

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2018/0180

BETWEEN:

WINSTON RICHARDSON

Claimant

-and-

SPECIAL SECURITY SERVICES LTD

Defendant

APPEARANCES:

Mr. Sherfield Bowen of counsel for the Claimant

Mr. Kendrickson Kentish with him Ms. Alketz Joseph of counsel for the Defendant

2024: April 22nd
July 5th

JUDGMENT

- [1] **DRYSDALE, J.:** This is a claim for damages for occupational injuries and wrongful dismissal. The Claimant was severely injured on his job when an intruder trespassed upon the property where the Claimant was posted as a security guard. The intruder pushed the Claimant over a cliff causing him to fall 8 to 10 feet unto rugged rocks which resulted in an injury to the Claimant's left foot. The Claimant filed the present claim seeking compensation for injuries sustained as a result of the incident, damages for wrongful termination and costs.

The Pleadings

The Claim

- [2] The Claimant was employed by the Defendant as a security officer and was stationed at the Hawksbill Hotel. One of his responsibilities was to patrol the perimeter and all areas of the Hotel with a view towards protection of the hotel property and to be alert to the instruction that one Oliver Oscar was not allowed on the hotel property.

- [3] The Claimant was injured on 4th July 2013 at the Hotel when Mr. Oscar pushed him over a cliff. The Claimant fell some eight to ten feet on rugged rocks and broke his left foot, he was later placed on sick leave.
- [4] The Claimant has claimed damages for wrongful dismissal. While the Claimant was under the care of physicians on account of the occupational injuries sustained during the course of his employment, the Defendant, acting with retaliation, first discontinued the payment of the Claimant's salary on 31st July 2015, and then issued a termination letter to the Claimant dated 2nd February 2016.

The Defence

- [5] The Defendant is a company in the business of providing security services to various commercial and residential properties in Antigua and Barbuda.
- [6] The Defendant denies that the Claimant was wrongfully terminated and contends that the Claimant failed to respond to the Defendant's repeated requests to submit himself to be evaluated by the Defendant's doctor. The Defendant denies stopping the Claimant's payment on 31st July 2015 and avers that payment of the Claimant's salary only ceased after the Claimant failed to adhere to the Defendant's request that he visit the doctor. Further the Claimant failed to attend a meeting scheduled for 19th October 2015 to discuss his future with the Defendant which demonstrated that he was no longer interested in working for the Defendant.
- [7] Finally, the Defendant denies that the Claimant is entitled to compensation for the injuries sustained during the course of his employment as the Defendant was paying the Claimant in accordance with the law and paid his medical expenses.

The Evidence

The Claimant

- [8] The Claimant filed a witness statement on 17th February 2020.¹
- [9] The Claimant was employed as a security guard with the Defendant Company and was stationed at the Hawksbill Hotel.
- [10] On the morning of Thursday 4th July 2013, the Claimant arrived at work and posted himself to patrol the premises, his female partner Officer Ellis was also stationed at the Hotel. At about 10:30am Claimant was patrolling the compound when he observed one Oliver Oscar coming towards him.
- [11] After a struggle Mr. Oscar lifted the Claimant to his toes and pushed him over a nearby cliff. The Claimant fell a distance of approximately 8 to 10 feet down unto rugged rocks at the bottom of the cliff.

¹ TB2 at page 1

- [12] The Claimant experienced pain and realized that his left leg could not support his body weight. He eventually looked down at his ankle and observed that it was gushing blood at high pressure.
- [13] The Claimant made contact with Officer Ellis by cellular phone, she then called 911 and also notified the management of the Hotel and the management of Special Security Services of the incident.
- [14] At the hospital the Claimant had emergency surgery and his left ankle was placed in an open cast. He was required to do therapy on the outpatient ward and was later discharged on 22nd January 2014. On 30th January 2014 the Claimant's doctor advised him that he was fit to return to work on 3rd February 2014, at that time the Claimant says that he was relying on crutches to assist with walking.
- [15] On 3rd February 2014 the Claimant went to the office of the Defendant's Managing Director, Mr. Wilbur Purcell to inquire as to which doctor he would recommend for a second opinion as the Claimant was of the view that his foot did not look or feel normal, and he felt he could not yet return to work. Mr. Purcell was unsuccessful in his attempts to secure another doctor for the Claimant and so they agreed that the Claimant should return the next day so that they could further discuss his matter. Before leaving the Claimant says that he requested authorization from Mr. Purcell to have an MRI done (this MRI was recommended by one Dr. Yearwood), he also requested an advance on his salary. Both requests were denied.
- [16] Following this the Claimant obtained a sick leave certificate from NSA Medical Centre and delivered the document to Mr. Purcell's office. Later that day he got a phone call from Mr. Purcell's office saying that the sick leave certificate would not be accepted and that he should return to the office to talk about it.
- [17] The next day the Claimant went to speak with Mr. Purcell who informed him that he would not accept the sick leave certificate and that he would appoint a doctor for the Claimant to visit. After awaiting word from Mr Purcell's office for some time, the Claimant decided on his own initiative to visit one Dr. Gaekwad with an x-ray file of his foot and an MRI. Having reviewed the MRI Dr. Gaekwad informed the Claimant that he would have to do reconstruction surgery on his foot. The Claimant subsequently submitted a report of Dr. Gaekwad's recommendations to Mr. Purcell's office.
- [18] The Claimant says that from 16th February 2014 he stopped receiving his salary as Mr. Purcell refused to accept the sick leave that he submitted.
- [19] On 5th March 2014 the Claimant took Dr. Gaekwad's report to Mr. Purcell along with the estimated cost of the surgery. Mr. Purcell stated that "it was just too much". The Claimant also submitted the report and the cost of the surgery to the Defendant's Insurers, Nagico Insurance.
- [20] Following this Nagico Insurance directed the Claimant to a surgeon in Trinidad and Tobago, one Dr. Lousaing to perform the surgery. The Claimant was given a cheque to pay for the surgery. Mr. Purcell paid for the Claimant's airline ticket to Trinidad and provided him with a cheque for the guest house and money for food.

- [21] Dr. Lousaing performed the surgery and issued a medical report, copies of the report were delivered to the Defendant and to Nagico Insurance. The report indicated that screws that were placed in the Claimant's foot would need to be removed in three months' time to avoid further injury. The Claimant was to return to Trinidad for an appointment with Dr. Lousaing on 19th January 2015. Prior to January 2015 the Claimant received a cheque from Nagico Insurance to cover the cost of removal of the screws by Dr. Lousaing.
- [22] In his medical report dated 19th January 2015 Dr. Lousaing stated that the Claimant was to submit to an x-ray within 3 months and upon review of the x-ray consideration would be given to removing the screws as the x-ray done on 19th January 2015 showed that the bone was not healed. This information was given to Mr. Purcell.
- [23] On 28th April 2015 there was a meeting between the Claimant, Mr. Purcell and the Defendant's HR Officer Ms. St. Jean about the surgery to remove the screws from the Claimant's foot. At this meeting the Defendant refused to pay the Claimant's costs to travel to Trinidad to have the screws removed. Mr. Purcell indicated that the doctor told him that removing the screws was optional and that they could be removed in Antigua.
- [24] On 6th July 2015 the Claimant attended another meeting with Mr. Purcell. At this meeting Mr. Purcell cursed at the Claimant and accused him of not having a sick leave certificate. The Claimant presented a copy of his sick leave certificate to Mr. Purcell who then told him to go home.
- [25] Following this the Claimant had his attorney write to Mr. Purcell about making funds available so that he could travel to Trinidad and have the screws removed from his foot. Despite these efforts the Defendant continued to refuse to pay for the airfare, room and board to facilitate the removal of the screws.
- [26] The Claimant says he was terminated by a letter dated 2nd February 2016 which was said to be effective from October 2015.
- [27] To date the Claimant says that he is still on crutches. He also says he is unable to return to pre-incident employment as a result of the injuries and that he is unable to help sustain his family. According to the Claimant he is permanently disabled as the chronic pain in his left foot has brought on arthritis and a permanent knee drop.

The Defendant

- [28] The Defendant provided two witnesses in support of its case, namely, Mr. Wilbur Purcell and Mr. Anderson Carty.

Wilbur Purcell

- [29] Mr. Purcell is the Managing Director of the Defendant. He prepared a witness statement which was filed on 26th August 2020.²

² TB2 at page 24

[30] Mr. Purcell says that the Claimant was employed with the Defendant as a security officer from 8th March 2004.

[31] On 4th July 2013 the Claimant was rostered to work at the Hawksbill Hotel where he was regularly posted throughout the term of engagement with the Defendant. On the said day Mr. Purcell was informed that the Claimant was injured while in the administration of his duty at the Hotel.

[32] Later Mr. Purcell learnt that there had been a man trespassing on the Hotel property and that when the Claimant attempted to persuade the man to leave the property, he became extremely aggressive and pushed the Claimant over an incline. The trespasser was eventually arrested, charged by the police and convicted by the Court for the assault on the Claimant.

[33] Mr. Purcell was eventually able to visit and speak to the Claimant at the Hospital on several occasions, after he had received initial treatment for his injury.

[34] The Claimant was subsequently placed on medical leave and, as per the requirement of the Defendant's Workman's Compensation Policy, the Defendant notified its insurers, Nagico Insurance Agency of the incident and submitted a claim for their action and attention. The Claimant first sick leave was issued by Dr. Dirk Yearwood, from the Mount St. John's Medical Centre.

[35] The Claimant began his treatment in Antigua and had an initial surgical procedure done at the Hospital. The Defendant met the Claimant's medical expenses up front and then submitted receipts to the insurers for reimbursement. The insurers also paid some of the Claimant's expenses directly. The Defendant's HR department stayed in touch with the Claimant throughout the period of his injury and Mr. Purcell received regular updates of his condition.

[36] After about two (2) years of following the Claimant's progress, Mr. Purcell asked the Human Resources department to review his personnel file. Mr. Purcell was advised that the Claimant remained on sick leave due to the occupational injury and that the Defendant Company continued to meet the weekly payment of his wages and his medical expenses.

[37] However, Mr. Purcell noticed that the Claimant was submitting sick leave certificates from the NSA Medical Centre that were being signed by one Dr. Patrick Matthews, whom Mr. Purcell understood to be a physiotherapist and, as such, did not have the requisite legal authority to sign such certificates. Therefore, Mr. Purcell instructed the HR staff to contact the Claimant and inform him that any medical certificate from NSA Medical Centre could not be signed by Dr. Matthews.

[38] In short, the Claimant was told that any future certificates would have to be signed by a registered medical doctor. The Claimant refused to comply with the instructions and continued to submit certificates from the NSA Medical Centre. The Defendant could not accept the certificates as the insurers refused to reimburse the Defendant for the ongoing wage payments to the Claimant on the basis of sick leave certificates from Dr. Matthews.

[39] The Defendant Company continued to pay the Claimant although he continued to ignore the legitimate instructions from Mr. Purcell's office.

- [40] Mr. Purcell recalls that the Claimant approached him sometime during the early months of 2014, and requested funds to have an MRI done. He advised the Claimant that the process required that he had to first submit a request from a medical doctor and the Defendant would pay directly to have it done. Mr. Purcell says that he made it clear to the Defendant that payment for the MRI was not optional but rather a responsibility of the Defendant, but that the process had to be followed.
- [41] The Claimant was eventually examined by Dr. Deepraj C. Gaekwad in Antigua, who recommended surgery on his foot. Arrangements were made by the Defendant through its Insurers for the Claimant to travel to the Fracture and Orthopaedic Clinic in Trinidad and Tobago for surgery. Some screws were inserted in the Claimant's foot and the Defendant was informed by the doctor's report that the surgery was successful. The costs for this surgical procedure were paid by the Defendant's Insurers and the Defendant made and paid directly for all flight arrangements.
- [42] The Claimant returned to Antigua with the surgeon's recommendation that arrangements be made for him to have physiotherapy done for a few months. The Defendant made the necessary arrangements and his therapy sessions commenced at the NSA Medical Centre. In fact, a Medical Report dated 19th January 2015 from Dr. Derrick Lousaing, who performed the surgery in Trinidad, indicated that the Claimant had "good function in the ankle" and that he should have another x-ray done for his review before clearance was given for him to return to Trinidad to have the screws removed.
- [43] During the Claimant's initial period of the therapy, Mr. Purcell again asked the HR department for an update on the Claimant's condition and upon the department making inquiry, Mr. Purcell was told that the Claimant decided to discontinue his therapy sessions contrary to medical instructions following surgery but had continued to submit medical certificates.
- [44] Intervention was made by the Defendant and new arrangements were made for the Claimant's therapy sessions to continue, the Defendant's Industrial Relations Consultant was asked to monitor and supervise the process to ensure that the Claimant completed the sessions.
- [45] Mr. Purcell subsequently arranged an in-house meeting with Mr. Anderson Carty, the Defendant's Industrial Relations Consultant and sought his expert advice on the matter. Mr. Purcell says that he accepted Mr. Carty's recommendation to invite him to a meeting with the Defendant's HR Manager to have discussions that would hopefully lead to a better legal understanding and satisfactory resolution of all the outstanding issues, as it became apparent that the Claimant had become hell bent on ignoring the procedures established by the Defendant.
- [46] On 30th June 2015, the Defendant's then Acting HR Manager, Ms. Tamar St. Jean, met with the Claimant. Ms. St. Jean informed Mr. Purcell that the Claimant remained uncooperative. In any event, Ms. St. Jean gave the Claimant a letter, which he was instructed to take to Dr. Philmore Benjamin (the Company assigned doctor) so that the Claimant could obtain a referral letter to have an x-ray done. The Claimant accepted letter however, he failed to take it to Dr. Benjamin's office.
- [47] By July 2015, the Claimant started to submit consecutive sick leave certificates from a doctor outside of Antigua which confirmed that it was necessary to extend his sick leave. However, Mr. Purcell says

that his understanding has always been that such certificates are not valid unless endorsed or counter-signed by a doctor in Antigua and Barbuda.

[48] On 5th July 2015, Mr. Purcell met with the Claimant in his office and impressed upon the Claimant the need for him to follow his instructions. Mr. Purcell also told the Claimant of a conversation that he had with the Defendant's Insurers and the many difficulties the Defendant was having in getting reimbursed for the Claimant's medical expenses and wages. Mr. Purcell says that he practically begged the Claimant for his co-operation.

[49] Mr. Purcell was not satisfied with the outcome of the meeting on 5th July, 2015, since the Claimant gave no indication that he was going to follow his instructions and consequently, Mr. Purcell directed Mr. Carty and Ms. St. Jean to again meet with the Claimant on 14th August, 2015 to explain to him what was required to be done about the sick leave certificates, as they were not properly tendered and also for arrangements to get the x-ray done for Dr. Lousaing's review.

[50] At the 14th August meeting, the Claimant openly stated that he was not going to follow the Defendant's instruction to get the sick leave certificates counter signed and he was adamant that he would not be paying any visit to Dr. Benjamin's office. In fact, after the meeting, the Claimant sent back a note with instructions for it to be given to Mr. Carty, who chaired the meeting on Mr. Purcell's behalf. The note stated, "I Richardson did not go to Benjamin July 28th with the letter and will not go with the letter." The Claimant signed the note and dated it.

[51] The Claimant's last sick leave certificate on the Defendant's file expired on 23rd August 2015.

[52] By a letter dated 28th August 2015, Mr. Purcell wrote to the Claimant about the history of the matter and his repeated insubordinate and disrespectful behaviour. He was further advised that the Defendant Company would immediately discontinue the payment of his wages until he followed instructions to have the certificates regularized and he visited Dr. Benjamin's office.

[53] The letter of 28th August 2015 still did not invite the Claimant's co-operation.

[54] By letter dated 12th October 2015 Mr. Purcell again wrote to the Claimant advising him that the Defendant Company viewed his act of defiance, insubordination, failure to regularize the sick leave certificate and/or visit the doctor, as indication of job abandonment.

[55] This letter instructed the Claimant to contact the HR Manager, Mr. Hesketh Williams on or before 19th October 2015, at the risk of the Defendant Company considering that the Claimant had repudiated the employment contract. The said letter was delivered and received by the Claimant at his home but he neither responded nor executed the pending instructions.

[56] In any event, it was not before 2nd February 2016, that Mr. Purcell wrote to the Claimant confirming that the Company considered that he had left the job of his own volition.

[57] Thereafter, the Claimant did not attend Dr. Benjamin's clinic. The Claimant then began submitting sick leave certificates from the government's clinic at Gray's Farm, there was no indication that these certificates were signed by a doctor.

[58] A letter from Dr. Philmore Benjamin dated 11th February 2016, deferred the Claimant's case to Dr. Lousaing to determine the Claimant's suitability for work. By another letter of the same date, the Defendant received formal confirmation from Dr. Lousaing that the Claimant had, in fact, been declared fit to work.

[59] Mr. Purcell says that all of the Claimant's medical expenses to date have been paid. He also notes that the Claimant's injuries, while sustained in the course of his duty, did not occur on the Defendant's property.

Anderson Carty

[60] Mr. Carty is an Industrial Relations Consultant who provides services to the Defendant. He prepared a witness statement which was filed on 28th August 2020.³

[61] Mr. Carty says that in early 2015, Mr. Purcell asked him to intervene with the Claimant as he was not conforming to established procedures for sick leave. Mr. Carty met with the Claimant and explained the procedure to him.

[62] On 14th August 2015 Mr. Carty again met with the Claimant and Ms. Tamar St. Jean, the Acting HR Manager of the Defendant. They again explained to the Claimant that the sick leave certificates were not properly submitted and told him that they could be rectified. They also informed the Claimant that the surgeon in Trinidad, Dr. Lousing, requested that another x-ray be done. The Claimant openly stated that he would not be doing the requested x-ray. After the meeting he sent Mr. Carty a note confirming that he would not be doing the x-ray.

[63] On 28th August 2015 the Defendant wrote the Claimant to document his failure to co-operate with the Defendant. In that letter the Claimant was instructed to attend Dr. Benjamin's clinic to arrange for an x-ray to be done at the hospital. The letter also noted that Mr. Carty had spoken to the surgeon in Trinidad.

[64] On 12th October 2016 the Defendant wrote to the Claimant and enquired whether he had abandoned his job or if he wished to continue his employment as no valid sick leave certificates had been received. The Claimant did not respond to this letter.

[65] On 2nd February 2016 the Defendant wrote to the Claimant, confirming that he had abandoned his job and formally dismissing him from employment.

ISSUES

[66] Having regard to all the pleadings and evidence before me, I have determined that the following are the issues for the court to resolve:

- i. Has the Claimant established a cause of action for seeking damages for personal injuries?

³ TB 2 at page 32

- ii. Whether the Claimant was wrongfully dismissed?

Issue 1: Has the Claimant established a cause of action for seeking damages for personal injuries?

[67] The Claimant asserts that this is a claim for occupational injuries and medical expenses arising within the scope of his employment with the Defendant. Specifically, he describes an incident where he was pushed over a cliff, fell violently onto rugged rocks approximately 8 to 10 feet below, and sustained severe injuries by a person on the grounds of a hotel wherein the Defendant was hired to provide security services. For that reason, he seeks substantial damages.

[68] However, in his skeleton arguments, the Claimant explicitly seems to have grounded the claim for occupational injury in negligence. It is important to establish the cause of action as there are distinct considerations and remedies for each.

[69] The Claimant, an employee of the Defendant, was assigned to provide security services at a third-party location—the Hawksbill Hotel. While patrolling the hotel grounds, the Claimant was assaulted by an individual who was neither an employee of the Defendant nor the hotel.

[70] The incident having occurred at a third-party premises and having been committed by an erratic third party, I do not find the Defendant responsible for the Claimant's injury. At trial the Claimant admitted that the Hotel was a safe place. The Claimant's case is not based on any allegations that the assigned tasks were beyond his duties or inherently dangerous, resulting in an unsafe system of work. The Claimant has not provided a clear explanation of how or why the Defendant is responsible for the injuries sustained while patrolling the Hotel grounds. Additionally, during cross-examination, the Claimant was unable to directly answer questions about the specific wrong committed by the Defendant. Instead, the claim hinges on the unforeseen actions of a third party unrelated to the Defendant.

[71] There is no evidence that the Defendant, as the employer, breached a duty of care that directly caused the Claimant's injuries, entitling the Claimant to damages. As a result, the standard for an occupational injury claim based on negligence has not been met. Consequently, the claim, as pleaded, can only be pursued under the Workmen's Compensation Act.

[72] In order to claim damages related to occupational injury under the Workmen's Compensation Act, the Claimant must establish that the Defendant's actions deviated from the Act's provisions and constituted a breach. However, the Claimant's case does not specifically allege such breaches. Instead, the Claimant assumes entitlement to damages based on his injuries and cites the Defendant's admission in a letter as evidence. By letter dated 28th August 2015 Mr. Purcell wrote a letter to the Claimant wherein he stated that "A history of this matter would reveal that on 4th July 2013, you suffered a serious injury to your foot whilst in the course of performing your duties and for which the Company immediately and unhesitatingly accepted liability and have been treating with you since then, in accordance with the Workmen's Compensation Act."

[73] The Claimant contends that this constitutes an admission of liability that the Defendant is responsible for inter alia the resultant effects of the injury sustained. However, I disagree. The statement merely acknowledges that the Defendant accepted liability under the Workmen's Compensation Act and has

been treating the Claimant accordingly. Importantly, this acknowledgment does not imply negligence or fault. Under the Workmen's Compensation Act, employers agree to compensate employees on a no-fault basis, meaning that compensation is provided without requiring proof of the employer's fault or negligence. The Workmen's Compensation Act aims to provide injured workers with timely medical treatment and financial assistance during their recovery. In this case, the Defendant's actions align with this goal by covering the Claimant's medical expenses, arranging treatment both locally and abroad, and continuing to pay the Claimant's salary throughout the temporary incapacity. Therefore, the letter relied on by the claimant in the context of the law does not establish that the Defendant is liable in law to him for his injuries or the consequences thereof.

[74] Based on the information provided, it is clear that the Claimant has not effectively established a case for breach of occupational injury. The Claimant has neither cited nor referenced or more importantly proved a specific statutory breach by the Defendant. Furthermore, negligence has not been proven. It is the Claimant's duty to clearly articulate his case against the Defendant, which has not been adequately done or substantiated. Therefore, the claim for breach of occupational injury fails.

Issue 2: Whether the Claimant was wrongfully dismissed?

[75] The term 'wrongful or unlawful' dismissal denotes a situation where the employer terminates the employment contract in breach of the provisions which govern the expiration of the contractual term.⁴ The Claimant asserts that he was wrongfully dismissed by the Defendant as a form of retaliation, suggesting that the Defendant wanted to terminate his employment due to the expenses incurred for his care. The Defendant denies this claim and has argued that the Claimant was terminated as his actions demonstrated that he no longer wished to work for the Defendant.

[76] With regards to this aspect of the claim I accept the following as the facts:

- a. On 4th July, 2013, the Claimant suffered an injury whilst in the course of duty when it was reported that he was pushed off a cliff at Hawksbill Hotel by a known assailant.
- b. On 21st February 2014, an evaluation of the Claimant's injury was conducted by Dr. Depraj Gaekwad, who, by Medical Report dated 5th March 2014⁵ recommended surgery.
- c. The Claimant was sent to Trinidad for medical treatment at the Defendant's insurers' expense; had surgery on 8th October 2014 and was reevaluated by Dr. Derrick Lousaing who later completed a Medical Report dated 14th October, 2014⁶. In his Report, Dr. Lousaing gave an initial assessment that that Claimant was not expected to be able to return to his duties "for a period of four to six months".
- d. On 19th January, 2015, Dr. Lousaing reviewed the Claimant's injury and submitted another Medical Report dated 19th January 2015⁷, which indicated, among other things, that the

⁴ Halsbury's Laws of England (5th Ed., 2009) Volume 40, para 780.

⁵ TB2 at page 46

⁶ TB2 at page 42

⁷ TB2 at page 39

Claimant had "good function in the ankle"; he further advised that he would want to see the Claimant or his x-rays in three months' time for review and consideration of the diastasis screw removal that were temporarily put in during surgery in Trinidad.

- e. By letter dated 18th February 2015⁸, Dr. Lousaing also recommended physiotherapy for three (3) months which the Company arranged for the Claimant at NSA Medical Centre between the periods 9th March to 18th May 2015.
- f. It was the doctor's instructions that at the end of the physiotherapist sessions the Claimant needed to have an x-ray done so that he could make a medical assessment of the injured area to decide if it was sufficiently healed to have the diastasis screws removed.
- g. Despite the Defendant's many efforts to get the Claimant to submit himself to an x-ray the Claimant persistently refused to go to Dr. Benjamin's office for a referral letter to take to the Hospital.
- h. On 28th August 2015⁹ the Defendant wrote to the Claimant to document his failure to co-operate with the Company and instructing him to attend Dr. Benjamin's office to have the x-ray arranged.
- i. The Defendant wrote a letter dated 12th October 2015¹⁰ to the Claimant indicating that the company interpreted his refusal to comply with the request to collect a referral letter from Dr. Benjamin as a disinterest on the part of the Claimant to continue working for the Defendant. The Claimant was asked to contact the Defendant's HR Manager by 19th October 2015 to discuss his employment failing which the Defendant would conclude that he had abandoned his job.
- j. Despite the fact that the local treating physicians indicated that Claimant was fit to resume duties, he continued to submit sick leave certificates a month at a time from Trinidad. The Claimant was told that these sick leave certificates were not valid unless supported by a medical certificate issued locally.
- k. The Defendant received advice that the Claimant was medically fit to return to work, which should have happened some time ago.
- l. By letter dated 2nd February 2016 the Defendant again wrote to the Claimant to confirm that his employment with the Company came to an end on 20th October 2015.
- m. By letter dated 11th February 2016¹¹ Dr. Lousaing provided a letter which stated that "It is now 16 months following his procedure and this patient has been on injury leave for this extended period. At this point, he is fit to return to work with immediate effect even if the screws are still in situ and a fitness certificate outlining the same can be provided."

⁸ TB2 at page 38

⁹ TB3 at page 21

¹⁰ TB3 at page 114

¹¹ TB2 at page 37

[77] Having looked at the history of events what is apparent is that at all times the Defendant sought to act in a manner that was fair to the Claimant. The Defendant retained the Claimant in its employ during his extended leave and covered the costs of his medical expenses even when the Claimant failed to comply with requests to submit valid sick leave certificates and attend Dr. Benjamin's office.

[78] However, the Claimant repeatedly refused to comply with the Defendant's request for a referral letter from Dr. Benjamin. The Claimant argued that the referral letter referenced his foot, while the injury sustained pertained to his ankle. It is well established that the ankle is part of the foot. Ergo the failure to specifically state which part of the foot the referral letter related to was not a valid reason for the Claimant's continued rejection of collecting the referral letter in order for further examination to be undertaken to determine whether his foot had sufficiently healed. Further given the Claimant's lack of medical training, I find this refusal unreasonable.

[79] The Claimant's dismissive attitude toward responding to queries from the Defendant was again demonstrated after receiving a letter dated 12th October, 2015, expressing concerns that he may have abandoned his position resulting in the Defendant imploring the Claimant to arrange a meeting with Human Resources to discuss his employment status. In response, the Claimant emailed a document purporting to be a sick leave certificate, but it lacked the necessary signature from a medical professional in Antigua. Despite prior warnings about invalid certificates, the Claimant persisted. Although, the Claimant claimed to have visited the Defendant's offices to hand-deliver a response letter, this letter was never disclosed. Further the testimony that the Claimant was prevented from entering the offices of the Defendant is questionable, especially considering that the Defendant's decision regarding abandonment occurred a week later and in any event the nature of the actions which eventually led to the loss of employment was not such to warrant such drastic action being taken to prevent the Claimant from having access to the office. In any event throughout his testimony the Claimant has been deliberately evasive, and sometimes unresponsive and wholly unbelievable as a witness of truth.

[80] As a whole the Claimant's behaviour is demonstrative of a blatant refusal to communicate and cooperate with lawful orders. This behavior falls short of what one would expect from an employee interacting with their employer. The Claimant's lack of adherence to instructions and inflexibility in complying with proper and legal instructions cannot be used as a basis for claiming that the employer is responsible for the natural and resultant effects of his behaviour. Lord Evershed in the case of **Laws v London Chronicle Ltd.**¹² highlighted the consequences for such behaviour and stated that:

"the willful disobedience of an order will justify summary dismissal, since willful disobedience of a lawful and reasonable order shows a disregard – a complete disregard of a condition essential to the contract of service, namely, the condition that the servant must obey the proper orders of the master, and that unless he does so the relationship is, so to speak, struck at fundamentally."

¹² [1959] 1 WLR 698

[81] Extrapolated from the preceding discussion, is that an employee has a duty to comply with the lawful instructions of his employer, failure to comply can result in dismissal as it shows a complete disregard of a condition essential to the employment contract.¹³ After reviewing all the evidence, I conclude that the Claimant's behavior was highly unreasonable and unjustifiable. This behavior resulted in a breach of contractual engagement with the Defendant, justifying dismissal or treating the Claimant as having abandoned the position. Consequently, I cannot find that the Claimant was wrongfully terminated, and this aspect of the claim is dismissed.

Order

[82] The Claimant's claim is dismissed in its entirety.

[83] The Claimant shall pay the Defendant prescribed costs.



Jan Drysdale

High Court Judge

By the Court

Registrar

¹³ National Union of Government and Federated Workers v Jusanco Pavers Trinidad & Tobago Ltd TD 205 of 2004 (unreported) delivered July 27, 2005 [TT 2005 IC 91].