

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 60 OF 2014

BETWEEN:

CATHERINE NATION

Employee

and

**KENO PALACE CASINO
(ANTHONY VELARDI)**

Employer

Before:

The Hon. Charlesworth O.D. Brown
St. Lawrence de Freitas
The Hon. Samuel R. Aymer

President
Member
Member

Appearances:

Mr. Lawrence Daniels of Daniels Phillips & Associates, Attorney-at-Law for the Employee

Ms. Cicely Charles of Hotel Management Association, Representative for the Employer

2015: October 19
2016: October 21

JUDGMENT

Brown, P:

Background

1. The Employee commenced her employment in May 1992. Her last position was that of Staff Instructor/ Marketing Director from which she earned a weekly salary of US\$500.00 plus a commission of 2.5%.
2. Following periods of lay-off and recall between 2008 and 2013, the Employee was laid off with effect from April 4, 2014. The letter of temporary termination stipulated a "return date" six months later on October 4, 2014.



3. The Employee reported for work on October 4, 2014 but there was no work for her to perform. The Employer told her that he would call to inform her when to return to work on a subsequent date but he never did so.
4. By Reference filed on December 11, 2014 and her Memorandum of Claim, the Employee claimed her "due severance monies" to which she was entitled. She also raised the issue of Unfair Dismissal but did not pursue this at the trial. The Employee also raised the issue of her entitlement to payment in lieu of vacation (Vacation Pay) and ultimately contended that she was entitled to ten (10) days' pay.
5. The Employer's Memorandum and Witness Statement were filed on March 23, 2015. The main thrust of the Employer's case is that the Employee failed to return to work after the temporary termination and thereby abandoned her job.

Proceedings in Court

6. At the commencement of trial on October 19, 2015 the Employer's sole witness, Mr. Bruce Churchill, the Manager at the date of the Employee's termination, failed to appear. The Employer's application for an adjournment to allow him to return to Antigua to testify was denied. As a result the trial proceeded with the Employee as the sole witness. She was cross examined extensively by the Employer's Representative, Mr. Egbert Joseph (now deceased).

The Main Issue

7. The main issue for determination by the Court was whether the Employee was entitled to Severance Pay for her years of service to the Employer.

Severance Pay

8. Section C42 of the Labour Code provides as follows:
 - (1) **"Subject to the other provisions of this section simultaneously upon the termination of employment of any employee entitled to severance pay under section C 40, the employer shall remit to that employee severance pay computed in accordance with section C41.**
 - (2) **If the termination be stated as temporary, no severance pay need be remitted to the terminated employee at the time of termination:**

Provided however that

- (a) Where the date of recall, if one is given at the time of termination, be six months or more in the future, severance pay shall be payable on the date of the original termination;
- (b) If no date of recall is given at the time of termination, severance pay shall be payable when and if, after three months from the termination, the employee shall not have been recalled;

In which case, interest at the rate of ten per cent per annum on the amount of severance pay due shall be payable for the interval between the original termination date and the date of actual payment.

- (3) After such payment with interest has been made, if the employee is recalled to his past or substantially equivalent employment, or is again hired by the same employer, he shall be considered to be newly hired and his term of employment, for subsequent severance pay purposes, shall be considered to have commenced on the date of recall or rehire."

The Submissions

- 9. In his closing submissions Mr. Daniels, Counsel for the Employee, summarized her claim as follows:

- (a) Compensation for Unfair Dismissal in the sum of US\$1,200.00.
- (b) Severance pay for 19 years in the sum of US\$38, 000.00.
- (c) Ten (10) days vacation pay in the sum of US\$1,000.00.
- (d) Six months loss of job protection in the sum of US\$12,000.00.
- (e) Notice pay in the sum of US\$2,000.00.

- 10. On the other hand, Mr. Joseph, the Employer's Representative submitted that:

- (a) The Employee failed to return to work on the stipulated date and thereby effectively abandoned her job.
- (b) There was no evidence to prove that the Employee was unfairly dismissed.
- (c) The Employee's claim for compensation should be dismissed.

Assessment of Compensation

- 11. After a careful analysis of the evidence, we find that the termination of the Employee's services was grounded on redundancy. Accordingly, she is entitled to compensation under the following heads:

- (1) Severance Pay

The Employee's lawful employment commenced in 1994 when she obtained her work permit. There is no evidence in respect of the actual date of commencement. She testified that her employment was terminated on April 4, 2014. In the circumstances we accepted Counsel's submission and fix the period of her employment at 19 years. Further, although her testimony was sketchy in respect of her rate and interval of pay, doing the best we can, we find that she earned US\$500.00 per week or \$100.00 per day. Under Section C41 of the Labour Code, an employee is entitled to at least one day's pay for each month of service. Although the Employee was given the title Staff Instructor/ Marketing Director, her substantive duties reflected a less significant position. Accordingly, we apply the minimum rate and **we award the sum of US\$22,800.00** as the Employee's Severance Pay. (228 months @\$100.00 per month).

(2) Notice Pay

The Employee was temporarily terminated on April 4, 2014 with a recall date six months later. The evidence discloses that, she received no notice of her termination. Based on Section C9 of the Labour Code, **we award the sum of US\$500.00** being the equivalent of one week's pay in lieu of Notice.

(3) Vacation Pay

We accept the Employee's oral testimony given under Cross Examination that at the date of her termination she was entitled to payment in lieu of two (2) weeks or ten (10) work days accrued vacation. As a result, **we award the sum of US\$1,000.00** under this head.

(4) Interest

In the circumstances of this case the Employee is entitled to interest at the rate of 10% per annum on her Severance Pay for the period April 2014 until the date of payment. To the present date, we award interest in the sum of US\$5,130.00 representing interest for 2 years and 6 months.

Order

12. We order that:

- (1) the Employer do make the following payments to the Employee:
 - a. Payment in lieu of Notice in the sum of US\$500.00.
 - b. Payment in lieu of accrued vacation in the sum of sum of US\$1000.00
 - c. Severance Pay in the sum of US\$22,800.00.

- d. Interest on the said Severance Pay in the sum of US\$5,700.00
- (2) The Employer shall pay the total award in the sum of **US\$30,000.00** to the Employee no later than November 30, 2016.
- (3) In the event that the debt is not paid on or before October 31, 2016, the Employer shall pay additional interest on the said Severance Pay at the rate of 10% per annum.

Dated this 21st day of October, 2016.



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



.....
St. Lawrence de Freitas
Member



.....
Samuel R. Aymer
Member

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 60 OF 2014

BETWEEN:

CATHERINE NATION

Employee

and

**KENO PALACE CASINO
(ANTHONY VELARDI)**

Employer

JUDGMENT

Dated 21st October, 2016

Charlesworth O.D. Brown, President

St. Lawrence de Freitas, Member

Samuel R. Aymer, Member