

IN THE INDUSTRIAL COURT

ANTIGUA AND BARBUDA

REFERENCE NO.C/ULP/ 15 of 2016

BETWEEN:

FITZROY FARRELL

Employee

AND

I.M. LAND LTD

Employer

Before:

The Hon. Charlesworth O.D. Brown (In Chambers)

President

Appearances:

The Employee in person.

Mr. Craig L. Jacas of Stapleton Chambers, Attorney-at-Law for the Employer

2016: August 18
October 21

Brown, P

DECISION ON ASSESSMENT OF COMPENSATION

Background

1. The Employee was employed by the Employer as a Driver commencing on January 11, 2014. He was dismissed by letter dated September 30, 2015 at which time he earned \$750.00 per fortnight.
2. These proceedings were commenced by the Reference filed on March 16, 2016. Upon the application of the Employee, Judgment in Default was entered in his favour August 04, 2016.
3. At the assessment of compensation held on August 18, 2016, the Employee relied on his Witness Statement filed on June 13, 2016 as supplemented by his oral



testimony and his bundle of exhibits attached to his Memorandum of Claim filed on June 13, 2016. The Employer's Director, Mr. Ian Ireland, testified on behalf of the Employer at the hearing.

4. After the hearing, the Employee, acting on his own behalf, filed an "Adjusted Claim" on August 19, 2016. The Employer's Counsel filed Closing Submissions on August 22, 2016.

Assessment

Outstanding Severance Pay:

5. At the date of termination the Employer paid the sum of \$1,050.00 to the Employee. He contended that his full entitlement is \$1,312.00 so that there is a balance of \$262.00 due to him based on his last wages of \$750.00 per fortnight. On the other hand the Employer contends that at the said rate of pay the outstanding balance is only \$74.97.
6. The Employee contended that his last daily rate of pay was \$62.50. His Witness Statement was silent in that regard. Under cross examination he insisted that his hourly rate was \$12.50 and that he worked five (5) hours per day making \$62.50 his daily rate. I am not convinced by his evidence. As a result, I find that he was entitled to \$1,124.97 being twenty-one (21) days' pay at the rate of \$53.57 per day. Since he was paid \$1,050.00 at the date of termination the balance due to him is \$74.97.

Vacation Pay

7. For the eleven (11) month period, January 2014 to November 2014, the Employee's daily rate of pay was \$43.33. His entitlement to vacation pay for that period is \$476.63 ($\$43.33 \times 11$). For the ten (10) month period, December 2014 to September 2015, his entitlement to vacation pay is \$535.70 ($\$53.57 \times 10$). The total entitlement under this head is \$1,012.33 ($\$476.63 + \$535.70$). Since the Employee was paid \$1,050.00, he was over-paid by \$37.67.

Outstanding Public Holiday Pay

8. Typically, there are 11 public holidays per year in Antigua & Barbuda. For the first period of his employment, January 11, 2014 to November 2014, the Employee is entitled to public holiday pay for 7 typical days plus one declared after the general elections in June 2014. As a result, he is entitled to 40 public holiday hours times 150% of his hourly rate of \$8.67 making a total of \$520.20 [$40 \times (\$8.67 \times 150\%)$]

9. For the second period December 2014 to September 2015 the Employee is entitled to public holiday pay for an additional 10 public holidays or 50 public holiday hours at the rate of 150% of his hourly rate of \$10.71 making a total of \$803.25 [50 x (10.71 x 150%)]

10. The total award under this head is \$1,323.45

Premium Pay

11. Under section C27 of the Antigua and Barbuda Labour Code, an employer is obliged to give premium pay to an employee who has worked in excess of 8 hours in any 24 hour period or in excess of 48 hours in any 168 hour period. The Employee's evidence discloses no or no sufficient basis for an award under this head.

Outstanding Wages

12. The Employer concedes that the Employee is entitled to be paid all sums deducted from his salary in respect of vehicle repairs while the Employee was on suspension. In the circumstances, I award the sum of \$912.71 under this head.

Loss of Use of the Vehicle

13. On a balance of probabilities, the Employee has proved his claim for compensation for loss of use of the company's vehicle. In my opinion, the quantum of his claim is justified. Accordingly, I award the sum of \$1,305.00 under this head.

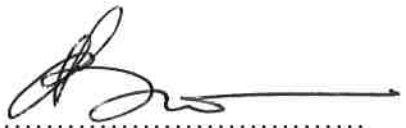
Costs

14. The evidence discloses no exceptional reasons to ground an award of costs. As a result, the Employee's claim under this head is denied.

Order

15. The Employer shall pay to the Employee the total award in sum of \$3,578.46 no later than November 15, 2016.

Dated 21st October 2016


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Charlesworth O. D. Brown
President

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