IN THE COURT OF APPEAL

VIRGIN ISLANDS

MAGISTERIAL APPEAL (CIVIL) NO. 1 of 1975

BETWEEN: PROSPECT ESTATES LIMITED - Appellant (Defendant)

And

ROOSEVELT TODMAN - Respondent (Plaintiff)

Before: The Honourable the Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

M. D. Riegels for Appellant
J.S. Archibald, with him W.L. Stevens, for Respondent

1976, July 8, 14th

DAVIS C.J:

This is an appeal from the decision of the District Magistrate in which she gave judgment for the respondent in the sum of $347.58 and $100 costs.

The respondent's claim was in the sum of $378 being four weeks' wages in lieu of notice less the sum of $113.41 paid by the appellant as one week's wages in lieu of notice, and the further sum of $220.50 being holiday pay earned and unpaid in respect of ten months' service. The total claim was therefore for $485.09.

The respondent was employed by the appellant in June 1974, as a plant operator at the rate of $2.10 per hour and he continued in this employment until 4th April, 1975, when he was injured in the course of his employment. He was paid workmen's compensation in respect of this injury up to the 13th May, 1975. By letter dated 18th April, 1975, the appellant terminated his contract of employment with effect from Friday 25th April, 1975. It is this termination of employment which gave rise to the claim.

The respondent stated in his evidence as follows:-

> "I spoke to John Griffiths when I was to be re-employed. He told me Mr. Howard was to be my boss and he will tell me what to do and that I must continue the same way. He said while standing at the edge of the swimming pool that I would get $2.10 per hour and that at the end of the week I will get my salary. Some days I might be sick and can't get out to work. I did not get paid for these days."

/I.....

I should also mention that during the course of the argument of this appeal both counsel agreed that the respondent was entitled to be paid only for the hours actually worked by him so that if it rained on a particular day or part of the day he would receive wages only for the time actually worked by him.

In regard to holiday pay, Mr. Griffiths of the appellant company said in evidence, "I told him that this time he had to behave himself. I told him his hourly rate would be $2.10 and 10 days holiday pay per year and I told hi[illegible]he agreement was that he would have five days at Christmas and five days during the August Festival." This evidence was rejected by the Magistrate but the respondent in his evidence said, "when you make a year you were supposes to get two weeks' pay. I worked for ten months and I am claiming a proportionate part of that." It is common ground that the respondent actually received holiday pay in respect of 11.7 days.

The hiring has been described as a weekly hiring of 5 working days.

The appeal raises two issues. The first is whether it was open to the Magistrate to rule upon what was reasonable notice for a weekly hiring, and the second is whether it was open to the Magistrate to allocate holiday pay paid and received as such to public holidays on which days the respondent did no work and in the terms of his agreement with the appellant was not entitled to any payment.

On the first question counsel for the appellant submitted that the learned Magistrate was wrong to hold that one month's notice was reasonable for the termination of the respondent's employment. He further submitted that in law a weekly hiring can be terminated by one week's notice or one week's wages in lieu of notice and that there was no scope for the Magistrate to determine what was reasonable notice.

Counsel for the respondent on the other hand contended that where in a contract of employment there was no agreement as to notice then a court is competent to determine what was reasonable notice.

In my view Mr. Archibald's contention is correct that where there was no agreement in a contract as to notice the question of reasonableness of notice was an issue before the court. In order for a court to determine

/what....

what is reasonable notice under a contract of employment, the Court must look at the nature of the employment, the duration of the employment and all the surrounding circumstances including the availability of other employment. When one looks at the nature of the employment of the respondent, I am of the view that although the parties regarded it as a weekly hiring it was not. A person who enters into a contract which denies him payment if he is prevented from working because of rain on any day and which also denies him payment when he falls sick and who has admitted that he could be stopped from working on any day at any time according to the election of his employers can hardly be heard to complain that in those circumstances a week's notice or a week's pay in lieu of notice is unreasonable for the termination of such a contract.

As to the issue of holiday pay the learned Magistrate found that the holidays were two weeks per year and that two weeks meant fourteen working days. She therefore allocated the sum already paid by the employers as holiday pay towards the number of public holidays which fell during the two periods of Christmas and August. It is clear that the Magistrate over-looked the fact that a working week under this contract was limited to five days and that even though two weeks holiday may have been mentioned it could not have been in the contemplation of the parties that it meant anything more than 10 days' pay. I do not agree that public holidays should be excluded as I have already said the respondent was not entitled to any payment except he worked on public holidays. As the respondent has already been paid holiday pay in respect of 11.7 days his claim under this head should have failed. In the result therefore I would allow the appeal with costs in the sum of $150.00.

(sgd) Maurice Davis
CHIEF JUSTICE

I agree.

(sgd) E.L. St.Bernard
JUSTICE OF APPEAL

I also agree.

(sgd) N.A. Peterkin
JUSTICE OF APPEAL