

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

Ref. No. 30 of 1999

BETWEEN

FLORA CABRAL/PETULA BOWEN

Employees

and

CAMACHO & SONS LTD.

Employer

Before:

Nelleen Rogers Murdoch

Edward T. Henry

Genevieve Benjamin

Chairman

Member

Member

Appearances:

Justin L. Simon - Solicitor for the Employees

No appearance for the Employer

2001: July 3

JUDGEMENT

Unfair dismissal - Summary dismissal - no prior disciplinary issues - verbal order to leave - employees locked into workplace after refusal to leave - police summoned to eject employees.

1. By reference filed on the 25th October, 1999, the court was informed of the existence of a dispute between the Employees and the Employer. The Employees'

memorandum, filed on the 3rd December, 1999, alleges that the Employees were unfairly summarily dismissed and that they are entitled to compensation for their unfair dismissal.

2. The Employer was not represented at the hearing of the reference. The Court noted that Mr. Dane Hamilton had represented the Employer in this matter previously and was informed that the Court's registry had been advised by Mr. Hamilton on the morning of the hearing that he no longer represented the Employer in the matter. Mr. Simon's application for an ex parte hearing of the matter was therefore granted.
3. The Employee Floral Cabral was employed by the Employer company in the company's business premises on High Street. She had been employed from October, 1982 and her last salary was \$600.00 per week.
4. The Employee Petula Bowen was also employed by the company in its main business premises at High Street. She began work in September, 1991 as a clerk and her last salary was \$350.00 per week.

Employees' Evidence

5. Both Employees indicated that they were dismissed on 8th October, 1998 after an incident that had occurred at their workplace involving one Mr. Lee Camm who was the grandson of the Managing Director of the business.
6. The evidence of Flora Cabral was that the Employer company owned the Scent Shop on High Street where she worked, and an airport outlet at the V.C. Bird International Airport. She states that her boss was Mrs. Rose Camacho who was also the Managing Director and owner of the business.
7. Mrs. Cabral indicated that in September, 1998 Mrs. Camacho travelled to Miami and left her business in the care of one Peter Abrams who had been accustomed to run the affairs of the business in Mrs. Camacho's absence. She states that on 8th October, 1998, one Lee Camm the grandson of Mrs. Camacho visited the premises and he advised the staff that he was now going to be in charge of the business and that Mr. Peter Abrams was no longer going to be in charge.
8. Mrs. Cabral indicated that she had prior to 8th September, 1998 been requested by Mr. Peter Abrams to assist at the airport store as the sole employee there was

unable to work and that she had travelled to High Street to obtain the keys from Mr. Abrams to open the company's airport store, on the morning of 8th September, 1998.

9. Her evidence was that she requested the keys for the airport store from Mr. Lee Camm and that he failed to respond but that she then proceeded to assist a customer in the High Street store while waiting for Mr. Lee Camm to deliver the keys to her.
10. Mrs. Cabral further stated that Mr. Camm approached her shortly thereafter and requested her to produce for him invoices relating to a shipment of goods which was then on a table in the storeroom. The Employee stated that she indicated to Mr. Camm that she was unable so to do as she had been working at the airport store, and had not cleared the shipment, but that she would attend to the matter after she had dealt with the customer.
11. She stated that Mr. Lee Camm then in the presence of the customer and in the hearing of other members of staff told her loudly and aggressively that if she did not wish to work with him that she could use the door.
12. The Employee further stated that Mr. Camm shortly thereafter made a phone call to Mrs. Camacho in Miami. She stated that she was able to speak to Mrs. Camacho on the phone during Mr. Camm's call and she stated that she was told by Mrs. Camacho that she had placed Mr. Camm in charge of her affairs and that if Mrs. Cabral did not wish to work with Mr. Camm that she could take the door.
13. Flora Cabral's evidence is that she indicated to Mr. Camm that she had worked all week and had not been paid and stated that at least she should be paid for the week and that the other matters could be discussed thereafter. She stated that Mr. Camm then loudly stated that there was no money in the business to pay any of the employees and that he loudly demanded that all the employees leave the premises.
14. The Employee gave evidence that she refused with the other employees to leave the premises whereupon Mr. Camm took off the lights and locked the door leaving her along with four other co-workers in the building. She gave evidence that Mr. Camm's actions provoked an outcry from vendors in the street outside the store, so that Mr. Camm subsequently opened the door, entered the building and called the police to have the staff ejected. She stated that all staff members left the

premises after three police officers came to the premises and requested them to leave.

15. The evidence of the Employee Petula Bowen substantiated that given by Mrs. Cabral in every material particular. Miss Bowen further gave evidence that after the incident was reported to the Union, the Employees returned to work for several days after the 8th, but that the premises remained closed until after the 13th September, 1998 when a meeting was convened with all the parties before the Labour Commissioner.

Employer's Evidence

16. No evidence was given for the Employer.

Issues

17. Whether the action of Mr. Lee Camm amounted to a summary dismissal of the Employees and whether that dismissal was unfair.

Law

18. **Section C.61** of the Antigua Labour Code indicates that termination of employment may be fairly done where the Employee has mis-conducted himself in or in relation to his employment in a manner so serious that the Employer cannot reasonably be expected to take any course other than termination. The section lists several types of misconduct which may be considered sufficient grounds for termination.

Discussion

19. The facts as indicated from the evidence do not show any form of misconduct on the part of the two employees that would justify disciplinary action or indeed dismissal.
20. There is no evidence that the Employer was dissatisfied in any way with the work of the Employees or that there had been any other prior issues which could have precipitated or justified the action of Mr. Lee Camm on the day in question.

21. The secondary issue of whether Mr. Camm was authorised to act in the manner in which he acted on the Employer's behalf is answered by the fact that the Employee Flora Cabral had spoken to Mrs. Camacho, her boss and the Managing Director, who indicated that Mr. Camm was in charge.

Decision

22. The Court finds that Mr. Camm's action in loudly telling Mrs. Cabral to take the door was harsh, oppressive and arbitrary and would in itself have amounted to a constructive dismissal. His further action in locking the Employees in the building and then calling the police to have them ejected, after which the office remained closed for at least five days without any effort to contact the Employees amounts clearly to an unfair dismissal.

Award

23. In view of the above the court finds that both Employees should be compensated for the unfair dismissal under the heads below:

Flora Cabral

Loss of protection of employment

24. The Employee gave evidence that she worked with the company from October 1982 to 8th October, 1998 and that her last salary was \$600.00 per week. Her severance pay would have been for 192 days by her daily rate of \$100.00 = **\$19,200.00.**

Immediate Loss

25. Mrs. Cabral gave evidence that she obtained work at Lipstick on 2nd December, 1998 and that she was paid \$540.00 per week. This amount was altered in December, 1999 to the amount of \$2,300.00 per month.

Immediate loss is payable from the date of dismissal to the date of the hearing.

- (a) The loss of salary from 8th October to 2nd December when she was out of work is eight weeks. For this period the loss is therefore $8 \times 600 = \$4,800.00$.

- (b) For the period 2nd December, 1998 to 1st December, 1999 Mrs. Cabral was paid \$540.00 per week, a short fall of \$60.00 per week for 52 weeks. The loss for this period is therefore $60 \times 52 = \$3,120.00$.
- (c) For the period 2nd December, 1999 to the present 3rd July, 2001 is 19 months approximately. The difference between what she previously earned and what she in fact earned for the period is \$5,677.00. The sum of **\$5,677.00** is therefore awarded for this period.

The total awarded under this head is therefore **\$13,597.00**

Future Loss

The Employee gave evidence that her present salary is \$2,300.00 per month. The short fall on her annual salary is \$3,600.00. It will be some time before her present salary will be increased to bring her to the point at which she will be earning the \$600.00 per week she earned previously. In accordance with the principle in *Jennifer Watt vs. Antigua Village Condo* she will be awarded six months loss in the amount of **\$1,800.00**.

Manner of Dismissal

No award is made under this head.

The total award to Mrs. Cabral is therefore **\$34,597.00**.

Petula Bowen

Loss of protection of employment

Miss Bowen gave evidence that she was out of employment from 8th October, 1998 to 2nd January, 1999 when she was employed at the Inland Revenue Department. She mitigated her loss during the period by making applications to several places. She is now employed for \$1,006.90 per month and she previously worked for \$350.00 per week. She had been employed with the company from September, 1991 to October 8th 1998, seven years and one month. At the time of her dismissal her daily rate was \$58.33, so that her severance is awarded at 58.33 x 85 days = **\$4,958.05**.

Immediate Loss

- (a) The period when Miss Bowen was out of work was from 8th October, 1998 to 2nd January, 1999 a period of 12 weeks. The loss for this period is therefore $12 \times 350.00 = \$4,200.00$
- (b) For the period 2nd January, 1999 to the date of hearing is two years 6 months i.e 30 months or 130 weeks. The difference between what she was earning and her salary during that period is \$15,293.00 and this amount is therefore awarded. The total awarded under this head is therefore **\$19,493.00**.

Future Loss

The annual short fall of earnings for Miss Bowen is \$6,117.20. In keeping with the case of **Jennifer Watt v Antigua Village Condo** an award will be given in this case of six months **\$3,058.60**.

Manner of Dismissal

No award is made under this head.

The total awarded to Miss Bowen is therefore **\$27,509.65**.

Costs

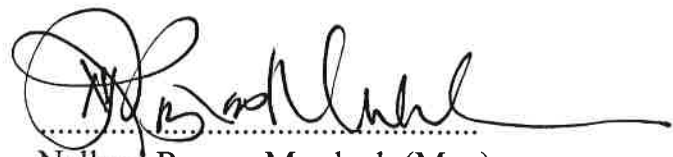
There shall be no order as to costs.

The amounts so awarded shall be paid to the Employees on or before Friday 27th July, 2001.

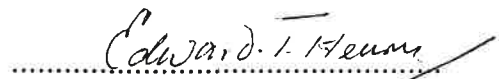
Dated this 6th day of July, 2001.

I concur

I concur



Nelleen Rogers Murdoch (Mrs.)
Chairman



Edward T. Henry
Member



Genevieve Benjamin (Miss)
Member