

ANTIGUA AND BARBUDA
IN THE INDUSTRIAL COURT

REFERENCE NO. 17 of 2013

BETWEEN:

VENETA BURTON

Employee

and

PIRATES OF ANTIGUA LTD

Employer

Before:

The Hon. St. Lawrence de Freitas

Chairman

The Hon. Samuel R. Aymer

Member

The Hon. Judith Dublin

Member

Appearances:

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

No appearance by or on behalf of the Employer

2016: September 20

December 02

JUDGMENT

De Freitas, Chairman

Background

1. By Reference dated 18th of March 2013 the Employee Ms. Veneta Burton (hereafter referred to as the Employee or Ms. Burton) who lives at Cedar Valley, St. John's Antigua has filed a complaint to the Court that she was unfairly dismissed by her Employer Pirates of Antigua Ltd, and that she is entitled to compensation.
2. Pirates of Antigua Ltd., (hereafter referred to as the Employer or the Company) is a registered company (with its registered address as Watt & Associates, 55A Newgate



Street, St. John's, Antigua.) and operated a boat cruises operation with on board meals drinks and other entertainment as part of the tourist industry.

Proceedings

3. The Employee filed her Memorandum on the 17th May 2013. In her Memorandum she claims *inter alia* that having regard to "natural justice and good industrial relations practices in Antigua and Barbuda" that her "dismissal was clearly in violation of law and is therefore, grossly unfair". She asked the Court to so rule and to grant appropriate awards of compensation under the requisite heads.
4. By an application filed with the Court on May 30, 2016, and in accordance with Industrial Court (Procedure) Rules, 2015 (Statutory Instrument (No.61 of 2015)) the employee through her representative has made application for Judgement in default on liability to be entered in her favor and that the Court proceed to the assessment of compensation for unfair dismissal.
5. The Employee through her representative Mr. Anderson Carty has sworn an "Affidavit of Service and filed on May 30, 2016 that on August 12th 2015 he duly served a copy of the reference in this matter together with the copies of the Employee's Memorandum her Witness Statement and other trial exhibits, on the registered office of the Company.
6. The Court made an Order, filed on the 13th day of June 2016, that "UNLESS the employer files and serves all relevant documents including its Memorandum, Witness Statement, Bundle of Exhibits and Pre-Trial Questionnaire on or before July 8, 2016 Judgement in default be entered in favor of the Employee with damages and costs, if any, to be assessed by the Court".
7. The Court fixed the matter to be heard on September, 20th 2016.
8. Up to and including the hearing date, the Employer failed to respond to the UNLESS order of the Court.
9. After careful consideration of the Application by the representative for the Employee, and also having looked at the "Affidavit in Support" by the Employee, and the "Affidavit of Service" sworn to by her representative, and in addition the UNLESS order of the Court and all the other Documents filed, and further in the interest of Good Industrial Relations, it is the decision of the Court to proceed to enter judgement in favor of the Employee.
10. The Employee is deemed to have been unfairly dismissed.

Assessment of Compensation for Unfair Dismissal

The Evidence

11. The Employee worked with the Company from February 2009 until May 25th, 2012. She last held the position of Managing Director with a monthly salary of \$6,250.00 with the additional benefit of the use of a company vehicle. She further gave evidence that the Company provided free maintenance and fuel for the vehicle's operation.
12. The Employee further gave evidence that she is entitled 12 working days per year, that she has not had vacation for the 3.25 years of her employment and that she is therefore due 39 working days' vacation pay.
13. The Employee informed the Court that on May 25th 2012, Mr. Villiers (the owner of the Company) told her that he had to "sack" her with immediate effect. He later explained that he had sold the Company and that the new buyer already had someone to work in her position. She also told the Court that Mr. Villiers, by letter dated June 1st 2012, modified the reason for her dismissal and accused her *inter alia* of being negligent and incompetent.
14. The Employee's evidence is that after her dismissal she made application to several establishments including; The Blue Waters Hotel, Carlisle Bay Resort, Jumby Bay (Rosewood) and Sandals without success. She obtained employment in the United States in October 2012.
15. By her Witness Statement filed on 12th August 2015 the Employee is seeking compensation for, Basic Award, (including fringe benefits) Immediate Loss, Future Loss, Manner of Dismissal, Exemplary Damages and Cost.

The Law

16. The Antigua & Barbuda labour Code at Section C56, States:

*C56. 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.*

17. The Industrial court Act (Cap 214), Sec 10 (3) b 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) ...

(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.*

18. The Industrial Court (Procedure) Rules 2015. [Statutory Instrument 2015. No. 61]
Sec 34.

Judgment in Default

- (1) The party which files a Reference may apply to the Court for a Judgment in Default without a trial when the other party has failed to file its Memorandum of Defence.
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) ...
- (7) ...

The Award

19. An Employee who is held to be unfairly dismissed is entitled to certain awards under specific established headings. Ms. Burton's awards are as follows.

(a) Basic Award

The Employee was employed with the company from February 2009 to 1st June 2012. This is period of 3 years and 3 months. Her last salary was \$6,250.00 per month, she is therefore entitled to $(\$6,250.00 \times 39/12) = \$20,312.50$.

(b) Immediate Loss

The dismissed Employee is under a duty to take reasonable steps (which may include starting up her own business), to mitigate her loss – see *Antigua Village Condo Ltd v Jennifer Watt* (Civil Appeal No 6 of 1992).

The Employee gave evidence that she made several attempts to mitigate her losses. We therefore award her three months' salary. She is therefore entitled to - \$18,750.00

(c) Manner of Dismissal

We do not find that the Employee was made less acceptable to potential Employers or exceptionally liable for selection to be dismissed. (*Leslie Emanuel v Royal Bank of Canada Reference #3 of 1994*). The Employee is therefore not entitled to any award under this head.

(d) Future Loss

The evidence is that at the time this matter came to trial, the Employee had found employment with the Government of Antigua & Barbuda within the Ministry of Tourism. There was no evidence led to establish what her present salary is, with the Ministry of Tourism.

“The head, loss of future wages provide little difficulty when the employee has obtained other employment. There can be a determination of the difference between the current and the former remuneration. If the current remuneration is less than the former, it will form part of the loss, and then the length of time such a situation is likely or expected to last is estimated for the purpose of the calculation”. (Antigua Commercial Bank v Mary White Civil Appeal #1 of 1988. Bishop J.A.)

However, given the lack of evidence led in this regard, this Court is unable to assess whether the current remuneration is the same, less or more than the former.

We therefore make no award under this head.

(e) Fringe Benefits

The value of the use of a company vehicle we assess to be \$500.00 per month, she is therefore entitled to an additional $(\$500.00 \times 39/12) = \$1,625.00$

(f) Notice Pay

The evidence is that the Employee is entitled to 1 month's pay in lieu of notice = \$6250.00. At the time of dismissal she was paid \$5582.29 as notice pay (See letter of dismissal dated 1st June 2012). She is therefore entitled to the difference of \$667.71

(g) Vacation Pay

The Employee gave evidence that she is entitled to 12 working days' vacation per year, that she had not had vacation during the 3 years and 3 months of her employment.

She is therefore entitled to $(3.25 \times 12) = 39$ working days @ \$242.31 per day = \$9453.21.

At the time of dismissal she was paid \$2659.57. She is therefore entitled to the difference = \$6793.64

(h) Exemplary Damages

Section 10 (4) and (5) of the Industrial Court Act Cap. 214 of the Laws of Antigua and Barbuda make provision for an award of exemplary damages to be made to an employee where he has been dismissed in circumstances that are harsh and oppressive or not in accordance with good industrial relation practices.

The principles which guide the Court in the making of such an award are set out in the matter of *Elliot Arnim Street and Caribbean Star Airlines Ltd. #19 of 2005 at Para.166*. (A matter decided by this Court). They are that exemplary damages are to be awarded only if the compensatory award is inadequate; for an award the employee must have suffered some punishable behavior; that the power to award exemplary damages should be used with restraint; and that the award should be moderate.

“By a certificate of exhibit filed on June 2nd 2016 the registered office of the Pirates of Antigua Ltd is “Watt & Associates, 55A Newgate Streets, St. John’s, Antigua,” and Mr. Michael Villiers is the Incorporator.

By letter dated October 21st, 2015 and filed with the Court October 22 2015 and accepted in evidence as part of the Employee’s bundle.

It was revealed that Dr. Dorsett, of Watt & Associates met with Mr. Villiers (the Company) and apprised him of the Employee’s claim including documents and information of the Court proceedings. Notwithstanding these effort the Company failed to file any and all documents with the Court and failed to respond to the UNLESS order of the Court, exhibiting total disregard and contempt for the Court.

We find that this disregard caused the Employee additional effort and expense to file an Application asking the Court to issue an order for “Judgement in Default on Liability”. [Industrial Court (Procedure) Rules Sec 34]. We find that this total disregard for the Employee amounts to a punishable behavior by the Employer in that he failed to act in accordance with good industrial relation practices. We therefore award a moderate amount under this head of \$6,000.00.”

(i) **Cost** There shall be no order as to cost.

Summary of Awards.

Basic Award:	\$20,312.50
Immediate Loss	18,750.00

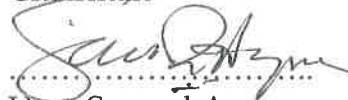
Manner of Dismissal	0.00
Future Loss	0.00
Fringe Benefits	1,625.00
Notice Pay	667.71
Vacation Pay	6,793.64
Exemplary Damages	6,000.00
Cost	<u>0.00</u>
Total Award	<u>\$ 54,148.85</u>

The Employer shall pay to the Employee the sum of **\$54,148.85** on or before December 31, 2016.

Dated the 02 day of December, 2016



Hon. St. Lawrence de Freitas
Chairman



Hon. Samuel Aymer
Member



Hon. Judith Dublin
Member

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