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**ANTIGUA & BARBUDA**

**IN THE INDUSTRIAL COURT**

**REFERENCE NO. 17 OF 2009**

**BETWEEN:**

**SHAWN ADAMS**

**Employee**

**and**

**MARLON BROWNE**  
**(trading as Marlon Browne Construction)**

**Employer**

**Before:**

**The Hon. Samuel R. Aymer**  
**The Hon. Dr. Hayden Thomas**  
**The Hon. Jessie F. Kentish**

**Chairman**  
**Member**  
**Member**

**Appearances:**

**Mrs. Denise Jonas-Parillon - Attorney-at-Law for the Employee**  
**No appearance for the Employer**

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**2011: March 21**  
**June 22**

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**JUDGMENT**

**AYMER, S**

**INTRODUCTION:**

1. The Employee commenced employment with the Employer from November 11, 2002. He last worked for the Employer as a Supervisor. In this capacity his duties included detailing the work for other employees, issuing instructions to construction workers and the general

management of a construction site.

2. The Employer was a building contractor.
3. According to the Employee he worked for the Employer for five (5) days per week, Monday to Friday. He further states that he was paid EC \$1,500.00 per week.
4. The Employee produced no evidence whatsoever to show whether his earnings were net or gross. In addition he led no evidence to verify the actual weekly earnings which he indicated he worked for.
5. The Employee informed the Court that on June 23, 2005 the Employer verbally informed him "*that things were slow*". As a result the Employer sent the Employee home without notice. It is the Employee's evidence that the Employer failed or refused to indicate to him the date when he would have been expected to resume work.
6. The Employee also stated that he made repeated calls to the Employer, to resume his employment. The Employer failed to recall the Employee to resume employment.

#### **Legal proceedings**

7. Having not received any response from the Employer the Employee commenced proceedings before this Court. He is of the view that he was unfairly dismissed by the Employer.

### **The Employee's Memorandum**

8. An Employee's Memorandum was filed on behalf of the Employee on September 07, 2009. In that Memorandum the Employee claims (a) no statement was issued to him in accordance with Section C10 of the Labour Code; (b) no severance payment was paid to him in accordance with Section C42 of the Labour Code and (c) no vacation leave payment was made to him in accordance with Section C18 of the Labour Code.

### **The Employer's Case**

9. The Court informed the Employer by letter dated October 04, 2009 of the necessity to file his Employer's Memorandum and Witness Statements. No response was received from the Employer.
10. An Affidavit of Service on behalf of the Employee was filed on November 05, 2009. In that document, the Employer was served with the Employee's Memorandum. No reply to that document was received from the Employer.
11. An Affidavit of Service on behalf of the Employee was filed on February 09, 2011. In that document the Employer was informed that the date of hearing would have been March 21, 2011.

### **The relevant issues**

12. The relevant issues are as follows:
- (i) Whether or not the Employee was unfairly dismissed;
  - (ii) If the Employee was unfairly dismissed, what sum is due to him.

### **The first issue**

#### **Whether or not the Employee was unfairly dismissed.**

13. The Employee filed a Witness Statement on January 07, 2011. In that Statement the Employee indicated that he never received a letter of termination from the Employer.
14. The Employee also submits that after the Employer sent him home, he *“went out to several different construction sites to try to find work but he was not successful”*. He further states that in September 2005 he *“finally got some temporary employment with Keyland Mentour and that lasted for seven months.”* He was paid \$800.00 per week.
15. In September 2007 he started his own business as a building contractor. For the first year of his self-employment he made an average of about \$300.00 per week. He received work for five months of that first year. He earned a weekly wage of \$800.00.
16. The Employee also gave evidence to this Court. In summary his evidence was that which was contained in the Witness Statement.

### **The Law**

17. Section C56 of the Labour Code provides as follows:

*“C56. 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 such employee without just cause.”*

18. Section C10 of the Labour Code (Amendment) Act 1988 reads as follows:

*“(1) Upon termination by an employer of an employee’s employment subsequent to the expiration of the latter’s probation period, the employer shall, within seven days of the termination or notice thereof, furnish to such employee a written statement of the precise reason for the termination.”*

19.(i) If an Employer submits no Written Statement of termination to an Employee of the precise reason for termination in breach of Section C10 of the Labour Code, the Employer has contravened that particular Section.

(ii) In the circumstances of this case as the Employer has not made known to the Employee a reason for the dismissal, I find that the Employee’s dismissal was unfair.

### **The second issue**

**If the Employee was unfairly dismissed what sum is due to him?**

An employee who has been unfairly dismissed is entitled to certain awards. They are as follows:

#### **(a) Basic Award**

20. The Employee claims that he *“was paid wages of \$1500 per week”*.

However, no credible evidence was led by the Employee in support of

this claim. Such evidence would have led in different ways. It could have included (a) the wages document from the Employer, (b) the Employee's bank record, or (c) evidence of a similar employee who works in the construction sector.

It is not enough for an employee to appear in this Court and seek an award which is not supported by any evidence whatsoever.

Moreover, no evidence was led of the Employee's qualification, work experience or list of projects which he may have supervised for the Employer. Doing the best that I can in the circumstances, I hold that having regard to current existing wages on construction sites, a reasonable weekly wage payable to the Employee would have been EC \$900.

The Employee was employed from November 11, 2002 to June 23, 2005. This amounts to two (2) years and seven (7) months. His monthly wage amounts to  $(\$900 \times 52 \div 12) = \$3,900$ . Accordingly, he is entitled to  $(\$3,900.00 \times 2) + (\$3,900.00 \times 7/12)$ . This amounts to an award of EC \$10,075.00 under this head.

**(b) Immediate Loss**

I award two (2) months salary under this heading. The sum due is \$7,800.00.

**(c) Manner of Dismissal**

No award is made under this heading.

**(d) Future Loss**

No award is applicable.

**(e) Notice pay**

The Employee was a weekly paid worker. One week notice pay is therefore awarded under this head in the sum of EC \$900.

**(e) Vacation Pay**

Counsel for the Employee submits that the Employee is entitled to EC \$9,300.00 vacation pay. Apart from the Employee's evidence that he has never received vacation leave or payment, no other evidence was led in support of this claim. Accordingly, no sum is awarded under this heading.

21. It is appropriate at this stage of the judgment to repeat what **His Honour Mr. Addison Khan stated in the Trinidad Industrial Judgment entitled National Union of Domestic Employees and Pit and Quarry Limited, No. 47 of 1989**. At page 3 of the judgment **His Honour** stated as follows:

*“There is a tendency we have noticed on the part of certain persons who appear in this Court to believe they do not have to support their case by evidence. It is true that this Court is not bound by the rules of evidence stipulated in the Evidence Act but this does not mean that the Court can act without evidence. This Court, like any other court of justice, must determine the issues before it only by the evidence and not ‘by spinning a coin or consulting an astrologer’. We do not know how such a tendency developed, but we must say that if such an idea exists it is an erroneous and foolish one”.*

22.The Employer shall pay to the Employee **EC \$18,775.00** on or before  
**31<sup>st</sup> day of July 2011.**

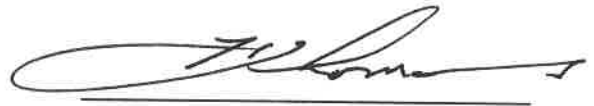
23.There shall be no order as to costs.

**Dated the 22<sup>nd</sup> day of June, 2011**

  
**SAMUEL R. AYMER**

**Chairman**

**I agree**



**Dr. HAYDEN THOMAS**

**Member**

**I also agree**



**JESSIE F. KENTISH**

**Member**