

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO.: 10 OF 2014

BETWEEN:

THEODORE ISAAC

Employee

And

ALLIED HOTELS AND RESORTS LIMITED

Employer

Before:

The Hon. Dr. Hayden Thomas

Chairman

The Hon. Samuel R. Aymer

Member

Appearances:

Ms. Judith Dublin and Ms. Joy Dublin of James Dublin and Associates,
Attorneys-at-Law for the Employee

Ms. Kari-Anne P. Reynolds of Hill and Hill, Solicitors for the Employer

2014: October 29
December 18
2015: April 10

JUDGMENT

THOMAS – Chairman

BACKGROUND

- [1] A Reference dated 14th March, 2014 was filed in the Industrial Court on 17th March, 2014 on behalf of the Employee, Mr. Theodore Isaac, by Ms. Judith Dublin, Attorney-at-Law of James Dublin and Associates. It was in respect of a complaint that the Employee had been unfairly dismissed by his Employer, The Allied Hotels and Resorts Limited.
- [2] The Employee was employed at The Grand Royal Antiguan Beach Resort, one of the hotels owned by the Employer. It is situate at Deep Bay, St. John's, Antigua.



- [3] The Employee accepted an offer of appointment by the Employer to the position of General Manager with effect from 6th February, 2012 as per terms and conditions laid out in a Contract of Employment dated 30th January, 2012, the full text of which is as follows:

“30th January, 2012
Mr. Ted Isaac,
c/o Jolly Beach Resort,
Antigua.

Dear Mr. Isaac,

We have the pleasure of offering you the position of **General Manager** at our Company, *Grand Royal Antiguan Beach Resort*, under the following terms and conditions:

1. Commencement: 6th February 2012
2. Salary: US\$6,000.00 per month net.
3. Probation: You will be on probation for a period of six (6) months. The Company reserves the right to determine your suitability and efficiency during this period and may terminate your services without any form of notice.
4. Meals: Three (3) meals per day with a beverage. Alcoholic beverages are not included.
5. Telephone/Alcoholic Beverages: Will be charged to you at cost.
6. Car: You will be provided with the use of a car.
7. Housing: One (1) complimentary hotel suite.
8. Laundry: No Charge.
9. Health Insurance: There is no charge to yourself for coverage under the Hotel's local health insurance.
10. Vacation: You will be entitled to three weeks vacation on completion of 12 months service, and thereafter on the anniversary date of your employment.
11. Reporting to: The Chairman/Group Corporate Controller.

12. Hours of Work: Six (6) days a week.
13. Duties/Responsibilities: To manage the Hotel's operations.
14. Termination of Services: No notice or pay in lieu of notice will be given if your employment is terminated during the probationary period. Upon completion of the six-month probationary period, the company undertakes to give you two week's notice or two week's pay in lieu notice if you are to be terminated without cause. Should you tender your resignation after the probation period, you will give two week's notice on that date; failure to comply could lead to your benefits being withheld.
15. Confidentiality: Another very important condition of your employment is that you will not, during your employment with the company, disclose to any person, firm or company (other than officers or employees of the company whose it is to know same), any information concerning the affairs of the company, the disclosure of which may damage the interest of the company, or which is of confidential nature. Also, that you will not use for your own purposes or for purposes other than those of the company, any information that you may acquire in relation to the company's business. Your attention is particularly drawn to the continuation of these restrictions on disclosure or use after you have left the company's employment.
16. Rules/Regulations: You will be subjected to the Rules & Regulations of the Company, which will be subjected to review from time to time. In addition, you agree that prior to signing any contracts or binding agreements on behalf of the company, these must have been agreed to and approved in writing by the Chairman or Executive Director.

If you are in agreement with all of the above terms and conditions, please indicate your acceptance of the position by signing in the space provided.

Yours faithfully,
Grand Royal Antiguan Beach Resort

Accepted:

Date:

(Sgd.) Issa Nicholas
Chairman

(Sgd.) Ted Isaac”

[4] The Employee received a termination letter dated 28th February, 2013 as follows:

“Grand Royal
Antiguan Beach Resort

28th February 2013

Mr. Ted Isaac

Present

Dear Mr. Isaac,

We hereby terminate your services effective today, 28th February 2013.

In accordance with the terms of your employment contract of 30th January 2012, you are being paid two (2) weeks salary in lieu of notice, and a draft in the amount of US\$3,000.00 has been issued in this respect.

Please hand over all keys and other relevant items and documents to the Financial Controller, Ms. Judy Francis.

We take this opportunity to thank you for your past services and wish you all the best in the future.

Yours faithfully,

Grand Royal Antiguan Beach Resort

(Sgd.) Ashram Ramnarine

Group Corporate Controller.”

The Employee's Case

[5] The Employee, through his Attorney-at-Law Joy Dublin, filed an Employee's Memorandum on 16th April, 2014 contending that he was unfairly dismissed. He stated *inter alia* that:

1. He received remuneration of US\$6,000.00 per month during the period of his employment.
2. Contrary to the Antigua and Barbuda Labour Code, the terms of the Employment Contract purported that the Employee's services could be terminated without cause.

3. The letter of termination “did not provide a precise reason, or any reason at all for the dismissal” as required by Section C10 of the Labour Code.

[6] Section C10 (1) of the Code states “Upon termination 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.”

[7] The Employee claims compensation under the heads of:

Contractual benefits

Loss of Protection from unfair dismissal

Vacation pay

Immediate Loss

Future Loss

Loss of Allowances

[8] The Employee filed a Witness Statement dated 23rd January, 2014 on 16th April, 2014. It was accepted as his evidence-in-chief and was amplified in Court by him on 18th December, 2014.

The Employer’s Case

[9] The Employer filed an Employer’s Memorandum on 12th August, 2014 through its Attorneys-at-Law Hill and Hill. It was dated 11th August, 2014. It admitted that the Employee was unfairly dismissed but denied “that the Employee is entitled to compensation other than for Loss of Protection for unfair dismissal.”

[10] The Employer filed an Employer’s Witness Statement on 2nd October, 2014 and an amended Witness Statement on 8th December, 2014.

Assessment of the Award

[11] Since the Employer in Paragraph 5 of its Memorandum admitted that the Employee was unfairly dismissed, all that was now left to be determined by the Court was the quantum of damages to be awarded to the Employee.

[12] An Employee who is unfairly dismissed is entitled to certain awards under specific established headings. Those to which Mr. Isaac is entitled are as follows:

Basic Award (Loss of Protection from Unfair Dismissal)

[13] This is similar to Severance Pay and is calculated on the basis of one month's pay for each year of service. Since the Employee worked for one year he is entitled to an award of US\$6,000.00, the equivalent of his monthly salary.

Notice Pay

[14] According to the Labour Code C9(3)(b), the period of "advance notice shall be at least equivalent to the interval of time between the affected employee's pay days." Mr. Isaac was paid monthly and should therefore have been given either one month's notice or one month's pay in lieu of notice. He was given two weeks' salary amounting to US\$3,000.00 in lieu of notice on the premise that this was in keeping with Clause 14 of the letter of appointment dated 30th January, 2012. This was clearly in violation of Section C9 (3) (b) of the Labour Code. In its submission the Employer conceded that the Employee is entitled to an additional two weeks' notice pay. Accordingly, the Court hereby awards an additional amount of US\$3,000.00 under this head.

Vacation Pay

[15] The Employee is claiming three weeks' vacation pay equivalent to US\$4,500.00 in keeping with Clause 10 of the letter of appointment. The Employer in its Amended Witness Statement dated 4th December, 2014 stated that 16 days of paid vacation were taken as follows:

a) 1 - 7 April, 2012 – Cruise -	6 days
b) 21 - 22 August, 2012 – Cave Hill Committee -	2 days
c) 29 - 31 August, 2012 – Annual Medical –	3 days
d) 20 October, 2012; no reason given -	1 day
e) 24 to 27 October ABTA (Antigua and Barbuda Tourism Association) Meetings -	4 days
Total -16 days	

It should be noted that no supporting documents were submitted. In any event, it appears reasonable to us that the General Manager should have been granted time off in respect of items (b) to (e). In respect of the cruise mentioned in item (a), however, this should be counted as vacation days. The remaining vacation days due are, therefore, 12 days (i.e. 18 days less 6). The Employee worked a 6-day week according to the employment contract. The 18 days used here are thus in respect of the 3 weeks vacation due. The daily rate is calculated to be $(\$6,000.00 \times 12) / (52 \times 6) = \text{US\$}230.77$. Therefore the award under this head is $\text{US\$}230.77 \times 12 = \text{US\$}2,769.24$.

Immediate Loss

- [16] Compensation under this head is usually considered on the basis of loss of earnings for the period between date of dismissal and the date of trial. The dismissal date is 28th February, 2013 and the trial date is 29th October, 2014, the intervening period being 20 months. It is expected, however, that during this period the Employee should make every effort to mitigate his loss. In the Case *Antigua Village Condo Corporation v Jennifer Watt*, Civil Appeal No. 6 of 1992, Sir Vincent Floissac, C.J. in Paragraph 13 said *inter alia* “.....during the pre-trial period, the employee is under a duty to take proper and reasonable steps to obtain other suitable employment and thereby to mitigate the loss of earnings during that period.”
- [17] Mr. Isaac gave evidence that since his termination he sought employment by making several applications to various hotels including Hodges Bay Club, Jumby Bay, Sandals, Admiral's Inn and Rex Resorts in Antigua. He also sent out applications overseas including Accra Beach in Barbados and Four Seasons in Nevis. He said that he was unsuccessful. The question arises as to whether, bearing in mind his experience, the Employee should have explored other possibilities e.g. the possibility of establishing a consultancy or other suitable business. In arriving at a decision, the Court took into consideration the period of his employment and his age. Clearly, each case must be considered on its own

merit. In the circumstances of this case, we consider that compensation under this head for six months loss of salary is reasonable. Therefore we award the sum of US\$36,000.00.

Future Loss

[18] The Employee testified that he was still unemployed up to the time of hearing of this case. He felt that his age of 69 years might be acting negatively on his efforts to find employment. Counsel for the Employee submitted that the Employee would have had expectations of working at least for another three years.

[19] Given his age, it is not likely that the Employee will find employment in the near future from which he would earn the amount which he earned from the Employer. His evidence shows that his age is a negative factor when he seeks new employment.

[20] Counsel for the Employer submitted that it would not be fair and just to award the Employee compensation for future loss. This is based on his age of 69 years and in this regard Counsel cited a judgment delivered by the Industrial Court of Antigua and Barbuda in the case Henson Barnes v Leila Simon, James Adams and Malcolm Edwards as Trustees of the United Progressive Party Ref No. 3 of 2004. No award was given since it was felt that the Employee had passed the normal retirement age.

[21] We also considered some other important statements made *inter alia* by Sir Vincent Floissac, C.J. in the Civil Appeal Case Antigua Village Condo Corporation v Jennifer Watt (op. cit.) as follows:

a. "The interests of employers and the community as a whole, the principles of compensation in general, the principles and practices of good industrial relations in particular and fairness and justice all demand that certain rules be observed in the award of compensation to an unfairly dismissed employee for loss of future earnings."

b. "compensation for loss of future earnings should be predicated on the probability that the earnings from future employment or self-employment will be

less than the earnings from the terminated employment. The loss is the difference between the two earnings and not the total amount of the prospective earnings from the terminated employment.”

c.“Some limit must be placed on the number of years over which future loss is calculated and on the amount of the future loss recoverable.”

d. ...“Fairness and justice dictate that in any award of damages or compensation for loss of future remuneration expected to be earned in weekly or monthly installments spread over a period of time, there must be a substantial discount for the fact that the award is an accelerated lump sum payment in realization of a mere expectation.”

e.“The onus is on the unfairly dismissed employee to prove the probability of loss upon which an award of compensation is based and to prove the probable duration of that probability.”

[22] Sir Vincent Floissac, C.J. concluded “Having regard to the restrictive rules which govern the award of compensation for loss of earnings, fairness and justice demand that in this case, the compensation for loss of future earnings should not exceed six months’ salary.....”

[23] We have taken all of the various factors into consideration and conclude that the Employee is deserving of a limited amount for future loss. We award the sum of US\$18,000.00 representing his future loss for a period of three months.

Accommodation

[24] The employment contract made provision for the Employee to be given housing in the form of “one complimentary hotel suite.” The Employee, however, gave evidence that he did not receive the promised accommodation. He said that a cottage provided was not suitable. Another building was to have been renovated but the renovation was never completed. He was forced to finance the cost of renting a building at Jolly Harbour during the whole period of his employment. He sought reimbursement of the cost incurred amounting to US\$48,000.00.

- [25] The Employer in its amended Witness Statement stated that a suite was available to the Employee at all times during his employment but that he chose not to make use of it. The Employer further stated that "at the request of the Employee, the Employer agreed to refurbish an existing structure on the premises of Grand Royal." The Employer further said that the Employee never requested and the Employer never agreed to pay for any other housing accommodation for the Employee.
- [26] Under cross-examination the Employee accepted that there was no agreement for the Employer to pay rent and that he never submitted any invoices to the Employer seeking compensation for the rents paid.
- [27] It is clear to us that the provision of housing accommodation by the Employer was a significant part of the Employee's employment package. The evidence is that the Employer offered the Employee an alternative building to the one originally identified and agreed to renovate it. This fact shows tacit agreement that the original building was unsuitable. Unfortunately, according to the evidence provided by both sides the repairs were only two-thirds complete. We are of the view that a compromise should have been reached. In the circumstances we will make an award for loss of accommodation allowance at the rate of US\$1,500.00 per month. The amount awarded under this head is US\$18,000.00.

Travelling

- [28] In the letter of appointment the Employer stated "you will be provided with the use of a car." The Employee in his claim sought travelling benefit of US\$13,625.00. The evidence given by the Employer was that a car was not available but that a gas allowance of EC\$500.00 per month was given to the Employee for the use of his personal car. In this regard, an email from Mr. Ashran Ramnarine Group Corporate Controller and copy of a receipt were admitted in evidence. The Employer conceded an amount of EC\$ 1,500.00 for loss of car allowance. In our view an award should be made under this head for loss over a six-month period. The award is therefore EC\$3,000.0. This is equivalent to approximately US\$1,111.00.

Summary of Awards

[29] In summary, the total award made to the Employee is as follows:

Basic Award	US\$6,000.00
Notice Pay	3,000.00
Vacation Pay	2,769.24
Immediate Loss	36,000.00
Future Loss	18,000.00
Accommodation	18,000.00
Travelling	1,111.00
Total	84,880.24

Costs

[30] There shall be no order as to costs.

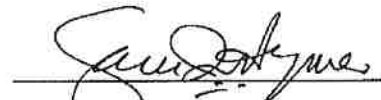
[31] The amount awarded is to be paid by the Employer to the Employee on or before 29th May, 2015.

Dated the 10th day of April 2015.



DR. HAYDEN THOMAS
CHAIRMAN

I Agree



SAMUEL R. AYMER
MEMBER