

ANTIGUA AND BARBUDA



IN THE INDUSTRIAL COURT

REFERENCE NO. C/48 of 2021

BETWEEN:

MELISSA RAMPERSAUD

Employee

And

SIR LESTER BIRD MEDICAL CENTRE  
(formerly Mount. St. John's Medical Centre)

Employer

Before:

The Hon. Charlesworth O.D Brown

President

The Hon. John H. R. Benjamin

Member

The Hon. Dalmer A. Mc Coy

Member

Appearances:

Mr. Vere C. Bird III, Edgehill Chambers, Attorney-at-Law for the Employee

Mr. George E. Looby IV, HEF Law, Attorney-at-Law for the Employer

2023: November 8, 24

*Non-citizen Employee engaged as a permanent worker for over 9 years on basis of her resident status – Immigration Department rejecting her application for renewal of her resident status and requiring her to obtain a work permit in order to be employed – Immigration Department limiting employee's residency status to three months and prohibiting her from being gainfully employed – Employer summarily dismissing Employee and offering her fresh employment commencing two weeks later – Whether the Employer acted reasonably or unreasonably*

.....  
**JUDGMENT**

**Brown, P**

Background

1. The Employer is the only full-service hospital in Antigua and Barbuda. It was established in 2009 as a teaching hospital providing a full range of services from primary care to advanced critical care from its headquarters at Michael's Mount in the city of St. John's.

2. The law governing the immigration status of non-citizens residing in Antigua and Barbuda is largely set out in the Immigration and Passport Act, 2014. Section 4 of that Act provides for the grant of permanent or temporary resident status. The Chief Immigration Officer, as head of the Immigration Department, is responsible for the day-to-day administration and enforcement of the provisions of the Act and related Regulations.
3. Division F of the Antigua and Barbuda Labour Code, Cap 27, provides for the application and granting of work permits in respect of persons who are not citizens of Antigua and Barbuda. Section F 4 provides:

**“A person who is not a citizen of Antigua and Barbuda shall not engage in employment or self-employment in Antigua and Barbuda unless he has obtained a work permit issued by or on behalf of the Minister.”**

#### Overview of Facts

4. After careful consideration of the evidence and having regard to the pleadings and the submissions of Counsel, our findings of fact include the following:
  - 1) The Employee is a citizen of Guyana by birth. Prior to being registered as a citizen of Antigua and Barbuda sometime after her dismissal in April 2019, she was a Temporary Resident in Antigua and Barbuda, a status which she held since she was attending school as a minor. She continued to hold that status, which was renewed annually, up to February 2010 when she commenced her employment.
  - 2) At the commencement of her employment; the Employer did not ascertain the residency or citizenship status of the Employee. As a result it inadvertently overlooked the requirement for her to obtain a work permit.
  - 3) Upon commencement of her employment, the Employee held the position of Receptionist. At the time of her dismissal on April 30, 2019, she was engaged as a Purchasing Clerk earning a salary of \$2,170.35 per month.
  - 4) As shown stamped in her Guyana passport, the Immigration Department permitted the Employee to lawfully remain in Antigua and Barbuda for the period April 23, 2018 to April 22, 2019 in order “TO PROCESS RESIDENT PERMIT”. She continued in her employment during that period but did not complete the process to obtain her resident permit.
  - 5) On April 25, 2019 the Employee returned to the Immigration Department with a view to obtaining a fresh “one year work extension stamp”. Her application was denied. Instead, she was granted a limited three-month

period to lawfully remain in Antigua and Barbuda from April 25, 2019 until July 24, 2019 with the stipulated condition "PERMITTED TO SAY ON THE FOLLOWING CONDITION: HOLDER SHALL NOT ENGAGE IN GAINFUL OCCUPATION".

- 6) On or about April 25, 2019, the Employer received an "anonymous tip off via telephone" that the Employee was "an illegal immigrant" whose status was being reviewed by the Chief Immigration Officer.
- 7) On April 29, 2019, the Employer's Human Resources Manager, Ms. Denise Benjamin, informed the Employee that she would be sent home on leave pending a further investigation of the matter. She was told to return for a meeting the following day. She subsequently received pay in lieu of 13 days accrued vacation.
- 8) Upon her return to work on April 30, 2019, the Human Resources Manager informed the Employee that she needed a work permit; that she should not have been on the payroll; and that she would not be allowed to work until she got one.
- 9) At the meeting on April 30, 2019, the Employee requested that she be permitted to go on vacation. Her application was rejected on the ground that she had no work permit. Instead, by letter bearing the same date the Employer wrote to the Labour Commissioner enclosing a signed work permit application form and requesting that the Employee be granted a work permit.
- 10) By a separate letter of the same date the Employee was summarily dismissed on the ground that she had not obtained the requisite work permit. The dismissal letter reads:

*"Dear Ms. Rampersaud*

*Re: Termination of Employment – Purchasing Clerk*

*A recent review of your Human Resources Personnel File revealed that you are not in compliance with Cap. 27 Division F 4 of the Antigua and Barbuda Labour Code as it relates to your employment at Mount St. John's Medical Center.*

*The Law states that "a person who is not a citizen of Antigua & Barbuda shall not engage in employment in Antigua and Barbuda unless he has obtained a work permit issued by or on behalf of the Minister."*

*To ensure that we are in compliance with provisions of the law we have no other choice but to summarily terminate your employment on the basis that you are not a holder of a valid permit to work in Antigua & Barbuda.*

*You will be compensated for any accrued vacation up to April 30<sup>th</sup>, 2019. The payment will be processed via cheque and a HR representative will contact you in this regard.*

*..."*

5. It is noteworthy that, during the trial, it emerged that the Employee would have us believe that she did not actually receive the dismissal letter dated April 30, 2019. However, having regard to the structure and content of both her Memorandum of Claim, her witness statement and her oral testimony, vis-à-vis the Employer's Defence, its witness statement and oral testimony, each taken as a whole, we find that she did receive it. We will proceed accordingly.

#### The Reason for the Dismissal

6. Section C 58 (1) (d) of the Antigua and Barbuda Labour Code provides that a dismissal shall not be unfair if the reason assigned by the employer **"is that the employee could not continue to work in the position she held without contravention (on his or on the employer's part) of a requirement of law"**.
7. Our selected findings of fact outlined above leave no doubt that the continued employment of the Employee in her position as Purchasing Clerk after April 25, 2019, would have been in clear contravention of section F (4) of the Labour Code since she had not obtained the requisite work permit. Thus, through the evidence of Keisha George, the Employer's Human Resources Coordinator, the Employer established that it had a good reason with a sound factual basis for the dismissal of the Employee.
8. It is important to emphasize that, notwithstanding the words of subsection 58 (1), the existence of a good reason does not, by itself, lead to a final conclusion as to whether or not the dismissal was unfair. That determination can only be made after considering the conjoint effect of both section C 58 (1) and section C 58 (2). The statutory test which must be applied pursuant to the latter subsection is: **"whether or not, under the circumstances, the employer acted unreasonably or reasonably in dismissing the employee."**

### The Reasonableness of the Dismissal

9. The term reasonableness is difficult to define. It eludes a single comprehensive and accurate definition. Where appropriate, regard must be had for the overlapping principles of natural justice, the practices of good industrial relations and procedural fairness.

When considering the concept, a good starting point is always the consideration of what a reasonable employer would do in a particular situation. Better yet, the proper approach is to consider a band of reasonable responses within which the responses of particular employers may fall. Ultimately, if the action taken by the Employer falls within the range of reasonable responses which reasonable employers would take, then the dismissal was not unfair. The converse is equally true.

10. Further, when considering the statutory term “under the circumstances”, our analysis must not be limited to a narrow selection of core facts. Regard must be had for the pertinent surrounding circumstances. For present purposes, we will consider selected aspects of the Employer’s actions and determine whether they were reasonable or not.
11. According to Ms. George, prior to April 25, 2019, the Employee was lawfully permitted to work in Antigua and Barbuda because she had a “residency stamp”. She also testified that the Employee was a good employee working legally up to April 22, 2019.
12. The fact that the Employee was not summarily dismissed until April 30, 2019, means that she remained an “employee” in a state of limbo for eight days, five of which were after the Employer received its tip-off and the immigration department had prohibited the continuation of her employment. The failure on the part of the Employer to act in a more timely manner was unreasonable in the face of the expiry of the one-year extension on April 22, 2019 and the prohibition of the Chief Immigration Officer issued on April 25, 2019.
13. While we appreciate that it was necessary to abruptly terminate the employment relationship, it is our opinion that the basis for the summary dismissal could have been avoided if the Employer had paid sufficient attention, exercised the necessary due diligence and taken the necessary pre-emptive action. In that regard, we accept the Employee’s evidence that acting on the advice she received from Immigration Officer, Mr. Crump, and confirmation of the same by the Employer’s Chief Executive Officer, Mr. Gary Thomas, she had a legitimate expectation that, as at April 22, 2019, pending her successful application for citizenship or the acquisition of a ‘Resident Permit’, a job letter would have facilitated a further “one year work extension stamp”. Such an extension would allow her to continue in her employment without a work permit. In the

circumstances, the Employer's disregard for the Employee's legal status and its related actions and omissions, taken as a whole, were unreasonable.

14. The evidence reveals that the Employer made an offer of fresh employment to the Employee, which would take effect from May 15, 2019. This offer was made in light of the Immigration Department's permission for her to remain in Antigua and Barbuda for the limited 3-month period from April 25 to July 24, 2019, provided that she was not gainfully employed. In light of that prohibition and the summary dismissal on April 30, 2019, the Employer's offer of fresh employment from May 15, 2019, was unreasonable. The unreasonableness is evident not only because the fresh employment would conflict directly with the prohibition issued by the Immigration Department, but also because it would have required the Employee to obtain her work permit, resident permit or citizenship within a mere two weeks after her dismissal.
15. Further, it appears that the Employer unreasonably required the Employee to forego any benefits which had accrued to her during her previous nine-year tenure. In particular, the Employer disregarded the Employee's equity in her job which she had earned over that period. It would have been manifestly more appropriate for the Employer to either provide the Employee with a reasonable severance package, or credit the Employee with her years of service and assure her that they would be taken into consideration in the proposed future employment. In that regard, it would have been useful to engage in more or better consultation with the Employee's union representatives.
16. As to the options available to the Employer at the material time, in light of the Employee's acknowledged request that she be placed on "vacation leave", it is our considered opinion that rather than simply denying her request, it would have been reasonable for the Employer to grant the Employee special leave without pay for a specific period, subject to review, to allow her to take the necessary remedial steps to regularize her status. Alternatively, the Employee could have been temporarily terminated with a date for recall and a timely review of her progress towards the regularization of her status.
17. As to the Employee's status after her dismissal, her unchallenged evidence is that the Employer refused to provide her with a "job letter" to support her further application for a fresh "one year extension stamp". Further, the Employee's evidence reveals that sometime in or before September 2019 she received "a three-year resident stamp". Moreover, she also testified that she was granted citizenship sometime in "2021 or early 2022". We find it unreasonable that, having benefitted from the Employee's 9 years of service as a "good worker", the Employer did not handle the matter in a more compassionate manner by assisting the Employee to obtain either her resident status or citizenship.

18. By reason of matters aforesaid, we find that the Employer has failed the test of reasonableness under section C 58 (2) of the Labour Code. In other words, we conclude that it was unreasonable for the Employer to dismiss the Employee at the time, on the terms and in the manner it did notwithstanding the constraints imposed by the Chief Immigration Officer. In our opinion, the Employer's responses as a whole and the action of dismissal, in particular, did not fall within a band of reasonable responses which a reasonable employer should have taken in the circumstances. As a result, we are constrained to find that the Employee was unfairly dismissed and is entitled to compensation, which we assess as follows.

#### Compensation

19. We assess compensation as follows:

##### Notice Pay

The Employee is entitled to the equivalent of one month's pay in lieu of notice in the sum of **\$2,170.35** which we award accordingly

##### Loss of Protection from Unfair Dismissal

The Employee worked from February 8, 2010 to April 30, 2019, a total of 9 years and 2 months. In the circumstances, she is entitled to the sum of **\$19,894.88** being the total of one month's pay for each year of service.

##### Immediate Loss

Subject to her duty to attempt to mitigate her loss, the Employee is entitled to compensation for the loss she suffered over the period between her dismissal and the trial. In that regard, her evidence, which was not tested, is sketchy. She testified that her status was regularized when she was granted resident status, after which she found work in September 2019 at a lower rate of pay. In the circumstances, having regard to the prohibition against her employment up to July 24, 2019, we will limit our award under this heading to one month's salary in the sum of **\$2,170.35**.

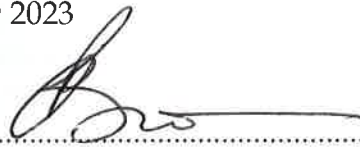
##### Fringe Benefits and Other Heads

We make no award for Risk Pay since we accept the Employer's evidence that none was payable during the Employee's tenure. Further, in the absence of adequate evidence, we make no award of compensation under any other heading.

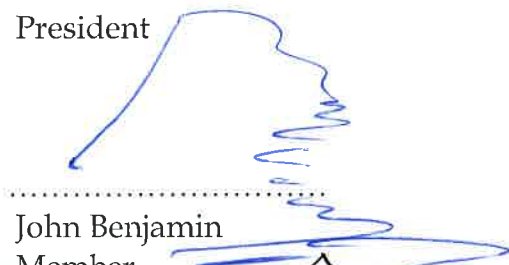
Order

20. In the premises, we order that the Employer do pay the total sum of \$24,235.58 to the Employee, as compensation for her unfair dismissal, no later than December 24, 2023.

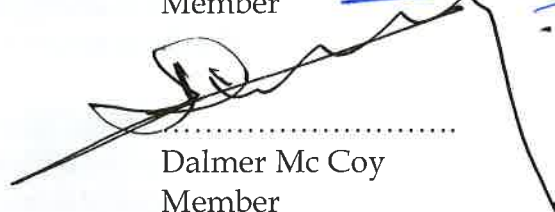
Dated this 24<sup>th</sup> day of November 2023



Charlesworth O. D Brown  
President



John Benjamin  
Member



Dalmer Mc Coy  
Member



