

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 3 of 2023

BETWEEN:

SHELLEY HUMPHREYS

Employee

and

SIGNATURE FLIGHT SUPPORT ANTIGUA LIMITED

Employee

Before:

The Hon. Samantha May- Francis

The Hon. Collin R. Maynard

Vice President

Member

Appearances:

Mr. Samuel James and Mr. Simon Leonard of Antigua & Barbuda Free Trade Union
Representative for the Employee

Ms. C. Kamilah Roberts of Roberts & Co., Attorneys-at-law for the Employer

2024: July 11
December 17

Employee was dismissed for redundancy, Employee alleged that his dismissal was unfair, Parties subsequently entered into Mutual Settlement and Release Agreement, Employee claims that despite the Agreement he is entitled to accrued vacation pay- Whether the Employee who executed the Agreement and received compensation under the Agreement is entitled to an award for accrued outstanding vacation pay as alleged

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JUDGMENT

May-Francis, VP

Background

1. The Employee was employed as a Landscaper, having commenced his employment on April 1, 2015.
2. By Reference filed on January 26, 2023, the Employee claims that he is entitled to outstanding vacation pay pursuant to Section 18 (1) of the Antigua and Barbuda Labour Code (the Labour Code).



3. The Employee alleges that the Employer unfairly dismissed him on December 10, 2020, under the guise of redundancy.
4. The Employer's defence is that its liability to the Employee had been discharged and or released by a Settlement and Mutual Release Agreement dated January 21, 2021 (the Release), which the Employee executed in consideration of the global sum of \$34,260.10 in full and final settlement, satisfaction and discharge of all claims against the Employer.
5. The Employee has not taken issue with the fact that he signed the "Release" on January 21, 2021. He contends in his Memorandum filed on January 26, 2023 that his accrued vacation did not form part of the global figure stipulated in the Release. Further, in correspondence dated October 23, 2020, the Employer undertook to pay all his outstanding and accrued vacation entitlement. According to the Employee's Memorandum, the only dispute that existed then was in relation to the declaration of redundancy, mainly whether a genuine redundancy existed or whether he had been unfairly dismissed.
6. The Employee averred that his Representatives wrote to the Employers on December 10, 2020, claiming that he was unfairly dismissed. Thereafter, the matter was negotiated, and compensation for the unfair dismissal was agreed upon. The Employee contends that the issue of outstanding vacation had been settled as the Employer had undertaken to pay him accrued vacation outstanding as stated in its letter of October 23, 2020 when he was made redundant.

Issues

7. Having regard to the pleadings, the sole issue for determination is whether or not the Employee's entitlement to vacation pay was extinguished after the execution of the Release.

The Submissions

8. Learned Representative Mr. Samuel James submitted that the Release only concerned the issue of the purported redundancy and the alleged unfair dismissal. He argued that there was no need to demand payment for the outstanding vacation pay and to include the same in the settlement as the Employer had already undertaken in writing to satisfy same. Mr. James argued that this contention is supported evidentially by the letters dated October 23, 2020 from the Employer to Antigua and Barbuda Workers Union and December 10, 2020 from the Antigua and Barbuda Free Trade Union to the Employer.

9. Mr. James further contended that a perusal of the letter of December 10, 2020, which was admitted into evidence, clearly shows the breakdown of the different heads considered in arriving at the global sum stipulated in the Release. He argued that the sum of \$34, 260.10 is the amount demanded by the Employee in the letter of October 23, 2020, having deducted the notice pay paid to the Employee.
10. Learned Counsel Ms. Kamilah Roberts contended that the terms of the Release are clear and unambiguous in that it specifically stated the global sum to be paid to the Employee. Learned Counsel argued that the Court is duty-bound to apply the ordinary meaning in interpreting the effect, meaning, and nature of the Release. Learned Counsel Ms. Roberts argued that the Court should not bring into the words of the Release anything that has not been stated therein. She asked that the Court give effect to the clear and unambiguous terms.
11. Learned Counsel further argued that in the Release, the Employee agreed to accept \$34, 260.10 in full and final settlement, satisfaction, and discharge of all claims upon the Employer. Learned Counsel pointedly stated that the Employee was always represented by his Learned Representative and benefited from his advice.

Analysis

12. It is not in dispute that the Employer offered to pay the sum of \$34,260.10 to the Employee. The Employee agreed to accept the offer and accordingly received payment. Learned Representative Mr. James argued that the Employee's right to vacation pay is mandated by statute, particularly Section 18 of the Labour Code.
13. With the Employee's right to accrued vacation in mind, this Court considered whether the facts of this matter supports a finding of a common mistake in that both parties had an intention and agreement that the Release should contain terms to the effect that the sum offered by the Employer and accepted by Employee was only for what the Employee deemed his unfair dismissal. If the evidence suggests that based on the discussions and negotiations with and on behalf of the Employee, it was not intended to exclude consideration for outstanding vacation pay, then it would be inequitable to allow the Employer to insist on the binding force of the Release.
14. The Court must therefore move to address this inequity.
15. We have no evidence of what was discussed and negotiated between the parties. The Employee's evidence is that he had not attended any meeting between Mr.

James and the Employer pertaining to the terms of the Release. Therefore, he could not provide any assistance of what was discussed.

16. We note the Employee did not proffer that a mistake was made in the drafting and preparation of the Release. Notably, Learned Representative Mr. James appeared by his submissions to be suggesting that the compensation stated on the Release was based on the December 10, 2020 letter. His contention on behalf of the Employee, as we understand it, is that there was no omission in the Release; the Employee is due his vacation pay based on statute and on the representation by the Employer in the dismissal letter of October 23, 2020.
17. Learned Counsel, Ms. Roberts argued that no offer of settlement was made on the individual heads of compensation submitted by the Employee or based on the Employer's representation in the letter of October 23, 2020, but a global sum was offered for full and final settlement to the Employee.
18. We carefully considered Mr. James' submission. He relied on several cases, including **Gervis Johnson v Antigua Masonry Products Ltd Reference C/UD 7 of 2016** and **Alphonso David Henry v Beresford Reference No C47 of 2017**. In the **Gervais Johnson** case, the employees were given a Release when they went to collect their severance. They were not given the opportunity to take the document away to obtain advice. It was represented by the Employer that the employees were required to sign the Release as a mere formality in collecting their severance cheque. Accordingly, the Court found that the employer's actions were unreasonable.
19. In the **Alphonso David Henry** case, the employee contended that he had executed the separation agreement under pressure from the employer. The employer had not given him the agreement before for review and consideration and simply presented it to him for execution. This Court accepted the evidence of the employee that the separation agreement was prepared without any consultation with him, he had no opportunity to obtain advice so he could make an informed decision about acceptance and that the employee was ill-equipped and unable to negotiate on his own. It was held that the employer had acted unreasonably in dealing with the employee. The employee was therefore succeeded on his claim.
20. However, we note that the facts and evidence surrounding the Release and Separation Agreement in the aforementioned cases are markedly different from the facts in this case. In the Reference at hand, there was no evidence of disparity or disadvantage to the Employee as, at all times, he had the benefit of representation. Neither is there any evidence that the Employee acted in ignorance. He signed the Release and witnessed it by his Representative. There is

no evidence that he was duped into accepting the amount stated in the Release and acting under mistake or ignorance.

21. Additionally, this is not a case where the Employee is saying he was unaware of the amount being agreed upon or did not understand the terms of the documents he was presented with. Both parties relied upon the case of **St. James' Club Antigua Limited v Sundry Workers ANUTAP2018/0005**, where the Court of Appeal stated that a Release in proper form can constitute a bar to future litigation. Learned Representative Mr. James suggested that the Release was not in proper form as it does not include the Employee's vacation entitlement. We are unable to agree with Mr. James that the omission of vacation pay entitlement speaks to the form of the Release. Furthermore, evidentially, what the Court has before it is a Release in which a global sum has been agreed and which states the purpose of the Release.

22. Further, having regard to the Employee's contention, we considered the words contained at paragraph 1 of the Release, which states:

The Employee does hereby release, remise and forever discharge the Employer and any of its predecessors, parent corporations, subsidiaries, affiliates, heirs, successors and assigns and all of their officers, directors, and employees from any and all liabilities, causes of action, claims, proceedings, demands, claims, debts duties losses, damages, interest, costs of any nature of kind whatsoever, whether known or unknown presently existing or which hereunder may exist, which the Employees has or hereinafter can, shall or may have, in any way resulting from, relating to or arising out of any actions, inactions, events, transactions, contracts, agreements, or representations alleged or which could have been alleged in any action or otherwise resulting from, relating to or arising out of the alleged unfair dismissal of the Employee or any circumstance related thereto.

23. In our view, having considered the above and having ascribed the ordinary meaning of the words contained in paragraph 1 of the Release and after giving due regard to the purpose of the Release and the circumstances in which it was made, we are convinced, that the words although broad included the known claim for accrued vacation.

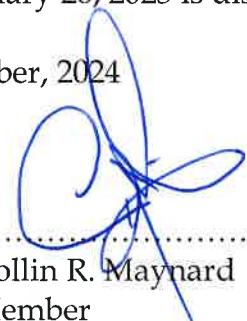
24. Moreover, in our view, an essential ingredient of a valid release is actual performance and acceptance of the consideration or satisfaction. As we understand it, the law regarding release and discharge provides that any person who has a cause of action against another may agree with him to accept any consideration in substitution for his legal remedy. *The agreement by which the obligation is discharged is called the Accord, and the consideration which makes the agreement binding is called the Satisfaction- Clerk and Lindsell on Torts 17th*

Edition 30-06 p. 1559. We make this statement mindful of Section C7(a) of the Labour Code but conclude that the settlement amount not being particularised in this case does not run afoul of Section C 7 (a) of the Labour Code.

25. Furthermore, since the Employee had the benefit of representation and advice before he executed the Release, he cannot now rely on his intentions. The Court also noted that the Release was signed on January 21, 2021. At no time between October 23, 2020 and January 22, 2021 when the Employee issued payment of \$37,035.02 did the Employee raise the issue of outstanding vacation pay, even if it was only in the context of when payment would be made. Additionally, the Employee did not submit any evidence to this Court to assist in determining how long after the execution of the Release he took any steps to immediately bring to the Employer's attention that he considered he was still owed outstanding vacation pay. Perhaps had the Employee done so, we would have been in a better position to equitably determine the issue.
26. The Release states that the consideration was the payment of \$34,260.10. It is not in dispute that the Employee received \$34,260.10 from the Employer. The payment having been made, the effect of the Release is that the Employer was released from all *"liabilities, causes of actions, proceedings, demands, claims, debts, duties losses, damages, interest, costs of any nature or kind whatsoever, whether known or unknown, presently existing or which hereafter may exist..."*
27. When the satisfaction is agreed upon, performed, and accepted, the original right of action is discharged. The Accord and Satisfaction constitute a complete defence to further proceedings upon the right of action. In our view, there has been Accord and Satisfaction. Consequently, any original claim the Employee may have possessed is discharged.
28. Additionally, in the absence of any incapacity, mistake, illegality, fraud, misrepresentation, duress or undue influence, this Court is restrained from setting aside the Settlement and Mutual Release Agreement entered into on January 21, 2021 and making any further award.
29. Therefore, the Employee's Reference filed on January 26, 2023 is dismissed.

Dated this the 17th day of December, 2024


Samantha May-Francis
Vice President


Collin R. Maynard
Member