

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim No. SLUHCV2002/1163

BETWEEN:

DESMOND KNIGHT

Claimant

and

BWIA WEST INDIES AIRWAYS LIMITED

Defendant

Appearances:

Mr. Kenneth Monplaisir QC, Mr. Peter I. Foster with him for the Claimant
Mr. Hilford Deterville QC, Ms. Diana Thomas with him for the Defendant

2004: May 03, 05
2004: June 08

JUDGMENT

Introduction

1. **HARIPRASHAD-CHARLES J:** By letter dated 17th December 2001, the claimant, Mr. Desmond Knight was summarily dismissed by his employer, BWIA (West Indies) Airways Limited. He had been in continuous employment with BWIA for nearly 22 years. He brought these proceedings for wrongful dismissal arising out of a breach of contract of employment.
2. Mr. Knight commenced his employment with BWIA as Resident Representative on 15th December 1979. He served in that position until 1st January 1990 when he was promoted to Area Manager, Saint Lucia and Grenada. In that position, Mr. Knight was the most senior officer in Saint Lucia.

3. As Area Manager, he was responsible for all matters relating to the management of BWIA's office in Saint Lucia including but not limited to staff management and the management of the payment and collection of funds in the course of BWIA's business. His immediate supervisor was Mrs. Beatrix Carrington, Vice President, Marketing and Sales whose office is located in Barbados.

The background to the dispute

4. The basic facts of the case are not in issue. On Sunday, 25th November 2001 at approximately 4.30 p.m., Fabian Hunte, a reservation agent employed with the BWIA office in Saint Lucia was intercepted at the George F.L. Charles Airport by Customs Officials on the ground that he had contravened section 113 (a) and (b) of the Customs (Control and Management) Act No. 23 of 1990, in that he failed to declare when given an opportunity to do so, that he had in his possession the sum of US\$35,210.00 in cash. He, at the time, had disembarked a BWIA flight from Piarco International Airport in Trinidad.
5. Mr. Hunte explained to the Customs Officials that the money he had in his possession belonged to BWIA and that he was carrying it for BWIA. He also indicated that he was in Trinidad on official company business. He admitted also that he had made a false declaration on the Customs Form but explained that the question 'currency instruments' confused him. The money was confiscated.
6. At the time of the incident, Mr. Knight was at the airport. Mr. Terence Leonard, the Assistant Comptroller of Customs approached him and Mr. Knight confirmed that Mr. Hunte was an employee of BWIA and that he was expecting him to bring in money for payment of tickets issued to a client in Trinidad.
7. The following day, Mr. Leonard telephoned the BWIA office in Saint Lucia to seek their assistance in the matter. Ms. Margaret Semei, the Reservations Manager said that BWIA was expecting Mr. Hunte to bring in monies totaling EC \$43,346.60 or US\$16,234.70. Mr. Leonard realized that Mr. Hunte had more money in his possession so he requested a meeting with Mr. Knight, Mr. Hunte, Mr. Kurt Charles, a Reservations and Ticketing Agent

and Ms. Semei. Mr. Leonard also received a letter from Mr. Knight dated 26th November 2001 (Exhibit TL3) wherein Mr. Knight attempted to explain where the money came from and the reason why Mr. Hunte was carrying a such large amount of money on his person. At the meeting, Mr. Leonard analyzed the letter as well as the explanations given by the staff and Mr. Knight. He was not satisfied with the explanations given. As a result, he contacted BWIA's Head Office through Mrs. Beatrix Carrington seeking further clarification on the matter. He wrote a letter dated 26th November 2001 and faxed it to Mrs. Carrington (Exhibit TL4).

8. Mrs. Carrington responded by letter of 27th November 2001 (Exhibit TL5). She provided relevant computerized exhibits but could have only satisfactorily accounted for US\$16,234.70. To date, no satisfactory explanation had been given for the remainder of the money which has since been forfeited.
9. BWIA decided to wait for Mr. Knight to contact them with an explanation of the matter. In the meantime, BWIA launched an investigation. Mrs. Carrington carried out investigations into the flight system and by faxed letter dated 27th November 2001(Exhibit BC1), she supplied the information that Customs requested.
10. Two days passed and Mr. Knight still did not report the incident to BWIA Head Office nor the General Counsel. Instead, he sought legal advice from BWIA's local lawyer on the island, Mr. Anthony McNamara QC.
11. On Wednesday, 28th November 2001, at about 4.55 p.m. Mrs. Carrington set up a Conference call to speak to Mr. Knight. Present were Ms. Nicole Richards, General Counsel and Mr. Anthony Frederick, Security Lead Agent. It was at this stage that Mr. Knight indicated to Mrs. Carrington that he was about to contact her to apprise her of certain developments with respect to Customs in Saint Lucia. He told Mrs. Carrington that he had not contacted her earlier because he was trying to resolve the matter with the assistance of Mr. McNamara. Mrs. Carrington requested him to submit a written report by 10.00 a.m. on the following day.

12. Mr. Knight did not submit his report at 10.00 a.m. but he did so at 2.00 p.m. (Exhibit BC2). On the same day, Ms. Semei, Mr. Hunte and Mr. Charles were summoned by BWIA officials to their Administration Building, Piarco, Trinidad where they were all interviewed and written statements were obtained from them.
13. On Friday, 30th November 2001, Mr. Knight was suspended pending investigation with pay and later that same day, he received a second letter re-suspending him, without pay, to facilitate completion of the inquiry. Mr. Knight was requested to submit any further information relating to his involvement in the matter.
14. Following his suspension, Mr. Knight was summoned to two subsequent meetings in Barbados held on 3rd December and 17th December 2001 respectively. At the latter meeting, he was handed his letter of termination with immediate effect.

The proceedings

15. On 12th December 2002, Mr. Knight instituted proceedings in the High Court for breach of contract of employment on the ground of the manner of his dismissal. He alleged (i) that he was not given a proper opportunity to be heard; (ii) that the investigations carried out by BWIA were unfair and biased and (iii) that he was wrongfully dismissed.

Issues

16. The following three issues arose for determination by the court namely:
- (1) Whether the law of unfair dismissal forms part of the law of Saint Lucia?
 - (2) Whether the rules of natural justice apply in this case?
 - (3) Whether BWIA had a legal right to summarily dismiss Mr. Knight from his employment and if not, the question of damages?

The law of Unfair Dismissal

17. Mr. Knight alleged that he was not given a proper opportunity to be heard. He stated that he was summoned to a meeting in Barbados on 3rd December 2001 but he did not know that the reason for the meeting was to report on or explain the circumstances surrounding the incident of the seizure of the cash until he arrived in Barbados. He further stated that

he became very emotional but composed himself and proceeded to give an oral report which was very consistent with his previous reports but, that at no time was it made known to him that he was exposed to summary dismissal. In particular, he was not told of management's decision given on 28th November 2001 to request Ms. Semei, Mr. Hunte and Mr. Charles to proceed to Trinidad on 29th November 2001 on the instructions of BWIA Head Office and as a result of their reports which contain allegations prejudicial to him, he ought to have been given an opportunity to respond.

18. Mr. Knight next alleged that he was summoned to another meeting in Barbados on 17th December 2001. During the meeting he was handed a letter terminating his services. He alleged that he was not given a proper opportunity of responding to allegations made against him.
19. Mr. Monplaisir QC appearing for Mr. Knight submitted that the investigation which was carried out by BWIA precluded Mr. Knight from putting his case adequately and as such, Mr. Knight was not given a fair opportunity to put his own case and to contradict any relevant statement prejudicial to him.
20. Mr. Monplaisir next submitted that the investigations carried out by BWIA were unfair and biased. He gave five instances to support this contention.
21. Ms. Diana Thomas, Junior Counsel for BWIA argued that the right of an employee not to be unfairly dismissed is a new statutory right that is not known to the law of Saint Lucia. In the case of *Burrill and another v Schrader and another*¹, the Court of Appeal of the Eastern Caribbean Supreme Court had occasion to look at the statutory right not to be unfairly dismissed. One issue in that case was whether the statutory right abolished the common law right not to be wrongfully dismissed. In coming to that decision, Sir Vincent Floissac, Chief Justice quoted at page 196 from the English case of *Surrey County*

¹ 50 WIR 193

*Council v Lewis*² where Lord Hailsham of St. Marylebone (commenting on analogous British Legislation) said:

“...Parliament conferred two important new rights on employees against their employers which arise independently of any rights or obligations contained in their contracts of employment. The first is the right not to be unfairly dismissed...”

22. Further, at pages 196 - 197, Sir Vincent quoted from 44 Halsbury's Laws of England (4th ed) paragraph 904 which reads:

“Statutes which limit or extend common-law rights must be expressed clearly and unambiguously, but, if the language is clear, there is no reason why such statutes should be construed differently from other statutes. Except in so far as they are clearly and unambiguously intended to do so, statutes should not be construed so as to make any alteration in the common law or to change any established principle of law, or to alter completely the character of the principles of law contained in statutes which they merely amend.”

23. Ms. Thomas admits that Mr. Knight has one right and that is the right not to be wrongfully dismissed. She argued that he may ground his claim either in contract or pursuant to the Contracts of Service Act. But nowhere in BWIA's contract with Mr. Knight are the requirements that before he can be dismissed as he alleges in his statement of claim and skeleton argument:

- (a) That he had to be given an opportunity to respond to allegations which would affect his legitimate expectations.
- (b) That before he was suspended he had to be informed that BWIA would summon Saint Lucia staff to discuss complaints about him and that BWIA should not summon or supply tickets to subordinate staff without his knowledge.
- (c) That he had to be present at an investigation where subordinate members of staff were interviewed and that whatever transpired at the interviews, had to be given to him so that he would be given an opportunity of replying to allegations made against him.
- (d) That specific material about the reasons for decision had to be disclosed to him.
- (e) That he had to be made aware of the consequences likely to result in a dismissal.

² [1987] 3 All ER 641 at 643

24. Ms. Thomas submitted that Mr. Knight cannot show a breach of contract by BWIA, and that he was wrongfully dismissed.
25. Unlike England, the right of the employee not to be unfairly dismissed is a new statutory right that is unknown to the employment law of Saint Lucia. The English Parliament introduced the unfair dismissal legislation in its original form by the Industrial Relations Act 1971 with subsequent reforms by passing the Employment Protection Act 1975 and the Employment Rights Act of 1996: see the House of Lords case of *Johnson v Unisys Limited*.³ No such legislation has been enacted in Saint Lucia.
26. Therefore, Mr. Knight is restricted to matters which fall strictly within the province of his right to sue for breach of contract or for the statutory right to sue for wrongful dismissal.

Natural Justice

27. Mr. Monplaisir QC argued that Mr. Knight was wrongfully dismissed in that he was not given a fair opportunity to be heard and to reply to certain allegations which were prejudicial to him. He argued that the investigation into Mr. Knight's involvement in the incident of 25th November 2001 was unfair and that there was essentially a breach of the rules of natural justice. Counsel submitted that implicit in the concept of fair adjudication lie two cardinal principles, namely, that no man shall be a judge in his own cause (*nemo iudex in causa sua*), and that no man shall be condemned unheard (*audi alteram partem*).
28. The rule that no man shall be condemned unless he has been given prior notice of the allegation against him and a fair opportunity to be heard is indeed a cardinal principle of natural justice: see *R v Chancellor of Cambridge University*⁴. This rule has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act judicially in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court.

³ [2001] UKHL 13; [2001] 2 All ER 801

⁴ (1723) 1 Stra 557 at 567, per Fortescue J.

29. So, the principles of natural justice are public law principles that ought to remain in the public law sphere and have no relevance or application to the private contract of employment between an employer and an employee.

30. In *Ridge v Baldwin*⁵, Lord Reid made it clear that the principles of natural justice have no place in a strictly contractual relationship. At page 71, he said:

“ The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service and the master can terminate the contract with the servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract, he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence; it depends on whether the facts emerging at the trial prove breach of contract...”

31. So the fairness or unfairness of the investigation does not affect whether or not Mr. Knight was wrongfully dismissed. Rather, the question is whether or not BWIA had sufficient cause to dismiss Mr. Knight.

32. Even if I were wrong to accept the submissions of Mr. Deterville QC that the principles of natural justice have no place in this case, I am of the opinion that BWIA acted fairly in all the circumstances in that:

- (a) Mr. Knight was given an opportunity at the conference call on 28th November 2001 to comment on the letter written by the Saint Lucia Customs.
- (b) He was requested to submit a report by 10.00 a.m. on 29th November 2001. The report did not arrive until 2.00 p.m.
- (c) He was informed by two letters dated 30th November 2001 of the reason for his suspension.
- (d) BWIA requested Mr. Knight to submit further information on his involvement in the matter.
- (e) BWIA had a meeting with Mr. Knight on 3rd December 2001 whereby he was given an opportunity to explain the inconsistencies and his handling of the matter.

⁵ [1963] 2 All ER 66

- (f) Mr. Knight has another 14 days to make representations to BWIA while he knew that investigations were ongoing. He did not avail himself of that opportunity.
- (g) BWIA gave Mr. Knight another opportunity at the meeting on 17th December 2001 to give further information.
- (h) BWIA gave reasons for Mr. Knight's dismissal in its letter of 17th December 2001.

33. In my judgment, Mr. Knight was given more than enough opportunities to be heard on the matter.

Summary Dismissal

34. Under the Contracts of Service Act, No. 14 of 1970, Mr. Knight was deemed to have been employed for an indefinite period: see Section 6.

35. Under Section 7, an employee can be summarily dismissed for the following reasons:

- (i) where an employee is guilty of misconduct whether in the course of his duties or not, inconsistent with the fulfillment of the express or implied conditions of his contract of service;
- (ii) for willful disobedience of lawful orders given by his employer;
- (iii) for repeated substantial neglect of his duties.

(i) Misconduct

36. Mr. Knight was dismissed on the grounds contained in a letter of dismissal dated 17th December 2001. Mr. Monplaisir submitted that the reasons given for Mr. Knight's dismissal can be categorized as misconduct and that in analyzing the reasons for his dismissal, it is submitted as follows:

- (a) Being involved in ticket sales for a route other than Saint Lucia;
- (b) Disregarding company's pre-paid ticket advice (PTA) procedure;
- (c) Failure to fulfil responsibilities as Area Manager.
- (d) Failure to supervise the sale of tickets;
- (e) Assistance of external Counsel
- (f) Inconsistent information.

37. Mr. Monplaisir submitted that Mr. Knight was wrongfully dismissed for the following reasons:

- (a) He was not immediately responsible for processing tickets.
- (b) He was unaware that the employee was carrying cash for tickets sold and did not authorize it.
- (c) He was not aware and did not sanction additional tickets and monies for those tickets.
- (d) He did not invite Mr. Hunte to make a false declaration to the Customs.
- (e) Customs promised to refund the money if proper documentation was received.
- (f) There was no reason to disbelieve Customs since Mr. Hunte was not arrested and charged with any offence.

38. Mr. Monplaisir submitted that in the circumstances, Mr. Knight has a reasonable excuse for his conduct – the prevailing reason being to recover BWIA's monies as promised by Customs.

39. Mr. Deterville submitted that a single act of misconduct by an employee may give the employer a legal right to terminate the employment if the single act is attended with serious consequences. In the Barbadian case of *Gulstone v Anchor Life Insurance Co. Ltd*⁶, the issue was whether one act of misconduct justified a summary dismissal. Following the Privy Council decision of *Jupiter General Insurance Co. Ltd v Ardeshir Bomanji Shroff*⁷, it was held that there is good ground for the dismissal of a servant if he habitually neglects his duties, but an isolated act of neglect or misconduct will not justify summary dismissal unless attended by serious consequences. In *Henry v Mount Gay Distilleries Limited (Barbados)*⁸, Mr. Henry had been employed by Mount Gay Distilleries for nearly 40 years. The issue was whether his behaviour on the night in question was such as to warrant summary dismissal. Lord Reid at paragraph 8 of the judgment said:

“Thus a single act of carelessness or negligence can provide grounds for summary dismissal if the negligence itself or the circumstances surrounding it show that there has been a ‘deliberate flouting of the essential contractual conditions’”: *Laws*

⁶ (1976) 27 WIR 68

⁷ [1937] 3 All ER 67

⁸ [1999] UKPC 39 (21st July 1999); Privy Council Appeal No. 43 of 1998

*v London Chronicle Limited*⁹. The question whether misconduct is such as to justify summary dismissal is a question of fact and degree.”

40. Mr. Deterville submitted that the single act, or series of acts of misconduct by Mr. Knight surrounding the incident of the commission of a criminal offence by a BWIA staff member had not only serious but disastrous consequences for the airline, which warranted summary dismissal of Mr. Knight. Further the inconsistencies in the explanations for his involvement in the Tower Promotions transaction, the failure to report to his superior and the failure to investigate the commission of the offence by a staff member under his control eroded all confidence that BWIA reposed in him to continue to manage and be responsible for its affairs in Saint Lucia.

Wilful Disobedience

41. Under cross-examination, Mr. Knight stated that he does not know anything about BWIA's Policy on Legal Affairs which provides that whenever penalties and fines are imposed or threatened to be imposed on BWIA, the General Counsel/ Corporate Secretary must be informed forthwith via facsimile of any notice served on the company in connection with such fines or assessments. In the instant case, about US\$16,000.00 of BWIA's money was detained and was liable for forfeiture by Customs. Instead of notifying the General Counsel, Mr. Knight sought local legal advice in the matter.

42. I do not believe Mr. Knight when he deposed that he did not know BWIA's Policy on Legal Affairs. As a senior officer of the company with 22 years of service, I am of the view that he must or ought to have known what the Company's Policy on Legal Affairs is.

43. In respect of BWIA's Cash Policy, Mr. Knight disagrees that the procedure laid down by the company was not followed. He agrees that he directed the Reservations Supervisor, Ms. Semei to hold the cash for Friday, 23rd November 2001 which should have been banked on Monday, 26th November 2001 until the following day. This is a flagrant breach of BWIA's Cash Policy 8.2.3.4 which states that all monies collected by the cashier must

⁹ [1959] 2 All ER 285, 287

be deposited daily to BWIA's Bank Account. No Banking was done on Monday, 26th November and on the following day, Ms. Semei went ahead and did her own banking.

44. BWIA also alleged that Mr. Knight involved himself and allowed BWIA's Saint Lucia Office in 'poaching' by becoming involved in a transaction in circumstances where Area Saint Lucia was not on the itinerary of the customers; an action that Mrs. Carrington had warned Mr. Knight about.

45. Mr. Knight admitted that he was involved in 'poaching' but that there is no policy which states that a customer cannot purchase a ticket or tickets from another person or persons to travel from one place to another. He alleges that it is a normal procedure of travel.

46. In *Didier v Geest Industries*¹⁰, the OECS Court of Appeal stated at page 5:

"It was accepted that there was obvious willful disobedience of the suggestion of Mr. Rapier. However, for this willful disobedience to be a ground for dismissal, it must be evident that the disobedience was a deliberate flouting of the essential contractual conditions of the appellant's contract. In my judgment, this suggestion of Mr. Rapier was not part of the express contractual conditions of the appellant's terms of employment or of his job duties and could not be implied. In the Law of Dismissal in Canada by Howard Levitt 1985, the learned author referring to *Smith v Mills*¹¹, *Beal v Grant*¹² and other cases, supports this opinion of mine when he stated that the order disobeyed must be within the scope of the employee's job duties."

47. The Court stated further, at page 6:

"There was an onus placed on the respondents to prove on a balance of probabilities that the appellant's entry into politics was inimical to the proper functioning of the business of the company."

48. It is my firm view that Mr. Knight's participation in "poaching", his direction to his staff to flout BWIA's Cash Policy, the deliberate breach of the Company's Policy on Legal Affairs and the failure of Mr. Knight to use the available Pre-paid Ticket Advice for collection of monies for cross-border transactions are all inimical to the proper functioning of BWIA's business.

¹⁰ Civil Appeal No. 6 of 1999 dated 25th October 1999 – unreported Dominica judgment

¹¹ (1913) IOD LR 589

¹² (1983) 44 NBR (2CH) 477 QB

49. As Mr. Deterville so rightly pointed out, the incident of 25th November 2001 and the attendant possible damaging effects of BWIA's reputation and image was exactly the type of occurrence that BWIA was attempting to prevent in giving those directions to its stations, and as the Area Manager in charge of the Saint Lucia station, Mr. Knight was expected to obey.

Neglect

50. It is contended by BWIA that further or alternatively, the facts alleged amounted to substantial neglect of Mr. Knight's duties which gave BWIA a legal right to terminate his employment.

51. It is also contended that the failure of Mr. Knight to properly investigate the matter and save BWIA's good name seems to suggest that Mr. Knight could not perform the duties entrusted to him.

52. In *Ben Hosman v Windjammer Landing*¹³, Matthew J, quoted from Halsbury's Laws of England Volume 16 (4th ed), paragraph 640 et seq

"643 Neglect: There is good ground for the dismissal of an employee if he is habitually neglectful in respect of the duties for which he was engaged, but not if there is only an isolated instance of neglect, unless attended by serious consequences."

53. In *Gulstone's* case, at page 70 of the judgment, Johnson J.A. (ag) quoting from the Encyclopaedia of Labour Relations Law by Hepple and O'Higgins, at page 1129, set out a series of principles to assist in understanding the degree of misconduct necessary to establish a right to warrant summary dismissal. It is stated as follows:

"4. Breach of an important term nowadays will not necessarily give rise to a right of summary dismissal if it occurs in such circumstances that the employee has a reasonable excuse or justification for his conduct.

¹³ High Court Civil Suit No. 736 of 1988(unreported) (Saint Lucia)

5. Single acts of misconduct are somewhat less likely to give rise to a right to summary dismissal than is a persistent pattern of misconduct; in the case of a single act of misconduct a record of unsatisfactory behaviour may tip the balance and lead the judge to the view that there are grounds for summary dismissal

6. What is to be regarded as an important term will depend upon the nature of the business or industry and the position of the employee."

54. Mr. Deterville submitted that BWIA is in the business of providing airline services to international and regional passengers. It must therefore maintain good relations with government agencies and in particular the Customs Departments of all countries. BWIA entrusted Mr. Knight with its affairs. But, he had a duty of ensuring good relations with all government agencies. Above all, he should have submitted a report and involve his superior in a prompt and efficient manner rather than attempting to solve the matter internally. He failed in that duty.

Conclusion

55. This is a most unfortunate litigation. It involved a man who has given long and meritorious service to his employer, BWIA. It involved a man who, during his career, demonstrated a high degree of loyalty, commitment, dedication and competence. It involved a man who contributed significantly to BWIA so much so that the airline was nominated for the Best Airline Award in Saint Lucia Award and in 2000, BWIA was dubbed BEST AIRLINE by the Par Excellence Ste Lisi Awards.

56. This Court recognizes that the immediate dismissal of an employee, especially someone like Mr. Knight who has given such commendable service to his employer is a strong measure. This court recognizes that in exceptional circumstances only that an employer is acting properly in summarily dismissing an employee on his committing a single act of negligence.

57. But Mr. Knight handled the whole incident of 25th November 2001 badly. He should have reported the matter in a prompt manner to his employer. But, as he says "it was a judgmental decision" to have waited so long to do so. To say the least, it was a bad

judgmental decision. By his conduct or his negligence, he could no longer command the confidence of his employer, BWIA.

58. In the premises, I will dismiss his claim. In respect of Costs, both Mr. Monplaisir and Mr. Deterville agreed on a figure of \$25,000.00. I have taken into consideration that Mr. Knight, however judgmentally wrong he has been in not adhering to Company's policies; has been an excellent worker for many years. He built his life around BWIA. He must have planned his future in the expectation that he will continue until he reaches retirement age. For him, like many other workers, dismissal is a disaster. He is now almost without a job. The job market is hostile to anyone who would have been dismissed for whatever reason. I will therefore reduce the costs to \$10,000.00. Mr. Knight will have to pay to BWIA the costs of \$10,000.00.

Indra Hariprashad-Charles

High Court Judge