

**IN THE INDUSTRIAL COURT
ANTIGUA AND BARBUDA**



REF NO. 11 of 2013

BETWEEN:

MALINDA QUINLAND

Employee

And

GEOTECH COMPANY LIMITED

Employer

Before:

Hon. St. Lawrence de Freitas

Chairman

Hon. Dr. Hayden Thomas

Member

Hon. Samuel R. Aymer

Member

Appearances:

**Mr. Anderson E. Carty of the Antigua & Barbuda Tradesmen & United workers
Federation for the Employee**

Judith Dublin and Joy Dublin of James, Dublin & Associates for the Employer

2014: September 30

2015: May 1

JUDGMENT

De Freitas - Chairman

1. By Reference dated 18 March 2013 the employee Malinda Quinland (hereinafter referred to as the "Employee" or "Ms. Quinland") and who lives at George Street, Green Bay, St. John's, Antigua, has filed a complaint to the Court that she was unfairly dismissed by her Employer, Geotech Company Limited and that she is entitled to compensation.

2. The Geotech Company Ltd (hereinafter referred to as the “Company” or “Employer”) are Civil Engineers involved in general contracting services in Antigua.

Legal Proceedings

3. The Employee filed her Memorandum on October 15th 2013, and her Witness Statement on December 10th 2013. These documents were duly served on the Employer on December 12th 2013.
4. By letter dated February 6th 2014 the Court directed the Employer to file their Memorandum and Witness Statement not later than Monday 10 March 2014.
5. By further letter dated April 8th 2014 the Employer was reminded by the Court that the original date for filing their Memorandum and Witness Statement had passed and that they were required to make a written application for further extension within seven days.
6. No application was made by the Employer and no Memorandum or Witness Statement was ever received by the Court.
7. On the date of trial, the legal representative of the Employer, in the presence of the Employer’s General Manager, Mr. Arthur Bostic, informed the Court that the Employer admitted that the Employee had been “Unfairly Dismissed”

Employee’s Evidence

8. The Employee gave evidence that her last salary was \$1500.00 per month.
9. The Employee’s evidence is that she commenced her employment with the Company in July 2006 as a Messenger/Cleaner and sometimes performed as a Utility Clerk.
10. On February 5th, 2008 she was told that her job as Messenger/Cleaner was made redundant. She was offered a new position as Utility Clerk with new working conditions. While she was in the process of discussing these new working conditions she received a letter dated 30th April 2008 telling her that the posts of Utility Clerk and

that of Cleaner/Messenger will no longer exist and that her employment with the Company was terminated.

11. The Employee told the Court that after she was dismissed she sent several applications to several business places seeking employment. These included The Tides Restaurant, the Labour Department Job Program, BlueWaters Hotel, and Jolly Harbour resorts. Of the several business establishments to which she sent applications, only one responded saying that there were no vacancies. There was no response from the others.
12. The Employee told the court that she was without work for four years immediately after her termination. She then found employment with Burger King for six months at \$400.00 per week.
13. After the job at Burger King ended, she found odd jobs with a private Caterer on a job basis. She said that she received \$100.00 per job and had approximately 7 of those jobs.
14. The Employee further told the Court that when she was terminated she was given a cheque by the Employer and on advice from her Union Representative that the amount was inadequate, she had returned the cheque.

Cross Examination

15. On cross examination by Ms. Joy Dublin for the Employer, the Employee said that she had not earned any money during the first four years after her termination except from her father and boyfriend.
16. The Employee confirmed and Counsel for the Employer accepted that the cheque in question was returned to the Employer.

Special Circumstances

17. The Employee was informed on April 30th 2008 that her position was made “redundant” as of May 1st 2008. She filed a Reference with the Court on March 18th 2013. She further filed her Employee’s Memorandum and her Witness statement as noted in paragraph 3 above.
18. Notwithstanding several requests made by the Court to the Employer that they file their Employer’s Memorandum and the Employer’s Witness Statement, (to wit February 6th 2014, April 8th 2014, September 15th 2014 and then again by a Direction Order of the Court entered September 18th 2014), the court takes special note that the employer had not filed any documents up to and including the date of trial of this matter, nor did they respond to any of the reminders or directives.
19. The Court is cognizant of the fact that the Employee was dismissed in April of 2008 and that to the date of trial in September 2014 is an accumulated period of some 6 years and 5 Months.
20. The Employer’s failure or refusal, to respond to the Employee’s Reference before this court, (filed some 18 months before the date of trial), notwithstanding the Court’s reminders and directives is troubling.
21. The Court frowns at any action or inaction by either the Employer or Employee that has the effect or appearance of ignoring the court.

The Law

22. The Antigua and Barbuda Labour Code – Cap 27

Section C56 states, “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.”

23. Industrial Court Act – Cap 214

Section 10 states

- (3) *“Notwithstanding anything in this Act or in any other rule of law to the contrary, the Court in the exercise of its powers shall-*
- (a) *make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;*
- (b) *act in accordance with equity, good conscience and the substantial merits of the case before it. Having regard to the principles and practices of good industrial relations and, in particular, the Antigua and Barbuda Labour Code.*

Awards

24. The Employer has admitted that it “unfairly dismissed the Employee” (see Paragraph 7 above).

25. An employee who is held to be unfairly dismissed may be entitled to certain awards under specific established headings. The Court hereby makes the following awards in favour of the Employee.

a) Basic Award - loss of protection from unfair dismissal

The Employee was employed with Geotech Company Ltd., from July 2006 to May 1st 2008, this is a period of 2 years and ten months. Her last monthly salary was \$1,500.00. She is therefore entitled to $(\$1500.00) \times (34/12) = \$4,250.00$

b) Immediate Loss

It is the duty and responsibility of the dismissed employee “to take proper and reasonable steps to obtain other suitable employment and thereby to mitigate the loss of earnings during that period”.

See Sir Vincent Floissac in the Jennifer Watt case at page 5.

“The plaintiff is required only to act reasonably, and whether he has done so is a question of fact”. See *Halsbury’s Laws of England Fourth Edition (Reissue) Volume 12 (1) at paragraph 1042*

The court finds that the Employee acted reasonably in her efforts to mitigate her loss of earnings during that period. There appears to be no guidelines established for a judicial cap, either articulated by this Court or by statute as a cut-off-point for awards under this head. See *Elliot Streete vs Caribbean Star Airlines. No. 19 of 2005, a matter decided in this Court. Pilgrim, P. the then President of the Court in his dicta at Para. 136 said-*

“No such guidelines for the establishment of a judicial cap in an area where there is no statutory cap have been articulated by this Court for awards to be limited to ‘*a cut-off point.....at 24 weeks.*’ Since no guidelines have ever been established it stands to reason *a fortiori* that this Court is not bound by any prior decisions of this Court which seek to establish such a ‘*cut-off point*’ during which time all or any employees irrespective of their standing, skill, training, professionalism and or experience and personal history are all expected to obtain suitable alternative employment within a period of 24 weeks.”

Notwithstanding her several and reasonable efforts to find employment, the Employee was without work for 4 years before obtaining employment. Her dismissal was effective May 1st 2008 at a period, when due to world and local economic circumstances the job market in Antigua had become difficult. We therefore award her a sum equal to a period of 6 months pay. The award is \$1500.00 X 6 = **\$9,000.00**

c) Manner of Dismissal

We do not find that the Employee was made less suitable for employment or more liable for selection to be dismissed. The employee is therefore not entitled to any award under this head.

d) Future Loss

The employee was dismissed on the 30th April 2008. The matter came to trial 30th September 2014. After a period of some six years there is no evidence to support an award under this head.

e) Notice Pay

The Employee's evidence is that she was paid monthly at a rate of \$1,500.00 per month. We therefore award her 1 month's pay in lieu of notice. The award under this head is **\$1,500.00**.

f) Costs

We also consider that the subsequent behavior of the Employer in this matter was not in accordance with good industrial practices.

We further find that the Employer's reluctance to respond to the Employee's reference filed on the 18th March 2013 (until the matter came to trial on the 30th September 2014) to be highly irregular. The Employer's originally failure to admit that they "unfairly dismissed the employee", and only did so when the matter came to trial some 6 years later. We find that this further inflicted unnecessary hardship and additional expenses on the Employee. The Employer exhibited not only poor judgment in this matter but also contempt in its dealings with the Employee. We feel that these exceptional reasons make it proper to order cost to the employee in accordance with Section 10(2) of the Industrial Court Act. We therefore make an award **\$4000.00**.

Summary of Awards

26. Basic Award	\$4,250.00
Immediate Loss	9,000.00
Manner of Dismissal	-
Future Loss	-
Notice Pay	1,500.00
Costs	4,000.00
Total Award:	\$18,750.00

27. The award shall be paid by the Employer to the Employee on or before May 29th 2015.

Dated this the 1st day of May 2015



HON. ST. LAWRENCE DE FREITAS

I agree



HON. DR. HAYDEN THOMAS

I also agree



HON. SAMUEL R. AYMER