

IN THE INDUSTRIAL COURT
ANTIGUA AND BARBUDA

REFERENCE NO. 21 OF 2015



OKEREE LEE

Employee

And

CARLISLE BAY ANTIGUA T/A CARLISLE BAY RESORT

Employer

Before:

Hon. St. Lawrence de Freitas
Hon. Megan Samuel-Fields

Chairman
Member

Appearances:

Mr. Anderson Carty of Antigua & Barbuda Tradesmen & United Workers' Federation,
Attorney-at-Law for the Employee
Mr. Hugh Marshall of Marshall & Co., Attorney-at-Law for the Employer

2017: May 15
2019: January 29

JUDGMENT

De Freitas- Chairman

1. By Reference dated 27th April 2015 the Employee Mr. Okeree Lee (hereafter referred to as **Mr. Lee or the Employee**) who lives at Greenbay Hill, Antigua, has filed a complaint to the Court that he was unfairly dismissed by Carlisle Bay Antigua, his Employer and that he is entitled to compensation.

2. Carlisle Bay Antigua (hereafter referred to **the Company or the Employer**) operates a luxury hotel at Carlisle Bay.

Proceedings

3. The Employee filed his Memorandum on May 15, 2015, and claims *inter alia* that the “action to terminate his employment is unwarranted and, therefore, unfair”. He also claims that “having due regard to the law, natural justice, ... and the tenets of good industrial relations practices, the Employer’s action is a serious breach of the law of unfair dismissal”.
4. The Employer filed its Memorandum on June 2nd 2015. Its claim is that on the 25th January 2015, the Employee, having been given certain instruction by his supervisor, one Devrin Christopher, and (in the presence of another employee Rodney Browne), threatened to kill his said supervisor by uttering the words “Me ah go kill you”.

The Evidence

5. The Employee’s evidence, *inter alia*, is that he was employed by Carlisle Bay Antigua as a Kitchen Steward in April 2013, that, his last weekly earnings were \$433.60 and that in addition to his weekly wage his share of the gratuity fund averaged \$275.00 per week and that he was paid on a fortnightly basis.
6. The Employee’s further evidence is that he reported to work on January 25th 2015 and was assigned duties washing dishes in the staff canteen. While there his immediate supervisor, Devrin Christopher, spoke to him, addressing him as “hey you” and advised him of the supervisor’s intention to change his work schedule to another location. The Employee asserts that, “four (4) other staff members were in the canteen at the time and heard when the supervisor and I spoke to each other”.
7. The evidence is that the Employee had some objection to the supervisor changing the work schedule and responded saying “Devrin, you know every time Coreet [department Manager], no yah, ah you chose fu do as you like with the (cleaning) schedule”! The supervisor replied saying, “Me say when me come back, ah we ah go up so”. The supervisor later returned and said to the Employee, “Hey, let’s go so”.

8. The Employee's evidence is that he immediately responded to the request and walked towards the door where the supervisor was standing, and repeated his earlier statement about his (Supervisor) changing up the work schedule. The Employee told the Court that sometime later, while working, the hotel manager approached him, and informed him that his supervisor, Devrin, made a report to management that he (Okeree) had threatened to kill him (Devrin).
9. The Employee's further evidence is that he then vigorously denied that he had threatened to kill his supervisor, that he asked to confront his accuser and gave the names of the persons that had been present at the times he had spoken with the supervisor.
10. Mr. Devrin Christopher's (the supervisor) evidence on behalf of the Employer, is that on the day in question he had a conversation with Mr. Lee, he gave him instructions on what, and where he wanted him to work. Mr. Christopher further gave evidence that after that conversation and while the Employee and Mr. Christopher were in the presence of another employee, one Rodney Browne, the Employee came up to Mr. Christopher, accused him (Christopher) of interfering with him (the Employee) and then said "me a go kill you".
11. Charmaine Gore-Biesheuvel, the Human Resources Manager, gave evidence on behalf of the Employer. She recalled that on the 26th of January 2015 she received a report that Okeree Lee made threats to kill his supervisor Devrin Christopher. Her evidence is that she investigated the matter. She made inquiries and had all the employees that were present at the time write reports and submit them to her. She further interviewed all the employees involved. Her further evidence is that on the 29 January 2015 she convened a meeting with the Employee and Devrin Christopher together with other management staff and her personnel assistant, who was required to take notes. At this meeting the Employee and his supervisor were asked to each give their version of the incident and were invited to question each other.
12. Further evidence of Gore-Biesheuvel, is that Rodney Browne who had also been invited to the meeting but was not present in person, rather he was called on the telephone, (during the said meeting) put on speakerphone where the Employee was able to hear him. He (Browne) confirmed at that meeting that he did hear the Employee tell Devrin he was going to kill him. The evidence, on behalf of the Employer is that the Employee was invited to question him, but declined to do so. However, the Employee gave evidence that Mr. Browne did not join the meeting by phone or otherwise while he (the Employee) was present.

13. Further evidence on behalf of the Employer was given by Nicole Hector the Personnel Assistant. Her evidence is that at the said meeting, she was required to take notes. Her oral evidence before the court is that Mr. Lee was present when Rodney Browne was called on the telephone and put on speakerphone. She also confirmed that Mr. Lee was given the opportunity to question both Mr. Christopher and Mr. Browne but declined to do so. She explained that at that point in the meeting the Employee was asked to leave the room. When asked if she was sure that when the call was made to Browne, that Mr. Lee was present, her reply was; "Yes, he was there".
14. Mr. Rodney Browne, in his witness statement and on behalf of the Employer, told the Court that on the day in question he was in fact having a conversation with Devrin Christopher when Okeree Lee approached them, and in his presence; "Mr. Lee told Devrin he was going to kill him". He further said by his witness statement, "I plainly heard him tell Devrin that he was going to kill him".
15. Carlisle Bay Antigua, is a member of the Antigua Hotels & Tourist Association. The association has a memorandum of agreement with the Antigua Workers' Union that covers the workers at Carlisle Bay. The agreement *inter alia* sets out a disciplinary code. At Appendix 1 Clause 26 (item 26) and under the heading of "Immoral Conduct" the said code prescribes the discipline for such conduct to be "Summary Dismissal". In their letter of dismissal, the Employer told the Employee that he violated this section of the code and that they were left with no choice but to terminate his service.
16. During the course of the hearing the Employee's Representative, (by their Employee's Exhibits), asked the Court to accept into evidence written statements that had been submitted to the Employer by some of its employees as part of the Employer's in-house investigation. Counsel for the Employer objected to such statements being accepted into evidence on the grounds that the Employee could have called those persons as witnesses so that their evidence could be tested under cross examination. The Court notes that none of those persons referred to by the Employee's Representative had been called to give formal evidence before the court. Under the circumstances, the Court upheld the objection of counsel for the Employer, and accordingly the said statements were not admitted into evidence.

Matters to be Determined

17. The matters to be determined by the Court are as follows:

- Did the Employee threaten to kill his Supervisor, Devrin Christopher?
- Was the Employee Unfairly Dismissed
- If the Employee was Unfairly Dismissed what compensation would be due to him.

The Law

18. The Antigua and Barbuda Labour Code at Section C56 and C59 State:

C56. "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".

In addition, the Industrial Court Act (Cap 214), Sec. 10 (3) b 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)

(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."

"C 59. (1) An employer may terminate the employment of an employee where the employee has been guilty of misconduct in or in relation to his employment so serious that the employer cannot reasonably be expected to take any course other than termination. Such misconduct includes, but is not limited to situations in which the employee has

(a) conducted himself in such a manner as to clearly demonstrate that the employment relationship cannot reasonably be expected to continue;

(b)
(c).....”

Reason for Dismissal

19. The Employee was dismissed by letter on the 29th January 2015. The letter reads in part as follows:

“Mr. Okeree

Liberta

St. Paul

29th January, 2015

“Dear Okeree,

On Sunday January 25th 2015 you threatened your supervisor Devrin Christopher by telling him that you would kill him. This was said in the presence of Rodney Brown, Steward who confirmed that you did indeed voice this sentiment.

You were called into a meeting on the 28th January, 2015 with Nicole Hector, Personnel Assistant, Coreet Francis, Back of House Manager, Devrin Christopher Stewarding Supervisor and me to discuss the above. You stated that you did not recall saying this. Your accusation of threatening to kill Devrin was again affirmed by Rodney Browne.

Okeree your aforementioned behavior is unacceptable. You violated the disciplinary code #26 *Immoral Conduct*. Use of threatening language cannot be tolerated at Carlisle Bay as this is a serious offence which cannot go unnoticed. We are therefore, left with no choice but to terminate your service with Carlisle Bay Resort Ltd. effective today 29th January, 2015. This letter served as confirmation.

Please find enclosed a cheque in the amount of EC\$234.44 representing your full and final payment. The calculation is as follows:”

The letter continued to set out the calculation in detail.

[The court notes that during oral evidence that the date of the meeting described in Para 2 of the letter of dismissal was corrected to read 29th January 2015 in lieu of the 28th January 2015].

Employer's Submission

20. Learned counsel for the Employer made reference to the collective agreement (see Para. 15 above) and directed the Court's attention to item 25 of Clause 26 (Appendix 1) where it states that "**Assaulting a guest, representative of management or any member of staff, together with (item 21) Immoral conduct** are punishable by summary dismissal.
21. Learned counsel for the Employer further refereed the Court to the sections of the Antigua and Barbuda Labour Code, Cap 27 and argue that under subsection C59 (1) of the said code the Employer was justified in dismissing the Employee.
22. Learned counsel also asserted that the Employee was given a fair hearing by the Employer, that he was given notice of the allegations against him, and that he had had an opportunity to present his version of the events and to question witnesses. Counsel further asserted that even if these rules of natural justice had not been followed, summary dismissal would have been justified under the Collective Bargaining Agreement.

Employee's Submission

23. The Representative for the Employee maintains that at no time did the Employee issue any threat to kill or harm the supervisor.
24. The Employee's Representative asserts that the Employer took a decision ... "to inform the Employee that his employment had been terminated...albeit there was no explicable motive, rhyme or reason for him having resorted to this course of alleged conducts and behavior".
25. The Representative for the Employee also directed the Court's attention to the Antigua and Barbuda Labour code, at section C58 (1) and C59 (1) (2) and suggest that this gives an employer "some guidance in terms of its disciplinary process and options to be exercised".

Decision

26. In arriving at a decision in this matter consideration was given to the evidence of all the parties concerned. Special consideration was given to the relevant sections of the Antigua and Barbuda Labour Code, Cap 27, the Industrial Court Act, Cap 214, the Memorandum of Agreement between the Antigua Hotels & Tourist Association and the Antigua Worker's Union, together with various legal authorities. We were also able to observe the demeanor of the witnesses.
27. It is common ground that the Employee was dismissed on January 29th 2015. However, the Employee has denied threatening his supervisor and had denied being present when Mr. Browne allegedly confirmed that he had heard the threat.
28. The Employee has denied that he was in the meeting at the time when Rodney Browne was called on the telephone and put on speakerphone, and has claimed that he had no opportunity to ask Mr. Brown questions.
29. This Court however accept the evidence of the Human Resources Manager and also the evidence of Nicole Hector, the personnel assistant, when they confirmed that the Employee was in fact present in the meeting at the material time. (See Para 12 & 13 above.) and that he declined asking any questions.
30. The Court also accepts the evidence of Rodney Browne when he said *inter alia* 'I plainly heard him tell Devrin that he was going to kill him'.
31. Thus the question that remains is whether or not the threat made by the Employee was sufficient to ground his dismissal.
32. The Employer has a common law duty to take reasonable care for the safety of their employees. They must therefore be seeing to act to protect their worker's safety. As stated by the Learned Author in **Industrial Law (Second Edition)** at **page. 239**, the "influence of the common law could arise in the case of an employee who ...is inclined to show physical aggression, for in such a case there is a common law duty upon the employer to take reasonable care for the safety of that man's fellow employees which may ultimately require his dismissal."
33. The court is of the view that any threat to kill, cannot be taken lightly. The Employee has not expressed any remorse for the said threat. He did not lead any

evidence to assist the Court in determining his intents when he made the threat. Rather he denied having made the threat despite convincing evidence of witnesses to the contrary.

34. Having accepted the evidence that the threat was made, the Court can only view that threat on its face as a potential for harm to the supervisor. In those circumstances, it was imperative for the Employer to first satisfy itself as to whether the threat had in fact been made, give the Employee a reasonable opportunity to be heard, and, if necessary take steps to protect Mr. Bowne and other employees from any potential for future harm.
35. The Court finds that the Employer took reasonable steps and held consultations with the Employee in the meeting convened by the Human Resources Manager on the 29th January 2015, that he (the Employee) was given an opportunity to hear the accusation made against him by the said supervisor and was given the opportunity to ask questions, He had an opportunity to challenge the person who said they heard him threaten his supervisor but he chose to make no such challenge until bringing this claim.
36. The Court is satisfied that a threat of the kind made by the Employee amounts to misconduct of the type specified in section C59 of the Labor Code, that is to say, misconduct *so serious that the employer cannot reasonably be expected to take any course other than termination.*
37. **In the UK Court of Appeal matter of British Leyland (UK) Ltd. v. Swift.** Lord Denning MR noted that “The correct test is: was it reasonable for the employer to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might have reasonably dismissed him, then the dismissal was fair”. [see **Industrial Law (second edition) Page 235**].
38. We find that the Employer acted fairly when they determined that, quote “threatening language cannot be tolerated” ...and that they are ...therefore, left with no choice but to terminate your services”.
39. We would therefore dismiss the Employee’s reference.

40. There shall be no order as to cost.

Dated the 29th day of January, 2019

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

HON. ST. LAWRENCE DE FREITAS
CHAIRMAN

A handwritten signature in black ink, appearing to read 'M. Samuel-Fields' with a stylized flourish at the end.

HON. MEGAN SAMUEL-FIELDS
MEMBER

