

**IN THE SUPREME COURT OF GRENADA  
AND THE WEST INDIES ASSOCIATED STATES  
HIGH COURT OF JUSTICE  
(CIVIL)**

**GRENADA**

**CLAIM NO. GDAHCV2022/0522 (formerly GDAHCV2020/0135)**

**BETWEEN:**

**SONIA RODEN**

Claimant

and

**GRENADA INVESTMENT DEVELOPMENT CORPORATION**

Defendant

**Before:**

The Hon. Mde. Justice Agnes Actie

High Court Judge

**Appearances:**

Ms. Deborah Mitchell for the Claimant

Ms. Karen Samuel for the Defendant

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2023: November 28;  
December 1;  
2024: January 17.  
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**JUDGMENT**

- [1] **ACTIE, J.:** The central question in the claim filed on 29<sup>th</sup> April 2020 is whether there was a breach of an employment contract by the defendant in the payment of severance and vacation leave pay to the claimant.

**The Claimant's case**

- [2] The claimant avers that she had been employed with the defendant continuously from 1<sup>st</sup> March 1985 until her services were terminated effective 8<sup>th</sup> September 2014. The

claimant contends that her employment with the defendant was governed by a management staff agreement dated 1<sup>st</sup> April 1996, (hereafter referred to as “the agreement”) and that it was an implied term of the agreement that the weekly wage for the computation of her severance pay package would be calculated by dividing her annual wage by a denominator of fifty (50).

- [3] The claimant states also that it was a statutorily implied term of the agreement pursuant to Section 3(1) of the Employment Act that, if the defendant terminated her employment and paid her in lieu of notice, the defendant would also confer all other benefits that would have been due up to the expiry of any notice period.
- [4] The claimant further states that it was mutually agreed that she would and did proceed on 41 working days’ annual vacation leave from 1<sup>st</sup> April 2014 to 30<sup>th</sup> May 2014. The claimant avers that following the expiry of the 41 days’ vacation leave and without any previous consultation, the defendant by letters dated 20<sup>th</sup> May 2014 and 30<sup>th</sup> June 2014 directed that she was to continue her annual vacation leave for a further 21 working days and a further 44 working days’ leave, respectively. Thereafter, by letter dated 29<sup>th</sup> August 2014, the defendant terminated the claimant’s employment with effect from 8<sup>th</sup> September 2014.
- [5] The claimant contends that the defendant’s termination of her contract was made in breach of the employment agreement for the following reasons namely:
  - (1) Payment of severance was for the period 1<sup>st</sup> October 2001 to 8<sup>th</sup> September 2014 rather than from the period 1<sup>st</sup> March 1985;
  - (2) Failure to pay termination allowance for the period of payment in lieu of notice as required by statutorily implied term of the said agreement contained in Section 79 of the Employment Act;
  - (3) Failure to pay the claimant for 55 days accumulated leave which the claimant had upon completion of her annual vacation leave on 31<sup>st</sup> May 2014;
  - (4) Failure to pay the claimant for 30 days leave which would have accumulated during the period of payment in lieu of notice;

- (5) Breach of the implied term of the contract which required the claimant's weekly wage to be calculated by dividing her annual wage by 50;
  - (6) Alternatively, breach of the term which required the payment of 7 weeks for each year worked.
- [6] The claimant claims special damages in the sum of \$288,804.22, general damages for breach of the agreement, together with interest and costs.

### **The Defendant's case**

- [7] The defendant denies the alleged breaches or that the claimant suffered loss and damage. The defendant contends that the claimant was paid all termination benefits under the contract of employment as was confirmed by a Senior Labour Officer of the Labour Department.
- [8] The defendant further avers that the claimant, subsequent to her termination, referred the substance of the claim herein as a complaint for unfair dismissal under the Employment Act to the Labour Department and to the Arbitration Tribunal. The defendant contends that the claimant has engaged the correct legal forum for the determination of her complaint, and that this court has no jurisdiction or, alternatively, should decline to exercise any jurisdiction to deal with this claim.
- [9] With respect to the issue of vacation leave, the defendant avers that the claimant was told in a meeting held on or about 31<sup>st</sup> March 2014 that the board of the defendant had taken the decision to have employees with excessive accumulated leave to proceed on vacation. Further, the defendant states that the claimant failed to raise any concerns with the chairman of the board in relation to her leave although invited to do so by letter dated 9<sup>th</sup> July 2014.

### **Legal Analysis**

*Whether the court has jurisdiction to determine the claim for failure to pay termination allowance*

[10] The claimant in her pleadings claimed for termination allowance amounting to \$249,981.43. However, counsel for the claimant concedes in closing submissions filed on 4<sup>th</sup> December 2023, that insofar as the right to termination allowance is concerned, the procedure of complaint to the Minister and if necessary, a determination by an Arbitration Tribunal is applicable.

[11] Counsel for the claimant argues that the Employment Act however has not excluded common law rights and that the court continues to have jurisdiction to hear and determine common law causes of action. Counsel relies on **Eastwood and another v Magnox Electric PLC** **Mc Cabe v Cornwall County Council and another**<sup>1</sup> wherein it was held that:

“ ..... where an employee had, prior to his unfair dismissal, whether actual or constructive, acquired a common law cause of action against his employer in respect of the employer’s failure to act fairly towards him **such that it could be said to exist independently of his subsequent dismissal**, and financial loss had flowed directly from that failure, he could, subject to the rule against double recovery, bring an action at law in respect of that loss and such action was not barred by the availability of a claim in the employment tribunal under the unfair dismissal legislation.” [emphasis added]

[12] On the other hand, counsel for the defendant argues that the agreement did not create a remedy called “termination allowance”, and states that **Section 89** of the **Employment Act**<sup>2</sup> sets out the complaints procedure with respect to termination allowance.

[13] The particulars of breach of the agreement as pleaded by the claimant include “failure to pay termination allowance for the period of payment in lieu of notice...” The claimant has not directed the court to any provision in the agreement which guarantees the payment of termination allowance.

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<sup>1</sup> [2004] 3 WLR 322

<sup>2</sup> CAP 89

- [14] It must follow therefore, that the claimant is relying on **Section 84** of the **Employment Act** for the enforcement of this right to termination allowance. **Section 84** prescribes the remedy for complaints which arise on the application of the Section with the relevant subsections being subsections **(1)** and **(5)** which provide as follows:

“(1) On termination at the initiative of the employer, an employee who has completed one year or more of continuous employment with his or her employer and who is not entitled to gratuity shall be entitled to be paid by the employer a termination allowance of not less than one week’s wages for each completed year of service.

...

(5) A complaint that a termination allowance has not been paid may be presented to the Labour Commissioner and if necessary to an Arbitration Tribunal which, if it finds the complaint to be well founded, shall make a declaration to that effect and order payment of the amount due.”

- [15] Further, **Section 89** of the **Employment Act** states that:

“(1) Any person alleging a violation of a provision of this Act may report the matter to the Labour Commissioner, who may institute or cause to be instituted a prosecution in order to enforce the provisions of this Act.

(2) Notwithstanding the provisions of subsection (1), where not otherwise specified, any person alleging a violation of this Act may present the complaint to the court for appropriate relief.”

- [16] The claimant has admitted to initiating the process of complaint as prescribed by the Act, before the Labour Commissioner. Accordingly, this court is therefore of the view, and finds, that based on the cause of action with respect to termination allowance under the **Employment Act**, as well as the evidence that the claimant has engaged the statutory processes in pursuit of her complaints, the court’s jurisdiction to determine a claim for termination allowance has been ousted.

*Whether the defendant breached the 1996 Agreement*

### Severance Pay

- [17] The claimant states that upon the termination of her employment, she was paid one year's salary in lieu of notice, severance pay for the period of 13.92 years, from 1<sup>st</sup> October 2001 to 8<sup>th</sup> September 2014, and other allowances as per the agreement amounting to a gross sum of \$333,061.00.
- [18] The claimant's factual complaint relates to the period of severance pay which she alleges ought to have been from 1<sup>st</sup> March 1985 to 8<sup>th</sup> September 2014.
- [19] The defendant does not dispute that the claimant was entitled to severance pay. Instead, the defendant contends that the claimant could not have been in continuous employment from the year 1985 since the claimant continued to enjoy the status as a public servant up to 1<sup>st</sup> October 2001.
- [20] The agreement with respect to severance pay states as follows:
- "Redundancy and Severance Pay
- Years of service... over 4 years of continuous service: 7 weeks salary for each year, or proportional part thereof, of service."
- [21] To ascertain the period during which the claimant was effectively employed by the defendant, the timeline and history of the claimant's employment becomes relevant.
- [22] By letter dated 19<sup>th</sup> January 1984, the claimant was appointed as Administrative Cadet of the Ministry of Industrial Development and Fisheries with effect from 1<sup>st</sup> September 1983. This letter states that the claimant would be responsible to the Permanent Secretary of the Ministry of Industrial Development for the proper performance of duties, and that the claimant would be on two years' probation. Thereafter, and during the period of probation, the claimant was seconded from the Ministry of Industrial Development to the defendant by the Public Service

Commission, by letter dated 29<sup>th</sup> March 1985 from the Chief Personnel Officer. The letter states the following:

“I am directed to inform you that the Public Service Commission has approved your secondment to the Industrial Development Corporation with effect from 1<sup>st</sup> March 1985 and until further notice.”

[23] By letter dated 11<sup>th</sup> March 1999, the claimant was confirmed retroactively in her appointment as Administrative Cadet in the Public Service posted to the Ministry of Finance with effect from 1<sup>st</sup> September 1983. This letter states that the claimant is subject to the provisions of the Public Service Commission Regulations, the Civil Service Staff Orders, Financial and Store Rules and other Regulations, responsible to the Permanent Secretary of the Ministry of Finance for the proper performance of duties. A further letter dated 17<sup>th</sup> November 2005, retired the claimant from service of the Public Service Commission with effect from 1<sup>st</sup> March 1985.

[24] The claimant contends that the effect of PSC letter dated 17<sup>th</sup> November 2005 is that she was the defendant's employee effective 1<sup>st</sup> March 1985. However, there is only one letter of appointment of the claimant for services to the defendant which is dated 28<sup>th</sup> February 2001. In that letter, the defendant appointed the claimant as General Manager with effect from 2<sup>nd</sup> January 2001.

[25] The court has not been directed to legislation which governs the status of public officers seconded to the defendant. Nor has the court been presented with an explanation as to issuing of the letter of 11<sup>th</sup> March 1999 confirming the claimant in her appointment as Administrative Cadet of the Ministry of Industrial Development and Fisheries, when the claimant alleges she was in the employment of the defendant. Evidence was solely given by the claimant.

[26] Nevertheless, the court notes that **Section 16(7)** of the **Grenada Investment Development Corporation Act No. 30 of 2016** states that:

“Public officers may be transferred or seconded to the Corporation or may otherwise give assistance to the Corporation.”

[27] The court finds that the claimant herself did not consider herself an employee of the defendant from 1<sup>st</sup> March 1985 for the following reasons:

- (1) On 21<sup>st</sup> March 1985, the claimant applied to the Permanent Secretary of the Ministry of Finance for maternity leave, copying the Manager of the Industrial Development Corporation;
- (2) An increment certificate for 1<sup>st</sup> March 1989 was granted to the claimant by the Ministry;
- (3) An increment certificate for 1<sup>st</sup> March 1990 was granted to the claimant by the Ministry;
- (4) In letter dated 2<sup>nd</sup> March 2000, from the claimant to the Chief Personnel Officer of the Public Service Commission, the claimant stated that she was currently on secondment from the service to the defendant; and
- (5) By letter dated 5<sup>th</sup> April 2000, from the claimant to the Comptroller of Inland Revenue, the claimant considered herself a civil servant.
- (6) Further, the claimant obtained a gratuity as a public servant.

[28] The court finds that the terms of the appointment letter of the claimant dated 28<sup>th</sup> February 2001 in effect created a relationship of employment between the claimant and the defendant. In said letter, the defendant states:

“The Board of Directors of the Grenada Industrial Development Corporation, with the approval of the Minister of Finance, is pleased to appoint you to act in the position of General Manager of the GIDC effective January 2, 2001.”

[29] This appointment was in accordance with the **Grenada Industrial Development Corporation Act CAP 130B, Section 9(1)** of which states:

“The Corporation, with the prior written approval of the Minister, shall appoint a suitable person as the General Manager and fix his or her terms and conditions of service.”

- [30] Given that the defendant issued an appointment letter to the claimant in accordance with the then governing Act, the court is constrained to find that the claimant was an employee of the defendant as of 2<sup>nd</sup> January 2001.
- [31] As stated prior, the agreement makes provision for the payment of severance in the formula of seven weeks salary for each year or proportional part thereof of service.
- [32] In evidence given on behalf of the defendant, the claimant's gross monthly salary was \$9,556.70, however counsel for the claimant argues that the final annual salary of the claimant was \$114,184.56. The court is guided by the claimant's evidence.
- [33] Counsel for the claimant suggests the calculation of an hourly rate, to thereafter calculate a weekly rate. The court does not find this necessary as it is common understanding that there are 50 working weeks in a year, which then counsel for the claimant conceded to in correspondence dated 12<sup>th</sup> May 2015 concerning payment of severance. It is therefore to be assumed that the weekly rate of pay for the purpose of severance is \$2,283.69. Seven weeks' salary would therefore be \$15,985.83.
- [34] The court having found that the claimant was employed by the defendant from 2<sup>nd</sup> January 2001 to 8<sup>th</sup> September 2014, results in the total of 13.8 years, which would equate to 14 years of service under the agreement. It is therefore to be assumed that this totals \$223,801.62 in severance pay to the claimant.
- [35] In a letter dated 3<sup>rd</sup> October 2014 from Messrs. Samuel Phillip and Associates to Messrs. Henry Henry and Bristol, the figure of \$196,397.72 is explained to be paid to the claimant in severance. This leaves an outstanding \$27,403.90.
- [36] Nevertheless, it is evidence in a letter dated 3<sup>rd</sup> March 2015 from Messrs. Samuel Phillip and Associates to Messrs. Henry Henry and Bristol, that the claimant procured payment by the defendant of gratuity to her by vouchers dated 2<sup>nd</sup> June 2000 and 20<sup>th</sup> November 2001 for the period from April 1999 to September 2001 respectively.

- [37] Moreover, the claimant concedes, both at trial and in submissions filed on 4<sup>th</sup> December 2023, that the gratuity payment received, as well as payments received for severance during the period 1<sup>st</sup> October 2001 to 8<sup>th</sup> September 2014 should be discounted in the calculation of her severance, as required by the rule against double recovery.
- [38] It is therefore the undisputed evidence that the claimant was paid gratuity in the sum of \$19,628.92 and \$22,039.32 respectively making a grand total of \$41,668.24. This figure must accordingly be discounted from the outstanding balance of \$27,403.90 leaving a surplus of \$14,264.34 paid by the defendant to the claimant.
- [39] Counsel, Ms. Karen Samuel, for the defendant contends that a gratuity payment having been made to the claimant as a public servant up to the end of September 2001, it would therefore be inconsistent, unfair, unjust and amount to double recovery should the court make an award in respect of continuous employment from 1985.
- [40] The court finds counsel's argument quite compelling. The claimant cannot approbate and reprobate in relation to her employment status. It is the evidence that the claimant vigorously pursued her endeavours to be deemed a public servant from 1985 to 2001 and was paid a gratuity as a public servant for the period. The claimant now seeks to resile from this position for the purposes of severance pay from the employment with the defendant for the very same period. This, in the court's view, is inconsistent and would lead to double compensation by two purported employers for the same period.
- [41] The claimant's employment with the defendant was governed by the terms of the agreement. The claimant's severance pay was calculated in accordance with the terms of the agreement for the period of employment with the defendant. The evidence as confirmed by the Senior Labour Officer is that the claimant was adequately compensated, and the court accepts the evidence. Accordingly, the claimant has failed to establish that the defendant was in breach of the employment contract with respect to severance pay.

## Leave

[42] With respect to leave, the agreement states as follows:

### “Annual Vacation Leave

It is agreed that Vacation Leave shall be on the following basis:-

Salary in excess of \$30,001.00: 42 days per year, maximum accumulated leave 70 days.”

[43] The claimant argues she proceeded on 41 working days’ annual vacation leave and was subsequently directed to proceed on further vacation leave without consultation.

[44] In submissions, counsel for the claimant states that the additional mandated 55 days without prior consultation is enforced vacation leave. The claimant’s complaint is that the defendant’s-imposed vacation leave amounted to suspension by the defendant which did not amount to the claimant’s consumption of her leave entitlement. The claimant therefore claims for payment of 55 days of accrued vacation leave.

[45] Counsel for the claimant relies on **Section 58(1)** of the **Employment Act**, which states:

### “Date of leave

(1) The leave referred to in section 56—

(a) shall be granted by the employer, after consultation with the employee, as from a date determined by the employer, but as far as it is practicable not later than six months after the end of the year in respect of which the entitlement arose...”

[46] The defendant asserts that the claimant’s position with respect to consent required for the period of leave, as well as the payment for additional leave during the termination notice period is unsupported by the terms of the agreement, the Employment Act, and other sources of law.

[47] The defendant further demonstrates that the claimant was given the opportunity to indicate any issues with respect to the mandated leave, which the claimant failed, neglected or refused to identify. It is the evidence of the defendant that the claimant utilized all leave to which she was entitled to prior to the date of her termination.

[48] The defendant in a letter dated 9<sup>th</sup> July 2014 clearly expressed the purpose for which the claimant was asked to continue her vacation leave. The letter states the leave was:

“in keeping with the Board’s mandate to ensure that the Corporation is efficiently and effectively run; to assess the Corporation’s viability; to ensure that the Corporation’s liabilities are minimised; and by of protecting employees’ accrued annual leave.”

[49] The said letter concludes as follows:

“If you have any concerns about enjoying your leave entitlement at this time, do promptly notify me, and I shall be obliged to discuss same with you, should you so require.”

[50] Given that **Section 58(1)** of the **Employment Act** directs that an employee be consulted prior to the granting of leave, the court finds that the defendant was in breach of the statute by mandating the claimant to take the additional leave of 55 days. However, each matter should be considered on its particular facts. The court finds that the claimant as manager was part of the senior hierarchy of the defendant’s team and would have been fully aware of the defendant’s policy to reduce accumulated leave which had become a financial burden to the defendant. The claimant never challenged the directives to continue her extended leave at that time but is only now raising the issue in her claim.

[51] The claimant as manager would have been fully aware of the policy and terms of employment yet failed to engage the board; neither is there any evidence that she took issue with the directives to utilize her vacation leave. This is especially in light of the claimant previously engaging the chairman of the defendant through email of 20<sup>th</sup>

May 2014, regarding her attendance at a strategic planning session to be held during her notice of extended vacation leave. There was opportunity advanced to the claimant by the chairman of the defendant to raise any concerns regarding her taking of vacation leave. The claimant therefore cannot now seek to regain compensation for the time spent away from work by means of the very same vacation leave.

- [52] The Court of Appeal in **Ministry of the Public Service and Broadcasting v Vincent Marcel**<sup>3</sup>, in judgment delivered by Webster JA relied on the case of *Ormond Shotte v the Attorney General*, wherein it was stated:

“It must be stressed that leave is not money. It is absence from duty with permission... This is why, upon retirement, a person takes any leave due prior to the date of retirement. Similarly, a person who is resigning but who desires not to lose his accumulated leave ought, where possible, to arrange his affairs so that the leave due is taken prior to the effective date of resignation.”

- [53] The Court of Appeal therein held that leave is not money, but an opportunity for rejuvenation from the rigours of work. This court is of a similar position. Despite the lack of consultation by the parties in the defendant’s stipulation of leave to be taken by the claimant, the claimant indeed obtained the requisite time off, and was not required to report to work on the days she was on vacation. The claimant had the benefit of fifty-five (55) days for which she is now seeking compensation, which is unreasonable in the circumstances.

- [54] The claimant further argues that she was entitled to receive thirty (30) days’ holiday pay for the vacation that would have accrued up to the date upon which the period for which she received payment in lieu of notice would have expired.

- [55] The claimant relies on **Section 79(1)** of the **Employment Act**, for her entitlement to an additional 30 days of vacation leave. **Section 79(1)** states that:

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<sup>3</sup> SLUHCVP2017/0006

“(1) In lieu of providing notice of termination, the employer shall pay the employee a sum equal to the wages and other remuneration and confer on the employee all other benefits that would have been due to the employee up to the expiry of any required period of notice.”

[56] It is to be noted that **Section 75** of the **Employment Act** prescribes the period of notice for contracts for unspecified periods of time. **Section 75(1)(e)** states:

“(1) Subject to section 74, a contract for an unspecified period of time may be terminated by the employer after the probationary period, if any, upon giving the following minimum periods of notice in writing—

(e) two months where the employee has been employed by the employer for five years or more.”

[57] By statutory authority, therefore, the claimant is solely entitled to two months’ notice, or two months’ pay in lieu of notice should the employer decide to exercise that option.

[58] It is the evidence that in lieu of notice, the claimant was paid benefits for twelve months in lieu of notice, as opposed to the two month period prescribed by the **Employment Act**. The court is of the view that, by being paid the equivalent of her annual salary and annual benefits, the claimant somehow presumed that she was entitled to a year’s notice for the termination of her employment. This is untenable and not legally supported by the Employment Act or the claimant’s terms of engagement.

[59] The claimant has not demonstrated to the court that a further thirty (30) days would have accrued within the statutorily provided period of notice, from 29<sup>th</sup> August 2014 to 29<sup>th</sup> October 2014. It is the evidence that the claimant utilized her 2014 vacation prior to her termination. Furthermore, this matter is one of breach of contract, and not of breach of statutory duty.

## Conclusion

[60] The court applying the law to the facts finds that the claimant's case has failed to prove her case and the reliefs claimed. Accordingly, the claim is dismissed with costs to the defendant.

[61] In summary, it is ordered as follows:

(1) The claimant's claim is dismissed.

(2) The parties prior to the trial agreed to prescribed costs in the sum of \$25,000.00 pursuant to CPR 65.5(2)(b) . Accordingly, the claimant shall pay the defendant the sum of \$25,000.00 within thirty (30) days of the date of this order.

**Agnes Actie**  
High Court Judge

**By the Court**

**Registrar**