

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. C20/2015

BETWEEN:

GLENTIS GOODWIN

Employee

and

CABLE & WIRELESS ANTIGUA AND BARBUDA LTD

Employer

Before:

The Hon. Samantha May- Francis

Vice President

The Hon. Judith A. Dublin

Member

The Hon. Hesketh A. Williams

Member

The Hon. Dalmer A. McCoy

Member

Appearances:

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

Mr. Roger Forde, KC, Ms. Letlow and Ms. Leandra Smith of Hill & Hill, Attorneys-at-Law for the Employer

2023: July 24

2024: June 28

JUDGMENT

Severance Pay-the Employee received severance calculated at four (4) weeks' pay for each year worked; Employee contending that he is due further severance pay based on formula in Cable and Wireless (West Indies) Limited v Conrad Tonge (deceased) et al. [2010] UKPC 25; Employer contending that the Employee negotiated and agreed to the rate of severance; Whether the Employee has the right to bring a claim on behalf of other former employees in accordance with Section 19(3) of the Industrial Court Act Cap 214 Equitable Doctrine of Laches- whether the Employee unreasonably delayed in bringing his claim; Whether the relief sought by the Employee should be denied

May-Francis VP;

The Claim

1. The Employee by Reference, filed on April 21, 2015, pursuant to Section 19 of the Industrial Court Act Cap 214 (the Act), commenced a claim on his behalf and as representative of Sundry Workers comprising eleven (11) other individuals, all of whom were former employees of the Employer at the date of filing this Reference.
2. In his Memorandum, he alleged that between 1994 and 2000, when the Employer made their positions redundant, their severance pay was calculated at a rate of four (4) weeks for each year of service.
3. The allegation against the Employer is that it has owed to the Employee and the former workers named in a list attached to the Employee's Memorandum severance pay on the basis that their severance pay ought to have been calculated on the formula established by this Court in **Sundry Workers v Cable & Wireless (West Indies) Limited Reference 20 of 2002** which was decided on March 18, 2007 and upheld in **Cable and Wireless (West Indies) Limited v Conrad Tonge (deceased) et al. [2010] UKPC 2**.
4. As a preliminary point, the Court intimated that the Reference, though filed as a "Trade Dispute" under Section 19 of the Act, could not be construed as such and that the Employee, as representative of himself and other eleven (11) former workers, could not be considered a party to a trade dispute. Additionally, the Court highlighted its concern with the lack of evidence concerning the former workers and the potential prejudice to them if the Court proceeded as per the filed Reference. Upon hearing the parties' submissions and Mr. Anderson Carty, the Employee's Representative having submitted that the Reference should proceed only in the name of the Employee, the Court amended the Reference.
5. The Court proceeded with the Employee's claim without prejudice to the former employees listed in the attachment to the Employee's Memorandum.

Historical Background

6. The Employee was employed by the Employer from 1967 to August 31, 2001, for approximately thirty-one (31) years and eight (8) months before his employment was made redundant. He last served as a Senior Manager and earned \$12,700.00 per month.

7. On August 17, 2002, the Employer formally advised the Employee by correspondence of even date that his effective termination date was August 31, 2000. The Employer paid the Employee \$430,068.03, which included \$60,613.03 for outstanding vacation pay and \$369,455.00 as severance pay.
8. After the Employee was made redundant, the Employer continued the restructuring process over several years, which culminated in the positions of several other employees being made redundant in 2001. Some of these employees were part of a Bargaining Unit represented by the Antigua and Barbuda Workers Union.
9. The Collective Agreement governing these employees provided for severance to be negotiated but was void of a method of calculating severance for redundancy. Negotiations between the Employer and the Antigua and Barbuda Workers Union (the Union) broke down in January 2001. The matter was brought before this Court in **Sundry Workers v Cable & Wireless (West Indies) Limited Reference 20 of 2002**.
10. The Union challenged the rate of four (4) weeks per year applied by the Employer in calculating the workers' severance pay. After trial, it was determined by former President Maundy that severance should be calculated at the following rates:

...."

- a. Persons with thirty (30) years of service or more shall be paid 5 ½ weeks' pay for each year of service;
- b. Persons with twenty (20) years of service but less than thirty (30) years shall be paid five (5) weeks' pay for each year of service;
- c. Persons with ten (10) years of service but less than twenty (20) shall be paid 4 ½ weeks' pay for each year of service;
- d. Persons with less than ten 10 years of service but more than one (1) year shall be paid four weeks' pay for each year of service;
- e. Employee with one (1) year of service shall be paid twelve 12 days severance...."

11. Additionally, it was decided that the payments were made retroactive to January 2001, and the ex-employees not listed in the Memorandum in **Sundry Workers v Cable & Wireless (West Indies) Limited Reference 20 of 2002** could file a claim if the Employer failed to satisfy their payments accordingly.
12. The matter did not end at the Industrial Court. A legal battle ensued, spanning almost a decade to the Judicial Committee of the Privy Council (Privy Council),

our court of final appeal. We have had the opportunity to read the Court of Appeal's decision in **Cable and Wireless (W.I.) Limited v Conrad Tonge et al. Suit HCVAP 2007/2010** and the Privy Council's decision in **Cable and Wireless (West Indies) Limited v Conrad Tonge (deceased) et al. [2010] UKPC 25**.

13. The Court of Appeal accepted that this Court had acted reasonably in exercising its discretion and arriving at the decision it did, having considered all relevant facts, submissions and relevant law. Therefore, the Learned Justice of Appeal (Acting) Hariprashad-Charles did not disturb this Court's judgment regarding the rate to be applied in the calculation of severance.
14. The appeal to the Privy Council followed. Lord Collins determined that there was no evidence to suggest that this Court had applied any wrong principle in using its discretion under Section 10 (3), nor had this Court considered matters it ought not to have considered. He stated, "*There are no grounds for holding that the Industrial Court failed in its responsibilities*".

The Employee's case

15. The Employee in his Memorandum filed on April 21, 2015, the Employee claims:
 - i. He was paid severance at a rate of four (4) weeks for each year of service. However, it was a settled practice for the Employer to apply certain benefits established under the Collective Bargaining Agreement to management employees.
 - ii. He is entitled to redundancy pay based on the formula determined by the Industrial Court
 - iii. Despite having demanded, the Employer failed to pay him severance at the rate he is entitled.
 - iv. Additionally, in paragraph 3 of the Privy Council's decision, the severance rate determined by the Industrial Court applies to all employees made redundant from 1996, and as such, he is included.

The Employer's case

16. The Employer disputed the claim and contended as follows:
 - i. The Employee who was made redundant in 2000 negotiated and received redundancy pay calculated at a rate of four (4) weeks for each year of service.
 - ii. The Employee, having accepted the payment of \$369,455.00 as severance pay, is estopped for claiming any unfairness or additional sums for redundancy pay.

- iii. The judgments concerned employees within a Bargaining Unit who were made redundant in and after 2001 and cured the deadlock between the Antigua & Barbuda Workers' Union and the Employer regarding a rate of severance for the workers in the Bargaining Unit after the expiration of Collective Bargaining Agreement.
- iv. The doctrine of laches is relevant and applicable, and the Court should not grant the Employee the relief claimed.

Issue

- 17. The main issue in this case is whether the Employee is entitled to additional redundancy pay at the rate determined in **Sundry Workers v Cable & Wireless (West Indies) Limited in Reference 20 of 2002**, which was affirmed on appeal by the Privy Council in **Cable and Wireless (West Indies) Limited v Conrad Tonge (deceased) et al. [2010] UKPC 25**.

The Evidence

- 18. The Employee gave evidence that he held a management position at the time of his dismissal. His evidence is that in 1995, he received an email from the Employer removing his position from the Bargaining Unit. He accepted that employees holding management positions were generally not unionised and acknowledged that management employees individually negotiated and agreed to their terms and conditions of employment. He further accepted the terms and conditions of employment of the unionised employees were contained in the Collective Bargaining Agreement negotiated between the Employer and the requisite Bargaining Agent.
- 19. The Employee admitted under cross-examination that he had discussed with the Employer the rate of his severance. His testimony confirmed that he received \$365,455.50 as redundancy pay, and he did not object to the amount received at the time.
- 20. Nonetheless, the Employee gave evidence that notwithstanding, it was a settled practice that the Employer applied certain benefits under the Collective Bargaining Agreement to its employees who held management positions.
- 21. Mr. Joe Mathieson, General Manager of the Employer and only witness for the Employer gave evidence that when the Employee was made redundant, he was not privy to the discussions and negotiations as the Employer had yet employed him. He accepted that the Employee's employment contract did not establish a rate for severance and stated that the issue of severance payment was, therefore, one for negotiation. He conceded that it was the Employee's right to negotiate a fair rate for severance with the Employer. His evidence is that, based on the records, discussions were held with all employees. Relying on correspondence

dated August 17, 2000, Mr. Mathieson testified that the Employee in this Reference, after discussion and negotiation, agreed to the rate of four (4) weeks per year for every year worked for severance.

Resolution

22. Mr. Carty submitted, amongst other things, that the issue is not whether the rate of four (4) weeks paid to the Employee is unreasonable but that the fairness and equity of the matter necessitates that the Employee should receive severance at a rate which is proportionate to his thirty-one (31) years and nine (9) months service to the Employer. Additionally, he submitted that considering the practice of the Employer to use negotiated benefits as the benchmark for determining benefits to other employees, the rate as determined by *Cable and Wireless (West Indies) Limited v Conrad Tonge (deceased) et al. [2010] UKPC 25* should apply even to those in management positions who did not fall within the Bargaining Unit. He also urged us to apply the broad discretion given to us under Section 10 of the Act.
23. There exist some similarities between the case above and the instant case, mainly that the Employee in this Reference was employed by the Employer and was made redundant at the Employer's determined rate of four (4) weeks per year for severance pay. Nonetheless, the instant case called for examining the facts and circumstances related to it and which existed at the time. After careful analysis, we saw that the facts and circumstances of the two cases differed in some important aspects.
24. Notably, the Employee in this Reference was made redundant in 2000 and accepted his severance package before the breakdown of negotiations between the Employer and the Union in 2001.
25. The Employee, under cross-examination, indicated that the parties to the discussion referred to in the August 17, 2000, correspondence included him. The correspondence states on June 1, 2000, discussions were held with the Employee. It is equally clear from the evidence that based on those discussions, the Employee accepted that his employment would end on August 31, 2000, and his terminal benefits were as stipulated in the correspondence. Consequently, a different picture emerged concerning the circumstances surrounding the Employee's redundancy. Undoubtedly, the Employer discussed the issue of redundancy and negotiated a severance package with the Employee.
26. The Employee contended, through questions posed by his Representative to Mr. Mathieson, that several managers were dismissed by the Employee from 1997 to 2007, and based on their tenure, they were paid severance per the formula determined in the **Cable and Wireless Case**. However, Mr. Mathieson was

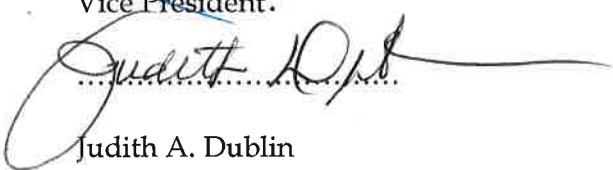
unable to assist the Court in that regard. He provided no evidence on which we can conclude that the Employer had applied the formula to the other managers and when this was done. Had the Employee foreshadowed this contention in his pleadings, the Employer may have addressed the same in its pleadings or the Witness Statements of Mr. Mathieson, whose evidence we found reliable.

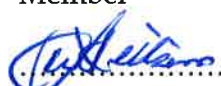
27. The Employee argued that in paragraph 3 of the Privy Council decision, Lord Collins made a declaration that all employees who were affected by the re-organisation of Cable & Wireless from 1996 through to May 31, 2004, were entitled to severance rate as determined by the Industrial Court. Having read Lord Collins' decision it is our opinion that there is nothing stated in paragraph 3 or the remaining portions of the decision that supports the Employee's contention.
28. After careful consideration, based on the Employer's responses and the lack of documentary evidence, there is no evidence on which we can conclude that there was a difference in the treatment of the Employee in comparison to the other managers who were made redundant in 2000 or subsequent.
29. Additionally, we noted that the Employee held a senior management position and appeared sufficiently intelligent during cross-examination to have appreciated the happenings. It is manifestly clear that the Employee negotiated and agreed to the severance payment in 2000 based on the circumstances and facts that then existed. It is equally clear from the evidence that the rate of four (4) weeks per year for severance pay was offered to all Employees in 2000. The Employee acknowledged in cross-examination that he received everything he was supposed to receive as stipulated in the August 17, 2000 correspondence.
30. In his submission, Learned King's Counsel Mr. Forde asked that we consider the equitable doctrine of laches, which the Employer foreshadowed in its Memorandum as part of its defence. He relied on the case of **Lindsay v Petroleum Co v Hurd (1874) LR 5 PC 221,239** in which Lord Selbourne stated "it would be practically unjust to give a remedy, and that, in every case where a defence "is founded upon mere delay ... the validity of that defence must be tried upon principles substantially equitable." He went on to state that what had to be considered were "the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."
31. To properly consider the Employer's submission, we considered the evidence given at trial. Until May 9, 2014, the Employee raised no dispute about his

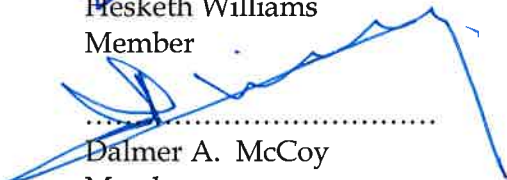
severance pay. It was not until April 21, 2015, that he decided to initiate court proceedings some fifteen (15) years after he had been made redundant, thirteen (13) years after Maundy P. judgment in **Sundry Workers v Cable & Wireless (West Indies) Limited Reference 20 of 2002** and five (5) years after the Lord Collins' decision in **Cable and Wireless (West Indies) Limited v Conrad Tonge (deceased) et al. [2010] UKPC 25**.

32. After a full trial of the matter, this Court heard no evidence and no reasonable explanation to justify the delay by the Employee. We are therefore inclined to accept the Employer's submission that the Employee unreasonably and inexcusably delayed in filing this Reference.
33. We also collectively considered our jurisdiction, the Labour Code, and the terms negotiated and agreed between the parties. We will refrain from interfering with a settlement arrangement reached by parties except where the terms of such arrangement fall below the standards of the Labour Code and are contrary to good industrial relation practices. Based on the terms of the arrangement between the Employer and the Employee, nothing suggests that they are contrary to the Labour Code or good industrial relation practices. Likewise, no evidence emerged to suggest that the transaction between the Employer and the Employee was unfair or that he was taken advantage of, intimidated or coerced.
34. In the final analysis and further to our mandate to act with good conscience, fairness, and equity, we conclude that the Employee duly negotiated and received his severance pay and is, therefore, not entitled to further payments. We, therefore, dismiss the Employee's Reference.


Samantha May-Francis
Vice President.


Judith A. Dublin
Member


Hesketh Williams
Member


Dalmer A. McCoy
Member