

**EASTERN CARIBBEAN SUPREME COURT
GRENADA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2023/0416 (formerly GDAHCV2021/0230)

BETWEEN:

RAYMOND ANTHONY

Claimant

and

NATIONAL INSURANCE BOARD

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Claimant in person

Mr. Ruggles Ferguson KC and Ms. Keisha Lander for the Defendant

2025: February 13th;
May 8th, 15th;
December 17th.

JUDGMENT

- [1] **ACTIE, J.:** This case concerns the calculation of the claimant's entitlement to a pension under the applicable social security schemes.

Brief Facts

- [2] The facts are largely not in dispute. The claimant was employed in Canada, Antigua and Barbuda and Grenada between 1972 and 2006. During this period, he was subject to the national insurance laws of each respective jurisdiction and paid a total of 52 contributions in Canada, 138 contributions in Antigua and Barbuda and 359 contributions in Grenada.

- [3] The claimant attained the pensionable age of 60 years on 23rd January 2006 but submitted a claim for age benefit pension ten years later on 11th August 2016. The Director, exercising his discretion pursuant to the **National Insurance Act** and the **Social Security Agreement Acts**¹, commenced retroactive payment of pension to five years to the claimant from 12th August 2011.
- [4] The claimant alleges that the defendant miscalculated his pension entitlement on several grounds namely that:
- (i) Pension payments ought to have commenced on 23rd January 2006, the date he attained the pensionable age;
 - (ii) The **Social Security (Grenada and Canada) Agreement Act**² (hereafter referred to as the “Canada Agreement Act”), gives legislative effect to the reciprocal agreement between Grenada and Canada concerning the coordination of social security benefits. The claimant avers that **Canada Agreement Act** is the principal legislation governing the determination of his eligibility, the totalisation of contributions and the calculation of his pension.
 - (iii) The defendant failed or refused to apply the second limb of the pension calculation set out in **Article XIII 1(b)** of the said **Canada Agreement Act** which would reflect the correct weekly pension sum of \$259.15.
- [5] The claimant claims he has suffered loss and damage as a result of the incorrect calculations of his pension entitlements and seeks an order payment of arrears of pension; damages for breach of statutory duty; interest and costs.

The Defendant’s case

- [6] The defendant denies that the **Canada Agreement Act** is the principal legislation governing the calculation of the claimant’s pension, and states that the **National Insurance Act**³, together with the **National Insurance (Claims and Payments)**

¹ CAP 307A and CAP 307B

² CAP307B

³ CAP 205

(Amendment Regulations)⁴ (hereafter referred to as the “Claims Regulations”) affords the claimant a more beneficial pension calculation.

- [7] The defendant asserts that the claimant’s pension was properly calculated in accordance with **Regulation 33** of the **National Insurance (Benefit) Regulations**⁵ (hereafter referred to as the “Benefit Regulations”).
- [8] On 14th May 2018, the defendant informed the claimant that he would receive a “Notional Reduced Age Pension” in accordance with **Article 19** of the **CARICOM Reciprocal Agreement on Social Security Act**⁶ (hereafter referred to as the “CARICOM Agreement Act”).
- [9] The defendant contends that the claimant has been receiving a weekly pension of \$145.00, backdated to 12th August 2011, in accordance with the provisions of the **National Insurance Act** and the **Social Security Agreement Acts**⁷.
- [10] The defendant denies that the claimant is entitled to a weekly pension of \$259.15, stating that **Regulation 30** of the **Benefit Regulations** provides for a 30% rate which it avers is consistent with **Article XIII 1(a) and (b)** of the **Canada Agreement Act**.
- [11] The defendant also denies the claimant’s entitlement to pension payments prior to 12th August 2011, asserting that retroactive payments are determined not from the date a person attains pensionable age, but from the date of application, subject to a five-year limitation period.

Legal Analysis

- [12] The primary issue for determination is whether the claimant’s age pension was correctly calculated in accordance with the applicable legislation, and from which date such payments should properly commence. This requires interpretation of several legislative instruments, including: the **Claims Regulations**⁸, the **Benefit**

⁴ SRO 42 of 2006

⁵ SRO 55 of 1997

⁶ CAP 307A

⁷ CAP 307A and CAP 307B

⁸ SRO 42 of 2006

Regulations⁹, the Canada Agreement Act¹⁰ and the CARICOM Agreement Act¹¹.

Entitlement of the claimant to a pension

[13] **Section 39(e)** of the **National Insurance Act¹²** states:

“Subject to section 42, benefits shall be of the following kinds, namely—

...

(e) age benefit comprising—

(i) age pension,

(ii) age grant;...”

[14] **Regulation 29** of the **Benefit Regulations** stipulates that an age pension is payable to an insured person who has attained the age of sixty years and in respect of whom not less than five hundred contributions have been actually paid or credited.

[15] Further, **Regulation 33** of the **Benefit Regulations** provides an alternative pathway to qualification:

“An Age pension shall be payable to a person who has attained the age of sixty years and-

(a) Who was over the age of thirty-four years at the Appointed Day;

(b) In respect of whom no less than one hundred and fifty contributions have been actually paid;

(c) In respect of whom no less than two hundred and sixty contributions have been actually paid; and

(d) In respect of whom no less than twenty additional contributions have actually been paid or credited in excess of the first two hundred and sixty contributions, for every year of age that he was under the age of forty-six at the Appointed Day.”

[16] The claimant argues that his entitlement to an age pension arises from the totalisation of his contributions across Canada, Antigua and Barbuda and

⁹ SRO 55 of 1997

¹⁰ 307B

¹¹ 307A

¹² CAP 205

Grenada. He asserts that his eligibility to apply for the benefit crystallised on 18th May 2018.

- [17] In support, the claimant relies on the decision in **Insurance Officer v McCaffrey**¹³ where the House of Lords held:

“...The logic of entitlement and claim is clear: claim is based on the existence of entitlement. Third, s 79(1) does not speak of 'entitlement'. It merely declares it to be 'a condition of a person's right to any benefit that he makes a claim'...”

- [18] Conversely, the defendant argues that the claimant did not qualify for a full age pension having made less than 500 contributions, and that he only qualified for an age grant. In support, the defendant relies on **Regulation 31** of the **Benefits Regulations** which states:

“Subject to the provisions of these Regulations, an insured person who does not satisfy the provisions of regulation 29 but who—

- (a) has attained the age of sixty years; and
- (b) has not less than fifty contributions paid in respect of or credited to him or her, shall be entitled to an age grant.”

Totalisation of Contributions

- [19] **Article VIII** of the **Canada Agreement Act** provides for totalisation of contribution periods between Grenada and Canada. It states:

“1. If a person is not eligible for a benefit because he or she has not completed sufficient creditable periods under the legislation of a Party, the eligibility of that person for that benefit shall be determined by totalising these periods and those specified in paragraphs 2, 3 and 4, provided that the periods do not overlap.

...

3. For purposes of determining eligibility for an age benefit under the legislation Grenada—

- (i) when the calendar year 1983 is a creditable period under the Canada Pension Plan, it shall be considered as 39 weeks for which contributions have been paid under the legislation of Grenada,
- (ii) a year commencing on or after January 1, 1984 which is a creditable period under the Canada Pension Plan shall be considered as 52 weeks for which contributions have been paid under the legislation of Grenada,
- (iii) a week commencing on or after April 4, 1983 which is a creditable period under the Old Age Security Act of Canada and which is not part

¹³ [1985] 1 All ER 5

of a creditable period under the Canada Pension Plan shall be considered as a week for which contributions have been paid under the legislation of Grenada....”

[20] While **Article VIII(3)(i)** does not explicitly address creditable periods prior to 1983, the transitional provisions in **Article XXII** of the **Canada Agreement Act**¹⁴ clarify that such periods are to be included in calculating eligibility and benefit amounts.

[21] **Article XXII** provides:

“1. Any creditable period completed before the date of entry into force of this Agreement shall be taken into account for the purpose of determining the right to a benefit under this Agreement and its amount.
2. No provision of this Agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of this Agreement.
3. Subject to paragraph 2, a benefit other than a lump sum payment, shall be paid under this Agreement in respect of events which happened before the date of entry into force of this Agreement.”

[22] Therefore, any period before 1st October 1998 (the date of entry into force of the **Canada Agreement Act**¹⁵), must be taken into account in determining both the right to a pension and the quantum thereof.

[23] Similarly, **Article 17** of the **CARICOM Agreement Act** states:

“Where the applicable legislation of a Contracting Party makes entitlement to benefits conditional on the completion of a specified number of insurance periods and Article 16 does not apply, the competent institution shall take account of all insurance periods completed under the applicable legislation of other Contracting Parties in determining the fulfilment of the condition at the material time.”

Application

[24] The claimant's Claim for Age Benefit form employment history included: 52 contributions in Canada from 1970 to 1973, 138 contributions in Antigua and Barbuda from 1981 to 1984, and 359 contributions in Grenada from 1985 to 2005 making an aggregate of 549 contributions .

[25] Accordingly, the claimant in light of the totalisation provisions of **Articles VIII** and **XXII** of the **Canada Agreement Act** and **Article 17** of the **CARICOM Agreement Act** is entitled to have all qualifying contributions.

¹⁵ Section 3 Canada Agreement Act CAP 307B

- [26] To be entitled to the full benefits, the insured must have contributed the minimum of five hundred contributions. Accordingly, the claimant met the threshold at the age of 60 in 2006 required under both **Regulation 29** and **Regulation 33** of the **Benefits Regulations** and was therefore entitled to an age pension.

Calculation of the Claimant's Pension

- [27] The key issue to be determined is whether the claimant's pension benefit should have been calculated pursuant to the **Canada Agreement Act** or the **CARICOM Agreement Act**.

The Canada Agreement Act

- [28] **Article III** of the **Canada Agreement Act** states:

“This Agreement shall apply to any person who is or has been subject to the legislation of Canada and Grenada, and to the dependents and survivors of such a person within the meaning of the applicable legislation of either Party.”

- [29] The claimant forcibly argues that the formula expressly provided in the **Canada Agreement Act**¹⁶ governs the proper method of calculation. The claimant asserts that his pension should be calculated under **Articles VIII, IX** and **XIII** of the **Canada Agreement Act** which address eligibility, totalisation of contributions and the formula for determining pension amounts.

- [30] **Article IX** of the **Canada Agreement Act** provides further support for totalisation involving third countries:

“If a person is not eligible for a benefit on the basis of the creditable periods under the legislation of the Parties, totalised as provided in Article VIII, the eligibility of that person for that benefit shall be determined by totalising these periods and creditable periods under the legislation of a third State with which both Parties are bound by social security instruments which provide for totalising of periods.”

- [31] **Article XIII** of the **Canada Agreement Act**, sets out the calculation method as follows:

¹⁶ CAP 308B

“1. If a person is not eligible for a pension solely on the basis of the periods creditable under the legislation of Grenada, but is eligible for that pension through the application of the totalising provisions of Chapter 1, the competent institution of Grenada shall calculate the amount of pension payable in the following manner—

(a) it shall first establish the rate of the pension which would be payable if the person qualified for the pension on the basis of creditable periods completed under the legislation of Grenada alone;

(b) it shall then multiply that rate by the fraction which represents the ratio of the actual creditable periods under the legislation of Grenada in relation to the minimum creditable period required to establish entitlement to that pension under that legislation.

2. Notwithstanding any other provision of this Agreement, where a grant is payable under the legislation of Grenada, but entitlement to a pension under that legislation can be established through the application of the totalising provisions of Chapter 1, the pension shall be paid in lieu of the grant.

3. Where a grant was paid under the legislation of Grenada in respect of an event which happened before the date of entry into force of this Agreement, and where entitlement to a pension under that legislation is subsequently established through the application of the totalising provisions of Chapter 1, the competent institution of Grenada may deduct from any pension payable any amount previously paid in the form of a grant.”

[32] **Article II (1)(b)** of the **Canada Agreement Act** confirms its application to the **National Insurance Act**¹⁷ and the regulations made thereunder. Thus, the calculation provisions of the **Canada Agreement Act** are to be read alongside the domestic regulations.

[33] The parties agree on the base rate of \$207.70 as specified in **Regulation 30** of the **Benefits Regulations**¹⁸. The claimant submits that his pension should be calculated using the formula: $\$207.70 \times (549/440) = \259.15 .

[34] The defendant contends however that the **Canada Agreement Act** does not itself confer a benefit, but merely enables the totalisation of contributions to establish eligibility. Counsel for the defendant calculates the pension by applying the formula: $\$207.70 \times (359/500) = \149.10 , with 359 representing actual Grenadian contributions and 500 being the minimum threshold for entitlement under domestic law.

¹⁷ CAP 205

¹⁸ SRO 55 of 1997

[35] The dispute centres on the correct denominator and numerator for the statutory fraction under **Article XIII (1)(b)**. The court finds that the defendant's interpretation aligns with the legislative framework. The proper fraction is 359/500, representing Grenadian contributions over the minimum required. The recalculated result of \$149.15 not \$149.10.

[36] The court therefore finds the defendant's calculation under the **Canada Agreement Act** to be accurate, subject to a minor correction of the amount to \$149.15.

The CARICOM Agreement

[37] **Article 19** of the **CARICOM Agreement Act** provides a method of calculating a "notional amount" of benefit where totalised contributions across contracting states are involved. The relevant subsections state:

"... 2. Where the institution concerned determines, by applying the provisions of Article 17, that an insured person satisfies the relevant conditions for entitlement to benefit, such institution shall calculate the notional amount of benefit such person could claim if the contribution periods completed under the legislation of all the Contracting Parties concerned has been completed under its applicable legislation.

3. The actual amount payable by each of the institutions concerned shall bear a direct ratio to the notional amount which the number of insurance periods completed in the territories of the interested Contracting Parties bears to the total number of insurance periods completed in all of their territories."

[38] The claimant argues that the provisions of the **CARICOM Agreement Act**¹⁹ are not the applicable legislation for calculating his pension, as the **Canada Agreement Act**²⁰ provides the governing formula.

[39] The defendant maintains that it is not required to pay a pension covering contributions made in Canada or Antigua and Barbuda, and that the principle of

¹⁹ CAP 307A

²⁰ CAP 307B

totalisation applies in each country independently to determine entitlement under its respective legislation.

[40] The **CARICOM Agreement Act** came into force on 3rd January 2003. Both Antigua and Barbuda and Grenada are parties. The claimant made 138 contributions in Antigua and Barbuda and 359 in Grenada, a total of 497 contributions relevant to the **CARICOM Agreement** framework.

[41] Counsel for the defendant states that under this regime, the claimant qualifies for a “notional reduced age pension” at the rate of 29%. Using a base of \$200.80, it arrived at the figure $\$200.80 \times (359/497) = \145.00 .

[42] However, counsel for the defendant does not cite the specific regulation or statutory provision that authorises the 29% rate or the base sum of \$200.80.

[43] As indicated earlier, the claimant qualifies for an age pension in accordance with **Regulation 33** of the **Benefits Regulations**. Applying the defendant’s formula with the correct base rate yields: $\$207.70 \times (359/497) = \150.05 . Accordingly, the amount payable to the claimant under the **CARICOM Agreement Act** is \$150.05 per week.

Retroactive Entitlement

[44] Entitlement to benefit under **Section 39(e)** of the **National Insurance Act**²¹ is dependent on the fulfilment of the prescribed conditions, including payment of the requisite contributions²².

[45] **Section 44** of the **National Insurance Act**²³, it states:

- “(1) It shall be a condition of a person’s right to benefit—
- (a) that, within the prescribed time, he or she makes a claim therefor to the Director, on the form provided by the Director for the purpose or in such other manner as the Director may accept in the circumstances of the case; and
 - (b) that he or she produces such certificates, documents, information and evidence for the purpose of determining the right to benefit as

²¹ Cap 205

²² Section 40 (1) of the National Insurance Act Cap 205

²³ Cap 205

the Director may reasonably require, and for that purpose attends at such office or place as the Director may appoint...”

[46] **Regulation 11** of the **Claims Regulations**²⁴ further states:

“(1) The prescribed time for claiming benefits is—
... (c) in the case of invalidity, age or survivors’ benefit, the period of three months after the date on which apart from satisfying the condition of making a claim, the claimant becomes entitled thereto;...

(2) Subject to subregulations (3) and (4), a person failing to make a claim for benefit within the time prescribed shall be disqualified for receiving—
... (c) in the case of invalidity, age or survivors’ benefit, benefit in respect of any period more than three months before the date on which the claim is made

(3) If in any case the claimant proves—
(a) that on a date earlier than the date on which the claim was made, apart from satisfying the condition of making a claim, he or she was entitled to the benefit; and
(b) that throughout the period between the earlier date and the date on which the claim was made there was good cause for delay in making such claim, he or she shall not be disqualified under subregulation (2) for receiving any benefit to which he or she would have been entitled if the claim had been made on the earlier date:
Provided that—
... **(iii) no sum shall be paid by way of age pension in respect of any period more than five years before the date on which the claim thereof is duly made.”**

[47] **Section 53** of the **Benefit Regulations**²⁵ reinforces this statutory limitation:

“... (2) No age pension payment otherwise authorised in these Regulations shall be made with respect to a period of time that is earlier than five years prior to the calendar month in which a claim for payment was presented to the National Insurance Scheme.”

[48] The application of this section turns on three key points: (i) the date the claimant became entitled to the benefit; (ii) when the claim was actually made; and (iii) whether the statutory conditions for late claims and retroactive payments are satisfied.

²⁴ SRO 42 of 2006

²⁵ SRO 55 of 1997

[49] As previously established, the claimant filed his application more than ten years later after he became entitled at the age of 60 and outside of the prescribed period of three months period under **Regulation 11(2)**.

[50] Notwithstanding the lateness of the application, the Director of the defendant exercised the discretion permitted under **Regulation 11(3)** and authorised retroactive payment for the maximum allowable period of five years preceding the date of the claim. As a result, the claimant's pension payments were backdated to 11th August 2011.

[51] The court applying the law to the facts finds that the defendant acted lawfully and within the scope of its statutory discretion. The five-year limitation period applies, and the claimant's request for payment beyond the five-year retroactive limit is untenable. The claimant, having failed to make a claim within the prescribed time, has not established any legal basis upon which the statutory limitation may be displaced, and is therefore not entitled to retroactive payments of his pension from 23rd January 2006 as claimed.

Whether the defendant was in breach of its statutory duty by failing to issue a Registration Card

[52] The claimant asserts that the defendant breached its statutory duty under **Regulation 5** of the **National Insurance (Registration of Employers and Employees) Regulations**²⁶ (hereafter referred to as the "Registration Regulations") by failing to issue a registration card to him during the period 1993 and 2006.

[53] **Regulation 5(1)** of the **Registration Regulations**²⁷ states:

"(1) If upon receipt of an application for registration of an individual under the Act the Director is satisfied that the person concerned is required to be insured, he or she shall cause to be issued to the employer concerned a National Insurance registration card for that person and the employer shall deliver that registration card or cause it to be delivered to the employee, or if that person is no longer in his or her employment, the employer shall

²⁶ SRO 3 of 1983

²⁷ *ibid*

return the registration card to the Director. The registration card shall bear unamended the full names and registration number of the insured person. If the entries on the registration card are amended in any way the card shall be invalid and shall be returned to the Director forthwith.”

[54] The claimant contends that the defendant had a statutory duty to ensure that he was insured, given that a National Insurance number was assigned to him and contributions were collected in his name for the period 1993 to 2006.

[55] Counsel for the defendant argues that registration requires an application initiated by the employee through the employer. Although contributions were paid on the claimant’s behalf, the defendant states that he remained unregistered until he applied in 2016. In support of this position, the defendant relies on **Regulation 8(1)** of the **Registration Regulations**²⁸.

[56] **Section 8(1)** of the **Registration Regulations** states:

“(1) Every employee shall furnish to his or her employer on request such personal particulars as the employer may require for the purposes of these Regulations. The employee shall be responsible for the correctness of the particulars so furnished and shall, where required, sign the appropriate form in the place provided for the purpose.”

[57] The simple response to the claimant’s contention is that the statutory framework in **Regulation 5** establishing the obligation to issue a registration card is triggered by an application. In the extant case, the claimant applied on 11th August 2016 and the process was duly followed at that time. The evidence shows that while contributions were made on behalf of the claimant, he was assigned a temporary number during the period in question. Accordingly, the court finds that the defendant was not in breach of its statutory duty in relation to the issuance of a registration card.

Whether the defendant is in breach of statutory duty by failing to provide insurable periods in Grenada for the claimant to process claim in Antigua

²⁸ SRO 3 of 1983

[58] The claimant raises for the first time in his written submissions, an allegation that the defendant is liable for a proportional payment to the Antigua and Barbuda Social Security Board. He contends that the defendant failed or refused to process his pension claim pursuant to **Articles 19(2), 34, 39 and 40** of the **CARICOM Agreement Act**.

[59] It is well established that parties are bound by their pleadings²⁹. **Rule 56.3** of the **Civil Procedure Rules (Revised Edition) 2023** requires that a claimant state the nature and grounds of any relief sought. Claims raised for the first time during submissions are procedurally improper and do not permit the opposing party a fair opportunity to respond. Accordingly, the court declines to rule on this purported breach of statutory duty.

Conclusion

[60] The court finds that the claimant is entitled to an age pension by virtue of the totalisation of his contributions in Canada, Antigua and Barbuda and Grenada, pursuant to the **Canada Agreement Act** and the **CARICOM Agreement Act**.

[61] The court notes that under the **CARICOM Agreement Act** the notional pension payable to the claimant in light of the established entitlement under both agreements equates to a weekly pension of \$150.05 retroactive to 12th August 2011.

ORDER

[62] For the forgoing reasons it is ordered as follows:

- (1) It is declared that the claimant is entitled to an age pension pursuant to the totalisation provisions under the Canada Agreement Act and the CARICOM Agreement Act;
- (2) It is declared that the claimant is entitled to receive a weekly pension at the rate of \$150.05, retroactive to 12th August 2011, in accordance with the CARICOM Agreement Act;

²⁹ George W. Bennett Bryson's & Co. Ltd. v George Purcell [2018] ECSCJ No. 39

- (3) The defendant shall pay the claimant the difference in calculations from 12th August 2011 with interest at the rate of 3% per annum from the date of filing the claim on 2nd June 2021 and at the rate of 6% from judgment until payment in full. .
- (4) The claimant's claim for retroactive pension payments from 23rd January 2006 and for damages for breach of statutory duty, is dismissed.
- (5) Each party shall bear its own costs.

Agnes Actie
High Court Judge

By the Court

Registrar