

SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

SUIT NO. 1 OF 1993

BETWEEN:

JULIE SAUNDERS AND MERLIN
SAUNDERS, ADMINISTRATORS OF THE
ESTATE OF JOHN SAUNDERS (DEC'D) APPELLANT

AND

ST. KITTS SUGAR MANUFACTURING
CORPORATION RESPONDENT

Before: The Rt. Hon Sir Vincent Floissac Chief Justice
The Hon. Dr. N.J.O. Liverpool Justice of Appeal
The Hon. Mr. Satrohan Singh Justice of Appeal

Appearances: Mr. Lee L. Moore, Q.C., Dr. Henry L.O.S. Browne
and Mr. Glenford Hamilton with him for the
Appellant
Mr. Hugh Rawlins, Solicitor General for the
Respondent

{October 5, 1994: April 6 1995}

J U D G M E N T

SATROHAN SINGH, J.A.

On December 4, 1992, HYLTON J, in giving judgment for the Appellant against the respondent, declared that the deceased was wrongly dismissed from his employment with the respondent as an Area Manager. She awarded the appellant "damages \$33,334 plus total to be agreed as due under the pension scheme" and costs. Included in this sum is \$18,012: being the salary of the appellant for six months. The learned Judge in making this award, considered six months notice as reasonable notice for the termination of the deceased's employment. The appellant appealed against the quantum of the global award but at the end of the arguments, the sole issue which was left for the determination of the Court was whether six months' notice was reasonable notice given the circumstances of this case.

The determination of this issue always depends on the circumstances of each case. The Court should consider inter alia, the deceased's qualifications, his stature in the position which he held, his skill, his training, the very senior position

he occupied, the length or duration of his employment, the responsibilities that attended themselves to that position and the reasonable length of time it would take for him to obtain alternative employment.

The following cases were referred to this Court as a guide to its deliberations on the issue of reasonable notice:-

S W STRANGE LTD V MANN (1965) 1 AER 1065, re. ORIENTAL BANK CORPORATION (1866) 32 CH. 366, LONDON V. GREENBERG (1906) 24 TLR 441, DANIEL V. DIVERSEY CORP. LTD 3053 OF 1984 H.C.T. & T, MARTIN BAKER AIRCRAFT CO. LTD AND ANOTHER V. CANADIAN FLIGHT EQUIPMENT LTD (1955) 2 AER 722, BARDAL V. THE GLOBE AND MAIL LTD (1960) 24 DRL 140, B.G. CREDIT CORPORATION V DA SILVA (1965) 7 WIR 530, GRUNDY V SUN PRINTING ASSOCIATION (1916) 33 TLR, ALBERT MENDEZ AND THE BANK OF NOVA SCOTIA (ST. KITTS BRANCH) SUIT NO. 93 OF 1991 (CIVIL) ST. CHRISTOPHER CIRCUIT DECEMBER 9TH, 1991 UNREPORTED.

In this last case, several other cases were referred to as precedents of reasonable notice.

In the case of B.G. CREDIT CORPORATION V. DA SILVA (1965) 7 WIR 530, where a former Financial Secretary of the Colony of British Guiana was appointed to the position of Manager of the defendant Corporation and had his services in that post terminated before he had even taken up his appointment, Her Majesty's Privy Council opined that **PRIMA FACIE** reasonable notice in those circumstances should have been six (6) months.

The learned Judge in this matter before us, in deciding on six months notice said:-

"An employee who has been wrongfully dismissed is entitled to such damages as will compensate him for the wrong he has suffered. However if an Employer wrongfully terminates a Contract that could be terminated validly the Employee's entitlement is that which he would have earned up to the time at which the Contract could validly be terminated (*Chitty on Contracts 22nd Edition paragraph 1141*). The evidence of the Personnel Manager discloses that the Plaintiff's employment could have been terminated by six (6) months notice and consequently I hold that he is entitled to six (6) months pay in lieu of notice".

I have given serious consideration to these examples of what may be reasonable notice but, as I mentioned earlier, each case will have to be determined having regard to its own circumstance.

In the instant matter, the evidence on these issues which were accepted by the learned Judge revealed that the deceased who was 56 years old, was three from the top on the field side of his employment. Above him were the Chief Executive Officer and the Agricultural Manager. He was a trained employee with a Credit Diploma in Agriculture from the Eastern Caribbean Farm Institute in Trinidad. He was responsible for 1/3 of the Sugar Cane Area of St. Kitts. He had given the respondent 34 years service. He was a good team player who had received several commendations for his work, including one from Booker Tate, a United Kingdom company which was known and respected world wide in the sugar industry. The evidence also showed that the deceased accompanied a Government team to Taiwan as an agricultural expert. The accepted evidence of the Personnel and Industrial Relations Manager of the Corporation, Mr. Wentford Rogers was that if the appellant needed to terminate his employment with the respondent three months notice was required but if the respondent was to terminate the appellant's employment, six months notice was required. There seems however, to be a lacuna in the evidence whether this requirement of notice was a part of the conditions of service of the appellant or whether this was mere opinion of the personnel manager. In his amended statement of claim, the appellant thought that six months notice was required. I do not consider this thought binding on the appellant, the issue of reasonable notice being a matter of law.

Guiding myself by the examples from the cases aforementioned as to what is reasonable notice and, especially by the opinion expressed by Her Majesty's Privy Council in *B.G. CREDIT CORPORATION V DA SILVA* and, considering that in 1991 in *ALBERT MENDEZ V. BANK OF NOVA SCOTIA*, in the High Court of St. Kitts, nine (9) months notice was considered reasonable notice for a 34 year old assistant manager of a banking corporation with fourteen

years service and who was four from the top, I am of the view that given the circumstances of the instant matter, six (6) months notice was inadequate. Having regard to the age, expertise, length of service and the other qualities of this appellant already mentioned, I am of the firm opinion that reasonable notice in these circumstances should be ten months.

Consequent upon this determination, the appellant is entitled to an additional four (4) months salary at the rate of \$3,002: per month totalling \$12,008: The lump sum ordered by the learned Judge to be paid to him under the pension scheme would also now be increased to what would be due to him as if he was retiring in the normal course of his employment ten months from the date of the letter of suspension. He will also be entitled to an additional \$248: for telephone expenses for these extra four months at the rate of \$62: per month. Accordingly, the Judge's award of damages of \$33,334: would be increased by these sums and would now read "Damages \$45,590: plus total to be agreed as due under the pension scheme as if the appellant had retired in the normal course of his employment ten months after his letter of suspension dated November 13, 1991". The remaining orders made by the learned Judge are affirmed.

The Appeal is therefore allowed to the extent of this variation with costs to the appellant.

Satohan Singh

 SATOHAN SINGH
 Justice of Appeal

I concur

[Signature]

 SIR VINCENT FLOISSAC
 Chief Justice

I concur

[Signature]

 NICHOLAS J.O. LIVERPOOL
 Justice of Appeal