

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 15 of 2006

BETWEEN:

CHRISTINE JEMMA GOMES

Employee

And

OVERSEAS PROPERTY BOARD MANAGEMENT LIMITED

Employer

Before:

**The Hon. Philip A. Pilgrim
The Hon. M. Althea Crick
The Hon. Samuel R. Aymer**

**President
Member
Member**

Appearances:

**Mr. H. Asquith Fearon Attorney-at-Law for the Employee
Watt & Associates Attorneys-at-Law for the Employer**

**2008: October 06,
2009: February 24, March 27**

JUDGMENT

PILGRIM P.:

Some essential facts

- [1] Overseas Property Board Management Limited (OPBM) is a limited liability Company which is registered under the Companies Act of Antigua & Barbuda. Its principal office is situate at Jolly Harbour

Beach Resort Marina & Golf Club, St. Mary in Antigua and Barbuda. OPBM is engaged in the business of selling accommodation in villas on a time share basis.

- [2] Ms. Christine Jemma Gomes, the Employee herein, commenced working for the Employer on March 15, 1994 as a Receptionist. Her gross salary was \$1,700.00 per month. After she successfully completed a three (3) month period of probation she was given permanent employment. In June 2004, her gross monthly salary was \$1,900.00
- [3] In or about October 1994, Ms. Christine Jemma Gomes was promoted to the position of Administrative Assistant. Her gross monthly salary was increased to \$2,500.00. Her net monthly salary was \$2,275.00.
- [4] The Employee continued her work with the Employer as an Administrative Assistant in different departments. These included training, reservations, accounts and special projects. She performed her duties and reported to different managers of the above departments throughout her period of employment.
- [5] On or about September 2002 and April 2004, two principals of OPBM died. As a consequence of these events, changes took place in the managerial structure of the Employer. Each person reacts to changes in various ways. Changes always produce different personalities who may bring to the company a different organisational culture. Some employees interpret this new culture in a positive way. Others beg to differ.

- [6] By letter of July 02, 2004 the Employer dismissed the Employee with immediate effect. She was advised by the Employer that her final salary cheque would be available to be collected by her on July 06, 2004.

MITIGATION EFFORTS

- [7] Subsequent to her dismissal Ms. Christine Jemma Gomes made applications to obtain alternative employment with Barrington Bank, the Stanford Group of Companies and Royal Antiguan Hotel. She commenced working for Mr. Asquith Fearon, Attorney-at-Law from September 2004 for 3 days per week at the rate of \$100 per day or a gross sum of \$1200 per month,
- [8] In December 2004 she obtained part-time employment with Unlimited Services Plus, agents for FedEx. Her gross monthly salary was \$2,000.00. Her position was upgraded to full time employment in May 2005. In January 2006, her gross monthly salary was increased to \$2,200.00.
- [9] She has subsequently applied to Sport Book Companies, World Wide Telesports and World Sports Exchange for employment.

LEGAL PROCEEDINGS

- [10] The Employee was dissatisfied with her termination. She filed a Reference on May 12, 2006. In that Reference she claimed that she was unfairly dismissed.

- [11] The Employee filed her Employee's Memorandum on May 12, 2006. A substantial amount of the sordid details of what took place at OPBM prior to and after her dismissal are outlined in her Employee's Memorandum. This is unnecessary since that information neither adds nor detracts from her claim against the Employer. It would be prudent, however, for Attorneys-at-Law charged with the responsibility of representing both employees and employers in these matters to refrain from placing allegations and counter allegations before the Court which have absolutely nothing to do with the central issues.
- [12] It is this Court's finding that only those matters that appear in the Employee's Memorandum which may actually assist the Court shall be taken into consideration.
- [13] In answer to the Employee's Memorandum the Employer filed its Employer's Memorandum on June 14, 2006. The finding as stated at **paragraph [12]** shall equally apply to the Employer's Memorandum.
- [14] The Employee filed her Witness Statement on May 20, 2008. In that statement she claims certain sums under different headings referred to at **paragraph [19]**.
- [15] Witness Statements of Ms. Nekisha Pryce and Ms. Gloria Watt were filed on behalf of the Employer on May 28, 2008.

The Order by Consent

- [16] Happily, with the consent of both Attorneys-at-Law for each

respective party, both parties agreed on October 06, 2008 that the Employer unfairly dismissed the Employee. This is to the outstanding credit of Mr. H. Asquith Fearon, Attorney-at-Law for the Employee and Dr. David Dorsett, Attorney-at-Law for the Employer. They both further agreed to discuss quantum of damages. On subsequent dates neither party reached a settlement.

[17] On February 24, 2009 this Court ordered both parties again by consent, to file their written submissions on quantum on or before February 26, 2009. Both parties substantially complied.

THE ISSUE

[18] As a consequence of the Consent Order at **paragraph [16]** what is the correct measure of damages due to the Employee.

EMPLOYEE'S LEGAL SUBMISSIONS

[19] Mr. H. Asquith Fearon, Attorney-at-Law for the Employee submitted that the following headings are relevant. They are as follows:

- a) Basic Award for Loss of Protection
- b) Immediate Loss
- c) Manner of Dismissal
- d) Future Loss
- e) Loss of 10% Commission
- f) Notice Pay
- g) Vacation Pay
- h) Costs

He requests this Court to award the Employee \$91,091.00

EMPLOYER'S LEGAL SUBMISSIONS

[20] Dr. David Dorsett, Attorney-at-Law for the Employer submits that the Employee is entitled to certain awards under the following headings:

- a) Basic Award for Loss of Protection
- b) Immediate Loss
- c) Notice Pay
- d) Vacation Pay

Dr. Dorsett further submitted that any award granted to the Employee should be discounted in accordance with **Kimberly Marcia Lewis and Tradewinds Hotel Ltd Ref. No.17 of 2004**. I do not agree. According to Dr. Dorsett the Court should award Ms. Christine Jemma Gomes \$20,413.75.

THE LAW

[21] C 56 of the Labour Code states as follows:

“C 56. Every employee whose probationary period with an employer has ended shall have the right not to be unfairly dismissed by his employer; and no employer shall dismiss any employee without just cause.”

ISSUE NO.1

As a consequence of the Consent Order at paragraph [16] what

is the correct measure of damages due to the Employee.

[22] As a consequence of the Consent Order at paragraph [16] the Employee is entitled to certain awards in accordance with specific established headings. The sums to which she is entitled are as follows:-

a) Basic Award

The Employee was employed from March 15, 1994 to July 02, 2004. This amounts to 10 years and 3.5 months. She is entitled to $(\$2,275 \times 10) + (\$2,275 \times 3.5/12)$. This amounts to \$23,413.54.

b) Immediate Loss

Both parties have agreed that the relevant period is two months. The sum due to her is $\$2,275 \times 2$ or \$4,550.00.

c) Manner of Dismissal

No award is made under this heading.

d) Future Loss

Prior to her dismissal the Employee earned a net monthly salary of \$2,275.00. After her dismissal she earned different monthly sums of \$1,200, \$2,000 and as at January 2006 she earned a gross monthly salary of \$2,200.00.

A period of four (4) months at the rate of \$975.00 is awarded under this heading subject to a reduction of five per centum. The sum due to her is \$3,705.00

e) **Notice Pay**

Both parties agreed that one month's salary in lieu of notice should be paid. I agree. The sum due to her is \$2,275.00.

f) **Vacation Pay**

The Employee was entitled to three (3) weeks vacation pay. This amounts to \$1,706.25 which I award her.

g) **Commission on Sales**

(i) No evidence was presented that the Employee earned any commission on the sales of time sharing. Her letter of employment was never presented to the Court. The relevant evidence is contained in her Memorandum and the List of Attachments to the Employee's Memorandum filed on May 12, 2006. There is "Exhibit A" dated September 28, 1995 from the Employer to her. In that letter she was responsible for **"Reservations, Payroll, Front Desk and communication with Housekeeping."** No mention of any additional work was stipulated therein.

(ii) Again in the Employer's letter to her of January 05, 2000 in which she was transferred from the Reservations Department to the Accounting Department there was no mention of time sharing payments. Indeed no evidence was presented of any payment having being made to her by the Employer of a time sharing bonus payment.

(iii) No award is made under this heading for the payment of a time sharing bonus payment.

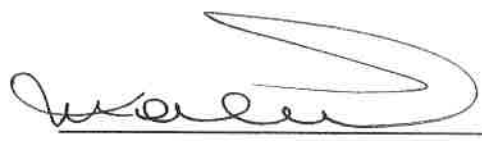
Conclusion

[23] The Employer shall pay to the Employee **\$35,649.79** on or before April 30, 2009. There shall be no order as to costs.

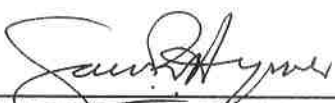
Dated this 27th day of March, 2009


PHILIP A. PILGRIM
President

I agree


M. ALTHEA CRICK
Member

I also agree


SAMUEL R. AYMER
Member

