ *OO v BK*,⁵⁵ and *Attorney General v Prince Ernest Augustus of Hanover*,⁵⁶ and also as explained in *Bennion on Statutory Interpretation*,⁵⁷ when construing the meaning of ‘terminated’⁵⁸ under s 183(1)(b)(i), one must have regard for the statutory context in which it appears. That context includes both Pt XV and s 183 itself.

[121] A comparative analysis of the use of ‘terminated’ in s 183(1) reveals the following. In s 183(1)(b)(i), it is qualified by ‘...for reasons, which do not amount to dismissal’. However, this condition is not used generally throughout s 183 (as it appears in s 183(1)(a)(i)). For example, in the context of s 183(1)(b)(iii), ‘terminated’ is qualified by ‘...the expiration’ of ‘a definite period’. Further, s 183(b)(iv) utilises the word ‘ended’ rather than ‘terminated’.

[122] Additionally, examining the Labour Act as a whole, and although s 183 delineates specific circumstances in which severance benefits arise, the terms ‘terminated’ or ‘terminate’ appear in various other contexts. For example, they appear in: (i) s 2

⁵³ *Heydon's Case* (1584) 3 Co Rep 7a, 76 ER 637.

⁵⁴ [2017] CCJ 13 (AJ) (BB), (2017) 91 WIR 70.

⁵⁵ [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36.

⁵⁶ [1957] 1 All ER 49.

⁵⁷ Diggory Bailey and Luke Norbury, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn, LexisNexis 2020), ch 10.

⁵⁸ Bryan A Garner (ed), *Black's Law Dictionary* (12th edn, Thomson West 2024), defines ‘termination’ as ‘The act of ending something’ and ‘termination of employment’ as ‘The complete severance of an employer-employee relationship’.

which defines ‘gross misconduct’;⁵⁹ (ii) s 2 which defines ‘redundancy benefit’;⁶⁰ (iii) s 29A under probationary periods;⁶¹ and (iv) s 42A(2) which deals with constructive dismissal.⁶²

[123] Thus, taking a contextual and purposive approach, it appears that ‘terminated’ in the Labour Act is intended to mean and be applied in circumstances in which there is an ‘ending’ or a ‘cessation’ of employment, in the circumstances described in each of the particular provisions in which it (or its equivalent) appears. The Court of Appeal concluded that there is a distinction to be drawn between an employee’s contract ‘ending’ and being ‘terminated’ for the purposes of interpreting s 183(1). However, the term ‘ending’ or ‘end’ is not used in any other provision in the Labour Act to describe such an event, apart from in s 183 (1) (b) (iv). The distinction drawn by the Court of Appeal is unwarranted given a broader contextual and purposive interpretation that bears in mind the legislative policy of Pt XV and the entirety of s 183 of the Labour Act.

[124] Therefore, if one examines s 183(1)(b)(i) in such a light and having regard to the social context of Caribbean industrial relations, and acknowledging that the CBA is a negotiated instrument, the following flows. The term mandating retirement at 55 and the corresponding removal of severance pay may have likely been a change driven by the employer, BTL, intended to serve its own interests. This is not an unreasonable assumption. An employee who, under the terms of the CBA, ‘shall be retired by the company’ upon reaching a specified age, has no choice in the matter. Practically and pragmatically, the cessation of employment is not a result of their volition; it is an event mandated by the contract. Which, in the context of this contractual provision and the statutory regime, arguably serves the interests of the employer. On a legalistic and formalistic interpretation of the Labour Act, an

⁵⁹ ‘Gross misconduct’ means misconduct that is such that the employer cannot reasonably be expected to take any course other than to terminate the employment of the worker.

⁶⁰ ‘Redundancy benefit’ means the amount of money that an employee whose employment has been terminated on account of redundancy is entitled to receive from his employer pursuant to s 183.

⁶¹ Section 29A (1) ‘... may be terminated at will by either party without notice’; 29A (2) ‘... if the employment is terminated by either party.’

⁶² Section 42(A) (1) ‘... is entitled to terminate the contract of employment’; 42A (2) ‘... employment is terminated by the employee.’

employee could not choose to remain in employment until the age of 60 and therefore could not obtain severance through s 183(1)(a).

[125] Applying a policy driven pragmatic measure of juridical common sense in the applicable constitutional and social justice contexts to s 183(1)(b)(i); to distinguish this mandatory retirement at age 55 from a ‘termination’ can be seen as a semantic exercise that elevates form over substance and defeats the purpose of s 183. A purposive, teleological and generous interpretation ought to be preferred over the literal and narrow interpretation, as it promotes the general legislative intent underlying s 183. Such an approach is also in keeping with s 65(a) of the Interpretation Act.⁶³ Thus, as argued by the Appellants, the compulsory ‘retirement’ may be considered a form of statutory ‘termination’ by the BTL, for reasons which do not amount to dismissal, and as intended to be included under s 183(1)(b)(i). The Retirees are therefore entitled to severance.

B. Are the Voluntary Retirees Entitled to ‘Severance’ Under s 183(2)?

[126] The second issue concerns whether the group of employees who accepted voluntary retirement packages, in addition to pension benefits, are entitled to ‘severance’ under the Labour Act. In fact, s 183(2) provides for the payment of ‘gratuity equal to severance pay’. However, since this comes under Pt XV it has been discussed and treated as an entitlement to severance. At first blush, their situation might appear distinct from those compulsorily retired, since they ostensibly exercised choice in their departure. Yet, when approached through the SJL Framework, it becomes clear that this difference of form cannot lawfully extinguish the substantive statutory protection guaranteed by the Labour Act.

[127] As explained above, the mischief addressed by the severance provisions of the Labour Act is the vulnerability of long-serving employees at the point of termination (the ‘ending’ or ‘cessation’) of employment. It is to ensure they are

⁶³ ‘The following shall be included among the principles to be applied in the interpretation of Acts where more than one construction of the provisions in question is reasonably possible, namely, (a) that a construction which would promote the general legislative purpose underlying the provision is to be preferred to a construction which would not.’

fairly compensated for years of service and cushioned against the economic disruption of ending their employment.

[128] *Birch v University of Liverpool*,⁶⁴ is an interesting case. It establishes that an employee's departure from employment following an offer of early retirement, which is then applied for by the employee and accepted by the employer, results in a termination by mutual agreement, not a unilateral dismissal by the employer. While the issue in *Birch* was distinguishing consent from dismissal, the underlying principle may offer analogous precedential support for the characterisation of the Voluntary Retirees acceptance of the Voluntary Retirement Agreement ('VRA') as a voluntary, mutually consensual act agreed to by the employer and employee, and as contemplated by s 183(2). The employees who accepted voluntary retirement packages, with the employer's agreement, together bring about the ending of employment.

[129] To treat Voluntary Retirees, some of whom served decades, with less protection than ordinary Resigners would invert this protective scheme. That is, in the context of this case, Resigners would get the benefit of s 183(2), but Voluntary Retirees, who are deemed not to have formally resigned by BTL, do not get the same statutory protection. Yet both are similarly circumstanced, as they are both workers 'with a minimum of ten years' continuous service'. Section 183(2)⁶⁵ expressly secures a gratuity equal to severance for employees who resign after ten years' service. It would be contrary to the legislative intent to hold that the negotiated "voluntary retirement" in this case, which is in substance a resignation, falls outside this protection.

[130] Furthermore, the VRAs themselves support the conclusion that a severance payment is contemplated, because they contained a clause requiring the employee to acknowledge that such payments had already been made or included in their

⁶⁴ [1985] IRLR 165.

⁶⁵ 'A worker with a minimum of ten years' continuous service who resigns his employment shall be eligible for a gratuity equal to severance pay computed in accordance with this section.'

pension. In *Igbo v Johnson Matthey Chemicals Ltd*,⁶⁶ the Court of Appeal held that any provision in an agreement that has the effect of limiting the operation of a statutory protection (in that case, the right not to be unfairly dismissed) is void under the relevant anti-contracting out/non-derogable provision in the statute. The court warned that if such contractual provisions were allowed, the whole object of the legislation could be easily defeated, by employers including terms in contracts that would cause statutory rights to be automatically forfeited under certain conditions. This case is also of analogous precedential value.

[131] Teleologically, the Labour Act must be read so as to advance its remedial objectives rather than defeat them. BTL's contention that the Voluntary Retirement Agreements waived severance is undermined by s 190, which voids any agreement that purports to exclude or limit the operation of the Labour Act. As explained below, s 190 serves a similar 'anti-contracting out/non-derogable' purpose as the section considered in the *Igbo case*.

[132] The Respondent's (BTL's) VRAs, by compelling employees to attest to a falsehood (that all severance owed had been paid),⁶⁷ which was to their own financial detriment, effectively sought to 'limit the operation' of s 183(2). Thus, the Court of Appeal's decision to merely sever the clause as 'meaningless' does not adequately address the illegality of the employer's action and would, as warned in the *Igbo case*, create a pathway for employers to circumvent statutory duties without consequence.

[133] Additionally, as mentioned previously, the Preamble to the Belize Constitution, affirms respect for social justice and prohibits labour exploitation. Thus, viewed through a constitutional lens, this frames the severance entitlement not as a private contractual perk, but as part of a constitutionally resonant social policy. To construe the Voluntary Retirees' departure as a resignation within s 183(2) is to give full

⁶⁶ [1986] IRLR 215.

⁶⁷ See for example, Record of Appeal, 'VRA between BTL and Ruthlyn Barbara Ayuso' 460 at [5]. And note: severance had in fact been paid up to the introduction of the impugned pension schemes.

effect to that protective ethos. To construe it otherwise would leave this group worse off than Resigners, an outcome inconsistent with the remedial character of the Labour Act.

[134] Applying a purposive, teleological, and generous interpretation, and fortified by a fair measure of pragmatic juridical common sense, the proper characterisation of the VRAs is that they amounted to resignations after ten years' service, for the purposes of s 183(2). This conclusion rests on the voluntary and employee-initiated nature of the act. The label 'voluntary retirement' cannot be used to defeat this statutory entitlement. The acceptance of the Voluntary Retirement Agreement by the Voluntary Retirees falls within the scope of s 183(2) of the Labour Act, which provides for employees with over 10 years of service who resign their employment.

[135] Consequently, the Voluntary Retirees are entitled to gratuity equal to severance pay under s 183(2), calculated in accordance with the Labour Act.

C. Section 190 Viewed Through a SJL Lens

[136] A further issue arises as to whether s 190 of the Labour Act applies to the Collective Bargaining Agreement ('CBA') between BTL and the Union and the Voluntary Retirement Agreements ('VRA'). The Court of Appeal held that s 190 was inapplicable since, on its view, no statutory right to severance was triggered. Such reasoning is, however, ultimately self-defeating of the Labour Act's protective design.

[137] When approached purposively, s 190 emerges as an essential component of the statute's protective architecture. It was enacted to prevent employers from undermining the Labour Act's social justice purposes by contractual instruments, be they individual contracts or collective agreements, that purported to waive or limit statutory rights and policy. The mischief to which it is directed is precisely the one presented in this case. It is that of an employer benefitting from the bargaining process to structure employment terms in a way that excludes statutory entitlement to severance and gratuity, as intended by and provided for by the Labour Act. To

construe s 190 as inoperative simply because the CBA and VRA have defined away the entitlement would hollow out the protection, leaving workers exposed to the very exploitation the Labour Act was intended to redress. Indeed, such an approach to social justice legislation would undermine its constitutional foundations.

[138] Teleologically, s 190 gives legislative expression to the wider constitutional and social policy commitments of Belize, as well as to its international representations. The Constitution's Preamble, at clauses (b) and (e), affirms the principle of social justice, prohibits labour exploitation, and demands policies to protect the right to work. Section 15 further guarantees the right to gain one's living by freely chosen work. These provisions create a constitutional environment in which statutory protections like severance are not discretionary benefits, but rights now embedded in the social fabric. Section 190 ensures that those rights cannot be contracted out of existence by unequal bargaining or otherwise, thereby defeating constitutional promises.

[139] A generous interpretation of s 190, aligned with its protective purpose, requires that it be read expansively. The reference to 'any agreement' in s 190 is unqualified and must purposively extend to CBAs and VRAs and their respective provisions.

[140] This analysis reinforces the legitimacy of the SJL Framework itself. The Legislature, by enacting s 190, has embedded purposive, teleological, and generous interpretation into the very structure of the Labour Act. Section 190 embodies an express legislative policy to protect workers' rights against contractual derogation. To honour that policy, the courts must adopt an interpretation that prioritises substance over form and ensures that the protective net of the Labour Act cannot be undone by private instruments, however styled.

[141] Accordingly, aspects of the CBAs or the VRAs which seek to exclude severance are agreements that 'purports to exclude the operation' of Pt XV of the Labour Act

and are void to the extent to which they do so.⁶⁸ To hold otherwise would be to permit an employer to circumvent statutory obligations and legislative policy under the guise of collective bargaining, thereby frustrating the core purpose of the Labour Act as social justice legislation.

D. Under s 194 are Employees Nevertheless Entitled to Severance?

[142] I adopt the reasoning of Eboe-Osuji J on the question whether BTL's pension contributions subsumed its liability to pay statutory severance. Section 194 does not permit pension entitlements to displace or extinguish the distinct statutory obligation to severance under s 183. Rather, it is a retaining mechanism, ensuring that severance accrued throughout an employee's service is separately accounted for, regardless of the existence of a contributory pension plan. This is consistent with an application of the SJL framework.

[143] The concession by counsel for BTL during the hearing, confirms the correctness of this analysis. The Labour Act demands transparency and specificity; the employer must demonstrate that severance has in fact been satisfied. On the evidence, BTL has failed to do so.

[144] Accordingly, I agree that as the pension benefits that the Appellants received did not show that severance was accounted for under s 183, as such, BTL did not discharge the obligation imposed by s 194(1).

Conclusion

[145] The Labour Act demands a constitutionally informed protective interpretation. A purposive and generous reading of its provisions as outlined under the SJL framework establishes that both the Retirees and the Voluntary Retirees fall within the categories of employees entitled to severance.

⁶⁸ This is also in accordance with the maxim *omne majus continet in se minus* (the greater includes the less). The maxim also corresponds to the rule that where an act is permitted, anything less is included in the permission: see eg *R v Cousins* [1982] QB 526 (where actual force is permissible, a threat to use force is also permissible).

[146] Part XV of the Labour Act must be read for what it is: a piece of social justice legislation, enacted to secure fairness for workers at the point of greatest vulnerability, the end of their employment. To approach it too narrowly, formally, or in ways that allow contractual devices to displace constitutionally grounded statutory protections, is to frustrate both its text and its purpose.

[147] Applying the SJL Framework one is compelled to conclude that both the Retirees and the Voluntary Retirees are entitled to severance. The compulsory retirement of the former is properly characterised as a termination by the employer under s 183(1)(b)(i). The voluntary retirement of the latter is functionally a resignation within s 183(2). In both instances, any agreement or aspect thereof purporting to exclude or extinguish severance is null and void under s 190.

[148] For these reasons, I concur with the orders proposed; the appeal is allowed, and BTL is ordered to pay severance in accordance with the Labour Act. Costs are awarded to the Appellants as agreed and computable under the Court's appellate rules, in the Court of Appeal to be assessed, if not agreed, certified fit for one senior counsel and one junior counsel; and in the High Court, as agreed in the High Court between the parties.

BARROW J:

[149] I agree with Justices Eboe-Osuji and Jamadar that the appeals succeed for the main reasons they give.

/s/ W Anderson

Mr Justice Anderson (President)

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ D Barrow

Mr Justice Barrow

/s/ P Jamadar

Mr Justice Jamadar

/s/ C Eboe-Osuji

Mr Justice Eboe-Osuji