

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 20 OF 2016

BETWEEN

HAYNES JOSEPH

Employee

And

ATTORNEY GENERAL
THE SUPERINTENDENT HER MAJESTY'S PRISON

Employers

Before:

The Hon. Charlesworth O.D. Brown
The Hon. John Benjamin

President
Member

Appearances:

Mr. Anderson E. Carty of Antigua & Barbuda Tradesmen & United Workers' Federation, Representative for the Employee
Mrs. Carla Brooks-Harris, Ms. Alicia Aska and Ms. Rose-Anne Kim of the Attorney General's Chambers, Attorney-at-Law for the Employers

2017: July 05
2019: August 26

JUDGMENT

Brown, P;

Background

1. The operation, maintenance and administration of Her Majesty's Prison are largely governed by the provisions of the Prison Act, Cap 341 of Laws of Antigua & Barbuda. That Act provides for the establishment of a Visiting Committee and the appointment of Prison Officers. The power to make rules for the



regulation and management of prisons, the conduct and discipline of Prison Officers is vested in the Cabinet pursuant to section 26 of the Act.

2. Prison Rules 97, 98 and 117 provide as follows:

97. USING OR BRINGING IN PROHIBITED ARTICLES. No subordinate officer shall introduce into, keep or use in the prison tobacco or liquor of any kind or any newspaper, book or other publication, except under such restrictions as may from time to time be laid down by the Superintendent. Officers in charge of gangs employed outside the prison walls shall on no account use tobacco or spirituous liquors whilst in charge of such gangs.

98. PUNISHMENT FOR DEALINGS WITH PROHIBITED ARTICLES. Every subordinate officer or servant of the establishment who shall (except for lawful purposes and with the authority of the Superintendent) bring in or carry out, or endeavour to bring in or carry out, or knowingly allow to be brought in or carried out of the prison, or convey or attempt to convey, or knowingly allow to be conveyed to or for any prisoner within or without the prison walls, any money, clothing, provisions, tobacco, letters, papers, other articles whatsoever not allowed by the Rules of the prison, shall be suspended from his duties and placed under arrest by the Superintendent who shall forthwith report the offence to the Governor-General. Such conduct shall be liable to be punished under the provisions of the law relating to prisons.

114. OFFENCES BY SUBORDINATE OFFICERS. (1) if a subordinate officer is guilty of any of the following offences, namely-

(i) ...

...

(xx) Drunkenness, disobedience of, or negligence in carrying out, the Prison Rules, or any orders or directions given by any proper authority;

...

the Superintendent may, unless he considers the offence to be of a serious nature, impose a fine not exceeding five dollars for each offence. If the Superintendent considers the offence to be of a serious nature he shall report the matter to the Chairman of the Visiting Committee, who may summon a meeting of the Visiting Committee and cause an inquiry upon oath to be made before him and if after such inquiry the Visiting Committee are satisfied that the offence with which the officer has been

charged be proved to their satisfaction, they may award any of the following punishments-

(i) ...

....
(viii) Recommendation for dismissal”

3. The Employee commenced his employment on 24th March, 2000 as a Non-Established employee of the Government of Antigua and Barbuda holding the position of Junior Prison Officer with effect from 24th March, 2000. As such he was subject to the Prison Rules.
4. On or about the 21st January, 2012 the Acting Superintendent, Mr Percy Adams discovered the following items in the locker assigned to the Employee:

Two (2) plastic bottles containing alcohol
Three (3) packs bamboo wrappers
Nine (9) large packs of cigarettes
Four (4) small packs of cigarettes
Two (2) bottles of pepper sauce
Four (4) lighters

5. As a result, the Employee was summoned to a meeting with the Superintendent and 5 other senior officers, where he was confronted with allegations that he was in breach of the Rules. In response, the Employee admitted that the items belonged to him and that he was in breach of the rules by taking the prohibited items into the prison but contended that this was due to inadvertence on his part.
6. Upon hearing the Employee’s explanation Mr. Adams came to the conclusion that the Employee disobeyed and violated the relevant Prison Rules by bringing prohibited articles into the Prison and attempting to convey them to a prisoner. As a result by letter dated 26th January, 2012 the Employee was suspended with half pay and charged with three (3) offences.
7. The three offences with which the Employee was charged are:

“

(1) Mr. Haynes Joseph, a Junior Prison Officer at Her Majesty’s Prison on/or about the 23rd January, 2012 you disobeyed and violated the prison rules by bringing prohibited articles into the compound of the Prison, contrary to Section 97 of the Prison Rules, Cap. 341, Volume 13 of the 1992 revised Laws of Antigua and Barbuda.

(2) Mr. Haynes Joseph, a Junior Prison Officer at Her Majesty's Prison on/or about the 23rd January, 2012 you disobeyed and violated the rules of the Prison by attempting to convey to a prisoner prohibited articles, contrary to section 98 of the Prison Rules, Cap. 341.

(3) Mr. Haynes Joseph, a Junior Prison Officer at Her Majesty's Prison on/or about 23rd January 2012 you disobeyed and violated the rules of the Prison contrary to section 114 (XXV) of the Prison Rules, Cap. 341."

8. After several hearings before it, the Prison Visiting Committee by letter dated 17th January 2013 found the Employee guilty of the offences and recommended that he be dismissed from his employment.

"January 17th, 2013

*Mrs. Sharon Peters
Permanent Secretary
Ministry of National Security & Labour*

...

Dear Mrs. Peters,

Re: Jr. Officer Haynes Joseph

After several hearings in the case involving the above named Officer and statements received from various witnesses, it is the conclusion of the Prison Visiting Committee Members that Mr. Haynes Joseph, is guilty of the charges brought against him, regardless of the fact that he pleaded not guilty.

Further, it is the Committee's opinion that Mr. Bowen (Mr. Joseph's Attorney) failed to prove his client's innocence in the cross-examination of witnesses who were called to testify during the hearing.

In light of the above submission, the Committee hereby recommends the dismissal of Mr. Haynes Joseph from the service of Her Majesty's Prison.

Respectfully,

... ..

*Pastor James Warner
Chairman, Prison Visiting Committee*

cc: ..."

9. By its decision made on Wednesday 30th January 2013, Cabinet agreed with the recommendation of the Visiting Committee and directed the Permanent Secretary to implement it. That decision was communicated as follows:

“ IN THE CABINET OF ANTIGUA AND BARBUDA

Wednesday 30 January 2013

***Request for the Termination of the Appointment of Junior Prison Officer –
Mr. Hayden Joseph – Her Majesty’s Prison***

63. Cabinet agreed to the recommendation of the Prison Visiting Committee to terminate the appointment of Mr. Haynes Joseph, Junior Prison Officer, Her Majesty’s Prison effective 17th January, 2013 and consequently directed by the Honourable Minister of National Security and Labour to cause the Permanent Secretary to implement the said recommendation. “

10. Ultimately, the Employee was dismissed by letter dated 19th February 2013 to him from the Permanent Secretary, Ministry of National Security and Labour.

Court Proceedings

11. The Employee commenced these proceedings by Reference filed on 07th July 2016 by which he identified the issues in dispute to be unfair dismissal and unlawful suspension.
12. In his Memorandum of Claim the Employee set out his version of the events, denied the allegations against him and contended that his suspension and dismissal were unlawful.
13. By its Memorandum of Defence, the Employer joined issue with the Employee’s claim, asserted that his dismissal was not unlawful and maintained that he contributed to or caused his own dismissal.
14. At the commencement of the trial the Employee’s representative Mr. Carty made a preliminary submission on his behalf contending that the Employer failed to state the precise reason for the dismissal pursuant to Section C10 of the Labour Code. He submitted that as a result of that failure, the Employer was estopped from introducing evidence at the trial that could otherwise be used to justify the dismissal.

15. Upon hearing the submissions and having regard to the express inclination of the Court, Ms. Kim, on behalf of the Employer, conceded that the Employee was unfairly dismissed by reason of the Employer's failure to furnish him with a statement of the precise reason for his dismissal pursuant to the Labour Code.

The Issue of Compensation

16. Having conceded that the dismissal was unfair, Counsel did not call Mr. Albert Wade, Superintendent of Prison, to testify on behalf of the Employer, although his witness statement with supporting documents attached was before us. The Employee was called to testify on his own behalf after which both Representatives made closing oral submissions.
17. In our estimation, the approach of both Representatives to the assessment process is flawed. On the one hand, Counsel's election not to call Mr. Wade was misguided. Notwithstanding the prior determination of liability, the Employer's evidence would have been critical for the purposes of the assessment of compensation. Accordingly, on the other hand, Mr. Carty's submission that in carrying out its assessment, this Court should wholly disregard all the Employer's evidence is also misguided. Each case turns on its own facts. In the instant case, the abundance of documentary evidence, although initially directed at the issue of liability, was also most instructive for the purposes of the assessment.
18. In the ordinary course of things, when determining the quantum of compensation payable to an employee who has been unfairly dismissed, we invariably carry out our assessment subject always to our consideration of the employee's contribution, if any, to his dismissal. In that regard, Ms. Kim relied on Reference No. 13 of 2013: **Tanika Martin v Board of Education** and Reference No. 79 of 2000 **Judith Bramble v St. Nicholas Primary School**. In those cases, this Court, as differently constituted, found that the employees were blameworthy and fixed their contributions to their dismissals at 50% and 60% respectively. In the more recent case of **Damien Lynch v Kenny Gardner**: Reference No. 7 of 2015, this Court took into account the employee's contribution to his dismissal discounted his compensation by 75%.
19. In the instant case, we have taken into consideration, (a) the nature and purpose of the institution where the Employee's services were deployed, (b) the nature and purpose of the duties which he performed, and (c) the egregious nature and execution of offences committed by the Employee. In fact, we agree with Ms. Kim's submission that the Employee's conduct "is a flagrant and blatant violation of his duty to maintain the safety and security of visitors, fellow officers

and inmates of the prison". Counsel also expressed the view, with which we agree, that the Employee's conduct had serious implications for national security

20. Based on the Employee's own testimony, during which we carefully observed his demeanor, and the relevant documentary evidence, we make the following findings of fact:

- (1) The Employee is not a credible witness. For that reason, we reject his version of the events leading up to his dismissal. In any event, he admitted that he knowingly breached the Prison Rules as he well knew that he was not permitted to take the prohibited items into the prison. Moreover, by his manuscript letter to the Permanent Secretary dated 23rd January 2013 he admitted his guilt and requested her leniency.
- (2) The Employee failed to take any or any sufficient steps to mitigate his loss after his dismissal. He presented no documentary evidence of his applications for employment and testified that he found no employment until 8 months after his dismissal. We conclude that during that period he continued to operate his own and/or his family's retail shop and did not diligently attempt to find fresh employment.

21. As to the Employee's claim for a pension, we are mindful of section 4 of the Pension (Government Non- Established) Act Cap 310 which provides that no employee shall have the absolute right to a pension or gratuity payment. Further section 4 (2) provides that where Cabinet is satisfied that an employee "has been guilty of negligence, irregularity or misconduct", his pension may be withheld. In the circumstances, suffice it to say, the matter of the award of a pension to the Employee is entirely with Cabinet's purview.

22. In the final analysis, there can be no doubt that as a matter of record, the Employee betrayed the trust and confidence reposed in him by the relevant authorities. We are mindful of the purpose of the institution of the Prison, the inherent nature of his duties as a Prison Officer, and the inclinations and the presumed propensities of some of the prisoners under his charge from time to time. Taken in context, we are inclined to agree with Ms. Kim that the Employee's conduct was "perverse".

23. Having regard to all the circumstances, we are acutely aware of our mandate under Section 10 (3) of the Industrial Court Act. At the end of the day, in making our order, we must make an award according to what is "fair and just, having regard to the interests of the persons immediately concerned and the community

as a whole". We must at always "act in accordance with equity, good conscience and the substantial merits of the case" before us.

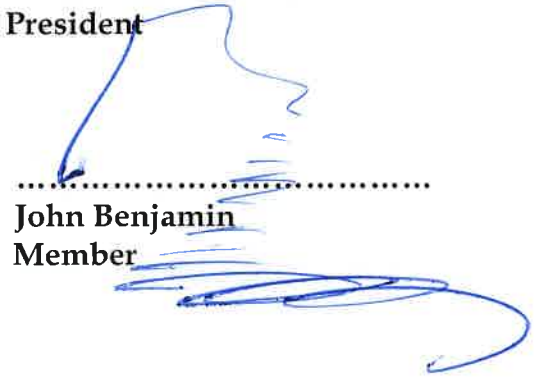
Conclusion

24. We find that, by reason of his misconduct, the Employee is blameworthy for the state of affairs culminating in his dismissal. In the words of Ms. Kim: "the culpability of the employee being clearly established ...he is totally to blame for his dismissal, it is just and reasonable to reduce any compensation awarded (to include the employee's gratuity and pension) by one hundred (100%) percent." We are so persuaded by those submissions that we will refrain from treating this matter as an ordinary assessment.
25. In the premises, we are of the firm opinion that the Employee's claim for compensation has no merit. Consequently, it is fair and just that we make no award of compensation in this case.

Dated this 26th day of August 2019



.....
Charlesworth O.D. Brown
President



.....
John Benjamin
Member

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