

**BARBADOS**

**[Unreported]**

**IN THE SUPREME COURT OF JUDICATURE  
COURT OF APPEAL**

**Civil Appeal No. 5/1999**

**BETWEEN:**

**DISCOVERY BAY BEACH HOTEL LIMITED  
(Appellant)  
AND**

**MONA BASCOMBE  
(Respondent)**

**Civil Appeal No. 6/1999**

**BETWEEN**

**MONA BASCOMBE  
(Appellant)**

**AND  
DISCOVERY BAY BEACH HOTEL LIMITED  
(Respondent)**

**Before: The Honourable Mr. Justice Errol DaC. Chase, Chief Justice (ag.), The Honourable Mr. Justice Colin A. Williams and The Honourable Mr. Justice Frederick L.A. Waterman, Justices of Appeal**

**July 28, 2000; March 1, 2002**

**Mr. W. LeRoy Inniss, Q.C., for Mona Bascombe; and Mr. Hal Gollop and Mr. Steve Gollop for Discovery Bay Beach Hotel Limited.**

**DECISION**

Colin A. Williams, J.A. These are appeals from a decision of the Magistrate for District "E" dated the 6th June 1999, whereby he found that Discovery Bay Beach Hotel Limited ("Discovery") had wrongfully dismissed Mona Bascombe ("Bascombe") and gave judgment for \$27,199.62 and costs of \$305.00. The first appeal is against the whole decision; the second appeal is against the amount of damages awarded by the Magistrate.[1]

The second appeal was disposed of by the parties, who agreed before us through their respective attorneys-at-law that, assuming the Magistrate was correct in finding for Miss Bascombe, the damages should be \$36,266.17 and not 27,199.62.

As to the first appeal, Discovery relies upon three (3) grounds:-

"1. That the decision is erroneous in point of law.

2. That the decision is against the weight of the evidence.

3. That some other specific error not hereinbefore mentioned and substantially affecting the merits of the case, has been committed in the course of the proceedings in the case."

The thrust of Discovery's evidence was that Bascombe and another member of the kitchen staff (Ms. Bowen) did not get on well and that up to 1997 there were at least three (3) disruptions in the smooth running of that department which had adverse affects on the service to guests. By letter dated the 17th February Bascombe was warned and suspended from duty without pay of 14 days. The same letter made reference to two (2) earlier meetings that had been convened because of conflicts between Bascombe and Bowen.

No evidence was led of any alleged misconduct by Bascombe after that, until the 14th May 1998, i.e., some 15 months later, when a dispute

arose over the preparation of fruit for breakfast. It was alleged (Bowen did not give evidence) that fruit was in the cooler already prepared by Bowen the evening before, but Bascombe said she did not see the fruit when she checked the cooler the following morning. Bascombe was dismissed the same day. Discovery's position was that Bascombe's conduct on the 14th May 1998 was just another repetition of her misconduct that was detrimental to the best interests of the hotel.

The Magistrate did not make any assessment of the allegations against Bascombe up to and including her suspension on the 17th February 1997. He [2] did not have to: it was quite clear that, even if her previous conduct was such as to merit dismissal, Discovery had elected to keep her in its employment for another 15 months and thereby condoned any previous misconduct.

It follows, therefore, that the critical events are those of the 14th May 1998. This is how the Magistrate saw and assessed the competing versions of what happened:-

"The undisputed evidence was that on 1998-05-04 the Respondent was on duty. Fruit which ought to have been served to the guest was not served. There was an investigation and it was discovered that fruit was in the cooler already prepared and that Ms. Bowen had worked the evening shift, the previous day. The Respondent's case on the other hand, was that she did not refuse to work with food items already prepared by another member of staff, but that she had not seen the prepared fruit when she checked the cooler.

The Court observed the demeanour of the respondent and believed her when she said she did not see the fruit in the cooler. Indeed that was her story from the very beginning. She said it to her immediate supervisor, she said it when she appeared before the resident manager and when she gave evidence in Court."

It follows from the Magistrate's finding of fact as to what happened on the morning of 14th May 1998 that Discovery must fail in its contention that it had good cause to dismiss Bascombe. Discovery's appeal must therefore be dismissed and the Magistrate's decision in favour of Bascombe is affirmed with the agreed increase in damages.

The order of the Court is that judgment be entered for Ms. Bascombe in the sum of \$36,266.17 and \$305.00 the costs in the Court below, together with the costs of these appeals to be taxed.[3]

Chief Justice (ag.)

Justice of Appeal Justice of Appeal