

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 6 of 2015

BETWEEN:

ROSEMARIE TAYLOR

And

ST. JAMES'S CLUB ANTIGUA LIMITED

Employee

Employer

Before:

The Hon. Charlesworth O.D. Brown

The Hon. John Benjamin

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 08

2020: July 31

JUDGMENT

Brown, P;

Background

1. The Reference commencing these proceedings, filed on February 20, 2015, identifies the issues in dispute between the parties as unfair suspension and unfair dismissal.
2. The Employer carries on business as a hotelier at its premises at Mamora Bay, in the Parish of St. Paul. In the course of its business the Employer entered into contracts with Virgin Atlantic Airlines and British Airways whereby it was required to have selected rooms in a state of readiness for use by the crews of those airlines from time to time.



3. The Employee's employment was governed in part by the Collective Agreement then in force between the Employer and the Antigua and Barbuda Workers' Union. That Agreement included provisions under Article 25 for progressive disciplinary actions against employees who were guilty of breaches of the stipulated Disciplinary Code.
4. In her position as Housekeeping Supervisor, the Employee reported to and was supervised by Ms. Telicia Thomas, Junior Assistant Manager. Her duties and responsibilities included the obligation to ensure that selected rooms were in a state of readiness from time to time, for use by crew members of the said airlines.
5. Prior to the Employee's dismissal on October 7, 2014 the Employer had taken several disciplinary actions against her over the period February 2011 up to the date of her dismissal. The more recent disciplinary actions include the following six (6) warnings in 2014:
 - January 24, 2014 – written warning of suspension or termination.
 - April 1, 2014- written warning of suspension.
 - June 3, 2014- verbal warning of stronger disciplinary actions.
 - August 7, 2014- written warning of termination.
 - September 12, 2014- written warning of termination.
 - September 19, 2014- suspension and written warning of termination.

The Opposing Cases

6. The Employee's case is set out in her Memorandum of Claim and supported by her witness statement. The main grounds for her contention of unfair dismissal are set out in sequence as follows:
 - a. The Employee was first employed on April 15, 2000 as a Room Attendant and later promoted to Housekeeping Supervisor, which position she held up to the date of her dismissal on October 7, 2014. She earned the sum of \$499.20 in addition to which she received a 1.75-point share of the service charge which amounted to approximately \$300.00 weekly.
 - b. On September 15, 2014, Ms. Telecia Thomas, the Employer's Assistant Manager, to whom the Employee reported, instructed or directed her to contact one of her colleagues, who was then off-duty, and request that she work overtime to meet the staff requirements for a particular shift on the night of September 18, 2014. The Employee undertook to contact her off-duty colleague and adjust the work schedule in order to ensure that the required rooms were ready for the arrival of the Virgin Atlantic Crew the following morning.

- c. Following her initial unsuccessful effort to contact her off-duty colleague, the Employee forgot to follow-up. On her return to work on September 18, 2014 following her days off on the preceding two days, the Employee was summoned to a meeting with Ms. Thomas who confronted her with her failure to comply with the instructions. In response, the Employee explained that she had simply forgotten.
- d. Based on the explanation given, Ms. Thomas advised the Employee that she would receive a letter of warning. However, when the matter was referred to the Human Resources Department, a meeting was held and the decision was taken by Ms. Melissa Farley, the Personnel Assistant, that the Employee would be suspended for two (2) weeks for failure to perform her duties.
- e. On October 5, 2014, when the Employee returned to work after her suspension, she was working alongside another Supervisor Ms. Camilla Richards who informed her that guest rooms 125 and 126 were ready for occupancy. In reliance on that information the Employee, in turn, informed the "Front Desk" that those rooms were in a state of readiness.
- f. On October 7, 2014 the Employee was summoned to a meeting with Mr. Hesketh Williams, the Human Resources Director, who informed her of a guest complaint regarding the said rooms. At the meeting the Employee relied on what Ms. Richards told her. However, Ms. Richards denied telling her that the rooms were ready.
- g. By letter dated October 7, 2014 the Employee was dismissed. In the letter of dismissal, the Employee was held accountable since she was the one ultimately responsible for the readiness of the crew rooms on the day in question. The Letter also cited a number of flaws in the Employee's performance which resulted in previous disciplinary actions against her. Excerpts from the letter of dismissal are as follows:

"Dear Ms. Taylor,

...

What is clear from the exchange between you both is that since neither of you checked the rooms, it must be concluded that they were not checked; such a situation is just as bad as if the room had been checked and the flaws overlooked.

Ms. Taylor, you admitted that you were the one ultimately responsible for the crew rooms that day, and therefore must be held accountable for what went wrong. During the past few months, a number of flaws have been found in your performance which necessitated disciplinary action to be taken against you, the

most recent of which resulted in your suspension on September 19, 2014. The letter indicated that the next offence could result in your termination. We cannot allow the name of the resort to continue to receive bad publicity due to the inefficiency of our supervisors. In light of that and the current situation your service with St. James's Club and Villas is terminated with immediate effect"

...

.....
Hesketh Williams
Human Resources Director"

7. On the other hand, by its Amended Memorandum of Claim as supported by its witness statements, the Employer contends that the dismissal was not unfair for the following reasons:
- (a) As Housekeeping Supervisor, the Employee's main duties were to assist Ms. Thomas in ensuring that all guest rooms were kept in a state of readiness to the established company standard so that it could properly discharge its contractual obligations.
 - (b) Prior to September 15, 2014 the Employee had been given a reprimand and warnings of suspension and termination in respect of the proper performance of her duties.
 - (c) Between September 15, 2014 and September 18, 2014, the Employee failed to execute specific instructions or directions given to her by Ms. Thomas.
 - (d) As a result of the Employee's failure, the Employer found itself in breach of its contract with Virgin Atlantic, from which contract it derived significant earnings.
 - (e) The suspension of the Employee on September 18, 2014, like all previous disciplinary actions taken against her, was in accordance with Disciplinary Procedures and the Disciplinary Code established in the Collective Agreement.
 - (f) On October 5, 2014, the Employee had failed to perform her duties satisfactorily in that she failed to inspect the rooms and confirm their state of readiness as she was required to do.
 - (g) As a result of the Employee's failure, the Employer found itself in breach of its contractual obligations to British Airways with the consequential risk of significant financial loss.

Key Findings and Resolution

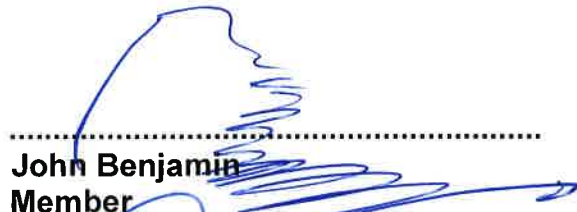
8. In our opinion, the documentary, written and oral evidence before us favour the Employer. In particular, where specific parts of the Employee's evidence conflict with the corresponding parts of evidence given on behalf of the Employer, we accept the latter as being more convincing. In the final analysis, we find that:
 - (1) In taking disciplinary actions against the Employee, the Employer acted substantially in accordance with the agreed Disciplinary Code and the Disciplinary Procedures set out in the Collective Agreement.
 - (2) As a result of the Employee's failure to diligently carry out the instructions of the Assistant Manager and perform her related duties, selected Rooms were not prepared to the established standard by 9:00am on September 19, 2014 to meet the Employer's contractual obligations to the Virgin Atlantic Crew.
 - (3) As a result of the Employee's failure to diligently perform her duties on October 5, 2014, Rooms 125 and 126 were not prepared to the established standard and left in a state of readiness for use, in accordance with the Employer's contractual obligations to the British Airways Crew who were scheduled to arrive the following morning.
9. In our view, the most critical question at this juncture is whether it was reasonable for the Employer to suspend the Employee on September 18, 2014 and dismiss her on October 7, 2014 in the respective prevailing circumstances.
10. We have noted above that the Employer acted substantially in accordance with Article 25 of the Collective Agreement. In that regard. We paid attention to the bands of offences and the progressions of the disciplinary actions which the Employer was entitled to take. The band of offences which includes "Failure to perform duties" allows for dismissal on the fourth occurrence of any particular offence. Importantly, we note that Clause 25:1 provides that the Employer is not necessarily bound to follow the order of progression from the first to the fourth occasion. Clearly, that provision leaves some degree of latitude within which the Employer might exercise its discretion. In any event, it is clear that the letter of suspension warned the Employee of the possibility of her dismissal if there was a repetition of the offences which she had previously committed.
11. Moreover, we note the Employer's reference to its previous disciplinary actions against the Employee. In our opinion, although the weight of previous infractions diminish significantly after the statutory six month period established by section C 59 (1) of the Labour Code, it was not unreasonable for the Employer to take them into account when weighing its options as to whether or not to dismiss the Employee.

12. In approaching our final conclusion, we remain mindful of the Employee's contention that her failure to carry out the instructions of the Assistant Manager does not, per se, equate with poor performance. We also remain mindful of the Employee's contention that in the Assistant Manager's opinion after the September incident, a letter of warning would have been sufficient. On the facts of this case, both of those contentions are without decisive merit, given the nature of the Employer's business, its contractual obligations to its guests, the duties of the Employee in her position of Housekeeping Supervisor and her actions and omissions.
13. Ultimately, we are obliged to consider whether the Employer's actions in suspending and dismissing the Employee fall within a band of reasonable responses which a reasonable employer would take in the circumstances. We are mindful that there is a band of reasonableness within which, in similar circumstances, one employer might decide to suspend and dismiss while another might decide to administer a less severe form of disciplinary action. On the facts of this case, we are of the view that the Employer's action in dismissing the Employee falls squarely within an acceptable "range of reasonable responses." Accordingly, having regard to all the circumstances we are inclined to conclude that neither the suspension nor the dismissal was unfair.
14. For the reasons stated above, we declare that the Employee was neither unfairly suspended nor unfairly dismissed. As a result, we would dismiss her claim in its entirety and make no order as to costs.

Dated this 31st day of July, 2020



.....
Charlesworth O.D. Brown
President



.....
John Benjamin
Member



.....
Megan Samuel-Fields
Member