

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 36 OF 2002

BETWEEN:

BEVERLY SAMUEL

Employee

and

**CARIBBEAN BANKING CORPORATION LIMITED
ROYAL BANK OF TRINIDAD & TOBAGO (RBT)**

Employers

Before:

The Hon. Cyril L. Maundy
The Hon. Hubert Hood
The Hon. Genevieve Benjamin

President
Member
Member

Appearances:

E. Ann Henry, Attorney-at-Law, for the Employers
Charlesworth Brown, Attorney-at-Law, for the Employee

2004: September 21, 22 & 23
2005: October 24, 25 & 26
2006: February 8 & 9

DECISION

In Judgment delivered on February 21, 2006, the Industrial Court held that the Dismissal of the Employee by the Employers on June 21, 2000, was not Unfair and dismissed a claim for compensation for Unfair Dismissal. The Employee had some uncertainty on the proper

interpretation of one of the clauses in the Judgment, viz, Number 34, which states, "Finally, and this was acknowledged by Counsel for the Employee, the Employers shall pay to the Employee the monies agreed between themselves and the Employee as payable to her in the event of a dismissal, payment to be made by March 15th, 2006. There shall be no Order as to Costs," and filed an application to the Court for a decision on the question as to the interpretation of the paragraph of the Judgment pursuant to Section 15 of the Industrial Court Act, Cap. 214, Laws of Antigua and Barbuda, Revised Edition, 1992.

At a Hearing on January 22, 2007, the Court heard submissions by Ms E. Ann Henry, Attorney-at-Law, on behalf of the Employers and Charlesworth Browne, Attorney-at-Law, of behalf of the Employee. Mr Browne contended that the paragraph in question should be interpreted to mean that the Employee, although the dismissal was not found to be unfair, was entitled to Severance Pay in the sum of \$ 74,900.00 for the period when she was employed by the Royal Bank of Canada, the predecessor Employer pursuant to an agreement. No written agreement was adduced and the contention was denied by the Employer.

Miss Henry denied the existence of the alleged agreement and submitted that Severance Pay is only payable where an Employee has been unfairly dismissed. Further, it is not payable for services rendered to a predecessor Employer.

In support of her submission, Miss Henry cited Section C.40, C. 41 and C.42 of the Labour Code, Cap. 27, Laws of Antigua and Barbuda, Revised Edition, 1992:

Section C.40: "Every employee whose terms of employment with an employer and his predecessors has in aggregate exceeded one year is entitled to severance pay upon termination of said employment by employer for reasons of redundancy."

"Section C.41: "Severance pay shall consist of at least one day's pay, at the employee's latest basic wage, for each month or major fraction thereof of his term of employment with his employer and any predecessor employer.

Section C.42: (1) Subject to the other provisions of this section, simultaneously upon the termination of employment of any employee entitled to severance pay under section C40, the employer shall remit to that employee severance pay computed in accordance with section C41.

(2) If the termination be stated as temporary, no severance pay need be remitted to the terminated employee at the time of termination:

Provided however that-

- (a) where the date of recall, if one is given at the time of termination, be six months or more in the future, severance pay shall be payable on the date of the original termination;
- (b) if no date of recall is given at the time of termination, severance pay shall be payable when and if, after three months from the termination, the employee shall not have been recalled;

in which case, interest at the rate of ten per cent per annum on the amount of severance pay due shall be payable for the interval between the original termination date and the date of actual payment.

(3) After such payment with interest has been made, if the employee is recalled to his past or substantially equivalent employment, or is again hired by the same employer, he shall be considered to be newly hired and his term of employment, for subsequent severance pay purposes, shall be considered to have commenced on the date of recall or rehire."

After listening to Counsel, examination and careful consideration of the arguments presented and the relevant provisions of the Labour Code and the Industrial Court Act, I have not been persuaded that severance is payable in these circumstances or there existed an alleged agreement for the payment thereof by the Employer for services rendered by the Employee while in the employ of the predecessor employer even if fairly dismissed by the successor Employer and, in the circumstances, the Application cannot stand and is hereby dismissed.

It is clear that the organisation might have had, in addition to severance, "other benefits" as part of the purported agreement, although none was specified and we were presented with no documents.

Paragraph 34 of the judgement orders that the Employers pay to the Employee any monetary entitlements if any were due to her as per the purported initial employment agreement

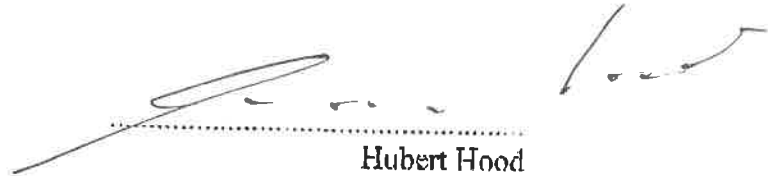
(adoption or acceptance of responsibility for obligations) dealing with conditional treatment in the event of dismissal, the fairness of which has been determined by the Court.

DATED the 1st day of March, 2007



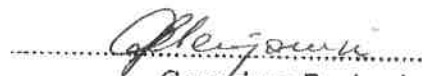
Cyril L. Maundy
President

I concur



Hubert Hood
Member

I concur



Genovieve Benjamin
Member