

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE: NO. 48 OF 2013

BETWEEN:

ALEXANDRA PEETS

and

CARIB HOLDING LTD T/A BLUE WATERS HOTEL



Employee

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. Dr. Hayden Thomas

Member

The Hon. St. Lawrence de Freitas

Member

Appearances:

Mr. Egbert Joseph of the Hotel Management Association, Representative for the Employee

Mr. Anderson E. Carty of Antigua & Barbuda Tradesmen & United Workers' Federation, Representative for the Employer

2014: September 18

2017: December 19

JUDGMENT

Brown, P:

Background Facts

1. Having read the Witness Statements, seen the demeanor of the witnesses and heard their oral testimony, the background facts as agreed by the parties or otherwise determined by the Court are as follows:

- (a) The Employer is a company duly incorporated in Antigua & Barbuda carrying on business as hoteliers at its premises known as Blue Waters Hotel.

As a member of the Antigua Hotels and Tourist Association, it is subject to that association's Collective Agreement with Antigua & Barbuda Workers Union dated 24th February, 2010, the relevant terms of which remained in effect at all material times.

- (b) The Employee commenced her employment on 1st November, 1998 and held the position of Supervisor, Food & Beverage Department at the date of her dismissal on 16th May, 2015.
- (c) As a supervisor, the Employee had several subordinates including Shanike Gordon, a waitress working in the same department of the Employer's hotel business. In the performance of her duties the Employee was required to train and delegate duties to them in relation to food & beverage services.
- (d) Clause 25 of the Collective Agreement established the contractual right of the Employer to discipline its employees for misconduct, including the right to effect summary dismissal in cases where an employee is guilty of assaulting any member of staff.
- (e) On May 10, 2012, in the presence of Marlon Fenton, the Food & Beverage Service Manager, and two other employees who were subordinate to her, the Employee in the course of her employment, assaulted and beat the said Shanike Gordon by slapping her in the face three times in rapid succession.
- (f) The Employer, through its Human Resource Manager held a meeting to ascertain the facts immediately before and subsequent to the assault and battery.
- (g) Immediately before the assault and battery, Shanike Gordon was having a "chit chat" with another employee, Kwansia Carr. In the process, Shanike Gordon's voice was so loud that she was overheard by the Employee in the nearby restaurant.
- (h) Upon hearing Shanike Gordon's voice, the Employee approached her, exchanged words with her after which Shanike Gordon tapped her lips and apologized by saying "sorry". The Employee then assaulted and beat Shanike Gordon. Immediately afterwards, Shanike Gordon got angry and left the kitchen. Ms. Kadessa Charles, a server and Ms. Kwansia Carr, a Cook witnessed the assault and battery.
- (i) The Employer investigated the incident at two fact finding meetings, convened by the Employer on 11th May, 2012 and 15th May, 2012. At the first meeting, the Employee acknowledged slapping Shanike Gordon, said they were friends and that it was a joke. She apologized for her conduct. She also

pursued Shanike Gordon with a view to apologizing to her personally. Shanike Gordon denied the existence of a friendship or any other basis to justify the Employee's action.

- (j) The Food & Beverage Manager, was absent off duty on the day of the incident and was also absent off duty on the date of the first meeting. In the circumstances, the Employer decided to carry out further investigations and took no action to discipline the Employee pending completion of the same.
- (k) The Employer obtained Witness Statements from the Employee and three (3) other employees, including Marlon Fenton, who witnessed the incident.
- (l) At the second investigative meeting convened by the Employer on 15th May, 2012 the Employee's Union Representative Esrome Roberts President of the Antigua and Barbuda Workers' Union was present together with the General Manager and the Food & Brokerage Manager. During the meeting Mr. Roberts was allowed to question the witnesses. Afterwards, the management team convened in his absence and decided to dismiss the Employee.
- (m) The dismissal was effected by letter dated 16th May, 2012 on the ground that the Employee had acted in breach of Section 25 of Appendix 1 under Clause 26 of the Collective Agreement, whereby it had been agreed that the appropriate disciplinary action in the circumstances would be Summary Dismissal.

The Employee's Case

- 2. In her Memorandum filed on 24th January, 2014 the Employee acknowledged her duties in respect of the services provided by the dining room. She contended that she had an impeccable record and stated that she did not recall having any problems with any guest or employee. Ultimately, she contended that the termination of her services was not handled properly and that natural justice was not done.

The Employer's Case

- 3. For its part the Employer, in its Memorandum filed on 9th April, 2014, contended that the Employee's record was not impeccable and that the dismissal was not unfair having been effected in accordance with Clause 26 of the Collective Agreement.

The Main Issue

4. The main issue for determination is whether the Employee's conduct was sufficiently serious to justify her dismissal.

Resolving the Issue

5. Section C58 of the Antigua and Barbuda Labour Code establishes good causes for dismissal. Section C58 (1) provides:

C58 (1) (a) A dismissal shall not be unfair if the reason assigned by the employer therefor
(a) relates to misconduct of the employee on the job, within the limitations of section C59 (1) and (2);
(b)...
(c) ...
(d)...
(e) ...

Provided, however, that there is a factual basis for the assigned reason.

C58 (2) The test, generally, for deciding whether or not a dismissal was unfair is whether or not, under the circumstances, the employer acted unreasonably or reasonably but, even though he acted reasonably if he is mistaken as to the factual basis for the dismissal, the reasonableness of the dismissal shall be no defence, and the test shall be whether the actual circumstances which existed, if known to the employer, would have reasonably led to the employee's dismissal."

6. Section C59 of the Labour Code provides for situations where an employer may reasonably terminate the services of an employee as follows:

C59 (1)An employer may terminate the employment of an employee where the employee has been guilty of misconduct in or in relation to his employment so serious that the employer cannot reasonably be expected to take any course other than termination. Such misconduct includes, but is not limited to situations in which the employee has
(a) conducted himself in such a manner as to clearly demonstrate that the employment relationship cannot reasonably be expected to continue;
(b) committed a criminal offence in the course of employment, without the consent, express or implied, of the employer; or

7. In his Closing Submissions, Mr. Egbert Joseph (now deceased) the Employee's Representative, acknowledged her misconduct but noted her apology and asserted that she slapped Ms. Gordon in jest without any intention to hurt her. For those reasons he submitted that her dismissal was unreasonable, harsh and unfair. Mr. Joseph referred to Sections C58, C40 and C12 of the Labour Code and submitted that the Employee was entitled to her severance pay, at least.
8. For his part, Mr. Carty, the Employer's Representative, emphasized that her record was not impeccable, that the Employer carried out a thorough investigation and allowed the Employee's union Representative to question the witnesses. Most importantly, he relied on the relevant sections of the Labour Code and the Collective Agreement.

Conclusion

9. In arriving at our final determination of this Reference we considered the conduct of the Employee in the context of the relevant provisions of the Labour Code and the Collective Agreement. At the end of the day, we were persuaded by Mr. Carty's submissions. Those of Mr. Joseph were tenuous and unsustainable.
10. Finally, we conclude that the Employer acted reasonably so that the Employee's dismissal was not unfair. Accordingly, we are constrained to dismiss her Reference.

Dated the 19th day of December, 2017



Charlesworth O. D. Brown
President



Dr. Hayden Thomas
Member



St. Lawrence de Freitas
Member

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