

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2006/0520

BETWEEN:

ALICIA SARDINE BROWNE

CLAIMANT

-AND-

RBTT BANK CARIBBEAN LIMITED

DEFENDANT

Appearances: Mr Richard Williams for the Claimant, Mr Samuel E. Commissiong for the Defendant.

2015: Mar. 26
Jul. 13

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Mrs Alicia Sardine Browne is a former employee of RBTT Bank Caribbean Limited ("RBTT"), a bank licensed under the Banking Act.¹ RBTT dismissed her in 2004 allegedly for her failure:

1. to protest 10 Bills of collection; and
2. for not obtaining authority from an authorized officer to waive such protest.

Mrs Alicia Sardine Browne initiated this action seeking damages and compensation for unfair dismissal, wrongful dismissal and breach of contract. She alleges that she has suffered substantial loss and injury including loss of

¹ Cap. 87 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

publicity, injury to her reputation, mental stress and stigma associated with the manner of her termination, loss of earnings, pension insurance benefits and bonuses. RBTT contends that her termination was lawful at common law and fair because Mrs Sardine Browne was grossly negligent in not protesting certain Bills of Collection from one of its clients, Suntan Garments Limited (“Suntan”).

[2] RBTT alleges that it was embarrassed by Mrs Sardine Browne’s gross negligence in not protesting the bills. Further, RBTT claims that it had to pay substantial compensation of US\$44,802.50 to Suntan as a direct consequence of her gross negligence. It has counterclaimed for that sum. Mrs Sardine Browne submits that RBTT’s claim for negligence and compensation is statute barred by virtue of the provisions of the Limitation Act.²

[3] RBTT submits that by seeking damages for unfair dismissal and wrongful dismissal, Mrs Sardine Browne invokes two distinct and inconsistent branches of law, namely the common law and the Protection of Employment Act³ (“the Act”). RBTT argues that each claim gives rise to a separate action which must be pursued respectively before the High Court or the tribunal established under the Act.⁴ RBTTs submission implies that Mrs Sardine Browne’s claim of unfair dismissal can only be pursued as a dispute under Part IV of the Act, before a Hearing Officer and ultimately the Tribunal.⁵ In addition, RBTT contends⁶ that it paid Mrs Sardine Browne severance as an *ex gratia* payment under the proviso to section 23 (3) of the Act and this effectively bars her claim for damages for wrongful dismissal. RBTT argues further that payment of severance was not an

² Cap. 90 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

³ Cap. 212 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

⁴ See paragraphs 37 – 40 of the Defendant’s Submissions filed on April 15, 2015.

⁵ Established under section 41 of the Act.

⁶ See paragraphs 5.2 and 11 of the Amended Defence filed on March 6, 2007.

admission that Mrs Sardine Browne was unfairly dismissed. Mrs Sardine Browne submits that by paying her severance, bonus and merit pay, RBTT is estopped from claiming that she was terminated lawfully and for good cause. The case went to trial on the issue of liability.

ISSUES

[4] The issues before the court are:

1. Whether a claim for unfair dismissal can be brought in the High Court and if so, whether Mrs Sardine Browne was unfairly dismissed and is thereby entitled to recover damages?
2. Whether by virtue of the fact that severance was paid:
 - (a) RBTT is estopped from asserting that Mrs Sardine Browne was dismissed for good cause; or
 - (b) Mrs Sardine Browne is precluded from making a claim for wrongful dismissal?
3. Whether Mrs Sardine Browne was wrongfully dismissed and is thereby entitled to damages?
4. Whether Mrs Sardine Browne negligently performed her duties resulting in loss to RBTT for which it is entitled to recover compensation and is that cause of action time-barred?

Issue 1 – Can a claim for unfair dismissal be initiated in the High Court and if so, was Mrs Sardine Browne unfairly dismissed and is thereby entitled to recover damages?

[5] The Act creates a statutory right which protects employees from unfair

dismissal.⁷ It makes provision for an employee who claims to have been unfairly dismissed to raise a dispute by way of complaint.⁸ Whether this mechanism restricts or replaces an employee's access to the High Court for relief for unfair dismissal, must be examined in light of applicable principles. Courts recognize and give effect to the principle that an individual's entitlement to seek redress from the High Court for infringement of his rights can be restricted only by clear and unambiguous words in an Act of Parliament.⁹ Likewise, courts refrain from interpreting statutes to change an established principle of law where the provisions simply amend the principle.¹⁰ Mrs Sardine Browne's claim for unfair dismissal must be dismissed if the Act establishes the dispute mechanism as the sole avenue to pursue a claim for unfair dismissal. An examination of the applicable provisions is necessary to resolve this issue.

- [6] Part IV of the Act outlines the procedure by which an employer or employee may make a complaint for failure by the other party to comply with the provisions of the Act. It stipulates in the first instance that a complaint in writing be lodged with the Labour Commissioner, who shall endeavour to settle the matter with the parties, failing which he must refer it to the Minister.¹¹ The Minister must appoint

⁷ See section 5 (1) of the Act which provides: "*Subject to the following provisions, every person shall be protected against the unfair termination of his employment without good cause.*"

⁸ Ibid. at section 17 (1) which states: "*Where an employee alleges that he has been unfairly dismissed, the employee or any person or organization acting on his behalf may raise the issue as a dispute pursuant to Part IV.*"

⁹ See **Pyx v Granite Co Ltd v Ministry of Housing and Local Government [1959] 3 All E.R. 1 at p. 6 per Viscount Simonds** where he said: "*It is a principle not by any means to be whittled down that the subject's recourse to Her Majesty's courts for the determination of his rights is not to be excluded except by clear words.*" as quoted by **Sir Vincent Floissac C.J. in the Burrill case at p. 198 letter c**

¹⁰ See 44 Halsbury's Laws of England (4th Edn) at paragraph 904 where the learned authors stated: "*...statutes should not be construed ... to make any alterations in the common law or to change any established principle of law, or to alter completely the character of the principle of law contained in statutes which they merely amend.*" quoted with approval by **Sir Vincent Floissac C.J. in the Burrill case at p. 197 – 198.**

¹¹ Ibid. at sections 35 and 36 of the Act.

a Hearing Officer to resolve the dispute¹² and his decision is final unless an appeal to the Tribunal is filed within 21 days.¹³ The Tribunal's decision is stated to be final unless an application is made for judicial review.¹⁴

[7] The several provisions of the Act are expressed in mandatory terms and the relevant subsections provide respectively:

*“35 (1) **An employer or employee**, ... who alleges that the employer or employee respectively has failed to comply with any provisions of this Act, **shall** make a compliant in writing in the first instance to the Commissioner.*

*36 (1) **The Commissioner, shall**, in the case of any dispute referred to him under section 35, give notice thereof to all interested parties and **try** to bring about a settlement with the parties.*

*(3) If, within fourteen days of the filing of the petition referring the dispute, **the Commissioner** does not succeed in bringing about a settlement, he **shall** refer the dispute with his report thereon to the Minister.”*

37 (1) On receipt of any report from the commissioner pursuant to section 36, the Minister shall refer the dispute to an officer, in this Act referred to as a Hearing Officer.

*38 (1) **The Hearing Officer shall**, after issue of notice to all the interested parties, either-*

- (a) **hold hearing conference** and attempt to narrow down the issues and then adjudicate on the dispute; **or***
- (b) **proceed to trial** straight away **and adjudicate** on the dispute.*

*(2) **The Hearing Officer shall**, within fourteen days of the closing or hearing, **give his decision on the dispute** by order in writing.”*

¹² By holding a hearing conference or a trial.

¹³ Ibid. at sections 37 to 39 of the Act.

¹⁴ Ibid at section 41 of the Act.

“39 Every decision of the Hearing Officer shall be final if no notice of appeal is filed within twenty-one days of his decision.

41 (6) The Tribunal shall exercise such powers and perform such duties as are conferred or imposed upon it by this Part, or as may be incidental to the attainment of the objects of this Part, ... including ... the making of orders requiring compliance with the provisions of this Part.

(7) Every order or decision of the Tribunal is final and shall not be questioned or reviewed in any court save and except where judicial review is applicable under any law.” (bold mine)

[8] Section 3 (6) of the Interpretation Act¹⁵ is also germane and self-explanatory and states:

“In every written law, the word “shall” shall be read as imperative and the word “may” as permissive and empowering.” (bold mine)

By using the compulsory “shall” to govern the dispute procedure in Part IV and particularly in section 35 (1) of the Act, the Legislature has imposed a statutory obligation on employers and employees alike, to utilize the mechanism outlined whenever they allege that the other party has not complied with the Act. This includes when an employee claims that she has been unfairly dismissed. Mrs Sardine Browne deposed that RBTT dismissed her without good cause and without affording her an opportunity to defend herself.¹⁶ Her complaint invokes sections 5 (1) and 17 of the Act which confers on an employee, broad protection against dismissal without good cause and without being afforded an opportunity to defend oneself. Mrs Sardine Browne complaint is that RBTT failed to comply with those statutory requirements. If made out, such breaches of the Act would constitute unfair dismissal. In order to obtain redress in either case, the only

¹⁵ Cap. 14 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

¹⁶ See paragraphs 32 to 35 of Alicia Sardine Browne’s witness statement filed on August 25, 2008.

recourse available to Mrs Sardine Browne is to raise a dispute with the Labour Commissioner under section 35 of the Act. She has not done so.

- [9] Furthermore, the avenue for relief created by Part IV is available equally to an employer and an employee. Based on an established principle of statutory interpretation, such equanimity signifies that Parliament intended that issues of unfair dismissal be determined wholly through the process established under the Act, except where a party seeks judicial review of a decision or related proceeding. In this regard, the dicta of Lord Diplock in **Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd**¹⁷ is instructive. He explained as follows:¹⁸

*“... where in any Act which merely regulates the rights and obligations of private parties inter se, requirements to be complied with by one of those parties **are imposed for the sole benefit of the other party**, it would be inconsistent with their purpose if the party intended to benefited were not entitled to dispense with the other party’s compliance in circumstances where it was in his own interest to do so.”* (bold mine)

- [10] The implicit corollary of this principle is that where requirements are extended to both parties they are intended to be mandatory. In the premises, Mrs Sardine Browne must prosecute her claim for unfair dismissal in accordance with the legislative dictates in Part IV of the Act. Unless she is applying for judicial review, and she is not, she is not entitled to seek redress from the High Court. It is the Labour Commissioner, Hearing Officer and the tribunal which have jurisdiction to entertain and determine such a complaint, not the High Court. It is accordingly not appropriate for this court to consider whether she was unfairly dismissed. Her

¹⁷ [1970] 2 All ER 871, HL.

¹⁸ Ibid. at page 893 of the **Kammins case**, quoted with approval by **Sir Vincent Floissac C.J.** in the **Burrill case** at p. 199.

claim for unfair dismissal is misdirected and improperly originated in the High Court. For these reasons It must fail. Mrs Sardine Browne's claim for unfair dismissal and damages for unfair dismissal is therefore dismissed.

Issue 2 – Did RBTT's payment of severance bar Mrs Sardine Browne from making a claim for wrongful dismissal; and is RBTT thereby estopped from asserting that she was dismissed for good cause?

[11] RBTT submits that Parliament under the Act substituted severance pay for damages which were previously recoverable at common law for wrongful dismissal.¹⁹ RBTT also claims that the parties participated in the prescribed mediation process with the Labour Commissioner and at the conclusion Mrs Sardine Browne was lawfully dismissed and paid severance in full and final settlement.²⁰ RBTT asserts that Mrs Sardine Browne was represented throughout by Mr St. Clair Leacock of the Commercial Technical and Allied Workers Union (CTAWU), and that by bringing a claim for wrongful dismissal she is seeking to get "two bites at the cherry", which is not permitted by law.²¹ Mrs Sardine Browne contends that having paid her severance, RBTT is estopped from asserting that she was lawfully dismissed for good cause.

[12] Implicit in RBTT's submissions is the notion that the severance paid to Mrs Sardine Browne was compensation for both unfair and wrongful dismissal. RBTT seems to be suggesting that Mrs Sardine Browne cannot pursue a claim for wrongful dismissal after accepting severance. These contentions raise two separate and related issues and can be re-stated as follows:-

1. Payment of severance to Mrs Sardine Browne comprised compensation for unfair and wrongful dismissal; and

¹⁹ Ibid at paragraphs 6 and 7 of the Defendant's Submissions.

²⁰ See paragraphs 10 of the Amended Defence filed on March 6, 2007, and paragraphs 4, 5, 7 and 40 of the Defendant's Submissions filed on April 15, 2015.

²¹ Ibid. at paragraphs 4 and 5 of the Defendant's Submissions.

2. The only option available to Mrs Sardine Browne is to initiate a claim under the Act for unfair dismissal or in the High Court for wrongful dismissal, but not both.

I now turn to consider each of those contentions.

Purpose of severance pay to Mrs Sardine Browne

[13] The Act provides that an employee who has been terminated for good cause is not eligible to receive severance pay.²² Good cause includes serious misconduct which makes it unreasonable for the employer to continue the relationship.²³ The Act expressly provides for payment of severance to an employee:

1. whose services are terminated by reason that she is incapable of performing her duties due to physical or mental illness;²⁴
2. who is made redundant;²⁵
3. who is unfairly dismissed;²⁶
4. whose services are terminated consequent on disciplinary action, before the matter is referred to a Hearing Officer; in circumstances

²² See section 9 (1) which states: “*The services of an employee may be terminated for good cause, and any employee whose service is so terminated shall not be eligible to receive from his employer severance pay under Part III of this Act.*”

²³ See section 15 of the Act which states: “*An employee may summarily dismiss without notice or payment of any severance pay an employee who is guilty of serious misconduct pertaining to his employment if the conduct is of such a nature that it would be unreasonable to require the employer to continue the employment relationship.*”

²⁴ See section 11 of the Act.

²⁵ See section 12 of the Act.

²⁶ See section 17(1) and (2) (c) of the Act. Subsection (2) (c) states: “(2) *Where on a complaint made pursuant to subsection (1) the Commissioner, the Hearing Officer of the tribunal finds that the complaint is substantiated, the employer may be ordered to-*

(a)...

(b)...

(c) *pay severance to the employee if the employee is so entitled.*”

where the Hearing Officer subsequently rules that the disciplinary action is not justified;²⁷ or

5. whose services are terminated consequent on disciplinary action unrelated to dishonesty or refusal to discharge his work, where the employee has served at least five years.²⁸

[14] Mrs Sardine Browne claims that she was paid severance for RBTT's unlawful action and that they conceded the wrongfulness of their actions.²⁹ She led no evidence of such concession. RBTT alleges that Mrs Sardine Browne was dismissed for her "negligence and/or willful disobedience to lawful and reasonable instructions given in the course of her employment."³⁰ Mr Arnold Dalrymple, a retired Collections Officer with the bank and one of RBTT's witnesses, deposed that Ms Sardine Browne was paid severance out of sympathy and not by virtue of any legal right. RBTT insists that the severance payment was made pursuant to section 23 (3) of the Act and was not an admission that Mrs Sardine Browne was unfairly dismissed. Conspicuously absent from evidence for either party is a document outlining the sum paid to Mrs

²⁷ See section 25 (1) and (3) of the Act which provides: "(1) Every employee who has worked for not less than two years for an employer in a specified employment shall on the termination of his service be eligible to receive severance pay as herein provided from his employer.

(3) For the purposes of this section, save as otherwise provided in this Act, termination of service shall include termination of services resulting from redundancy and any other cause but shall not include termination of services for good cause under section 9, or for retirement on the ground of age, or consequent on disciplinary action if, before taking such disciplinary action the matter has been reported to such officer as may be authorized by the Minister in this behalf and the officer has adjudged the action to be justified..."

²⁸ See the proviso to section 23 (3) of the Act which provides: "

"Provided that where the disciplinary action is against an employee who has put in not less than five years of service, he shall be entitled to severance pay unless the disciplinary action relates to dishonesty or refusal to discharge his work."

²⁹ See paragraph 5 of the Statement of Claim filed on December 4, 2006.

³⁰ See paragraph 16 of the Amended Counterclaim filed on February 2, 2007.

Sardine Browne for severance and the rationale for such payment. However, under cross-examination, Mr Dalrymple's attention was directed to a copy of an email³¹ from Raylene Campbell to Cheryl Guerra³² (both employees at RBTT at that time). In it, Ms Campbell expressly confirms to the addressee that the dispute with Mrs Sardine Browne is being settled at the level of the Hearing Officer and she would receive "severance benefit to which she is entitled" in addition to "gainshare bonus" and "lump sum payments." She also indicated that "we would give Ms. Browne the benefit of the doubt and accept her performance for the years ended December 2002 and December 2003 as "Standard".

[15] This email indicates that RBTT seems to have agreed that Mrs Sardine Browne was entitled to receive severance pay although it contains no explicit reference to the basis for payment. Implicit in the statement about her "standard" performance is an acknowledgment that her termination was not occasioned by refusal to perform generally. As between the parties, it is accepted that the dismissal was not for illness or redundancy. From RBTT's perspective, Mrs Sardine Browne was paid severance because she was not terminated for reasons of dishonesty or failure to perform and she had completed over 5 years at the bank. The email contains an unequivocal acknowledgment by RBTT that Mrs Sardine Browne was entitled to severance pay under the Act. This acknowledgement implies that severance was paid to Mrs Sardine Browne consequent on disciplinary action which was unrelated to dishonesty or refusal to work and in view of the fact that she had served over five years before her dismissal.

[16] In the absence of direct evidence, it is not conclusive why severance was paid and none of the witnesses shed any light on this. I am left to infer the reason from the evidence. I do not accept that severance was paid to Mrs Sardine Browne as an *ex gratia* payment. This goes against reason having regard to the

³¹ Dated Tuesday November 16, 2004.

³² Listed as item number 34 in Schedule 1, Part 1 of RBTT's List of Documents filed on June 18, 2008.

allegations which RBTT made at the time and maintains against her up to the date of trial. This leads me to conclude that severance was paid consequent on disciplinary action unrelated to dishonesty or refusal to work. I note that the exhibits filed in these proceedings were substantial on both sides. I make this remark because I find it more than passing strange that neither party exhibited or produced any documentation containing the decision of the Hearing Officer although items 27 and 32 on RBTT's Amended List of Documents refer to correspondence from him.³³ Irrespective of the rationale for the severance pay, and having regard to all evidence, both direct and circumstantial, I find that RBTT paid Mrs Sardine Browne severance because Mrs Sardine Browne had worked with RBTT for over 5 years and was terminated consequent on disciplinary action, but not for dishonesty or failure to perform. It follows logically that RBTT is not estopped from asserting that Mrs Sardine Browne was dismissed for good cause.

Does a claim for unfair dismissal preclude one for wrongful dismissal?

[17] An employee's claim for damages for wrongful dismissal is sustainable at common law and existed before the Act was enacted. Nothing short of clear and ambiguous statutory language will limit or abolish such a right. It is established that while a statute may abolish or restrict a common law right of access to the High Court, only an unequivocal indication or necessary implication to that effect will suffice.³⁴ This action raises the issue whether an employee's common law

³³ Items 27 and 32 are described respectively as a letter from Hearing Officer, Matthew Thomas to the Defendant Bank dated 1st November 2004 and letter from the Hearing Officer Matthew Thomas to Dr. Ralph Gonsalves, Minister of Labour dated 16th November 2004.

³⁴ Supra. at para. 904 of Halsbury's Laws quoted with approval by **Sir Vincent Floissac C.J. in Burrill and Another v Schrader and Another (1995) 50 WIR 193 at p.197-198**; where the learned authors stated:

"Statutes which limit or extend common-law rights must be expressed clearly and unambiguously, but, if the language is clear, there is no reason why such statutes should be construed differently from other statutes. Except in so far as they are clearly and unambiguously intended to do so, statutes should not be construed so as to make any alteration in the common law or to change any established principle of law..."

right to seek damages for wrongful dismissal has been curtailed or abolished by the Act. In the **Burrill case**³⁵ decided in the British Virgin Islands, the Court of Appeal considered whether the Labour Code Ordinance abolished the common law right not to be wrongfully dismissed. It declared that the Labour Code did not, but rather “*supplemented that right by a statutory right not to be unfairly dismissed*”. That case also determined that “*an employee now has a common law right and a statutory right.*”

[18] In delivering the judgment, Sir Vincent Floissac C.J. stated: “The common law right is based on contract and the statutory right is based on social policy” and he concluded that “...*the two rights harmoniously exist.*”³⁶ While the provisions of the Labour Code Ordinance are not identical to those in the Act, the historical background to their enactment is analogous. The principles surrounding their application are identical. This court is bound by the decision in the **Burrill case**. I find therefore that Mrs Sardine Browne is not precluded from making a claim for wrongful dismissal even if she had initiated and prosecuted a claim for unfair dismissal under the Act and received severance pay.

Issue 3 - Was Mrs Sardine Browne wrongfully dismissed and if so, is she thereby entitled to damages?

[19] Wrongful dismissal involves the breach of the termination clause in an employment contract. It occurs where an employee who is employed:

1. for a fixed period is dismissed before the expiration of the period; or
2. under a contract terminable by notice is dismissed without being given the agreed notice; and
3. the employer did not have justifiable reasons for terminating the contract.

³⁵ **Burrill and Another v Schrader and Another (1995) 50 WIR 193.**

³⁶ Supra. in the **Burrill case** per Sir Vincent Floissac C.J. at p.196 and 197.

If the contract of employment contains no termination or expiry clause, it is determinable by reasonable notice or the statutory minimum notice whichever is longer.³⁷ An employee who is dismissed summarily for serious misconduct,³⁸ disobedience to lawful orders,³⁹ negligence⁴⁰ or incompetence will not be able to succeed in an action for wrongful dismissal.⁴¹

[20] Once the employee establishes that she has been dismissed, the burden of proof shifts to the employer to not only prove the reason for her dismissal but also that her termination was justified in all of the circumstances.⁴² RBTT acknowledges that Mrs Sardine Browne was dismissed without notice by letter dated June 30, 2004.⁴³ RBTT maintains that Mrs Sardine Browne was dismissed because by failing to protest the non-payment of 10 bills of collection from Suntan, she negligently failed to carry out lawful and reasonable instructions given to her in the course of her employment.⁴⁴ Mr Dalrymple deposed that between October and December 1999, Suntan sent 10 bills of collection to RBTT with instructions to collect all charges from the consignee and to protest the non-payment of the goods on the due dates. He attested further that Mrs Sardine Browne was RBTT's Collections Officer and was responsible for carrying out those instructions. She was therefore required to protest the bills by writing to the consignee demanding full payment within 3 days. If payment was not made within 3 days, Mrs Sardine Browne was required to write to RBTT's attorney instructing him to demand payment.

[21] Mr Dalrymple testified that contrary to RBTT's Code of Ethics and its circular outlining the procedure for protesting bills, Mrs Sardine Browne did not protest

³⁷ See Halsbury's Laws of England 4th Ed. Vol. 16 at paras. 277 and 302.

³⁸ Ibid. at para 640 of Halsbury's Laws. See also **Mercer v. Whall (1845) 5 Q.B. 447 at 466.**

³⁹ **Spain v. Arnott (1817) 2 Stark 256** and **Pepper v Webb [1969] 1 W.L.R. 514.**

⁴⁰ **Jupiter General Insurance Co. Ltd v Shroff [1937] 3 All E.R. 67.**

⁴¹ **Romford Ice and Cold Storage Co. v Lister [1955] 3 All E.R. 460 at 464 and 476.**

⁴² See Halsbury's Laws of England 4th Ed., Vol. 16 at para. 328.

⁴³ See paragraph 6 of the Defence and paragraph 4 of Arnold Dalrymple's affidavit.

⁴⁴ See paragraphs 6 – 9 of the Defence and paragraphs 4 – 15 of Arnold Dalrymple's affidavit.

the bills and she did not obtain permission from RBTT's duly authorized officers to waive such protest. He explained that Mrs Sardine Browne was under a continuing obligation to protest the bills unless she received specific instructions from the authorized officer not to do so. He testified "*every time the bank waives the protest instructions, the person can sue the bank and obtain judgment if the bill is not paid.*" He asserted that Mrs Sardine Browne was quite experienced in that area of RBTT's business having had at least 8 years experience in that area of banking. Mr Dalrymple conceded under cross-examination that it was 6 bills which Mrs Sardine Browne did not protest and not 10 as he originally stated. He said that although she was given repeated opportunities to explain why she had not protested the bills, Mrs Sardine Browne could not provide a legitimate reason. He described her failure in this regard as a serious dereliction of duty which she sought to cover by claiming erroneously that no instructions were given to protest the bills. He indicated that RBTT could no longer trust Mrs Sardine Browne to remain in its employment.

- [22] Mrs Sardine Browne while conceding that she held the position of Collections Manager and was directly responsible for letters of credit along with her supervisor, argued that she was not responsible for carrying out the instructions to "collect all charges" and "protest non-payment of the bills on the due dates". She insisted that it was a department job and she was just a member of the department which had a supervisor, a counter clerk, a typist and a messenger who all deal with bills. She explained that her supervisor had to sign off on anything that she did. I find this explanation mind-boggling and unacceptable. Mrs Sardine Browne accepted that she was manager of that department, yet her *laissez-faire* attitude as expressed in those sentiments suggests that as far as she was concerned, it was everyone else's in the department's responsibility to protest the bills but not hers. I accept Mr Dalrymple's evidence which was not impeached under strenuous cross-examination.

[23] The law is that in each case, it is the quality of the breach complained about by the employer which is important. While a single act of misconduct, negligence or other default will generally not amount to reasonable justification for summary dismissal, depending on the consequences which flow from such conduct, a single incident might be sufficient. I am satisfied that as Manager of the Collections Department Mrs Sardine Browne was responsible for protesting the bills of collection and that she had the necessary training and experience to do so competently. Her excuses and lack of recollection are nothing more than an attempt to avoid responsibility for actions which in all the circumstances were inexcusable and amounted to negligence in the performance of her duties.

[24] I am satisfied that RBTT acted appropriately by giving Mrs Sardine Browne ample opportunity to explain her default in not protesting the bills. I am also satisfied that she failed to provide a reasonable explanation for her repeated delinquencies. The six incidents complained about by RBTT were serious enough to warrant Mrs Sardine Browne's dismissal especially in circumstances where she failed to take responsibility for her failure to protest the bills and could not provide any reasonable excuse for not doing so. In those circumstances, RBTT was justified in terminating her employment for negligence and misconduct, without notice. As it reasoned, failure to do so would probably have exposed it to further loss in similar circumstances in the future. I find therefore that Mrs Sardine Browne was not wrongfully dismissed and she is not entitled to recover damages. Mrs Sardine Browne's claim for damages for wrongful dismissal is dismissed.

Issue 5 – Did Mrs Sardine Browne negligently perform of her duties resulting in loss to RBTT for which is RBTT entitled to recover compensation and is that action time-barred?

[25] RBTT alleges that it was obliged to pay Suntan Garments USD\$44,802.50 to compensate it for the products it lost because Mrs Sardine Browne failed to

protest the Bills of Collections. Mrs Sardine Browne submits that RBTT's claim is statute barred under the Limitation Act⁴⁵ as it was brought more than 6 years after the events complained about. The Limitation Act provides that actions founded in tort shall not be brought more than six years after the cause of action accrued.⁴⁶ Mr Dalrymple testified that Mrs Sardine Browne's failure to protest the collection bills took place in 1999. RBTT filed its counterclaim on February 2, 2007, 8 years later by which time its claim was time-barred. RBTT's claim for compensation from Mrs Sardine Browne in respect of sums paid to Suntan must fail and it is accordingly dismissed.

ORDER

[27] It is ordered:

1. Mrs Sardine Browne's claim for damages for unfair dismissal is dismissed.
2. Mrs Sardine Browne's claim for damages for wrongful dismissal is dismissed.
3. RBTT's claim for compensation from Mrs Sardine Browne is dismissed.
4. Each party to bear its own costs.

[28] The court is grateful to Mr Samuel Commissiong for his submissions.

POSTSCRIPT

[29] When the trial concluded on March 26, 2015, the parties were ordered to file written submissions on or before April 1, 2015. The court learnt subsequently that learned counsel Mr Richard Williams was involved in an accident in which

⁴⁵ Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

⁴⁶ Ibid. at section 4.

he sustained injuries as a result of which he was incapacitated. Counsel Mr Williams wrote to the court requesting an extension of time to April 30, 2015 to file written submissions. An extension was granted having regard to the circumstances. To date, no written submissions have been filed on behalf of Mrs Sardine Browne.

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Esco L. Henry
HIGH COURT JUDGE