



ADVANCE COPY PENDING SIGNATURE OF MEMBER

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 24 of 2012

BETWEEN:

DAVE RUSSELL

Employee

and

GEOTECH COMPANY LIMITED

Employer

Before:

The Hon. Althea Crick*

Chairman

The Hon. Samuel R. Aymer

Member

The Hon. Dr Hayden Thomas

Member

Appearances:

Mr. Stafford Joseph of Antigua & Barbuda Free Trade Union for the Employee

Ms. Joy Dublin of James Dublin & Associates, Attorneys-at-Law for the Employer

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2014: April 10, 17

2022: September 23

JUDGMENT

Aymer, C:

Background

1. At all material times the Employer was a company duly registered in Antigua and Barbuda and engaged in the ownership and operation of heavy-duty equipment for the purpose of carrying out construction works from time to time at various sites.
2. The Employee commenced his employment with the Employer as a Heavy-Duty Equipment Operator on May 31, 1991. His duties included the operation of the Employer's backhoe which he did during overtime hours from time to time as required by the Employer.



9. However, this matter was seemingly resolved as evidenced in a Release signed by the Employee and dated February 5, 2008, acknowledging an outstanding balance of EC5,000.00 and a schedule of payments to liquidate the outstanding balance.
10. By letter dated April 21, 2008, the Employer requested that the Employee "document the reason for the drastic change" in his work schedule and deliver the same to the office no later than April 23, 2008. The Employee did not comply.
11. By letter dated April 28, 2008, the Employee was suspended without pay 'until' he contacted the office to arrange for a meeting to bring resolution to the outstanding matter of his "untimely decision to cease all overtime work". The Employee did not contact the office to arrange a meeting as requested by the Employer.
12. By letter dated May 21, 2008, the Employer again wrote to the Employee informing him that if he failed to respond by May 27, 2008, the Employer "would have no alternative but to assume that [he] had abandoned [his] position as backhoe operator at the company" and that it would "move forward to find someone to fulfill that vacancy". The Employee did not respond by the stipulated date.
13. The matter remained unresolved up to August 1, 2008, on which date the Employer wrote to Cumberbatch & Associates, the Employee's Attorneys-at-Law, inviting them and the Employee "for further discussions on the matter to determine the way forward". The Employer received no response to its letter and heard nothing further from the Employee or his Union.

consider them in the context of the general obligations of the parties in the employment relationship between them, having particular regard to the pertinent provisions of the Labour Code.

17. At first blush, it appears that the Employer was casual in its approach when it first summoned the Employee to the meeting on April 18, 2008. We have no reason to doubt that before that date, it had received "constant complaints regarding the Employee's work ethics and refusal to carry out reasonable orders". It was as a result of those complaints that the meeting was held.
18. While we make no finding as to the precise words used by the General Manager to the Employee, we find that, on the balance of probabilities, there was no dismissal on that date. Based on the evidence, we prefer to conclude that the Employee was loosely suspended pending further consideration and action by the Employer within the framework of the statutory provisions and good industrial relations practices.
19. Sections C 59 (2) and C 59 (5) of the Labour Code provide strong guidelines for employers who are concerned about an employee's (a) conduct in or in relation to his employment, and (b) failure to perform his duties in a satisfactory manner. In both instances, the employer is required to issue a written warning to the employee informing him of the need for improvement and specifying what action would be taken against him in the event that there was a repetition of misconduct or if there no improvement in performance.
20. In our estimation, the Employer failed in its duty by not issuing a written warning to the Employee in light of its concern about his misconduct, insubordination or stoppage of his previously satisfactory performance. In his testimony, Mr. Bostic named Hillary James as the Employee's immediate supervisor and stated that "I constantly received calls from Mr. James pertaining to the attitude of the

on April 18, 2008, it had written to the Employee terminating the suspension period, informing him that he had not been dismissed and inviting him to return to work without any loss of income.

25. In the final analysis of the Employer's actions, we find that no allegation of misconduct or poor performance were properly put to the Employee. Further, the Employee was not informed of any proper basis for or duration of his suspension. Finally, he was never recalled to work before the statutory limit of 4 weeks after the commencement of his suspension.

26. For the reasons stated above, we declare that:

- (1) The Employee was unfairly suspended with effect from April 18, 2008;
- (2) In the absence of any positive action by the Employer to affirm the employment relationship, the Employee was constructively and unfairly dismissed upon the expiration of 4 weeks from the commencement of his suspension.
- (3) The Employee did not abandon his job;
- (4) The Employee is entitled to compensation for his unfair suspension and his unfair dismissal.

27. Notwithstanding the foregoing declarations, we find that the Employee contributed to his unfair dismissal by reason of his general conduct and his failure to report for work immediately upon the expiration of the 4-week statutory maximum period of suspension, or at all. We fix his contribution at 30% by which percentage his compensation assessed below will be reduced.

- (1) The Employer do pay the sum of \$58,718.21 to the Employee no later than October 31, 2022, as compensation for his unfair suspension and unfair dismissal.
- (2) There shall be no order as to costs.

Dated this 23rd day of September 2022



Samuel R. Aymer

Member

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Dr. Hayden Thomas

Member

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The Honourable Althea Crick passed away on November 29, 2014. For the purposes of appropriate advisement and the preparation of this judgment, the chairmanship was assumed by the Honourable Samuel R. Aymer.