



ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 3 of 2016

BETWEEN:

ASANTE BENJAMIN

Employee

and

SAMUEL SECURITY SERVICES

Employer

Before:

The Hon. Dr. Hayden Thomas

Chairman

The Hon. John Benjamin

Member

The Hon. Megan Samuel-Fields

Member

Appearances:

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

Ms. Gail A.J. Christian, Attorney-at-Law for the Employer

2016: November 24

2018: August 8

JUDGMENT

THOMAS, C:

Background

1. The Employee Asante Benjamin, was employed on or about 16th September, 2014 as a Security Officer by Samuel Security Services, the Employer, which provides security services to various clients at their premises in Antigua and Barbuda. Mr. Benjamin worked for about nine (9) months up to June 23, 2015.
2. The Employee filed a Reference with the Court on January 27, 2016 in which he outlined certain issues in dispute with his Employer as follows:

“(a) Whether or not the Employee was wrongfully and/or unfairly dismissed from his employment.

- (b) Whether or not the Employee is entitled to compensation for the wrongful and/or unfair dismissal.
- (c) Whether or not the Employee is entitled to compensation for the Employer's failure to give notice and unpaid vacation leave.
- (d) Whether or not the Employee is entitled to vacation pay.
- (e) Whether or not the Employee is entitled to payment for two (2) weeks.
- (f) Whether or not the Employee is entitled to payment for his overtime."

The Employee's Case

3. The Employee submitted a Memorandum to the Court on March 15, 2016. In it, he referred to a letter dated 25th June, 2015 which was forwarded to him by Charmaine Oreggio, a Manager of the Employer. The Employee said that this letter referred to a staff meeting which was held by the Employer on 23rd June, 2015 but which gave an inaccurate account of what took place. The Employee said that the Employer attempted to give the false impression that the Employee had abandoned his job or resigned following a statement by the Employer that he would be reducing staff work hours from twelve hours per day to six hours per day.
4. To the contrary the Employee stated *inter alia* that "the Employer was dissatisfied with the Employee's continued requests to be transported to his work site for the midnight shifts and his position that a bicycle provided by the Employer was too hazardous for him to operate at such dark hours". The Employee further mentioned that on the evening of 23rd June, 2015 when he was preparing himself for the midnight shift, the Employer lodged a complaint with officers attached to the Grays Farm Police Station that the Employee must not go to any of its work sites. They informed him accordingly and he, therefore, stayed away.
5. The Employee's Counsel also said that at the meeting of 23rd June, 2015, the Employee expressed concerns about non-payment by the Business of statutory deductions and non-payment of overtime pay and not receiving the legal rate of pay for working on holidays and that these statements and calls for fair treatment aggravated the Employer.
6. The Employee said that he never received a termination letter from the Employer and that he never served the Employer with a letter of resignation but instead that he was unfairly or constructively dismissed.

7. The Employee feels that he is entitled to a sum of \$4,680.00 for dismissal, a similar sum under the Head Failure to give Notice, for Loss of Job protection, Future Loss of Earnings and Manner of Dismissal as well as \$590.00 as Vacation Pay. The overall total amounted to \$23,990.00.

The Employer's Case

8. The Employer's case is set out in its Memorandum to the Court dated 17th May, 2016. In summary, it states that the Employer is a security firm operating in Antigua and Barbuda since 1993. The business is owned and managed by Mr. Wilhelm Samuels, a former Assistant Commissioner of Police in the Royal Police Force of Antigua and Barbuda.
9. On or about 16th September, 2014, the Employer employed the Employee as a Security Guard earning EC\$ 8.20 per hour "with a weekly allotment of forty (40) hours". He said that the usual statutory deductions were taken from the Employee's wages and the net amount paid to him fortnightly.
10. The Memorandum further stated that around March, 2015, the Employer was compelled to reorganize its business due to a marked decrease for its services resulting in a fall off of earnings. A difficult decision was, therefore, made to reduce the hours of work for several of the employees in order to make the business more viable without loss of employment by anyone. Consequently, in April, 2015 the hours worked by the Employee were adjusted to a six-hour work shift.
11. A staff meeting was held on 23rd June, 2015 at which time Mr. Samuels mentioned about the financial state of the business which made it necessary to reduce the hours of work to six (6) hours per day for those businesses that the Employer provided services to on an hourly basis. At the material time, the Employee's work location was Trafalgar, Deep Bay.
12. The Employee arrived at the meeting late but he was aware of the changes to his schedule as he had already commenced working the six (6) hour shift. The Employer stated that the Employee protested vehemently and demanded increased hours. The Employee said that he had sought legal advice and was told that the law demanded that he worked eight hours per day.
13. The Employer insisted that in the circumstances it was the best that could be offered. The Employer contends that it was at this point that the Employee emphatically stated "I fire the work, Mr. Hadeed has given me a new contract and

I fire the work". The Employee then placed the bicycle he was given for travel, at the foot of the stairs of the building and proceeded to leave the premises. He was called back but he did not respond except to inquire when he would be paid for the hours he had already worked. The Employer stated that he paid the Employee EC \$947.75 on 25th June 2015.

14. The Employer further stated that he subsequently made arrangements with another Officer to take up Mr. Benjamin's post so as not to jeopardize the Employer's business with Trafalgar.
15. The Employer said that on or around 5:00 p.m. on June 23, 2015 he received a message from a member of staff of the Antigua and Barbuda Trades and Labour Union requesting that he take back the Employee. The Union representative was, however, informed of the events of the day which made it necessary for the Employer to assign another Employee to Trafalgar. The Employer emphasized that he did not fire the Employee but rather that it was the Employee instead who quitted the job.
16. The Employer denies any allegation of dismissal of the Employee constructively or otherwise and "maintains that the Employee voluntarily quit the job on the 23rd June 2015".

The Issues

17. The issues to be determined are those outlined in Paragraph [2] above.

The Law

18. Section C56 of the Antigua and Barbuda Labour Code (The Labour Code) establishes the statutory right of an employee not to be unfairly dismissed. It states:
"Every employee whose probationary period with an employer has ended shall have the right not to be unfairly dismissed by his employer; and no employer shall dismiss any such employee without just cause".
19. The Industrial Court Act (Cap. 214), Section 10 (3) 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) Make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;

- (b) Act in accordance with equity, good conscience and the substantial merits of the case before it, having regards to the principles and practices of good industrial relations and, in particular, the Antigua and Barbuda Labour Code".**

Issue No. 1

Whether or not the Employee was wrongly and/or unfairly dismissed from his employment.

20. The Employer presented evidence to show that the Employee was not at all dismissed whether wrongly and/or unfairly from his employment but rather that it was the Employee who quitted the job as indicated by the following:
- 1) The Employee and other co-workers were invited to attend a staff meeting on June 23, 2015 the main purpose of which was to formally inform them that due to a reduction of business caused by a downturn in the economy it became necessary to reduce the hours of work in order to keep the business viable. The hours were adjusted to six hours per day to those businesses that the Employer provided services to on an hourly basis. The Employee's six-hour shift had actually commenced about April, 2015.
 - 2) The Employee arrived late but was briefed of the decision to fully implement the reduction of work hours by June 29, 2015. He protested and demanded increased hours. He said that he sought legal advice and was told that the law required that he be given eight hours per day. The evidence is that when the Employer said that he was doing the best he could in the circumstances, the Employee stated "I fire the work, Mr. Hadeed has given me a new contract, and I fire the work". He was then thanked by the Employer for services rendered. The Employee left a bicycle he was given for use as transport but never reported that he had any problems with it. While leaving in an agitated manner he asked the Employer when he would receive his pay. The Employer attempted to call him back but to no avail. The Employer said that it became necessary for him to post someone else that evening to work the shift. Two other workers corroborated this evidence.
21. The Employee, on the other hand, gave a different account of events. He said that at the meeting on June 23, 2015, the Employer was dissatisfied with his (Asante Benjamin's) continued requests to be transported to the work site for the midnight shifts and that a bicycle provided by Mr. Samuel was too hazardous for him to operate "at such dark hours". He said that the main argument was about the bicycle and not about hours of work. Benjamin also said that he

voiced concerns at the meeting about the non-payment by Mr. Samuels of statutory payments although these were being deducted from his pay, also the non-payment of overtime pay and that he did not receive the legal rate when he worked on holidays. He said that these complaints and calls for fair treatment aggravated Mr. Samuels.

22. In his Witness Statement, Mr. Benjamin also stated that on the evening of June 23, 2018 while he was preparing himself for work on the midnight shift, Mr. Samuels lodged a complaint with officers attached to the Gray's Farm Police Station. They subsequently informed him that Mr. Samuels indicated to them that he should not present himself at any work site for Samuels Security Services. He therefore stayed away. He stated that a letter dated June 25, 2015 subsequently written to him by Charmaine Oreggio, Manager of the Employer, did not give an accurate account of the events of the meeting of June 23, 2015 in that it attempted to advance the notion that he abandoned his job or resigned. In his witness statement the Employee's further stated: "I never received a letter of termination from the Employer. I never abandoned my job on the 23rd day of June 2015 as the Employer never allowed me (with the aid of the police) to report for duty for the midnight shift". He further stated that he never served the Employer with a letter of resignation.
23. We carefully observed the demeanor of the witnesses during the trial. It is to be noted that two witnesses corroborated the evidence given by the Employer. Unfortunately, no witnesses appeared on behalf of the Employee. It would have been particularly helpful to the Court if an officer from the Grays Farm Police Station was asked to appear to give evidence in connection with what was said by the Employee to be instructions given to them by the Employer to prevent the Employee from appearing on the Employer's work sites on June 23, 2015.
24. Taking everything into consideration, we conclude that the Employer's account of events was the more credible. The point made, for example, that he engaged someone else on June 23 to carry out security duties during Benjamin's absence was reasonable. We, therefore, rule that the Employee was not wrongfully and/or unfairly dismissed from his employment by the Employer.

Issue No. 2.

Whether or not the Employee is entitled to compensation for the wrongful and/or unfair dismissal.

25. Since the Court ruled in Paragraph [24] above that the Employee was not wrongfully and/or unfairly dismissed it follows that no compensation is payable.

Issue No. 3

Whether or not the Employee is entitled to compensation for the Employer's failure to give notice and unpaid vacation leave.

26. In light of the foregoing, the question of failure to give notice does not arise and therefore no compensation is payable. Pertaining to the question of unpaid vacation leave, the Employee claimed nine days outstanding vacation pay in the sum of \$590.00. Mr. Samuels in his Witness Statement stated that a cheque in the sum of \$947.75 was given to Mr. Benjamin for hours worked and for holiday pay. There was no further queries raised at the trial.

Issue No. 4

Whether or not the Employee is entitled to vacation pay.

27. This issue was resolved in Paragraph [26] above.

Issue No. 5

Whether or not the Employee is entitled to payment for two weeks.

28. This is also captured in Paragraph [26] above.

Issue No. 6

Whether or not the Employee is entitled to payment for overtime.

29. The Employee gave evidence that he did not receive overtime pay during the period that he worked 12 hour shifts. He said he received only the flat rate. He did not, however, state either in his Witness Statement or during trial the period of overtime or the sum due. The Employer on the other hand said in his Witness Statement that when the Employee was given the job he was told that the Company did not pay overtime but would be paid by the hour and he accepted. The Employee's Attorney then stressed that the Labour Code made provision for overtime to be paid after one worked for 8 hours in a day. This was accepted.

30. The Labour Code actually refers to Overtime Pay as Premium Pay. Section C 26 of the Code states:

"Premium Pay shall consist of at least one-and-one half times an employee's basic wage per hour."

Section C 27 goes on to state:

“For any hour of work in excess of eight in any twenty four hour period or in excess of forty-eight in any one hundred and sixty-eight hour period, an employer shall give premium pay to the involved employee:

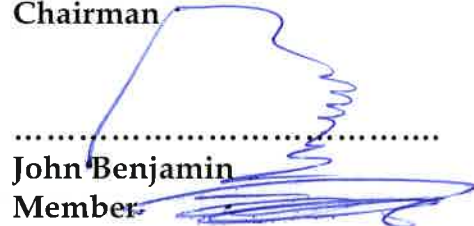
Provided that the Minister, may after consultation with the employer and employee representatives, revise these standards for any given industry or enterprise by the issuance of an Order to that effect”. No evidence was presented to show that there was issuance of an Order by the Minister in this respect to the Security firm.

31. The Court frowns on the practice by some enterprises in ignoring these provisions of the Labour Code. We are mindful of previous judgments delivered whereby employees have been paid premium pay retroactively.
32. With the above in mind, we rule that Mr. Asante Benjamin is eligible to receive overtime pay in respect of work done over and above 8 hours per shift. The quantum is to be determined following consultation between the Employer and the Employee after ascertaining the total number of overtime hours worked. If there is no agreement an Order will be made by the Court after further examination of relevant documents.
33. There is no order made with respect to costs.

Dated the 8th day of August, 2018



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Dr. Hayden Thomas
Chairman



.....
John Benjamin
Member



.....
Megan Samuel-Fields
Member

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