

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 5 OF 2010

BETWEEN:

THERESA GREGORY

Employee

and

ST. JOHN'S CO-OPERATIVE CREDIT UNION LTD

Employer

Before:

The Hon. Philip A. Pilgrim

President

The Hon. M. Glendina McKay

Member

The Hon. Jessie F. Kentish

Member

Appearances:

**Mr. Charlesworth O.D. Brown - Attorney -at-Law for the
Employee**

**Ms Stacy A. Richards-Anjo of Richards & Co. Attorneys-at-Law
for the Employer**

2011: December 15

2012: January 19

JUDGMENT

PILGRIM P.:

The essential facts

- [1] Mrs. Theresa Gregory resides at Herberts in the parish of St. John's in Antigua and Barbuda. She was born on November 26, 1946.

- [2] The St. John's Co-operative Credit Union Ltd is a member based organization (afterwards sometimes called the Credit Union). A prospective member is required to purchase 100 shares before becoming qualified as a member. The Credit Union is located at All Saints Road in St. John's in Antigua and Barbuda.
- [3] Between 7,000 and 8,000 members had joined the Credit Union as at 2006. Members are allowed to borrow loans to obtain mortgages, purchase motor vehicles, obtain an education and for general thrift purposes. The loan limit in 2006 was between \$200,000.00 and \$300,000.00.
- [4] Mrs. Gregory commenced employment with the Credit Union on November 15, 1994 pursuant to a letter of employment from the Credit Union dated October 17, 1994. It was admitted as "TG-1". She was employed as its Manager for an indefinite duration. She worked in this capacity until December 18, 2006 when she was retired by the Credit Union. This was in accordance with a letter from the Credit Union to her dated November 27, 2006. This is "TG-3".
- [5] Mrs. Gregory commenced holiday from the Credit Union from November 22, 2006 to December 08, 2006 with a date to return to work on December 09, 2006. As December 09, 2006 was a public holiday being Heroes Day, Mrs. Gregory returned to work on December 10, 2006.
- [6] The letter of November 27, 2006 (supra) was received by Mrs. Gregory on December 10, 2006. She received a cheque from the Credit Union for \$10,000.00 and a package. She received legal advice not to negotiate the

cheque for cash. At **paragraph [11]** of the Employer's Memorandum the package is described as "*a computer system*" which along with the cheque for \$10,000.00 "*were to be presented to the Employee at her farewell retirement party arranged by the Employer.*" This package was described by Mr. Brown at **paragraph [13]** of his Written Submissions as "*a gift wrapped computer both of which have remained unnegotiated and unwrapped in her possession.*" Ms. Richards-Anjo in her Written Submissions at **paragraph [4]** describes the computer system as "*a further ex-gratia payment upon her retirement.*"

Legal proceedings

- [7] Mrs. Gregory filed a Reference in this Court on March 30, 2010. In this Reference the former employee claims that her employment was terminated without reasonable or adequate notice given to her by her former employer.
- [8] The Employee's Memorandum was filed in this Court on March 30, 2010. In this document Mrs. Gregory claims payment of one years' salary in the sum of \$73,970.00 in lieu of notice of retirement.
- [9] The Employer's Memorandum was filed in this Court on July 28, 2010. At **paragraph [14]** of it, the Employer states *inter alia* as follows:
- "The Employer asserts that the employee was given in excess of two months and two weeks notice of the termination of her employment. The employer denies that the employee is entitled to one year payment of salary in the sum of \$73,970.00 in lieu of notice of retirement or any sum at all."*

[10] The Employee filed her Witness Statement on November 05, 2010. This Witness Statement was admitted into evidence by consent of both parties.

[11] Mr. Yves Ephraim on behalf of the Credit Union filed his Witness Statement on July 01, 2011.

THE ISSUES

[12] The issues which I am required to decide are as follows:

(i) Did the St. John's Co-operative Credit Union Ltd give to Mrs. Theresa Gregory reasonable notice of her retirement to take effect on December 18, 2006?

(ii) If the period of notice at 12(i) above was not reasonable what is the measure of damages which is due to her?

THE EMPLOYEE'S LEGAL SUBMISSIONS

[13] Mr. Brown's Written Submissions were filed on December 30, 2011. Learned Counsel submits that the Employer had no retirement policy in place for its employees.

[14] (i) Mr. Brown cites **E. Alex Benjamin Limited and St. Lawrence Defreitas Civil Appeal No. 12 of 2002**. In this case the Eastern Caribbean Court of Appeal held that it was obligatory for the employer to have first given the employee reasonable notice.

-See page 7 of the judgment.

(ii) In this case the employee had worked for the employer for 9 years as its Operations Manager. In determining the length of notice to be given to the employee the Court stated at **page 7** *inter alia* as follows:

“As regards the length of notice that should have been given, I would be guided by the Industrial Court’s view that a period of at least 12 months should have been given”.

(iii) The Court in that case took into consideration Mr. Defreitas’ age as she became 60 on August 10, 1998, and his *“nine years loyal and efficient service to the company”*.

[15] Mr. Brown submits that the Employee should be awarded 16 months notice. In addition learned counsel is of the view that this Court should grant an award for aggravated damages *“in the sum of \$24,640.00 equivalent of 4 months’ salary.”*

-See paragraph [26] of Counsel’s Written Submissions.

THE EMPLOYER’S LEGAL SUBMISSIONS

[16] Ms Richards-Anjo Attorney-at-Law for the Employer submits that **E. Alex Benjamin Limited and St. Lawrence Defreitas** (op cit) is the main decided case which deals with the matter of retirement in the private sector in Antigua and Barbuda.

[17] Counsel further submits that *“notice of one (1) year ought to be given in same cases. In the Appeal Court, the Court agreed that one (1) year was*

adequate and good notice for an employee that had given 9 years service to the employer.”

[18] (i) Learned Counsel also states at **paragraph [8]** of her Written Submissions as follows:

“In cases where the adequacy of language in notice of dismissal is discussed it is settled that the date must be certain or when the notice is given there should be material from which that date is positively ascertainable.”

This quotation purports to emanate from a partial headnote in the case of **The Burton Group Limited vs M Smith [1977] IRLR 351**. The proper quotation of the relevant part of the headnote at **page 351** is as follows:

“It is well established that a valid notice of dismissal must contain either a specific date upon which the employment is to terminate or contain material from which that date is positively ascertainable....The requirement that the date should be positively ascertainable is not met by a statement that the date of termination is to be some specific date or such earlier as the employer may select, or such earlier date as the employer may, consistent with his obligation to give the requisite notice, select.”

(ii) In that case the Employment Appeal Tribunal held that *“there had been a prior warning and a prior arrangement as to intended dismissal for redundancy, but not itself a dismissal.”*

-See the headnote at page 351.

[19] Ms. Richards-Anjo also submitted at **paragraph [8]** of her Written Submissions as follows:

“A line of cases including Barclay vs City of Glasgow District Council [1983] IRLR 313 establish that notice dismissal can be oral and is not required to be in writing”.

[20] I do not share Ms. Richards-Anjo’s view that the Barclay case or any similar case supports such a contention. In the Barclay case the Employment Appeal Tribunal held that the Industrial Tribunal’s findings that the respondent employers were entitled to regard the employee’s clear words of resignation as notice of termination was wrong. In any event however, in issues of dismissal it is always a wise employer who takes into consideration Section C 10 of the Labour Code.

[21] Ms. Richards-Anjo further submits that the employee knew and understood that as at October 02, 2006 that she would be retired on her sixtieth (60th) birthday which was a readily ascertainable date.

THE LAW

[22] The law with respect to a determination of the two issues is contained in **E. Alex Benjamin Limited and St. Lawrence Defreitas** (op cit). The approach of this Court commences with an examination of the reasonableness of the length of notice which must be given by an employer to an employee in circumstances where the employer has not established a retirement policy for its employees.

[23] It is good industrial relations practice that the notice of retirement by the employer to the employee should be in writing. This provides both parties

with a sure sense of certainty. It avoids any element of doubt by either party with respect to (a) the requisite period of notice (b) its effective date and (c) any other relevant matter.

- [24] In determining the length of notice to be given by the employer to the employee the Court must take into consideration certain factors. These include the employee's age, duration or length of employment; the rank which he or she has achieved in the organization, the degree of responsibility which he or she holds in the workplace, and his or her skill and training. The determination of the issues always depends on the facts of each case.

THE FIRST ISSUE

Did the St. John's Co-operative Credit Union Limited give to Mrs. Theresa Gregory reasonable notice of her retirement to take effect on December 18, 2006?

- [25] Mrs. Gregory gave evidence in this Court. She stated that she obtained increases in salary during her tenure of employment. Her last monthly salary was \$6,160.00. As the Credit Union's Manager she supervised its 12 employees.
- [26] Mrs. Gregory also stated that between January 26, 2006 and October 02, 2006 the Credit Union did not inform her in writing relative to its retirement policy.

- [27] Mrs. Gregory met with Mr. Paul Bacchus a Director of the Credit Union and Mr. Yves Ephraim its President on January 26, 2006. They discussed her staff appraisal. At that meeting Mrs. Gregory whose age was 60 in 2006 raised the matter that the Credit Union had no policy in place relative to an employee's retirement. This was confirmed by Mr. Ephraim in his evidence.
- [28] It was Mrs. Gregory's evidence that as she spoke of the matter on January 26, 2006; it was the Credit Union's Board of Directors to put a retirement policy in place for its employees.
- [29] Mrs. Gregory also stated that she attended a meeting of the Credit Union's Board of Directors on June 13, 2006. According to her, the issue of her retirement was not discussed at that meeting.
- [30] In Mr. Ephraim's evidence he stated in answer to Mr. Brown as follows:
"The policy decision to retire members at 60 was taken by the Board in June /July 2006. The Board did not communicate this policy to Mrs. Gregory until October 02, 2006 because the Board wished to ascertain whether she would continue to work on a month to month basis after her retirement."
- [31] His evidence at **paragraph [30]** above must be contrasted with **paragraph [11]** of his Witness Statement. It states *inter alia* as follows:
"During a Board meeting that was held on the 13th June, 2006, the matter was discussed.....There was general discussion concerning the matter but no decision was reached as to what policy would be adopted by the Board."

[32] There was a Board Meeting in September 2006. In Mr. Ephraim's Witness Statement he stated *inter alia* as follows:

"The matter of her retirement was discussed and it was decided that the Employee would be retired on her 60th birthday and that, once she agreed, the Board would explore Mrs. Gregory's interest in being retained as manager on a month by month basis until a suitable replacement was found."

[33] According to Mr. Ephraim he met with Mrs. Gregory on October 02, 2006. He informed Mrs. Gregory on this first occasion that the Board had decided to retire her upon her sixtieth (60th) birthday.

[34] Mrs. Gregory states that a meeting did take place between Mr. Ephraim and herself on October 02, 2006. However it is Mrs. Gregory's testimony that no effective date was stated by Mr. Ephraim. She requested the decision in writing.

[35] A staff meeting took place on October 05, 2006. At this meeting which was attended by Mrs. Gregory, she heard Mr. Ephraim announce that Mrs. Gregory would be retired. No effective date of her retirement was stated.

[36] In light of all that had transpired namely (a) the meeting of January 26, 2006, (b) the Board meeting of June 13, 2006, (c) the meeting of October 02, 2006 and (d) the staff meeting of October 05, 2006, Mrs. Gregory wrote a letter to Mr. Ephraim dated November 06, 2006. It was admitted as "TG-2".

[37] In that letter Mrs. Gregory quoted Mr. Ephraim as stating at the staff meeting of October 05, 2006 as follows:

“Mrs. Gregory is retiring”.

Mrs. Gregory also stated *inter alia* as follows:

“However, I have yet to receive correspondence as to the policy adopted by the Board of Directors and or otherwise; the effective date of such retirement and the other issues as relayed to me in the October 2nd Meeting.”

[38] No evidence was put forward by the credit Union to corroborate Mr. Ephraim’s testimony that in fact the Credit Union made a decision at its September 2006 meeting to retire Mrs. Gregory on her sixtieth (60th) birthday. This could easily have been done by the production of its minutes for that meeting.

[39] The Board Secretary’s reply to Mrs. Gregory’s letter of November 06, 2006 is dated November 27, 2006. The letter in its entirety states as follows:

“27th November 2006

Mrs. Theresa Gregory

Manager

St. John’s Co-operative Credit Union Ltd.

All Saints Road

St. John’ Antigua

RETIREMENT

I refer to your letter dated 6th November 2006, and must apologize for the delay in replying. However, the Board has since met and has taken the following decisions regarding your retirement.

The balance of your leave up to the 31st December 2006 is 4 days. You should proceed on your four days leave from 11th to 14th December 2006.

On the 15th December 2006, you will be required to do a complete handing over exercise and inventory to Miss Louise Henry the Acting Manager.

Please ensure that all property of the Credit Union in your possession is handed over on that day.

Your retirement will commence from 18th December 2006.

We will communicate with you further regarding a retirement reception in your honour.

Should you require any further clarification, please do not hesitate to contact Ms. Inez Joseph Secretary to the Board.

On behalf of Management and Staff, I take this opportunity to express sincere appreciation for your invaluable contribution to the Credit Union over the years and wish your every success in your future endeavours.

Sincerely,

Inez A. Joseph

Secretary

Board of Directors

Cc: Mr Yves Ephraim

President"

This letter was admitted as Exhibit "T G-3".

[40] (i) The Board Secretary's reply to Mrs. Gregory and which was copied to the President contradicts his testimony before this Court that the Credit Union decided in September 2006 to retire Mrs. Gregory on the date of her sixtieth (60th) birthday.

(ii) In summary the Board Secretary who is the officer that is mandated to write the Minutes of the Board clearly states that the decision of the Board to retire Mrs. Gregory from December 18, 2006 was taken since November 06, 2006.

[41] The Secretary of the Board therefore confirms Mrs. Gregory's evidence that Mr. Ephraim could not have informed her of an effective date of her retirement when they met on October 02, 2006.

[42] In any event this letter of the Board dated November 27, 2006 which was delivered to Mrs. Gregory on December 10, 2006 is not reasonable notice for her retirement to take effect from December 18, 2006.

THE SECOND ISSUE

If the period of notice at paragraph 12 (i) above was not reasonable what is the measure of damages which is due to her?

[43] I must take into consideration the facts of this case. Mrs. Gregory was employed by the Credit Union for a period of 12 years and 1 month. She occupied the highest paid office in the Credit Union. She was responsible for a team of workers who executed the policies of the Credit Union. The success of these policies depended on the Board of Directors and the Staff headed by its Manager. She attained the age of 60 in 2006.

[44] With regard to the length of notice which should have been given by the Employee to the Employer in this case I hold that twelve (12) months would have been appropriate.

[45] Accordingly I therefore order that the Credit Union should pay to Mrs. Gregory the sum of \$6, 160.00 X 12 or \$73, 920.00.

The matter of costs

[46] This Court is usually loath to award costs unless for exceptional reasons. The matter is governed by **section 10 (2) of The Industrial Court Act Cap. 214 of the Laws of Antigua and Barbuda.**

[47] In **Elliot Streete and Caribbean Star Airlines Ltd. Ref. No. 19 of 2005**, I made an award of costs in favour of the employee in that case in the sum of \$10, 000.00. I outlined the reasons for my decision to do so.

[48] This matter was governed by a decision of the **Eastern Caribbean Court of Appeal in the case of E. Alex Benjamin Ltd and St. Lawrence Defreitas** (op cit). I was not impressed by the quality of the evidence of Mr. Ephraim the President of the Credit Union.

[49] Mr. Ephraim gave evidence that it was Mrs. Gregory who *“wished to retire on her 60th birthday....”*

-See **paragraph [25]** of his Witness Statement.

Mrs. Gregory testified that's Mr. Ephraim's statement was untrue. I had the opportunity of hearing the evidence and assessing both parties. I believe the evidence of Mrs. Gregory.

[50] I have also read the Employer's Memorandum. At **paragraph [14]** it states *inter alia* as follows:

“The Employer gave the employee notice in excess of the required statutory notice”.

- [51] I am not aware of any statute which governs a period of notice which is to be given by an employer to an employee upon retirement. It is well settled law that the period of notice must be reasonable having regard to the facts of each case.
- [52] These matters are clearly exceptional. In all the circumstances of this case the Employer shall pay to the Employee costs in the sum of \$7,000.00.
- [53] The sum of \$73,920.00 and \$7,000.00 being \$80,924.00 shall be paid by the Credit Union to Mrs. Gregory on or before February 29, 2012.

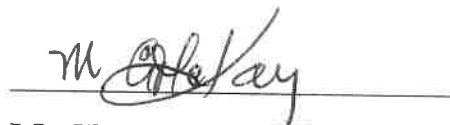
Dated the 19th day of January 2012.

A handwritten signature in black ink, appearing to read 'Philip A. Pilgrim', written over a horizontal line.

PHILIP A. PILGRIM

President

I agree.

A handwritten signature in black ink, appearing to read 'M. Glendina McKay', written over a horizontal line.

M. GLENDINA MCKAY

Member

I also agree.

A handwritten signature in black ink, appearing to read 'Jessie F. Kentish', written over a horizontal line.

JESSIE F. KENTISH

Member