

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 2 OF 2004

BETWEEN:

FRANCIS-ANN MELLANSON

Employee

- and -

WORLD WIDE TELE SPORTS (WWTS)

Employers

Before:

The Hon. Cyril L. Maundy
The Hon. Ian Shoul

President
Member

Appearances:

H. Marshall, LL.B., Attorney-at-Law, for the Employee
Miss Sharon Cort, LL.M., Barrister-at-Law, for the Employer

2006: April 4
2007: March 27

JUDGMENT

**Ex Parte Judgment, Employers failed to enter
an Appearance or to be represented.**

- [1] **Maundy, P.:** By this Reference the Employee, Francis-Ann Mellanson, claims compensation from the Employers, World Wide Tele Sports (WWTS), for Unfair Dismissal. At the commencement of the Hearing Miss Cort informed the Court that she no longer represented the Employers and sought leave to withdraw and this was granted. The Hearing was adjourned to allow the Employers to obtain new Counsel. Contact was made with the Employers' office and Mr Clement Bird who it was informed

to be their Lawyer. Mr Bird stated that he did not represent the company and all the other efforts by the Court to find out the representative of the company were unsuccessful. Counsel for the Employee informed the Court that his client who now lived in New York, U.S.A., had travelled to Antigua at her own expense for the Hearing after several delays, that the Employers had treated the Court with discourtesy and asked for an ex-parte Hearing; this was granted.

- [2] The Employee took up employment with the Employers on December 3, 2001, as Financial Comptroller of their company and performed financial duties including Preparation of Bank Reconciliations, and the Management of staff – there was a staff of 53 and the Employers were a Sports Betting Company and was also engaged in on-line gaming. There were over 500 bets per day and the Employee had to reconcile over 5 bank accounts every month. There were four large accounts with over 200 transactions per day and the payroll was approximately 150 transactions per month. The Employee had to prepare Financial Statements for the owners, the Auditors and the government.
- [3] The Employee was not given any Performance Criteria during her Probation period or any formal training. At times the Employee had to handle a turnover of US\$ 1,000,000.00 per month and she never received any complaints about her work.
- [4] In June 2002, the Employee was introduced to Mr and Mrs Lock by Jessica, the Vice-President, and told to vacate the Accounts Department, where she had her office and give it to the Locks and move to the Messenger Room – she was told to remove all of her personal belongings.
- [5] Further to the disruption of her office the Employee had a meeting on the matter with the Labour Commissioner but continued to report to the Locks – she was instructed by two of her superior officers, Jessica and William Scott, to do so. In September 2002, a meeting was arranged by the Employers with the Labour Commissioner to discuss performance but the Employee was ill and unable to attend; she was sick for two weeks

and on her return to work she was given a letter with a number of accusations and complaints (FM5 and FM6) which she denied. Mr Lock gave her 45 days to make improvements in her job or she would be dismissed. On August 23, 2002, she was dismissed without any further assessment or communication.

[6] Following her dismissal the Employee was unemployed for a year; she applied to various places for employment including the Antigua Commercial Bank and the Anglican Diocese, where she worked for one year. After some time the Employee emigrated to the United States of America, went to school and is presently living and working there.

[7] The Employee carried out her duties admirably and without complaints from the Employers throughout her tenure of office. She was paid monthly by cheque.

[8] I do not find that the dismissal was fair and thus the Employee is entitled to compensation as per the established heads as follows – her salary at the time of dismissal was \$ 13,500.00 per month:

- (a) Basic Award for Loss of Protection – this award consists of one month's pay for each year of service or major part thereof. The Employee commenced her employment on December 3, 2001, and was dismissed in August, 2002, on the allegation that her performance was unsatisfactory. The dismissal was made with immediate effect and without warning and the Employee was not given an opportunity to reply. At the time of her appointment the Employee was not given a Job Description as required by the Antigua and Barbuda Labour Code nor any advance Notice of an intention to terminate as required by Section C.9 of the said Statute. The Award under this head is thus \$ 13,500.00.
- (b) Immediate Loss – Further to her dismissal the Employee mitigated her loss by seeking new employment and sought employment at Antigua Commercial Bank; she remained unemployed for a year after which she migrated to the United States of America. With due diligence I believe the Employee should have

obtained new employment or self-employment within six months and so the Award is \$ 13,500.00 x 6 = \$ 81,000.00.

- (c) Manner of Dismissal - No Award. The dismissal did not render the Employee prone to dismissal from any new employment she may find or make it more difficult for her to find employment.
- (d) Future Loss - There shall not be any award as in her present employment the Employee is earning more than she did in her last employment.
- (e) The Employee is also entitled to Notice Pay of EC\$ 13,500.00.

Conclusion

- [9] The Employers shall pay the Employee the sum of \$ 108,000.00 payment to be made by *28 April 2007*. The Employee had to engage Counsel to pursue her entitlements and travel from the United States at her own expense and in the circumstances I would award her costs in the sum of \$ 10,000.00.

DATED the *27th* day of *March*, 2007


Cyril L. Maundy
President

I concur


Ian Shoul
Member