

**ANTIGUA AND BARBUDA
IN THE INDUSTRIAL COURT**



REFERENCE NO. 19 of 2021

BETWEEN:

KOBIE DE PEZA

Employee

and

MERYL PILGRIM T/A PILGRIM ELECTRICAL SERVICES

Employer

Before:

The Hon. Samantha May- Francis

President

The Hon. Judith A. Dublin

Member

The Hon. John H.R. Benjamin

Member

The Hon. Collin R. Maynard

Member

The Hon. Dalmer A. McCoy

Member

Appearances:

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

Mr. Justin L. Simon KC of Simon Rogers Murdoch, Chancellor Chambers for the Employer

2024: June 24

2025: October 17

Application to strike out Employee's Reference – Whether a Claim for Unfair Dismissal is subject to Section 7 of the Limitation Act No. 8 of 1997 of the Laws of Antigua and Barbuda

DECISION

May-Francis, P

The entire membership of the Court as it then was, to include the Honourable Charlesworth Brown and the Honourable Hesketh A. Williams, heard this Reference on June 24, 2024. It has become necessary to invoke Section 3 (6) of the Industrial Court Act on account of the ending of the tenure of the Honourable Charlesworth Brown, former President, before the delivery of this judgment. Additionally, having deliberated

on the matter, the Honourable Hesketh A. Williams passed away before the delivery of the decision. Section 3 (6) provides:

“The Court may act notwithstanding any vacancies in its number or in the absence of any member from hearing or part thereof; and no act, proceeding or award of the Court shall be called in question or invalidated by reason of such vacancy or absence.”

Accordingly, we deliver the decision of the Court.

Background

1. Both Memoranda filed on behalf of the Employee and Employer suggest that the employment relationship between the parties commenced in August 1998. The Employee was employed as an electrician and driver until August 2011, when he was dismissed.
2. The substantive matter began by way of a Reference filed on May 18, 2021, in which the Employee claims that the Employer unfairly dismissed him. The Employee also filed his Memorandum and Witness Statement on the same date. The Reference was served on the Employer on May 25, 2021. Learned Counsel Justin L. Simon KC filed a Notice of Acting on June 3, 2021, stating that he represented the Employer. On June 17, 2021, the Employer filed its Memorandum of Defence. The Employer's Witness Statement was filed on June 22, 2021. Mrs. Andrea De Peza, wife and witness on behalf of the Employee, Witness Statement was filed on August 10, 2021.
3. The Employer and the Employee filed Pre-Trial Questionnaires on August 20, 2021 and March 13, 2024, respectively. The Employee also filed a Supplemental Bundle of Documents on March 13, 2024.
4. In its Memorandum of Defence, the Employer denied having dismissed the Employee and proffered as part of its Defence that the Employee's claim was barred by statute, the Employee having brought the action ten (10) years after his dismissal. Additionally, in its Pre-Trial Questionnaire, the Employer indicated that it indeed intended to make a Preliminary Application, contending that the Employee's Reference filed on May 18, 2021, was time-barred and should be struck out for being a breach of section 7 of the Limitation Act No. 8 of 1997. The Employer also filed submissions in support of his preliminary application on May 8, 2024.
5. On June 24, 2024, when the matter came up for trial before a fully constituted panel of the entire then membership of the Court, Learned Counsel Mr. Simon KC made an

oral application to strike out the matter. Learned Representatives, Messrs Samuel James and Simon Leonard, opposed the application. The Court reserved its decision until now.

Issues

6. In light of the above submissions, the issue to be considered by the Court is whether the Employer can avail itself of the complete defence of the statute of limitations.

Law

7. We will determine the central issues within the legal framework established by the Antigua and Barbuda Labour Code (the Labour Code), the Industrial Court Act (the Act) and Judicial Precedents.

8. Under the caption “Unfair Dismissals”, Section C 56 of the Antigua and Barbuda Labour Code (the Labour Code) states:

“Every employee whose probationary period with an employer has ended shall have the right not to be unfairly dismissed by his employer; and no employer shall dismiss any such employee without just cause.”

9. Section C60 of the Labour Code provides the following in relation to the initiation of proceedings for unfair dismissal- Section C60 (1) :

“Should any question arise as to whether an employee has been unfairly dismissed, the employee, or his registered agent, may seek a resolution of the question by filing a Complaint of Unfair Dismissal with the Labour Commissioner.

10. Thereafter, Sections C61 to C64 set out the entire structure by which an unfair dismissal complaint is to be dealt with following the filing of a complaint of unfair dismissal with the Labour Commissioner. A claim for unfair dismissal is pursued as a dispute under Part 5 of the Act, before a Hearing Office and ultimately the Industrial Court.
11. The powers of this Court are derived from the Industrial Court Act. In exercising our powers, we are expressly required to consider our statutory jurisdiction as set out in Section 7 (1) of the Act, which empowers this Court to hear disputes concerning the dismissal of an employee.
12. We are also expressly required to have regard to the principles and practices of good industrial relations. Section 10(3) provides:

“Notwithstanding anything in this Act or in any other rule of law to the contrary, the Court in the exercise of its powers shall-

(a) Make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;

(b) Act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations and, in particular, the Antigua and Barbuda Labour Code.

13. The Limitation Act No. 8 of 1997, Section 7 provides:

“An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued”.

14. We also considered secondary sources of law - Halsbury's Laws of England Volume 9, which quoted the definition of simple contracts –

“Simple contracts include all contracts which are not contracts of record or contracts made by deed. Simple contracts may be expressed or implied, or partly expressed or partly implied.”

Halsbury's Laws of England Volume 28 paragraph 668 –

“When the cause of action arises. In an action for breach of contract, the cause of action is the breach. Accordingly, such an action must be brought within six years of the breach; after the expiration of that period, the action will be barred, although damage may have accrued to the plaintiff within six years of the action brought...”

Arguments

15. In the Application at bar, Learned Representatives for the Employee raised several principles of law and legal arguments, which he states rebut the presumption of the Employer that the cause of action is statute-barred. In their submissions opposing the application, Learned Representatives Messrs James and Leonard contended that nowhere in the Limitation Act No. 8 of 1997 is there any provision for limitation on filing an unfair dismissal case. He says that it is clear that Parliament did not intend to provide any limitation on unfair dismissal claims.

16. He relied on **Reference No. 17 of 2010, Dale Abraham and Hawksbill**, and submits that this Honourable Court has settled the issue of unfair dismissals subject to limitation pursuant to the Limitation Act No. 8 of 1997. According to Learned Representatives Messrs James and Leonard, the conclusion of this Court, which the Court of Appeal upheld, is that the Limitation Act, which was predicated on the Limitation Act of the United Kingdom, contained no provision insofar as it relates to claims for unfair dismissal. He argued, as submitted in the Dale Abraham case, that the Employment Rights Act imposes a limitation on unfair dismissal cases in the United Kingdom. Compared to our Labour Code and the Industrial Court Act, by which we are governed, there is no limitation period for the commencement of unfair dismissal claims.
17. Learned Representatives Messrs James and Leonard also submitted that the recent amendments to the Limitation (Amendment) Act 2022 (No. 6 of 2022) do not limit claims for unfair dismissal.
18. On the other hand, Learned Counsel Mr. Simon KC submitted that in the Dale Abraham case, the Court of Appeal, in its oral judgment, dismissed the employer's appeal that this Court erred in finding that the Limitation Act 1997 created no limitation period for the commencement of an unfair dismissal claim. He contended that the Learned Judges determined that a claim for unfair dismissal is not a claim for recovery of the sum in accordance with section 11 of the Limitation Act 1997.
19. Learned Counsel further submitted that the presumption that the Employee reference is barred is not based on Section 11 of the Act, which was the basis of the Court of Appeal's decision in Dale Abraham Case, but rather Section 7. Simply put, he contended that Section 7 of the Act stipulates that no action based on a simple contract can be brought after six (6) years have expired. According to Learned Mr. Simon KC, it has been settled that employment contracts are simple contracts. He relied on Halsbury Laws of England 4th Edition Volume 9 paragraphs 209-2013 as quoted above.
20. Mr. Simon KC, like Messrs James and Leonard contended that the Limitation (Amendment) Act No. 6 of 2022 does not limit claims for unfair dismissal.

Analysis

21. It remains that, at common law, an employee who contends that he was not justly dismissed could advance a claim of wrongful dismissal based on a breach of the terms of his contract. On September 19, 1975, the Parliament of Antigua and Barbuda passed the Antigua and Barbuda Labour Code, Cap 27, an Act of Parliament that would serve as the primary legal framework governing employment standards,

industrial relations, and labour matters within the State. Shortly after, on June 19, 1976, the Parliament passed the Industrial Court Act Cap 214, conferring upon this Court the jurisdiction to handle trade disputes, industrial actions and claims of unfair dismissal.

22. Many years later, the Limitation Act No. 8 emerged in 1997- “An Act to make provision for the limitation of actions”.
23. In answering the question of limitation as advanced by the Employer, the Court must first determine the legal basis of a claim of unfair dismissal. We acknowledge pursuant to Labour Code Section A5, a contract of employment exists where it is agreed that one person (the employee) will perform services for another (the employer), whether expressed or implied, whether written or implied.
24. However, the argument does not end there. In this jurisdiction, an employee who contends that he has been unfairly dismissed has two possible causes of action. He can advance a wrongful dismissal claim or a claim of unfair dismissal. Essentially, for an employee to commence a claim for unfair dismissal and not wrongful dismissal, which is predicated on the terms of the contract, the actions of the employer must have resulted in a breach of Section C56, Part 5 of the Labour Code- an employee’s right not to be unfairly dismissed. An employee may then seek a resolution of the question, whether he has been unfairly dismissed, before the Labour Commissioner. If the matter remains unresolved, this may trigger the filing of a reference before the Industrial Court for unfair dismissal.
25. Consequently, we considered the implications of the proviso to section C58 of the Labour Code, which provides that a dismissal should be deemed unfair if there is no factual basis for the **statutory reason** assigned therefor.
26. In our determination, based on the provisions of the Labour Code, unfair dismissal is a specific statutory right protecting employees from being dismissed unfairly. It is settled law that unfair dismissal is a creature of statute, whereas the common law action of wrongful dismissal is based on a breach of the terms of a contract. They are separate and distinct, with different principles and bases on which an action can be brought.
27. In the case of **Indra Williams v Casepak GDAHCVAP2018/0008**, the Court of Appeal repeatedly stated in its decision that **“unfair dismissal is entirely a creature of statute, as distinct from the common law cause of action of wrongful dismissal”**. The Court of Appeals' position was affirmed by the Judicial

Committee of the Privy Council on further appeal in **Indra Williams v Casepak Company (Grenada) Ltd (t/a Calabash Hotel) JCPC2020/0045.**

28. Therefore, while an employer's breach of its contractual obligations plays a role in advancing an action for unfair dismissal, an unfair dismissal does not necessarily involve a breach of contract by the employer, as will be demonstrated in the decided cases mentioned below.
29. Foremost, the Labour Code provides certain specific provisions that render the employee's dismissal unfair if breached by the employer. In the case of **Berridge and Another v Benjie's Business Center (Antigua and Barbuda) Privy Council Appeal No 51 of 1995**. The main issue in this case concerned the interpretation and application of Section C10 of the Labour Code. Section C10 of the Labour Code requires employers to provide written statements of the precise reason for dismissing the employees within seven (7) days of dismissal.
30. The position of the Privy Council, as we understand it, highlighted the importance of the statutory requirement for an employer to provide reasons for dismissal under Section C10 of the Labour Code, and that the Industrial Court could not disregard this provision as it is a statutory requirement that reflects legislative intent. Therefore, the Court of Appeal's decision was overturned, and the Industrial Court's decision, which found that the employer unfairly dismissed the employee, was reinstated.
31. Additionally, there are numerous decisions of this Court where a dismissal was deemed unfair because the employer, having admitted to dismissing the employee, could not meet the reasonable test threshold set by Section C58 (2) of the Labour Code. In **Sundry Workers (Veronica Joseph & Others) v Kings Casino Limited Civil Appeal No 28 of 2001**, Chief Justice Sir Dennis Byron (as he then was) stated at paragraph 6: **"I think that the main point of relevance to this case is that it is pellucid that for a redundancy there must be cause and effect. The effect being that the work has ceased or substantially diminished....This brings me to point out, however, that the existence of a cause, such as a hurricane, does not mean that any dismissal after it is fair. The employer must have acted reasonably ..."**
32. Similarly, an otherwise fair dismissal can be deemed unfair due to the employer's failure to engage in proper industrial relations practices. In the judgment of this Court in **Reference No. 20 of 1988: Antigua Workers' Union v Antigua Gases Limited, President H. S. R. Moe** (as he then was) asserted: **"Nonetheless the mere fact that a genuine redundancy does exist does**

not per se lead to the conclusion that the dismissal was fair; for the determining factor is whether the employer acted reasonably in handling the situation....”

33. We echo the view of Learned President Charlesworth Brown (as he then was) expressed in the **Angella Carey v Carlisle Bay Resort Reference No. 6 of 2019**, in which the employer made an application to strike out the Reference based on limitation pursuant to Section 7 of the Limitation Act. Learned President Mr. Brown stated: **“In considering Mr. James's submission, I was mindful that claims of unfair dismissal, like the one in this Reference, constitute a special category which involve claims to recover damages by virtue of the Antigua and Barbuda Labour Code.”**

34. Further to the submissions of Learned Counsel and Learned Representative for the parties regarding the effect of the Limitation (Amendment) Act 2022 (No. 6 of 2022), we saw it necessary to address the same. The Antigua and Barbuda Labour Code defines a trade dispute as:

“trade dispute” (or “industrial dispute”) means any disagreement between employer and workers or between worker and worker over conditions of employment, the engagement or non-engagement or termination or suspension of employment of one or more workers, the allocation of work as between workers or groups of workers, the terms or interpretation of a collective agreement, or any other matter relating to the employer-employee relation- ship, which disagreement has led, or may lead, to an interruption of employment by lockout or by strike.”

35. Section B3 defines Unfair dismissals-

“Unfair dismissals” refers to terminations of employment which may be deemed to be unfair dismissals covered by Part 5 Division C.”

36. Section 3 of the Limitation (Amendment) Act No. 6 of 2022 provides:

“7A -Time limit for trade dispute actions

No action arising from a trade dispute shall be brought before the Industrial Court after the expiration of six years from the date on which the cause of action accrued.”

37. We also referred to the Hansard of the House of Representatives dated Tuesday, March 15, 2022. Based on the presentation of the Limitation Amendment Bill, it is clear that the legislators determined that the Limitation Act No 8 of 1997 did not provide for any limitation period for claims commenced in this Court. The Honourable Attorney General stated:

“The Bill seeks to provide for the efficient management of the Industrial Court by introducing a limitation period within which to bring a claim in the Industrial Court. The current situation provides for indefinite periods to bring claims. This creates an imbalance in the Justice System. It is only reasonable and fair to expect that persons who believe that their rights have been affected to bring claims without a reasonable period, which by this Bill, will be six (6) years...”

38. Despite what is stated in the Hansard, in our view, having applied the literal meaning of Section 3 of the Limitation (Amendment) Act No. 6 of 2022, we opine that the effect of the amendment is that there now exists a limitation period regarding trade disputes or industrial action. Still, there exists no limitation period in relation to claims for unfair dismissal. The Labour Code clearly provides a distinction between a trade dispute and a claim for unfair dismissal. We are therefore unable to expand the meaning of Section 3 of the Limitation (Amendment) Act, No. 6 of 2022, to include claims for unfair dismissal.

Conclusion

39. We therefore conclude that, based on the existing provisions of law, the legal basis of unfair dismissal actions rests on the statute, which focuses on the reasons for the dismissal, the fairness of the dismissal and the procedures followed. We believe that a claim in unfair dismissal falls into a “special category,” an inherent right created by statute, Section C56 of the Labour Code. In our view, the Legislators in 1975 established the right not to be unfairly dismissed and also provided the legal remedy for unfair dismissal. Therefore, although every employment relationship creates a written or unwritten contract, an action for unfair dismissal falls within that ‘special category’ for which Section 7 of the Limitation Act does not apply.

40. Our conclusion regarding the application of Section 7 of the Limitation Act differs where the claim advanced is one of wrongful dismissal, whose legal basis is founded in common law and which focuses on a breach of contractual terms. In our view, section 7 of the Limitation Act certainly limits an action for wrongful dismissal to six years, but not one for unfair dismissal.

41. What, therefore, is left to an employer? In our view, until an amendment is made to the Labour Code, as was done in the Employment Rights Act of the United Kingdom, limiting claims or unfair dismissal, an employer who takes issue with the unjustifiable delay in the commencement of proceedings for unfair dismissal has relief available to him pursuant to the equitable doctrine of Laches.

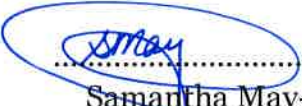
42. Finally, it would be remiss of us not to express that the Court is grateful to both parties for their spirited arguments, the submissions filed and for the opportunity to consider this critical legal issue as raised by the Employer. Nonetheless, considering the conclusion reached, the matter shall be listed for trial on a date to be arranged and notified by the court office.

ORDER:

Having regard to the authorities cited and the reasons advanced, we will not allow the Employer's application to strike out the claim and order the following instead:

1. The Employer's application to strike out the Employee's Reference is dismissed.
2. The matter shall be listed for trial on a date to be fixed and notified by the court office.

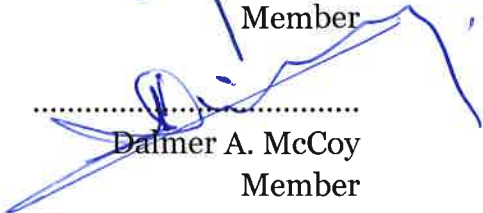
Dated the 17th day of October, 2025


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Samantha May- Francis
President


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Judith A. Dublin
Member


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John H.R. Benjamin
Member


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Collin R. Maynard
Member


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Dalmer A. McCoy
Member