

ADVANCE COPY PENDING SIGNATURE OF VICE PRESIDENT

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REF: NO C/79 of 2017

BETWEEN:

GARFIELD MORRISON

Employee

and

HAWKEYE SECURITY & SURVEILLANCE LTD

Employer

Before:

The Hon. Samantha May-Francis

Vice President

The Hon. John Benjamin

Member

The Hon. Judith Dublin

Member

Appearances:

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

Mr. Kendrickson Kentish of Lake & Kentish for the Employer

**2021: July 20
2022: August 26**

JUDGMENT

May-Francis, VP:

Background

The Employer is engaged in the business of providing security services to private institutions in Antigua and Barbuda. For that purpose, it employs security officers who are deployed to private premises to provide the required services.



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Background

1. The Employer is engaged in the business of providing security services to private institutions in Antigua and Barbuda. For that purpose, it employs security officers who are deployed to private premises to provide the required services.

2. The Employee was employed by the Employer as a Security Officer commencing October 2013. He resigned on June 10, 2016, at which date he was receiving wages at the rate of \$8.20 per hour. By this Reference he sought to recover statutory entitlements for unfair suspension, sick pay, premium or overtime pay, and wages.

The Opposing Cases

3. The Employee claims that:
 - a. He worked a forty-eight (48) hour workweek from 6:00 a.m. to 6:00 p.m.
 - b. From October 2013 until January 2015, he worked twelve (12) hour daily shifts.
 - c. The Employer is in contravention of Sections C26 and C27 of the Antigua and Barbuda Labour Code. The Employer failed to pay him premium pay or the additional four (4) hours he worked more than the eight (8) hours scheduled to work.
 - d. He was unlawfully suspended on May 23, 2016, for allegedly sleeping on the job on the day before.
 - e. He was not sleeping but had been lying down as he was not feeling well. In addition his medical history was known to the Employer.
 - f. He is entitled to receive payment for 13 days suspension from May 24 to June 7, 2016, because he was not scheduled to return to duty until June 8, 2016.
4. The Employer's defence is that:
 - a. The Employee was lawfully suspended on May 24, 2016, as he was found sleeping on the job on May 22, 2016, by his shift supervisor
 - b. The Employer paid the Employee for the days for which he was suspended
 - c. It accepts liability for outstanding wages, overtime, and vacation but contends the burden rest upon the Employee to prove the amount owed.

Resolution

5. Having admitted to resigning from his employment and the Employer having accepted liability, the Employer is liable to pay the Employee any statutory entitlement determined to be due to the Employee for outstanding wages, overtime, and vacation.
6. During the trial, much was said concerning the Employee's payslip dated June 16, 2016, covering the period June 1 to June 15, 2016. The pay slip shows that the Employee was entitled to be paid wages for 120 hours. It also contained a handwritten breakdown which the Employer accepts was written by its payroll clerk. The Employer asked the Court to accept that 9 days or 72 hours of the 120 hours are the days the Employee was suspended. On the other hand, the Employee contends the 9 days or 72 hours correctly reflects 9 days accrued vacation.
7. This Court has repeatedly stipulated that the obligation to keep full and proper records related to its employees rests on the employer. The Employer produced no evidence of the Employee's vacation record. In the absence of proper records, we do not accept that the Employee was compensated for the suspension period.
8. The suspension letter stipulates that the Employee was suspended from May 24, 2016 to May 31, 2016, a total of eight (8) days. However, the Employee's evidence is that he was suspended for thirteen (13) days. The Employer, in its Memorandum of Defence and through its witness Mr. Bruce Croal, contended the suspension was for nine (9) days.
9. Based on the pay slip dated June 2, 2016, for the period May 16 to 31, 2016, it is clear that the Employee was not paid on June 2, 2016, for the days on which he had been suspended. Mr. Croal's evidence is that the "suspension fell off" as the Employer had decided to pay the Employee for the 9 days he was suspended.

Accordingly, having so decided and considering Section B3 of the Antigua and Barbuda Labour Code (Amendment) Act 1998, we agree with the Employee that he is entitled to be paid wages in the sum of \$590.40 ($\$65.60 \times 9$) for the period of suspension.

10. The Employee sought an additional six (6) days' pay for the period June 1 to June 6, 2016. His pay slip dated June 17, 2016, for the period June 1 to June 15, 2016 indicates that he was paid for 120 hours, of which 72 hours relate to vacation days, 32 hours relate to wages while on sick leave, and 16 hours for regular working hours.
11. The Employee sought an additional six (6) days' pay from June 1 to June 6, 2016. The pay slip dated June 17, 2017, for the period June 1 to June 15, 2016 indicates that the Employee was paid for 120 hours, of which 72 hours relate to vacation days, 32 hours for wages
12. The Employee returned to work on June 8, 2016, because he was advised in the suspension letter that he was required to meet with Mr. Croal on June 6, 2016. There is no evidence that he was scheduled to work from June 1 to June 6. In our view, his suspension was extended over that period. Therefore, we find that the Employee is entitled to wages for the period June 1 to June 6, 2016 in the sum of \$393.60 ($\$65.60 \times 6$)
13. Sections C26 and C27 set out an employee's right to premium pay. The Employee in this Reference claims for accrued premium pay for October 2013 to January 2015. In his witness statement, the Employee states that he is owed outstanding premium pay from October 21, 2013, to December 31, 2014. As part of the Employee's evidence, a breakdown of payments due to the Employee from October 21, 2012, to August 23, 2014. The Employer did not object to this breakdown and provided no evidence to dispute that the Employee was not owed

overtime up to December. In essence, the Employee's claim that he is due overtime until December 31, 2014, remained unchallenged.

14. Based on the evidence as a whole, we accept the Employee's claim for accrued premium pay to be valid. Unfortunately, we do not have sufficient evidence from the Employer to ascertain the precise number of overtime hours worked by the Employee. Moreover, there was no evidence produced to suggest that the record produced by the Employer was the only overtime owed to the Employee or when this document was prepared. We also considered the admission made by the Employer in the correspondences of January 31, 2018, and February 14, 2018, in which the Employer admits to owing the Employee. The Employer also stated that it has since decided to change the shift system to twelve hours and no longer eight hours. We, therefore, accept the unchallenged evidence of the Employee that he worked twelve-hour shifts for the period claimed and that he is owed premium pay in the sum of \$6,138.00 as stated in his witness statement.

15. Regarding the Employee's claim for exemplary damages, we note Section 10 (5) of the Industrial Court Act provides:

"An order under subsection (4) may be made where in the opinion of the Court, an Employee has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice;...."

16. An award for exemplary damages as provided under the Act must relate to a dispute concerning the Employee's dismissal. Based on the evidence, the Employer did not dismiss the Employee. The Reference filed by the Employee does not include a claim related to unfair dismissal. As such, no award is made for exemplary damages.

Order

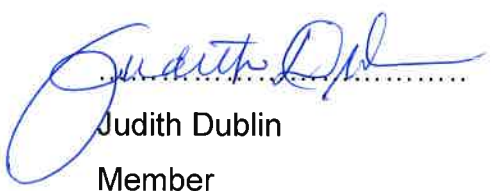
17. By reason of matters aforesaid, we order that:

- (1) The Employer shall pay the Employee the total sum of \$7,122. 00, inclusive of \$984.00 (\$393.60 + \$590.40) for outstanding wages and \$6,138.00 for accrued premium pay, no later than September 30, 2022.
- (2) No order as to costs.

Dated this 26th day of August 2022

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Samantha May-Francis
Vice President

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John Benjamin
Member


Judith Dublin
Member

