

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. C/25 of 2019

BETWEEN:

DERRICK HUGGINS

Employee

and

CARIB HOLDINGS LIMITED d.b.a. BLUE WATERS HOTEL

Employer

Before:

The Hon. Samantha May-Francis

President

The Hon. Collin R. Maynard

Member

The Hon. Dalmer A. McCoy

Member

The Hon. Charlene Selkridge

Member

Appearances:

Mr. Rushaine Cunningham and Ms. Chelsea Walker of Cunningham Law, Attorneys-at-Law for the Employee

Mr. Justin L. Simon KC of Simon Rogers Murdoch, Attorneys-at-Law for the Employer

2025: May 19

2025: July 25

JUDGMENT

May-Francis, P

Employer as part of its restructuring plan determined that the Organisation was top-management heavy, retrenched the position of Resort Manager held by the Employee- Employee alleges no genuine redundancy- claims to be unfairly dismissed and the Employer failed to reasonably consider him for the vacant position of General Manager due to unlawful/unfair finding that he inappropriately conducted himself towards another employee- whether a genuine redundancy existed- whether the Employer acted fairly in dismissing the Employee

Background

1. The Employer employed the Employee under a fixed-term employment contract dated March 7, 2017. The Employee commenced work on June 1, 2017, subject to successfully completing a two-month probationary period.
2. The Employee earned Four Thousand Five Hundred United States Dollars per month (US\$4,500.00) plus allowances of Two Thousand One Hundred and Seventy United States Dollars (US\$2,170.00).
3. At the start of his employment, the Employee reported to Mr. Alistair Forrest, who held the position of General Manager.
4. On March 28, 2018, the Employer's Managing Director, Mr. Gary Randall, met with the Employee at a popular restaurant, away from the workplace, for a meeting. During that meeting, it is alleged that the Managing Director advised the Employee that he was invoking the termination clause under the contract. Accordingly, the Employee's contract of employment was brought to an immediate end.
5. Consequently, the Employee filed a Reference with this Court on May 8, 2019, in which he claims unfair dismissal and compensation, having failed to reach a settlement with the Labour Commissioner.

The Employee's Claim

6. The Employee claims the following: -
 - (i) His contract of employment contained a termination clause which provided that either party could terminate the contract by giving two months' notice in advance.
 - (ii) During the meeting, Mr. Randall explicitly stated that the Employer was relying on that clause to terminate the employment relationship.
 - (iii) The Employer thereafter paid him two (2) months' salary in lieu of notice.
 - (iv) On April 11, 2018, on his instructions, Marshall and Co, his then Attorneys, advised the Employer that it had breached Section C56 of the Antigua and Barbuda Labour Code as he was dismissed summarily without any allegation or finding of misconduct and in the absence of unsatisfactory performance.
 - (v) Having received his letter of claim, the Employer then responded via letter dated April 12, 2018, stating that his position was made redundant.
 - (vi) Having terminated his employment since March 28, 2018, the Employer contravened Section C10 of the Labour Code.

- (vii) Even if he had been dismissed for redundancy, the Employer failed to hold any consultations, did not offer any alternative employment and summarily dismissed him.
- (viii) There being no redundancy or retrenchment, he therefore seeks compensation for unfair dismissal.

The Employer's Claim

7. The Employer, for its part, contended inter alia that:

- (i) It had been in the process of restructuring the business even before the Employee was hired.
- (ii) The Employee was hired by Mr. Forrest shortly after he (Mr. Forrest) became the General Manager.
- (iii) The Employment relationship between Mr. Forrest and the Employer ended in January 2018, leaving the General Manager position vacant.
- (iv) Thereafter, one of the Directors and beneficial owner, Mr. Gary Randall who resided overseas relocated to Antigua and took up the role of Managing Director sometime after January 2018.
- (v) There were now three top management positions, Managing Director, General Manager and Resort Manager. The structure was top-heavy, and the cost of maintaining it was not sustainable.
- (vi) The roles of General Manager and Resort Manager are compatible, similar, and intrinsically linked, and the Employer, having decided to replace the General Manager, rendered the position of Resort Manager superfluous.
- (vii) The Employee was considered for the role of General Manager, but due to a blemish in his employment record arising from allegations of inappropriate conduct and sexual harassment towards a female employee, he was disqualified from holding the position of General Manager despite his competencies.
- (viii) The meeting of March 28, 2018, was consultative in nature, and the Employee was advised by the Employer of its intention to retrench his employment by giving notice of two months.
- (ix) The Employer paid the Employee his salary for the notice period in advance.
- (x) The Employer did not require the Employee to return to work and afforded him time away from the workplace until May 28, 2018.
- (xi) Between March 28, 2018, and May 28, 2018, the Employee continued to have access to his company issued cellphone and continued to benefit from health insurance.
- (xii) The effective date of dismissal was May 28, 2018.
- (xiii) The Employer denies breaching Sections C10 and C56 of the Labour Code.
- (xiv) The Employee is not entitled to compensation.

The Issues

8. Considering the nature of the Employee's contention and his statutory right not to be unfairly dismissed, we have identified the main issues in this Reference to be:
- (i) The effective date of dismissal
 - (ii) Did the Employer breach Section C10 of the Antigua and Barbuda Labour Code and is therefore estopped from advancing any reason as to the dismissal of the Employee
 - (iii) If not, whether a genuine redundancy situation existed in respect of the Employee's position of Resort Manager
 - (iv) If so, was the decision to dismiss the Employee reasonable

The Legal Framework

9. Sections C3 and C58 of the Antigua and Barbuda Labour Code set the legal framework for determining these issues. The Labour Code provides:

"C3. In this Division, unless the context otherwise requires "redundancy" means a situation in which by virtue of lack of customer orders, retrenchment, the installation of labour saving machinery, an employer's going out of business, a force majeure, or any other reason, work which a person was last employed to perform has ceased or substantially diminished; "

"C58 (1) A dismissal shall not be unfair if the reason assigned by the employer therefor ...

(c) is that the employee was made redundant; ...

Provided however, that there is a factual basis for the assigned reason.

C 58 (2) The test, generally, for deciding whether or not a dismissal was unfair is whether or not, under the circumstances, the employer acted unreasonably or reasonably but, even though he acted reasonably, if he is mistaken as to the factual basis for the dismissal, the reasonableness of the dismissal shall be no defence, and the test shall be whether the actual circumstances which existed, if known to the employer, would have reasonably led to the employee's dismissal."

10. In Reference No. 66 of 2015, *Antigua and Barbuda Workers' Union v. Cable & Wireless (Antigua & Barbuda) Ltd*, this Court emphasised that the burden is that of the Employer to prove the existence of genuine redundancy.

11. As to the reason for the dismissal, Section C10 (1) of the Labour Code provides:
Section C10 (1)

"Upon termination by an employer of an employee's employment subsequent to the latter's probation period, the employer shall within seven days of the

termination or notice thereof, furnish to such employee a written statement of the precise reasons for the termination".

12. Section C10 (4)

"An employer who fails to furnish either the statement or the certificate shall be estopped from introducing testimony as to facts which might have been recited in said statement or certificate in any proceeding testing the fairness of the dismissal or his liability for severance whichever is applicable"

ANALYSIS OF THE EVIDENCE AND THE COURT'S FINDINGS

The relevant date of dismissal and Section C10 of the Labour Code

13. The parties had differing views concerning the relevant date of dismissal. On the Employee's pleaded case, his dismissal took effect on March 28, 2018. On the Employer's pleaded case, the dismissal took effect on May 28, 2018.
14. In its written evidence, the Employer contends that on March 28, 2018, when Mr. Randall, the Managing Director, met with the Employee, the Employee was informed that his position was being made redundant. Learned Counsel Mr. Justin Simon KC, in his submissions, relied on the correspondence dated April 12, 2018, to argue that the effective date of dismissal was May 28, 2018. In the aforementioned letter, which was addressed to Mr. Randall from the Employee's then Attorney-at-Law, it was stated, **"He was simply informed that his position was being made redundant effective March 2018 and that there was no other suitable position for him within your organisation"**. The Employee also restated this in his Witness Statement, which was entered as his evidence in chief.
15. Having reviewed the letter dated April 12, 2018, it is our opinion that the Employee was advised on March 28, 2018, that his employment was being terminated due to redundancy. We believe that there were discussions about the two-month notice period and that the Employer would invoke that provision to determine the appropriate notice period. Additionally, the letter of April 12, 2018, meets the requirements of Section C 10 of the Labour Code. Accordingly, we are satisfied that there was no breach of Section C10 and accept the Employer's position that the Employee's effective date of dismissal was May 28, 2018.

Was there a case of genuine redundancy?

16. Having determined that the Employee had been advised that his position was being made redundant and that the effective date of termination was May 28, 2018; we must

consider whether a genuine redundancy existed based on the facts and evidence before us.

17. Our understanding of the Employer's defence is that with Mr. Randall being more involved in the day-to-day operations, and considering the responsibilities of the Resort Manager and General Manager, there was no need for a Resort Manager.
18. Mr. Anderson Carty, Industrial Relations Consultant to the Resort and Mrs. Karen Whitehead, the Human Resources Manager gave evidence on behalf of the Employer. In their oral testimony, both indicated that the restructuring of the Employer's operations had been under consideration for some time before 2017. Additionally, we note in particular the Employee's evidence was that Mr. Randall functioned as the Managing Director when he commenced employment and during Mr. Forrest's tenure as General Manager.
19. As a matter of fact, and law, a retrenchment in labour can lead to redundancy as defined by Section B3 of the Labour Code. This Court has also previously ruled that an employer is entitled to restructure or streamline its operations as necessary. However, it remains incumbent on an employer when the matter is before this Court for determination of whether a genuine redundancy existed to furnish proof to the Court that there is a genuine basis for the retrenchment affecting an employee's position and leading to his dismissal.
20. Mr. Carty, the Employer's second witness, gave evidence that by 2017, Mr. Randall was more involved in the oversight of the Resort. Mr. Carty was unable to assist with certainty that before 2017, Mr. Randall functioned in the capacity of Managing Director. Nonetheless, according to Mr. Carty, the management structure that existed before 2016 included the positions of Managing Director and General Manager, but did not include the position of Resort Manager. Based on Mr. Carty's testimony, our understanding is that the position of Resort Manager emerged in 2017. His evidence is that after Mr. Forrest's departure, Mr. Randall's role, which was intended to be one of oversight, had to take on the day-to-day operations of the resort.
21. Having regard to the evidence of all the witnesses, in determining whether a genuine redundancy existed, we considered whether there was a diminution in the work that the Employer required the Employee to undertake. We also considered whether there was a diminution in the number of employees the Employer now needed to do the work. For the period from June 2017, when the Employee was hired, to January 2018, when Mr. Forrest ceased to be employed, the management structure of the Employer appears to have necessitated the employment of a Managing Director, a General Executive, and a Resort Manager. The departure of the General Manager inevitably led to the work previously performed by three individuals now being performed by

two. According to Mrs. Whitehead, the position of General Manager remained vacant for a while even after the termination of the Employee.

22. We believe that, based on the facts and arguments presented, in particular that the Resort was top-management heavy, the emphasis must be on the latter consideration – whether there was a diminution in the number of employees the Employer required. In the case of **Carry All Motors Ltd v Pennington [1980] ICR 866**, where the work of two employees was merged to create a single job to be done by one of them, the other dismissed employee was deemed to have been made redundant. Although the workload had remained constant, the number of employees required had diminished. The Learned judge Peter Clark stated that **“where an employer was now doing the work formerly done by two, the statutory test of redundancy has been satisfied”** even when the amount of work to be done was unchanged. In this case, the Employer’s argument, as we understand it, is that as part of its ongoing restructuring plan, it needed fewer managers since the beneficial owner, Mr. Randall, had become more involved in the operations, even though the work required may not have diminished.
23. Additionally, we note that, although the Employee’s contention is that there was no genuine redundancy, there was no evidence that the decision to retrench the position of Resort Manager related to the allegations of inappropriate conduct and sexual harassment against the Employee, or any other personal reason in relation to the Employee. To the contrary, the evidence supports a finding that the decision to retrench the position of Resort Manager was a business decision.
24. We agree that the Employee may not have seen his dismissal coming before March 28, 2018. We have impressed in our judgments the importance of early discussions. Mrs. Whitehead, under cross-examination, testified that although discussions about restructuring occurred during management meetings, at no point was it stated or presented that the Resort Manager's position was being considered for retrenchment.
25. Mrs. Whitehead also gave evidence that the Employee’s position was the only position affected at the Management level. Her evidence is that Mr. Randall’s relocation to Antigua was not a result of the departure of Mr. Forrest. The Resort had always been headed by Mr. Randall, followed by the Executive Management Team. Mr. Randall had become more involved on a day to day basis.
26. Based on the facts presented in this Reference and the Statutory definition of Redundancy, we are satisfied that a genuine redundancy existed.

Was the decision to dismiss the Employee reasonable?

27. The Employee's contention in challenging the actions of the Employer from the evidence and testimony is that the Employer did not consult with him, and secondly, he was not offered alternative employment, in particular, the General Manager position. Learned Counsel Mr. Cunningham submitted that the investigation in relation to the allegations against the Employee was a sham, the meeting with the Employee was a disciplinary hearing and was unfair as the Employer was both judge and executioner and more importantly the Employee was not invited to have a representative with him. As such he asked this Court to make a finding that the Employee was not afforded due process and logically any finding of wrong doing be deemed unfair. In other words, the warning letter issued to the Employee was unfair.
28. We note that the Reference of Complaint contains no complaint of breach of procedural fairness and natural justice in relation to the investigation and subsequent finding and warning issued to the Employee concerning the allegations of inappropriate conduct that had been made against the Employee. Additionally, the Employee failed to foreshadow this contention in his Memorandum of Claim and Witness Statement.
29. We did not have the benefit of the Minutes from the meeting of January 23, 2018, which was held following the allegations and before the Employer issued the warning letter. There was insufficient evidence before us, particularly in the absence of a formal complaint challenging the fairness of the investigation and the conclusions of the Employer, for us to form a view concerning procedural fairness and the reasonableness of the Employer's conclusion to issue the Employee with a warning. We are therefore not prepared to make any findings of unfairness in that regard.
30. There was also no evidence demonstrating that the Employee took issue with or challenged the Employer's finding and had taken steps to have the warning letter issued to him on February 7, 2018, removed from his employment record.
31. During his oral testimony, the Employee maintained that he was qualified for the position of General Manager, he offered no evidence of any other alternative position that he may have been interested in or that was available. He testified that after Mr. Forrest's departure, he assumed some of his responsibilities under the supervision of Mr. Randall. Having determined that a redundancy situation existed, the decision of the Employer being a business decision to have one of its beneficial owners more involved in the operations of the business; we having considered that the position of General Manager was the second highest position within the Employer's business structure; also having considered the importance for any individual who holds that position to have an impeccable record and considering the nature of the blemish on

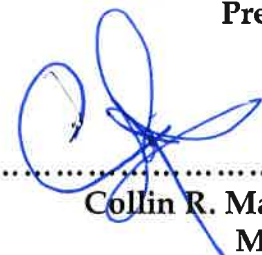
the Employee's record; we are of the view that the Employer's actions were reasonable.

32. To this end, we find the dismissal to be fair. The Employee's Reference is therefore dismissed.

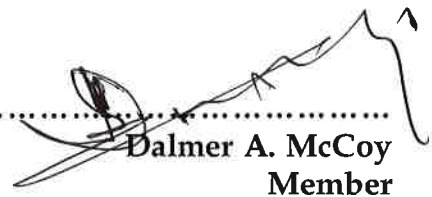
Dated the 25th day of July, 2025



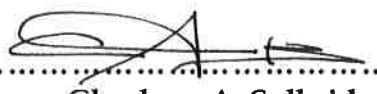
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