

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE: NO. 63 OF 2015

BETWEEN:

VIOLET ELSON

Employee

and

LEROY HUMPHREYS

T/A LEROY'S CAR WASH AND BRAKE SERVICE

Employer

Before:

Hon. Charlesworth O.D. Brown

President

Hon. Mr. John Benjamin

Member

Hon. Ms. Judith Dublin

Member

Appearances:

Mr. Septimus A. Rhudd, Attorney-at-Law of Rhudd and Associates for the Employee

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

July 11, 2016

JUDGMENT

Background

1. The Employer carries on the business of brake repairing, fabricating of brake shoes in addition to the provision of automated car wash services at Bendals Road, in the Parish of St. John.
2. The Employee was employed by the Employer as a Cleaner from December 2000 until August 28, 2014 when she was terminated by a letter bearing the same date. Her duties included the sweeping and cleaning of the business premises. At the date of her dismissal her wages were \$80.00 per day.



3. At first blush, the dismissal letter does not state a precise reason for dismissal and as such appears to be in contravention of Section C10 of the Antigua & Barbuda Labour Code. However, the point was not taken or pursued by the Employee. Instead, her claim by Reference filed on November 20, 2015 focused exclusively on the quantum of her entitlement to Severance pay. She contended that the payment at the time of her termination was incorrectly calculated.
4. It was common ground that the Employee was a part-time worker. At the heart of the matter is the question of the number of days per week that the Employee worked. The answer to that question would determine the amount of Severance Pay to which she was entitled. On the one hand, the Employee contended that she worked three (3) days per week, including Saturdays, while her Employer asserted that she worked on two (2) week days.
5. It was also agreed that at the date of her termination she received the sum of \$2,410.00 as her Severance entitlement.
6. Having regard to the content of the Memoranda of the parties, the issues for determination are:
 - (i) Whether the Employee worked three (3) days per week including Saturdays.
 - (ii) Whether the Employee is entitled to additional Severance Pay.

Resolving the Issues

7. After careful consideration of all the evidence, and having regard to the surrounding circumstances, we resolve both issues in favour of the Employee and will enter Judgment on the following bases:
 - (1) The Employee worked three (3) days per week, including Saturdays.
 - (2) Her last wages were paid at the rate of \$80.00 per day.
 - (3) The payment of said sum \$2410.00 did not represent her full entitlement to Severance Pay.
 - (4) The Employee is entitled to interest at the rate of 10% per annum on the balance of the Severance Pay to which she is entitled pursuant to Section C42 of the Labour Code.
 - (5) The Employee is entitled to payment in lieu of notice of her termination pursuant to Section C9 of the Labour Code.
 - (6) The Employee is entitled to payment in lieu of vacation accrued up to the date of her termination.

The Closing Submissions

8. At the end of the trial, both Mr. Rhudd and Ms. Charles made very instructive submissions. For her part, Ms. Charles conceded that an additional sum is due to the Employee based on her part-time work on two (2) days per week. Mr. Rhudd submitted that the additional compensation due to the Employee should be based on three (3) days work per week. Mr. Rhudd was more persuasive.

The Award

9. Having regard to the evidence as a whole and the closing submissions, we accepted the Employee's position and awarded her compensation as follows under the specific heads:

- (1). Payment in Lieu of Accrued Vacation

In April 2014, the Employee was paid for her vacation entitlement up to March 2014 in accordance with the recommendation of the Labour Department. She received no additional vacation after that date. As a result we agree that she was entitled to additional payment in lieu of vacation for the five-month period from April to August 2014: Had she been working a five-day work week she would have been entitled to \$400.00, the equivalent of 5 days pay at \$80.00 per day. Since she worked for only 3 days, **we award the sum of \$240.00**, being 3/5 of \$400.00

- (2). Payment in Lieu of Notice of Termination

The Employee is entitled to the equivalent of one week's pay in lieu of notice. Therefore, **the award under this head is \$240.00** (\$80.00 x 3).

- (3). Balance of Severance Pay

The parties agree that the Employee worked for a total of 144 months. Her last wages were \$80.00 per day. She is entitled to one day's pay for each month worked. Had she worked a full week she would have been entitled to \$11,520.00 (\$80.00 x 144). Since she worked only 3 days per week, her full entitlement would be \$6,912.00 or 3/5 of \$11,520.00. Further, since the Employee received the sum of \$2,410.00 at the date of her termination, **we award the balance of \$4,502.00** (\$6,912.00 - \$2,410.00).

- (4). Interest on Balance of Severance Pay

The Employee is entitled to interest at the rate of 10% per annum on the outstanding balance of her Severance pay. Accordingly, **we award the sum of \$450.20** (10% of \$4,502.00).

Order

In the premises, we order as follows:

1. The Employer shall pay to the Employee the following amounts:

(1) Payment in lieu of accrued vacation	\$ 240.00
(2) Payment in lieu of notice of termination	240.00
(3) Balance of severance pay	4,502.00
(4) Interest on severance pay	<u>450.20</u>
Total	<u>\$5,432.20</u>
2. The Employer shall pay the said total sum of \$5,432.20 to the Employee by five (5) equal monthly instalments of \$1,081.44 commencing on the 29th day of July 2016 and continuing on the last regular workday of each successive month until the said total sum is paid in full.
3. There is no order as to costs.

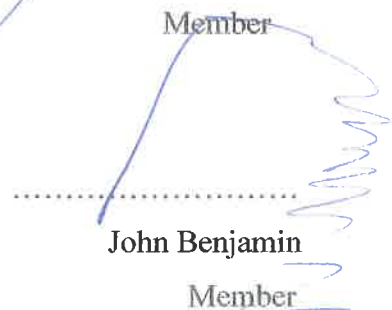
Dated the 20th day of July, 2016



Charlesworth O. D. Brown
President



Judith Dublin
Member



John Benjamin
Member