

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2014/0090

BETWEEN:

MARIANELLA DESTANG

Claimant

and

GEEST INDUSTRIES (ESTATES) LTD

Defendant

Before:

Ms. Agnes Actie

Master

Appearances:

Ms. Leandra Vernueil of counsel for the Claimant

Mr. George Charlemagne for the defendant

2016: December 19.
December 30

JUDGMENT

- [1] **ACTIE A.:** The matter before this court is for assessment of damages for wrongful dismissal.

BACKGROUND

- [2] The claimant had been an employee of the defendant and on 5th January 1997 was appointed as Managerial Assistant and Secretary. She was initially paid a salary of \$3850.00 plus commission on all sales with a retirement plan at the age of 64 years. The claimant avers that sometime in 2012, the defendant in breach of the contractual agreement unilaterally changed her salary to a fixed salary of \$4350.00 and stopped paying the commission on sales. The claimant avers that the defendant, further on 5th

September 2013, unilaterally changed her working schedule by requiring her to work on a rotational basis every other week from 16th September 2013, instead of monthly.

- [3] The matter proceeded to trial before Wilkinson J. where she struck out the defendant's defence and judgment entered in favour of the claimant with damages to be assessed.
- [4] The defendant failed to file a notice of intention to participate in the assessment in accordance with CPR 12.13 and accordingly the assessment of damages shall be conducted in accordance with standard guidelines governing assessment of damages.

Loss of Earnings

- [5] The claimant claims the sum of \$2350.00 for the months of September and October 2013 respectively. The sum claimed represents the diminution in salary for the two months. According to the evidence the rotation of the claimant's duties commenced on the 16th September 2013 and not for the entire month of September as claimed by the claimant. I will allow the compensation from the 16th September 2013 making a total of 45 days. Accordingly the claimant is awarded the diminution in salary for 45 days totalling \$3525.00.
- [6] The claimant also claims for loss of earnings in the sum of \$56,550.00 for the period of unemployment for 13.5 months from November 1, 2013 to December 14, 2014. The claimant presented a job letter from Valley Cold Storage Ltd to confirm her employment from the 15th December 2014 with a monthly salary of \$2500.00. The amount claimed represents the loss of salary for the period of unemployment and the diminution in her present salary.
- [7] The claimant also claims loss of earnings from December 15, 2014 to the age of retirement at 65 years for 144 months at \$1850.00 per month making a total of \$222,400.00. The claimant was 52 years at the time of the dismissal and states that she was due to retire at the age of 64. The claimant avers that she endured hardship to meet most of her financial commitments, including her mortgage commitments which she was unable to honour.

Analysis

- [8] The purpose of an award for damages for breach of contract, is to put the claimant in a position that she would have been had the breach never occurred. The measure of damages for wrongful dismissal is the amount that the claimant would have earned had the employment continued subject to a deduction in respect of any amount derived from any other alternative employment.
- [9] The principles outlined for an award of damages for wrongful dismissal has been distilled by Floissac CJ in **Saunders v St. Kitts Sugar Manufacturing Corporation** which was cited by Barrow J.A. in **Dominica Agricultural and Industrial Development Bank v Mavis Williams**¹, a case almost identical to the case before this court. The respondent in that case had been employed by the appellant bank for almost 21 years as an Assistant Manager, Securities, when she was dismissed for gross misconduct on 9th August 2000. The judge held that the respondent was wrongfully dismissed. In the damages judgment, the judge awarded as damages, the equivalent of the respondent's former salary from the date of dismissal until the date of judgment (approximately 5 years), and from the date of judgment until the date that the judge found that the respondent would have retired (approximately 9 years). The judge awarded the respondent, as well, compensation for the bonus and gratuity that she would have received had the employment continued.
- [10] Barrow J. A on appeal stated as follows:
- “[44] The respondent having been wrongfully dismissed she is entitled to an award of damages that compensates her for the losses she suffered from not having been terminated in accordance with the contract, which is to say upon reasonable notice or upon payment of salary and other contractual entitlements in lieu of notice. This is a well-established principle and was helpfully restated by Floissac C.J. in the

¹ DOMHC Civil Appeal No.20 Of 2005

judgment of this court in **Saunders v St. Kitts Sugar Manufacturing Corporation**.

[45] The chief justice reviewed a number of decisions in arriving at his decision that the appellant in that case was entitled to the equivalent of 10 months' salary and benefits in lieu of notice, and not the 6 months' payments that the judge had awarded. Reasonable notice was a matter of law, he stated, and its determination always depended on the circumstances of each case. The court should consider, among other things, the employee's qualifications, his stature in the position which he held, his skill, his training, the very senior position he occupied, the duration of his employment, the responsibilities of his position and the reasonable length of time it would take him to obtain alternative employment. Among the particular facts that influenced the court's award in that case were that at the time of his dismissal the employee was 56 years old, was three from the top on the field side of his employment, he had undergone specialised training, he had national responsibility and he had given the employer 34 years service.

[46]

[47] In the instant case the respondent was about 46 years of age at the time of her dismissal, she was an assistant manager, she had recently been given financial assistance by the appellant to enable her to pursue a master's degree in business administration and had served the appellant for 21 years and 6 months. In examination in chief in the course of the first hearing the respondent stated that she had been unemployed between August 2000 and October 2001 but had found employment in that month, at a higher basic (but lower gross) salary, which lasted two years. At times thereafter she was variously unemployed or employed at a comparatively very low salary.

[48] In her witness statement the respondent offered her view that damages equivalent to 7 years' loss of salary would be appropriate. The judge's award of 14 years' loss of salary and benefits would have heightened the respondent's expectations. It is, therefore, necessary to clarify the principles behind an award of damages for wrongful dismissal.

[49] On the basis, as set out above, that the respondent's employment was terminable upon reasonable notice, the award of damages to which she is entitled is to compensate her for the loss that flowed from not having been given such notice. The premise is that an employee who has been given reasonable notice of termination has the opportunity of seeking other employment and avoiding the loss flowing from unemployment. Had the respondent obtained better employment within two months of dismissal, for example, her loss from not having been given notice would have been a loss of earnings for two months and there would have been no need to decide what was a reasonable period of notice."

[11] The principles as distilled in the cases state that an employee who has been wrongfully dismissed is entitled to damages as will compensate for the wrong suffered. The basis is that a claimant employment is terminable on reasonable notice. Where an employee is wrongfully dismissed without reasonable notice, the award of damages to which a claimant is entitled is to compensate for the loss that flowed from not having been given such notice. The principle is that an employee who has been given reasonable notice of termination has the opportunity of seeking other employment and avoiding the loss flowing from unemployment.

[12] It is clear from the authorities that the claimant cannot be compensated for the period until the age of retirement as claimed. The claimant can only be compensated for lack

of reasonable notice. What is reasonable notice is to be decided taking into consideration all the circumstances of the individual case. The court would normally take into consideration the age, expertise, qualifications, length of service, position held, and the reasonable length of time it would take for the claimant to find alternative employment.

- [13] In considering a reasonable period of notice for compensation, I take into account that the claimant had been employed from 1977 as a managerial assistant and secretary to the defendant company and other associate and subsidiary companies for over 16 years. It is the evidence that the defendant company in 2013 employed a new Managing Director, who unilaterally changed the claimant's salary and stopped payments of commission on all sales. The new Managing Director also unilaterally reduced the claimant's work schedule to two weeks. I also take into consideration that the claimant was fifty two (52) years old when she was dismissed. She was able to obtain employment at a lower rate than that of her previous employment with the defendant's company. I am of the view that an award in the sum of \$56,550 000 claimed for compensation from the 1st November 2013 to 15th December 2014 to be reasonable to compensate for reasonable notice. However, the amount claimed was calculated on the gross earnings. This award should be adjusted to take into consideration 5% NIC deductions making a sum total of \$53,722.50.

ORDER

- [14] In summary, the claimant is awarded damages for breach of contract as follows:
- (1) Diminution in salary for 45 days totalling \$3525.00.
 - (2) Compensation in lieu of notice in the sum of \$53,722.50.
 - (3) Prescribed Costs on the global sum in the sum of \$5,152.17.
 - (4) Interest at the rate of 3% from 23rd October 2013 to 10th February 2014 and at the rate of 6% from the date of judgment until payment.

Agnes Actie
Master