

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REF: NO. C/17 of 2016

BETWEEN:

ANN- MARIE ISAAC

Employee

and

ST. JAMES'S CLUB ANTIGUA LIMITED

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. St. Lawrence De Freitas

Member

The Hon. John Benjamin

Member

Appearances:

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

Mrs. Stacey-Ann Saunders-Osborne, of S. Saunders-Osborne Legal Services, Attorneys-at-Law for the Employer.

2017: June 29
2022: August 26

JUDGMENT

Brown, P:

Background

1. The Employer carries on business as "St. James's Club". At all material times, it was one of a 3-member group of companies operating resorts in Antigua under the brand name Elite Antigua Resorts. It is engaged in the dynamic tourism sector of the national economy, which sector has a settled annual high season, roughly between November and April, and a low season, roughly between April and November each year. As a natural consequence, it experiences fluctuating occupancy levels from month to month and year to year.



May 9, 2015, covered three successive one-year periods commencing May 1, 2015. Article 12 of that agreement, under the sub heading "Temporary Employees" provides:

"An employee in any category maybe hired for a fixed period of any duration not exceeding twenty-six (26) weeks, and is not entitled to any notice at the end of that period, provided that the duration of the employment is specified at the commencement of the employment. Such temporary employee shall be entitled to the same overtime pay, pro-rated vacation, sick leave and severance as a permanent employee."

The Opposing Cases

7. On the one hand, the Employee contends that notwithstanding the commencement of her employment as a temporary contractual worker, she attained the status of a permanent worker and was subsequently unfairly dismissed. The grounds for that contention are:
 - a. She commenced her employment as a Room Attendant under a fixed term contract for the period November 18, 2013, to February 15, 2014.
 - b. When that term came to an end, the Employer permitted her to continue uninterrupted in her employment as a result of which she became a permanent employee as of February 16, 2014.
 - c. On May 9, 2014, the Employer terminated her employment without notice or a written statement of termination.
 - d. On July 7, 2015, she was reengaged and presented with a fresh temporary contract covering the period July 7 to October 4, 2014.
 - e. On October 4, 2014, her employment was again terminated without notice or a written statement of termination.
 - f. The Employee was again reengaged on November 17, 2014 and presented with a fresh contract of temporary employment for the period November 17, 2014 to February 14, 2015.

- d. The notice of further contractual temporary employment for the fixed period July 7 to October 14, as communicated by the letter dated July 10, 2014, was also “read, understood and agreed” by the Employee.
- e. No notice of the termination of the second employment agreement was required in the circumstances.
- f. By letter dated November 20, 2014, the Employer offered the Employee a separate and distinct contract of temporary employment for the period November 17, 2014 to February 14, 2015, which she accepted in the same manner as she had done in respect of the previous fixed term contracts.
- g. By the contract letter dated February 6, 2015, which the Employee signed, she agreed to an extension of the last period of temporary employment up to May 9, 2015. In the circumstances, as on previous occasions, no notice of termination of the temporary was required.
- h. The Employee was duly paid the “vacation pay” to which she was entitled at the end of each period of temporary employment.
- i. Having regard to section C 57 of the Labour Code, the Employee cannot be deemed to have been unfairly dismissed since her employment was terminated at the expiration of the respective fixed terms.
- j. In the circumstances, there was no violation of the principles of law, judicial precedents, the spirit of the Collective Agreement or good industrial relations practices. Consequently, the claim is “frivolous and vexatious” and should be dismissed with an order that costs be paid to the Employer.

Analysis

- 9. As noted above, the Labour Code includes provisions which recognize fixed term employees as a special category vis -a-vis permanent or indefinite term employees. In that

contract may be terminated at any time prior to this date given seven (7) days' notice."

13. It is common ground between the parties that the period of temporary employment commenced on November 18, 2013. There is no dispute in respect of the commencement date of the contract and the date on which it was signed by the Employee. In fact the Employer averred that by signing and returning the document to the Employer, the Employee "signified that she read, understood and agreed to the terms of temporary employment". As to the date of signing, the Employee testified that for each of the contracts she was allowed two days between receipt of the formal offer and the return of the signed letter signifying her acceptance. Given that assertion, we are inclined to find that at the start of each new contract period she was told of the commencement and end date of the period on or before the effective date before formally entering into the agreement.
14. While testifying, the Employee exhibited a keen sense of awareness of her continuing status as a temporary worker. In fact she testified as to her awareness of her membership of the relevant bargaining unit and that it was open to her to raise her concerns with her Union Representative. Further, she testified that she went so far as to speak to the manager, Ms. Thomas complaining that she was tired of being on contract as a temporary employee. In the circumstances, we are satisfied that she was fully aware of and embraced her status as a temporary worker.
15. Upon the expiration of the fixed term contract, the Employee continued in her employment without any interruption. By a new agreement dated February 7, 2014, signed by the Employer on February 11, 2014, and by the Employee on July 11, 2014, the parties agreed to an extension of the first contract. The agreement reads:

"I Ann-Marie Isaac, acknowledge that I am a contractual employee and hereby agree to have my contract...extended beyond February 15, 2014.

It is understood, however, that the period of such extension shall not exceed 10th May, 2014 and based upon guest occupancy levels at the Hotel, the

period of temporary employment was recorded by the Employer as coming to an end on October 4, 2014.

22. The pattern of retroactivity extended to the third period of temporary employment. On this occasion, it was offered by letter dated November 20, 2014, in respect of employment which actually started on November 17, 2014 for the period up to February 14, 2015. It was not signed by the Employee until January 7, 2015. This period of employment was also extended by agreement between the parties up to May 9, 2015, and recorded by the Employer accordingly as having come to an end on that date.

23. Having regard to the aforementioned provisions of the Labour Code, the relevant article of the Collective Agreement and course of conduct between the parties, we find that there was no conversion of the initial period temporary contractual employment to permanent employment. Further, we find that the Employee not only knew of her status as a temporary worker at all material times but she also knew of the maximum duration of each fixed term of temporary employment. In other words, at the onset of each fixed term of temporary employment and any extension thereof, the Employee was informed of its commencement date and duration.

24. In the final analysis, we conclude that the Employee's employment was terminated on the expiration of each of the successive periods of temporary employment. Consequently, in accordance with section C 57 of the Labour Code, there was no unfair dismissal and the Employee's claim in that regard is dismissed.

Contractual Benefits

25. As to the claim for outstanding wages, we note that under Article 17 of the Collective Agreement, wages for all employees in the bargaining unit are specified in the attached Schedule A. With effect from January 1, 2015, the rate of wages at which the Employee should have been paid is \$423.00, which is \$51.30 more than the wages of \$371.70 which she received during that year. Further, we have also ascertained that the

