

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO.: C/UD 7 of 2016



GERVIS JOHNSON

Employee

And

ANTIGUA MASONRY PRODUCTS LTD.

Employer

REFERENCE NO.: C/UD 8 of 2016

SUNDRY WORKERS

Employee

And

ANTIGUA MASONRY PRODUCTS LTD.

Employer

Before:

The Hon. Charlesworth O. D. Brown

President

The Hon. Sir Hayden Thomas

Member

The Hon. Samuel Aymer

Member

Appearances:

Mr. Samuel James and Mr. Simon Leonard of Antigua and Barbuda Free Trade Union for the Employees.

Mr. Hugh Marshall Jr and Ms. Kema Benjamin of Marshall & Co. for the Employer

2018: May, 10

2022: March 18

JUDGMENT

Brown, P:

Background

1. As a member of the Hadeed Group of Companies, the Employer is engaged in the business of manufacturing Masonry Products at its premises situate at Green Castle, Antigua.
2. Mr. Gervis Johnson, Ms. Venice Hart, Ms. Veronica Berry, Mr. Damyon Daw and Mr. Lloyd Lewis, the five Employees involved in this Reference, were engaged as Security Officers in the Security Department of the Employer's business. Substantive terms of their engagement were set out in successive collective agreements between the Employer and the Antigua and Barbuda Workers' Union (the Union), the last of which is dated January, 5th, 2016.
3. In accordance with the Antigua and Barbuda Labour Code (the Labour Code), the governing Collective Agreement provided for a "normal work week" of 5 days or 40 hours. In particular, it provided for payment at the "premium rate" for work in excess of 8 hours per day.
4. Contrary to the Collective Agreement and the Labor Code, the Employer scheduled the Employees to work twelve-hour daily shifts on 5 or 6 days per week without paying them at the stipulated premium rate.
5. On July 17th, 2015 the Employees were summoned by the Employer to a meeting at which they were told that their services would be terminated with effect from July 24th, 2015. The Employers' decision was formally communicated to the individual Employees by letters dated July 20th, 2015, in identical or similar terms. The letter to Mr. Johnson reads:

"20th July 2015

Gervis Johnson

...

Dear Mr. Johnson,

As discussed with you on Friday 17th July, 2015, we now officially give notice that as of Friday 24th July, 2015 Antigua Masonry product (sic) will no longer directly employ security officers. This service will be provided by a private company which is in a better position to train and operate Security within the laws of Antigua and Barbuda.

We thank you for your loyal service, and will certainly recommend you to the qualified provider at their discretion.

Sincerely,

.....

Christine Steele

Chief Accountant/Human Resource Manager"

6. The Employees were paid their severance entitlements as determined by the Employer and, in exchange for the same, were required to sign a Release accepting those payments as full and final satisfaction and discharge of all existing and future claims against the Employer.
7. By this Reference the Employees contend that there was no genuine redundancy situation, by reason of which they were unfairly dismissed, and that they are entitled to compensation over and above the severance pay which they received. In addition, they also claim payment of accrued premium pay - for the hours they worked in excess of 8 hours per day during their tenure - and accrued public holiday pay for work done on public holidays.

The Main Issues

8. The four main issues arising in these proceedings, which we will resolve in sequence below, are:
 - a) Whether the Employees are entitled to outstanding accrued premium pay.
 - b) Whether the Employees are entitled to outstanding accrued public holiday pay.
 - c) Whether there was a genuine redundancy situation.
 - d) Whether the Employees were unfairly dismissed.

Are the Employees Entitled to Outstanding Accrued Premium Pay?

9. The Employees contend that, contrary to the Labour Code and the Collective Agreement, the Employer arbitrarily scheduled them to work daily twelve-hour shifts but did not pay them any premium pay during their entire tenure.
10. The Employees' position is that the twelve-hour shifts, which they worked, were based on the Employer's unilateral policy which was imposed on them without their consent.
11. In disputing the claims, the Employer asserts that it entered into an agreement with the Employees that it would schedule them to work twelve-hour shifts at

the flat rate of \$10.00 per hour or \$120.00 per day up to 2015. In 2015, according to the Employer, it was further agreed that the rate would be increased to \$10.43 per hour or \$125.16 per day. In addition, the Employer contends that the Union was well aware of the flat rates it had agreed with the Employees. Moreover, the Union never raised any questions about the said rates or premium pay in their several rounds of negotiations between 2006 and 2015. The Employer's position is that the issue of overtime pay arose only after its decision to outsource its security services to a private company.

12. In the absence of any evidence to the contrary, we surmise that the Employees were all engaged under employment agreements evidenced in writing in similar or identical terms to the letters to Ms. Hart and Ms. Berry both dated July 3, 2008. The letter to Ms. Hart reads:

"1 July 2008

REF. SECURITY OFFICER

Dear Ms. Venice Hart,

The Management of Antigua Masonry Products Ltd are pleased to offer you employment as we feel that your skills and background will be valuable assets to our team.

Per discussion, the position is Security Duties in our Organization; your immediate supervisor will be Mr. Richard Allen, Chief Security. Your hours of work will be 48 hours per week; any additional hours needed would be at the same rate. The starting salary is \$10.00 per hour and is paid on a weekly basis. Your hours of work per day will be 12 hours starting at 6.00 am with Saturdays or Sundays off duty. If Management ask employees to work additional time employees will be paid.

If you are in agreement with the terms and conditions herein contained, kindly acknowledge your acceptance of signing in the space below.

Yours Faithfully,

(Sgd. Management)

Management

I acknowledge and accept the above conditions of employment

(Sgd. V. Hart)

(3 -7-08)

Employee

Date

13. There is no indication in the letters that they were copied to the Union. In the face of the conflicting evidence, we accept the Employees' version that the Union was not aware of the precise terms of the employment agreements as contained in the letters. In particular, we accept the evidence of the Employees that the Union had not agreed to the twelve-hour shifts at the flat rate without any premium pay. Moreover, we find that the Employees did not negotiate the terms of their employment, they merely accepted what was offered to them.
14. In any event, we are satisfied that the Employees all worked overtime at the fixed rate. This fact triggers the application of the relevant provisions of the Labour Code and the Collective Agreement.
15. Section C 7. Of the Labour Code provides:

"It shall be lawful for an employer and employee to enter into an individual contract of employment, covering terms of employment, but

- a) Any provision thereof which establishes conditions which fall below the minimum employment standards established by this Code shall be null and void;**
- b) ...**
- c) Any provision thereof which, to the employees' disadvantage, conflicts with the terms of a collective bargaining agreement in effect between the employer and a trade union which is the sole bargaining agent of the bargaining unit of which the employee is a part, within the definition of section J 4, shall be null and void".**

16. The corresponding provisions in the Collective Agreement are stated at Article 4 as follows:

"Overtime shall be approved by Management and paid to all workers on the following basis-

- (a) Time and one half, i.e. 150% for the first four (4) hours of overtime on a normal working day. Thereafter, double time, i.e. 200% up to twelve (12) midnight, triple time, i.e. 300% shall be paid up to 7 a.m. One and a half time on Saturdays for the first 4 hours, double time for the next 4 hours, and 2 ½ times thereafter.**

- (b) Double time on Sundays up to a maximum of eight (8) hours, thereafter triple time, i.e. 200% for the first 8 hours, and 300% for any time thereafter.
- (c) Two and a half times (2 ½) for the first eight (8) hours on Public Holidays, triple time thereafter.

(d) ... "

17. As to the rate at which premium pay must be paid, sections C26 and 27 of the Labour Code provide:

"C26. Premium pay shall consist of at least one-and-one half times an employee's basic wage per hour.

C27. For any hour of work in excess of eight in any twenty-four-hour period or in excess of forty-eight in one hundred and sixty eight hour period, an employer shall give premium pay to the involved employee:

..."

18. In light of the evidence before us, having regard to the provisions of the Labour Code and the Collective Agreement, it is clear that those contradictory parts of the employment agreement are null and void. In so far as the Employer implemented those contradictory terms, we are persuaded by the submissions of Mr. James and Mr. Leonard that the Employer violated its statutory and contractual duties in respect of the Employees' entitlement to premium pay. We will assess the quantum due to the respective Employees below.

Are the Employees Entitled to Outstanding Accrued Public Holiday Pay?

19. The Employees also contend that they were not paid any Public Holiday Pay for work done on public holidays during their tenure. The Employer did not dispute this claim. In the circumstances, we find that the Employees all worked on public holidays and received no public holiday pay. That finding leads us to the application of the relevant provisions of the Labour Code and the Collective Agreement.

20. Section C 15 (2) of the Labour Code provides:

"If an employee does work on a public holiday he shall be paid, in addition to any wage which he would have received in respect of the public holiday, an hourly rate of not less than 150 per centum of his basic rate per hour worked".

21. **Article 5 (a)** of the Collective Agreement sets out a list of 11 “paid Public Holidays), in addition to which should be added “any other Government Declared Holidays”.
22. In accordance with section C 15 (1) of the Labour Code, Article 6 (b) of the Collective Agreement provides as follows:
- “Workers will be paid their normal day’s pay for the days shown above if they would have worked the schedule workday immediately before and immediately after the said holiday. ...”
23. Those provisions together with the evidence before us have led us to the conclusion that the Employer acted in breach of its statutory and contractual obligations in respect of the Employees’ entitlements to public holiday pay. Having regard to the closing submissions of Mr. James and Mr. Leonard on this issue, we will assess the quantum of public holiday pay due to the respective Employees below.

Was There a Redundancy Situation?

24. Redundancy is defined in Section C3 of the Labour Code as follows:
- “redundancy” means a situation in which by virtue of lack of customers’ orders, retrenchment, the installation of labour-saving machinery, an employer’s going out of business, a *force majeure*, or any other reason, work which a person was last employed to perform has ceased or substantially diminished;”**
25. On behalf of the Employees, Messrs. James and Leonard submitted that no redundancy situation existed when their services were terminated. They relied on the “un-refuted evidence” that the duties previously performed by the Employees were still being carried on up to the date of trial. In addition, they highlighted the pertinent provisions of the Labour Code and the Judgment of Harris J in the High Court case of **Paulette Matthew v Antigua Port Authority. (ANUHCv 2005/0129)** for their conclusion that there was no redundancy. And consequently, that there was no factual basis to justify the termination of the services of the Employees. We respectfully disagree with those conclusions.
26. In making their spirited submission, Messrs. James and Leonard appear to have overlooked the critical fact that those continuing duties had been outsourced and were being carried out by a private security firm. In effect, the redundancy

situation arose because the Employer had ceased the direct employment of Security Guards.

27. The documentary evidence led us to conclude that the Employer had economic and organizational reasons for its decision to outsource its security services. In that regard, by its letter dated June 30, 2015 to the Union, it stated that it had "a two-tier security personnel operation, part private and part directly employed" which had become "cumbersome and troublesome" and led to its decision to terminate its "security detail effective on or before July 31st 2015."
28. Further, by its letter dated June 20, 2015, the Employer notified the Union that as a result of the "national policy just announced concerning the management and ownership of Security Services, we now officially give notice that as of July 31st 2015 Antigua Masonry Products will no longer directly employ Security Officers."
29. We are mindful that the Employer did not substantiate the alleged 'national policy'. In paragraph 18 (c) of its Memorandum, it merely averred, "That in or about 2014 and 2015 the Employer was advised that the Government was leaning towards requiring training for all security staff even those employed directly by private entities". The Employer's only supporting evidence, given by Ms. Steele, was similarly vague. She testified that the "Government ...indicated that it required all security officers ...to be trained and certified".
30. Notwithstanding that lack of substantiation, it is our opinion that the Employer made a calculated decision to discontinue the security services which it had hitherto provided. As we understand it, there were two reasons for taking that course. Firstly, the Employer was not in a good "position to train and operate Security within the laws of Antigua & Barbuda" in order to comply with the "national policy". Secondly, it had in place a "cumbersome and troublesome" two-tier operation with some security officers provided by private entities while others were directly employed by the Employer.
31. Thus, while the Employer could have done more to substantiate the economic and organizational bases for its decision to outsource its security services, we are satisfied that at some time between July 24 and July 31, 2015, the Employer ceased to employ security officers because it had outsourced those services. In fact, the Employees all testified that, at the date of trial, "a private security company had taken over the security" on the Employer's premises.
32. The situation in this case is not wholly dissimilar to that in **Reference No. 66 of 2015: Antigua & Barbuda Workers Union v. Cable & Wireless (Antigua & Barbuda) Limited** in which this Court determined that a redundancy situation

resulted from the Employer's divestment of the retail area of its business on account of the inefficiency and high costs in that area. In the end, the decision was taken by the Employer to cease business in that area "in order to improve efficiency and maximize profits".

33. In that case, after careful consideration of the evidence and the submissions of Counsel, it was held that, in terms of "cause and effect", the cause of the redundancy was the "implementation of the Employer's decision to cease its retail business". And the effect was "the cessation of work". Consequently, a redundancy situation crystallized on date of the cessation of the retail business.
34. Applying the same reasoning, we conclude that, on the facts of this case, a redundancy situation crystallized sometime between July 24 and July 31, 2015, when the Employer closed its Security Department. Accordingly, we prefer the opposing submissions of learned Counsel, Ms. Benjamin, on this issue and resolve it in favor of the Employer.

Was the Dismissal Unfair?

35. In reliance on the authorities referred to in the **Cable & Wireless case**, we remind ourselves of the conjoint effect of Sections C58 (1) and (2) of the Labour Code. The existence of the redundancy situation does not mean that subsequent dismissals were fair. This Court's application of that conjoined effect was clearly well settled and codified, as early as in 1988, in **Antigua Workers Union v. Antigua Gases (Reference No. 20 of 1988)** in which it was held that "... the mere fact that a genuine redundancy does exist does not per se lead to the conclusion that the dismissal was fair; the determining factor is whether the employer acted reasonably in handling the situation."
36. It is noteworthy that in Civil Appeal ANULTAP 2016/003 **Cable & Wireless (Antigua & Barbuda) Limited v Antigua & Barbuda Workers' Union** the Court of Appeal upheld the judgment of and emphasized the correctness of the settled approach of this Court in reading subsections C58 (1) and C58 (2) conjunctively.
37. To the desired end, we are obligated to consider the evidence and apply the test of reasonableness stipulated in the latter subsection. Adopting the approach used in the **Cable & Wireless case**, we will follow the guiding principles expressed in the case of **Williams and others v Compair Maxam Ltd; 1982 I.C.R 156**. As was done in the former case, in applying the test of reasonableness, we will consider the actions and / or omissions of the Employer in the actual circumstances prevailing at the material time.

Consultation

38. On behalf of the Employees, Messrs. James and Leonard pointed out that the Employer did not dispute the Employees' evidence that there was no consultation. In fact, as they correctly noted, the Employer's own evidence is that it first convened a meeting with the Employees on July 17, 2015, when they were informed for the first time that it had decided to outsource its security services. Indeed, there is no evidence from the Employer's sole witness that any consultation was done prior to that date. For their part, the Employees all maintained that there was "no prior discussion".
39. In the circumstances, having regard to the extent of the tenures of 4 of the Employees ranging from approximately 6 to 10 years, we have no choice but to conclude that there was no consultation with them about the redundancy.
40. We note that we have no evidence of when the decision was made relative to the timing of its implementation. Since nothing was disclosed by the Employer regarding the need for an urgent decision and / or implementation, we accept the Employees' assertion that the decision was not made "overnight". That being the case, there was no justification for the lack of consultation with the Union and the Employees.
41. We have no doubt that the lack of consultation is inimical to the principles and practices of good industrial relations. In our view, that omission is an aspect of unreasonableness. In that regard, we are mindful of the dictum of **Lord Browne-Wilkinson in Freud v Bentalls case**, as quoted by the Representatives of the Employees, that "consultation is one of the foundation stones of modern industrial relations practices".

Warning and Notice of Redundancy

42. On first principles, the better practice is for employers to first give an advance warning of the likelihood or possibility of a redundancy followed by an actual notice with relevant particulars such as the effective date and so on, if not previously given. Needless to say, the objective is always to give the affected employees as much time as practicable to seek alternative employment and otherwise plan their future.
43. We note that the Employees were given oral notice of the impending redundancies on July 17, 2015. They received formal written notices 3 days later. By comparison, in the **Cable and Wireless case**, the Court found that the notices

given on November 23, 2015, were inadequate for redundancies scheduled to take effect on November 30, 2015. The period of notice is obviously very similar in this case. Given the similarities in the periods of notice, we conclude, as we did in the earlier case, that the Employees received no adequate notices of the termination of their employment due to redundancy.

44. In emphasizing the adverse effect of the lack of adequate notice, we adopt the words of Messrs. James and Leonard, namely: "the Employees were taken by surprise and had no time to plan...their livelihood was thrown in a tailspin". Needless to say, the actions of the Employer in the circumstances in omitting to give adequate warning and notice is also contrary to the principles and practices of good industrial relations.

Selection for Redundancy

45. We note that the whole of the Employer's Security Department was shut down. For that reason, it appears that the only criterion was that the Employees were all members of that particular group of workers. At first blush, it may be argued that the Employer had no choice but to select them all for redundancy. However, having acknowledged the Employees' "skills and background", the Employer provided no evidence in respect of any other individual or group of workers at a similar skill level, background or pay-grade.
46. Based on our knowledge of the station in life of a typical security guard and the Employer's conclusion that the Employees were all in need of training, a lingering question remains to be answered: Was it reasonable to dismiss all the Employees without consideration of the possibility of retaining the services of any of them? There is no sufficient evidence that the Employer properly contemplated such a possibility. That omission is also contrary to the principles and practices of good industrial relations.

Alternative Employment

47. In the **Cable and Wireless case**, this Court quoted the following excerpt from **Blackstone**:

"The employer has a duty, if someone is provisionally selected for redundancy, to see whether there is any other role which might suit that

particular employee, not only with the employer but also with any associated company of the employer. If this requirement is ignored, a dismissal is normally rendered unfair..."

48. That guideline is pertinent in this case. In relation to matters which the Employer should have considered, it is clear that the Employer prides itself in being a member of the Hadeed Group of Companies. As such, its duties included one to consider the possibility of alternative employment with its sister companies in the Group. There is no evidence that any such consideration was given. That omission also tends to carry weight as an aspect of unreasonableness. The Employer's stated recommendations of the Employees to the private security firm, to which the security work was being outsourced, was not enough to discharge the duty asserted by Blackstone.

The Release

49. The Release Forms signed by all the Employees, except Mr. Johnson, are substantially in identical terms. They do not include the amount of severance payment received by or offered to them, but purported to acknowledge acceptance of the same "as full and final satisfaction and discharge" to the extent that the Employer "be absolutely and finally exonerated and discharged from all further and other claims...".
50. The evidence reveals that four Employees were given the document to sign when they went to collect their severance pay. They were not allowed to take the document away to obtain legal advice on it or to consult with their Union. They were required to sign as "a mere formality" in order to receive their severance pay. This assertion by the Employees is confirmed by Ms. Steele, the Employer's sole witness, who testified that "the Release was just a formality...a requirement ...in order to collect the severance cheque".
51. In the circumstances, having regard to (a) the provisions of the Labour Code in respect of public holiday pay, premium pay and severance pay; (b) the corresponding articles of the Collective Agreement; and (c) the terms of the individual letters of employment, it was contrary to the principles and practices of good industrial relations for the Employer to present the Release to the Employees in the manner it did without first consulting with them and their Union as to its terms or allowing the Employees ample time to obtain legal

advice. Those omissions are also clear aspects of unreasonableness on the part of the Employer.

52. In the final analysis, taking all the circumstances into consideration, we find that the Employer failed the test of reasonableness in dismissing the Employees in the manner it did. Taken as a whole, the Employer's action of dismissing the Employees does not fall within the band of reasonable responses which a reasonable employer should have adopted in the circumstances. Needless to say, we are persuaded by the submissions of Messrs. James and Leonard that the Employees were unfairly dismissed and are entitled to compensation.
53. In the circumstances, we will assess the Employees' entitlements to outstanding premium pay, public holiday pay and compensation as follows.

Outstanding Premium Pay

54. We have noted Ms. Benjamin's submissions on behalf of the Employer regarding the Employees' claim for outstanding premium pay. We do not agree. Firstly, as stated above, we find that the rates of pay detailed in the offers of employment were not negotiated with the Employees or their Union Representatives. In any event, those rates conflict with the minimum standards of premium pay stipulated in the Labour Code and are therefore unenforceable.
55. As to the participation of the Antigua and Barbuda Workers' Union in the hearing of any grievance which the Employees could have brought during the course of their employment, the fact is that their claims were made after their dismissal. Thus, there was no subsisting employment agreement to ground a grievance procedure which would involve the participation of the Union.
56. As to learned Counsel's submission regarding the effect of the Limitation Act in terms of barring the claims for outstanding premium pay, we do not agree that they should be wholly rejected. Instead, we will follow this Court's earlier judgments in **Reference No. 4 of 2014: Joyann Canoville v Dickenson Bay Hotel Management Limited** and **Reference No. C/26 of 2018: Trevor Aska v Premier Beverages Limited**. Accordingly, we will limit the respective claims to the period of 6 years before the commencement of these proceedings on February 18, 2016. This means that our assessment of the outstanding premium pay to which the respective Employees are entitled will start from February 17, 2010, and end on the dates of their dismissal on July 24, 2015.

57. Doing the best we can with the available evidence, the assessment of outstanding overtime pay will be done using rounded numbers in following two phases:

Phase 1: February 17, 2010, to December 31, 2014, when the flat rate of pay was \$120.00 per day or \$10.00 per hour.

Phase 2: January 1, 2015, to July 30, 2015, when the flat rate was \$125.16 per day or \$10.43 per hour.

61. **GERVIS JOHNSON** commenced his employment in 2008.

During Phase 1, this Employee worked 4 hours overtime per day or 24 hours per week for 253 weeks.

He was paid \$40.00 ($\$10 \times 4$) per day or \$240.00 (24×10) per week for overtime work.

The rate of premium pay to which he was entitled is "one-and-one half times" the flat rate or \$15.00 per hour for the overtime hours. This means that he should have been paid \$60.00 ($\$15 \times 4$) per day or \$360.00 ($\$15 \times 24$) per week.

He is entitled to the weekly difference \$120.00 for the 253 weeks or \$30,360.00 for overtime work during Phase 1.

During Phase 2, this Employee worked the same number of daily or weekly hours for 31 weeks.

He was paid \$41.72 ($\$10.43 \times 4$) per day or \$250.32 ($\$41.72 \times 6$) per week for overtime work.

The rate of premium pay to which he was entitled is "one-and-one half times" the flat rate or \$15.65 per hour for the overtime hours. This means that he should have been paid \$62.60 ($\$15.65 \times 4$) per day or \$375.60 ($\$15.65 \times 24$) per week.

He is entitled to the weekly difference of \$125.28 for the 31 weeks or \$3,883.68 for overtime work during Phase 2.

Accordingly, the total outstanding premium pay to which Mr. Johnson is entitled is **\$34,243.68** ($\$30,360.00 + \$3,883.68$)

62. **VENICE HART** commenced her employment in 2007. For the first six and a half years of her employment she worked 12 hours per day for 6 days per week.

During Phase 1 she worked from February 17, 2010 to October 2013, a total of 193 weeks.

She was paid \$40.00 per day or \$240.00 per week for overtime work.

She should have been paid \$60.00 per day or \$360.00 per week.

She is entitled to the weekly difference \$120.00 for the 193 weeks or \$23,160.00 for overtime work up to October 2013 during Phase 1.

For the remainder of 60 weeks in Phase 1, this Employee worked the 12-hour shifts for only 5 days per week.

She was paid \$40.00 per day or \$200.00 per week

She should have been paid \$60.00 per day or \$300.00 per week.

As a result, in addition, she is also entitled to the weekly difference of \$100.00 for the 60 weeks or \$6,000.00 for the remainder of Phase 1

During Phase 2, this Employee worked 12 hours per day, 5 days per week for 31 weeks.

She was paid \$41.72 ($\$10.43 \times 4$) per day or \$208.60 ($\$41.72 \times 5$) per week for overtime work.

At the premium rate of \$15.65 per hour, she should have been paid \$62.60 ($\$15.65 \times 4$) per day or \$313.00 ($\$15.65 \times 20$) per week for overtime work.

She is entitled to the weekly difference of \$104.40 for the 31 weeks or \$3,236.40 for overtime work during Phase 2.

Accordingly, the total outstanding premium pay to which Ms. Hart is entitled is \$32,396.40 ($\$23,160 + \$6,000 + \$3,236.40$).

63. **VERONICA BERRY** commenced her employment on or about May 18, 2006.

Since she worked at the same rates of pay and for the same hours as Ms. Hart, her entitlement to outstanding overtime pay is the same.

Accordingly, the total outstanding premium pay to which Ms. Hart is entitled is \$32,396.40 ($\$23,160 + \$6,000 + \$3,236.40$).

64. **DAMYON DAW** commenced his employment on or about July, 14, 2014.

During Phase 1, he worked from July 14, 2014 to December 31, 2014, a total of 24 weeks.

At the same flat rate as the other Employees, he was paid the total sum of \$5,760.00 ($\$240.00 \times 24$) for overtime work.

Since he should have been paid a total of \$8,640.00 ($\$360.00 \times 24$), **he is entitled to the difference of \$2,880.00 for overtime work during that part of Phase 1.**

As to Phase 2, this Employee worked the same number of hours and at the same rate as Mr. Johnson, with the result that **he is also entitled to the weekly difference of \$125.28 for the 31 weeks or \$3,883.68 for overtime work during Phase 2.**

Accordingly, **the total outstanding premium pay to which Mr. Daw is entitled is \$6,763.68 ($\$2,880 + \$3,883.68$)**

65. **LLOYD LEWIS** was seconded to work for the Employer by Finance and Development Company Ltd., one of its sister companies in the Hadeed Group of Companies, in or about 2010. It is common ground that Finance and Development continued to pay his wages during his tenure with the Employer. It is also common ground that this Employee was given notice of his redundancy and received redundancy pay from the Employer, like the other Employees. **In fact, by the "Attestation" prepared by the Employer and signed on December 3, 2015, the Employee "accepted the payments...as full and final compensation and settlement of any and all claims I had and may have against Antigua Masonry Products Ltd. For my services as an employee during the period..."**

66. In the circumstances, notwithstanding the niceties of "transfer" to work for the Employer, we are satisfied that the Employer fully accepted liability for the payment of severance pay, premium pay, public holiday pay and other payments due to this Employee upon the termination of his employment. On that basis, we assess his entitlements as follows.

This Employee worked over the same periods during the 2 Phases as Mr. Johnson. Therefore, **the total outstanding premium pay to which Mr. Lewis is entitled is \$34,243.68 ($\$30,360 + \$3,883.68$).**

Public Holiday pay

67. Pursuant to section C 15 of the Labour Code, any employee who works on a public holiday is entitled to his pay at his regular rate plus additional pay at "an hourly rate of not less than 150 per centum of his basic rate per hour worked".

68. For present purposes, we accept that the Employees all worked on public holidays without any additional pay for the same. The evidence discloses that

they all were paid at the applicable flat rate. However, no evidence was adduced as to actual number of public holidays worked by individual Employees during the 2 Phases.

69. During Phase 1, we fix the number of public holidays worked by each Employee per year at 9, in respect of which they were paid the flat rate of \$10.00 per hour or \$120.00 per day. In addition to that sum, they were each entitled to an additional sum of \$180.00 ($\$120 \times 150\%$) per public holiday worked. Accordingly, **we award the sum of \$1,620.00 ($\$180 \times 9$) per year or \$8,100.00 ($\$1,620 \times 5$) as public holiday pay to each of the Employees, except Damyon Daw, for work on public holidays during Phase 1. We award the sum of \$900.00 ($\$180 \times 5$) to Mr. Daw as public holiday pay during Phase 1.**
70. During Phase 2, we fix the number of public holidays worked by each Employee at 4, in respect of which they were paid at the flat rate of \$10.43 per hour or \$125.16 per day. In addition to that sum, they were each entitled to an additional sum of \$187.74 ($\$125.16 \times 150\%$) per public holiday worked. Accordingly, **we award the sum of \$750.96 ($\$187.74 \times 4$) as public holiday pay to each of the Employees for work on public holidays during Phase 2.**

Compensation for Unfair Dismissal

71. Based on our finding that the Employees were unfairly dismissed, we assess compensation under the headings as set out below.

a. Payment in lieu of Notice

We award the sum of \$500.64 ($\$10.43 \times 8 \times 6$), being the equivalent of one week's pay, to each of the Employees.

b. Loss of Protection from Unfair Dismissal

The usual award under this heading is the equivalent of their severance pay entitlement if the Employees were properly dismissed because of redundancy. In this case, since they received an amount described as "severance pay" and in the absence of any claim under this heading, we make no award.

c. Immediate Loss of Earnings

An award under this heading takes into account the Employees' efforts to mitigate their loss. In our estimation, with diligent efforts, each of them

should have been able to find alternative employment within 3 months after their dismissal. Accordingly, we award the sum of \$6,508.32, being the equivalent of 3 months wages, to each of them.

d. Exemplary Damages

We agree with the Employees' submissions that the dismissals were harsh and oppressive; that the Employer treated them with scant regard and failed to heed their statutory and contractual rights. In the circumstances, we award the sum of \$5,000.00 to each of the Employees under this heading.

Costs

72. In our opinion, the facts and circumstances disclosed above constitute "exceptional reasons" on the basis of which we consider it proper to award costs in the sum of \$2,500.00 to each of the Employees.

Summary

73. The amounts payable to the Employees may be summarized as follows:

GERVIS JOHNSON

Premium Pay	\$34,243.68
Public Holiday Pay	8,850.96
Notice Pay	500.64
Immediate Loss	6,508.32
Exemplary Damages	5,000.00
Costs	2,500.00
Total	\$57,603.60

VENICE HART

Premium Pay	\$32,396.40
Public Holiday Pay	8,850.96
Notice Pay	500.64
Immediate Loss	6,508.32
Exemplary Damages	5,000.00
Costs	2,500.00
Total	\$55,756.32

VERONICA BERRY

Premium Pay	\$32,396.40
Public Holiday Pay	8,850.96
Notice Pay	500.64
Immediate Loss	6,508.32
Exemplary Damages	5,000.00
Costs	2,500.00
Total	\$55,756.32

DAMYON DAW

Premium Pay	\$ 6,763.68
Public Holiday Pay	1,650.96
Notice Pay	500.64
Immediate Loss	6,508.32
Exemplary Damages	5,000.00
Costs	2,500.00
Total	\$22,923.60

LLOYD LEWIS

Premium Pay	\$34,243.68
Public Holiday Pay	8,850.96
Notice Pay	500.64
Immediate Loss	6,508.32
Exemplary Damages	5,000.00
Costs	2,500.00
Total	\$57,603.60

Declaration and Order

74. For the reasons stated above, we declare that the Employees were unfairly dismissed and are entitled to outstanding accrued premium pay, accrued public holiday pay and compensation for unfair dismissal as assessed above.
75. And we Order that the Employer do pay the following aggregate amounts, inclusive of costs, to the respective Employees

Gervis Johnson	\$57,603.60
Venice Hart	\$55,756.32

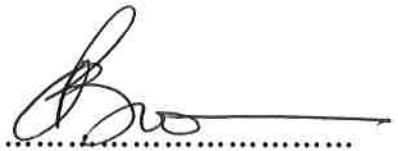
Veronica Berry \$55,756.32

Damyon Daw \$22,923.60

Lloyd Lewis \$57,603.60

no later than April 30, 2022.

Dated this 18th day of March 2022



.....
Charlesworth O. D. Brown
President



.....
Sir Hayden Thomas
Member



.....
Samuel Aymer
Member

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO.: C/UD 7 of 2016

GERVIS JOHNSON

Employee

And

ANTIGUA MASONRY PRODUCTS LTD.

Employer

REFERENCE NO.: C/UD 8 of 2016

SUNDRY WORKERS

Employee

And

ANTIGUA MASONRY PRODUCTS LTD.

Employer

JUDGMENT

Hon. Charlesworth O. D. Brown, President
Hon. Sir Hayden Thomas, Member
Hon. Samuel Aymer, Member