



ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 5 OF 2014

BETWEEN:

ARDEN WILLIAMS

Employee

and

ANTIGUA & BARBUDA OLYMPIC ASSOCIATION

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. Dr. Hayden Thomas

Member

The Hon. St. Lawrence de Freitas

Member

Appearances:

Mr. Egbert Joseph and Ms. Cicely Charles of Antigua Hotel Management Association for the Employee

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

2015: October 22

2019: May 08

JUDGMENT

BROWN, P:

Background

1. The Employer is an umbrella body comprised of representatives of national associations and committees in Antigua and Barbuda which participate in the Olympics and the Commonwealth games. It provides national representation on

the International Olympic Committee and the Commonwealth Games Federation.

2. The Employer, a “not-for profit” organization, run by an executive of 13 volunteers, carries on business from its offices situate at Redcliffe Street in the City of St. John’s in premises provided free of charge by the Government of Antigua & Barbuda.
3. The Employee commenced his employment with the Employer as an Administrative Assistant on 15th August, 2002. At the date of termination of his employment, he was earning \$5,000.00 per month.
4. By letter dated 18th December, 2009 the President of the Employer addressed the Employee as “Office Manager” and required him to assume the duties of Secretary General which he did for four months up to 15th April, 2010.
5. By letter dated 19th April, 2010 the Employee’s services were terminated with immediate effect on the ground of redundancy. By that letter the Employer proposed to pay him the sums of \$26,316.70 as his severance entitlement, \$5000 – as pay in lieu of notice and \$1,603.28 as 8 days vacation pay.

The Opposing Cases

6. Being dissatisfied with the termination of his employment, the Employee commenced these proceedings. In his Memorandum of Claim filed on July 14, 2014 set out the chronology of events leading up to the termination of his employment and contended that “the termination was not handled properly” and that the Employer “did not practice fair labour industrial principles.” Although the “Reference” commencing the proceedings identified “unfair dismissal” as an issue between the parties, that term was not used in the Memorandum.
7. On the foregoing bases the Employee claimed severance pay at the rate of 1 month per year for 8 years; Notice Pay equivalent to one month’s salary and loss of earnings for 3 months at the rate of his previous salary.
8. On the other hand, by its Memorandum of Defence filed on 30th October, 2014, the Employer contended that:
 - (a) In or about August 2002 the Employee was employed in the position of Administrative Assistant.

- (b) The Employee was not a manager and had no managerial functions. He was “given” the position of Office Manager, as an act of nepotism by his father, “merely as a nominal, titular appointment in or about January 2003.
 - (c) Immediately prior to the termination of his employment the total Employee’s salary per annum was \$60,000.00 or almost 75% of the annual budget of \$81,000.00 allocated by the International Olympic Committee to the Employer.
 - (d) By reason of global recession and a lack of sponsorship, the Employer determined that the existing state of affairs was untenable and the continued employment of the Employee was unsustainable.
 - (e) By letter dated 18th December, 2009 as a result of the then recent retirement of the Secretary General, the Executive Committee decided that the Employee should fill that position and perform the duties of the Secretary General, all of which were voluntary.
 - (f) By a decision of its Executive Committee made on 26th October, 2009, it was decided that the three members of staff would be severed with effect from 31st January, 2010 towards the restructuring of the Employer’s business.
 - (g) By letter dated 19th April, 2010 the Employee’s employment with the Employer was terminated.
9. On those grounds, the Employer contended that the Employee is not entitled to any further sums in addition to the amount paid to him at the date of the termination of his employment.

The Main Issues

10. The Main Issues arising are as follows:

- (1) Whether the Employee was employed as Office Manager.
- (2) Whether there was a genuine redundancy situation at the material time.
- (3) Whether the Employee was unfairly dismissed.
- (4) Whether the Employee is entitled to additional compensation under a redundancy or by reason of unfair dismissal.

Main Issue No.1: Was the Employee employed in the position of Office Manager?

11. We have noted the relevant parts of the pleadings and the evidence of both parties on this issue on the bases of which we make the following findings of fact:

- (a) Although the Employee commenced his employment as Administrative Assistant on or about 15th August 2002, he was promoted to the position of

Office Manager in January 2003. His promotion coincided with the increase in his salary to \$5,000.00. He was required to report to the Secretary General.

- (b) The Employee worked in the position of Office Manager for over 7 years from 03rd January 2003 to 19th April, 2010. He was acknowledged to hold that position in formal correspondence addressed to him by the President of the Employer.
- (c) By letter dated 18th December, 2009 his duties and responsibilities were increased. He was required to “assume responsibility for the day-to-day management and operations of the Secretariat.” In addition, he was required to perform the duties of Secretary General.

12. Based on our analysis of the evidence, it is our opinion that the Employee held the position of Office Manager for which he was earning \$5,000.00 per month at the date of termination of his employment.

Main Issue No. 2: Was there a genuine redundancy situation?

13. We are persuaded by the evidence before us that there was a genuine redundancy situation at the material time. We note that staff changes were made as part of the overall restructuring programme pursuant to the request and the directions of the International Olympic Committee. In that regard, we note in particular, the President’s letter dated 27th May, 2010 to the Committee, pursuant to the request and directions of the International Olympic Committee and the Employee’s letter dated 11th May, 2010 to the President.

Main Issue No. 3: Was the Employee unfairly dismissed?

14. In **Reference No. 66 of 2015 Antigua & Barbuda Workers Union v. Cable & Wireless (Antigua & Barbuda) Ltd** this Court found that there was a genuine redundancy situation. However, most importantly, this Court, in reliance on the Court of Appeal decision in **Civil Appeal No. 28 of 2001 Sundry Workers v. Kings Casino Limited**, determined that notwithstanding the redundancy, the Employer must establish that it acted reasonably in handling the situation.
15. Given the totality of the evidence generally and the role of the Employee in discharging the duties of the Secretary General at the material time, we conclude that as follows:
- (a) The Employee had reasonable notice of the then impending redundancy.

- (a) The Employee had reasonable notice of the then impending redundancy.
 - (b) The Employer's hands were tied in so far as its role in handling the redundancy situation was delimited by the International Olympic Committee.
 - (c) The structure and size of the Employer's operations and the role of the Employee at the material time, did not leave much scope for the usual consultation process after he became aware of the planned restructuring process.
 - (d) Similarly by reason of the structure and size of its operations, the Employer had little or no latitude in the selection of the Employee or offering him any alternative employment.
16. On a balance of probabilities, we find that the Employer has discharged its evidentiary burden with the result that the dismissal was not unfair. Accordingly, we declare that the Employee was not unfairly dismissed. However, the question remains as to whether the payment he received at the date of termination of his employment was sufficient.

Issue No. 4: Is the Employee entitled to additional Severance entitlements?

17. Upon the termination of his services the Employee was paid the total sum of \$32,919.98 comprised of the following amounts:
- (a) One month's pay in lieu of notice in the sum of \$5,000.00.
 - (b) Severance pay at the rate of 15 days pay per year.
 - (c) 8 days vacation pay.
- His claim in this Reference is for Severance pay at the rate of one month's pay per year; One month's pay as pay in lieu of notice; and 47 day pay as vacation pay, and an honorarium of \$6,000.00.
18. In his closing submissions the Employee's Representative, Mr. Egbert Joseph submitted that the Employee is entitled to severance pay for the full 8 years of his employment. On the other hand, Counsel for the Employer contended that the amount paid to him representing 15 days pay per year is in excess of the minimum requirement set out in the Labour Code.
19. We have already determined above that the Employee was last employed as Office Manager. In any event, it is now well settled in this Court that Severance

pay for monthly paid workers should be calculated at the rate of one month's pay for each year worked. Therefore, in the circumstances of this case, we accept Mr. Joseph's submission and award the sum of \$13,683.30 being the difference between his full severance entitlement of \$40,000.00 and the sum of \$26,316.70 paid to him earlier.

20. As to payment in lieu of notice, during cross-examination the Employee conceded that his claim under this head has been fully satisfied.
21. As to the Employee's claim for an honorarium, we accept the Employer's evidence that the position of Secretary General was voluntary and did not attract any payment. Accordingly we dismiss the Employee's claim for payment under this heading.
22. As to vacation pay, doing the best we can with the evidence before us, we interpret the President's endorsement on the Employee's letter dated 23rd April, 2009 to be approval for the employee to take 15 days leave, leaving a balance of 6 days. Further, we find that in accordance with the dismissal letter, the Employee was paid his accrued vacation for the year 2009/2010. In the circumstances we award the Employee the sum of \$1,384.26 being the balance of 6 days vacation pay (\$230.71x6).

Conclusion

23. In conclusion we award the Employee the total sum of \$15,067.92 comprised as follows:

(a) Difference due on severance entitlement -	\$13,683.30
(b) 6 days outstanding vacation pay	- \$ 1,384.26
	<u>\$15,067.56</u>

Order

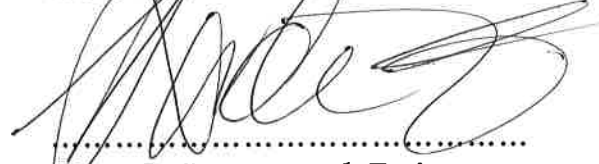
24. It is ordered that the Employer do pay to the Employee the total sum of \$15,067.56 no later than 14th June, 2019.

Dated the 08th day of May, 2019


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Hon. Charlesworth O.D. Brown
President



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Hon. Hayden Thomas
Member



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Hon. St. Lawrence deFreitas
Member

