

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
CIVIL

CLAIM NO: ANUHCV 2003/0531

BETWEEN:

GLADSTON JOSEPH

Claimant

and

FIRST CARIBBEAN INTERNATIONAL BANK
(FORMERLY CIBC CARIBBEAN LIMITED)

Defendant

Appearances:

Ms. E. Ann Henry for the Claimant

Mr. Kendrickson Kentish for the Defendant

2008: May 28, June 16; 2009: May 21

Re-issued May 22

JUDGMENT ON ASSESSMENT

- [1] **Thomas J (Ag.):** In proceedings filed on 22nd December 2003, the claimant sought to recover certain payments he claimed were due to him on account of his employment with his former employer, CIBC Caribbean Limited.

[2] Mr. Justice Francis H.V. Belle heard the matter and on 20th December 2005, delivered the judgment in favour of the claimant. The two final paragraphs of the judgment, being 29 and 30, are in these terms:

"29. I therefore order as follows:

1. The claimant is entitled to severance payment pursuant to Part C of the Labour Code of Antigua and Barbuda with interest at the rate of 10% per annum from 12th June 2003 to the date of the claim, 19th December 2003, and thereafter from the date of the judgment to the date of payment at the rate of 5%.
2. The claimant is entitled to be paid a lump sum respecting such benefits as he would have been entitled to under his contract with CIBC West Indies Holdings Limited in the circumstances of redundancy.
3. The claimant's claim for pay in lieu of notice is dismissed.
4. Prescribed costs are awarded to the claimant.

30. The parties are in agreement on how severance payment is calculated in Antigua and Barbuda. I therefore believe both sides are prepared to calculate the sum due based on the date provided by their respective clients. If this approach fails, the matter should be set down for assessment of damages and costs awarded to the claimant on the prescribed basis pursuant to Part 64 of the CPR 2000."

[3] The sequel to the judgment was that on 27th June 2008, a consent judgment was filed. In essence it stated as follows:

The parties having agreed the terms in which the judgment herein should be entered in part and consenting that judgment be entered in such terms as hereafter provided

BY CONSENT

It is this day adjudged that:

1. The defendant shall pay to the claimant the sum of \$644,509.48 representing the amount due to the claimant for severance pay pursuant to the judgment of his Lordship Justice Francis Belle made 20th day of December, 2005 which sum is inclusive of interest to the date of the claim;
2. The defendant shall pay to the claimant interest on the said amount of \$644,509.48 at the rate of 5 per centum per annum from 20th day of December 2005 to the date of payment;
3. The quantum of damages, if any, to be paid by the defendant in respect of benefits to which he would be entitled in the circumstances of his redundancy, to be determined by the Court;

4. Costs to be prescribed costs.

[4] As indicated by Mr. Justice Belle in his judgment, if the parties cannot agree on the sums due the matter must be set down for assessment. The amount due to the claimant in lieu of continued benefits to which he may have been entitled falls in this category to be determined by the Court.

[5] In this regard, the parties were ordered to file submissions. There was compliance by learned counsel for the claimant but to date no submissions were filed on behalf of the defendant.

[6] In the main, the submissions by Ms. E. Ann Henry cover the following:

1. In the claimant's affidavit on the assessment, filed on 4th April 2007, the benefits to which he was entitled included participation in a pension scheme, share options, insurance benefits, housing allowance and home cleaning services.

2. The claimant placed a monetary value to the loss of benefits at \$62,214.18.

3. The claimant at paragraph 24 of his said affidavit contends that a lump sum payment equivalent to 10% of the severance would adequately represent the amount to be paid on his redundancy.

4. The claimant's formula is consistent with the defendant's formula as contained in its booklet "Indicating your intention to leave", ("the booklet"). In that document the termination benefits, over and above severance, were valued at 10% of the severance entitlement.

5. Chere Gilkes, also a former employee of the defendant, was in a similar position to the claimant and her payment was 10% of the severance entitlement for the loss of her benefits on her position becoming redundant.

Conclusion

[7] Learned counsel for the claimant has pointed to the fact that, no evidence or submissions being filed by the defendant, the matter turns entirely on the evidence and submissions of the claimant.

Accordingly, there are a number of variables that must constitute the equation in this context. These are: The booklet, the benefits, the precedents, Ms. Chere Gilkes and the comparison.

The booklet

- [8] It is common ground that this booklet was produced in order to serve as a guide in dealing with human resource matters in view of the impending merger of the two banking institution and the formation of the defendant. It therefore suffices too merely to record the first two sentences in the said document. They indicate the following:

"Creating First Caribbean will involve significant change including restructuring the way we do things. This will mean some of the jobs that currently exist will no longer be needed."

- [9] And there can be no doubt that the brochure is official and represents policy. This can be inferred from the extensive nature of the document and also the following appearing at the bottom of the "Contents": "The programme is referred to in this brochure is a specific to First Caribbean Programme – the term of the programme will remain in place during initial restructuring, which is expected to take up to 24 months from Firstday. This programme is discretionary." But an even more compelling reason is the fact that the said document is referred to extensively in the defendant's defence in the substantive matter.

- [10] On the specific and relevant matter of "Severance Payment" the following is stated:

"The severance payment will be a one-off lump sum, which will be paid to you when you leave. In addition, it will include a one-off lump sum equivalent to 10% of the total amount, which represents payment in lieu of continued benefits."

The benefits

- [11] There is no evidence to contradict the claimant's contention in his affidavit that as Manager the benefits he enjoyed were: Entitlement to pension, entitlement to participate in share purchase plan, entitlement to participate in Group Health and Group Life Insurance, housing allowance, home helper, gardener and utilities allowance.

The precedents

[12] At paragraphs 14 to 16 of his affidavit on assessment of damages, the claimant says as follows:

"14. To my knowledge, the basis upon which other persons, who like me, did not indicate their intention to leave, were compensated for lost benefits was an amount equivalent to 10% of their severance entitlement.

15. Three (3) persons who fell into my category are Ms. Chere Gilkes, Receiving Officer, Mr. Henderson Fields and Everett Christian.

16. As such, I consider that my compensation for lost benefits should be calculated on the same basis as these persons, like me, did not indicate their interest to leave as required by the booklet....".

Chere Gilkes

[13] Ms. Chere Gilkes in an affidavit filed on 4th April 2007 gives the history of her employment with CIBC, the defendant's predecessor, and the manner in which her employment with the defendant ended.

[14] At paragraphs 4 to 6 of the said affidavit, the affiant deposes the following:

"4. I did not indicate my intention to leave and continued in my employment with the defendant's Bank.

5. On 24th October 2003, I received a letter from the defendant's Bank. Exhibited hereto is a copy of the said letter, marked 'A'.

6. I noted that, notwithstanding that I had not indicated my intention to leave, I was paid compensation for my loss benefits at the same rate as would have been the case had I indicated my intention to leave."

[15] The letter to which Ms. Gilkes refers came from Mr. Ivan Brown, Corporate Banking Director, OECS and Country Manager – Antigua. It is dated, October 24, 2003. The letter, in essence, deals with the elimination of Ms. Gilkes' position and the financial consequences on offer. Included is the following:

"First Caribbean will provide you with severance payment... and a lump sum equivalent to 10% of the severance payment, which represents payment in lieu of continued benefits....".

The Comparison

[16] The payment to Ms. Gilkes in lieu of continued benefits coincides exactly with the policy in the booklet. And the source of the letter written to her could hardly be higher.

[17] In the absence of any contradictory evidence the Court accepts the claimant's contention that he and Ms. Gilkes are on par for purposes of severance payment. And the fact that Ms. Gilkes was a Recovery Officer and the claimant, a Manager must be brought to bear on the issue as a certain corporate logic flows from such facts. Therefore, in the view of the Court there is no reason why the claimant should not be paid the amount claimed in lieu of continued benefits to which he was lawfully entitled.

[18] **ORDER**

IT IS HEREBY ORDERED as follows:

1. The claimants is entitled to be paid EC\$62,214.18 in lieu of the continued benefits.
2. The said amount of EC\$62,214.18 will bear interest at the rate of 10% from 12th June 2003, to the date of the claim, being 19th December 2003; and at rate of 5% from 20th December 2005 until payment.
3. Prescribed costs are awarded to the claimant.

[19] Pursuant to Part 42.10 of CPR 2000 on an error appearing in the judgment with respect to the name of one of the parties was corrected.



**Errol L. Thomas
Judge (Ag.)**