

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 66 of 2016

BETWEEN:

BEVERLY WILLIS

Employee

And

ST. HELENA CLUB INC.

t/a

THE INN AT ENGLISH HARBOUR

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. St. Lawrence de Freitas

Member

The Hon. Samuel Aymer

Member

Appearances:

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

Mrs. Sharon Cort-Thibou of Cort & Cort, Attorneys-at-Law for the Employer

2020: August 12

2020: August 21

JUDGMENT

Brown, P;

Background

1. The main issue in dispute in this Reference is whether the Employee, a former Cook Helper at the Employer's hotel, was unfairly dismissed in relation to two rolls of bathroom tissue, two bottles of wine and a plastic bag containing basmati rice found in her possession on the Employer's premises on June 17, 2016.
2. It is not in dispute that the Employee had the items in her possession. She maintained that they all belonged to her as she purchased the bathroom tissue from a village shop and that the wine and rice were given to her by a relative,



Jason, in whose vehicle she was a passenger on her way to work earlier that day. She also maintained that she omitted to declare the items upon her arrival or at any time during her shift because she was late for work and the day was busy.

3. The Employer contended that the items were of the same type and brand as the ones kept on stock in its storeroom for use in the normal course of its business; that contrary to established rules, the Employee failed to declare that the items were in her possession on the Employer's property; that the Employee attempted to conceal the items at the checkpoint when leaving the premises at the end of her shift; that the Employer became suspicious as the Employee was not able to give a satisfactory explanation regarding her possession of the items; that upon its investigation, the Employer confirmed that the items were "identical" to those kept in its storeroom; and that although she was given a further opportunity, the Employee could not provide a reasonable explanation for her possession of the items and/ or provide proof of ownership of the same.
4. Apart from the evidence in her Witness Statement, the Employee testified on her own behalf. Mr. Fabio Giorgi, the Employer's General Manager, testified on its behalf. Factually, it is common ground that the Employee had the items in her possession. Accordingly, the dispute to be resolved by this Court turns largely on the pertinent conduct of the parties at all material times.

The Burden of the Employer

5. Given the statutory origin of the Employee's right not to be unfairly dismissed, a finding of unfair dismissal will be made unless the Employer can establish that it had a good cause for the dismissal and that it acted reasonably in dismissing the Employee under Section C58 of the Antigua & Barbuda Labour Code (the Labour Code).
6. It is well settled that, as stated by this Court in its Judgment in **Ref. No. 22 of 1990: Hubert James v. St. James's Club**, there is no burden on the Employer to prove that the Employee is guilty of a criminal offence provided that it formed a genuine and reasonable belief to that effect. In other words, the Employer must discharge the burden of proving that it entertained a reasonable suspicion amounting to a belief that the Employee was guilty of the alleged misconduct.
7. As in all civil matters, the standard of proof in this matter is on the balance of probabilities. Accordingly, in so far as the evidence of the two witnesses differ, we may accept one version over the other. We may be persuaded or convinced one way or the next after careful consideration of the evidence as a whole, taking into account our careful observation of the demeanor of each witness.

8. In relation to the Employee's evidence, we are not convinced by her account of how she came into possession of the items; the reasons for her failure to declare them upon arrival or at any time during her shift; her interaction with Mr. Giorgi at the checkpoint; and her failure to provide a reasonable explanation or provide adequate proof at or before the meeting on Monday June 20, 2016.
9. In our estimation, it was reasonable for the Employer to conclude that her possession of the items was not a mere coincidence. Further, in our view, it was natural for the Employer to form a reasonable suspicion that the Employee was guilty of "Stealing Hotel Property" expressed as part of item No.27 of the Disciplinary Code in Appendix 1 to the governing Collective Agreement.
10. In our opinion, the evidence of Mr. Giorgi is more plausible than that of the Employee. In the circumstances, we find as follows:
 - a) Based on an incident which occurred about one month before her dismissal, the Employee was aware that the Employer was concerned about the unauthorized removal of its property from its premises.
 - b) The Employee failed to prove that she purchased the bathroom tissue at a village shop as she claimed.
 - c) The Employee failed to prove that the two bottles of wine and the basmati rice were gifts she received from her relative, "Jason".
 - d) In breach of the rules, the Employee failed to declare the items either upon her arrival at work, during her lunch break or at any other time during her shift.
 - e) At the exit checkpoint, the Employee was reluctant to remove the items from her bag. Eventually, she did so at Mr. Giorgi's request.
 - f) Based on the identity of the items she removed from her bag at the checkpoint, her failure to declare the items upon entering the premises and her unsatisfactory explanation, the Employer formed a reasonable suspicion about the Employee's possession of items and her related conduct.
 - g) The Employer carried out a reasonable investigation and determined that the items found in the Employee's possession were in fact "identical" to or of the same kind as those in stock in the Employer's storeroom or otherwise on its premises.

- h) The Employee had access to the stocks of identical items kept in storage or otherwise by the Employer on its premises.
- i) As a result of its investigation, the Employer confirmed its reasonable suspicion that the Employee was guilty of gross misconduct.
- j) On Monday, June 20, 2016, at a meeting convened by the Employer, the Employee was given a further opportunity to provide proof of her ownership of the items and/ or a reasonable explanation as to how they came into her possession.
- k) At the said meeting the Employee failed to provide the required proof and /or provide a reasonable explanation.
- l) Based on its prior reasonable suspicion, the Employer formed a reasonable belief that the Employee had misappropriated the Employer's property for her own use.
- m) The dismissal of the Employee was properly grounded on the Employer's reasonable belief that she was guilty of gross misconduct.

Concluding Declaration and Order

11. In the circumstances, we find that the Employer had a good cause for the dismissal and that it acted reasonably in dismissing the Employee. For those reasons we declare that the Employee was not unfairly dismissed and order that her claim be and is hereby dismissed.

Dated this 21st day of August 2020



Charlesworth O.D. Brown
President



St. Lawrence de Freitas
Member



Samuel Aymer
Member

