

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

GRENADA

CLAIM NO. GDAHCV2018/0478

BETWEEN:

DUANE WILLIAMS

Claimant

and

GRENADA PORTS AUTHORITY

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Deborah St. Bernard for the Claimant

Mrs. Amy Bullock-Jawahir with Ms Rena Banfield for the Defendant

2023: January 16th
March 24th

JUDGMENT

[1] **ACTIE, J.:** This a claim for wrongful dismissal. The claimant is the former assistant to the Port Manager (Ag.) of the defendant, the Grenada Ports Authority, a body corporate established under the provisions of the Ports Authority Act CAP 247 of the Laws of Grenada.

The Claim

[2] By Claim Form filed on 29th November 2018, the claimant claims:

- (1) Damages for wrongful dismissal.
- (2) The sum of \$26,101.17.
- (3) Interest; General damages; and Costs.

- [3] The claimant was appointed to the post of assistant to the Port Manager in the island of Carriacou in the State of Grenada on 3rd September 2012. According to his terms of appointment, the claimant was to receive a monthly salary of \$5,500.00 in lieu of overtime. The claimant nevertheless collected overtime payments during the term of his employment.
- [4] By letter dated 11th January 2016, the Human Resource Manager of the defendant informed the claimant of a hearing on the matter of alleged irregularities in billing at the Carriacou out-station of the defendant. At said meeting which took place on 18th January 2016, it was highlighted that having the position of assistant to the Port Manager, the claimant should not be receiving overtime. The claimant agreed that he collected some overtime directly but averred that over 90% of the overtime billed was paid into the defendant's account.
- [5] Subsequently, the defendant wrote to the claimant on 15th April 2016 terminating his employment with immediate effect. This letter stated that the claimant collected over \$35,000.00 in overtime not rightfully due to him.
- [6] The claimant filed a complaint with the Labour Commissioner for wrongful dismissal and a hearing was held on 19th May 2016, at which both the claimant and the defendant were represented. On 12th September 2016, the Labour Commissioner rendered his report indicating that the claimant was unable to provide proof of the amounts received "ex-hand" and recommended that the sum of \$35,000.00 be deducted from monies that may be due to the claimant from the defendant.

- [7] On 29th September 2016, the claimant wrote the Labour Commissioner disagreeing with his conclusion and his recommendations, and by letter dated 9th March 2017, the Labour Commissioner invited the claimant and the defendant to attend a meeting on 15th March 2017 with the Minister of Labour. There were no further updates following the meeting with the Minister of Labour.
- [8] Subsequent to the claimant's termination, the defendant on 23rd May 2017 issued a certificate of gratuity and pension outlining payments which were due and payable to the claimant upon his termination of service. By letter dated 25th July 2017, the claimant wrote the defendant requesting the payment of what the statement identified as the balance payable to him. A further request was made on 5th October 2017.
- [9] By letter dated 22nd November 2017, the defendant responded to the claimant's request and stated that the sum of \$80,466.33 was the balance payable to the claimant. The defendant remitted the sum of \$47,067.16 to the claimant's bank account on 11th November 2016. The defendant also informed the claimant that the difference of \$33,399.17 was deducted to settle the claimant's indebtedness to the defendant.
- [10] It is the claimant's position however that the overtime he collected "ex-hand" which was deemed to be refundable to the defendant was the sum of \$7,298.00 and not \$33,399.17 as deducted by the defendant.
- [11] The claimant argues that the defendant acted without due consideration of the claimant's position on the matter when it chose to accept the Labour Commissioner's recommendation that the greater sum of \$35,000.00 than the sum of \$7,298.00 was due by the claimant to the defendant.

[12] The claimant argues that the balance of \$26,101.17 is part of his lump sum pension benefit and contends that he was wrongfully dismissed without an opportunity of a fair hearing on the basis of an audit report which was not made available to him.

Defendant's case

[13] The defendant states that the matter of overtime payments arose as a result of an internal audit report dated 13th January 2015, the findings of which showed discrepancies with regard to overtime billing and customer invoicing. The defendant asserts that it is the established policy that persons who hold management positions are not entitled to receive overtime payments.

[14] The defendant contends that the claimant's assertion that the overtime collected by him "ex-hand" amounts to \$7,298.00 is unsubstantiated and therefore cannot be accepted.

Legal Analysis

Preliminary Issue

[15] This matter was previously scheduled for trial on 18th November 2022, but in light of an application for adjournment made on behalf of the defendant, was adjourned to 16th January 2023.

[16] Despite the extension of time for the hearing of the trial however, counsel for the claimant filed Part 2 of the trial bundle comprising documents for the trial on Friday 13th January 2023 at 3.44 p.m. in breach of the court's order and **Part 39.1** without an application for an extension of time to comply with the order, or relief from sanctions.

[17] As indicated by this court in **Cardinal Ollivierre v Algeron Belfon et al**¹, there is a deep concern about the continuous and blatant disregard of the timelines given in court orders without any application for extension of time, variation of the orders of the court, and/or relief from sanctions in keeping with the requirements of the CPR.

[18] Counsel ought to be conscious of the consequences with respect to treatment of the court's orders and the CPR with impunity, which undermine the essence of the overriding objective. Though the trial proceeded on the date of the hearing, it proceeded to the disadvantage of counsel for the defendant and the court. Serious steps must be taken to encourage a new litigation culture in this jurisdiction, as the court cannot continue to countenance such blatant breaches by legal practitioners.

Whether the Claimant was Wrongfully Dismissed

[19] It is the claimant's evidence that overtime payment was an issue raised by him for discussion at a meeting that was to be held between him and the General Manager of the defendant. This meeting however did not come to fruition.

[20] The claimant argues that he was terminated by the defendant without a hearing on the matters of his employment, in breach of his rights.

[21] On the other hand, the defendant contends that the meeting scheduled with the claimant was cancelled for good reason and also that the meeting was not for the purpose of the dismissal of the claimant. The defendant further avers that upon the claimant's

¹ GDAHCV2015/0260

termination, it paid the claimant his salary in lieu of notice and other benefits, which cures any breach that may have occurred by dismissal without notice.

[22] **Halsbury's Laws of England**² defines wrongful dismissal as:

“...a dismissal in breach of the relevant provision in the contract of employment relating to the expiration of the term for which the employee is engaged. To entitle the employee to sue for damages, two conditions must normally be fulfilled, namely:

- (1) The employee must have been engaged for a fixed period or for a period terminable by notice and dismissed either before the expiration of that fixed period or without the requisite notice, as the case may be; and
- (2) His dismissal must have been wrongful, that is to say without sufficient cause to permit his employer to dismiss him summarily.”

[23] In **Jupiter General Insurance Co. Ltd v Ardeshir Bomanji Shroff**³, it was held that the test to be applied with respect to the second condition for wrongful dismissal is whether the misconduct of the claimant was not such as to interfere with and to prejudice the safe and proper conduct of the business of the company, and therefore to justify immediate dismissal⁴. This test varies with the nature of the business and the position held by the employee, thus decisions in other cases are of little value.

[24] The claimant argues that he was summarily dismissed by the defendant on 15th April 2016 without the defendant having any discussions with him. The claimant further asserts that his wrongful dismissal was even further exacerbated when the defendant withheld his payment of pension and gratuity benefits until 11th November 2017 when only a portion of what he alleges was due was paid.

² (2021), vol 41, para 832

³ [1937] 3 All ER 67

[25] The defendant maintains that the claimant was dismissed with cause as it was an expressed term of the claimant's employment contract that his salary included an allowance in lieu of overtime payments, and that he was not entitled to receive same. Notwithstanding this, the claimant received cash payments "ex-hand" from clients of the defendant for overtime which he did not disclose to the defendant in breach of his contract which ultimately led to his dismissal.

[26] **Section 77** of the **Employment Act**⁵, empowers an employer to summarily dismiss an employee for cause. **Section 77** of the **Employment Act** provides:

"An employer is entitled to dismiss summarily where the employee is guilty of serious misconduct of such a nature that it would be unreasonable to require the employer to continue the employment relationship."

[27] The burden of proof lies with the claimant to prove that the defendant acted unreasonably in terminating his employment. This is especially so in light of **Section 79(1)** of the **Employment Act CAP 89**, which states that:

"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."

[28] The claimant has failed to discharge the said burden on the face of the facts. The court is of the view that the actions of the claimant in the taking of what is termed by the parties as "ex-hand" payments from clients for overtime without the knowledge or consent of the defendant was unlawful.

⁵ CAP 89

[29] The claimant claimed that he should have been compensated for the duties that he performed in addition to and beyond his duties as assistant to the port manager. Whereas the claimant may have been performing over and beyond his scope of duties, he was bound by the terms of his contract which provided for an allowance in lieu of overtime.

[30] Lord Bingham of Cornhill in **Dairy Containers Ltd v Tasman Orient CV**⁶ stated that:

"The contract should be given the meaning it would convey to a reasonable person having all the background knowledge which is reasonably available to the person or class of persons to whom the document is addressed."

[31] The claimant conceded that he collected overtime, this was in breach of his contract of employment. The fact that other persons were taking "ex-hand" payments unknown to the defendant did not make it lawful. The claimant was required to continue his negotiations with his employer for an increase in salary for the additional work assigned or seek to vary the terms of his contract to provide for the payment of overtime.

Whether outstanding monies are due to the Claimant

[32] The claimant pleads that he is entitled to an outstanding amount of \$26,101.17, being a portion of the monies due from the claimant's lump sum pension payment. The amount of \$33,399.17 was deducted by the defendant to settle the claimant's indebtedness to the defendant, however it is the claimant's position that the total amount refundable by him to the defendant was the sum of \$7,298.00.

[33] The claimant has failed to demonstrate through any documentation or evidence the basis for arriving at the figure of

⁶ [2005] 1 WLR 215 at 12

\$7,298.00. Likewise, the defendant was also unable to prove before this court that the amount of \$33,399.17 was appropriated by the claimant. The evidence on behalf of the defendant demonstrated that its internal auditor could not determine how much money the claimant appropriated.

[34] As this is the claimant's claim, however, the \$7,298.00 figure ought to have been justified by him. It is trite law that he who alleges and seeks to establish their rights in law must prove his case, and on a balance of probabilities. This court requires more than bare assertions made by the party whose interest is concerned to find in favour of said party. There are no witnesses for the claimant other than himself. Instead, the claimant merely seeks to undermine the defendant's decision to deduct \$33,399.17, which figure was less than that which was found owing after of a conference held between the claimant, the defendant and the Labour Commissioner. The claimant has failed to prove this aspect of his claim.

[35] As indicated above it appears that the claimant's reasoning for appropriating "ex-hand" payments was that he completed additional duties during his employment but was not compensated for same. Be that as it may, the appropriate rectification for the lawful receipt of payment would have been through renegotiation of his existing contract. The completion of additional duties by the claimant did not justify the appropriation of the defendant's funds by way of overtime "ex hand" payment from the port users. The claimant ought to have pursued same through the avenue of complaint laid with the Labour Commissioner and the Labour Minister under the statutory provisions.

ORDER

[36] Given the above circumstances, it is ordered and directed as follows:

- (i) The claimant's claim stands dismissed.
- (ii) Prescribed costs to the defendant pursuant to CPR 65.5.

Agnes Actie
High Court Judge

By the Court

Registrar