

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO ANUHCV1999/0123

BETWEEN:

GLORIA LAKE

Claimant

and

ANTIGUA COMMERCIAL BANK

Defendant

Appearances:

Kendrickson Kentish for the Claimant

Justin Simon for the Defendant

2003: June 24, December 9,
2004: March 26, April 1

JUDGMENT

[1] MITCHELL, J: Gloria Lake has developed a bad back while working at the Antigua Commercial Bank. She attributes it to the type of work she was put to do. She says the injury was aggravated by a fall she suffered from slipping after stepping in a puddle of water in the staff washroom.

[2] Mrs Lake was first employed on a temporary basis by the Antigua Commercial Bank in the year 1992 as a teller. After various renewals of this short-term contract, she was in the year 1995 employed on a one year contract as a utility clerk. That contract was renewed for another year in October 1996. It was not renewed after October 1997.

[3] As part of Mrs Lake's duties as utility clerk she was required to lift and move about boxes of vouchers and ledgers. She did this in the course of filing records, and researching and

responding to customer queries. The boxes were stored on shelving that extended to the ceiling of the archives room. Their weight varied from between ten and thirty pounds. Sometimes she was assisted by a male member of staff, if one was handy. Her supervisor suggested that she seek the assistance of other employees to lift the boxes. There was not always another member of staff available to assist her. Frequently, she had to lift down and carry the boxes herself. She began to suffer back pains as she carried out her tasks. By April 1995 she had been diagnosed by her doctor as suffering from back pains. She reported the problem to her colleagues and her supervisor, but was not assigned any lighter duties.

[4] In November 1996, heavy rain caused water to enter the staff washroom at the bank. Mrs Lake unknowingly stepped in a puddle of it. As she walked back to her desk she slipped and fell. She hurt her back in the fall. The pain was so unbearable that she had to leave work early and go to visit her brother, who is a doctor, for treatment. He sent her to see a specialist. He diagnosed her as suffering from a prolapse of the lumbar intervertebral disc. He later certified her to be suffering from myofascial pain syndrome, ie, from chronic pain. She has had to take medication to reduce the constant pain. She has travelled to Florida seeking treatment for the continuing pain. There, she underwent surgery. She is still in severe pain and undergoing continuing treatment and taking medication for it.

[5] She has brought this claim against the bank as her employer as she claims she suffered the injury while on the job. This trial is limited to the question of liability only. The question of the amount of damages, if any, has been ordered to be dealt with at a later stage if the court finds the bank liable to her. The bank denies liability. Its claim is that Mrs Lake never brought to its attention the problem with her back so that it could take steps to assign her to lighter duties. They are also suspicious about her allegation that the wet bathroom floor caused her to slip. They suspect that she took up employment with knowledge of a pre-existing condition and concealed it from them. They insist that the system of work they provided was safe, and they deny that the fall occurred as a result of

their negligence. They claim they expressly told her not to lift the boxes but to get assistance when she needed.

[6] The duty of care owed by an employer to his employee is well settled. It is to take reasonable care in all the circumstances of the case not to expose the employee to unnecessary risk. For convenience this duty is often split up into different categories, such as safe tools, safe place of work and safe system of work. But, it always remains one general duty¹. The duty of the employer is to take reasonable care in regard to the particular employee, and all of the circumstances relevant to that employee must be taken into consideration. So far as slips and falls are concerned, it has long been established that it is the duty of the occupier of premises is to see that the floors are kept clean and free from all spillages so that accidents do not occur². Damage suffered by a plaintiff will be held to have been caused by the defendant's negligence if the plaintiff proves on a balance of probabilities or by reasonable inference that the negligence substantially contributed to the damages or the risk or danger thereof. Such negligence may operate either alone or concurrently with other factors to form a component of one compound or cumulated causes³. The House of Representatives of Antigua and Barbuda has codified the common law in sections D10 and D13 of the **Antigua and Barbuda Labour Code, Cap 27**. Those sections impose a duty on an employer to keep the work place in a clean state and to provide effective means for draining floors. The latter section places a responsibility on an employer to furnish suitable protective equipment where a work process involves a reasonable possibility of injury to parts of the employee's body, and prohibits the lifting, carrying or moving of anything manually in excess of a maximum weight which, unfortunately, has never been prescribed.

[7] There is nothing intrinsically dangerous in a utility clerk being asked to lift down boxes of files and papers in the course of her work. These boxes at between 10-30 lbs were not so heavy as to be patently unfit for a woman to lift. The situation was altered when Mrs Lake reported a developing back problem. Supervisors should be trained to be alert for

¹ *Wilson v Tyneside Window Cleaning Co* [1956] 2 QB 121

² *Ward v Tesco Stores Ltd* [1975] 1 All ER 219

³ *Northrock v Jardine* (1992) 44 WIR 160

problems of this sort, so that remedial steps can be taken before the problem escalates to major injury. I do not accept as has been suggested by the witnesses for the bank that she never complained. Nor do I accept the other suggestion that when she did complain she was instructed not to lift the boxes but to let a male employee lift them for her. A bad back caused by injury to the intervertebral disk is notoriously resistant to treatment and repair. It was reasonably foreseeable that if Mrs Lake engaged in lifting boxes of files developed a bad back at work, such an injury would only grow worse if she was left to perform the same duties.

[8] The bank is suspicious that Mrs Lake suffered a long-standing back problem when she took up this employment. The suggestion is that, in voluntarily accepting this type of work when she was aware she had a back problem, she is partly responsible for her injuries. The medical evidence is clear that she never had any history of suffering from low back pain before she fell ill in 1995. I am satisfied that the problems with her back arose only after she began work as a utility clerk. I am equally satisfied that the problem with her back was as a consequence of her lifting of the boxes. She would likely not have sustained the injury but for the lifting of the boxes at work. I do not accept the suggestion that she concealed the injury to her back from the bank. Nor do I accept that when she did complain she was advised not to lift any more heavy boxes but to call on male assistance. Even if that suggestion was made to her, there was no male assistant designated and available to lift the boxes down and back up again when they were needed.

[9] The injury that Mrs Lake suffered while lifting the boxes was aggravated when she slipped on the tiled floor. This is evident from the doctor's testimony. It was reasonably foreseeable to the management of the bank that if water was allowed to puddle on the tiled floor in the staff washroom a member of staff might unknowingly step in it and subsequently slip when walking away, just as happened in this case. The bank has not attempted to produce any evidence that the presence of the water did not arise from any want of care on its part. That a cleaner was present and alerted Mrs Lake that she had stepped in the puddle does not assist the bank. The cleaner had failed to dry the puddle in time to prevent Mrs Lake from accidentally stepping in it. The only ordinary, common

sense conclusion that can be reached is that the bank failed in its duty as an employer to see to it that its floors were kept clean and free from spillages so that an accident did not occur.

[10] Nor is it of legal significance that Mrs Lake was not in continuous employment but on a series of year to year contracts, so that she may be said to have known of her back problem and accepted the risk of further injury when she signed her last contract of 1 October 1996. The fall which caused the crisis to her back and aggravated the injury about which she now complains took place the following month, November.

[11] Given the findings above, there will be judgment for the claimant for damages and costs to be assessed. There will be an interim order for costs to the claimant in the sum of \$6,000.00 to be deducted from the eventual amount of costs ordered and to be paid within 30 days. The following directions are given for assessment:

1. Any further witness statement of the claimant in relation to the issue of quantum to be filed and served by 4 May 2004;
2. Any further witness statement of the defendant in relation to the issue of quantum to be filed and served by 18 May 2004;
3. All documents intended to be used at the assessment to be exhibited to a witness statement;
4. Skeleton arguments to be lodged and served by 1 June 2004;
5. All witnesses to make themselves available for cross-examination;
6. Assessment to take place in chambers before a judge on a date in June to be fixed by the court office;
7. The claimant to file and serve this order.

Don Mitchell, QC
High Court Judge