

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 36 OF 2013

BETWEEN:

DONNA LAMBERT

Employee

And

PATRICK "PADDY" BENJAMIN

JOYCELYN BENJAMIN

Employers

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. Dr. Hayden Thomas

Member

The Hon. Samuel R. Aymer

Member

Appearances:

Mr. Anderson E. Carty of the Antigua & Barbuda Tradesmen & United Workers'
Federation for the Employee

Mr. Craig Christopher, Attorney-at-Law of Christopher Gonsalves & Co. for the Employer

2014: June 10

2015: October 2

JUDGMENT

BROWN, P.

Background:

1. The Employee was employed by the Employer's as a Domestic Assistant commencing in October 2010 and paid weekly wages of \$300.00.
2. On or about July 13, 2012, the First Employer confronted the Employee about \$200.00 that had gone missing from his wallet. The Employee denied taking the money.

3. The Employers terminated the services of the Employee on the ground that they no longer trusted her but did not issue a letter of dismissal.
4. By Reference filed on April 24, 2013, the Employee claimed that she was unfairly dismissed. The details of the claim were set out in her Employee's Memorandum filed on March 1, 2014. Her Witness Statement was filed on March 14, 2014.
5. In response to the Employee's claim, the Employers filed their Memorandum on April 11, 2011 followed by Witness Statements filed on May 8, 2015.

The Preliminary Submission

6. At the commencement of the trial Anderson Carty, the Employee's Representative, made a preliminary submission that by virtue of section C10 of the Antigua & Barbuda Labour Code (the Labour Code), the Employers were estopped from introducing any evidence regarding the fairness of the Employee's dismissal.
7. Mr. Carty contended that the effect of the estoppel was to automatically render the dismissal unfair. He further contended that the Court should proceed to assess the quantum of compensation payable to the Employee.

Section C10

8. Section C10 of the Labour Code provides that:

"C10 (1) Upon the 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.

(2)

(3)

(4) An employer who fails to furnish either the statement or the certificate shall be estopped from introducing testimony as to facts which might have been

recited in said statement or certificate, in any proceeding testing the fairness of the dismissal or his liability for severance pay whichever is applicable.”

The Ruling

9. Upon the concession by Craig Christopher, Attorney-at-Law that the Employers had failed to provide the Employee with a Written Statement of her dismissal, the Court ruled that the estoppel took effect with the result that the Employee had been unfairly dismissed.

Assessment of Compensation

10. After ruling in favor of the Employee and effectively barring the Employers from denying liability for the unfair dismissal of the Employee, the Court proceeded to assess the compensation due to her.
11. The relevant facts extracted from the Employee's unchallenged testimony or as determined by the Court on the balance of probabilities are as follows:
 - (a) The Employee worked 4 days per week at the rate of \$75.00 per day
 - (b) At the date of her dismissal the Employee was entitled to 8 days accrued vacation.
 - (c) After her dismissal the Employee did not find further employment until May 20, 2013 for which she was paid weekly wages of \$150.00 for 2 day's work.
 - (d) The Employee was obliged to obtain a fresh work permit and pay the related fees of \$500.00
 - (e) In the process of making applications and being interviewed by prospective employers, the Employee was forced to disclose that the Employers were her previous employers and the circumstances of her dismissal.
 - (f) The delay in finding further employment was largely due to the Employee's forced disclosure as to the identity of the Employers and their stated reasons for dismissing her.

The Awards

12. In the circumstances, I make the following awards under the respective headings:

(a) Loss of protection from Unfair Dismissal

Under this head I award the equivalent of the minimum prescribed as severance pay under Section C41 of the Labour Code, one day's pay for each month of employment: **\$1,575.00** (\$75x21).

(b) Pay in lieu of Notice

Under Section C9 (3) (b) of the Labour Code, the Employee is entitled to no less than one week's notice of the termination of her services. Accordingly, I award the sum of **\$300.00** being the equivalent of her weekly wages.

(c) Pay in lieu of accrued Vacation

It is common ground that at the date of her dismissal the Employee was entitled to 8 days (2 weeks) annual vacation. Accordingly, I award the sum of **\$600.00** (\$300x2).

(d) Immediate Loss

The amount awarded under this head is intended to compensate the Employee for the loss she suffered immediately after her dismissal up to the date of her trial. The Employee made efforts to mitigate her loss. However, she did not find further employment until approximately 10 months after her dismissal. In my view she should have been able to earn the equivalent of her previous wages within 4 months after her dismissal. In the circumstances, I award her the equivalent of 4 months' pay in the sum of **\$5,200.00** (\$1300x4).

(e) Manner of Dismissal

I find as a matter of fact, that the Employee was rendered less attractive to prospective employers because of the manner of her dismissal. The allegations by the Employers that the Employee was dishonest and could not be trusted are critical factors determining whether the Employee found a new job sooner or later. In the circumstances of this case, I award **\$3,900.00**, the equivalent of 3 months wages.

(f) Costs

As provided under Section C10 (2) of the Industrial Court's Act. Costs are awarded only where exceptional reasons exist. Given the clear provisions of Section C10 (4) of the Labour Code, the Employers abused the Court's process by allowing this Reference to take its full course until it came to a trial. . On facts of this case, I consider it proper to award costs in the sum of **\$2,000.00**.

13. The total award is **\$13,575.00** which sum must be paid by the Employer to the Employee no later than October 30, 2015.

Dated this the 02nd day of October, 2015



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HON. CHARLESWORTH O.D. BROWN
PRESIDENT

I agree



.....
HON. DR. HAYDEN THOMAS
MEMBER

I also agree



.....
HON. SAMUEL R. AYMER
MEMBER