

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

CLAIM NO. GDAHCV2019/0326

BETWEEN:

TARA LEWIS

Claimant

and

UNICOMER GRENADA LIMITED

Defendant

Appearances:

Mr. Derick Sylvester with him Ms. Alicia Lawrence for the Claimant
Ms. Linda Dolland for the Defendant

2022: May 5;
August 2 .

JUDGMENT

- [1] **GLASGOW, J.:** This is a claim for damages arising out of a dispute between the claimant, Tara Lewis, and her former employer, the defendant, Unicomer Grenada Limited, (the company) over its alleged failure to pay severance allowance and pension benefits owed to her upon her termination. The company does not dispute that Ms. Lewis is owed severance allowance and pension benefits, but disagrees with the amount that she claims. The disputation as to the amount has arisen because the parties have not found consensus on the interpretation to be given to article 29 of the 2016 collective agreement made between the trade union representing workers of the company such as Ms. Lewis. Article 29 recites the method for calculating severance benefits. This court is tasked with determining the correct interpretation to be given to article 29 of the 2016 collective agreement and by extension, rule on the amount of severance to be paid to Ms. Lewis.

Ms. Lewis' Case

- [2] Ms. Lewis began employment with the company on 20th May, 1996. Her claim states that:
- (1) The company gave her notice of her impending redundancy by way of a letter dated 27th September 2018. The letter advised her that the post of Customer Service Representative would be made redundant effective 31st December 2018;
 - (2) Her employment with the company spanned 23 years and that fact entitles her to four weeks' salary for each completed year of service in accordance with article 29 of the collective agreement;
 - (3) In breach of the collective agreement, the company has failed to pay her the sum of \$81,574.41 and her pension benefits.
- [3] The particulars of the breach are as follows:
- (1) Failing to pay redundancy package calculated in accordance with article 29 of the collective agreement;
 - (2) Failing to use the appropriate method of calculation of the redundancy pay in accordance with the collective agreement;
 - (3) Failing to pay pensions pursuant to the agreed pension scheme.
- [4] Ms. Lewis avers that the parties convened a meeting with the Labour Commissioner further to which meeting, the Labour Commissioner recommended that Ms. Lewis be paid according to the collective agreement and nothing less than the same. However, the claim states that the company has refused to comply with the recommendation. Therefore, Ms. Lewis asks for special damages in the sum of \$46,394.53 (being the sum of \$81,574.41 less the sum of \$35,179.88 already paid by the company), among other reliefs.

The Company's Case

- [5] The company in its defence admits that Ms. Lewis was previously employed with the company but insists that the number of years of her employment amounts to 22 years. At trial, counsel for the company, Ms. Linda Dolland, conceded that Ms. Lewis was employed with the company for 22 years and 7 months. The defence further states that there were two collective agreements dated 20th February, 2004 and 29th August, 2012 which preceded the collective agreement dated 7th April, 2016. Article 29 of the 2004 collective agreement provides for severance allowance as follows:

“From the completion of one year of service any worker whose service is terminated by the Company as a consequence of closure of a department, redundancy or retrenchment shall be entitled to be paid a severance allowance of:-

2 weeks [sic] pay for each completed year service of [sic] to five (5) years.

3 weeks [sic] pay for each completed year of service over five (5) years.”

- [6] The company points out that article 29 of the 2012 collective agreement is identical to the 2004 agreement. With respect to article 29 of the 2016 agreement titled severance allowance, the defence is that this article is identical to the similar provisions in the 2004 and 2012 agreements, save and except the following:

“Three (3) weeks [sic] pay for each completed year of service up to twenty (20) years;

Four (4) weeks [sic] pay for each completed year of service over twenty (20) years.”

- [7] The company pleads that the true meaning and intention of article 29 of each collective agreement (2004, 2012 and 2016) was that a worker's severance allowance would be calculated on a *“graduated stepped or phased basis constructed on the number of years worked by a worker”*. For that reason, they say that a worker who worked for 15 years and was made redundant would receive two weeks' pay for the first five years of employment and three weeks' pay for the next 10 years of employment. The defence explains that the calculation of the

severance allowance on a stepped or phased basis was consistent with the clear and ordinary meaning of the words contained in article 29.

[8] Alternatively, the company pleads that severance payments on a stepped or phased basis was an implied term by virtue of custom. The company avers that during 2010-2018 it terminated 25 workers, including Ms. Lewis and that the severance allowances were all calculated on a graduated stepped or phased basis according to the 2004, 2012 and 2016 collective agreements. Therefore, the company insists that it correctly calculated and paid Ms. Lewis severance pay in accordance with article 29 of the 2016 collective agreement.

[9] With respect to deductions, the company's defence is that Ms. Lewis executed a salary deduction order dated 12th April, 2018 which required the company to make deductions from her salary and to pay the same to Ariza Credit Union Ltd. It was a term of the salary deduction order that the amount of the loan outstanding should be deducted from "whatever amount" was due to Ms. Lewis upon dismissal by the company. Consequently, the company paid the sum of \$28,781.99 to the Communal Co-operative Credit Union.

[10] With respect to the Labour Commissioner's recommendation, the company maintains that the recommendation was not binding on them and as such they were not required to comply with same. The company claims that Ms. Lewis is only entitled to a severance allowance of \$35,179.88 which sum has already been paid to her in accordance with her instructions.

The Submissions

Ms. Lewis' Submissions

[11] Counsel for Ms. Lewis, Ms. Alicia Lawrence, in her submissions filed on 21st October 2020 submits that the proper approach for the court to adopt on a question of the interpretation of a contract is to identify the intention of parties by reference to what a reasonable person having all the background knowledge available to the

parties would have understood them to mean. Ms. Lawrence relies on the House of Lords' decision in **Chartbrook Ltd v Persimmon Homes Ltd and ors**¹ at paragraph 14 and the UK Supreme Court case of **Arnold v Britton**² at paragraph 15 which was referenced by our Court of Appeal in **Grenada Technical and Allied Workers Union v St. George's University Ltd**³ at paragraph 20 of that judgment.

[12] Ms. Lawrence submits that the interpretation of the words used in the agreement must be construed considering their plain and literal meaning. Further any background knowledge available may also be relied upon by the court to determine which type of evidence must be taken into consideration as admissible background information⁴.

[13] The Privy Council in **Donald Halstead v The Attorney General of Antigua and Barbuda and Ors**.⁵ stated at paragraph 6 of the judgment that:

“The recognised approach to the construction is to consider not only the words themselves but the circumstances with reference to which the particular words were used and to ascertain the object which the parties would have had in view in making this particular agreement.”

[14] With respect to background information, Ms. Lawrence submits that the true intention of article 29 was explained by the President of the Union, Mr. George Mason who was also a signatory to the 2016 collective agreement. Mr. Mason's evidence at paragraphs 4, 6 and 7 of his Witness Statement should be taken into consideration when construing the effect of article 29. Ms. Lawrence argues that article 29 is clear and unambiguous. She submits that at face value both interpretations are foreseeable. However, the only difference is the effect of each interpretation.

¹ [2009] UKHL 38

² [2015] UKSC 36

³ GDAHCVAP2014/0008

⁴ Ibid at paras. 21-26

⁵ [1997] UKPC 26 or Privy Council Appeal No. 53 of 1996

[15] Ms. Lawrence is of the view that article 29 was not drafted in a way for a graduated stepped or phased approach to be perceived. Counsel opines that for each category of payment a number of weeks was agreed upon and the qualifying year of service was stated. In this context counsel says that the words in article 29 are not difficult to understand and do not require any more words to be imported to obtain their meaning.

[16] Further, Ms. Lawrence notes that article 29 is quite similar to section 25(1) of the **Protection of Employment Act**, Cap. 212 of the Laws of Saint Vincent and the Grenadines (the SVG Act). In **Floral Fantasy v Bethel Brackin**⁶ the court in that case was asked to construe section 25 of the SVG Act which prescribes:

“The rate of severance pay which is payable by an employer shall be:

- (a) Two weeks’ pay for each year of continuous service from two to ten years;
- (b) Three weeks’ pay for each further year of continuous service from eleven to twenty five years;
- (c) Four weeks’ pay for each year of continuous service in excess of twenty five years.

At the rate of pay at the time of termination a half year or more to count as a full year and less than half year to be excluded from the calculations.”

[17] Comparing the above section in the SVG Act to article 29, Ms. Lawrence explains that had article 29 contained qualifying terms such as “*each further year*” as seen in the SVG Act, then the company’s interpretation would have been accurate. However, article 29 simply stated “*for each completed year of service*” and is meant to qualify workers for the weeks agreed based on their years of service. In the premises, Counsel urges the court to grant the reliefs sought by Ms. Lewis.

The company’s Submissions

⁶ SVGHCV2012/0017

- [18] Counsel for the company, Ms. Linda Dolland, in her skeletal arguments relies on **Grenada Technical and Allied Workers Union v St. George's University Limited**⁷ (SGU case) regarding the principles that the court should apply to interpreting the terms of a commercial contract. Ms. Dolland commends the court to paragraph 20 of that case where the court set out the principles to be applied when the court is interpreting a written contract. Applying these principles to the present case, Ms. Dolland urges the court to deliberate on the natural and ordinary meaning of the clause; the overall purpose of the clause and the agreement; the facts and circumstances known by the parties at the time of execution and commercial common sense.
- [19] In respect of the words “each completed year of service” contained in article 29, Ms. Dolland relies on Lord Hoffman’s dicta in **Investors Compensation Scheme v West Bromwich Building Society**⁸ where His Lordship stated that “[t]he rule that words should be given their natural and ordinary meaning reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents”. Ms. Dolland opines that the application of this principle means that the popular sense of a word prevails unless the court is persuaded by evidence that the parties intended another meaning.
- [20] Ms. Dolland’s view is that the natural and ordinary meaning of the words “each completed year of service” in article 29 of the agreement is a 12-month period which commences from the date of the worker’s engagement. It does not include any fraction or prorating of a year. Therefore, Ms. Lewis’ severance calculation can only be based on the number of years which have “finished a 12-month period of service and not a portion or part of a year of service”. Learned counsel relies on an extract from the Editors of Interpretation of Contracts⁹ in relation to what amounts to a “year”.

⁷ GDAHCVAP2014/008

⁸ [1998] 1 WLR 896

⁹ Sir Kim Lewison, Sweet & Maxwell, 2007 at para. 14.01 at page 521

- [21] Further, Ms. Dolland explains that the use of the words “shall be entitled to be paid a severance allowance of” obligated the company to make payments at the rates apportioned to each tranche of years. Counsel argues that there is no discretionary language in the article which permits the company to forgo one or more tranches in the years of service. Ms. Dolland relies on the case of **Rainy Sky SA v Kookmin Bank**¹⁰, applied in the SGU case in relation to the construction of the article and the agreement in that case. The court, counsel says, must also have regard to the surrounding documentation and circumstances in this case which were known to the contracting parties at the time of the making of the agreement.
- [22] The company’s position is that historically each of the collective agreements, that is the 2004, 2012 and 2016 collective agreements, have had identical or similar tiered severance provisions. The severance payments from those agreements were all calculated on a phased basis. Further, Ms. Dolland invites the court to draw an adverse inference from the fact that George Mason, in his evidence, did not deny that severance payments have historically been calculated on a phased basis.
- [23] Counsel, Ms. Dolland contrasts the 2004, 2012 and 2016 collective agreements with subsequent negotiations for collective agreements. Counsel points out that the collective agreements subsequent to those years include a clause which removes a phased severance calculation for workers who were employed for over twenty years. Counsel observes that this specific exclusion is indicative of the acceptance and recognition that all other severance payments have been and continued to be calculated on a phased basis.
- [24] With respect to pension payment, Ms. Dolland highlights the company’s denial of Ms. Lewis’ claim that it has made no pension payments to her. Ms. Dolland says that Ms. Lewis did not counter this defence in her reply. Therefore, counsel is of

¹⁰ [2011] 1 WLR 2900

the view that Ms. Lewis cannot maintain and/or prove her claim for pension benefits and as such that the issue is no longer live.

Discussion and Analysis

- [25] In **Grenada Technical and Allied Workers Union v St. George's University Limited**¹¹, the Court of Appeal summarised the principles that the court ought to apply when it is interpreting a commercial agreement. The Court recited Lord Neuberger's summation of the relevant principles¹² -

"When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words ... in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see *Prenn* at pp 1384-1386 and *Reardon Smith Line Ltd v Yngvar Hansen-Tangen* (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, *Bank of Credit and Commerce International SA (in liquidation) v Ali* [2002] 1 AC 251, para.8, per Lord Bingham, and the survey of more recent authorities in *Rainy Sky*, per Lord Clarke at paras 21-30."

Natural and Ordinary meaning

- [26] Article 29 of the 2016 collective agreement provides:

¹¹ GDAHCVAP2014/0008

¹² *Arnold v Britton* [2015] UKSC 36 or [2016] 1 All ER 1

“From the completion of one year of service any worker whose service is terminated by the Company as a consequence of closure of a department, redundancy or retrenchment shall be entitled to be paid a severance allowance of:-

- Two (2) weeks pay for each completed year of service up to five (5) years;
- Three (3) weeks pay for each completed year of service up to twenty (20) years;
- Four (4) weeks pay for each completed year of service over twenty (20) years.”

[27] It cannot be said that a fair reading of the foregoing words excludes any of the meanings proposed by either party in this case. But if that is the case, then what did the parties intend when they agreed to conduct their affairs by these terms?

[28] A useful starting point may be to read all of the parts of the clause as a whole. Using this approach suggests that the rate for each period of service was not drafted independent of each other. The use of semi colons instead of full stops after each period of service suggests to me that the draftsman did not intend for those provisions to function or be read as stand-alone provisions. For Ms. Lewis’ interpretation to be correct, the rate for each period of service ought to have been drafted as complete sentences. In this case, the rate for each qualifying period is followed by a semicolon which suggests they follow each other and as such the entire provision ought to be read as whole.

[29] Additionally, I agree with Ms. Dolland’s suggestion that the natural and ordinary meaning of the words “completed year” ought to be construed as a full calendar year. Having regard to the fact that Ms. Lewis worked for the company for 22 years and 7 months, those 7 months will not construed as a “completed year”. Therefore, for the purpose of giving effect to article 29, Ms. Lewis’ severance pay will be based on those 22 completed years.

The purpose of the Article and the Agreement

- [30] It is not disputed that on 7th April 2016, the company and the Commercial and Industrial Workers Union executed an agreement with respect to the “wages and conditions of work for the workers of Unicomer Grenada Limited” as stated on the front page of the agreement. The purpose of the agreement and article in issue, that is article 29 of the agreement, was to make provision for terminated workers of the company to receive severance payments based on their completed years of service.

Background information

- [31] Ms. Lewis’ case is that she is entitled to severance allowance based on her cumulative years of service. The company contends that the severance allowance ought to be construed using a graduated stepped or phased approach. Most of the evidence led by both parties, including George Mason’s evidence reflects each party’s subjective interpretations of article 29. The case law suggests that in ascertaining the true meaning of the document, the court must disregard “*the previous negotiations of the parties and their declaration of subjective intent*”¹³, save and except in cases of rectification.

- [32] In respect of background information, the House of Lords in **Investors Compensation** recited above stated at page 913 of the judgment that:

- (1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.
- (2) The background was famously referred to by Lord Wilberforce as the “matrix of fact,” but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

¹³ *Investors Compensation Scheme v West Bromwich* [1998] 1 WLR 896 at page 913

- (3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.
- (4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: see *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.* [1997] A.C. 749.
- (5) The “rule” that words should be given their “natural and ordinary meaning” reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in *Antaios Compania Naviera S.A. v. Salen Rederierna A.B.* [1985] A.C. 191, 201:

“If detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense.” (My emphasis)

Ann-Marie DeGale’s evidence

- [33] Ms. Ann-Marie DeGale’s evidence provides some helpful background information. In her testimony, Ms. DeGale states that between the years 2000 and 2018 some 25 former workers were paid severance allowances pursuant to collective agreements applicable to those years. The company used the graduated stepped or phased approach to determine the severance payments paid to those workers.

- [34] While this evidence may not be said to be solely conclusive of the true intention of the parties, as stated above, it provides very useful context to understand the dealings between the former workers and the company. There ought to be no disputation, for instance, from Ms. Lewis that these former workers were in fact paid using the graduated stepped or phased approach in relation to the calculation of their severance allowances.
- [35] In addition to the foregoing, Ms. DeGale at paragraph 15 of her witness statement testified that as part of negotiations for a new collective agreement (post the 2016 agreement), the union proposed that the severance allowance provision contained in article 29 in respect of workers who have completed over 20 years of service should not include a provision for prorated payments to be made to that category of workers. The future proposed agreement is to stipulate that **“workers who complete over twenty years shall not have their severance payment prorated¹⁴.”**
- [36] The foregoing, in my assessment, is further contextual information indicating that the union representing workers like Ms. Lewis never questioned or objected to the course of dealings with the employees of the company. More explicitly, it would appear from the course of dealings that the phased method of calculation is the method that is currently being applied to severance allowances. It is only in the current cycle of negotiations that the union and the company sought to adjust this course with respect to at least one category of workers, that is, those workers who have completed more than 20 years of service.

George Mason's evidence

¹⁴ Witness statement of Ann-Marie DeGale “AMD 10” at page 67 (Page 385 of Trial Bundle)

[37] Mr. George Mason, President of the Commercial and Industrial Workers Union testified on behalf of Ms. Lewis. He sought to provide background information on the parties' dealings prior to the execution of the 2016 collective agreement. Mr. Mason, at paragraph 7 of his witness statement¹⁵, states that "[t]he defendant failed to honour the true spirit and intent of the negotiation and plain meaning of article 29..." Mr. Mason continues that "[t]he true meaning of this section was that an employee who served over twenty (20) years would be paid four (4) weeks for each completed year of service. It was not supposed to be tiered."

[38] Further, at paragraph 8 of Mr. Mason's witness statement, he recalled a meeting with the Labour Commissioner, Ms. Lewis' representative and the company where the issue of Ms. Lewis' severance allowance was discussed. Mr. Mason recited what transpired at that meeting:

"It was explained in said meeting that at the time of negotiations and subsequent signing of the agreement, the Union understood and interpreted the same to be that the employees would be paid a severance based on their years of service, being the applicable one of the three items stated under article 29 of the agreement and not split or tiered payments as was the Defendant's practice."

[39] The authorities¹⁶ suggest that in interpreting a written contract the court must disregard the subjective evidence of any of the party's intent. None of what was said by Mr. Mason provides an objective background to the dealings between the parties. His evidence is largely a recital of (1) his own subjective take on what the clause meant; and (2) a recital of what the union may have said in a meeting with the company regarding the union's posture on the severance that the union thinks should be paid by the company to Ms. Lewis.

[40] However, I observe Mr. Mason's acknowledgment that the "...split or tiered payments ... was the Defendant's practice". As I have stated above this material

¹⁵ Witness statement of George Mason filed 18th September 2020 (Page 299-301 of Trial Bundle)

¹⁶ See Grenada Technical and Allied Workers Union v St. George's University Limited GDAHCVAP 2014/0008 at paragraph 2 of the headnote.

evidence as to the manner in which the union and the company which negotiated article 29 conducted the payment of severance in times past forms objective and useful background information. Mr. Mason's acknowledgment bolsters the credibility of Ms. DeGale's evidence that between the period 2000 and 2018 the company paid severance to 25 former workers using the tiered approach. Mr. Mason's acknowledgment also strengthens my finding that the Union knew or ought to have known that the company was applying this tiered approach for many years and made no objections to such practice. Therefore, at the time of execution of the 2016 collective agreement it was an objective fact that what the parties intended with respect to article 29 in practice were pursued by the company paying severance allowances to the terminated workers using the tiered or phased approach.

Commercial common sense

[41] A fair construction of the words contained in article 29, does not, in my view, flout any commercial principle. For instance, the only major difference in the outcomes of the two approaches suggested by the parties would be the amount each worker would receive upon termination.

[42] My conclusion on all the foregoing is that a reasonable person being cognisant of the relevant background information would conclude that the language contained in article 29 indicates the payment of severance allowances on a graduated stepped or phased approach.

Ms. Lewis' severance allowance

[43] At trial counsel for both parties agreed that Ms. Lewis worked for 22 years and seven months. Further, both counsel agreed that Ms. Lewis' annual salary for 2018 was \$31,217.45. Ms. Lewis only completed 22 years of employment since those seven months did not make a "complete year" as contemplated by article 29. Her severance allowance can be calculated as follows:

$$\text{Weekly salary} = \frac{\$31,217.45}{52 \text{ weeks}} = \$ 600.34$$

Completed years = 22 years

Using the phased method Ms. Lewis is entitled to the following weekly pay benefits for each completed year of service to company:

2 weeks' pay up to 5 years = 10 weeks' pay
 3 weeks' pay up to 20 years = 45 weeks' pay
 4 weeks' pay over 20 years = 8 weeks' pay
 Total = 63 weeks' pay

- [44] Ms. Lewis' weekly pay of \$600.34 multiplied by her 63 weeks' pay allowance entitles her to the sum of \$37,821.42. It is not disputed that Ms. Lewis has already received the sum of \$35,179.83 from the company. That sum must be subtracted from her entitlement. Therefore, Ms. Lewis is awarded the sum of \$2,641.59 as severance allowance.

Conclusion

- [45] The claimant's claim is granted in part. I order as follows:
- (1) The claimant is entitled to the sum of \$2,641.59 as severance allowance.
 - (2) The claimant has claimed pension on her claim but she has not pleaded the basis or any particulars on which the pension is to be assessed. However, the defendant agrees that the claimant is entitled to pension. Therefore, the parties are to agree on the amount of the outstanding pension due to the claimant. They may file a consent order in this regard. If there is no agreement, either party may apply to the court with evidence for the court to determine the sum due as pension owed to the claimant.

The claimant is entitled to prescribed costs in the sum of \$5,673.21 (being 15% of \$37,821.41). However, the claimant is only partially successful on this claim,

therefore the costs awarded will be reduced to reflect this fact. The claimant is awarded costs of \$2500.00 as costs.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar