

**IN THE INDUSTRIAL COURT
ANTIGUA AND BARBUDA**



REFERENCE NO: 20 of 2013

BETWEEN:

AMIS PENNYFEATHER	Employee
AND	
GALLEY BAY INVESTMENT LTD.	
t/a GALLEY BAY ANTIGUA	Employer

Before:

The Hon. Charlesworth O.D. Brown	President
The Hon. Samuel A. Aymer	Member

Appearances:

**Mr. Anderson E. Carty of Antigua & Barbuda Tradesmen & United Workers Federation
for the Employee**
Mrs. Tamara M. E. Khan of Stapleton Chambers, Attorneys-at-Law for the Employer

2015: January 21, 30

March 20

DECISION ON ASSESSMENT OF COMPENSATION

1. The Employee's employment as a Grounds Attendant with the Employer commenced on 25th November 2004. At the date of his dismissal on 15th February 2007 he was earning wages of \$348.40 per week. He also earned an average of \$150.00 per week as his share of the "service charge".
2. By this Reference filed on 18th March 2013, the Employee complained that he was unfairly dismissed. His Memorandum of Claim (Employee's Memorandum) was filed on 17th February 2014. The Employer failed or refused to file its Memorandum of

Defence (Employer's Memorandum)

3. By Notice of Application for Judgment in Default filed 15th October 2014, the Employee applied for Judgment in his favour consequent upon the Employer's failure to file its Memorandum of Defence (Employer's Memorandum) pursuant to:
 - a) The Court's Requisition dated on 20th February 2014 requiring that the Employer's Memorandum be filed and served by 17th March 2014.
 - b) The Court's extension of time, up to 17th April 2014 granted by letter dated 24th March 2014, within which to file and serve the Employer's Memorandum
 - c) The Court's further extension of time up to 30th September 2014, granted by Order made at the Call Over hearing on September 08, 2014, within which to file and serve the Employer's Memorandum
4. By Directions Order made on 02nd January 2015 the Employer was given an opportunity to oppose the Application for Default Judgment which was set down for hearing on 21st January 2015. The Employer was served with the Order on January 5, 2015 but filed nothing to oppose the Application.
5. At the hearing on 21st January 2015, Mrs. Tamara M. Evelyn Khan, Counsel for the Employer, offered no resistance to the Application and graciously consented to the entry of Default Judgment in favour of the Employee in respect of liability only. For his part, Mr. Carty emphasized the Employer's obvious disregard for the Court's Requisitions, Extensions of time and Orders. He also underscored that the unnecessary delays were prejudicial to the Employee.
6. As to the quantum of compensation, Mrs. Khan also conceded that the Employer was liable to the Employee for amounts due to him for loss of protection from unfair dismissal; payment in lieu of vacation; and notice pay.
7. After hearing both Counsel, it was ordered that:
 - a) **Judgment on liability be entered for the Employee;**

- b) **The Parties be at liberty to file submissions on quantum no later than 28th January, 2015;**
- c) **Further hearing for the assessment of compensation be adjourned to 30th January, 2015;**
- d) **The Employer do pay costs in the sum of \$1,000 to the Employee no later than 28th January, 2015.**

8. At the commencement of the adjourned hearing on 30th January, 2015 in response to a submission by Mr. Carty, Mrs. Khan conceded that the Employee should be awarded two days pay to which he was entitled at the time of dismissal. Therefore, the amount awarded under this head is **\$139.36** (\$69.68 X 2).
9. In the absence of pertinent evidence in his witness statement, the Court invited the Employee to give evidence on oath in respect of his efforts to mitigate his loss. He gave evidence of his efforts to find work at other hotels. He said that after his dismissal on February 15, 2007 he was unable to find another job until September, 2007 when he commenced working at Vere's Trucking, as an assistant on a block delivery truck and a concrete pump truck. That employment lasted up to January, 2008 and he was paid \$420.00 per week. The Employee is now employed by The Antigua and Barbuda Port Authority where he earns \$412.00 per week.
10. By her submission filed on 28th January, 2015 Mrs. Khan raised the issue of the Employee's contribution to his dismissal. While her statement of the principles of law in respect of an employee's contributory conduct were correct, we are not satisfied that they should be applied in this case in the light of the limited evidence before us. Accordingly, we decline to find that the Employee contributed to his dismissal.
11. Mrs. Khan reiterated the heads of compensation which were not in dispute, and proposed that awards be made as follows:
 - a) Basic award for loss of protection: 27 days @ 69.68 per day **\$1,881.36**
 - b) Payment in lieu of vacation: 3 days @69.68 **\$ 209.04**

c)	Notice Pay: 1 week @ 348.40	<u>\$ 348.40</u>
	Total:	\$2,438.80

12. Mr. Carty confirmed his acceptance of Mrs. Khan's proposals as set out in paragraph 11 above. Accordingly, the awards under those heads and the award for unpaid wages are made by consent.
13. As to additional compensation under other heads of loss, Mrs. Khan contended that 8 weeks pay at \$348.40 per week, making a total of \$2,787.20, should suffice. On the other hand, Mr. Carty submitted that the Employee should be compensated for a longer period including the six month period of loss immediately after the dismissal. He further submitted that the Court should also take into consideration the intermittent nature of the Employee's subsequent employment until the commencement of his current employment.
14. Taking into consideration the evidence of the Employee and the submissions made by both Counsel, we are of the firm view that the Employee should be compensated for a period of loss less than six months. In that regard, we award him the sum of **\$2,090.40** (\$348.40 X 6) representing his loss for the first six weeks of the period of his unemployment. In addition, we make a further award in respect of his period of self employment when he earned \$200.00 per week. Under this sub-head we award the sum of **\$593.60** representing his loss for a period of 4 weeks at the rate of \$148.40 (\$348.40 – \$200.00) per week
15. Mr. Carty also claimed compensation under the heads of future loss and manner of dismissal. We find no bases for any awards under those heads.
16. The Employee is also entitled to recover an award for Fringe Benefits to which he was entitled during his employment. In his Witness Statement confirmed by him on oath at the hearing, the Employee states that, apart from his basic wages, he earned a "1-point service charge which average at \$150.00 per week." That evidence remains unchallenged but no award for the loss of

service charge was agreed. In the circumstances, we award the additional sum of **\$1,500.00** (10 weeks @ \$150.00) as loss of Fringe Benefits.

17. The final awards under the respective heads are as follows:

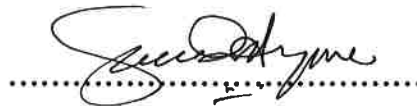
a)	Unpaid wages	\$ 139.36
b)	Vacation pay	\$ 209.04
c)	Notice pay	\$ 348.40
d)	Basic award	\$1,881.36
e)	Immediate loss	\$2,684.00
f)	Fringe Benefits	<u>\$1,500.00</u>
	Total	\$6,762.16

18. The Employer shall pay the total sum of \$6,762.16 to the Employee on or before the 10th April, 2015.

Dated the 20th day of March, 2015



HON. CHARLESWORTH O.D. BROWN
PRESIDENT



HON. SAMUEL AYMER
MEMBER