

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. C/UD/2/2014

BETWEEN:

RAYMOND DICKENSON

Employee

and

BELMONT CLINIC LTD t/a BELMONT PHARMACY

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

Appearances:

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

Mr. D. Raimon Hamilton of Hamilton & Associates, Attorney-at-Law for the Employer

2016: April 27
July 29

DECISION ON ASSESSMENT OF COMPENSATION

Background

1. The Employee was employed by the Employer as Inventory Packer for a total of four (4) years and ten (10) months from November 10, 2008 to September 30, 2013. His last salary was \$2,475.00. By Reference filed on January 21, 2014, he claimed compensation for unfair suspension and unfair dismissal.
2. Upon the application of the Employee, Judgment in Default on liability only was entered in favor of the Employee on December 28, 2015 and the assessment of compensation was deferred.
3. At the hearing for the assessment the Employee relied on his Witness Statement filed on March 24, 2016 and his bundle of exhibits filed on March 31, 2014, on the basis of which he was cross-examined.



Assessment

4. Based on his witness statement and oral testimony, I assess compensation as follows:

(1) Notice Pay

Under section C9 of the Antigua & Barbuda Labour Code (the Labour Code) the Employee was entitled to one month's advance notice of the termination of his employment. He did not receive the required notice. As a result, I award the sum of **\$2,475.00**, being equivalent of one month's pay, in lieu of notice.

(2) Loss of Protection

The Employee's right not to be unfairly dismissed is established by Section C 56 of the Labour Code. It is well settled that the measure of compensation for the loss of protection against unfair dismissal is equivalent to severance pay. Although Section C 41 of the Labour Code sets the minimum rate for the calculation of severance pay, it is also well settled that monthly paid employees are entitled to compensation under this head at the rate of one month's pay for each year of service. Since the Employee worked for 4.83 years, the award under this head is **\$11,954.25** ($\$2,475 \times 4.83$)

Counsel for the Employer expressly conceded the sum of \$11,962.50 as erroneously calculated by the Employee.

(3) Immediate Loss

An employee who has been unfairly dismissed has a duty to mitigate his loss. Subject to that duty, loss under this head is for the period between the date of dismissal and the date of trial or assessment.

The Employee's claim is for \$17,325.00, the equivalent of his full salary for a period of 7 months. He is entitled to recover for his loss of salary less his earnings in the interim. Given his skill and salary levels, I fix a period of 2 months during which the Employee had no income after his dismissal. Accordingly, I award the sum of \$4, 950.00, being the equivalent of his full salary for two months. ($\$2,475 \times 2$).

If he made diligent efforts, the Employee should have been able to earn at least then prevailing minimum wage of \$300 per week or \$1,300.00 per month for the following five (5) months. Accordingly, I award the additional sum of \$5,875. 00 $\{(\$2,475 - \$1,300) \times 5\}$, making a total of **\$10,825.00** under this head.

(4) Future Loss

Under this head, the Employee's claim is for \$6,300, the equivalent of the difference between old and new salaries (\$525.00) for a period of 12 months. I accept his evidence that at the date of the assessment, the Employee's salary was \$1,950.00 per month. He is entitled to the difference between that amount and his previous salary from the Employer, ($\$2,475 - \$1,950$) for a period

after the date of the assessment. In my view, if he is diligent the Employee should be able to earn the equivalent of his previous level of salary within six months. Accordingly, I award **\$3,150.00** $\{(\$2,475 - \$1,950) \times 6\}$ being the difference in salary for a period of six months after the date of assessment.

In making the award under this head, I am mindful of the many uncertainties and imponderables of life.

(5) Retroactive Balance

Given his lack of protest and/or enquires regarding the reduction of his working hours and salary over the period of 15 months, the Employee is deemed to have accepted the unilateral variation of his contract of employment. However, under no circumstances should his salary have been reduced below the national minimum level. The difference between his average varied salary of \$500.00 per fortnight or \$250.00 per week and the national minimum of \$300.00 per week is \$50.00. In the circumstances, I award the sum of **\$3,250.00** $\{[(\$50.00 \times 52) \div 12] \times 15\}$, being the total of the monthly differences for the period.

(6) Vacation

Under the contract, the Employee was entitled to annual vacation of twelve (12) work days. Accordingly, I award the sum of **\$1,370.76** $(\$114.23 \times 12)$.

5. Costs

The facts of his case disclose exceptional reasons on the basis of which I will award costs. In particular, I am mindful of the following:

- (1) A fundamental term of the contract of employment was unilaterally varied by the Employer. There was no consultation or advance warning of the drastic variation.
- (2) The suspension of the Employee was effected with no regard for the principles of natural justice.
- (3) The suspension although stated to be for four (4) weeks, was effectively for a period of two (2) months. Apart from being greater than the statutory limit, suspension for 4 weeks without pay was harsh.
- (4) Having regard to the Employee's claim, filed since January 2014, and the Employer's apparent disregard for the ensuing Orders of the Court, the Employer's conduct in prolonging this matter is blatantly contrary to the principles and practices of good industrial relations. In the process, the Employer inflicted unnecessary hardship and expenses on the Employee.

Based on those exceptional reasons, I award costs in the sum of **\$4,000.00**.

6. Order

- (1) The Employer shall pay to the Employee:
 - (a) Compensation in the sum of \$33,025.01 for his unfair dismissal.
 - (b) Costs in the sum of \$4,000.00.
- (2) Payment of the said sums totaling \$37,025.01 must be made no later than August 30, 2016.

Dated this 29th July 2016



.....
Charlesworth O. D. Brown
President