ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 20 OF 2002

BETWEEN:

SUNDRY WORKERS

Employees

and

CABLE & WIRELESS (WEST INDIES) LIMITED

Employers

Before:

The Hon. Cyril L. Maundy — President
The Hon. E.T. Henry — Member
The Hon. Genevieve Benjamin — Member

Appearances:

E. Ann Henry & Jasmin Wade, Attorneys-at-Law, for the Employers
Charlesworth Brown, Attorney-at-Law, for the Employees

2004: June 28
2005: April 18 & 20
2006: March 28
2007: January 15, 16 & 17

JUDGMENT

Redundancy – employees granted severance package on the basis of prior rates of payment made to the Employees – Union contends that employees entitled to severance pay calculated at the rate of six weeks salary for each year of service.

[1] **Maundy, P.**: By this Reference, the Antigua and Barbuda Workers' Union, on behalf of a number of employees (The Employees) of Cable & Wireless (West Indies) Limited (Cable & Wireless) severed by the company in 2001 were not paid the full severance pay to which they were entitled and which was appropriate, fair and reasonable.

[2] The Employers deny the Employees' allegations and assert that the computation adopted was in keeping with the practice prevailing at the time in Antigua and Barbuda and was fair and reasonable.

[3] The matter originally came up for Hearing on June 28, 2004 but was adjourned to April 18, 2005, April 20, 2005, March 28, 2006, and the Hearing was finally heard on January 15, 16 and 17, 2007, a Decision being reserved.

Historical Background

[4] The Employers, an international communications company with a branch office in Antigua and Barbuda, decided to re-structure and declared a number of its employees including the Sundry Workers (Myrvin Davis, Jerome Browne, Bridget Wilson, Pearly Emmanuel, Marcella Samuel, Conrad Tonge, Clinton Benjamin, Denise Barnes, Colin Browne, Cicely Joseph, Mizpah Abbott, Samuel Peters, Henrietta Roberts, Centilia Thomas, Catherine V.A. Lovell, Bernadette Batchelor, Rupert Ambrose and Cathandra Martin) redundant.

[5] Negotiations for a severance rate under Article 16 of the Collective Agreement broke down. In the absence an agreement severance pay was computed at the rate of four weeks pay for each year of service but the Union wanted the computation of six weeks pay for each year of service.

[6] The last negotiations before the terminations took place in February, 2001, where the company was represented by the then General Manager, Colin Shewry, who is alleged to

have agreed that the severance should be computed at a rate of five weeks pay for each year of service but this was not inserted in the Collective Agreement or put in writing and signed by the parties.

[7] By Article 16 of the Collective Agreement severance pay was to be the subject of negotiations between the parties. Negotiations were held but no agreement was reached at the time of the redundancy and the company computed the severance pay at the rate of four weeks pay for each year of service without further consultation with the Union.

[8] By a severance package the Employees were entitled to monies from a Thrift Fund and the Retirement Benefits Fund under the Collective Agreement but in addition to payment of these the company also paid each Employee under three additional heads, viz, a Re-training Grant, a six months Medical Insurance Grant and a Retirement Grant.

[9] During the course of the Hearing, Counsel for the Employees sought leave to amend their Memorandum a second time and add another ten additional names but this was denied although such persons are not barred from instituting proceedings if and when they consider fit – seven were added at the first amendment.

Triable Issues

[10] The matters here for determination appear to be whether:

(a) The basis for computation of the Severance pay paid to the Employees was inappropriate and the Employers acted contrary to the well established norms of good industrial relations.

(b) The rate at which the Severance Pay should have been computed.

(c) Severance Pay at six weeks pay for each year of service was fair and reasonable in the circumstances.

(d) Whether Severance entitlement should be back-dated to January 1, 2001, the date when the negotiations broke down.

(e) The benefits of the increased severance should extend to all employees who were retrenched on or about January, 2001.

The Arguments

[11] Mr Browne, on behalf of the Employees, contend that:

(a) The Severance payments made by the Employers are unreasonable, inadequate and wrong.

(b) There should be an increased entitlement in accordance with equity, good industrial relations and otherwise in accordance with Section 10(3) of the Industrial Court Act, Cap. 214, and this should date back to January 2001 and accrue to all the Employees.

(c) The Severance payments made to the Employees being calculated in excess of the minimum laid down in the Labour Code were not in accordance with the practice of the Employer for the last five years and is contrary to good industrial relations.

(d) The Employees should be paid an increased entitlement which should date back to January, 2001.

(e) The increased severance should apply to all employees who were retrenched on or after January 1, 2001.

(f) The formulation of Article 16 has remained the same in successive Collective Agreements since in the 1970's and there were previous negotiations and payments over the years. Retraining grants and Insurance Benefits were not included in previous severance packages but were added after successful negotiations. The Retirement Fund and Thrift Fund entitlements were independent of redundancy.

(g) The Employees claim for severance pay at a rate of six weeks pay for each year of service is fair and reasonable based on what was happening in the market place

and it is not fair and reasonable that employees like Conrad Tonge with 35 years of service should be paid severance computed at the same rate as persons with a shorter tenure.

(h) In support of his contentions, Mr Browne submitted that:

(1) The Court's lodestar is Section 10(3) of the Industrial Court Act

(2) The parties had been engaged in negotiations for several months but were unable to agree.

(3) At the negotiations the Employer seemed to have found the spirit of give and take when it is alleged that Mr Shewry accepted the compromise to pay severance at the rate of five weeks pay for each year of service.

(i) The Employers were not generous when they paid the severance at the rate of one (1) months pay per year and they were paying at no more than the minimum rate for a monthly paid employee.

(j) The Employers should agree to payment at the rate of six weeks salary for each year of service as in the case of FirstCaribbean International Bank (formerly Barclays Bank PLC).

(k) At the very least the Employers should pay at the rate of five (5) weeks salary for each year of service in line with LIAT (1974) Limited, Royal Bank of Canada, Bank of Nova Scotia, Antigua Commercial Bank and B.W.I.A.

(l) The other benefits paid to the Employees at the time of termination should not be used in any attempt to deceive the Court into concluding that the Employees received adequate generous compensation packages and were generously compensated. The Employees were entitled to the Thrift Fund and the Retirement Fund benefits they received.

(m) The severance pay should be increased by an additional 2 weeks salary per year of service and the increase should incorporate all other employees who were governed by the Collective Agreement. Further, that the Collective Agreement be amended to take effect from January 2001.

[12] In support of his contentions Mr Browne cited:

(i) Reference No. 1 of 1982 – Workers in the Bargaining Unit of Antigua Gasses Limited

(ii) Reference No. 11 of 1997 – Sundry Workers V Club Antigua

(iii) Reference No. 35 of 1996 – Antigua Shipping Agents Association V The Stevedores and Sundry Employees.

[13] Counsel for the Employers did not share the views of Mr Browne and asked the Court to find that the Employees were given their proper rate of Severance. Counsel contended that, inter alia:

(a) The claim is for each affected Employee, irrespective of their status or their respective years of service to be paid for Severance the equivalent of six (6) weeks pay for each year of service.

(b) The Employers paid the Employees the equivalent of four (4) weeks pay for severance.

(c) The Employees' Union have made Collective Agreements with several other entities and of these and in the case of Caribbean Relay Company and Computer Services Raytheon, severance was agreed upon at a rate of four (4) weeks pay for each year of service (maximum) for redundancy and their working conditions are similar to those provided by the Employers.

(d) Under the Collective Agreement with APUA the rate is four (4) weeks salary.

(e) Where there is no agreed practice an Employee cannot be at liberty to hand-pick a Collective Agreement which sets out terms he considers particularly favourable.

(f) The Court should be guided by the cases earlier considered (Reference No. 30 of 1991 – the Sybil Walling case – reported in the official Gazette of 3/9/92 where the Court awarded Severance pay of one month's salary for each completed year in the case of Managerial Staff and a lesser amount ranging from between two (2) weeks and three (3) weeks salary for completed years for non-management staff.

(g) The payment equivalent to one month's pay was made across the board to non-managerial staff is fair and well in accordance with good industrial relations as understood in Antigua and Barbuda.

(h) The amount paid was not out of line with the practices prevailing in Antigua and Barbuda.

The Law

[14] The Law relating to the payment of severance Pay is laid down in the Antigua and Barbuda Labour Code (the Labour Code) as follows:

(1) 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.

(2) 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.

Decision

[15] It is to be observed that, under the Code, the rate at which severance is to be paid is "at least one day's pay at the employee's basic wage, for each month or major part thereof of his term of employment with his employer and any predecessor employer. The foregoing is a minimum rate and the Code allows affected parties to negotiate higher rates and in the absence of an agreed rate or if the parties cannot agree the Court will intervene where requested so to do. The Employers, a telegraph company, have been carrying on business in the State for over 38 years and given the vigilance of the Trade Union movement I am most surprised that no agreement was reached by the parties upon the expiration of the last Collective Agreement, a matter of such importance, as is now revealed. Of course, I believe that negotiation is the most appropriate way to resolve disputes of this nature as the

Employers and the Union are in a better position to evaluate the competence of the Employee and make the necessary assessment.

[16] The Court has on past occasions been asked to rule on the quantum of Severance Pay and has laid down a rate for monthly paid employees and weekly paid employees which amounts were accepted by the Court of Appeal – See Reference 10 of 1988, Roxanne Warner-Payne V BWIA International Airways Limited and Reference No 6 of 1991, LIAT (1974) Limited V Shirley Dailey.

[17] It is accepted by the parties that there was a redundancy situation and the only issue was that of quantum of severance pay – the parties are also claiming interest on the amounts on which they were short paid pursuant to Section C.45 of the Code.

[18] In support of their 6 weeks claim the Employees cited a number of companies here and abroad with which they negotiated severance pay agreements at the rate they are asking and these include:

(a) LIAT (1974) Limited: Article 10: Severance pay shall be calculated as follows:

  (i) 4 ½ weeks basic pay for each completed year of service for 1 to 8 years.

  (ii) 5 weeks basic pay for each completed year of service for 9 years of service and over.

(b) BWIA: 4 ½ weeks pay for employees with service up to eight (8) years and five (5) weeks pay for each year of service for employees with nine (9) or more years of service.

(c) LIAT (1974) Limited V Antigua Workers Union, January 10, 1991: 4 ½ weeks pay for each year of service for 1 – 8 years of service and at 5 weeks pay for each year of service for the employee with completed service of nine (9) years and over.

(d) Caribbean Relay Company Limited V Antigua Workers Union:

  (i) 75% of one month's basic pay for each year of service from one (1) to five (5) years.

(ii) One (1) months basic pay for each year of service from one (1) year after five (5) years of service.

(e) Barclays Bank PLC:

(i) Twelve (12) days regular salary for one (1) completed year and pro-rated benefits for any part of the second year of service.

(ii) An employee that has completed two (2) years of service but less than five (5) years shall receive three (3) weeks regular salary for each completed year of service, pro-rated for any partial year of service.

(iii) An employee who has completed five (5) years of continuous service but less than fifteen (15) years shall receive one month's regular salary for each completed year of service pro-rated for any partial year of service.

(iv) An employee who has completed fifteen (15) years or more of service shall receive one and one half (1 ½) month's salary for each completed year of service pro-rated for any partial year of service.

(f) Antigua Commercial Bank:

(i) An employee who has completed one (1) year of continuous service shall receive twelve (12) days pay at his regular salary or wage for the completed year of service and a pro-rated benefit for any part of the second year of service.

(ii) Completion of two (2) years but less than five (5) years shall receive three (3) weeks pay for each year of service pro-rated for any partial year of service.

(iii) Completion of fifteen (15) years shall be entitled to one and one half (1 ½) months (6 weeks) regular salary for each completed year of service pro-rated for any partial year of service.

(g) Bank of Nova Scotia:

(i) Employee who has completed one (1) year of continuous service shall be entitled to twelve (12) days regular salary for each completed year of service pro-rated for any partial year of service.

(ii) The Employee who has completed two (2) years of service but less than five (5) years – 3 weeks regular salary for each year of service, pro-rated for any partial year of service.

(iii) An employee who has completed five (5) years of continuous service but less than ten (10) years shall receive one (1) month's regular salary for each completed year, pro-rated for any partial year of service.

(iv) An employee who has completed ten (10) years or more of continuous service shall receive five and one quarter (5 ¼) weeks salary pro-rated for any partial year of service.

(h) Antigua Public Utilities Authority – employees with continuous service as follows:

(i) 1 to 4 years – 12 working days

(ii) 8 continuous years of service – 15 working days

(iii) 9 years and over – 20 working days

(i) Cable & Wireless: Article 16: Severance pay shall be a subject of negotiations between the company and the Union.

(j) Computer Services Raytheon:

(i) Twelve (12) working days for each year of service pro-rated to unbroken service for 1 to 5 years and over.

(ii) Fifteen (15) working days for each year of service, pro-rated to persons with five (5) to fifteen (15) years of service.

(iii) Twenty (20) working days for each year of service, pro-rated to employees with over fifteen (15) years of service.

but these were all based on years of service whereas in the present case the computation was not so computed but was the same across the board, the amount of four weeks pay for each year of service was adopted regardless of the actual years of service.

[19] I believe that cognisance should be taken of the fact that the Employers provided the affected Employees extra benefits, viz, the re-training grant and the continued payment of

their medical insurance for six months after the terminations. Further, throughout the tenure of each affected Employee the Employers contributed 7.5% of salary monthly to a retirement benefit which was paid over to the affected employees at the date of their termination. Also the Employee's contribution of 2.5% of salary paid monthly into the Thrift Fund.

[20] The Collective Agreements cited by Mr Browne do not show that there was any established rule for payment of severance pay and it has to be remembered that the Employees were not of managerial status.

[21] I do not believe that there was any infringement of the Labour Code by the Employers' decision to grant the Severance at 4 weeks pay for each year of service, which was above the statutory minimum although this would cause disparity between the long serving Employees and those with but a limited number of years but this has been accepted by both parties for several years prior to the redundancy. The Court, by this decision, is not laying down an irrevocable and final rate for computation of severance but simply making a rule for resolution of the present deadlock, the parties being free to negotiate new terms if so desirous.

[22] In coming to a decision I carefully considered the evidence of the parties, the submissions of Counsel, the authorities cited, the relevant provisions of the Labour Code and the Industrial Court Act, Cap. 214 with special consideration of Section 10(3) and, at the end of the day, I hereby rule that Monies previously paid shall stand and Severance Pay should be calculated at the rate of:

(a) Persons with thirty (30) years of service or more shall be paid 5 ½ weeks pay for each year of service.

(b) Persons with twenty (20) years of service but less than thirty (30), shall be paid five weeks pay for each year of service.

(c) Persons with ten (10) years or more of service but less than twenty (20), shall be paid 4 ½ weeks pay for each year of service.

(d) Persons with less than ten (10) years of service but more than one (1) year the rate shall be paid four weeks pay for each year of service.

(e) Employees with one (1) year of service shall be paid twelve (12) days severance.

[23] The above payments shall be retrospective to January 1, 2001, and the ex-employees not here represented shall be at liberty to file a claim if not satisfied by the Employers.

Interest

[24] The Employees claim interest on the money short paid at the rate of 10% per annum and state that they are so entitled under Section C.45 of the Labour Code but my reading of the Code does not support this contention. The Section provides that: "If an employee's employment is terminated due to redundancy with a date of recall given him less than six months in the future or with no date of recall given him, and if the employer, prior to three months after the termination, sells his business to a successor-employer, then using the standards set forth in section C42 (2) (a) or (6) if severance pay becomes due, the predecessor-employer and the successor-employer shall be jointly and severally liable for the payment of the severance pay plus interest."

[25] My attention, however, was attracted by Section C.42 (2) where the issue of interest is addressed, however, to my mind the Section does not apply to the present situation. The Section states thus: "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.

[26] The parties shall calculate the monies payable to the affected Employees, sums already paid to be deducted, payment to be made by April 19, 2007. There shall be no Order as to Costs.

DATED the 1st day of March , 2007

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Cyril L. Maundy
President

I concur

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E.T. Henry
Member

I concur

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Genevieve Benjamin
Member