

**BARBADOS**

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE  
HIGH COURT**

**CIVIL JURISDICTION**

**No.665 of 1992**

**BETWEEN:**

**IVOR WINSTON HOYTE**

**(Plaintiff)**

**AND**

**THE TRANSPORT BOARD**

**(Defendant)**

**Before The Honourable Mr. Justice Errol Da Costa Chase, Judge of the Supreme Court**

**2002: August 2**

**Mr. H. deB. Forde, Q.C., with Ms. W. Straker for the Plaintiff**

**Mr. M. Pierce for the Defendant**

**JUDGMENT**

[1] The plaintiff joined the staff of the defendant as a Clerk on May 2, 1979, he was approximately aged 27, being born on February 17, 1952.

[2] After serving a period of 6 years in that capacity, he was promoted to the position of Supervisor and assigned to the Haggatts Depot, St. Andrew. He was paid monthly for his services with the defendant.

[3] His responsibilities, in the evidence of the General Manager, Hallam Field, entailed essentially the despatching of bus crews from a duty roster prepared by the Superintendent in charge and supervising the remaining employees at the Depot consisting of one or two security guards, a clerk, a duty driver and up to 3 general workers.

Termination of Plaintiff's

[4] In March 1992, a letter dated 25th was issued by the defendant to the plaintiff in the following terms:

Dear Mr. Hoyte:

I regret to inform you that due to the restructuring of the Transport Board, your position will be made redundant effective May 1, 1992.

You will be entitled to severance payment at the rate of 2.5 weeks for each year for the first 10 years of employment, 3 weeks per year for the remaining years up to twenty years, and 3.5 weeks for any further period up to 33 years.

The Board wishes to extend sincere thanks to you for the services rendered during the course of your employment and wishes you well in your future endeavours.

Yours sincerely,

Transport Board,

Ancil Grosvenor,

Personnel Manager.

[5] Two days later the plaintiff received another letter from the defendant dated March 27, 1992:

Dear Mr. Hoyte,

Further to our letter dated March 25, 1992, dealing with your retrenchment, this is to advise that you will be paid one month's pay in lieu of one

month's notice. Your last day at work will be Friday, March 27, 1992.

Yours sincerely,

Transport Board,

Ancil Grosvenor,

Personnel Manager.

[6] The plaintiff's evidence is that he was at work on March 27, 1992 and that at about 10.30 a.m., he received the letter which took immediate effect. In his words:

"I found myself without a job, after one month short of 13 years service with the Board."

[7] Being aggrieved by the defendant's conduct, the plaintiff consulted counsel and was advised to file an action for damages for wrongful dismissal

#### Particulars of Plaintiff's Claim

[8] The plaintiff asserts –

(a) that he was continuously in the defendant's employment pursuant to an oral agreement made between the plaintiff and the defendant on May 2, 1979;

(b) that he rose through the ranks to become a supervisor of the defendant on the following terms:

(i) Salary - \$1,853.00 per month

(ii) Entitlement to free travel on buses of the

defendant

(iii) Four weeks holiday;

(c) that the contract of employment contained no express stipulations as to notice of termination; but that it was an implied term of the contract that the plaintiff was entitled to reasonable notice to determine the employment and to continue in employment until the expiration of such notice;

(d) that in the premises, such notice would have been 12 months;

(e) that by letter dated March 27, 1992 the defendant wrongfully and in breach of contract terminated the plaintiff's services and promised to pay one month's salary in lieu of one month's notice; and

(f) that in the result, the plaintiff has suffered loss and damage.

[9] The plaintiff's claim for special damages are:

(i) 12 months' net salary in lieu of notice = \$18,620.76;

(ii) holiday pay due for period of January 1992 to date of termination;

(iii) loss of benefit in respect of free travel on defendant's buses for 12 months = \$1,440.00

(iv) severance payment for 12 years calculated in accordance with the Severance Payments Act, Cap. 355A.

[10] The plaintiff also claims interest on any damages awarded.

#### Defendant's Response To Claim

[11] While admitting that the defendant was continuously employed pursuant to the contract of employment, the defendant denies that the plaintiff received a monthly salary of \$1,850.00, but contends that the plaintiff was entitled to and was being paid a monthly salary of \$1,704.76 at the time of the termination of his employment.

[12] The defendant further denies that the plaintiff was entitled under the contract of employment to free unlimited travel on its buses as claimed, and asserts that the entitlement to free travel on its buses was limited to free travel only to and from work.

[13] As to the period of notice allegedly implicit in the contract for the termination of the plaintiff's services, the defendant admits that the plaintiff was entitled to reasonable notice to determine his contract, but contends that in the circumstances of the plaintiff's employment, he was not entitled to 12 months' notice.

[14] The defendant's further contention is that the plaintiff is entitled only to one month's notice or payment of one month's salary in lieu of notice.

#### Defendant's Perception of Plaintiff's Claim

[15] In further response to the plaintiff's claim the defendant asserts that the plaintiff is entitled to –

- (i) one month's salary in lieu of notice;
- (ii) holiday pay due from January 1992 to date of termination;
- (iii) severance payment as set out in the letter of March 25, 1992.

#### Circumstances of Plaintiff's Termination

[16] The General Manager of the defendant gave evidence on its behalf and the following extract from his evidence discloses the circumstances in which the plaintiff's services were severed:

"In late 1991 after it was decided that the service/operation of the Transport Board would have to be rationalised as a result of its inability to meet wages for the financial year 1992/1993, meetings were held with the Barbados Workers' Union employees representatives at which a policy was agreed upon as far as retrenchment of employees was concerned in all categories of workers from Manager down.

The agreed policy was that "last in first out" provided that all other things were equal; other things being performance, attitude, attendance and employees record.

These criteria were applied to determine who must go. Following that principle Mr. Hoyte was severed."

[17] His evidence further discloses that during the financial period 92/93 approximately 700 persons had been severed by the defendant. Of the 700, 7 were supervisors at the plaintiff's level and others junior to him in status were also severed. It was in these circumstances and according to the agreed policy with the worker's representatives that the letter of termination of March 25, 1992 was issued to the plaintiff.

[18] The evidence also indicates that the severance payment was not prepared as a result of the defendant's inability to meet its financial obligation during that period. The defendant had, however, informed its employees of their entitlement to severance payment.

[19] The General Manager further testified to the effect that the documents for payments in respect of the plaintiff's holiday and of one month's salary in lieu of notice were prepared and held by the defendant for delivery to the plaintiff personally.

[20] The reason given for this method of payment was that the plaintiff had a monthly standing order and an assignment of salary to a Bank which meant that for an assignment, whatever remained after the standing order would be remitted to the Bank. However, it was the policy of the defendant, in cases of an assignment, not to remit to the Bank the final cheque of an employee so as to ensure that any unfinished or outstanding business between the Board and employee could be concluded.

[21] His evidence further discloses that the plaintiff did not collect his final cheques i.e. the 4/52 part of his holiday pay and the balance of the month's payment in lieu of notice.

#### Severance Payment

[22] In its letter of March 25, 1992, the defendant informed the plaintiff of his entitlement to a severance payment. The evidence of the General Manager discloses, however, that by reason of the defendant's inability to meet its financial obligations in a timely manner during the period 1992/1993, arrangements for the payment of the plaintiff's severance were not concluded until March and June of 1993. His testimony continues in these terms:

"The Board paid 1/2 the severance during the month of March, 1993 (i.e. March 15); and the second half on June 15, 1993. Both of those amounts are at the Board. He did not collect either of the severance cheques."

#### Claim for Free Travel on Defendant's Buses

[23] According to the evidence of the General Manager, the defendant permitted its employees to travel to and from work on presentation of I.D. cards issued to them by the defendant. The evidence further indicates that the defendant had never given permission to travel on its buses using the I.D. card during periods of the employee's off-duty. He further testified that a duty bus was also provided by the defendant to take its employees to and from work thereby avoiding the necessity to use the bus pass.

#### Conditions of Bus Pass

[24] A copy of the pass admitted into evidence as an exhibit shows "the conditions of issuance" in these terms:

"Bearer is granted free travel on Transport Board buses, only while travelling to and from work on the routes specified below.

This pass must be presented on every occasion to the conductor, on demand to any Guard or Authority of the Board, and when collecting wages. This pass is company property, and must be surrendered to the Personnel Department on termination of employment.

Routes \_\_\_\_\_

Report immediately, if lost or stolen.

Signed

Personnel Manager."

[25] It is observed that no routes had been specified in the space allocated.

Fare Per Trip

[26] The evidence further discloses that when the plaintiff's services were terminated the fare payable by passenger travelling on the defendant's buses was \$1.50 per trip.

Issues

[27] An evaluation of the evidence indicates that the issues for resolution are these:

- (a) Whether or not the plaintiff's services with the defendant were wrongfully terminated;
- (b) What was the monthly salary payable to the plaintiff at the date of the termination of his services with the defendant;
- (c) Whether the plaintiff's contract of employment contemplated a period of 12 months' notice to terminate his services or the payment of 12 months' salary in lieu of notice;
- (d) Whether the grant of free travel on the defendant's buses constitutes a financial benefit to be taken into account in calculating the plaintiff's severance payment; and
- (e) What interest is payable to the plaintiff on the sums due to him.

Resolution

Was the plaintiff wrongfully terminated?

[28] It is not in dispute that the defendant experienced financial difficulties in providing its service to the public during 1991 and that towards the end of that year, the defendant took a management decision to rationalise its operation for the financial year 1992/1993. Meetings were held with the plaintiff's union representatives and a policy of retrenchment of the defendant's employees in all categories was agreed. This state of affairs therefore led to the defendant retrenching approximately 700 of its employees of various categories, including the plaintiff.

[29] The evidence of the defendant's general manager clearly indicates that by reason of its financial difficulties the defendant would not have been in a position to meet its obligations to its employees during 1992/1993 and therefore a re-organisation of its operations was necessary.

[30] Section 3 (3) of the Severance Payments Act Cap.355A provides for redundancy in these terms;

(3) For the purposes of this Act, an employee who is dismissed shall be deemed

(a) to be dismissed because of redundancy if his dismissal is wholly or mainly attributable to

(i) ...

(ii) the fact that the requirements of that business for employees to carry out work of a particular kind or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish.

[31] Applying the provisions of section 3(3)(a)(ii) to the evidence which was adduced on behalf of the defendant and which I accept, I find that the plaintiff's services with the defendant were indeed terminated by reason of redundancy and that the defendant's letter of March 25, 1992, to the plaintiff correctly reflected the position. That letter also informed the plaintiff of his entitlement under the Severance Payments Act.

[32] The plaintiff's claim for wrongful dismissal is therefore without substance and is rejected.

Monthly Salary at Termination

[33] The plaintiff's contention essentially is that during his period of service with the defendant his salary as a supervisor was revised from time to time until he was in receipt of the monthly sum of \$1,850.00, and that the defendant without his consent reduced his salary. His evidence on this aspect of the claim is as follows:

My salary was reduced in October of 1991. No one consulted me about that; I never signed to it, nor agreed for it. My salary was reduced when there was a reduction of salary by the Board from \$1853 to \$1704.76. The Board asked me to take a reduction in my salary and I said no and it was reduced in October 1991. I signed nothing. From October 1991, I was paid \$1704.76.

[34] It is a matter of common knowledge that during 1991, the Barbados economy was so seriously threatened that the Government of the day had to adopt stringent measures to preserve the integrity of the Barbados dollar from devaluation. Reduction of Government expenditure was therefore seen as one of the means to promote the recovery of the economy.

[35] Against the background indicated in paragraph 34, Parliament enacted the Public Service Reduction of Emoluments Act 1991 (Act 1991-13). The effect of the Act was to reduce the emoluments payable to public officers, and to other employees in the public service and in other related bodies and to several other persons receiving emoluments from the Consolidated Fund. Parliament also provided that the provisions of the Act were to cease to have effect on March 31, 1993.

[36] Section 3 of the enactment applied the provisions of the legislation to the several persons and services specified in the First Schedule which by paragraph 5(b) included the "staff of all statutory boards".

[37] The plaintiff in his pleadings avers that the defendant is a statutory corporation established by the Transport Board Act, Cap. 297, and his assertion is admitted by the defendant.

[38] The plaintiff's evidence is that the defendant had reduced his monthly salary from \$1853 to \$1704.76 in October 1991 without his consent. The implication is that by so doing, the defendant had acted unlawfully.

[39] The reduction in the salaries of public officers and employees of statutory bodies was ordained by Parliament in section 4 of the Act in these terms:

4(1) In this Act, the "September 1991 rate" means the rate of emoluments that was, on the 30th day of September, 1991, payable to the several persons or in respect of the several services set out in the First Schedule.

[40] Section 4(2) sought to fix the rate of emoluments payable at eight per cent less than the September 1991 rate. The Act further mandated by section 4(6) that the September rate of emoluments payable to the staff of statutory boards "be suspended" and "shall be of no effect and shall not be payable during the period 1st October 1991 to 31st March 1993. The section also prescribed that the rate to be calculated in respect of such staff was to be in accordance with eight per cent less than the September 1991 rate i.e. prescribing, in effect, an eight per cent cut in the salary payable to staff of "all statutory boards". In the case of the plaintiff, his rate of emoluments per month at the 30th of September, 1991 was \$1853.

[41] The constitutionality of the Public Service Reduction of Emoluments Act, 1991 was challenged and it was affirmed by the Privy Council in *Gladwyn King v Attorney-General of B'dos* [1994] 1 WLR at p 1560.

[42] I therefore find that the defendant's reduction of the plaintiff's monthly salary from \$1853 to \$1704.76 was lawful and that the reduced salary forms the basis for computing the plaintiff's severance payment. The claim for a computation on the basis of \$1853 per month is accordingly rejected.

#### LENGTH OF NOTICE

[43] It is contended that the plaintiff's contract of employment is only determinable on the giving of reasonable notice and that the defendant ought therefore to have given the plaintiff 12 months' notice to effectively terminate his employment.

[44] In this connection, it is appropriate to recall the following observations of McRuer C.J. H.C. in *Bardal v. The Globe and Mail Ltd* [1960] 24 D.L.R. (2d) p 140 at p 145:

"There can be no catalogue laid down as to what is reasonable notice in particular classes of cases. The reasonableness of the notice must be decided with reference to each particular case, having regard to the character of the employment, the length of service of the servant, the age of the servant and the availability of similar employment, having regard to the experience, training and qualifications of the servant.

[45] In *Ansari v. British Columbia Hydro and Power Authority* [1986] 13

C.C.E.L.238 (B.C.S.C.), McEachern, C.J. while addressing the question of reasonable notice commented as follows at p. 243:

In *Gillespie v. Bulkley Valley Forest Industries Ltd.*, [1975] 1 W.W.R. 607, 50 D.L.R. (3d) 316 B.C.C.A., it was said that the factors enumerated by McRuer C.J. H.C. should not be regarded as exhaustive but with great respect, they are indeed the most important factors, and other matters which have crept into the assessment of this kind of damages are not of great significance.

[46] Continuing at p. 248, McEachern C.J. added:

At the end of the day the question really comes down to what is objectively reasonable in the variable circumstances of each case, but I repeat that the most important factors are the responsibility of the employment function, age, length of service and the availability of equivalent alternative employment, but not necessarily in that order.

In restating this general rule I am not overlooking the importance of the experience, training and qualifications

of the employee but I think these qualities are significant mainly in considering the importance of the employment function and in the context of alternative employment.

What all this means, in my view, is that the general statement of factors quoted above from *Bardal* are the governing factors, and it would be better if other individual or subjective factors had not crept into the determination of reasonable notice. In my view such other matters are of

little importance in most cases.

[47] In seeking to support the plaintiff's claim, Counsel referred to *Samuel Waithe v. Caribbean International Airways Ltd* [No. 545 of 1987] and *Roseann Whittaker v Caribbean Sea Island Cotton Co. Ltd* [No. 14 of 1990] in which a notice period of 12 months was awarded. It is of significance, however, to observe that those decisions involved circumstances of wrongful dismissal.

[48] In *June Clarke v. American Life Insurance Co* No. 33 of 1998, the Court found that the appellant's termination was by reason of redundancy and the learned Chief Justice in the course of his judgment at pages 13 and 14, paragraphs 44 and 45 said:

Because of the conceptual and practical differences between redundancy and wrongful dismissal and because of the differences in the aims and objectives of compensation for redundancy vis-à-vis damages for wrongful dismissal, we see no basis upon which to import common law principles in arriving at our decision. Statutory severance (redundancy) payments represent compensation for loss of an established job not compensation for loss of future earnings. A severance payment compensates the employee retrospectively whereas damages for wrongful dismissal provide compensation prospectively. We therefore do not believe that the criteria applicable to a determination of reasonable notice in a wrongful dismissal case should apply in a case of redundancy. We are fortified in our view and persuaded by a statement appearing in Professor Cyril Grunfeld's pioneering work "The Law of Redundancy" (3rd Edition 1989). The learned author says at p. 58:

"For an employee to be entitled to redundancy pay the reason for his dismissal must be "redundancy". It is immaterial that his dismissal for redundancy contravened the common law, for example, because it was unjustifiably without due notice. The "redundancy" condition of entitlement to redundancy pay is a specially created concept without any previous common law model.

Equally, however, we are of opinion that a long serving employee should not be peremptorily severed with just the statutory minimum notice. It would not accord with notions of fairness, reasonableness and good industrial practice.

[49] In the *June Clarke's Case*, the appellant had entered the employment of the respondent as a secretary/cashier in May 1962 when she was 27. During her 25 years service with the respondent, she moved through the ranks of her employment to become the respondent's Administrative Manager in 1976. On November 20, 1987, her services were terminated by a letter dated November 12, 1987 which also indicated that she was entitled to full severance, one month's pay in lieu of notice, holiday pay and a full salary for November 1987.

[50] The key issue for resolution by the Court was whether the appellant Clarke was entitled under her contract of employment to more than one month's notice or a payment of more than one month's salary in lieu of notice.

[51] In seeking to resolve the issue, the Court examined the purpose and intent of the Severance Payments Act with particular reference to section 20 which deals with the required period of notice to determine a contract of employment, and the Court took the view, that as a matter of statutory interpretation, the minimum period of notice prescribed by the section could be enlarged by implying a term in the contract of employment to the effect that "the employer, was under a duty, for reasons of fairness and the requirements of good industrial practice, to give reasonable notice of redundancy beyond the statutory minimum period."

[52] In the result, the Court held that the appellant Clarke was entitled to more than the statutory minimum period of notice and, in the circumstances of the case, the Court awarded a period of 5 months' notice.

[53] The length of service with the employer in the *June Clarke's case* was 25 years and at her termination she was an Administrative Manager at the age of about 52. In the present case, the plaintiff's period of service with the defendant was 13 years and having moved through the ranks during those years to the position of a supervisor, he would have been 40 when his services were terminated. There is also the evidence that he sought and was unable to find alternative employment.

[54] In view of the decision in *June Clarke v. The American Life Insurance Company* No. 33 of 1998, and taking all the other circumstances of the plaintiff's termination into account, I find that the plaintiff is entitled to more than the minimum period of notice prescribed by section 20 for the termination of his contract of employment. It is therefore my opinion that 2 months would be reasonable notice in the plaintiff's case. Accordingly, the plaintiff is entitled to the payment of 2 months' salary in lieu of notice.

#### Free Travel

[55] With respect to the issuance of the bus pass to facilitate the plaintiff's travel to and from work, I find that the facility does not constitute a financial benefit for the purpose of computing the plaintiff's severance pay.

#### Interest Payable on Sums due

[56] The sums to which the plaintiff is entitled are:

(i) two months' salary in lieu of notice:

(ii) holiday pay;

(iii) severance payment calculated in accordance with the Severance Payments Act.

[57] In his evidence in chief, the plaintiff indicated that he had been paid up to March 1992, and that he had not been paid any money after his March salary. Under cross-examination on this aspect of his evidence, he said:

"I was not informed by the Board how much my severance was... I did not receive any cheque for 1/2 of any severance payment or notice about

any severance from the Board...My salary is normally paid into aBank account at Royal Bank of Canada, Broad Street."

[58] In further cross-examination with respect to the defendant's letter dated March 27, 1992, he said:

I did not check with the pay office for the one month's salary. I did not make any enquires about vacation pay or severance pay or the months's salary in lieu of notice.

[59] The evidence of the defendant's acting Financial Controller, Malcolm Bovell, indicates that the plaintiff's vacation pay was prepared on April 28, 1992 for collection from the accounts department. Bovell was, however, unaware as to whether the plaintiff was informed that the cheque was prepared and ready for collection.

[60] Bovell further testified that a cheque in respect of half of the amount due as severance pay was prepared on March 5, 1993, and was held by the accounts department. The final payment was due on June 15, 1993.

[61] With respect to the cheques for holiday pay and for the first half of the severance pay, the evidence is that these amounts were deposited in a special account for unclaimed wages held in the name of the Transport Board.

[62] Section 3A of the Severance Payments Act prescribes the time limit within which a severance payment is to be paid in these terms:

(1) A severance payment that is required to be paid by an employer under section 3 shall be paid within 2 months of its becoming due, or within such longer period not exceeding 4 months as the Board allows.

(2) Where a severance Payment that is required to be paid by an employer under section 3 has not been paid within the period specified in subsection (1) interest calculated on the unpaid severance payment at such rate as the Minister responsible for Finance may fix by order, is payable by the employer from the expiration of the period.

[62] In terms of the rate of interest to be applied to unpaid severance payment, Counsel did not, in the course of submissions, direct the Court's attention to any Ministerial order prescribing the appropriate rate; nor has the Court's research established that any such rate has been so prescribed.

[63] It is the Court's view, however, that the intention of Parliament may be achieved by reference to the Court's discretion under the Supreme Court of Judicature Act, Cap. 117A.

[64] The defendant's letter of March 25, 1992 indicated that the plaintiff's effective date of termination was May 1, 1992; and having regard to the terms of section 3A(i), the plaintiff's right to severance pay accrued as from that date.

[65] In the result, it is hereby ordered that the plaintiff's unpaid severance payment shall bear interest at the rate of 4% from July 1, 1992 until today's date, and thereafter at the rate of 6% until payment in full.

[66] The two month's salary awarded by this Court in lieu of two months' notice of termination shall bear interest at the rate of 4% from April 1, 1992 until today's date and thereafter at the rate of 6% until payment in full.

[67] As regards the sum due in respect of the plaintiff's holiday for the period January 1992 to the date of termination, no order is made as to interest, since the evidence discloses that the sum payable was prepared on April 28, 1992 for collection by the plaintiff and his evidence is that he did not make any enquiries about his holiday pay.

[68] The plaintiff will have 2/3 of his costs certified fit for two Attorneys-at-law.

Judge of the Supreme Court.