



ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 2 of 2016

BETWEEN:

JASON NICHOLAS

Employee

And

LOWGER BUS LINES LIMITED

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. John Benjamin

Member

Appearances:

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

Mr. Justin L. Simon QC of Simon Rogers Murdoch, Attorney-at-Law for the Employer

**2020: October 05
October 08
October 30**

JUDGMENT

Brown, P;

Background

1. The Employer is a company registered under the laws of Antigua & Barbuda. At all material times it was primarily engaged in the business of transporting workers to and from work at scheduled times at various locations in Antigua. Although its main administrative office was housed at Gambles Terrace, the Employer's garage where the Employee was stationed, was situated approximately one mile away at American Road.

2. The Employee commenced his employment with the Employer as a Bus Driver on November 10, 2008. As at January 2014 he was earning \$507.69 per week and worked eight-hour shifts, commencing at 6:30 am 6 days per week from Monday to Saturday. Upon acceptance of employment the Employee, like the other drivers, was given a schedule indicating the particular times and destinations at and to which he was required to transport passengers.
3. Prior to January 24, 2014, the Employee was a hard-working and responsible worker. He appreciated the nature of his job and the importance of meeting the fixed schedules. Accordingly, he called in advance to inform the Employer whenever he was going to be late or unable to make his assigned trips because of illness or mechanical problems with the bus he was assigned to drive.
4. On January 24, 2014, the Employee was summoned to a meeting at the Employer's administrative office. The Employee's supervisor, Mr. Vernon Tonge, transported him to the meeting. The Employer's Managing Director Ms. Gertrude Spenser, met with the Employee at approximately 10:30 a.m. During the meeting, the Employee was instructed by Ms. Spencer to return to the garage and clean Bus 107 to which he was being reassigned with immediate effect in place of Bus 225 to which he was previously assigned.
5. After the meeting, which lasted for approximately 10 minutes, the Employer expected the Employee to return to the garage, follow the instructions given to him by Ms. Spencer and resume his normal duties. The Employee expected Mr. Tonge to return to the office and transport him back to the garage but he failed to do so.
6. After waiting for over an hour and a half and making several unsuccessful attempts to contact Mr. Tonge by telephone, the Employee returned home and never reported back to the garage for the rest of his shift that day.
7. On Saturday January 25, 2014 when the Employee reported for work, Mr. Tonge told him that as a precondition to the resumption of his duties, he would have to apologize to Ms. Spencer who was then present at the garage. The Employee refused to apologize on the ground that Mr. Tonge was the one at fault for not returning to transport him back to the garage to complete his shift. Although he did not fully articulate his position to Ms. Spencer, the Employee maintained his position that he had nothing to apologize for and steadfastly refused to do so. Instead, when pressed by Mr. Tonge for the required apology, he responded by saying "I had enough of this" and walked out of the garage. He never returned to work that day and did not communicate with the Employer.

- On Monday January 27, 2014 the Employee did not report for work at 6:30 am as required. Instead, at approximately 8:00 am he visited the office of the Labour Commissioner to enquire about his rights. By approximately 9:00, in light of the Employee's failure to report for work that day, the Employer came to the conclusion that he abandoned the job and wrote to him to that effect.
8. The last paragraph of that letter dated January 27, 2014 setting out the Employer's position reads as follows:

"It is our view that you abandoned your job with us not only when you did not return to work on Friday 24th, as instructed, without any notification or excuse but also because you left the compound muttering that you had enough and consequently did not work on Saturday 25th and have not returned to work nor have we heard from you since then. Based on your actions, the employment relationship between Lowger Bus Lines and you is deemed to be terminated."

Discussion

9. In our estimation, the Employee is an unsophisticated man with an unblemished record of employment for the 6 years of his tenure up to January 2014. The evidence discloses no transgressions in respect of the performance of his duties or his conduct towards his superiors on the job. In particular, there were no reported incidents of insubordination or dereliction of duty.
10. As we understand it, the watershed in his relationship with the Employer occurred when, contrary to his expectation, neither his supervisor nor any other person was in position to transport him back to the garage after his meeting with Mrs. Spencer. We find that his expectation was not unreasonable in the circumstances. It was the Employer's responsibility to arrange transportation to take him back to his workstation.
11. It is understandable that the Employee became frustrated because of his long wait for transportation and his several unsuccessful attempts to contact his supervisor. However, it was not reasonable for him to arrange "a ride" to go home instead of returning to the garage.
12. As to the events on January 25, 2014, despite his "frustration" the day before, the Employee had enough time to cool down and appreciate that the Employer's request for an apology was based on his failure to follow Mrs. Spencer's instructions to return to work and the resulting inconvenience which the Employer and its customers might have experienced. In that regard, under cross

examination, the Employee accepted the suggestion that it was wrong not to return to work after the meeting. In our view, when confronted with the demand for an apology, there was nothing to prevent him from expressing his earlier frustration and explaining why he did not see the need for him to apologize.

13. As to the January 27, 2014, given his previous settled practice of communicating with the Employer in advance of any absence or lateness, notwithstanding his subsisting grievance, we also fault the Employee for not informing his supervisor or any member of the management team that he was going to be late for work that morning.
14. On the other hand, the Employer's issuance and delivery of the letter to the Employee was unfortunate. By acting as hastily as it did, the Employer had scant regard for the Employee's grievance and his effort to obtain advice from the Labour Department. In our view, a reasonable employer would have at least convened a further meeting to inform the Employee that disciplinary action against him was being contemplated and thereby give him a fresh opportunity to state his grievance or explain his position.
15. In the final analysis, we are of the opinion that, in the absence of an explanation, the Employee's attitude and conduct suggest a degree of insubordination and temporary dereliction of his duties. However, despite his utterance of the words "I had enough of this" and not reporting for duty at 6:30 am on January 27, 2014, we find that the Employee did not abandon his job. Instead, it was the Employer's letter which effectively terminated the employment relationship on January 27, 2014. Accordingly, the Employee was unfairly dismissed and is entitled to compensation.
16. Notwithstanding that conclusion, it is also our opinion that the Employee contributed to his dismissal. As a result, the compensation to which he would otherwise be entitled will be discontinued by 10% to reflect the extent of his blameworthiness.

Compensation

17. Naturally, the compensation to which the Employee is entitled is subject to his efforts to mitigate his loss. Under cross-examination he provided sketchy evidence, the most instructive part of which was that 3 weeks after his dismissal he found fresh employment as a Truck Driver for which he earned approximately \$600.00 per week.

18. In the circumstances, we award compensation as follows:

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|---|-----------|
| a) Notice Pay (1 week's pay) | \$ 507.69 |
| b) Loss of Protection (1 day's pay p/month of employment) | 5,330.75 |
| c) Immediate Loss (3 weeks' pay) | 1,523.07 |

Total	\$7,361.51
Less 10%	736.15

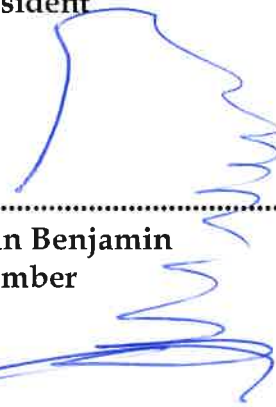
Net compensation \$6,625.35

19. Finally, we order that the Employer shall pay compensation in the sum of \$6,625.35 to the Employee no later than November 30, 2020.

Dated this 30 day of October 2020



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Charlesworth O.D. Brown
President



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John Benjamin
Member

