

**ANTIGUA AND BARBUDA
IN THE INDUSTRIAL COURT**

Reference No. 42 of 2000

BETWEEN:

RUTH GORDON/CARLENE CARR-ABRAHAM	-	Employees
and		
WORLDWIDE INTERNATIONAL BANK	-	Employer

Before:

Mrs. Nelleen Rogers Murdoch	-	Chairman
Mr. Hubert Hood	-	Member
Mr. Ian Shoul	-	Member

Appearances:

David Massiah (AWU) for the Employees
No appearance for Employer

2002: April 15 & 17

SUMMARY JUDGEMENT

EMPLOYEE CARLEEN CARR ABRAHAM

The Employee was employed with Worldwide International Bank from September, 1997. She was a data processing supervisor and her salary was \$3,000.00. On Thursday 15th October, 1997 she received a letter from her Employer indicating that she would be placed on rotation with another staff member and that her salary would be reduced by 50% to \$1,500.00 per month.

The Employee worked on Friday 17th and reported for work on Monday 20th October, 1997 without incident. On Tuesday 21st October when the Employee reported for work she was given a letter terminating her services. The letter contains no reason for dismissal as required by section C10 of the Labour Code, although it refers to three previous letters dated 8th July, 13th July, and 8th August, 1997. The employee denies ever receiving a letter dated 8th August, 1997 and gave evidence that the letter dated July 8th was in respect of an incident in which the Employer had reduced her salary after she incorrectly performed a task assigned to her, and that the letter of July 13th reinstated her salary to the original position prior to 8th July.

The Employer was not present was not represented at the hearing so that no evidence was led for the Employer.

HELD

The court finds from the Employee's evidence that the dismissal was unfair, as no reason was assigned in the dismissal letter, nor was any reason thereafter given.

Further the court finds that the computation of benefits due to the Employee contained in the termination letter were erroneous as they were based on a salary reduced by 50% as a result of the letter of 16th October, 1997 and that the reduction in salary was a unilateral change of the Employee's terms and conditions.

The Employee is therefore entitled to compensation for the unfair dismissal under the following established heads:

- (1) Immediate loss calculated from the date of dismissal until the date of hearing. The Employee was monthly paid at the rate of \$3,000.00 per month.

The Employee gave evidence that she found employment in March, 1999 at a gaming company. She however states that she did not seek employment until six to eight months after the birth of her child in March, 1998 as she was pregnant, so that she began to look for a job in or around November, 1998 and provided ample evidence of mitigation. The Employee will therefore be awarded an amount for immediate loss for the period during which she attempted to mitigate her loss to the time she obtained employment in March, 1999 i.e a period of four months.

She should reasonably have obtained a job within six months of the termination so she is awarded an amount for full salary for six months i.e an amount of \$18,000.00. In addition the Employee mitigated by finding a job in March, 1999 which she lost in December, 1999 as a result of the company going out of business. She thereafter obtained a job in May, 2000 which paid her the sum of \$1,338.00 less than her previous employment. The court will therefore award the Employee the loss for a four month period i.e the amount of \$5,352.00. The total award under this head is therefore \$23,352.00.

- (2) Notice pay The Employee was given no notice of termination so that she is entitled to one month's salary \$3,000.00. From this will be deducted the amount paid by the Employer on termination. She is entitled to \$1,500.00 under this head.
- (3) Severance/Loss of protection of employment The Employee worked for one year and two months in the employment before she was terminated so she is entitled to fourteen days severance pay. Her daily rate of pay is \$138.46 therefore her severance entitlement is \$1,938.44.
- (4) Future Loss: The Employee gave evidence that after losing her job at RYO in December, 1999 she found employment at the Treasury Department in May, 2000 at a salary of \$1,662.00. This is a little more than one half of that which she earned in her employment with the Employer. Future loss is therefore awarded at the 4 months (\$3,000.00 X 4) for a total of \$12,000.00.
- (5) Vacation: The employer gave evidence that she was entitled to three weeks vacation which she had not taken. Her vacation amount due is therefore \$2,076.90
- (6) No award is given for manner of dismissal.

(7) The total amount awarded to the employee is therefore \$40,867.34

EMPLOYEE RUTH GORDON

The Employee was employed with Worldwide International Bank from February, 1997. She was a receptionist and her monthly salary was \$2,000.00. On Thursday 15th October, 1997 she received a letter from her Employer indicating that she would be placed on rotation with another staff member and that her salary would be reduced by 50% to \$1,000.00 per month.

The Employee worked on Friday 17th and did not report for work during the period Monday 20th to Friday 24th October, as that it had been decided that the other rotated Employee Carleen Carr would work the first week. On Monday 27th October when the Employee reported for work she was given a letter terminating her services. The letter contains no reason for dismissal as required by section C10 of the Labour Code, although it refers to two previous letters dated 8th August, 1997 and 16th October, 1997. The Employee denies ever receiving a letter dated 8th August, 1997 and the letter of 16th October is the letter that placed her on rotation and reduced her salary.

The Employer was not present was not represented at the hearing so that no evidence was led for the Employer.

HELD

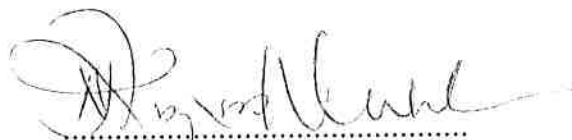
The court finds from the Employee's evidence that the dismissal was unfair, as no reason was assigned in the dismissal letter, nor was any reason thereafter given.

Further the court finds that the computation of benefits due to the Employee contained in the termination letter were erroneous as they were based on a salary reduced by 50% as a result of the letter of 16th October, 1997 and that the reduction in salary was a unilateral change of the Employee's terms and conditions, without just cause.

The Employee is therefore entitled to compensation for the unfair dismissal under the following established heads:

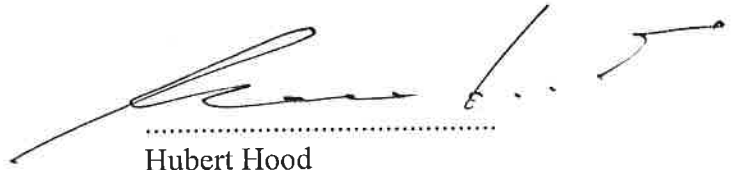
- (1) Immediate loss calculated from the date of dismissal until the date of hearing. The Employee was monthly paid at the rate of \$2,000.00 per month. The Employee gave evidence that after her termination she did not seek employment until after the birth of her baby as she was seven months pregnant at the time. She gave birth on 15th January, 1998 and did not seek employment until January, 1999 when she was employed by Island Photos. No award will be made for the period during which she took no steps to mitigate her loss.
- (2) Notice pay The Employee was given no notice of termination so that she is entitled to one month's salary \$2,000.00. From this amount will be deducted the amount of \$1,000.00 paid to the Employee by the Employer on termination.
- (3) Severance/Loss of protection of employment The Employee was employed for less than one year and is therefore not entitled to severance.
- (4) Future Loss: The employee began work in January, 1999 and has received since then a salary of \$1,834.00. She has therefore lost \$164.00 per month on her salary. The Court does not consider that her future loss will be substantial and will therefore award one month's salary i.e \$2,000.00 under this head.
- (5) Vacation: The Employer gave evidence that she was entitled to twelve days vacation. She worked with the Employer for nine months and had therefore accrued nine days vacation. Her daily rate of pay is \$92.31 so her award under this head is \$830.79.
- (6) No award is given for manner of dismissal.
- (7) The total amount awarded to the Employee is therefore \$3,830.79.

Dated the day of 2002.



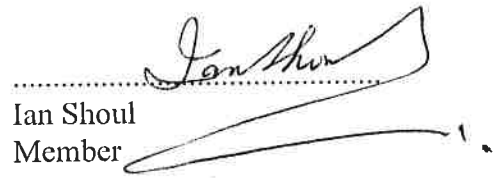
N. Rogers Murdoch (Mrs.)
Chairman

I concur

A handwritten signature in black ink, appearing to read 'Hubert Hood', written over a horizontal dotted line.

Hubert Hood
Member

I concur

A handwritten signature in black ink, appearing to read 'Ian Shoul', written over a horizontal dotted line.

Ian Shoul
Member