

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 36 of 2014

BETWEEN:

DERRICK NICHOLAS

Employee

and

ALLIED HOTELS AND RESORTS T/A GRAND ROYAL ANTIGUAN BEACH
RESORT

Employer

Before:

The Hon. St. Lawrence de Freitas
The Hon. Dr. Hayden Thomas
The Hon. Megan Samuel-Fields

Chairman
Member
Member

Appearances:

Ms. Cicely Charles of Antigua Hotel Management Association, Representative for the Employee
Ms. Kari-Anne P. Reynolds of Hill & Hill, Attorneys-at-Law for the Employer

2016: October 4
2017: December 1

JUDGMENT

De Freitas, Chairman

Background

1. By reference filed on the 31st July, 2014 the Employee Mr. Derrick Nicholas (hereinafter referred to as **Mr. Nicholas or the Employee**) who lives at Willikies Village, Antigua has filed a complaint and lists the issues in dispute as 1. Breach of Contract and 2. Unfair Labour Practices and he is claiming that he is entitled to compensation.
2. Allied Hotels and Resorts Ltd. (hereinafter referred to as the **Resort or the Employer**) is a Hotel at Deep Bay, Antigua, doing business as Grand Royal



Antiguan Beach Resort. It provides accommodation, food and beverage services to its guests on the Island. The Head office of the Company is in Trinidad.

Procedure

3. The Employee filed his Memorandum on the 19 August 2014. In his memorandum he complains that in April 2013 he had certain communication with the owner of the resort, Mr. Issa Nicholas, where he showed interest in obtaining a Job at the Resort as their Resident Manager.
4. The Employer filed their Memorandum on the 5th November 2014. They deny that Mr. Issa Nicholas is the owner of the Resort but concedes that he is a shareholder and officer of the Company.
5. The Employer admitted that they sent the Document complained of by e-mail dated 10th May 2013. They however maintain that it was a draft proposal and they deny that they entered into any contract of service with the Employee.
6. The Employer contend that there was no employment contract between the Employer and the Employee
7. The Employer further contends that to the extent that the Employee has a claim against the Employer it is one for breach of contract. Their plea is that this Court has no jurisdiction to hear the matter.

The Evidence

8. Mr. Nicholas gave evidence that during the Month of April 2013 he had 'reached out' by E-mail and telephone to the owners of the Grand Royal Antiguan Beach Resort (the Allied Hotel and Resort with Headquarters in Trinidad [**The Resort**]). He told the Court that he indicated his interest in obtaining a job as a Marketing Executive.
9. Mr. Nicholas further gave evidence that after several communications with the **Resort**, that on the 10th May 2013 he received a job offer from the owners of the Resort. He also told the Court that on receipt of the offer, he immediately signed the document and returned it to Employer's head office in Trinidad.
10. The Employee told the Court that the Document he received contained the starting date for the employment to begin, that is, on the 1st June 2013 and also included a stated salary of US\$4000.00 together with other fringe benefits

11. The Employee also told the Court that during that same time period, he had also received other Job offers from other companies that he felt he had to refuse, since he was committed to the Resort.
12. The Employee further gave evidence that on 16th May 2013 he received an e-mail from the Headquarters of the Resort in Trinidad telling him that the offer made to him "has been withdrawn"
13. The Resort's evidence was given by Mr. Ashram Ramnarine, the group Corporate Controller. He told the Court that the Resort had preliminary discussions by telephone with the Employee; that in response to the said phone call, the Employee (by e-mail dated May 08, 2013) provided the Employer with a compensation package for the position of Resident Manager of the Grand Royal, Antigua.
14. The Resort's evidence is that they sent the Employee a proposal containing a standard offer letter of managers of the Employer; that the letter was intended for the Employee's review and to be the basis of further discussions; that further, the letter was not signed and was never intended for the Employee's approval.
15. The Resort's further evidence is that after the Employee purported to have accepted the position of Resident Manager that he himself requested (by e-mail dated May 13, 2013) that the Employer contact him so that he can conclude negotiations. They maintained that at all material times they were engaged in preliminary negotiations with the Employee.

The Law

16. The Industrial Court Act (Chap 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.

17. The Antigua and Barbuda Labour Code (Cap 27) at Section A5 gives the meaning of Employee as:

“any person who enters into or works under or stands ready to enter into or work under, a contract with an employer, personally to perform any services of labour”

18. The Industrial Court was established by the **Industrial Court Act, Cap 214** (“the Act”). Section 4 of the Act reads:

(1) For the purposes of this Act, there is hereby established an Industrial Court which shall have the jurisdiction and powers conferred on it by this Act.”

19. In the matter of Antigua & Barbuda Transport Board v. Anderson Carty and others, **Webster JA [AG]** in his dicta stated

The Act sets up a structure for the Industrial Court to deal with disputes between employers and employees. (ECSC Court of Appeal reference ANULTAP2015/0006)

20. **Matters to be determined are as follows:**

- (a) Does the Industrial Court have Jurisdiction to hear and determine matters of the common-law doctrine of “Breach of Contract”?
- (b) Is the Employee’s claim that he was not treated fairly or in accordance with good industrial relations, (Unfair Labour Practices) a “cause of action” before the Court?
- (c) Was Mr. Nicholas an employee of the Resort at any of the material times?
- (d) If the Employee was unfairly dismissed, what compensation should be paid to him, if any?

Employer’s Submissions

21. Learned Counsel for the Resort in their written submissions referred the Court to the matter of **Universal Caribbean Establishment v James Harrison [1997] ECSCJ No.29**. In this matter the court of appeal determined that the Industrial Court can determine disputes in relation to dismissal of **employees**. Counsel submitted that under section C56 of the Code an employee must complete his probationary period before he has a right not to be unfairly dismissed. They further submitted that as a matter of law the Employee was not unfairly dismissed and as such the Industrial Court has no jurisdiction to determine the Employer’s reference.

22. Learned Counsel referred the Court to the dicta of **Lord Diplock** in the Case of **Letang v Cooper- [1964] 2 ALL ER 929** where he said that:

“A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person”.

Learned Counsel submits that the Employee’s claim was not for unfair dismissal but instead he was seeking compensation on the basis that he was not treated fairly or in accordance with good industrial relations by the Employer. Counsel contends that there is no right under the code or otherwise known to Law to be treated fairly in the absence of a claim for unfair dismissal. That subsequently Mr. Nicholas failed to establish any reasonable cause of action against the resort under the Labour Code or the Industrial Court act.

23. The Court is also referred to the **Black’s Law Dictionary Eighth Edition pp502-503 and 566** where Dismissal is defined as “**A release or discharge from employment**” and Employment is defined as “**Work for which one has been hired and is being paid by an employer.**”
24. Counsel for the Resort submitted that the only cause of action for Mr. Nicholas is based in contract and they directed the Court to the matter of **Burrill and Another v Schrader and Another (1995) 50 WIR 193 at page 196-197** where Chief Justice Sir. Vincent Floissac pointed out that, at the time of the enactment of the Labour Code, the common law right not to be wrongfully dismissed was not abolished.....” The result is that an employee now has a common-law right and a statutory right. The common-law right is based on contract and the statutory right is based on social policy”. Counsel further submitted that “The Industrial court should not disregard legislative intention whether or not the new procedure appears to be inadequate or unsatisfactory”. (**Smith v British Virgin Islands Electricity Corporation (2009) 76 WIR 241 para 22**)

Employee’s Submissions

25. The Representative for the Employee in his written submissions reminded the Court that the communication between the Resort and Mr. Nicholas was mostly by e-mails with the Chairman’s secretary, one Ms. Kathryn Shim and that he also spoke with the Chairman of the Resort, Mr. Issa Nicholas. He was invited by the Chairman to send him a proposal for the position of Resident Manager for the property.
26. The Representative referred the court to the **Antigua and Barbuda Labour Code Section A5** and the definition of “Employee” under the act. They submitted that Mr. Derrick Nicholas was an employee of Allied Hotels and Resort. (The Resort)

27. Other arguments raised by the representative staff behalf of Mr. Nicholas, *inter alia* asked the Court to consider that the Resort send Mr. Nicholas a contract of service, that Mr. Nicholas signed the said contract and returned it to the Resort. They admitted however that the purported contract was not signed by the Resort.

Analysis of the Facts & the Law

28. There is no doubt that since, on or about 3rd May 2013 that there was active negotiations between the Resort and Mr. Nicholas. The Resort contend that as a part of these negotiations they sent Mr. Nicholas a proposal containing an unsigned standard offer letter intending that it would form a basis for further discussions.
29. Mr. Nicholas signed the said offer letter and returned it to the Resort by fax on the 15th May 2013. The claim is that there was now an enforceable contract between himself and the Resort.
30. On the 16th May 2013 the Resort informed Mr. Nicholas that the position of Resident Manager of the Grand Royal would not be filled.

Decision

31. In arriving at a decision in this matter careful consideration was given, *inter alia* to the evidence of all parties concerned and the demeanor of the witnesses. Consideration was also given to the relevant sections of the Antigua and Barbuda Labour code, Cap 27 and the Industrial Court Act, Cap 214 and other authorities.
32. The Industrial Court was established to deal with disputes between employers and employees (para 19). The question then arises as to whether, at the material times was Mr. Nicholas ever an employee of the Resort?
33. In the matter at Bar (Para 23) the employment was to have commenced on the 1st June 2013, the evidence is that the "offer" was withdrawn on the 16th May before the proposed commencement of the employment. In addition there was never any salary paid to Mr. Nicholas. (Para 23).
34. Consequently, the Court finds that there was no employment relationship between the parties, that Mr. Nicholas was never an employee of the Resort and was therefore not unfairly dismissed.
35. The Court further finds, in the alternative and in any event, that if Mr. Nicholas was at the material times an employee of the Resort, that he would not have

completed or ended the probation period and therefore never entitled". Not to be unfairly dismissed by the employer" (Antigua & Barbuda Labour Code, Sec 56);

36. The question as to whether or not a binding contract existed between the parties would appear to be a matter to be determined at Common law.

37. The Court therefore finds that if there exist a claim by Mr. Nicholas against the Resort it appears to be one for breach of contract, and is therefore not within the jurisdiction of the Industrial Court.

38. We would therefore dismiss the Employee's reference.

39. There shall be no order as to cost.

Dated the 01st day of December, 2017



.....
St. Lawrence de Freitas
Chairman



.....
Dr. Hayden Thomas
Member



.....
Megan Samuel-Fields
Member

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 36 of 2014

BETWEEN:

DERRICK NICHOLAS

Employee

and

ALLIED HOTELS AND RESORTS T/A GRAND ROYAL ANTIGUAN BEACH
RESORT

Employer

JUDGMENT

Hon. St. Lawrence de Freitas, Chairman
Hon. Dr. Hayden Thomas, Member
Hon. Megan Samuel-Fields, Member