

ADVANCE VERSION OF JUDGMENT PENDING SIGNATURE
OF MEMEBER

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. C/25 of 2016

BETWEEN:

RENEE MORRIS-PHILLIP

Employee

and

ST. ANTHONY'S SECONDARY SCHOOL

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. Samuel R. Aymer

Member

The Hon. St. Lawrence DeFreitas

Member

Appearances:

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

Ms. Safiya L. Roberts of Roberts & Co, Attorneys-at-Law for the Employer

2017: July 10

2023: August 4

School teacher warned of dismissal in January on account of previous misconduct – Teacher repeating same or similar misconduct in April – Whether breach of implied term for mutual trust and confidence – Teacher dismissed during school vacation in July – Whether dismissal unfair

JUDGMENT



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JUDGMENT

Brown, P:

Background

1. The Employer is engaged in the business of providing secondary school education to students in Antigua and Barbuda at its premises situate at Longfords in the Parish of St. George. The School's Principal is Mrs. Joann Boulos-Callias, to whom the Employee was required to report and under whose direct supervision she worked on a daily basis.



2. Pursuant to the Employment Agreement made on June 23, 2008, the Employee commenced her employment with the Employer as a Teacher on September 1, 2008. She was assigned to teach Principles of Business and Art until her services were terminated by letter dated July 29, 2013, at which time she was receiving a monthly salary of \$4,400.00.
3. Under Clause 4 of the Agreement, the Employee agreed to *"perform faithfully, industriously, and to the best of the Employee's ability experience and talents, all of the duties that may be required by the express and implied terms of this Agreement, to the reasonable satisfaction of the Employer"*.
4. Further, under the heading "COMPLIANCE WITH THE SCHOOL RULES", the Employee expressly agreed to *"submit to all of the rules and regulations of the Employer"*. Moreover, under Appendix B to the Agreement, the Employee's duties and responsibilities required her to: *"maintain effective discipline in the classroom; maintain a positive working relationship with students, staff and parents / guardians"*; and *"work through appropriate channels to seek resolutions to problems"*.
5. By letter dated November 16, 2012, the Employer wrote the Employee accusing her of *"unprofessional conduct"* and stating that she *"demonstrates an absence of professional commitment and adherence to ethical standards of the profession..."* The Employee responded by letter dated November 23, 2012 disputing the allegations against her. Interestingly, she ended her response by stating: *"I will continue to hold my peace in the near future as I fail to believe I am the grey cloud dampening the institution"*.
6. After that exchange of letters, the relationship between the parties appear to have become or remained strained up to the date of dismissal.

The Dismissal

7. The main reasons for the dismissal are stated in the lengthy dismissal letter. We reproduce the substantial parts of the letter as follows:

"Dear Ms. Phillip,

Upon review of your performance as the Principles of Business (P.O.B) and Art Teacher at the St. Anthony's Secondary School (hereinafter referred to as "the School"), we have found that you have performed your duties in an unsatisfactory manner. Your actions have not changed since receiving a warning letter in relation to your behaviour and attitude dated 16th November 2012. The school has therefore taken the decision to terminate your employment on this basis as you have not demonstrated that you are able to perform and have performed your duties in a satisfactory manner.

In a letter dated October 12th 2011 you were warned of taking students off the School compound without authorisation. By letter dated December 17th 2012, the Principal expressed to you a number of incidents which detracted from your professionalism and stated that her trust in you had broken down.

In particular, we note that a meeting was held with you the 18th day of April 2013 to discuss the way forward for the new school year of September 2013. Present at this meeting was the Principal, Mrs. Joann Boulos-Callias, the Vice-Principal, Mrs. Catherine Stuart and you. At this meeting you were asked whether or not you hoped to be at the school in September 2013 given that in the previous school year you stated that you were not sure if you would be remaining at the school as a teacher. As a result the School was obliged to advertise for a teacher given that you expressed the possibility of not being at school for the new school year. At this meeting you refused to answer this question.

Also at this meeting, the principal identified several incidents in the past where you have been hostile in attitude towards parents. You defended yourself by casting blame on the students and their parents.

Also discussed was your attitude towards decisions made by the School. The Principal stated that she understood that you have a right to your own opinion however discussing these opinions with the students were inappropriate. In particular, you discussed with the students that you were against the expulsion of seven students who had been involved in unacceptable behaviour. You also discussed with students an incident involving a male student who was expelled for fighting with a girl. You further discussed with students that it was an invasion of the student's right to privacy for the Principal to decide to conduct random searches of lockers and bags after several phone calls from concerned parents whose children had been offered marijuana on campus and after two young men had been caught with wrappers.

Further discussed at this meeting was your disrespectful manner to the Principal by having no verbal communication with her, by ignoring her in front of students when she comes to the Art room and in front of staff in staff meetings and by snapping out an answer to any questions directed to you by the Principal. You were also disrespectful in your refusal to communicate with the Principal about the Side Walk Art Festival resulting in it being cancelled. This meeting on 18th April 2013 ended with the Principal and Vice-Principal asking you your thought on how to move forward given that the present situation was tense and uncomfortable however no answer was forthcoming from you.

The warning letter dated 16th November 2012 and mentioned in the first paragraph of this letter stated clearly that "this letter is to be considered as a final warning

that if this behaviour does not change immediately and permanently, you will face termination". Your conduct and performance since then and as described above is not and has not been satisfactory. Teachers play an integral role in the School striving to uphold a good reputation on which it must rely to attract prospective students. Under the above circumstances, your unsatisfactory performance can no longer be tolerated and therefore please be advised that we are terminating your employment with the School with immediate effect.
..."

Discussion

8. As we understand the dismissal letter, although the Employer categorized the main reason for the dismissal as *"unsatisfactory performance"*, the substantial matters recited fall in the category of *"misconduct"*. Essentially, the dismissal on July 29, 2013 was a culmination of events over the preceding 20 months starting in October 2011.
9. We have noted the following salient points in the chronology of incidents in relation to matters recited by the Employer:
 - (a) In October 2011, contrary to the Employer's rules, the Employee took students off the school compound without authorization. In the Employer's opinion, that action by the Employee together with a number of subsequent incidents, *"detracted"* from her *"professionalism"* and resulted in the erosion of the *"trust"* which the Employer had earlier reposed in her.
 - (b) By letter dated November 16, 2012, the Principal wrote to the Employee in respect of an incident involving the Employee and a student and related follow-up meetings. In that letter, the Employer complained of the Employee's manner of speaking to parents and her attitude towards her colleagues, all of which were disrespectful and unprofessional. In the final paragraph, the Principal warned the Employee that if her behaviour did not change *"immediately and permanently"*, she would face dismissal.
 - (c) In her response by letter dated November 23, 2012, the Employee highlighted her contribution to the School, touted her professionalism, disputed the several allegations made against her and made several complaints of her own against the Employer.
 - (d) Over the material period of time, in the face of the school policies and related decisions, the Employee had inappropriately expressed her personal dissenting opinions in respect of (i) the expulsion of 7 students for unacceptable behaviour; (ii) the expulsion of another student for

fighting; and (iii) the implementation of random searches of lockers and bags in order to ascertain whether marijuana was being sold on the school premises.

- (e) Further, over the material period of time, the Employer formed the view that the Employee had (i) disrespectfully refused to have verbal communications with the Principal; (ii) was guilty of ignoring the Principal in the presence of students and staff members; and (iii) had refused to communicate with the Principal, which resulted in the cancellation of the Employer's signature Side-Walk Art Festival in 2013.
 - (f) By letter dated January 25, 2013, the Employer issued its final warning to the Employee in respect of her failure to comply with the Employer's rules and regulations and her disrespect to the authority of the Principal. In the final paragraph, the Employee was warned that if there was a repeat of her misbehaviour, her employment would be terminated.
 - (g) On April 18, 2013, at a meeting convened by the Principal and attended by the Vice Principal, Mrs. Catherine Stuart, to discuss the way forward for the new school year, the Employee refused to answer the question put to her by the Principal as to whether she would be available to continue her employment for the new term in September 2013. During that meeting the Employer identified several incidents where the Employee demonstrated hostility towards parents of some of the students.
 - (h) By the end of the meeting, the Employer formed the opinion that the Employee had ignored both the Principal and Vice Principal and refused to cooperate with them towards improving the *"tense and uncomfortable"* situation.
 - (i) Moreover, by the end of that meeting on April 18, 2013, the Employer concluded that the Employee's behaviour had not changed following the *"final warning"* issued to her by letter dated January 25, 2013. In effect, the Employer's conclusion was that the Employee's conduct, as repeatedly demonstrated during the meeting, had remained unsatisfactory to the extent that the employment relationship could not continue.
10. We have noted above that the dismissal was largely grounded on misconduct. Accordingly, in its Memorandum of Defence the same matters recited in the dismissal letter are labelled as misconduct. Ultimately, the Employer averred that the Employee's several acts of misconduct, as well as her attitude "towards the students, parents and the principal", led to a breach of trust and confidence

with the result that the Employee was dismissed in accordance with Section C 59 (1) of the Labour Code.

11. In the alternative, the Employer averred that the Employee was dismissed in accordance with Section C 59 (2) of the Labour Code in that after the warning issued on January 25, 2013, the Employee engaged in the same or similar misconduct for which the final warning had been issued.
12. However, in her written closing submissions, Learned Counsel Ms. Safiya Roberts, correctly distilled the Employer's position, abandoned the former averment and asserted that *"the Employee was terminated on the ground of Section C 59 (2) of the Labour Code"*. That subsection provides:

"Where an employee is guilty of misconduct in or in relation to his employment that is not sufficiently serious or permit his employer to terminate his employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and state the action the employer intends to take in the event of

- a. a repetition of the misconduct; or
- b. the commission of another misconduct which is as serious as the one in respect of which the written warning was given.

..."

13. Section C 58 (4) provides:

"Where within six months of the receipt of the written warning under subsection (2), the employee is guilty of the same misconduct or is guilty of another misconduct in relation to his work which is as serious as the one in respect of which the written warning was given, the employer may terminate the employment of the employee or take such other action as may have been specified in the written warning.

...."

14. We note that in its warning letter dated January 25, 2013, the Employer complained that the Employee totally ignored the Principal's directions in respect of the presence of a child on its premises. In the letter, the Employer pointed to the Employee's "failure to comply with the rules and regulations of this institution" and her disrespect for the Principal's authority. The warning of possible dismissal was couched as follows: "Should the situation repeat itself in any form or means, your employment will be terminated"

15. Having regard to the statutory provision contained in Section C 59(2) the crucial question is: In light of the final warning on January 25, 2013, did the Employee repeat her misconduct "*in any form or means*" within the ensuing six months? In other words, did the Employee demonstrate any misconduct which could be reasonably interpreted to be disrespectful to the Principal's authority within the relevant period? If the answer to that question is in the affirmative, we would be inclined to find that the dismissal was not unfair.
16. In answering this crucial question, we must necessarily have regard to the opposing oral evidence of the parties and the related documentary evidence as contained in the Employer's undated Minutes and the Employee's manuscript response dated May 30, 2013. At the end of the day, having regard to the warning letters in November 2012 and January 2013, and treating the meeting of April 18 as the watershed, we find that Mrs. Boulos-Callias was a more creditable witness than the Employee. As it turned out, there is a preponderance of evidence in favour of the Employer.
17. As matters of fact, we find that the "Minutes" accurately reflect the following:
- (a) in order to ascertain if it would have a full slate of teachers, the Employer was concerned as to whether the Employee would continue her employment in the then upcoming September term.
 - (b) the Employee was upset because the Principal had earlier branded her as being "unprofessional".
 - (c) the Employee had been hostile to at least two parents
 - (d) the Employee had demonstrated an anti-administration stance regarding the expulsion of students and the random searching of student lockers and bags
 - (e) the Employee refused to discuss and consider a change in grades for two students
 - (f) the Employee was disrespectful in the manner in which she dealt with the Principal, had refused to properly communicate with her and had ignored the Principal in front of students and other teachers.
 - (g) In the presence of the Deputy Principal, the Employee's had refused to respond to the Principal's request for her suggestion as to how to move forward in order to diffuse then "*tense and uncomfortable*" situation.

18. The Employee's response to the Employer's request for her to sign the Minutes as recorded and presented to her for signature is also instructive. Although her manuscript was in response to and directed at the Principal, the Employee did not address her properly or at all. Instead, her terse response reads as follows:

"To whom It May Concern

With regards to minutes of meeting re: The way forward for Sept, 2013. Please me (sic) advised that I am unable to affix my signature per requested knowing that there are many errors incorporated in the said document.

Any inconvenienced (sic) caused is truly regretted".

In our opinion, the form and content of that response was bluntly dismissive of and uncooperative with the Principal.

19. As we understand the situation, in light of the previous two warnings and in the face of the Employer's reaching out to her at the April meeting, the Employee was obviously not interested in salvaging the employment relationship. In our opinion, the Employee effectively further disrespected the Principal and thereby repeated the same or similar misconduct as that in respect of which she had been warned four months earlier. Indeed, the Employee's response vindicated the Employer's position that the Employee's misconduct had resulted in her breach of the implied term for mutual trust and confidence.
20. In the final analysis, we conclude that there were sound factual bases for the misconduct as the reason assigned by the Employer for her dismissal. The factual bases satisfy the requirements of Section C 58 (1) of the Labour Code.
21. In carrying out the mandatory statutory test of reasonableness under Section C 58 (2), Counsel reminded us that we should adopt the settled approach and determine whether the Employer's response in dismissing the Employee falls within the band of reasonable responses which a reasonable employer would adopt in the circumstances.
22. Clearly, reasonableness must be assessed with due regard to the nature of the Employer's business and its statutory, corporate and moral obligations; its responsibilities for its students and the discharge of its objectives to their parents and the community as a whole; the discipline and professionalism required of the teachers; the express terms of the Employment Agreement; the requirement for compliance with the Employer's rules and policies; and the ubiquitous implied term for mutual trust and confidence.

23. In assessing reasonableness, we considered the timing of the dismissal, coming as it did during the summer vacation. Taking the settled vacation periods into consideration, it was reasonable for the Employer to delay the dismissal as it did. An earlier dismissal would have been disruptive to the Employer and its students. Needless to say each case turns on its own facts. On this issue we wholly agree with Counsel's submissions that, on the facts of this case, the timing of the dismissal did not render it less reasonable than it would otherwise have been.
24. In the final analysis, having due regard to the evidence as a whole and the pertinent parts of Counsel's submissions including the pertinent authorities she cited, we declare that the dismissal was not unfair.
25. Finally, we express our appreciation for the indulgence of the parties and offer our apologies for the delay in the delivery of this Judgment. Without attempting to justify the delay, we mention that, as a department of the government, we have experienced more than our fair share of challenges in relation to limited financial and human resources over which we have absolutely no control.

Dated this 4th day of August 2023



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

Charlesworth O.D. Brown
President

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

Samuel Aymer
Member

.....
St. Lawrence DeFreitas
Member

