

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 56 OF 2014



BETWEEN:

JUNE CATNOTT-RYAN

Employee

and

ST. JAMES'S CLUB

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. John Benjamin

Member

The Hon. St. Lawrence deFreitas

Member

Appearances:

Mr. Anderson Carty of the Antigua & Barbuda Tradesmen & United Workers' Federation for the Employee

Mrs. Stacey-Ann Saunders-Osbourne of Saunders-Osbourne Legal Services, Attorney-at-Law for the Employer

2015: December 07

2019: May 24

JUDGMENT

BROWN, P:

Introduction

1. The primary issue in this Reference is whether or not the Employee was unfairly suspended by letter dated March 30, 2014 for a period of "20 working days" with effect from 27th March, 2014.

Background

2. As outlined in her Memorandum of Claim, the employee commenced her employment as a Cook in the Kitchen Department of the Employer's resort on 25th March, 2002. She received weekly wages at the rate of \$443.20 plus a 1.25 point share of the service charge. The terms of her employment included relevant parts of the Collective Agreement then in force between the Employer and the Antigua & Barbuda Workers' Union. That Agreement included a Disciplinary Code setting out penalties for various offences.
3. Between November 2003 and January 2010 the Employee had been suspended on at least 6 occasions for violations of the Disciplinary Code involving misconduct. As described by the Employer, the types of misconduct included "using profane language"; "loud and disruptive verbal altercation"; "insubordination"; and "disruptive verbal abuse". Each suspension followed a disciplinary hearing at which the Employee was given an opportunity to defend herself.
4. In addition to the letters of suspension she received, the Employee also received a written warning in June 2005 in respect of "insolence to a representative of management". On each occasion when disciplinary action was taken against her, the Employee was warned of the possibility of her dismissal in the event of a repetition of the same or similar misconduct.
5. On March 25, 2014 an incident occurred involving the Employee and her direct supervisor, Ms. Denise Latoya Monroe, the Employer's Chef de Partie (Chef Latoya) in relation to the manner in which she was addressed by the Employee. Chef Latoya reported the matter to her Supervisor, the then Acting Executive Sous Chef, Mr. Glen St. Jean (Chef Glen) who in turn referred the matter to Mr. Kannan Ganesan, the Executive Chef (Chef Kannan). On the same date, Chef Kannan convened a meeting which did not result in a resolution of the dispute. When she referred to comply, she was asked to leave the Chef's office.
6. The matter was referred to Mr. Hesketh Williams, the Employer's Human Resources Director, who convened another meeting on 27 March, 2014. Those in attendance included the Employee, Chef Latoya, Chef Glen and Chef Kannan.
7. By letter dated March 30, 2014 the Employee was suspended for "20 working days" with effect from 27th March, 2014

Findings of Fact

8. We have carefully noted and considered the personal testimonies of the Employee and the Employer's three witnesses, Chef Latoya, Chef Kannan and Ms. Melissa Farley, the Employer's Personnel Assistant. On the preponderance of the evidence, our findings of fact are as follows:
 - (1) On 25th March, 2014 during her exchange with Chef Latoya, the employee was disrespectful to her. Her responses to her supervisor were rude, impolite or otherwise inappropriate. Based on her view of the Employee's conduct, Chef Latoya referred the matter to Chef Glen who escalated it to his supervisor, Chef Kannan.
 - (2) At the meeting convened by Chef Kannan in the presence Chef Glen, the Employee spoke to him in a loud and disrespectful manner. Her responses to him were insolent, daring and confrontational. Overall, the Employee's misconduct was disruptive. She refused to leave Chef Kannan's office when requested by him to do so on account of her misconduct. As a result, he summoned a Security Officer but the Employee left before he arrived and walked towards the dining room while cursing loudly.
 - (3) Although, the Employee had initially requested to have her representative present with her at the meeting with Mr. Williams on 28th March, 2014, she did not maintain that position. Instead, without any pressure, coercion or duress, she voluntarily participated in the meeting without him.
 - (4) At the meeting, the Employer adopted a fair procedure by which the Employee was allowed to explain her actions and confront her accusers.
 - (5) At the meeting on 28th March, 2014, after admitting that her behaviour towards Chef Latoya and Chef Kannan was out of order, the Employee expressed remorse and apologized for her misconduct.

Resolving the Primary Issue

9. In determining whether the Employee was unfairly suspended, we considered firstly whether there was a good factual basis for the Employer's conclusion that the Employee was guilty of misconduct. Secondly, we considered whether the Employer acted reasonably in suspending the Employee in the circumstances. Thirdly, we considered whether the duration of the suspension was appropriate.
10. On the basis of the evidence before us and having regard to all the circumstances and the closing submissions of Counsel, it is our opinion that there was a sound

factual basis for the employee's misconduct, to wit insubordination to both Miss Munroe and Mr. Ganesan. She conducted herself in a loud, boisterous, disrespectful and aggressive manner towards and in response to them. Moreover, her misconduct had a disruptive effect on the operations of the kitchen as well as the Employer's administrative processes. There is no doubt that the Employee realized the nature of the offence alleged against her and the Employer's stance in relation to it. In that regard, in her oral testimony she said: "I knew that the company takes such matters seriously".

11. As to reasonableness, we find that the Employer acted reasonably in treating the misconduct as a good reason to suspend the Employee. It is clear that the Employer did not rush to judgment. It was careful to conduct fact-finding enquiries, allowing each side to give its respective version of what happened. Chef Latoya rightfully first referred the matter to her superior Chef Glen who appropriately followed the chain of command and directed the matter to his superior, Chef Kannan. It is obvious that he too did the right thing in the face of the Employee's intransigence.
12. It is noted above that the Employer adopted a proper procedure at the disciplinary hearing before Mr. Williams on the 28th March 2014. In particular, the Employee was allowed to confront her accusers and had the unrestricted opportunity to state her own case. In the Employee's words: "Mr. Williams conducted the (disciplinary) meeting allowing each side to explain his position" It appears that she relented in her resentful attitude, became remorseful and tendered an "unsolicited apology" for her misconduct. In her words, her apology was "an apology for the overall situation".
13. In her Memorandum of Claim, the Employee placed a lot of emphasis on the fact that she did not have her desired "external representation" at the disciplinary hearing. There can be no doubt that the Employee was entitled to have her representative present at the meeting. Moreover, she was entitled to refuse to participate in his absence. However, it appears that in the face of the Employer's inclination to press on with the hearing, the Employee elected to proceed in the absence of her representative and speak on her own behalf. There is no doubt that she was very familiar with the process, having gone through it several times before. At the end of the day, given the nature of the misconduct, her general participation in the meeting and her eventual apology, it is doubtful that her representative's presence would have made any significant difference.

14. Based on the foregoing, we conclude that suspension was a reasonable action for the Employer to take in the circumstances. The only remaining question is whether the suspension for 20 days was excessive. Given the statutory limit of 4 weeks, it was open to the Employer to suspend the Employee for a reasonable time having regard to the nature and severity of the misconduct.
15. We have already noted that, apart from being disrespectful to her individual supervisors, the Employee's misconduct was disruptive of the Employer's business. It had a direct bearing on the working relationship between the Employee and other members of the kitchen staff. Moreover, her misconduct had or potentially had a direct adverse impact on the Employer's guests.
16. Further, we have noted above the several five or six-day suspensions meted out to the Employee over the years. Based on the recurrence of the same or similar misconduct, it is doubtful that those suspensions had the desired deterrent effect. However, it is noteworthy that no disciplinary action was taken against the Employee for the four years immediately before the incident in March 2014.
17. We have also noted the Employer's express inclination to dismiss the Employee at the end of the disciplinary hearing. It appears that the sole or main reason why it did not do so was her demonstrated remorse and "unsolicited apology".
18. Having regard to all the circumstances, we are of the opinion that it was open to the Employer to suspend the Employee for a period of up to twenty work days. In our opinion, the suspension for twenty work days was within the band of reasonable responses which a reasonable employer was entitled to take in the circumstances.

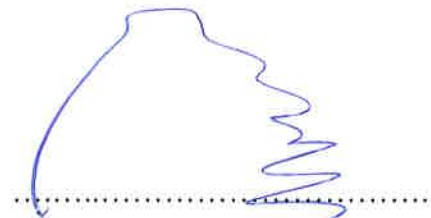
Conclusion

19. The suspension of the Employee for twenty work days was not unfair. She is not entitled to any remedy for unfair suspension. Accordingly, the Reference is dismissed with no order as to costs.

Dated the 24th day of May, 2019



Hon. Charlesworth O.D. Brown
President



Hon. John Benjamin
Member

A black ink signature, appearing to be 'St. Lawrence de Freitas', is written above a horizontal dotted line.

Hon. St. Lawrence de Freitas
Member

