

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 20 OF 1999

BETWEEN:

CLUNIS HUGHES

Employee

and

BONA MACY MILL REEF CLUB

Employers

Before:

The Hon. Cyril L. Maundy

President

The Hon. Hubert Hood

Member

Appearances:

The Hon. Baldwin Spencer, for the Employee

Justin L. Simon, Barrister-at-Law, for the Employers

2000: December 15

2001: May 25

SUMMARY JUDGMENT

- [1] This is another instance where apparently an Employer chose not to attend Court and give evidence. A failure to give evidence deprives the Court of the benefit of an opposite viewpoint and

not to be in a better position to weigh and evaluate the justice or injustice of the matter. Instead, the Court is deprived of what could be very important testimony and has to make a decision on the evidence of one only of the principal actors.

- [2] Whilst, of course, the Court is obliged to consider all the facts and not to regard the non appearance of an Employer as an admission of guilt or liability, one is very concerned that Counsel, in spite of the foregoing, will nevertheless, and at times, forcibly, try to persuade the Court to reject the only evidence adduced and find for the Employer. And, of course, Counsel may cite works of authority or previously decided cases thereby making it mandatory that the Court should fully research the matters contended, ascertain and study them and expend time and energy in order to determine whether there are grounds on which the Employer can be found without fault.
- [3] In his submissions Mr Spencer was clearly of the view that when the Employee was offered retirement the intent of the Employer and the understanding of the parties was that the Employee would be paid the sum of \$ 500.00 per month until his (the Employee's) death.
- [4] Mr Simon accepts that the monthly payment was a retirement payment or a pension in fact, but I cannot accept his view that the payment came to an end with the demise of J. Noel Macy, that the claim is based on past consideration and thus no

consideration. Taking this viewpoint further, the submission seems to suggest that an Employer, paying a retirement pension to a past employee can terminate the payment at any time on the ground of past consideration? Am I to understand that this is the jurisprudence of Antigua and Barbuda? I do not agree; if it is the case, numerous persons could wake up tomorrow to find their pensions terminated and they would have no legal redress and I do think this is a correct interpretation of the Law.

[5] Mr Simon did not allege in his Memorandum that the Court did not have any jurisdiction in this matter or adduce any evidence in substantiation thereof; in fact it was never raised! Consequently, I do not think the Court is obliged to act on such a submission – the Employee's representative never had an opportunity to Cross-exam or to address the Court on the matter – it formed no part of the proceedings and only raised its head at the end of the case when Mr Simon made his final submission.

[6] It must not be overlooked that according to the evidence, although he was retired in 1986 the Employee continued to perform certain services for the Employer, Bona Macy, and which services were part of the retirement package and indeed the Employee received his pension for approximately fourteen (14) years without anyone raising a finger. It was when he refused to accept an increase in his duties that Bona Macy, the successor Employer, sought it fit to terminate the Employee's pension and declare that there was no legal obligation to pay the

monies and that the payments were an honorarium and based on a moral and not a legal duty (right).

- [7] The Employer did not adduce any evidence in rebuttal of that given by the Employee and his witness, Kenelin Hughes.
- [8] In his Cross Examination Counsel endeavoured to discredit the evidence of the Employee and to create pitfalls therein which he then contended showed that it contained cracks and inconsistencies and should not be accepted.
- [9] In arriving at a decision I carefully considered the evidence adduced, the authorities cited and the relevant provisions of the Antigua and Barbuda Labour Code, Cap. 27, Laws of Antigua and Barbuda, Revised Edition, 1992, and the Industrial Court Act, 1976, Cap. 214, Laws of Antigua and Barbuda, Revised Edition, 1992, and at the end of the day I would accept the evidence of the Employee and his witness as a true account of what was intended and what was agreed between the parties.
- [10] In the circumstances I therefore find that:
- (i) The Employee was retired by Mr A. Macy in 1986 and the \$ 500.00 that he was being paid monthly by Mill Reef Club was part of his retirement package and was intended to be paid to him until his demise; indeed, the Employee said that it seems that he was not expected to live until now.

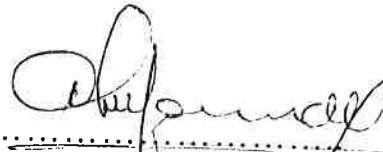
- (ii) The monies (US\$ 1,101.69) that Mr Macy's attorneys in the United States had calculated and ordered to be paid to the Employee but which he never received, were his Severance Pay entitlement.
- (iii) Bona Macy erred in terminating the \$ 500.00 monthly payment to the Employee.
- (iv) This is not a case of past consideration as services are still being performed by the Employee. The payments are not an honorarium.
- (v) The issue of jurisdiction was never pleaded and no evidence was led on same and is not accepted.

[11] In the circumstances and based on the evidence adduced I would hereby order that the Employee is entitled to:

- (i) The sum total of the monthly payments stopped by Bona Macy and these shall be paid to him by August 18th, 2001, i.e. $\$ 500.00 \times 16 = \$ 8,000.00$
- (ii) The monthly payments shall be immediately re-activated and the sum of \$ 500.00 be paid to the Employee on the last day of each month commencing July 31st, 2001, until his demise.
- (iii) The sum of US\$ 1,101.69 which, apparently, was to be paid to the Employee as Severance Pay shall now be paid to him by Bona Macy.

- (iv) Simple interest @ 5% per annum on the unpaid Severance
Pay i.e. US\$ 1,101.69 @ 5% = US\$ 826.29
- (v) The shall be no Order as to Costs.

DATED the 18th day of July, 2001



Cyril L. Maundy
President

I concur



Hubert Hood
Member