

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. C/ 3 of 2017

BETWEEN:

SHARON JOSEPH

Employee

And

UNIRACK WESTERN GROUP LIMITED

t/a

NORTHSHORE RESIDENCES

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. Samuel R. Aymer

Member

Appearances:

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

Mrs. Cherissa Roberts Thomas of C. Roberts Thomas & Associates, instructed by Simon Rogers Murdoch, Attorneys-at-Law for the Employer

2021: February 4
2022: September 2

JUDGMENT

Brown, P:

Introduction

1. In these proceedings the Employee claims compensation for unfair dismissal after her services were terminated on July 31, 2016, at the expiration of a fixed term of employment as a "House Keeper". Her assertion of unfair dismissal is grounded on her contention that:



9. We digress here to briefly consider Counsel's submissions in respect of selected averments in the Employee's Memorandum of Claim and some paragraphs in her witness statement. It is well settled that this Court will strike out or ignore inappropriate parts of pleadings and evidence, the prejudicial effect of which would tend to outweigh their probative value. In so far as the trial proceeded without any such parts being struck out, we have ignored them or given them no weight. We have taken judicial notice of any relevant information conveyed by such parts.
10. As to the evidence, we find that of the Employee to be riddled with inconsistencies. She first asserted that she was hired initially on August 1, 2014 under a one-year fixed term contract. Her evidence is that she signed it at the commencement. During her oral testimony, she admitted that at the time of signing she was aware that it was a two-year contract with an end date of July 31, 2016. She also conceded that the contract included no clause for its renewal.
11. The Employee's evidence in chief included allegations about the Employer's attempts to vary her working days and refused to pay her for public holidays. She testified that at or about the end of June 2016 she received a letter indicating that "the fixed-term contract" would come to an end on July 31, 2016. Thereafter, she made further erratic allegations hinting of bad faith against the Employer before concluding with her main claim for compensation under the headings applicable to permanent employees who had been unfairly dismissed.
12. The inconsistencies and erratic statements in the Employee's Memorandum, Witness Statement and Oral Testimony are carried over into her Representative's written Closing Submissions. Notwithstanding that, Mr. Carty's submissions were instructive in that they highlighted notable errors, inconsistencies and omissions in the fixed term contract. Moreover, some of his submissions were not supported by the Employee's evidence. Nevertheless, the

example, section C 57 with a side note “Termination after fixed term employment” provides that:

“...an employee will not be deemed to have been dismissed unfairly if his employment is terminated at the expiration of the term specified at the time of hire”

4. In passing, it should be noted that by the Labour Code (Amendment) Act 2019, the definition of a fixed term contract, previously implicitly acknowledged in its provisions, was inserted into the principal Act in the following terms:

“fixed term contract” means an employment contract in which an employer recruits an employee for a limited period of time to perform a specific task.”.

That definition was no attempt to reinvent the wheel. It merely represents Parliament’s codification of the common law position which was always understood and accepted.

17. As to the authorities on which Mr. Carty relied, it is clear that he misguided himself by failing to take into account the context of various pieces of UK legislation which are invariably far more advanced than ours. In that regard, Counsel’s submission in relation to the inapplicability of UK case of **Terry v East Sussex County Council [1977] 1 All ER 567** is most telling. Consideration and determination of the issue of whether there is a “genuine reason” for a fixed term contract or whether a fixed term contract is “genuine”, turn largely on the interpretation of specific statutory provisions which do not exist in this jurisdiction.
18. Having regard to the nature of the Employer’s business and the manner in which it was being conducted at the material times, and based we are persuaded by the testimony of Mr. Tiziano Rosignoli that:
 - a. It was reasonable for the Employer to offer employment to the Employee under the fixed-term contract.

were capable of being expunged or rendered unenforceable without voiding the entire contract.

- c. In principle, neither the clause for termination by either party upon the giving of notice nor the clause providing for termination by breach were inimical to the efficacy of the contract.
- d. The termination of the Employee's employment with effect from July 31, 2016, was the natural consequence in law and in fact, of the expiration of the fixed term contract.
- e. The Employer had no obligation to renew the contract.
- f. The non-renewal of the contract did not amount to a dismissal or an unfair dismissal as contemplated by sections C 56 and C 57 of the Labour Code.
- g. The Employee is not entitled to any relief as claimed or at all.

22. In the premises, we are constrained to dismiss the Employee's claim. And we make no order as to costs.

Dated this 02nd day of September 2022



A handwritten signature in black ink, appearing to be "C. Brown", written over a horizontal dotted line.

Charlesworth O. D. Brown
President

A handwritten signature in black ink, appearing to be "S. Aymer", written over a horizontal dotted line.

Samuel R. Aymer
Member