

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 49 OF 2000

BETWEEN:

BRENDA RAYNE

Employee

and

JAMES HOLBOROUGH (t/a CARIBBEAN ART SUPPLIES)

Employers

Before:

The Hon. Cyril L. Maundy
The Hon. Edward T. Henry
The Hon. Genevieve Benjamin

President
Member
Member

Appearances:

Keithlyn Smith of the Antigua & Barbuda Workers Union, for the Employee
The Employer in person

2002: May 15 & 17

JUDGMENT

Unfair Dismissal – abandonment of job – compensation/damages for Unfair Dismissal – mitigation.

Historical Background

- [1] **Maundy, P.:** This matter was referred to the Court by the Honourable Minister of Labour, Mr S.C.O. Benjamin, and was filed on March 2, 2000. The

Reference alleged that there was a Trade Dispute (Unfair Dismissal) between the Employee, Brenda Rayne, and James Holborough, trading as Caribbean Art Supplies.

- [2] In her Memorandum dated July 19, 2000, and filed on July 20, 2000, the Employee alleged that, inter alia:
- (a) In 1995, the Employer sublet the business from AC Screen Printing and it was renamed Caribbean Art Supplies.
 - (b) During her tenure in office with the Employer, she received paid vacation only once, viz, on April 15, 1996.
 - (c) On October 24, 1996, she informed the Employer that she was ill and unable to go to work but was persuaded to come out to work and when she did so was dismissed by the Employer; she was not told the precise reason for the dismissal except to say that she was late.
 - (d) The dismissal was unfair.
- [3] In his Memorandum dated April 29, 2002, and filed on April 30, 2002, the Employer denies that, inter alia, the Employee was ever dismissed and asserts that she had abandoned her job.
- [4] The evidence of the parties is most conflicting and unclear and is at variance one with the other.
- [5] The Employee asserts that she worked with another entity, Cadman Creations (which apparently operated the business before the Employer) until 1993 when she was severed and then went to work with the second company which was managed by one Aaron Challenger; she commenced working with Tee-Time, the new name given to the business by Mr Holborough in 1995 –

she thought Aaron Challenger and Mr Holborough were partners – Aaron Challenger managed the business between 1993 and 1995.

- [6] Mr Holborough was never in partnership with Aaron Challenger.
- [7] With regard to the dismissal itself, there were two different accounts: the Employee said that in April, 1996, she was having a baby and went on Maternity Leave to St Croix. On returning to Antigua in July she contacted the Employer who informed her that the business place which was owned by the National Parks Authority was being repaired by them and she had to wait until completion to return to work. Further, that she telephoned the Employer consistently and at regular intervals to find out when she could go back out to work and finally in October, 1996, he informed her to report for work at his shop in St John's. The Employee said that she reported for work as instructed and worked on Monday and Tuesday of the week but was not feeling well on the Wednesday morning and so telephoned the Employer to say that she was ill. The Employee said that she was persuaded to come out to work and though still ill she went to work and reached there at about 11:00am. On her arrival at work the Employee said that Mr Holborough was angry at her being late and terminated her employment.
- [8] For his part Mr Holborough disagreed with the Employee's version of the facts and asked the Court to dismiss the Reference on the ground that there was no dismissal but that the Employee had abandoned her job.

Triable Issues

- [9] The issues for determination appear to be:
- (i) Was the Employee dismissed? And if so, was the Dismissal Unfair?

- (ii) Had the Employee abandoned her job?
- (iii) When did the Employee commence working with the Employer?

The Arguments

- [10] Keithlyn Smith, on behalf of the Employee, asked the Court to accept the Employee's version of the facts and find that she was unfairly dismissed.
- [11] Mr Smith contended that, inter alia, the Employee had worked for the Employer from 1993 when he sublet the premises to the date of dismissal, that the Employee's employment continued after she returned from St Croix and that she never abandoned her job.
- [12] Mr Holborough contended that, inter alia, the Employee never contacted him until September, 1996, following her return from St Croix, that she had abandoned her job and that at the time of the alleged dismissal she had only been re-employed by him for two weeks as a substitute for another employee who had gone on Maternity Leave.
- [13] Mr Holborough did not draw the Court's attention to any definition of "abandonment" or cite any cases to illustrate same or in support of his contentions.
- [14] Mr Smith did not cite any authorities in support of his contention but referred the Court to Sections C.5, C.19, C.20 and C.21 of the Antigua and Barbuda Labour Code, Cap. 27, Laws of Antigua and Barbuda, Revised Edition, 1992, hereinafter referred to as "the Labour Code".

The Law

[15] The Law relating to Unfair Dismissal is contained in Section C.56, C.57 & C.58 of the Labour Code. By Section C 56 every employee whose probationary period with an employer has ended shall have the right not to be unfairly dismissed by the employer and no employer shall dismiss any such employee without just cause.

[16] C.57 concerns employees engaged under contract.

[17] Section C 58 (1) provides that a dismissal shall not be unfair if the reason assigned by the employer therefor:

- (a) relates to misconduct of the employee on the job within the limitations of Section C.59 (1) & (2)
- (b) relates to the capacity or qualification of the employee to perform work of the kind he was employed to do within the limitations of Section C. 59(5)
- (c) is that the employee was made redundant
- (d) is that the employee could not continue to work in the position he held without contravention (on his or the employers part) of a requirement of law; or
- (e) prolonged illness or some other substantial reason of a kind which would entitle a reasonable employer to dismiss an employee holding the position which the employee held.

Provided however that there is a factual basis for the assigned reason.

[18] Section C 58 (2) lays down the test to be applied in determining whether a dismissal is reasonable.

Decision

[19] I carefully considered the evidence adduced in this Reference and observed the demeanours of the parties as they gave their evidence. After much consideration and taking all the evidence into account I have been persuaded by the Employee and accept her testimony.

[20] I am satisfied that subsequent to her return from St Croix in 1996 the Employee so informed Mr Holborough and told him that she was available to resume her employment and wanted to know when she should report for work. Also, that Mr Holborough told the Employee that she had to wait as the shop was undergoing repairs by the owners and that she would have to wait until these were completed. Further, that in 1996 she was instructed to report for work at the Employee's shop in St John's and was dismissed on the 24th day of October, 1996 on the ground that she had abandoned her job.

The Award

[21] A person the victim of an Unfair Dismissal is entitled to compensation under the established heads and the Award is as follows:

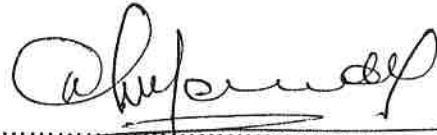
- (a) Basic Award – Under this head, in the case of a weekly paid employee the award is one day's pay for each month of employment or substantial part thereof. The Employee worked for the Employer from December, 1993, to October 24, 1996, i.e. 35 months and her daily rate of pay was \$ 40.00 per day so that the amount of the award is $\$ 40.00 \times 35 = \$ 1,400.00$.
- (b) Immediate Loss – Following her dismissal the Employee was unemployed until December, 1996, i.e. 6 weeks and the award is $\$ 240.00 \times 6 = \$ 1,440.00$.

- (c) Manner of Dismissal – I make no award.
- (d) Furture Loss – I make no award.
- (e) The Employee is entitled to 4 weeks vacation or payment in lieu thereof in the sum of \$ 960.00.

Conclusion

[22] The Employer shall pay to the employee the sum of \$ 3,800.00 payment to be made by *July 31,* 2002. There shall be no order for Costs.

DATED the *18th* day of June, 2002



Cyril L. Maundy
President

I concur



Edward T. Henry
Member

I concur



Genevieve Benjamin
Member