

IN THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
COMMONWEALTH OF DOMINICA  
CLAIM NO. DOMHCV2004/0381

BETWEEN:

KAY ROBINSON

CLAIMANT

VS

**CABLE & WIRELESS (DOMINICA) LTD**  
**DEFENDANT**

**Appearances:** Mrs. Zena Dyer Counsel for Claimant  
Mr. Gerald Burton and Miss Noelize Knight Counsel  
for Defendant

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DECISION – 11<sup>th</sup> April 2006

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- [1] **LEWIS S. HUNTE J. [AG]:** The Claimant, Kay Robinson, was an employee of the Defendant Company since 1996. At first she was employed on a fixed term contract.
- [2] In 1998, the Claimant went on five months maternity leave. During her maternity leave she was not on the payroll of the Defendant but she was welcomed back by the then General Manager, Mr. Carl Roberts and worked for a few months without a contract or any security of employment. She was eventually offered permanent employment. In offering the Claimant permanent employment, the General Manager highly commended her for her high standard of work. This is what he wrote in a letter to her dated 1 August, 1998:

**“Dear Kay**

**OFFER OF EMPLOYMENT**

**Prior to your taking maternity leave we promised to review your existing contract with the Business Unit. That review was to have taken place during your period on leave and was to result in a decision of whether your tenure with the Company would be as a permanent employee or as a contract worker.**

**I would like, through this medium, to do two things. Firstly, I wish to commend you on the excellent work done during the restructuring and skills review of the many candidates for promotion. Your own experience in this area was of tremendous help to me.**

**Secondly, I would like to thank you for your patience since your return to work as I endeavoured to settle this outstanding matter. Your professionalism in not allowing the uncertainty of your own situation to adversely affect your commitment to the task has been a source of assurance to me.**

**I am therefore pleased to make the attached offer to you as a permanent employee. This offer is effective from the 1<sup>st</sup> July. Please indicate your acceptance by signing and returning the enclosed copy of this letter.**

**A personalized contract will be drawn-up for your signature in due course. Outstanding leave to the 30<sup>th</sup> June will be taken into account from your previous contract. You will be paid a gratuity of 15% of your salary for the 3 months April to June 1998.**

**Yours Sincerely**

**Carl B Roberts  
General Manager.”**

- [3] On 1 June, 2002, a new General Manager took up duties at the Defendant Company in Dominica. His name was Ian Blanchard. Mr. Blanchard had been away from Dominica for a number of years before his return as General Manager.
- [4] On 27 January, 2004, the Claimant who then held the post of Head of Human Resource and also Human Resource Business Partner was summoned to the office of the General Manager, Mr. Blanchard. He handed her a letter terminating her employment with the Defendant. The reason cited for the termination was “reduced requirement for staffing” or in one word, redundancy.

The text of this letter is as follows:

**“Dear Mrs. Robinson**

**You are aware of the Company’s need to prepare itself to face increasingly competitive challenges and liberalization of the telecommunications market. Having completed other reorganizations, management is once again embarking upon a similar exercise to ensure that the Company is capable of operating effectively in the new competitive environment.**

**This reorganization has resulted in a reduced requirement for staffing. As a consequence, I am giving you formal notice that your substantive position as Head of Human Resources will be made redundant effective 31<sup>st</sup> January, 2004. You will however not be required to return to work after 27<sup>th</sup> January, 2004.**

**We much regret having to make redundancies of this sort but the exigencies of the business makes it impossible for us to do otherwise.**

**You will find attached details relating to your redundancy payment. Please note that all monies**

**owed to the Company will be deducted from your redundancy package.**

**You are required to return all company property including any documents whether in hard copy or machine readable form, credit card(s), keys, security passes, computers and other office equipment.**

**May I also remind you of your obligation under your Confidentiality Undertaking, the scope of which extends beyond your employment with the company.**

**Please sign the accompanying letter as verification of the information presented being full and final settlement of monies due and owing to yourself by the company, same and except contributions due to you in regard to your pension entitlements.**

**On behalf of the company, I wish to thank you for your services to the company over the years and wish you every success in your future endeavours.**

**Yours sincerely**

**M Ian Blanchard  
Chief Executive”**

- [5] The Claimant was, upon being handed the letter, escorted from the General Manager’s Office to her desk where she collected some of her personal effects under supervision. She was unable to collect all of her personal effects because the individual who was supervising her collection of them had to leave the office early that afternoon. She was therefore escorted off the premises of Cable & Wireless. She was, however, permitted to return to collect the rest of her belongings. She did so under supervision.

[6] The evidence before the Court indicated that persons who were employed in sensitive areas of the Defendant's service were always escorted off the premises if their services were terminated.

[7] I mentioned earlier that the Claimant held the post of Head of Human Resource and Human Resource Business Partner. Mr. Blanchard, when giving the evidence, denied that there was a designation known as Human Resource Business Partner at the office of Cable & Wireless in Dominica. He said that Human Resource Business Partner was a Regional designation but that her true post in Dominica was Head of Human Resource. Nevertheless, I note that in a letter dated 21 November, 2002 which Mr. Blanchard admitted that he, himself, wrote he addressed the Claimant as "Mrs. Kay Robinson HR Business Partner/Head of Human Resource, Cable & Wireless Dominica, Roseau." I therefore cannot help but find that the Claimant held both of these positions locally and, in the process of so finding, reject Mr. Blanchard's evidence on that issue.

[8] The Claimant testified-

(a) that in February 2004 the Defendant, acting through the same General Manager who on 27 January 2004, terminated her, promoted a typist, one Caryl Registe, and designated her "Human Resource Generalist"

(b) that the duties performed by Caryl Registe comprised the majority of those formerly performed by the Claimant

(c) that the Claimant was never informed of the existence of the post of Human Resource Generalist

(d) that Caryl Registe is a cousin of the General Manager's wife

- (e) that Josephine James, formerly Assistant Manager and Assistant to the Claimant, was promoted, given an increase in salary, assigned some of the tasks that the Claimant performed and was designated Manager Human Resource
- (f) that other persons, namely Luke Joseph and Derek Lestrade were transferred from other areas to assist in doing the work the Claimant used to do; and
- (g) one Alie Wilson and another person were newly hired to assist in performing the former duties of the Claimant.

In other words, the Claimant's tasks remained but were distributed among existing personnel, some of whom were promoted to perform those tasks and others who were freshly hired for that specific purpose.

- [9] Ian Blanchard confirmed that Josephine James was given a new job description and an increase in salary after the termination of the Claimant. He said that Mrs. James was made head of a section directly under him whereas the Claimant was head of a department. Under cross-examination, he sought to emphasize that there was a great difference between "Head of a section" and "Head of a department." He, nevertheless, conceded that after Mrs. James became head of a section her salary was increased above what she was paid as an Assistant manager, which was her post when she was the Claimant's subordinate; that she was assigned duties that the Claimant performed and that she reported directly to him just as the Claimant used to do.

- [10] It was also conceded by Mr. Blanchard, that Caryl Registe reported to Mrs. James in as much the same way as Mrs. James used to report to the Claimant before the Claimant was terminated and that some of the persons who reported to the Claimant also now report to Mrs. James.
- [11] It was not denied that Caryl Registe was given a new post of Human Resource Generalist and that this post was created after the termination of the Claimant. The job description of Human Resource Generalist set out the qualifications needed for the post. Those qualifications included a Certificate or Diploma in Human Resource Management and three years experience in a supervisory position. According to the unchallenged statement of the Claimant, Caryl Registe possessed none of those qualifications. She was a typist. The General Manager conceded that she was his wife's cousin. Also, not disputed was the Claimant's statement that shortly after Miss Registe assumed the position of Human Resource Generalist, Mrs. James went on maternity leave and Miss Registe acted as Manager Human Resource. I consider this a meteoric rise from the position of typist to manager in less than a year.
- [12] The witness Francis Paul, a former head of department who was made redundant the same day as the Claimant, stated that when Ian Blanchard hired Caryl Registe, his wife's cousin, the post was not advertised. This statement was never put to Mr. Blanchard for denial and I accept as true.
- [13] The sole witness for the Defendant was Ian Blanchard himself. Mr. Blanchard sought to show that the Claimant's case was a genuine one of redundancy and that the purpose was to make the running of the Defendant less costly. He agreed with the Claimant

and Francis Paul that when he assumed office there were six Heads of Department. He claimed that when he terminated the Claimant and Francis Paul there were only four Heads of Department remaining and that the number remained at four when he left the post of General Manager of Cable & Wireless in Dominica.

[14] The Claimant and Francis Paul disagreed with Mr. Blanchard that the number of Heads of Department was reduced from six to four. They claimed that the posts they held remained and were filled by others. Francis Paul said that his post of Manager of Customer Services is now held by Ewart Bain, a friend of Mr. Blanchard, who was specially hired by Mr. Blanchard without any interview and given a senior post under Mr. Paul, evidently to understudy Mr. Paul until Mr. Paul was terminated. Mr. Paul stated categorically that if an interview with Mr. Blanchard was arranged, he Mr. Paul, as head of the department, would have been involved in that interview. This was also not put to Mr. Blanchard for denial and I accept it as true. In fact, Mr. Blanchard admitted that Mr. Bain was his friend and that he hired him. The Claimant, on the other hand, stated that Mrs. James was promoted into her post and Caryl Registe was promoted into Mrs. James' post while two new persons were hired to join the Department. The question is, who is telling the truth, whether Mr. Blanchard or the Claimant and her witness Francis Paul.

[15] Mr. Blanchard at first stated that one new person was employed in the Department of Human Resources after the departure of the Claimant. However, he quickly retracted that statement and admitted that he had employed two new persons. He named Caryl Registe and Alie Wilson as the new persons he employed. He claimed that after the departure of the Claimant the Department of

Human Resources ceased to exist. He said that the Department was split into two Sections. The Sections, he emphasized, were not departments and, consequently persons who headed them were Heads of Sections and not Heads of Departments. He did not deny that tasks performed were the same tasks that the Claimant performed at the time of her termination.

[16] One of the Claimant's contentions was that the increased salary paid to Mrs. James, the appointment of Miss Registe and the hiring of two additional persons, all to do the work that she did could not have been less costly than when she alone did the work. Mr. Blanchard disagreed and claimed that it was less costly but when I asked him for figures he said that he could not remember the salaries. I am therefore left to assess the evidence in this regard as best I can.

[17] I found the Claimant to be a frank witness throughout the trial. The same cannot be said of Mr. Blanchard. His demeanour at times depicted that of an embarrassed man. He was often hesitant and was not always forthright. His evidence was replete with serious inconsistencies. I shall list a few of them:

(1) In answer to his Counsel he said at first that one person was employed to perform the tasks the Claimant performed although he quickly changed that and said that two persons were employed. He said that Miss Registe had "to hold for Mrs. James" as Ms. Wilson held on in administration. It was only revealed in cross-examination that Mrs. James was promoted to perform the Claimant's tasks but soon went on maternity leave and that was how Miss Registe came to "hold" for her. He did not, however, deny that Miss Registe was only a typist until the Claimant was terminated.

- (2) He stated, under cross-examination, that there was no post in the establishment by the name of Human Resource Business Partner. However, he wrote a letter to the claimant dated 21 November, 2002 addressing her as H. R. Business Partner. He was also confronted with a copy of the job description of the Claimant in which she was referred to as HR Business Partner Local.
- (3) He insisted that he did not know whether Caryl Registe was given a job description. However, when confronted with his own witness statement with which he had exhibited the job description of Miss Registe, he then admitted that he knew that Miss Registe was given a job description as Human Resource Generalist, yet, he later said that he was not certain that it was the job description given her when she was employed in May 2004. He, nevertheless, stated that she was given the post of H R Generalist when she was employed.
- (4) He denied that when the Claimant was employed at Cable & Wireless, Mrs. James reported to the Claimant in the capacity of HR Business Partner. However, when confronted with the Defendant's organizational chart which contradicted him, his answer was that he could not recall whether that happened during his tenure.
- (5) It was at this stage that he tried to convince the Court that the HR Department was abolished and an HR Section was created, but from the job descriptions before the Court the "play" between the words "Department" and "Section" was a mere exercise in semantics. In the end, he reluctantly

admitted that Mrs. James performed many of the Claimant's functions and her salary was increased, obviously to reflect this.

There were other instances where Mr. Blanchard contradicted himself. For example, he admitted that paragraph 25 of his witness statement was untrue. Also, he said in his witness statement that the Claimant was given an opportunity to remain in the Company's Medical Insurance Scheme; but, under cross-examination he agreed that that was not so. However, he changed his word when he discovered what he had said in his witness statement.

[18] It was clear to me that the Defendant Company employed a system whereby each department was headed by someone who reported to the General Manager. Heads of Department in turn had persons who reported them and so it continued right down the line. After the Claimant's termination, Mrs. James was promoted and given an increase in salary, a job description that in a large way corresponded with the Claimant's, except that some of the tasks were shared with her second in line, Miss Registe. Mrs. James was, designated "Head of Section" instead of "Head of Department" but, reported directly to the General Manager, just as the Claimant did. In other words, she was simply placed in the Claimant's job with a few cosmetic changes designated to camouflage the true position; which was that the Claimant's alleged redundancy was not genuine.

[19] I find on the facts that the tasks that the Claimant was employed to perform still existed after the termination of her employment with the Defendant. I also find that persons were promoted and others recruited to perform those tasks. As I understand it, the general rule relating to redundancy is, that it is the job that must

become redundant thereby making it unnecessary to retain the services of the employee. It was stated in the case **R V The Industrial Commission of South Australia Exparte Adelaide Milk Supply Co- Opt Ltd (1977) 16 SASR 6:**

**“The concept of redundancy.....seems to be this, that a job becomes redundant when the employer no longer desires to have it performed by anyone.....:**

This is the same principle was enunciated by the Eastern Caribbean Supreme Court in the cases **U S Navy Facility v Lewis and Another 31W1R 199** and **Antigua Workers Union (Sundry Workers) V Joseph Dew Division of Dantzler West Indies Ltd: Civil Appeal No 2 of 1992 (Antigua).** In the former case, Sir Neville Peterkin C J, in delivering the judgment of the Court put it quite clearly when he said:

**“I would hold that a prerequisite to a redundancy situation is the non-existence of the tasks.....”**

[20] Learned Counsel for the Defendant in his written submissions pointed the Court to section 11 of the Protection of Employment Act of Dominica, Chapter 89:02, in particular paragraphs (d), (e) and (g) of that section, which he argued is applicable to this case. The section provides as follows:

**“An employer may terminate the employment of an employee where that termination is or is part of a reduction in the work force employed by him that is a direct result of the fact that –**

- (a) .....
- (b) .....
- (c ) .....

- (d) the employer has reorganized his business to improve efficiency;**
- (e) the employer's need for employees in a particular category has diminished or ceased;**
- (f) .....**
- (g) a reduced operation in the employer's business had been made necessary by economic conditions, including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory."**

[21] Assuming that learned Counsel for the Defendant is correct that section 11 applies to this case, my interpretation of the section would indicate that the Defendant has not been able to overcome the first hurdle it presents, namely, the requirement for a reduction in the work force. There was no reduction in the workforce as a result termination of the Claimant. On the contrary, there was an increase in the work force. Mr. Blanchard, himself, admitted that two additional persons were hired. But I would go on and say that even if it is accepted that paragraph (d) is relevant, in that the business of the Claimant was reorganized, there is no evidence of the efficiency that resulted from the reorganization or as to how much money, if any, was saved because of it. The employment of additional staff and the promotion of others would indicate an increase in costs. Paragraph (e) is not satisfied because it is clear from the evidence that there was a need for additional persons to carry out the Claimant's

duties thereby denying that those duties had diminished or ceased. Also, paragraph (g) is clearly irrelevant in the absence of any evidence that there has been a reduction in the operation of the Defendant's business. The contrary would appear to be the case since at least two new employees were hired to work in the area in which the Claimant was employed.

[22] I do not find it convenient to consider the question of damages at this stage. Consequently, I am limiting my findings to the issue of liability. I find that the circumstances of the claimant's termination, which I have considered at great length, amount to wrongful dismissal. There is therefore judgment for the Claimant with damages to be assessed, if not agreed. The Claimant to have her costs of the action in the prescribed scale based on the quantum of damages after assessment.

[23] I direct that the assessment be by Notice of Application supported by affidavit.

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**LEWIS S. HUNTE J (Ag.)**