

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 26 of 2015

BETWEEN:

ROSEMARIE TAYLOR

Employee

And

GALLEY BAY INVESTMENT LIMITED

t/a

GALLEY BAY HOTEL

Employer

Before:

The Hon. Charlesworth O.D. Brown

The Hon. Hayden Thomas

The Hon. Megan Samuel-Fields

President

Member

Member

Appearances:

Anderson Carty, Antigua & Barbuda Tradesmen & United Workers' Federation for the Employee

Mrs. Stacey-Ann Saunders-Osborne of S. Saunders Osborne Legal Services, Attorneys-at-Law for the Employer

2017: May 22

2020: July 31

JUDGMENT

Brown, P;

The Opposing Cases

1. In this Reference the Employee claims compensation for "Breach of Employment Agreement" and "Unfair Dismissal". In response, the Employer denies that an employment relationship existed by reason of which the claim must fail.
2. In her Memorandum of Claim the Employee contends that after being interviewed by four (4) officers including the General Manager, Mr. Chris Ghita, the Employer, through its Personnel Officer, Delciere Waterfall, offered her employment in the position of Laundry Supervisor with effect from January 12, 2015 subject to her acquisition of a work permit. She obtained the Work Permit



at a cost of \$3,000.00 after which Ms. Waterfall "reconfirmed" her employment on the said starting date and stipulated that she should report from work at 8:00am wearing "black and white".

3. On January 12, 2015 while the Employee was at home preparing for work, Ms. Waterfall informed her by telephone that the Employer had changed its mind about hiring her. As a result, the Employee contends that the Employer's action in changing its mind "amounts to a breach of agreement which would give rise to a claim of unfair dismissal."
4. In its Memorandum of Defence the Employer acknowledges that it offered employment to the Employee in the position of Laundry Supervisor on two (2) conditions:
 - (a) that she would obtain the work permit
 - (b) that she had answered all the interview questions forthrightly and the same would be confirmed by her former employer.

According to the Employer, if the Employee failed to meet any of those two conditions its offer and her acceptance thereof would be withdrawn.

5. On the information received by "feedback" from the former employer, St. James's Club, the Employer determined that the Employee had failed to make full disclosure as a result of which it lost confidence in the Employee as being suitable for the position. Therefore, the Employer resiled from entering into a formal contract with her as would have been the case if the conditions were fully met.
6. Further, or in the alternative, the Employer contends that if an employment relationship existed, the termination occurred within her probation period in which case the Employee was not entitled to a letter of termination under section C 10 of the Antigua & Barbuda Labour Code.

Resolution

7. The evidence which we accept, discloses that, as far as Ms. Waterfall was concerned, the Employee was "quite impressive" during the interviews to the extent that there was no reason why she would not get the job. Accordingly, an offer was made by her which the Employee accepted.
8. Notwithstanding that offer and acceptance process, it is clear that during and after the interview process, Mr. Ghita was still making enquiries. That fact was acknowledged by the Employee in her oral testimony. She said that all the preliminary steps including her application for her work-permit were conducted before the interview with Mr. Ghita which came after those with Mr. Williams and Ms. Waterfall. During that interview, Mr. Ghita asked her for the name of a

person he could call for information about her previous employment at St. James's Club. The Employee directed him to call "Marsha Moss".

9. It is noteworthy that Mr. Hesketh Williams, Human Resources Director of the Employee's former employer, chaired the first interview session with the Employee. He is deemed to have known the details of the circumstance under which the Employee was dismissed from her previous employment. It appears that he expressed no objections to the Employee's employment. Be that as it may, it is clear that the final decision regarding the hiring of the Employee was solely in the hands of Mr. Ghita. In the circumstances, we find that his "due diligence" exercise was being carried out contemporaneously with Ms. Waterfalls conversations with and offer of employment to the Employee.
10. It emerged that when Mr. Ghita received the information on which he was waiting, he made the decision not to hire the Employee. In the words of Ms. Waterfall, "things changed". Although no details were given, it appears that Mr. Ghita came to the conclusion "that the Employee was not truthful during the interview process".
11. We find that the offer/acceptance process, and the information given to the Employee about the actual "starting date" were part of the normal procedure which were at all times subject to the approval of the General Manager. It stands to reason that the proverbial buck stopped with him. The ultimate responsibility for the hiring of the Employee was squarely in his hands. In the circumstances, he had the power to countermand any earlier decision taken and instructions given to the Employee about reporting for duty and so on. In that regard, it appears that Ms. Waterfall had no direct instructions or approval from him to communicate with the Employee as she did.
12. The evidence of Mr. Ghita is that the Human Resources Department had the responsibility for doing all the vetting before the matter of the hiring of the Employee came to him for "final approval". Based on the report he received from that Department, he said "I did not clear her for hire". He said that based on the information received he decided not to hire the Employee. He testified that he was not aware that the Employee had been called out to work at a specific time, wearing black and white.
13. Before stating our final conclusion, we recall the judgment of this Court in Reference No. 36 of 2014 **Derrick Nicholas v Allied Hotel and Resorts**. In that case, the employer delivered a written job offer to the employee. The written offer specified a starting date as well as the salary and fringe benefits which he would receive. Approximately 15 days before the proposed start date, the company notified the employee that it had withdrawn the offer. In the end, this Court upheld the Employer's contention that there was no employment relationship to ground Mr. Nicholas' claim.

Conclusion

14. On the facts of this case, we find that no employment agreement was consummated between the parties. Despite the purported "offer" and "acceptance" the employer/employee relationship remained suspended and never crystallized. The purported "offer" and "acceptance" were wholly superseded by the General Manager's decision not to hire the Employee.
15. In the circumstances, the Employee's claim is hereby dismissed with no order as to costs.
16. Finally, notwithstanding the dismissal of her claim of unfair dismissal the Employee should be reimbursed for the cost of the work permit in the sum of \$3,000.00 plus a reasonable sum for the "black and white" outfit she acquired in preparation for work.

Dated this 31st day of July, 2020



Charlesworth O.D. Brown
President



Hayden Thomas
Member



Megan Samuel-Fields
Member