

ANTIGUA AND BARBUDA
IN THE INDUSTRIAL COURT
REF NO. C/26 OF 2018

BETWEEN:

TREVOR ASKA
and
PREMIER BEVERAGES LIMITED
Employee
Employer

Before:
The Hon. Charlesworth O.D. Brown
The Hon. Samantha May-Francis

President
Vice President

Appearances:
Mr. Anderson E. Carty of Antigua and Barbuda Tradesmen & United Workers'
Federation Representatives for the Employee
Ms. E. Ann Henry QC of Henry & Burnette, Attorneys-at-Law for the Employer

2021: May 26
June 29
October 4

DECISION

Brown, P.

Introduction

1. The Employer is a company registered under the laws of Antigua & Barbuda with its registered office at Friar's Hill Road in the Parish of St. John. Among other things, it is engaged in the business of selling, operating and servicing products, including equipment such as dispensing machines, to its customers in Antigua & Barbuda.

2. Under the contract of employment between the parties the Employee was engaged as a Maintenance Technician for the period from February 1, 2006 to August 22, 2017 when he was dismissed. At the date of his dismissal, he was receiving a salary of \$1,567.56 per fortnight.



3. In these proceedings which were commenced on May 22, 2018, the Employee claimed (a) compensation for unfair dismissal, and (b) accrued premium pay.

4. The Employer filed no Memorandum of Defence and as a result the matter was set down for an ex parte trial. Subsequently, on the Employer's application, it was permitted to be heard in relation to the quantum of compensation to be paid to the Employee. By Counsel's written submissions filed on June 14, 2021 the Employer conceded that the Employee was unfairly dismissed and contended that he was fully compensated therefor. Accordingly, this decision is limited to the determination of the compensation for unfair dismissal and, independently, the amount of accrued premium pay due to the Employee.

5. After the first part of the trial on May 26, 2021 it was declared that the Employee was unfairly dismissed and it was ordered that the Employer pay to the Employee the total sum of \$32,601.10 as an interim payment in respect of Payment in lieu of Notice, Loss of Protection from Unfair Dismissal and Immediate Loss of Earnings. The trial was then adjourned to June 29, 2021 to allow for the filing of the said written submissions and the Employer's production of records of overtime work.

The Assessment

5. As to the quantum of additional compensation for unfair dismissal, given the earlier Order, we considered the categories of Manner of Dismissal and Exemplary Damages. We find that no proper evidentiary foundation was laid for any compensation under these headings. However, in relation to the Employee's claim for exemplary damages, we have noted his Representative's spirited submissions regarding the Employer's failure to make premium payments to the Employee which might have constituted an offence under section C 28 of the Labour Code. Clearly, any such failure or refusal had no nexus to the unfair dismissal.

6. As to the Employee's claim for accrued premium pay, we consider this to be a valid claim based on the evidence as a whole. Unfortunately, we have no sufficient documentary evidence from the Employer to ascertain the precise number of overtime hours worked by the Employee. Nevertheless, we have determined that:

(a) As a result of the increase in the requirement for securing and maintaining its equipment on customers' premises, it was in fact necessary to call out the Employee to work on Saturdays and Sundays between 2006 and 2013.

(b) It was a part of the settled procedure in handling call-outs that the Employee himself would directly receive requests for his services, perform the required work and then report the same to the Employer. Needless to say, the obligation to keep full and proper records fell on the Employer. For present purposes, we simply have to do the best we can with the available evidence.

(c) Between 2006 and 2013 the Employee was not paid any premium pay for the overtime work he carried out.

7. In response to the Employee's claim for premium pay, learned Queen Counsel cited the Limitation Act and referred to Section 7 thereof contending that any claim for premium pay prior to May 22, 2012 is statute-barred having accrued more than 6 years before the commencement of these proceedings.

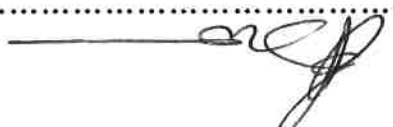
8. While we agree with Counsel that the claim for payment of premium pay is a claim in debt, it appears that she erred in relying on that section. The right to premium pay is grounded in statute and as such it is subject to the provisions of Section 11 of the Act which also imposes a statutory limit of six years.

9. In considering the Employee's claim for premium pay, we are mindful of the judgment of this Court in **Reference No. 4 of 2014: Joyann Canoville -vs- Dickinson Bay Hotel** in which it was held that the claim for "outstanding wages" was not contingent upon the claim of unfair dismissal. The same is true in this case.

10. In the circumstances, we will apply May 22, 2012 as the cut-off date for a valid claim for premium pay. In our estimation, based on the Employee's evidence, we find that on average he worked 30 hours per month for 9 months over the period May 23, 2012 to June 31, 2013. Accordingly, given his hourly rate of \$19.59, we award the sum of \$7,933.95 ($\$19.59 \times 1.5 \times 30 \times 9$).

11. In the premises, we order that the Employer do pay to the Employee the sum of \$7,933.95, as accrued premium pay, no later than October 30, 2021.

Dated the 04th day of October, 2021


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Charlesworth O. D. Brown
President


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Samantha May-Francis
Vice President

