STATE OF ANTIGUA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 9 of 1975

BETWEEN:

CHARLESWORTH ASHTON SHELLY HEWLETT (Plaintiff/Appellant)

and

WEST INDIES OIL COMPANY LIMITED (Defendant/Respondent)

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

Appearances: C. Francis for Appellant
K. Forde with him.

C. Phillips for Respondent
A.W. Archibald with him.

1976, October 25, 26, and 29.

J U D G M E N T

PETERKIN, J.A.

The Appellant sued the Respondent Company for damages for wrongful dismissal in the sum of $34,774.15, but obtained judgment for the sum of $2,074.84 which represented one month's pay in lieu of notice and further sums representing monthly benefits to which the Appellant was entitled under his contract of service.

The Appellant is a qualified Accountant and was recruited in England by Peat Marwick and Company for employment in their firm in St. Lucia on a two year contract. On his way to St. Lucia via Antigua he was offered permanent employment by the Respondent Company. He informed them of

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his contract with Peat Marwick and the terms of that contract, and they offered him a higher salary and better terms of employment than Peat Marwick and assisted him in obtaining release from his contractual obligations with them. They also reimbursed Peat Marwick their expenses incurred in recruiting the Appellant.

At a meeting with Middleton, the Financial Controller of the Company, and others prior to 1st June, 1971, the Appellant agreed to commence his employment with the Respondent Company on 1st June, 1971, pending the receipt of a letter containing the terms of his contract of service with them. The Appellant started to work on 1st June, 1971, and on 4th June, 1971, he received a letter of that date stating the terms on which the Respondent Company was offering him employment with effect from 1st June 1971. The terms of this letter were referred to in paragraph 2 of the Defence to which it was attached. In that letter one of the terms of employment was that the contract of service could be terminated by either party's giving 30 calendar days notice in writing.

The Appellant did not reply to this letter in writing but continued to work for the Respondent Company. He stated, however, that he raised the question of a two year minimum period with Middleton, but that Middleton had replied to the effect that the employment offered him by the Company was permanent. After a few months the Respondent Company became dissatisfied with the Appellant's performance, informed him of this,.....and eventually on 15th December, 1971, terminated his employment and tendered to the Appellant one month's pay in lieu of notice by cheque which unfortunately was unsigned.

/The.....

The Appellant contends that because he had a contract with Peat Marwick for a period of 2 years that it was an implied term of his contract of service with the Respondent that they were to employ him for a minimum period of 2 years and that he was entitled to the sum claimed being the total sum he would have received for the unexpired period of the two years. It is on this implied term only that he grounds his claim for wrongful dismissal, because in his Statement of Claim there is no allegation whatsoever of any variation in the terms of the letter alleged to be the contract, nor is any oral contract pleaded.

The grounds of appeal are as follows:-

(a) The learned trial Judge erred in not awarding judgment to the Plaintiff against the Defendant as the Plaintiff's evidence stood uncontroverted.

(b) The learned trial Judge erred in law in holding that the Memorandum of the Defendants addressed to the Plaintiff constituted evidence of the truth of the matters stated therein and not evidence merely that the matters therein were stated.

(c) The learned trial Judge erred in holding that the Letter of Appointment of 4th June 1971, contained all the terms of the contract between the Plaintiff and the Defendant and this was denied by the Plaintiff and there was no evidence to the contrary.

(d) The Order as to Costs is arbitrary and unjust.

Mr. Forde, Counsel for the Appellant, in arguing grounds (a) and (b) told the Court that the Appellant's claim was based partly on an oral contract and partly on a written contract. He conceded however that no oral contract was pleaded, and stated that the written contract referred to by him was the letter of 4th June 1971.

He contended that there was uncontroverted evidence given by the Appellant which entitled him to a judgment in his favour for wrongful dismissal, and that the trial Judge erred in law when he failed to give such a judgment.

/The.....

The evidence he referred to is the evidence of the Appellant stating that he spoke to Middleton concerning a two year period of employment whereupon he had replied to the effect that the employment offered was permanent. The answer to this submission is that no oral contract was pleaded which varied the terms of the letter of 4th June 1971 and provided for a minimum period of 2 years. In any event, the evidence referred to as being uncontroverted does not establish in my view any agreement to vary the terms of the letter of 4th June 1971. Where a contract specifically stipulates the period of notice which may be given to determine the hiring or employment that period must be taken to be what the parties consider to be reasonable notice for its determination, and even if the servant is wrongfully dismissed the quantum of damages must be the damages assessed for the period stipulated.

Mr. Francis, also for the Appellant, in arguing grounds (c) and (d) submitted that at the trial the question of the parties having expressly provided for a specific period of notice of termination was not an issue as it was not pleaded. I do not agree. Paragraph (2) of the Defence specifically refers to the terms set out in the letter of 4th June 1971, and it is on that contract that the Appellant states that he bases his claim in part.

Counsel further submitted that the Respondent Company dismissed the Appellant from their service for incompetence, and, as this was not proved, it was not open to the Respondent Company to invoke the "termination" clause, and that the trial Judge was therefore in error when he gave damages only for one month in lieu of notice. In my opinion the termination clause was clearly pleaded and was an issue at the trial. Even if I am wrong in so

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holding, then my remarks above in respect of the quantum of damages would apply.

Counsel also submitted that because it was within the Respondent Company's knowledge that the Appellant had a two year contract with Peat Marwick that a proper inference to be drawn was that he would work with the Respondent Company for a minimum period of 2 years. In my view this submission is devoid of merit. The Appellant had obtained a release from his former contract with Peat Marick and had entered into a new contract with the Respondent Company.

It was also argued that 30 calendar days meant a period running from the commencement of one month, and not a period running from one day within one month to another day in the following month. I am of the view that a calendar day runs from midnight of any day in the month to midnight of the following day, and that therefore 30 calendar days would be 30 consecutive days beginning from any day during the month to the following month.

The question arose as to whether or not the Appellant received pay from the 1st December 1971 to 15th December 1971. The evidence shows that although he claimed for a month's pay he stated at p. 30 of the record,

"also one month's salary in lieu of notice - a month ending 15th January, 1972, also holiday pay." That is the period for which one month's salary was given in lieu of notice. Middleton's letter at p. 69 of the record supports the view that the Appellant was paid for the period 1st December to 15th December, 1971.

For the reasons stated above, there is no need to deal with the Respondent's Notice under Order 64, Rule 8 (2) on page 4 (a) of the record.

Accordingly, I would dismiss the appeal, and sustain the judgment.

/N.A. Peterkin.....

(N.A. Peterkin)
JUSTICE OF APPEAL

I agree.

(E.L. St. Beranrd)
JUSTICE OF APPEAL

DAVIS C.J:

Regretfully, I also agree. I say regretfully, because in my view th appellant was treated shabbily by his employers. I think it was an unreasonable term to insert in the contract that his employment could be terminated by thirty calendar days notice. For that category of employee thirty days notice is unreasonable and I should have thought that a period of three to six months would be reasonable when dealing with employees of that category. It leaves me to wonder whether Middleton would have accepted that term as part of his contract. Regretfully too, because I feel that had the plaintiff run his case along other lines his chances of success would have been good certainly as regards the question of reasonable notice. But, there it is, I must do justice in accordance with the law.

I agree that this appeal should be dismissed but I would make no order as to costs.

(Maurice Davis)
CHIEF JUSTICE

I agree with the Order proposed by the Honourable Chief Justice as to costs.

/E.L. St. Bernard.....

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

I also agree.

(N.A. Peterkin)
JUSTICE OF APPEAL