

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

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

Claim Number: **NEVHCV2015/0098**

Between

Maureen Webbe

Claimant

-and-

Nevis Electricity Company Limited

Defendant

Before: His Lordship Justice Ermin Moise

Appearances:

Mr. Jeffery Nisbett of counsel for the claimant
Ms. Michelle Slack of counsel for the defendant

2020: February, 25th
March, 6th (Written Submissions)
May, 7th

JUDGEMENT

[1] **Moise, J:** This is a claim for damages for wrongful dismissal. The claimant was an employee of the defendant company until her employment was terminated on 1st April, 2015. She was granted three month's pay in lieu of notice. She complains that this was not sufficient notice, given her years of duty to the company and the level of seniority she had obtained prior to her dismissal. I agree with her and have granted her the orders she has prayed for, save for her claim for car allowance and medical insurance. These are my reasons for doing so.

The Facts

[2] In 1998 the claimant took up employment within the department of electricity within the Nevis Island Administration. Prior to that she had 12 years' experience in the government service, having

risen to the level of Senior Executive in the water department. She states in her evidence, and I have no reason to doubt her, that the Electricity Department was facing a difficult period at the time of her transfer. She was instrumental in getting the department to become a member of the Caribbean Electricity Utility Services Limited (CARILEC). She states that she was able to bring some stability to the department by motivating, encouraging, coaching and mentoring staff.

- [3] In the year 2000 the government established the Nevis Electricity Company (NEVLEC). The purpose of doing so was to transfer the functions of the Electricity Department within the government to a separate corporate entity. The government maintained the shareholding in that company but gave an option to the staff of the department to either remain within the public service or join the newly established entity. The claimant elected the latter. However, upon becoming an employee of NEVLEC, she was not given a written contract. She was however appointed to the post of Customer Service Manager. She held on to that post for five years, at which point she was transferred to the position of Human Resource Officer.
- [4] The claimant states that during these initial five years, she played a major role in the implementation of a new billing system for the organization. The company engaged the services of KPMG to assist with introducing management systems and the claimant played a significant role in that process. As Customer Service Manager she was given a monthly travel allowance in the sum of \$400.00. In September, 2005 a car allowance was instituted in the sum of \$650.00 and eventually increased to \$1050.00 in September, 2013. She also embarked on a course of study in 2004 with the University of the West Indies; completing with a certificate in Business Administration in 2008. In 2009 she enrolled in a course of study which led to her earning a Bachelor's Degree with 2nd class honours from the University of Sunderland, England.
- [5] The claimant states that in 2005 she was transferred to the position of Human Resource Officer. Her evidence was that the main purpose for doing so was to assist in setting up the Human Resource Department. She insists that this was a managerial position and that she was able to build this department from the ground up. This office meant that she also sat as a member of the board of administration of the company. She states that during this time she was able to lift staff morale and organize training workshops for staff, both locally and regionally. She also played a role in drafting and promulgating a staff handbook.

[6] According to the claimant, on 10th June, 2013 she was informed that she would no longer function as Human Resource Officer. She was transferred to the position of Senior Collections Officer. Her main responsibilities were to collect payments from customers with arrears in excess of \$2,500.00. She was offered no explanation for this transfer. She was not of the view that this position matched her expertise and she perceived this to be a demotion. She nonetheless continued to perform this function in a professional manner. In September, 2013 her car allowance was discontinued. She was terminated on 30th March 2015. She states that at 3:45pm on that date she was handed a letter stating that her position had been made redundant. On 1st April, 2015 she was paid \$16,451.35, representing 3 months' notice pay together with 5 days' vacation leave. That was the end of her employment with the defendant after 15 years of service.

[7] The defendant presented evidence from the then General Manager of NEVLEC, Mr. Jervan Swanston. He states that he has known the claimant for many years, although they did not work together for a majority of these years. He replaced the claimant as Human Resource Officer in 2013. He insists that the Human Resource Officer was not a managerial position. He accepted that he attended management meetings whilst holding that position. However, he states that was only because the department did not have a manager. He states therefore that the transfer of the claimant to the post of senior collections officer was a lateral move and not a demotion, as her previous post was not managerial. Mr. Swanston states that the reduction in the claimant's allowances was merely an attempt to cut costs. He suggests that the claimant was not the only one within the organization who had her allowances removed. It was his evidence, and that of at least two board directors who gave evidence at trial, that the decision to transfer the claimant to the position of senior collections officer was as a result of the number of larger accounts which remained in arrears. The claimant was therefore transferred in order to deal with that issue.

[8] Mr. Swanston's evidence was that, whilst the claimant served as Senior Collections Officer, he received a number of complaints about her from the Customer Service Manager. The main complaint was that the claimant was uncooperative and did not do enough for the position she held. He stated that he had a number of conversations with the claimant in an attempt to help her improve her performance. He states that the claimant complained that she should not be performing these tasks. It was his evidence that in 2015, the Customer Service Manager informed

him that there was no need for two persons within the Collections Department. The board considered the issue and decided to make the position redundant. Two members of the board of administration also testified that after reviewing the position in 2015 it was determined that there was no need for two persons in the Collections Department and it was decided to make the claimant's position redundant.

[9] The General Manager insisted that the corporation had concerns about the claimant's behaviour. He however, provided very little evidence to satisfy the court that this was the case or that there was ever any basis to question the claimant's behavior. No formal process had ever been initiated against the claimant, sufficient to demote her from her managerial position. His denial that the claimant served in a managerial position as Human Resource Manager was contradicted by the evidence of Mr. Cartwright Farrell who served as General Manager of the corporation between 2007 and 2013. Prior to that he served as Planning Manager and acted as General Manager between 2003 and 2005. Mr. Farrell's experience with the corporation and the claimant dates back to the period of the Electricity Department and the establishment of the corporation. His evidence was that Ms. Webbe was a dedicated Customer Relations Manager. He corroborates her evidence that the position of Human Resource Officer was a managerial one. In his evidence he states that there was no such department prior to her transfer there and that she was instrumental in setting up the Human Resource Department. Upon his retirement in 2013 he was of the view that the company had become heavily reliant on the customer service system which Ms. Webbe was instrumental in implementing.

[10] I accept Ms. Webbe's evidence where she states that she held managerial positions in NEVLEC until her appointment to the post of Senior Collections Officer. I can find no reason to conclude that she was demoted from the position of Customer Service Manager to Human Resource Officer. She was initially the only one in that department and would have been instrumental in its establishment. Contrary to Mr. Swanston's evidence, I am of the view that Ms. Webbe's appointment to the post of Senior Collection's Officer was effectively a demotion for someone who had been so instrumental in the management of that organization for much, if not all of its existence. No adequate reason had been provided for such a drastic step. What's worse is that the evidence suggests that after Ms. Webbe had done well to reduce the number of accounts which had remained in arrears of over \$2,500.00, her position was then made redundant. At 3:45pm on 30th March, 2015 she received a

letter terminating her employment. The next day she was paid 3 month's salary in lieu of notice. Ms. Webbe was not very far away from retirement age, and yet not even the dignity of early retirement was offered to her. She was, to my mind, not treated with the dignity that one would expect to be afforded to an employee who had served in this particularly public industry for such a long time. Nonetheless what is to be considered is whether her claim for wrongful dismissal is sustainable on the ground of unreasonable notice being provided to her.

The Law

[11] Thankfully, counsel for the parties have not generally disputed the applicable law. Counsel for the defendant has conceded that notwithstanding the notice period provided for in the legislation, the claimant is entitled to rely on the common law position if that is more favourable to her. Given that there was no notice period provided for in the contract, the question is whether 3 months' notice was sufficient. If it was not, then she would have been wrongfully dismissed.

[12] Section 7 of the Protection of Employment Act sets out the notice required in the case of termination of employment. However section 3 states that the Act will apply ***“except where the benefits to be derived by the employee are more favourable than those provided for in the Act, whether the more favourable benefits accrue or will accrue by law, custom, contract or any other arrangement.”*** Counsel for the claimant therefor refers the court to the case of ***Warren v. Super Drugs Markets Ltd***¹. where the common law position was articulated as follows:

“The question, what is reasonable notice, depends upon the capacity in which the employee was engaged, the general standing in community of the class of persons, having regard to the profession to which the employee belongs, the probable facility or difficulty the employee would have in procuring other employment in the case of dismissal, having regard to the demand for persons of that profession, and the general character of the services which the engagement contemplates.”

¹ (1965) 54 DLR (2d) 188

[13] In the case of ***Deca Penn v Scotiabank (BVI) Ltd***² Ellis J noted the following at paragraph 24 of her judgment:

In determining what constitutes reasonable notice of termination, the courts have generally considered all of the circumstances of the case including the nature and character of employment including seniority and stature, salary and benefits; the employee's age, the employee's experience, training and qualifications, the length of service, and the availability of similar employment.

[14] In considering these authorities I am not persuaded that the claimant had been provided adequate notice of the termination of her employment as the defendant has argued. Contrary to the assertions of the witnesses for the defence, I am satisfied that the claimant had held positions of seniority within the corporation. She was among the first employees, having made a significant contribution to the Department of Electricity even prior to the establishment of NEVLEC. She was instrumental in setting up the very management systems operated by the corporation. She entered employment with NEVLEC as a manager and sat on its board of administration. The claimant states that she was unable to obtain alternative employment and I accept her evidence when she says so. She was not that far from retirement, given her age. She had invested in furthering her education during her time at NEVLEC and no doubt used the skills she obtained to benefit the organization.

[15] Not only am I of the view that the notice provided to the claimant was insufficient, given the criteria established by the common law, but I would also not shy away from stating that the manner in which her employment was terminated and the notice provided to her was rather undignified. To hide behind the cloak of redundancy when the claimant was in fact transferred to reduce the number of accounts which remained so substantially in arrears does not remove the court's jurisdiction as it relates to wrongful dismissal. It seems to me that, on balance, the reason the corporation no longer needed two persons in that department was because the number of accounts in arrears for in excess of \$2,500.00 was reduced due to the efforts of the claimant. For that she was rewarded with redundancy and three months' pay in lieu of notice. Contrary to the submission

² BVIHCV2009/0277

of counsel for the defendant, these facts do not lead me to a conclusion of unfair dismissal, which this court is not called upon to consider, but rather into consideration of whether she was given sufficient notice in the circumstances of the case.

[16] Counsel for the defendant has thankfully provided the court with a table of cases from the Eastern Caribbean and the notice period which was deemed to have been reasonable. It is noteworthy that in not one of these cases was three months deemed to be reasonable notice. The lowest period of notice sanctioned by the court was that of 5 months in the case of a Kitchen Assistant and Accounts receivable Clerk³. In another case 5 months was deemed reasonable for an accounts manager with the bank⁴. I am of the view that the claimant is entitled to more notice than what was provided in this case. Failure to provide her with adequate notice was wrongful and she is entitled to damages.

[17] In the case of ***Julie Saunders et al v St Kitts Sugar Manufacturing Corporation***⁵, the employee was 56 years old at the time of his termination. He was an area manager for the Sugar Manufacturing Corporation. He was well qualified in his field and was three ranks away from the top of the organization. At trial the judge awarded 6 months' notice. The court of appeal increased this to one year. In ***Satyaprakash Rajmangal v. BVI Electricity Corporation***⁶, a Generation Manager who was head of his department was terminated and awarded 12 months' notice by the court. Whilst the claimant may not have been the head of a department at the time of her termination, she has certainly headed departments in NEVLEC before. Her contribution to that organization is certainly significant. I am of the view that the claimant is entitled to the period of notice similar to the cases referred above.

[18] As it relates to the claimant's claim for damages for car allowances and medical insurance, I am of the view that sufficient evidence has not been presented to substantiate the claim for medical insurance. As it relates to the claim for reduction in car insurance I accept the evidence of the witnesses of the defendant that this was a cut across the board to reduce costs after reevaluating the policy of vehicle allowance. I would decline to make such an award.

³ See *Marianella Destang v. Geest Industries* - SLUHCv 2014/0090

⁴ See *Deca Penn v Scotiabank (BVI) Ltd* (citation above)

⁵ SUIT NO. 1 OF 1993

⁶ BVIHCv2006/0270

[19] In the circumstances I make the following orders:

- (a) That a period of 12 months constitutes reasonable notice to the claimant for the termination of her employment;
- (b) That the defendant is to pay the claimant the sum of \$54,854.16 as notice pay, less any sums already paid to the claimant in lieu of notice;
- (c) The defendant will pay interest on damages at the statutory rate from the date of the filing of the claim;
- (d) The claim for payment of car allowances and medical insurance are denied;
- (e) The defendant will pay prescribed costs on the damages awarded.

Ermin Moise
High Court Judge

By the Court

Registrar