

ADVANCE COPY PENDING SIGNATURE OF VICE PRESIDENT AND MEMBER

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: C/UD/ 1 of 2018

BETWEEN:

GARFIELD MORRISON

Employee

and

**THE SUPERINTENDENT OF HER MAJESTY'S PRISON
THE ATTORNEY GENERAL**

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. Samantha May Francis

Vice President

The Hon. Megan Samuel Fields

Member

Appearances:

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

Ms. Joy Dublin, Crown Counsel, of Attorney General's Chambers for the Employers



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2021: November 3

2022: September 23

JUDGMENT

Brown , P:

Introduction

1. In this Reference the Employee raises the issues of Unfair Dismissal; Unlawful Suspension; Outstanding Salaries and Allowances; and Unpaid Statutory Contributions in respect of the constructive termination of his employment as a Junior Prison Officer at Her Majesty's Prison between February 21, 2000, and February 2009 when he last received 50% of his salary.



8. In February 2009, the Employee and his daughter-in-law were convicted in the High Court.
9. The Employee continued to receive 50% of his salary up to the end of February 2009. Thereafter, he received no further communication from the Employer in respect of his employment status. In particular, he received no statement notifying him of the termination of his employment, to which he was entitled under section C 10 of the Labour Code.
10. On May 29, 2017, the Employee's appeal against his conviction was allowed and his conviction and sentence were quashed.

The Proceedings

11. In his Memorandum of Claim, the Employee prayed that the Court would favour his claim and award "equitable compensation under the established headings". In turn, by its Memorandum of Defence, the Employer disputed the claim and maintained that the Employee was not unfairly dismissed.
12. The Employee filed his Trial Exhibits on January 2, 2018, his primary witness statement on March 7, 2018 and his supplemental witness statement on October 21, 2021. The Employer filed neither witness statements nor trial exhibits.
13. When the matter came on for trial in the presence of Mrs. Stacey Gregg-Paige, Permanent Secretary in the Ministry of Justice and Public Safety, the Employee's Representative promptly highlighted the obvious strengths of his client's claim. In particular, he emphasized that:
 - (a) The Employee had received no statement of the termination of his employment;
 - (b) The Employer had conducted no hearing or investigation into the matter;

18. In his witness statement, the Employee stated that his monthly salary was \$2,134.00 in addition to which he received a Duty Allowance of \$200.00 and a Shift Allowance of \$100.00. However, for the purposes of the assessment, it was common ground that the Employee received total emoluments of \$2,393.00 per month. For convenience, that amount was treated by both sides as his monthly salary and submissions were made by both sides based on that amount. Accordingly, we assess the Employee's accrued entitlements and compensation under the respective selected headings as follows:

Payment in Lieu of Notice

We award the sum of **\$2,393.00**, the equivalent of the Employee's former monthly emoluments.

Payment in Lieu of Accrued Vacation

The parties agreed that the Employee had an accrued vacation period of 75 days. Assuming a standard workweek of 5 days, his daily rate of pay was \$110.45 $\{(\$2,393 \times 12) / 52\} / 5$. Consequently, we award the sum of **\$8,283.75** $(\$110.45 \times 75)$ as payment in lieu accrued vacation.

Loss of Protection from Unfair Suspension

It is clear that the Employee had the statutory right not to be unfairly suspended. In that regard, we are mindful that the lawful period of suspension ended 28 days after March 4, 2018 or on April 1, 2018. In the circumstances, the Employee was entitled to return to work on April 2, 2018 but was in no position to do so. If he did and his return was rejected, he would have been entitled to assert that he was constructively dismissed. Be that as it may, the Employer actively sought to affirm the employment relationship and keep it alive by continuing to pay 50% of his salary up to the end of February 2009.

Costs

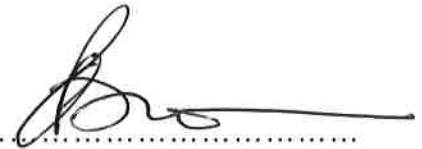
19. For the same exceptional reasons justifying the above award of Exemplary Damages, we award costs in the sum of **\$1,000.00**

Order

20. In the premises, we order that:

- (1) The Employer do pay the aggregate sum of \$66,929.75 to the Employee, in respect of compensation for his unfair suspension and unfair dismissal, his entitlement to accrued vacation pay and costs, no later than December 31, 2022.
- (2) There shall be no order in respect of statutory contributions.

Dated this 27th day of September 2022.



Charlesworth O. D. Brown
President

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Samantha May Francis
Vice President



Megan Samuel Fields
Member