

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 30 of 2016

BETWEEN:

CLAUDETTE THOMAS

Employee

And

HAWKSBILL BY REX RESORTS

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. St. Lawrence DeFreitas

Member

The Hon. Judith Dublin

Member

Appearances:

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

Ms. Fiona Murphy of Simon Rogers Murdoch, Attorneys-at-Law for the Employer

2017: August 17
2018: November 06
2021: January 08

JUDGMENT

Brown, P:

Background

1. The Employer, referred to in this Reference by its trade name, is a company registered in Antigua & Barbuda. At all material times, it carried on business as an all-inclusive hotel resort. The employment of its employees within a defined bargaining unit were largely governed by the Collective Agreement between the Antigua Hotels and Tourist Association, of which it was a member, and the Antigua and Barbuda Workers' Union.



2. Prior to May 5, 2015 the Employee was employed by the Employer for a period of approximately eight years, during which period she last held the position of Receptionist. Following an "interview selection process" the Employee commenced fresh employment with the Employer on December 01, 2015.
3. At the commencement of her fresh employment the Employee was required to complete a "New Employee Starter Form" (the Starter Form). In compliance with that requirement, the Employee completed and signed the form, excerpts from which are as follows:

"NEW EMPLOYEE STARTER FORM"

Permanent

☒

Temporary

☐

Casual

☐

SURNAME: Thomas

FIRST NAME: Claudette

DATE OF BIRTH: ...

MEDICAL BENEFIT NO: ...

JOB TITLE: Duty/Supervisor

SOCIAL SECURITY NO: ...

COMMENCEMENT DATE: 01st Dec, 2015

PROBATION ENDS:

SALARY / WAGES:

DEPARTMENT: **Front Office**

PAID:

SERVICE CHARGE POINTS:

PAID:

...

I am pleased to accept employment with Hawksbill by rex resorts. During this initial probation which may be extended, I will be paid the wages and service charge points set out above.

I agree that this appointment is on a three months' probation and that my lay off during this period or on termination of this period is without notice or pay in lieu of notice.

...

I Claudette Thomas have read the above and hereby confirm that I understand it fully and have agreed to it.

Date 03rd December 2015

Signature of New Employee Claudette Thomas"

4. By letter dated December 21, 2015, the Employee was dismissed with immediate effect on the ground that she had unreasonably disclosed certain confidential information to one of her subordinate Front Desk colleagues. The Employer concluded that the Employee's actions undermined the authority of the Front Desk Supervisor and created negativity within that department.

Court Proceedings

5. The grounds of the Employee's claim of unfair dismissal include the following:
 - (a) She was employed in the position of "Night Manager" at a salary of \$3,500.00 in addition to an 8-point share of service charge fund.
 - (b) As a result of her previous good performance, her employment was not subject to a probation period.
 - (c) She was not called to a hearing or otherwise given an opportunity to respond to the allegation against her.
 - (d) The Employer denied her of natural justice and totally disregarded the Collective Agreement.
6. On the other hand, the Employer disputes the Employee's claim on the following grounds:
 - (a) The Employee was hired as the Night Duty Supervisor at a salary of \$2,500.00 plus a 10-point share of the service charge fund.
 - (b) The employment was subject to a three-month probation period which had not expired at the date of dismissal.
7. The main issues for determination are:
 - (1) Whether the Employee was on probation at the date of her dismissal.
 - (2) Whether the Employee was unfairly dismissed.

The Evidence

8. Based on the Employee's amended witness statement, her oral testimony and the documentary evidence, we find as follows:
 - (a) It is not in dispute that upon the Employer's closure in May 2015, the Employee's previous position as Receptionist became redundant and she received the severance pay to which she was entitled. Accordingly, it is common ground that any fresh employment commencing in December 2015

would be subject to the Collective Agreement as well as such other terms and conditions as agreed between the parties.

- (b) By the date of commencement of her fresh employment on December 01, 2015, the Employee knew or ought to have known the "Job Title" of her position. Having previously served the Employer for eight years, she knew and appreciated the differences between the positions of Receptionist, Duty Supervisor and Duty Manager. Further, based on the interviews with the General Manager, Mr. John St. Luce and the Accountant, Mr. Sheredith Weston, although she was not aware of the precise salary she would receive, she knew the position offered by the Employer and accepted by her.
- (c) The Employee received a Starter Form on December 01, 2015, she completed, signed and returned it on December 03, 2015 by which latter date she was already on the job. On the form she acknowledged herself as "Duty/Supervisor". The fields of the form requiring entry of her salary and service charge points were omitted because she was not then aware of the precise information, which were later inserted by Ms. Weston.
- (d) By the Starter Form, the Employee committed herself to being employed by the Employer in the position of "Duty/Supervisor" subject to the issuance of her job description and a full employment agreement.
- (e) The 10-point share of the service charge fund to which the Employee was entitled was the same share as that which other supervisors were awarded. The Employer's managers do not ordinarily receive a share of the service charge.
- (f) By her preparation of the revised draft letter to the Royal Bank of Canada, as approved and issued by Ms. Weston approximately one week after the commencement of her employment, the Employee conceded that her true position was that of "Duty Supervisor".
- (g) The Employee expressly committed herself to being on probation for three months during which period her services could be terminated without notice or pay in lieu of notice. That commitment is inconsistent with Clause 13 of the Collective Agreement which provides that all the new employees are initially employed on a "four-week probation period", during which they may be dismissed with 24 hours' notice, provided that they had been previously warned of their shortcomings.
- (h) Neither prior to nor after the commencement of her employment did the Employer waive the requirement for the probation period or exempt the

Employee therefrom. As a result, whether her employment was subject to a "three-month" or a "four-week" probation period, the Employee was still on probation at the date of her dismissal because she had worked for only 3 weeks.

Resolution

Issue 1: Probation

9. Based on our findings of fact stated above, we resolve the first issue in favour of the Employer. The Employee was on probation at the date of her dismissal. Accordingly, she was subject to the provisions of section C9 (3) (a) of the Antigua and Barbuda Labour Code (the Labour Code) and clause 13 of the Collective Agreement both of which require the Employer to give her at least 24 hours' notice of the termination of her employment. Since she was not warned of her shortcomings, as required under the Collective Agreement, and given the required notice, she became entitled to at least one day's pay in lieu thereof. However, the oral and documentary evidence reveal that she was paid her full month's salary up to December 31, 2015 although she was dismissed ten days earlier.

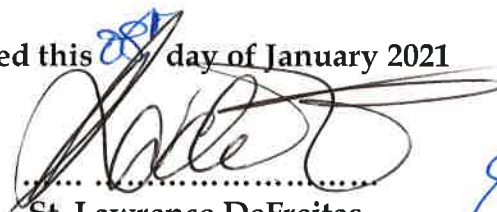
Issue 2: Unfair Dismissal

10. In her convincing closing submissions on behalf of the Employer, learned Counsel, Ms. Murphy, referred to Section C 56 of the Labour Code and pointed out that the right not to be unfairly dismissed arises only upon the completion of an employee's probation period. Given our findings above and our resolution of the first issue, it follows that the Employee was not unfairly dismissed.
11. In resolving the main issues as aforesaid, we make no pronouncement regarding the label of her position and the substantive duties which the Employee was required to perform. In our opinion, apart from our finding that her position, as labelled by the Employer was "Duty Supervisor", it is not necessary to determine whether her duties were more or less managerial or supervisory.
12. For the reasons stated above, we are constrained to dismiss the Employee's claim with no order as to costs.



Charlesworth O.D. Brown
President

Dated this 28th day of January 2021



St. Lawrence DeFreitas
Member



Judith Dublin
Member

