

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. C/UD/39 OF 2016

BETWEEN:

DENZELL OTTO

Employee

and

ANTIGUA PUBLIC UTILITIES AUTHORITY

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. Hayden Thomas

Member

The Hon. Judith Dublin

Member

Appearances:

Mr. Ralph Potter of the Antigua Trades & Labour Union, Representative for the Employee

Mr. Kelvin John, Mr. Loy Weste & Ms. Lisa John Weste of Thomas John & Co., Attorneys-at-Law for the Employer

2017: November 20

2019: May 24

JUDGMENT

BROWN, P:

Background

1. By his Reference in these proceedings the Employee identified the main issue in the dispute to be the "non-payment for work done on meal breaks". By his Memorandum of Claim filed on 22nd March, 2017 he acknowledged that he was a member of the bargaining unit represented by the Antigua & Barbuda Workers' Union and as such was subject not only to the provisions of the Antigua & Barbuda Labour Code (the Labour Code), but also to the terms of the Collective Agreement subsisting from time to time between that union and the Employer



(the Collective Agreement). In these proceedings both parties relied on the Agreement executed on November 30, 1997.

2. The Employee was employed as a Water Treatment Plant Operator. During his tenure as such, he worked as a "shift worker" and was always deployed at one of the Employer's Water Treatment Plants. He worked for thirty-three and one third years between 1975 and 2008 and rose to the rank of Foreman.
3. Unlike other employees of the Employer, the Employee and other shift workers at the Water Treatment Plants were not allowed to take scheduled meal breaks. According to the Employee, the Employer's policy and the terms of the employment arrangement which allowed for that differential treatment was discriminatory and unfair.
4. Paragraph 6 of the Employee's Memorandum of Claim reads:

"The Employee and the Antigua Trades & Labour Union contend that the provisions of the Collective Agreement which allows for meal breaks to be given to all employees except shift workers', solely on the basis that they work on a shift system, is a violation of good industrial relations practices and the purposes of the Antigua & Barbuda Labour Code."

That pleading is particularly interesting because the Antigua & Barbuda Trades & Labour Union is not a party to these proceedings.

5. By its Memorandum of Defence filed on 19th May, 2017 the Employer denied that it acted in violation of good industrial relations practices and the purposes of the Labour Code. More particularly, the Employer denies that the Employee was denied meal breaks. In accordance with the governing Collective Agreement, they were not allowed to have "scheduled" breaks. In that regard, the Employer also pointed out and emphasized that Clause 7.3 (b) of the Collective Agreement provides: "no regular meals period are scheduled on shifts, and meals must be eaten on the job, with no relief from responsibility..."
6. At paragraph 5 of its Memorandum the Employer asserted that:

"The Employee was a shift worker and worked on the plant on a shift basis of eight consecutive hours in a work day. The Employee, along with all weekly paid employees, was governed by the terms in the Collective Agreement between Antigua Public Utilities Authority and Antigua Workers' Union. Clause 7 of the Collective Agreement is applicable to all shift workers and states that no regular meal breaks are scheduled."

7. Further, the Employer maintained that the Employee was always treated fairly and prayed that his claim be dismissed.

The Evidence

8. For present purposes it is sufficient to adopt the Employee's summary of the relevant evidence set out in his Closing Arguments as submitted by Mr. Ralph Potter of the Antigua Trades & Labour Union on his behalf. Parts of that summary are as follows:

"No Meal Breaks

(1) ...

....

(4) *The employee was at all times during his employment part of a unionized Bargaining Unit represented by the Antigua Workers Union (Antigua and Barbuda Workers' Union).*

(5) *As a shift employee, the employee was not allowed to take meal breaks. All meals had to be eaten on the job with no relief from responsibility. This is stated in Clause 7 of the Collective Bargaining Agreement between the Antigua Public Utilities Authority and the Antigua Workers Union (Antigua and Barbuda Workers' Union). Clause 7.3 (a)*

Shift workers regular work day is a shift of eight (8) consecutive hours in a work day. The hours of work will be in accordance with separately issued shift schedules.

No regular meals period are scheduled on these shifts and meals must be eaten on the job with no relief from responsibility. Employees on shift must remain on their job until properly relieved.

(6) *All employees in the Bargaining Unit who are not shift workers are entitled to an interval of one hour lunch during each work day according to the evidence of Mr. Rodney Simon, Human Resource Manager of the Antigua Public Utilities Authority. This is also supported by Clause 7.2 of the Collective Agreement.*

Clause 7.2

The regular work day for workers except clerical workers shall consist of eight (8) hours in any workday normally commencing at 7:00 am and continuing until 4:00 pm Monday to Friday with an interval of one hour for lunch."

9. For its part, the Employer emphasized the oral testimony of its Human Resources Director, Mr. Rodney Simon and the documentary evidence of the relevant parts of the Collective Agreement. The Employer also highlighted clause 7.3 (b) as quoted by Mr. Potter. Further, the Employer relied on the uncontroverted evidence of Mr. Simon to the effect that "there has never been

any issue raised by the relevant collective bargaining Trade Union on behalf of the Employee with the Employer in relation to meal breaks and clause 7 of the Collective Agreement."

The Employee's Closing Arguments

10. In his submissions, Mr. Potter acknowledged that the question may arise as to whether (a) the issue is one of the interpretation of the Collective Agreement under Section 15 (2) of the Industrial Court Act (the Act) and (b) whether his Union can be a party having an interest in the matter under that subsection.
11. As to those possibilities, Mr. Potter also submitted that this case is not one of the interpretation of any provision of the Collective Agreement. According to him, this Reference is concerned with the "provision of the agreement which is unfair, discriminatory, is in violation of employment principles established by the Antigua & Barbuda Labour Code and also not in keeping with the long established historical practice of allowing meal breaks for all employees."

The Employer's Legal Submissions

12. Contrary to the position taken by Mr. Potter in his submissions, Counsel for the Employer, Mr. Loy Weste puts Section 15 (2) of the Act up front and center in these proceedings. He noted that the proceedings were "commenced by the Employee in his own name and was not referred to the Court by the Employer, or by any trade Union having an interest in the matter."
13. Accordingly, Mr. Weste submitted that "the Employee has no *locus standi* to refer this matter to the Industrial Court for the interpretation of any provision of the Collective Agreement herein. "Further he submitted that, as a creature of statute, this Court is constrained to dismiss the Employee's Claim since it is not properly before the Court..."
14. In addition, Counsel also submitted that the Employee is in breach of the Collective Agreement by not following the agreed procedure set out under Clause 14 (2) (c) which reads:

"14. (2) Any employee or group of employees who have a grievance or complaint may, within 10 working days after the occurrence of the specific matter giving rise to the complaint , seek redress in the following manner:

a...

b...

c. If the grievance is not disposed of at the second stage then an officer of the Union shall present the case to the General Manager..."

15. Clearly, Mr. Weste places much emphasis on the requirement for the involvement of the Antigua and Barbuda Workers' Union as the bargaining agent which negotiated the Collective Agreement. Logically, Mr. Weste further submitted that this Court should refer the matter back to the Antigua & Barbuda Workers' Union so that it may present the grievance to the Employer's General Manager.
16. Significantly, in his legal submissions, Counsel maintained that the Employee "breached the law by commencing this action without *locus standi* to do so... and has breached the Collective Agreement by refusing to submit to the grievance procedure stated therein."
17. Ultimately, the Employer relied on Section 15 of the Industrial Court Act, Cap 214, and prayed that the Employees Claim be dismissed.

Section 15 (2) of the Act: The Interpretation and Application of relevant provisions of the Collective Agreement

18. Having read the Memoranda of the parties, considered the evidence and the submissions, we have determined that the nub of the Employee's claim requires us to have regard for Section 15 (2) of the Act and consider the "interpretation and application" of several clauses in the Collective Agreement including Clauses 7.2, 7.3 (b), 10.1 and 14 (c). We have also identified the paramount and overriding issue to be: Whether the Employee has *locus standi* to refer this matter to the Court?

19. Section 15 (2) of the Act provides:

"15. (1) ...

(2) Where there is any question or difference as to the interpretation or application of the provisions of a collective agreement any employer or trade union having an interest in the matter or the Minister may make application to the Court for the determination of such question or difference."

20. As to the applicability of Section 15 (2) of the Act, we are obliged to refer to the Labour Code. In that regard, we refer to and follow the dicta of Byron C J, as he then was, at paragraph 3 of Judgment of the Court of Appeal in Suit No. 21 of 1993 **Universal Caribbean Establishment v James Harrison**:

"The Labour Code was an innovative and important enactment, which made substantial changes in the industrial law of Antigua ... The code created new and comprehensive machinery for dispute resolution. This involved a network including the Minister of Labour, the Labour Commissioner, decisional officers, an Arbitration tribunal, the National Labour Board, Hearing Officers, the Board of Review."

The learned Chief Justice then noted the establishment of the Industrial Court in 1976 under the Industrial Court Act and asserted that:

"Since its establishment, ... the Industrial Court has been exercising jurisdiction in labour and employment disputes... This procedure completely supplanted the network set up by the Labour Code."

21. We have no doubt that when Parliament passed the Industrial Court Act establishing the Court and providing for the "interpretation and application" of Collective Agreements under section 15 (2), it was mindful of the provisions of Division G of the Labour Code dealing with Trade Unions, and particularly Part 4 of Division K dealing with Collective Agreements.
22. In approaching the construction of any statutory provision there exists the presumption that parliament "has been specially precise and careful in its choice of language." So that one of the cardinal rules to be applied in the construction of statutory provisions is that "words are to be interpreted according to their ordinary and natural meaning."
23. Thus, in the absence of any inconsistency or ambiguity, we are constrained to give the words of subsection 2 of section 15 of the Act their natural and ordinary meaning. To the extent that there may be any semblance of doubt as to the construction of that subsection, we considered the Act as a whole. In that regard, as this Court did when construing the definition of the term "suspension" in its recent judgment in Reference No. 56 of 2016, **Otis Teague v Antigua Public Utilities Authority**, we rely on the **4th Edition Halsbury Laws of England Volume 44 paragraph 872** where the learned authors assert that:

"872 Statute to be construed as a whole, ... for the purposes of construction, the context of the words which are to be construed includes not only the particular phrase or section in which they occur, but also the other parts of the statute.

Thus a statute should be construed as a whole so as, so far as possible to avoid any inconsistency or repugnancy either within the section to be construed or as between that section and other parts of the statute."

24. As with all References before us, we are keenly aware of section 10 (3) of the Act which requires us, in the exercise of our powers, to have particular regard to the Labour Code. That section reads:

(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."

25. In the circumstances, in addition to considering other sections of the Act, in particular section 10 (3), we have allowed ourselves the liberty of considering the significant provisions of Division G and Part 4 of Division K of the Labour Code.

26. At the end of the day, it is our opinion that we have no choice but to constrain ourselves to construe section 15 (2) of the Act strictly in accordance with its express terms. Where there is a difference in the interpretation or application of the provisions of a collective agreement, as in this Reference, the application to the Court must be made by (a) the employer, (b) the union having an interest, or (c) the Minister. That section leaves no room for an application by an individual employee.

27. In the premises, we reject Mr. Potter's submission that this matter is **not** one of the interpellation of any provision of the Collective Agreement. In our opinion, this Reference falls squarely under Section 15 (2) of the Act. It deals with the interpretation and application of Clauses 7.2, 7.3 (a), 10. 1, 14 (c) and other relevant clauses of the Collective Agreement.

28. Needless to say, once the matter is properly before it, after its interpretation of named clauses, this Court could very well conclude that some or all of them are unfair, discriminatory, in violation of the relevant provisions of the Labour Code or contrary to long established historical practices as contended by the Employee.

29. The rejection of Mr. Potter's submission brings us to consideration of the primary issue stated above: Does the Employee have the necessary *locus standi* to commence and prosecute his claim in this Reference? In that regard, we have noted the Employee's averment, at paragraph 6 his Memorandum, as though the Antigua and Barbuda Trades and Labour Union is a party in these proceedings. In fact, the Reference was prosecuted, as it was commenced, by the Employee as an individual employee.

30. For the reasons stated above, we resolve the primary issue in favour of the Employer. The Employee does not have the requisite locus standi. The Reference should have been commenced and prosecuted by a "trade union having an interest in the matter".
31. Obviously, this is not a determination of the merits of the substantial points of claim in relation to the effect of the relevant clauses of the Collective Agreement vis-à-vis the provisions of the Labour Code and good industrial relations practices.

Conclusion

32. In the premises, it is ordered that the Reference herein be and is hereby dismissed with no order as to costs.

Dated the 24th day of May, 2019



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



.....
Hon. Dr. Hayden Thomas
Member



.....
Hon. Judith Dublin
Member

