

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 34 of 2012

BETWEEN:

DARIA CHRISTOPHER

Employee

and

CRYSTAL BUSINESS SOLUTIONS LIMITED

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. Samuel R. Aymer

Member

The Hon. Dr. Hayden Thomas

Member

Appearances:

Mr. Stafford Joseph of Antigua and Barbuda Free Trade Union, Representative for the Employee

Ms. Saska L. Diamond of Stapleton Chambers, Attorney-at-Law for the Employer

2014: April 23

2018: August 8

JUDGMENT

Brown, P:

Background:

1. The Employee commenced her full time employment with the Employer as Administrative Coordinator on September 26, 2005. Her last salary was \$2,000.00 per month.
2. On or about January 28, 2009 the Employee was granted certified sick leave from that date up to February 2, 2009.



3. Prior to the commencement of her employment the Employer's Managing Director, Petra Williams, had been well acquainted with the Employee for several years. As a result, communications between them were often informal and they visited each other's home from time to time.
4. A series of events happened between February 3, 2009 and February 6, 2009 on the basis of which the Employer came to the conclusion that the Employee had abandoned her job.
5. Based on the same series of events the Employee formed the opinion that the Employer acted in breach of the Antigua and Barbuda Labour Code and failed to have regard for the principles and practices good industrial relations. As a result, the Employee concluded that she had been unfairly dismissed.

The Main Issues

6. Based on the opposing positions of the parties as set out in their Memoranda filed on December 4, 2012 and February 19, 2013 respectively, the main issues for determination are:
 - (1) Whether the Employee abandoned her job.
 - (2) Whether the Employee was constructively and unfairly dismissed.

Findings of Fact

7. During the period of the Employee's sick leave from January 28, 2009 to February 2, 2009, the Employer hired Mr. Bernard Gold to perform the duties previously carried out by her for which purposes he was required to sit at the desk previously occupied by the Employee.
8. At the request of the Managing Director made during her visit to the Employee's home at or about 7:00am that morning, the Employee did not return to work on the 3rd February, 2009 as scheduled. She was told to stay at home until the Employer "worked something out" with her.
9. Thereafter, despite her several efforts, the Employee was unable to make contact with Ms. Williams until February 4, 2009 at which time the Managing Director proposed that the Employee should stay at home for the rest of the week and then report for work with, and be paid weekly by, Mr. King at "Kings Glass Enterprises". The Employee responded that she needed some time to consider the proposal. The Employee's attempts to see the Managing Director later that day and the following day were unsuccessful.

10. On February 6, 2009 when they met at Managing Director's home, the Employee informed her that she would not accept the proposal; that she was of the opinion that she had been "fired"; and that the Employer had filled her position. The Employee did not return to work after that date.
11. For completeness, we emphasize that the foregoing findings of fact were made after careful consideration of the evidence of the Employee and Ms. Williams. Naturally, we also paid careful attention to their demeanor in the witness box. The Employee impressed us as the more credible witness. Accordingly, we reject Ms. Williams's testimony as a whole in so far as it attempted to convey a picture substantially different to that of the Employee. In particular, we reject the Employer's contention that on the 6th February, 2009 the Employee refused to comply with the Employer's instructions to carry out duties at King's Glass and walked off the job.
12. In any event, we find it most instructive that, having formed the opinion that the Employee had abandoned her job, the Employer did not write to her or otherwise communicate with her in that regard or at all.

Mutual Trust & Confidence

13. In every contract of employment there is an implied term of mutual trust and confidence between the parties. As stated in **Woods -v- WM Car Services (Peterborough) Limited [1981] ICR 666** an employer shall not "...without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."
14. In considering whether there was a breach of that implied term, the following aspects of the Employer's conduct are most instructive:
 - (a) The Employer hired a new employee to do the work previously carried out by the Employee.
 - (b) After her sick leave the Employer preemptively stopped the Employee from returning to work.
 - (c) The Employer proposed to the Employee that she should commence a fresh working relationship with another employer.
15. Upon review of the facts, we conclude that the Employer had conducted itself in a manner calculated to destroy the relationship of confidence and trust between

itself and the Employee. In effect, the Employer committed a repudiatory breach of the employment agreement. It evinced a clear intention to rid itself of its contractual relationship with the Employee. Having done so, the Employer left the Employee in a position to either accept the repudiation or reject it and attempt to reaffirm the employment contract.

16. By handing over the Employer's phone and refusing to return to work after 6th February, 2009, the Employee clearly accepted the Employer's repudiation of the employment agreement and consulted with her union representative.

Resolution of the Issues

17. In the premises, we resolve both issues simultaneously in favour of the Employee. She did not abandon her job as alleged or at all. To the contrary, she was constructively and unfairly dismissed with a total disregard for the relevant provisions of the Antigua and Barbuda Labour Code and the principles and practices of good industrial relations.

Compensation

18. Since the Employee was unfairly dismissed, she is entitled to compensation which we assess as follows:

(a) Payment in Lieu of Notice

The Employee earned \$2,000.00 per month and received no notice of the termination of her employment. She is entitled to the equivalent one month's pay in lieu of notice. Accordingly, **we award the sum of \$2,000.00.**

(b) Loss of Protection from Unfair Dismissal

The Employee worked from September 26, 2005 to February 6, 2009, a period of 3 years and 4 months. As a result, **we award the sum of \$6,667.00**, being the equivalent of salary for three and one third years.

(c) Immediate Loss

We accept the Employee's evidence that she made efforts to find alternative employment after her dismissal. However, we are of the view that after six months she should have been able to find alternative employment if she was more diligent. Accordingly, **we**

award the sum of \$12,000.00, the equivalent of her full salary for the 6 month period immediately after her dismissal.

(d) **Thrift Fund Entitled**

Under cross examination the Managing Director conceded that the Employee was entitled to her portion of the Thrift Fund for the period January 2006 to January 2009 but she was not paid the same because she owed the Employer "some money". However the Employer provided no details of the amount allegedly owed. Under this head, **we award the sum of \$3,964.00** being the grand total of the amounts equally contributed by the parties at the rate of 3% of the Employee's salary.

(e) **Payment in Lieu of Vacation Leave**

Under cross examination, the Managing Director conceded that the Employee was entitled to the equivalent of 31 days pay in lieu of vacation leave. Accordingly, **we award the sum of \$2,861.61** (92.31×31).

(f) **Outstanding salary during period of sick leave**

Based on the concessions of the Employer's witness under cross examination, **we award the sum of \$553.86** ($\$92.31 \times 6$) being outstanding salary due to the Employee for the period of her sick leave between January 28 and February 2, 2009.

(g) **Unpaid salary after sick leave**

Under cross examination the Employer's witness contended that this amount was not paid because the Employee abandoned her job. In the circumstances, **we award the sum of \$276.93** ($\$92.31 \times 3$) under this head.

19. **Order**

In the premises we order that:

- (1) The Employer shall pay to the Employee the total sum of \$28,323.40 as compensation for her unfair dismissal.

- (2) The said total sum of \$28,323.40 shall be paid no later than 15th September, 2018.

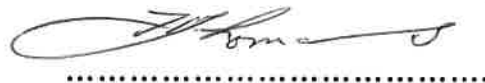
Dated the ~~28~~ day of August, 2018



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Charlesworth O.D. Brown
President



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Samuel R. Aymel
Member



.....
Dr. Hayden Thomas
Member

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