IN THE SUPREME COURT OF QUEENSLAND No. 3865 of 1988

CIVIL JURISDICTION

BEFORE MR. JUSTICE DOWSETT

BRISBANE, 20 APRIL 1990

BETWEEN:

GEOFFREY WARREN BECK Plaintiff

-and-

DARLING DOWNS INSTITUTE OF ADVANCED EDUCATION Defendant

JUDGMENT

HIS HONOUR: In this case there will be judgment for the plaintiff against the defendant in the sum of $113,600.

I publish my reasons.

I order the defendant to pay the plaintiff's costs of the action. Costs incurred after the proclamation are to be taxed on the appropriate District Court scale as from the date of proclamation of the legislation increasing the jurisdiction of the District Court.

IN THE SUPREME COURT OF QUEENSLAND No. 3865 of 1988

Before Mr. Justice Dowsett

BETWEEN:

GEOFFREY WARREN BECK — Plaintiff

AND:

DARLING DOWNS INSTITUTE OF ADVANCED EDUCATION — Defendant

JUDGMENT - DOWSETT J.

Delivered the Twentieth day of April, 1990.

CATCHWORDS:

Contract - Breach - Damages - Construction and Interpretation - Employment - Repudiation.

Counsel: Hanger Q.C. with Hall for the Plaintiff
Murdoch for the Defendant

Solicitors: Peter Channell and Associates for the Plaintiff
Thynne & McCartney for the Defendant

Hearing Dates: 19th, 20th March, 1990.

IN THE SUPREME COURT OF QUEENSLAND — No. 3865 of 1988

BETWEEN:

GEOFFREY WARREN BECK — Plaintiff

AND:

DARLING DOWNS INSTITUTE OF ADVANCED EDUCATION — Defendant

JUDGMENT - DOWSETT J.

Delivered the Twentieth day of April, 1990.

The plaintiff was born on 19th June, 1932 and has spent the whole of his working life in positions associated with accounting, taxation and other financial matters. He is a Master of Commerce and Doctor of Philosophy in the University of Queensland and has been employed in senior

positions with accounting firms, as a lecturer, senior lecturer and reader in Accounting in the University of Queensland and as a member of the Taxation Board of Review. Thus he has extensive teaching experience in the accounting field, substantial taxation experience from his years on the Taxation Board of Review, and some associated experience in practical accounting and, from his early years, experience in banking. He has published numerous articles in the fields of auditing, professional education, theory and practice of accounting, companies legislation and administration, management consultancy, white collar crime and taxation.

It is not necessary for me to form a view as to the plaintiff's practical expertise, but there can be no doubt that he has high academic qualifications, a breadth of experience in accounting, taxation and related matters and has published widely.

On 29th October, 1986, the defendant advertised in "The Australian" newspaper, inviting applications for the position of Dean of the School of Business Studies. Relevant parts of the advertisement were as follows:—

> "The Institute has an enrolment of some 6,000 students and teaches a wide range of courses in Business Studies, Engineering, Arts, Education and Applied Science from Associate Diploma to Master's Degree level in Australia and overseas.
>
> Applications are invited from suitably qualified men and women for the position of Dean of the School of Business Studies. The School of Business Studies has more than 1,700 students enrolled in its courses which include a degree course leading to a Bachelor of Business (with Accounting, Computing and Management areas of emphasis), an Associate Diploma in Secretarial Studies, and a Graduate Diploma in Information Processing. Planning is proceeding for the introduction of a Master's degree. The courses are designed with an applied rather than theoretical bias and aim at orienting the graduate both managerially and technically.

> The Dean will be the chief executive and chief academic officer of the School of Business Studies and will be responsible to the Director of the Institute for the effective operation of the School, including programme planning, implementation and review, resource management, student welfare and personnel development. In addition, the Dean will be expected to contribute to the corporate management of the Institute and to the achievement of its mission and objectives."

The plaintiff made application for this position, was interviewed and by letter dated 25th March, 1987 (ex. 4), was offered the appointment. A number of other documents were attached to the letter. The relevant parts of the letter were as follows:—

> "On behalf of Council it gives me pleasure to offer you appointment to the staff of the Darling Downs Institute of Advanced Education. You will be assigned duties in the position of Dean, School of Business Studies for a four year term as from the date of commencement. At the conclusion of this term another term may be offered by mutual agreement.
>
> You will be appointed on the substantive salary classification of Principal Lecturer 1, however during the term of office as Dean, School of Business Studies you will be paid at the salary classification of Head of School 1 at the rate of $2,236.50 per fortnight ($58,348.00 per annum). If another term is not offered at the end of your four year term you will revert to your substantive salary classification of Principal Lecturer 1 currently, $1,888.50 per fortnight ($49,268.00 per annum).
>
> This appointment is made in accordance with the Conditions of Employment of Permanent Academic Staff in Colleges of Advanced Education (Document No. 605/86), and the Position Guide for Academic Staff (Document No. 334/81), and the Academic Staff Award - Colleges of Advanced Education - State, copies of which are enclosed."

There is another document attached to ex. 4 which is headed "Dean", and I would infer that it was also forwarded

to Dr. Beck at the relevant time. It outlines the duties of a Dean.

The ambit of the School of Business Studies does not appear from the letter of appointment or attached documents, however I infer that the term is used to refer to the organization described in the advertisement to which I have referred. The advertisement made it clear that the position offered was that of chief executive and chief academic officer of a school which was offering a degree course in business with accounting, computing and management areas of study. The School also offered an associate diploma course in secretarial studies and a graduate diploma course in information processing. The plaintiff has said in evidence that it was the integration of various disciplines into one overall School of Business Studies which attracted him. Although his personal feelings about the job are not particularly relevant to the proper construction to be placed upon the contract of employment it is clear to me that the position offered by the advertisement and to which the plaintiff was appointed by the letter of 25th March, 1987 (ex. 4) was head of a teaching school the areas of operation of which went beyond accounting matters to include computing and management. I consider that the advertisement comprised part of the contract between the parties.

Dr. Beck was not offered appointment on a permanent basis as Head of School, which is a classification prescribed in the documents accompanying ex. 4, but rather he was offered appointment as Principal Lecturer 1, the highest position below that of Head of School, with an assignment of duties as Head of School 1 for a period of four years. This approach was probably designed to create a limited term for a person occupying the position of Head of School, whilst at the same time giving him permanent tenure. That this was a regular practice appears from the last document attached to ex. 4 which purports to have been “approved by Council 1st September, 1978”. The document provides that a Dean shall be “appointed as Dean for a

full-time, four year term by Council, with re-appointment by mutual agreement.” This is consistent with the proposal made to Dr. Beck.

The “Conditions of Employment” document and the relevant award (ex. 21) provide for appointment on probation. With minor exceptions, those provisions are in identical terms and are as follows (I adopt the numbering system used in the award):—

> “(1) Appointment shall be subject to a probationary period of 12 months and shall then be subject to confirmation.
>
> (2) Should a probationary appointment not be confirmed, the appointment may be terminated or the probationary period may be extended for a further period not exceeding twelve (12) months.
>
> (3) When a probationary appointment is terminated, at least four (4) months' notice shall be given of the termination of appointment except that, with the agreement of the staff member concerned, a shorter period of notice may apply.
>
> (4) A staff member shall give at least four (4) months' notice of resignation, provided that, in special cases, the Council may accept a shorter period of notice.
>
> (5) At the discretion of the Council, payment may be made in lieu of any or all of the required period of notice of termination of an appointment for reasons other than retirement.”

When one looks at ex. 4, it is difficult to conclude that either party intended that the plaintiff's appointment be subject to a period of probation. It seems likely that the inclusion of the requirement for probation was more as a consequence of using a standard form of offer than as a result of the relevant authority requiring probation in the

present case. Nonetheless it was not submitted on behalf of the plaintiff that the probation requirement was inapplicable in his case, and I am satisfied to proceed upon the assumption that he was initially appointed upon probation.

By letter dated 13th April, 1987 (ex. 5), the plaintiff accepted appointment and proposed that he take up his appointment with effect from 1st June, 1987, which he subsequently did.

In the early part of 1988, substantial debate occurred concerning the possible re-organisation of the Institute. By that time it was anticipated that it might acquire university status, and certain changes in organisation and terminology were thought desirable. Thus it was proposed that the chief executive officer be termed “President” rather than “Director” as had previously been the case. It was contemplated that a Deputy-President and Vice-Presidents would be appointed with the intention that three of the Vice-Presidents assume responsibility for academic planning, co-ordination and implementation in three Colleges within the defendant. These Colleges would be groups of Schools, the term “School” having until then been used to describe the major teaching sub-units of the Institute. It was also proposed that each School continue to have a Dean as its chief executive and chief academic officer, but that each Dean be responsible to the Vice-President of the relevant College. There were to be Colleges of Science and Technology, Humanities and Business.

The above information appears in a document which is part of ex. 11. No doubt the proposals emerged over some months and were subject to numerous variations. Exhibit 11 shows the position as at mid-April, 1988. At that stage, it was proposed that the College of Business contain a School of Management and Business Systems and a School of Accounting and Finance. The School of Accounting and

Finance was to offer courses in accounting, applied economics (banking and finance) and local government.

Although Dr. Beck was involved in some of the discussions which led to these proposals, it is clear that he always opposed them, in particular the proposal that his School be broken up.

At a meeting of the Council of the Institute held on 15th July, 1988, the Council adopted a report of the Chairman's Ad Hoc Committee of 13th July, 1988. See ex. 12. The minutes of that meeting of the Ad Hoc Committee (ex. 13) record the following recommendations to Council:—

1. That Council adopt as policy the recommendations contained in the paper “Key Parameters in Planning for Institutional Development: 588/88 ATTACHED and endorse the document “Planning for Institutional Development: 535/88.(sic)

2. That Schools of Accounting, Management and Information Technology be established forthwith.

These recommendations had the immediate effect of dividing up Dr. Beck's areas of responsibility. To reinforce this, the Ad Hoc Committee had also recommended that the School of Business Studies be disestablished as from 1st August, 1988 and that Dr. Beck be appointed Dean of the School of Accounting. There were to be Acting Deans appointed in the Schools of Management and Information Technology. It was also recommended that one position of Vice-President be established, to be described for the time being as “Associate Director”. The duties of this gentlemen were to include co-ordination of the academic programmes offered by the Schools, management of the development, implementation and evaluation of the Institute's academic programmes, identification and use of human and physical resources, and ensuring compatibility of academic policies and procedures at Institute and School levels. The Head of the School of Engineering was appointed to the position of Associate Director.

There can be little doubt that these proposals, all of which were adopted by the Council, had the effect of seriously reducing the area of responsibility assigned to Dr. Beck and also went a long way towards introducing, between him and the Director, another responsible officer, contrary to the circumstances which prevailed at the time at which he was appointed. The documents, “Planning for Institutional Development” and “Key Parameters in Planning for Institutional Development” are exs. 14 and 15. These documents recognize the proposal to create three Colleges within the Institute, including a College of Business which would comprise two Schools, a School of Management and a School of Accounting and Finance. It will be noted that the latter school differs in title from that described in ex. 13. According to ex. 14, the School of Accounting and Finance was to have two strands of study, a Bachelor of Business Degree in Accounting and a Bachelor of Business Degree in Applied Economics (Banking and Finance). Exhibit 15 indicates that the total proposal was to be implemented over some years, but the minutes of the Ad Hoc Committee meeting show that the changes contemplated in respect of Dr. Beck's area of interest and his position were to be effective immediately.

After the Council meeting, which occurred on a Friday night, Dr. Beck was contacted by the Registrar of the Institute and told that he had been appointed Dean of the new School of Accounting. Dr. Beck replied that he did not know how that could have happened since he hadn't applied for any such job. Dr. Beck had not then seen the documents which had been formally approved by the Council, but on or shortly after 19th July, 1988 he became aware of the contents of the documents which comprise ex. 16. These documents propose a School of Accounting conducting only one course, that of Bachelor of Business - Accounting. The course leading to the degree of Bachelor of Business - Applied Economics (Banking and Finance) had by then been transferred to the School of Management.

Exhibit 16 contains minutes of a meeting of the Director's Consultative Committee held on 19th July, 1988 at which the balance of the exhibit was produced to those attending. There can be little doubt that those documents were advanced as disclosing the proposals which were to be carried into effect, notwithstanding certain variations between them and the proposals previously approved by Council. Dr. Beck was at that meeting and registered his objection to the proposals, indicating that he would not be accepting the new position. The Director of the Institute, Dr. Barker “confirmed” that Dr. Beck would finish duty on 1st August, 1988, presumably because the effect of the Council's decision was that his present position would cease to exist thereafter, and he had not accepted the new position offered to him. As I have pointed out, there are some differences between the resolution of the Council and the proposal notified to Dr. Beck. I find that Dr. Beck was at no time prior to his departure from the Institute aware of these differences and that the proposal which was communicated to him as the effective decision of the Council was that contained in ex. 16.

On first principles, this appears to me to have been a clear repudiation by the defendant of its contract with the plaintiff. There are cases in which the application of the general rules of repudiation are applied to contracts of service and for services. The decision closest to the present is that of Asquith J. in Collier v. Sunday Referee Publishing Co. Ltd. (1940) 2 K.B. 647 at p. 651. That was a case in which the plaintiff had been employed by the defendant to act as chief sub-editor of a newspaper. The defendant subsequently sold the newspaper and thus put it out of its power to employ the plaintiff. The defendant continued to pay the plaintiff weekly sums equal in amount to his salary for some months, although the latter contended that he accepted these sums only on account of the damages to which he was entitled because of the defendant's breach. He performed some minor services. The plaintiff subsequently declined to continue on this basis, and the defendant stopped the weekly payments. The

plaintiff sued for damages for wrongful dismissal. At p. 651 his Lordship held:—

> "But I do hold that the very foundation of the contract was the appointment of the plaintiff, during the contract period, to a specific office. The defendants engaged the plaintiff, not to perform at large the sort of work commonly performed by any chief sub-editor. They engaged him to fill the office of chief sub-editor of a specific Sunday newspaper. By selling that newspaper they destroyed the office to which they had appointed him. That this is a breach of contract, I cannot doubt."

This conclusion is nothing more than an example of the operation of the general rules as to repudiation. If a contract is properly construed as appointing the plaintiff to a particular office, then to abolish that office constitutes a failure to permit him to have the benefit of the contract and must be a repudiation. The construction exercise involves a consideration of the importance of appointment to the office in the context of the contract as a whole to determine whether or not repudiation of that term is sufficient to justify rescission. The plaintiff in this case was appointed to be the head of the School of Business Studies and to be responsible to the Director of the Institute for the academic and administrative conduct of that School. Instead, he was in effect told (by ex. 16) that he would in future be the head of a much smaller school and that there was an intention in the future that he not be directly responsible to the Director.

It is true that some aspects of the proposed changes might not have been effected immediately and may have been introduced over some years, but this is beside the point. The point is that the defendant was, by ex. 16, communicating to the plaintiff an intention not to be bound by the contract made between them. Instead, the plaintiff was being offered a job different in scope and status from that which he had agreed to do. This amounted to a wrongful repudiation by the defendant of its obligations under the contract.

In the course of the trial, some time was taken up in discussing the entitlement of the defendant to reorganise its structure and canvassing the need for such reorganisation. Some time was also taken up in discussing the extent to which the plaintiff may have felt that he was being demoted by the proposed restructuring. It is clear that the governing body of the defendant was both entitled and obliged to organise its affairs as it considered proper for the performance of its functions. However it was also bound by the contract. Having chosen to appoint the plaintiff to a particular office for a fixed period, not retaining any right to terminate that appointment in the event of reorganisation, there were legal consequences incidental to abolishing that office.

Similarly, it does not seem to me to matter very much whether or not the plaintiff felt embarrassed or upset by the reorganisation, save that he claims damages in respect thereof, a matter with which I will deal later. The true point of the case is that the benefit bargained for by him was firstly, his salary and other perquisites of office and secondly, the status and challenge of the job. In many jobs, the important benefit for the employee is the pay, and what he does during working hours is irrelevant. In some cases it may be that employees are happy to do as little as possible for their wages, but this situation does not apply to a highly qualified professional man seeking academic appointment in a tertiary institution. It is obvious from the advertisement and the terms of the appointment, and one knows from common experience that persons in such positions derive considerable satisfaction from the performance of their duties. Indeed, it is probable that this is why people go into academic life as opposed to pursuing careers in the practising professions.

Some attempt was made to rely upon the probation provisions as excusing the defendant from the legal consequences of its breach. The plaintiff commenced employment on 1st June, 1987, and so his probation period expired on 1st June, 1988. The terms of the probation

offered the employer the options of confirming the appointment after 12 months, terminating the appointment or extending the probation for the further period of up to 12 months. Termination required four months' notice, and this was never given, nor was there any suggestion that the probation period be extended for a further period. The defendant submits that as at 19th July, 1988, it was still entitled to determine Dr. Beck's probationary appointment, notwithstanding the fact that his probation period had expired on 1st June, 1988 and that no step had been taken thereafter to effect any such termination. There has been no suggestion that his services were other than satisfactory.

There are many answers to this submission. The most persuasive is that the defendant never purported to take this step. There was no suggestion that the plaintiff had other than successfully completed his probation period. The Shorter Oxford Dictionary relevantly defines “probation” as, “The action or process of testing or putting to the proof; trial, experiment; investigation, examination. The testing or trial of a person's conduct, character or moral qualifications; a proceeding designed to ascertain these: esp. in ref. to the period or state of trial. Of a candidate for membership in a religious body, order, or society, for holy orders, for fellowship in a college, etc..”

The Concise Oxford Dictionary probably comes closer to the modern meaning of the word which it defines as, “Testing of conduct or character of person, esp. of candidate for membership in a religious body, etc. or for employment ...”

It is clear that what is contemplated in such a period of probation is that the employee demonstrate his suitability for the job in question. One would expect that the right to exercise a power to determine for failure to satisfy during a probation period would not be unfettered. In any event, as I have said, there was never any

suggestion that the defendant might exercise any power to determine the plaintiff's employment in reliance upon the probation provision. He was allowed to continue in his employment after the expiry of the probation period, and indeed in the circumstances which I have outlined, he was offered another position. It is impossible to infer that the defendant had any intention of exercising the alleged right to determine his employment in reliance upon the probation provision. The true position seems to me to have been that as a result of inaction on the part of the defendant, Dr. Beck's employment had been confirmed.

It should also be noted that pursuant to the Award, it was his “appointment” which was to be confirmed, and not the nature of his duties. When one has reference to ex. 4, it is clear that Dr. Beck was <u>appointed</u> as a Principal Lecturer 1, although he was ‘assigned duties in the position of Dean’...”. It was his appointment which was subject to probation and not his assignment of duties as Dean. There was no suggestion that his appointment as Principal Lecturer 1 be terminated, and I think this demonstrates the irrelevance of the probation provision to the present dispute.

Although the probation provision contemplates an election between confirmation, determination or extension of the probation period, I believe that the usual nature of a probation period strongly suggests that the failure to exercise any of those options at the appropriate time will lead to an inference of confirmation of the appointment, particularly in the case of a senior employee such as the plaintiff in the present case. As a factual matter, I consider that his appointment had been confirmed, and that the defendant had no intention of relying upon the probation provision, nor had it any continuing right to do so given the time which had elapsed since the expiry of his probation period and his continued employment, including in particular, the offer of further employment.

The defendant also submitted that the position offered to Dr. Beck was not substantially different from that to which he had previously been appointed. It is true that the new position carried with it a substantial part of the teaching programme of the former position. However there had been a significant narrowing in the range of courses and subject matter which would be under Dr. Beck's control. As a factual matter, the difference in ambit was such as to render the job offered to him after the restructuring, a job quite different from that which he had undertaken to do. I think, too that the interposition of another level of administration between him and the Director of the Institute substantially reduced the status of his position. In saying this I am not referring in particular to the situation in the Institute of that time, but more to the general view which a person in the position of the plaintiff, or somebody looking at his position might take. There was also the threat of reorganisation into colleges which would have further downgraded his position. The question of direct access to the overall head of such an organisation is obviously an important consideration in assessing status in this context. I found Professor Gibson's evidence in this respect to be unpersuasive.

It is true that the number of students in Dr. Beck's department would not have been substantially different from the number which obtained at the time of his initial employment. However the number of students in the Institute had increased dramatically as had the number under Dr. Beck's supervision in the School of Business Studies. Thus the proposed appointment would have reduced the number of students under his supervision. Similarly, his staff was to be reduced substantially, and it takes little imagination to see that reduction in the number of staff under supervision is again a serious attack on the standing of the position in question.

In the end, I am satisfied that the defendant wrongfully repudiated its agreement with the plaintiff and that such repudiation entitled the plaintiff to determine

the contract. This he did. It follows that he is entitled to damages for breach, and the question arises as to how those damages should be quantified and as to the extent of his obligation to mitigate his loss. He commenced looking for other employment and applied for a number jobs, although he was not particularly well-qualified for some of them. The evidence indicates that there was at that time, and has always been since a shortage of suitably qualified lecturers in Dr. Beck's area of expertise. It follows that he could at any time have obtained another job as a lecturer in accounting or some similar position. Of course, this would have meant a substantial reduction in status and salary for him, and I hold that it was reasonable for him to seek a job of higher standing and with more onerous duties until such time as it became apparent to him that he could find no such job.

The other important aspect of damages is that he had been appointed as Dean only for a period of four years from 1st June, 1987. After that time, any extension would have been a matter for agreement between the parties. Dr. Beck indicated that he would not have been interested in continuing other than as Dean. The events with which I have been concerned in this trial have made it clear that the defendant would not have been willing to renew his term at the expiry of the four year period. Thus any claim for damages cannot extend beyond 1st June, 1991.

In the absence of any other suitable employment, the plaintiff has now established himself in a consulting business, and although it is still in its infant stages, he anticipates that in the next tax year, he will derive an income roughly equivalent to that which he could have derived as a lecturer. Subject to one question of mitigation, the proper measure of the plaintiff's loss is to allow him a period of time after his termination as a reasonable time in which to find a job of roughly equivalent status. In the event that no job was found during that period (as actually occurred), it would be reasonable to expect him to mitigate his loss by taking a

job of lesser status, possibly as a lecturer or senior lecturer. Thus, broadly speaking, his loss will be measured by his lost salary as a head of department for a period of time after termination and thereafter, by the difference between that salary and the amount which he could have earned had he taken employment as a lecturer which employment was probably open to him. A claim was also made for the value of the lost use of a car. The practice at the Institute was to allow Deans the private use of Institute cars when not required for Institute purposes. This included possession and use of the car out of hours and at weekends. There was no contractual obligation upon the defendant to provide this benefit. Once the parties fell into dispute, as they did, it would be at least likely that any such voluntary benefit would be withdrawn. Once the parties resort to enforcement of strict legal rights, it is unlikely that voluntary benefits will continue. In any event, the plaintiff is only entitled to be put in the same position as if the contract had been performed according to its terms. To include an award for loss of a voluntary benefit would be to enforce a promise not supported by consideration.

This situation is conceptually different from the situation which arises in personal injuries cases. In those cases, the courts are often concerned to quantify lost capacity to earn income. To the extent that an employee has been receiving voluntary payments as an incentive to work, it is reasonable to infer that such payments would have continued had he not been injured. Thus in assessing his lost capacity to earn, regard must be had to such amounts.

It was urged by the defendant that in mitigation of his loss, the plaintiff ought to have accepted the offer of continued employment, although in a different position. I think it unreasonable to require this of the plaintiff. It seems extraordinary to assert that the plaintiff should have continued in a relatively important position in the Institute, notwithstanding the fact that he was actually looking for another job. One would think that a person in

such a position would only be effective if he were contemplating remaining there for a significant period of time. Once he had decided that he would be unhappy in that position and was looking for another, it could hardly be in the interests of the defendant that he continue temporarily. In a sense, it would have been dishonest for him to have accepted the other position, knowing that he intended to seek other employment. It would certainly not have been in the best interests of the defendant as a teaching institution. Secondly, one can imagine that serious questions of waiver and novation may have been raised had he chosen to accept the offer. Thirdly, given the treatment which he had received from the defendant, it seems to me quite unreasonable to expect him to remain within the Institute in the lesser position which was offered to him. In those circumstances I do not think that the duty to mitigate required him to accept the offer of employment.

As mentioned earlier, the plaintiff has made some claim for vexation and embarrassment. I say no more about this claim than to adopt the view of the Court of Appeal expressed in Bliss v. South East Thames Regional Health Authority (1985) I.R.L.R. 308 where the court (Cumming Bruce and Dillon L.JJ., Mrs. Justice Heilbron) held that in accordance with long established principles, such a claim could not succeed.

In assessing Dr. Beck's loss, as I have said, it is necessary to allow him a period without remuneration following his termination during which it was reasonable for him to seek a job of similar status. Given the necessary lead time involved in applying for a job, being interviewed and appointed, it would be inappropriate to fix too short a time for this process. Dr. Beck commenced with the defendant on 1st June, 1987, the position having been advertised in October of 1986, as appears from ex. 1. When one takes into account the possibility of some unsuccessful applications, it seems not unreasonable to allow him a year at full salary. It was submitted that any award should be

based on pre-tax figures as it is likely that the award will bear tax. No contrary submission was put. For the year from 1st August, 1988 to 1st August, 1989, I allow him the sum of $61,342.00 which was his salary at that time. He would also have received a 17½ per cent holiday loading for four weeks during that year and superannuation contributions by the employer. Calculations have been done and appear in ex. 19, the arithmetical accuracy of which was not challenged, although some of the assumptions underlying the calculations are not supported by my findings.

As to the holiday loading, 17½ per cent per week for four weeks shows $825.00. The plaintiff calculates his superannuation contributions from the defendant at $26,446.00 for the whole of the remaining term of his contract, that is for two years and 10 months, using his 1988 salary as a base figure. As I am presently concerned only with the benefit lost during the year immediately after his termination, I will allow him the part of that sum which is attributable to one year, namely $9,333.00. Thus the total loss attributable to that year is the total of $61,342.00, $825.00 and $9,333.00, equalling $71,500.00 before tax.

For the period from 1st August, 1989 until 1st June, 1991 I would allow him the difference between the average of a lecturer and a senior lecturer's pay as appears from Professor Gibson's evidence and his likely salary as head of department. His qualifications lead me to conclude that such positions would have been readily open to him. I am, to some extent, averaging because I do not have the figures for the various salary movements during the period from 1988 until the present time. I am assuming also that the salary indicated by Professor Gibson for a Professor is roughly equivalent to that which would have been received by the plaintiff. Professor Gibson put the top of the range for a lecturer at $40,000.00 and for a senior lecturer at $50,000.00. A professor receives about $65,000.00. Taking the average between lecturer and senior lecturer as a fair

representation of the likely position available to Dr. Beck had he been willing to accept it, this shows a loss of $20,000.00 per year before tax. For one year and 10 months, the loss is $36,666.00. As to the holiday loading, an employee entitled to four weeks' leave per year would be entitled to about 7½ weeks for one year and 10 months. Applying the 17½ per cent factor to $20,000.00 for 7⅓ weeks shows $493.00 as lost income attributable to the loading. As to lost superannuation contributions, the best I can do is to assume a proportional relationship between salary and contribution. If an annual income of $61,342.00 yields an annual contribution of $9,333.00, then an income of $36,666.00 (the loss for one year and 10 months) shows a contribution of $5,578.00. For the period from 1st August, 1989 until 1st June, 1991, I would allow the following loss:—

Lost income from salary	$36,666.00
Lost holiday loading	$493.00
Lost superannuation contributions	$5,578.00

This shows a loss for that period of $42,737.00 and a total loss of $114,237.00.

As I have said, the calculations for the period from 1st August, 1989 assume that the plaintiff ought to have taken employment as a lecturer or senior lecturer in accounting and that such a position was available to him. He has in fact undertaken consulting work, and he says that in the next tax year (1990/1991) he will probably be earning roughly what a lecturer would have earned. As I have projected his loss only upon the basis of the difference between a lecturer or senior lecturer and a professor, it is not necessary to make any deduction in respect of his likely income during that period. It seems that he started consulting on 1st September, 1988, and that until 28th February, 1990 (shortly before the trial), he had derived only $9,664.00 from that work. Some part of this must have been derived during the year 1st August, 1988 until 1st August, 1989, for which period I have allowed him full loss of salary. Any sum received between

1st August, 1988 and 1st August, 1989 ought be taken off the award made for that period. It is unlikely that such sum was significant. Probably, the vast bulk of the sum of $9,664.00 was derived in the later part of the period from 1st September, 1988 to 28th February, 1990.

It is also necessary that there be some discounting of the damages award to recognize the fact that the plaintiff will receive now moneys which he would normally have received progressively throughout the balance of 1990 and 1991 and for contingencies. To make allowance for these matters I will reduce the award marginally to $110,000.00.

The writ was issued on 19th October, 1988 and the damages have been accruing since 1st August, 1988. Of course, his income would normally have been subject to income tax, and so he would not have had the benefit of possession of the whole of the sum which I have estimated as attributable to past loss. Taking this factor into account and also the way in which the damages have accrued since the accrual of the cause of action, I will allow him interest at 6 per cent per annum on $40,000.00 since the date of issue of the writ, that is for 18 months, showing a further $3,600.00. There will be judgment for the plaintiff against the defendant in the sum of $113,600.00. I will hear submissions as to costs.