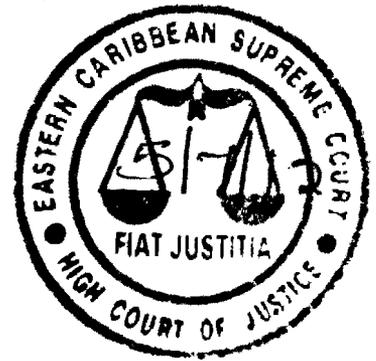


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CLAIM NO. 17 OF 2012



BETWEEN:

FLORAL FANTASY

Claimant

V

BETHEL BRACKIN

Defendant

Appearances:

Ms. Lakeisha John for the Claimant.
The Defendant In Person.

2012: July 5th

DECISION

INTRODUCTION

- [1] **JOSEPH, MONICA, J. (Ag):** The claimant, which floral Fantasy is a registered company under the laws of Saint Vincent and the Grenadines claims against the defendant, Bethel Bracken , an interpretation of section 25 (1) (a) of the Protection of Employment Act (Cap.212) of the laws of Saint Vincent and the Grenadines (the Act) and costs.
- [2] Under Part 61.1(a)(ii) Civil Procedure Rules 2000 the court may determine a question of law referred to it by a tribunal or other person. Herewith is the court's interpretation. On 19th January 2012, the claimant filed a fixed date claim form seeking an interpretation of section 25 (1) (a). The defendant is not represented. The fixed date claim states:

- [3] The claimant terminated the employment of the defendant and paid her severance pay under the Act. The claimant through its Attorneys Caribbean International Law firm calculated the severance payment for the defendant in accordance with section 25 (1)(a) from two years of employment.
- [4] Subsequent to the calculation and payment of severance pay the solicitors were contacted by the Labour Department who queried the payment indicating that calculation should have been done from the first year of employment to the sixth year of employment.
- [5] By letter dated 12th January 2012, the Labour commissioner wrote to solicitors on behalf of the claimant indicating that there was a balance of four weeks to be paid. An opinion dated 9th March 2005 from the Attorney General's chambers was attached with the letter and was relied on by the Labour Commissioner. A copy of the opinion is attached to the Statement of claim of the fixed date claim.
- [6] The claimant contends that the section 25(1) (a) of the Act is quite clear as the use of the word "from" specifies the starting point of calculation of severance payment being two years to ten years and as such calculation should commence from the second year of employment.
- [7] The claimant also contends that upon reading that subsection in conjunction with section 23 of the Act, the intention of Parliament was upon being entitled to severance after two years of employment it is from that period upon which calculation should commence.
- [8] The court has seen documents prepared by the Attorney General and the Labour Commissioner, stating a case for the interpretation of the sections of the Act. The Attorney General contends that once the qualifying period under section 23 has been met the employee is entitled to severance pay for each year of continuous service from the date of the commencement of continuous service.

- [9] The further contention is that section 23 fully instructs on what is considered continuous service. For example, the employee whose service has been terminated immediately after two years of continuous service qualifies for severance pay in accordance with section 23. His rate of severance should be calculated in accordance with section 25(1)(a) which is the rate specified for each year of continuous service for an employee whose qualifying period is between two to ten years.
- [10] That employee should receive in total four weeks pay, two weeks for each year of continuous service. If, on an interpretation of section 25(1)(a), continuous service is reckoned to commence from two years and more the employee may well find that he is qualified for severance pay but would not receive such sum simply because there would be no period on which to calculate his payment.
- [11] The argument is advanced that the words "from two to ten years" in section 25(1)(a) applies to the qualifying period under section 23 and refers to the employee's eligibility for severance. The alternative would lead to an unsavory conclusion, especially for an employee whose service is terminated immediately after two years. In this regard section 25 provides that a half year or more is to be treated as one year and less to be excluded from the calculation. The meaning which is obtained from section 25(1)(a) is that an employee whose service has been terminated and who is eligible for severance pay shall receive two weeks pay for each year of continuous service where that service is between two to ten years.
- [12] I consider that the main principle of statutory interpretation is that Parliament makes the laws and the Court interprets the laws, that have been made by Parliament. If there is a situation that Parliament has not covered, then it is for Parliament to mend the situation.
- [13] If the legislation is unambiguous then the court must carry out that indention expressed unambiguously, no matter how harsh it may be. If the intention, as expressed in the phrasing of the legislation is not clear then the court's aid is enlisted. The court gives the

interpretation to the statute that carries out the intention of Parliament as phrased in the legislative provisions.

[14] **Universal Caribbean Establishment v James Harrison**, Byron CJ stated:

The first principle to affirm is to recognize the separation of power between the Legislature and the Judiciary. It is the province of Parliament to make the law and for the court to interpret, without basing its construction of the Statute on a perception of its wisdom or propriety or a view of what Parliament ought to have done."

[15] **Charles Savarin v John Williams** , Sir Vincent Floissac C.J.

"In order to resolve the fundamental issue of this appeal, I start with the basic principle that the interpretation of every word or phrase of a statutory provision is derived from the legislative intention in regard to the meaning which that word or phrase should bear. That legislative intention is an inference drawn from the primary meaning of the word or phrase with such modifications to that meaning as may be necessary to make it concordant with the statutory context. In this regard, the statutory context comprises every other word or phrase used in the statute, all implications therefrom and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention.

[16] Sections 23 and 25 of the Act enact:

Section 23 . Period of service for eligibility

- (1) Every employee who has worked for not less than two years for an employer in a specified employment shall on termination of his service be eligible to receive severance pay as herein provided from his employer.

Section 25(1)

The rate of severance pay which is payable by an employer shall be –

- (a) two weeks pay for each year of continuous service from two to ten years;
- (b) three weeks pay for each further year of continuous service from eleven to twenty five years;
- (c) four weeks pay for each year of continuous service in excess of twenty five years.

At the rate of pay at the time of termination, a half year or more to count as a full year and less than half year to be excluded from the calculations."

[17] Under section 23(1), for an employee to qualify for severance pay, he must serve two years. The court looks at the ordinary meaning of the words and phrasing of the section. The ordinary meaning of 'qualify' is to meet requirements or meet criteria.

[18] When a time frame is given for a qualifying period, then the qualification must take place during that qualifying period. In the instant case, the qualifying period ends on the last day of the two year period. The period for calculation of severance pay is counted from the day following the last day of the two years. A half year or more than half year served by the employee, is counted as a year. The period for calculation must be for continuous service, that is, broken periods of service are excluded from the calculation.

[9] In the circumstances, I make no order as to costs.


MONICA JOSEPH
High Court Judge (Acting)

28th June 2012.