

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REF: NO C/72 of 2016

BETWEEN:

RICHARD JONES

Employee

and

SIR LESTER BIRD MEDICAL CENTRE

Formerly MOUNT ST. JOHN'S MEDICAL CENTRE

Employer

Before:

The Hon. Charlesworth O. D. Brown

The Hon. Samantha May-Francis

The Hon. John Benjamin

President

Vice President

Member

Appearances:

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

Mr. Andrea Smithen-Henry of Marshall & Co. Attorneys-at-Law for the Employer

2021: June 14
July 6
December 8

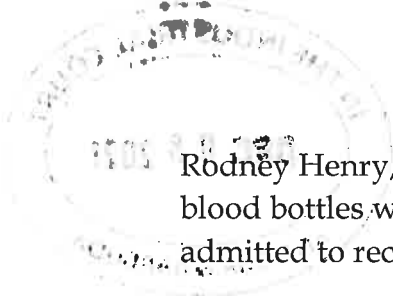
JUDGMENT

Brown, P

Background

1. At the date of his dismissal on May 9, 2016, the Employee was employed by the Employer as an Emergency Room Technician. He earned a monthly salary of \$2,600.00 and a risk allowance of \$350.00.
2. The stated ground for dismissal is that the Employee was guilty of misconduct, in that he had misappropriated 73 blood bottles and delivered them to Mr.





Rodney Henry, who worked as an Attendant in the Laundry Department. These blood bottles were found by the Police in the possession of Henry who later admitted to receiving them and promising to pay the Employee for them.

3. There is no dispute that the blood bottles, being the Employer's property, were found in Henry's possession and that they had been delivered to him by the Employee.
4. The main issue in dispute in this Reference is whether the Employee was unfairly dismissed. That issue turns on the existence of a good cause for the dismissal and the reasonableness of the Employer's action in dismissing the Employee.

Resolving the Main Issue

5. Having admitted to dismissing the Employee, the burden of proof is on the Employer to establish that it had a good cause for the dismissal and that it acted reasonably pursuant to Section C58 of the Antigua and Barbuda Labour Code (the Labour Code). In that regard, in **Ref. No 22 of 1990: Hubert James v St. James' Club**, after considering the facts and the law, this Court held that in discharging its burden, the employer was under no obligation to prove that the employee was guilty of the alleged offence. It is sufficient for the employer to prove, on a balance of probabilities, that it had a reasonable suspicion amounting to a belief that the employee was guilty of the alleged misconduct.
6. The Employee contends that he was unfairly dismissed because when he delivered the blood bottles to Henry, he did so believing that Henry was acting on a bona fide request for the same from the Casualty Department. Accordingly, he denied that he stole the bottles on the basis of his arrangement with Henry whereby he would receive payment for them.
7. The Employee also contends that the Employer is in breach of section C 10 of the Labour Code by failing to deliver the dismissal letter to him until June 21, 2021, six weeks after his dismissal. And as a result of that failure, the dismissal is automatically unfair by reason of the operation of that section.
8. The starting point of the Employer's defence is that on May 5, 2016, it received a report from the Police that Mr. Henry had been charged and arrested for the theft of 73 blood bottles from the Employer. On that date, when confronted by the Mrs. Jacqueline Jno-Baptiste, the Human Resources Manager, in the presence of

Mr. Gary Thomas, Director of Administration, Mr. Henry disclosed that that he received the bottles as stolen goods from the Employee who agreed to receive payment for them.

9. Further, the Employer 's position is that in pursuance of his unlawful arrangement with Henry, the Employee deliberately refused to comply with the well-known settled procedure for delivering blood bottles or any other supplies to anyone outside his department, and which in any event he was not authorized to do. Moreover, the Employer asserts that, in light of the police investigation and the arrest of Mr. Henry, it carried out its own investigation and held a Protocol (disciplinary) Meeting after which it formed the reasonable belief that the Employee had in fact stolen the blood bottles and delivered them to Henry in consideration of the payment he expected to receive.
10. As to the delivery of the dismissal letter, the Employer maintained that although during the disciplinary hearing on May 6, 2016, he was told to report to work on May 9, 2016, to receive the Employer's decision, the Employee failed or refused to do so. As a result, the Employer took adequate alternative steps towards the timely delivery of the dismissal letter but was unable to do so.
11. Having carefully considered all evidence before us, and assessed the credibility of the witnesses, we have determined the following facts:
 - (a) At all material times the Employer had in place a well-known policy governing the request for, the authorization and loan of medical supplies, including blood bottles, from one department to another.
 - (b) In blatant breach of that policy, of which he was well aware, the Employee took possession of the 73 blood bottles and delivered them to Mr. Henry.
 - (c) By reason of his actions and having regard to the arrest of Mr. Henry in whose possession the bottles were found, the Employer had a sound factual basis to conclude that the Employee had committed the criminal offence of larceny.
 - (d) The larceny committed by the Employee, which was inextricably connected to the arrest of Mr. Henry, constituted gross misconduct which is a good cause for his dismissal.
 - (e) After receiving the report of the Employee's misconduct, the Employer carried out a proper investigation. It also convened a disciplinary hearing, on Friday May 6, 2016, which was attended by the Employee, Mr. Henry and selected members of the Employer's management team.

- (f) At the disciplinary hearing, the Employee was confronted with the allegations against him and given an ample opportunity to defend himself. In particular, the Employee admitted that he delivered the bottles to Mr. Henry. Ultimately, the Employee's efforts to exculpate himself were rejected by the Employer.
- (g) At the disciplinary hearing, both the Employee and Mr. Henry were told to return to work on Monday May 9, 2016, when the Employer's decision would be delivered to them.
- (h) Although Mr. Henry returned as instructed, the Employee failed or refused to do so. As a result, the Employer took alternative reasonable steps, including its dispatch by registered post, to deliver the letter of dismissal to him.
12. In our consideration of this matter, we had due regard for Learned Counsel's final written submissions and supporting authorities filed on behalf of the Employer. It is noteworthy that although Mr. Carty expressed his desire to file submissions on behalf of the Employee and specifically requested reasonable time within which to do so, he failed to discharge his undertaking. Be that as it may, we are persuaded by Mrs. Smithen-Henry's submissions. We find them to be comprehensive and convincing.
13. In light of the abundance of overwhelmingly credible evidence in support of the Employer's position, and having regard to Learned Counsel's submissions, we find that the Employer has discharged its evidentiary burden of proving that the dismissal was not unfair.
14. Needless to say, in terms of the provisions of section C 58 of the Labour Code, the Employer has proved on the balance of probabilities that it had a good cause for the Employee's dismissal; that there was a sound factual basis for the same; and that it acted reasonably in effecting the dismissal.
15. For the reasons stated above, we wholly reject the Employee's claim of unfair dismissal and dismiss the Reference herein.

Dated this 08th day of December 2021


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Charlesworth O.D. Brown
President


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Samantha May-Francis
Vice President


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John Benjamin
Member