

**Antigua Public Utilities Authority**

*Appellant*

v.

**Malcolm Alphonso Edwards**

*Respondents*

FROM

**THE EASTERN CARIBBEAN COURT OF  
APPEAL OF ANTIGUA AND BARBUDA**

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JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 2nd October 2003  
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*Present at the hearing:-*

Lord Hoffmann  
Lord Millett  
Lord Scott of Foscote  
Lord Walker of Gestingthorpe  
Sir Christopher Staughton

*[Delivered by Lord Walker of Gestingthorpe]*  
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1. On 4 July 1973 the appellant Antigua Public Utilities Authority (“the Authority”) was established by the Public Utilities Act (“the Act”) with a statutory monopoly to supply electricity, telephone services and water within Antigua and Barbuda. It took into its employment a considerable number of individuals who had previously been public officers appointed by the Public Service Commission (“the PSC”). Those individuals were initially seconded to the Authority (while remaining public officers) but they were asked to decide whether to continue as public officers on secondment or to leave the PSC and enter employment with the Authority. The majority elected to transfer to the Authority, and their transfers took effect on 1 January 1974. One of them was the respondent Mr Malcolm Edwards, and this appeal is concerned with the terms (especially as regards retirement benefits) on which he became an employee of the Authority.

2. Mr Edwards was in an unusual (although probably not unique) position because although he was an established public officer he had not been appointed for an indefinite period. In July 1973 he was about half-way through a fixed-term contract for a period of three years. This was a renewal (although only after some dissatisfaction on the part of the PSC, and a ministerial intervention) of a two-year contract under which Mr Edwards had been appointed as an electrical engineer under a formal offer letter dated 1 December 1969. Mr Edwards (although a born citizen of Antigua and Barbuda) was at that time resident in England. He began work in Antigua on 23 February 1970. The PSC's decision to renew his contract for a further period of three years was taken on 5 April 1972.

3. Mr Edwards' starting salary was \$9,000 a year. The formal offer letter dated 1 December 1969 stated,

“On the satisfactory completion of the contract, you will be eligible for a gratuity at the rate of 12½% of your basic salary.”

It was conceded that this was in practice understood as 12½% of aggregate salary earned during the term of the contract, not annual salary, and Mr Edwards received a gratuity on that basis at the end of his initial two-year term. It is also common ground that Mr Edwards, as a public officer on a fixed-term contract, would not have been entitled to a pension under the statutory scheme for public officers (although he would be entitled, and indeed is now entitled, to a modest pension under social security legislation).

4. The effect of the Act was not to privatise the electricity, telephone and water industries, but to put them under the management of a new public body, subject to ultimate ministerial responsibility and control. The Act established the Authority as a body corporate consisting of nine persons (designated as Commissioners), subject to policy directions given by the Minister and a residual power for the Cabinet to intervene in an emergency (see sections 3, 37 and 38 of and Schedule 1 to the Act). The evidence of Mr. Benjamin (the Authority's General Manager at the time when Mr Edwards left the Authority's employment) was that throughout his time at the Authority (which began in 1987) there was no Board (meaning, apparently, the Commissioners) and that the Cabinet acted as the Board. This rather surprising evidence was not explored before their Lordships. By section 3 (4) of and paragraph 1 of Schedule 2 to the Act the Authority has power to appoint and remunerate employees and to establish and maintain a

pension scheme for employees. However it is common ground that no funded pension scheme has ever been established.

5. On 3 July 1973 (that is on the very eve of the enactment of the Act and the establishment of the Authority) the Minister of Public Utilities and Communications sent a letter to all staff members in those parts of the public service which were to be affected by the Act. This letter calls for quotation in full although it is the third paragraph which is most relevant:

“In view of the recent amendments to the second schedule of the Public Utilities and Port Authority Legislation, and in view of certain public pronouncements made by individuals purporting to be on behalf of the Public Service Association, I wish to indicate to you fully Government’s policy regarding the staffing of both Statutory Authorities.

All Public Servants i.e. Civil Servants or members of the establishment will be seconded with their permission to various departments in which they now work; as seconded officers they will of course, continue to be members of the Public Service for all purposes, i.e. their emoluments, disciplinary proceedings and their pension schemes.

At a later date, those persons who elect voluntarily to leave the service and work for either of the Authorities shall have their service with the Authority deemed pensionable service, and this will be gazetted.

Government wishes to stress that Government Departments forming a part of the Statutory Authorities are not being handed over to private enterprise but are in fact genuine authorities wholly owned by the Government and people of the State, and will be operated by a Statutory Board answerable to a Minister of Government and thus through him to Parliament. Stanley Consultants, for a fee, will provide management services on contract, and will not have shares in or benefit from any profits of either Authority. To say, therefore, that these departments are being handed over to private enterprise and therefore changing the status of workers is false and calculated to mislead.

Government is satisfied that with your goodwill and cooperation this turnover can be effected with a minimum of problems and without any loss of status to public servants, and indeed feels that a wide range of benefits will arise not

only to Public Servants and non-established staff, but to the State as a whole.”

It is common ground that this letter was sent to all the staff affected by the changes, whether or not they were prospectively entitled to public service pensions. It was sent to and read by Mr Edwards. The letter’s evident purpose was to reassure the staff to whom it was sent and to dispel doubts and rumours.

6. On or about 4 July 1973 the Assistant Secretary to the Electricity Division, acting on the instructions of the Minister, wrote a single letter addressed to and circulated round 34 staff members in that division. Each was asked to indicate whether he or she wished to be seconded or would prefer to “turn over immediately” to the Authority. All but two of the addressees elected to turn over, and Mr Edwards was one of the majority. Their elections were given effect by a minute dated 31 December 1973 sent by the Chief Establishment Officer of the PSC to the Permanent Secretary at the Ministry. So from 1 January 1974 Mr Edwards was no longer a public officer on secondment. Instead he was employed by the Authority.

7. On 5 February 1974 the Chief Establishment Officer sent another minute to the Permanent Secretary. The minute referred to the previous minute and continued as follows:-

“2. I forward herewith individual letters addressed to the following officers of the Electricity Division who exercised their option to be seconded or to turn over to the Public Utilities Authority:-

[There follow two names of those who elected for secondment, and 26 names of those who elected for transfer, *not* including the name of Mr Edwards].

3. A further communication will be addressed to you with regard to the officer employed on contract.

4. There is no record in this office of any further options from established officers. Grateful to receive the options of the remaining officers of the Electricity Division in order that their positions may be clarified.”

8. It is common ground that paragraph 3 of this minute must have been intended to refer to Mr Edwards. There was, as it happens, a similar letter dated 5 February 1974 relating to staff of

the Port Authority, which also seems to have had one officer on contract. But no copy of any separate letter, tailor-made for Mr Edwards' special position (or of any similar letter to an officer on contract with the Port Authority) has ever been found. The form of the letter dated 2 February 1974 sent to those listed as transferred to the Authority is extant. It was as follows:-

“I am to inform you that consequent upon a Government decision, the Public Service Commission has agreed that as you have signified your intention to be employed by the Public Utilities Authority, you be officially released from your appointment as [job description in the public service] with effect from 1st January, 1974.

2. Government has also confirmed that your service with the Public Utilities Authority will be pensionable and such pension rights will not be less favourable than those enjoyed with Government.

3. Your rights and other benefits will be borne by Government up to and including 31st December, 1973.”

9. Mr Edwards' evidence at trial was that he received a letter “word for word” the same as the second paragraph of the standard letter. The trial judge did not accept that evidence and the Court of Appeal did not differ from the judge's view. Their Lordships would not depart from those concurrent findings that Mr Edwards did not receive the standard letter. That does not however conclude the matter. The minute of 5 February 1974 referred to a further communication which was to be sent in relation to Mr Edwards. Either the Chief Establishment Officer of the PSC overlooked the need for the further letter, or Mr Edwards received a letter which (while not “word for word” the same) did cover his special position as someone who had been on a fixed-term contract as a public officer but who was (as Mr Dingemans QC for the Authority accepted) to be employed by the Authority on a permanent basis. The Authority always treated Mr Edwards as a permanent employee, and he did not receive a gratuity when his second three-year term would have come to an end.

10. As the years went by Mr Edwards rose to positions of greater seniority and took on various management responsibilities. In January 1979 he was appointed as Telephone Manager in the Telephone Division. In 1985 he chaired a small committee to redraft staff rules and regulations for the Authority. These were submitted to the General Manager on 18 December 1985 but the judge concluded that because of “bureaucratic delay and inertia”

they were never formally adopted and implemented. Nevertheless in this litigation each side has placed some reliance on parts of the draft favourable to its case. One paragraph of the rules provided for a normal retiring age of 60 years, and the Authority has relied on this. Another paragraph provided that in addition to certain other benefits:

“The Authority shall establish and maintain a contributory pension (and medical insurance) fund for the benefit of all staff members. Each staff member shall contribute to the fund an amount equal to the contribution made by the Authority.”

Mr Edwards’ office was at one stage engaged in obtaining quotations for an insured scheme, but (as already mentioned) to this day no funded pension scheme has been established by the Authority.

11. There was a collective agreement between the Authority and the relevant trade unions providing for retirement benefits by reference to statutory benefits for non-established public sector workers. But the collective agreement covered staff in grades F to I only (Mr Edwards was at all material times in a senior grade). It may have been in connection with this that Miss Cora Hill (the Authority’s Personnel and Public Relations Manager) sent a memorandum dated 25 March 1993 to Mr Woodroffe (then the General Manager), with a copy to Mr Edwards (then Assistant to the General Manager), showing how to calculate retirement benefits “for employees retiring in 1993 who worked for the Government as Non-Established Workers since 1963 and transferred in 1973”. If the calculations are simplified the general effect was that the monthly pension for monthly-paid employees could be obtained by the formula

$$\frac{N \times M}{800}$$

(where M is the employee’s monthly salary and N is his or her total service in months) and the gratuity was fifty times the monthly pension. Their Lordships were told that these benefits have in practice been paid (on an unfunded basis) out of central government funds, although there seems to be no legal basis for this.

12. Mr Edwards’ appointment as Assistant to the General Manager was his last position with the Authority. He was to be 60 on 21 November 1994. His evidence was that he expected to

continue in employment for some years after that, as a number of senior employees had done. But shortly before his 60th birthday (apparently about the middle of September 1994) Mr Benjamin told him that he was to retire on 21 November 1994.

13. This was confirmed by a letter dated 26 October 1994 stating that he would be paid “for all outstanding leave and your retirement benefits”. On 10 November 1994 Miss Hill calculated those benefits as a monthly pension of \$2,250 and a gratuity of \$112,500. But on 2 December, 1994 Mr Benjamin wrote to Mr Edwards (at his home address) that he would write to him again “on the subject of your pension/gratuity” by 15 December 1994. On 11 December 1994 Mr. Benjamin wrote as follows:-

“As you know, the issue of pension provision for APUA employees has been discussed for quite sometime. When the anomaly was realised, the former General Manager, Mr. M. Woodroffe, set the wheels in motion for the introduction of an APUA pension scheme. To this end, a draft proposal was circulated to the unions and senior management staff as a basis for discussion. This document is still being studied. Meanwhile, we have through your office requested proposals from selected insurance companies for an APUA contributory pension scheme. To date, the process has not been finalised. The reality of the situation now, is that APUA does not have a pension scheme. This is regrettable and really emphasises the urgent need to put a scheme in place.

I wish to advise therefore that you are not entitled to an APUA pension, however provision has been made under the Social Security Scheme. Under the circumstances, I am recommending that an ex gratia payment be made personal to you in an amount equivalent to one (1) year’s salary.”

14. Not surprisingly, Mr Edwards was extremely upset to receive this letter. He wrote to Mr Benjamin on 23 January 1995, saying, among other things:-

“You must know or should at any rate know, at the time of vesting of the APUA, all pre-vesting rights of employees who had previously worked for either The Electricity Division, The Telephone Division or The Water Division of Government were transferred. Letters signed by the then Minister of Public Utilities and given to each employee stated that retirement benefits would be no less favourable to transferred employees, than those benefits would have been

to those employees had they remained with Government. As you are perfectly well aware, this practice has been in effect for the last twenty years.”

15. Mr Benjamin sent what the trial judge described as a conciliatory response. He emphasised that Mr Edwards had been on contract in the public service. He suggested that Mr Edwards should give careful consideration to the position, and if he was in effect claiming a gratuity Mr Benjamin would pursue settlement of his claim. However, Mr Edwards was not prepared to compromise on the basis of a claim for a gratuity.

16. The outcome was that Mr Edwards commenced proceedings against the Authority on 22 August 1995. His statement of claim took the form of a claim for relief, followed by ten paragraphs of particulars, followed by another claim for relief (including a pension of \$2,977.75 a month and a gratuity of \$148,887.50). Paragraph 4 of the particulars was as follows:-

“It was an express condition of the Plaintiff and the other seconded employees that those persons taking up permanent employment with the Defendant would take with them all existing retirement benefits as government employees and that any retirement benefits introduced by the Defendant subsequently would be no less favourable than those of the government from whose employment they had been transferred, a letter to this effect was signed by the then Minister of Public Utilities and Communications and delivered to all transferred employees.”

17. After an eight-day trial Georges J dismissed the claim in a reserved judgment delivered on 18 September 2000. He identified the crucial issue as being Mr Edwards’ status immediately before his “turn over” to the Authority on 1 January 1974. He had a prospective right to a gratuity but no accrued pension rights. He was, the judge said, the odd man out. The judge rejected any claim based on breach of statutory duty (which had not been pleaded). He also rejected the claim based on paragraph 4 of the particulars (which seems to have been argued on Mr Edwards’ behalf in terms of estoppel, rather than breach of contract). The critical passage in the judgment was as follows:

“... since at the turn over date to the Authority the Plaintiff was in actual fact an officer on contract in the employ of the Government, he would, as a result have had *no accrued or existing retirement benefits* to take with him to the Authority as a government employee at that point in time. Nor could

he reasonably have expected that any retirement benefits by the Authority would be *no less favourable* than those enjoyed by other employees of the government who had transferred to the Authority, since in actual fact he would have no such pensionable emolument or entitlement in the first place.”

The judge described the Authority’s case as morally indefensible but legally unassailable. At the end of his judgment he accepted that the general practice in the Authority was for staff to retire at the age of 60. This disposed of Mr Edwards’ alternative claim for wrongful dismissal, which is no longer an issue in the case. The judge declined to order costs against Mr Edwards.

18. Mr Edwards appealed to the Court of Appeal which allowed his appeal and gave judgment for the sums claimed by Mr Edwards for monthly pension and gratuity respectively, with interest. The judgment of Archibald JA (Ag) (with whom Singh JA and Redhead JA agreed) is lengthy, setting out (either in their entirety or in extensive quotation) many documents including the pleadings, the Act, the documentary evidence, and the judgment below. The judgment then dealt fairly briefly with the cross-appeal and with certain grounds of appeal which do not call for mention.

19. Then the judgment turned to estoppel, the ground on which the appeal succeeded. After quoting various passages from the judge’s notes of the evidence Archibald JA (Ag) referred to Mr Benjamin’s letter of 26 October, 1994 (which referred to “your retirement benefits”) and to Miss Hill’s memorandum of 10 November 1994 (which quantified them), both read in the light of Miss Hill’s earlier memorandum dated 25 March 1993. He then cited a passage from Halsbury’s Laws of England (4th Edition, Volume 16 (1992 Reissue) paragraph 1070) setting out the elements of promissory estoppel. He said that the documents which he had identified must be construed within that context. He added that he was of that opinion even though he agreed that it was unlikely that Mr Edwards had received a letter similar to the standard letter. He proceeded to propose judgment in favour of Mr Edwards for the amounts which he had claimed in respect of pension and gratuity, and that was the order made by the Court of Appeal.

20. The Authority appeals to the Board with special leave of Her Majesty in Council. Mr Dingemans has (in written and oral submissions which were all the more effective for their economy) attacked the reasoning, such as it is, in the judgment of the Court of

Appeal. It correctly set out the principles of promissory estoppel as stated in Halsbury's Laws of England, but wholly failed to explain how Mr Benjamin's letter of 26 October 1994 and Miss Hill's memorandum of 10 November 1994 (read with the earlier memorandum of 25 March 1993) began to satisfy the test. Apart from other serious difficulties, Mr Edwards was by the end of October 1994 very close indeed to his 60th birthday. To suggest that his working out the last two or three weeks of his service could constitute a sufficient change of position verges on the absurd. Mr Watt QC for Mr Edwards realistically recognised that he could not support the way in which the Court of Appeal had decided the case. He accepted that estoppel is really a confusing irrelevance, and that if Mr Edwards is to succeed it must be on the basis of what the Authority actually promised him at the outset of his employment, as part of his contract of employment, and not on the basis of some last-minute estoppel.

21. Their Lordships have therefore had to examine what took place between July 1973 and February 1974 on the basis of documentary evidence which may be incomplete (unless the "further communication" promised by the PSC never came into existence) and on the basis of Mr Edwards' recollection of events which, when he gave evidence, lay nearly 30 years in the past. Their Lordships have approached this task on the footing that the Authority was a public body established for public purposes but that it was not a government department (compare the observations about the British Transport Commission made by Denning LJ in *Tamlin v Hannaford* [1950] 1 KB 18, 24 recently referred to by the Board in relation to the Trinidad and Tobago Postal Corporation in *Perch v The Attorney General of Trinidad and Tobago* (20 February 2003, [2003] UK PC 17). The Authority was therefore a legal person distinct from (although constitutionally subject to policy directions given by) the Minister. Nevertheless the Minister's statement in his widely-circulated letter of 3 July 1973 cannot possibly have been unknown to the Authority. It was a statement about the terms on which persons who had been public officers were to become employees of the Authority, issued by the Minister who had statutory power to give policy directions to the Authority. The Ministerial statement was expressly ratified by the Cabinet on 20 December 1973, some time after the incorporation of the Authority. Indeed the Cabinet minutes arguably went further, as they contained a confirmation in general terms:

"Cabinet confirms that Service with the Public Utilities Authority and the Antigua Port Authority will be

pensionable and that such pension rights will not be less favourable than those presently enjoyed with Government.”

It would be quite unrealistic to treat the Minister’s letter of 3 July 1973 (as the judge seems to have done) as analogous to an ineffective pre-incorporation contract, or as a non-binding letter of comfort. It was intended to be binding and to be acted on. It was acted on by the letters subsequently sent out by the Chief Establishment Officer.

22. On that basis the reformulated case presented by Mr Watt was that the Board should infer that at some time after 5 February 1974 Mr Edwards was, with the knowledge and approbation of the Authority, sent a tailor-made letter which promised him pension rights (as a permanent employee of the Authority) *as if* he had previously been a public officer with indefinite tenure (and not on contract); or alternatively (if the need for such a letter had been overlooked) that the Minister’s letter of 3 July 1973, subsequently ratified by the Cabinet, had the same effect.

23. Faced at short notice with a different case from that presented to the Court of Appeal, Mr Dingemans took three main points in his reply: that this case had not been pleaded; that it was for Mr Edwards to make out his case, his evidence of receiving the standard-form letter had not been accepted, and he had no evidence of what might have been in a letter tailor-made for his special situation; and that the new case was inconsistent with Mr Edwards’ own evidence.

24. Mr Edwards’ statement of claim was certainly not well drafted. It had obvious defects of form. As to the substance of the claim, it related to events which in 1995 were already remote in time and of which, even after discovery, there was less than complete documentary evidence. Their Lordships consider that the interests of justice require them to consider Mr Edwards’ case as now formulated, since paragraph 4 of the particulars does, even if imperfectly, put forward a case on those lines (Mr Edwards was asked on 20 November 1995 to give particulars of the Minister’s letter referred to in paragraph 4, but was not at that stage able to do so).

25. It is of course for Mr Edwards to make out his case. But the Chief Establishment Officer’s letter of 5 February 1974 clearly demonstrates that Mr Edwards was at that time recognised as being in a special situation calling for special treatment. His public service had been on contract and so was not pensionable, but he

was moving to permanent employment with the Authority (and in the event his employment continued, in increasingly responsible posts, for over 20 years). It is (to say the least) possible that he was recognised as someone who (but for the passing of the Act and the establishment of the Authority) would be likely to become a permanent (and so pensionable) public officer. It is therefore (to say the least) possible that it was thought appropriate to accord him the same pension rights as if he had become a permanent public officer immediately before his transfer. That is a possible inference from the evidence, incomplete though it is.

26. In contending that that inference would be contrary to Mr Edwards' own evidence, Mr Dingemans drew attention to a question and answer specially noted in the judge's notes:

“Q. What was your understanding would be your position with regard to your retirement benefits following upon your secondment?

A. All employees of government were initially seconded to APUA and my understanding regarding my retirement benefits on such secondment was that they would be no less favourable than they would have been had if we stayed with Government and the formula used for calculating benefits would be the same as used by the Civil Servants under Cap. 210.”

Mr Dingemans submitted that that (and another passage, less precisely recorded, in the evidence of Mr Edwards) was inconsistent with the case that Mr Edwards is now putting forward, because Mr Edwards was on contract as a public officer and so had no pension rights. That is the point which Georges J regarded as crucial. But if Mr Edwards had stayed as a public officer he would not have expected to continue as an electrical engineer on a fixed-term contract for the rest of his working life. Becoming entitled to retirement benefits is a long-term process, and the comparison between public service and employment with the Authority cannot realistically be frozen at a single moment of time, that is immediately before the “turn over” on 1 January 1974.

27. Similarly Mr Dingemans drew attention to the references (in Mr Edwards' letter of 23 January 1995 and in paragraph 4 of the particulars) to pre-vesting rights being “transferred” and to the understanding that transferred officers “would take with them” their existing rights. He reiterated the basic point that Mr Edwards did not have any existing right to a pension (as opposed to a

contingent right to a gratuity after successful completion of his second fixed-term contract).

28. These points call for serious consideration. But if Mr Edwards did (at some time in February 1974) receive a tailor-made letter promising him pension rights as if he had become a permanent member of the public service immediately before 1 January 1974, it is understandable that he should have thought that he joined the Authority with accrued pension rights. In this regard, while not resiling from their firm disinclination to differ from concurrent findings in the courts below, their Lordships note that the trial judge's finding (that Mr Edwards did not receive a letter "word for word" the same as the standard letter) was not expressed in terms of a positive rejection of his evidence. Georges J did not say that Mr Edwards was deliberately telling lies. In other respects he seems to have accepted Mr Edwards as a witness of truth. Otherwise the judge would not have described the Authority's position as morally indefensible, and refused the Authority an order for costs even though he dismissed Mr Edwards' claim.

29. Bearing in mind that it is for Mr. Edwards to make out his case, their Lordships have anxiously considered all the points relied on by Mr Dingemans. Nevertheless they consider that it is, on all the evidence which was before the trial judge, more likely than not that a further tailor-made letter was sent to Mr Edwards; and that it promised him that his service with the Authority would be pensionable service as if he had become a pensionable public officer on 31 December 1973. Although that letter would have been sent by the Chief Establishment Officer, not the Authority, it must (for reasons already mentioned) be taken to have bound the Authority. Its terms would have incorporated by reference the statutory retirement benefits scheme and so would not have lacked legal certainty. But if there was any lack of certainty it was removed by Miss Hill's memorandum of 10 November 1994 (which followed just the same pattern of calculation as her general memorandum of 25 March 1993).

30. In reaching that conclusion their Lordships have attached particular weight to the commercial realities of the situation as they would have appeared to Mr Edwards and the Authority (and to any reasonable bystander). If Mr Edwards had chosen to stay with the PSC he could have hoped to obtain indefinite tenure at a fairly early date, so that from then on his service would have been pensionable. At the very least he could have confidently looked forward to a fairly handsome gratuity in February 1975. Why should he give up those prospects unless he was being promised

something equally attractive? The fact that Mr Edwards never made any claim to a gratuity (or even an apportioned part of a gratuity) in February 1975 provides significant support for his case. It is much less likely that he would have taken a course which was contrary to his own financial interests.

31. In this way their Lordships have, by a very different route, reached much the same conclusion as the Court of Appeal. However their Lordships consider that there was no ground for including in the calculation of the award the additional allowances (totalling \$1,350 a month) claimed by Mr Edwards, as they were not part of his basic salary. Mr Watt did not in the end press that part of the claim.

32. Their Lordships will therefore humbly advise Her Majesty that the order of the Court of Appeal should be varied by substituting the sums of \$2,250 and \$112,500 for the amounts of the monthly pension and the gratuity respectively, with an appropriate adjustment in the award of interest; but that in other respects the appeal should be dismissed with costs before the Board, in the Court of Appeal and before Georges J.