

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 20 OF 2002³

BETWEEN:

VAUNY MARTIN

Employee

and

TRANS CARIBBEAN MARKETING LIMITED

Employers

Before:

The Honourable Cyril L. Maundy
The Honourable Edward T. Henry

President
Member

Appearances:

Ralph Francis, Barrister-at-Law, for the Employee

2004: September 13

JUDGMENT

Despite repeated requests the Employers failed to file the Employers' Memorandum and enter an Appearance and, on the Application of Mr Ralph Francis for the Employee, leave was granted to proceed ex parte; a notice to this effect was given by the Court at the Call Over on September 9, 2004.

The Employee worked for the Employers from January 6, 1986 to September 29, 2000, when he was dismissed on an allegation of stealing a carton of Kool-Aid

consisting of 12 bottles and valued at \$ 63.00. On the day in question the Employee and another were arrested and taken to the Coolidge Police Station where they were interrogated and charged with the offence – he was given “Station Bail” of \$ 1,500.00 and one surety. The matter came up for trial at the Magistrate’s Court on March 6, 2002 and was dismissed. See Exhibit VM2.

On the following day the Employee went back to work and was given a letter terminating his employment – See Exhibit VM3.

Mr Francis wrote to the Employers seeking compensation for Unfair Dismissal but the company never replied. The matter was referred to the Labour Commissioner and the Honourable Minister of Labour but was not resolved and so it was referred to the Court.

The Employee struck me as a truthful witness and there being no evidence to the contrary I would accept his testimony and find that the Dismissal was Unfair.

It is a serious matter where someone is accused of theft, arrested, charged and has to appear in Court to answer such a Charge; he is treated as a criminal and until granted bail, the freedom, liberties and rights of the subject are no longer his.

A victim of Unfair Dismissal is entitled to compensation under the established heads, however, he is under an obligation to mitigate his loss by taking reasonable steps to find new employment or, in an appropriate case, self-employment. Pursuant to the Dismissal the Employee took reasonable steps to find new employment and made applications to the Stanford Financial Group, Antigua and Barbuda Broadcasting Service, Food City Supermarket and Youth Skills and finally obtained new employment at West Indies Oil Company Limited in August, 2001, although during this period he did odd jobs for which he earned approximately \$ 1,000.00. The Employee’s entitlements are as follows:

- (a) Basic Award – In the case of a weekly paid employee – his wage at the time of the dismissal was \$ 541.98 per week – the sum payable is a minimum of one day’s pay for each month of service at his last basic rate. The Employee worked for approximately 177 months @

\$ 99.81 per day (his was a 5 ½ day week) so that his entitlements under this head is \$ 99.81 x 177 = \$ 17,666.37.

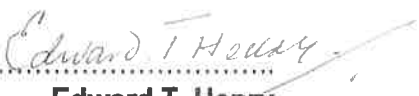
- (b) Immediate Loss – The Employee was out of work for almost a year but I believe that with due diligence and determination he should have been able to find new employment within 16 weeks. The Award here is therefore \$ 541.98 x 16 = \$ 8,671.68.
- (c) Manner of Dismissal – I believe that an allegation of Theft makes a person less employable and a more likely candidate for dismissal and would award \$ 15,500.00 under this Head.
- (d) Future Loss – No evidence was adduced by the Employee to show whether the earnings from the new employment are less than those from the former employment and consequently no Award can be made under this Head.
- (e) Notice Pay – This was a Summary Dismissal without Notice and the Employee is thus entitled to one week's Notice Pay, i.e. \$ 541.98.

The Employers shall pay to the Employee the sum of \$ 42,380.03 less the sum of \$ 1,000.00 (the earnings from the odd jobs), payment to be made by the day of 2004. There shall be no order as to Costs.

DATED the day of , 2004


Cyril L. Maundy
President

I concur


Edward T. Henry
Member

