EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN THE COMMONWEALTH OF DOMINICA

[Civil]

CLAIM NO. DOMHCV2012/0304

BETWEEN:

JOYCE LARONDE MATTHEW	Claimant
and	
FINE FOODS INC	Defendant

Appearances:

Mrs. Dawn Yearwood-Stewart of Dawn Yearwood Chambers for the Claimant

Mr. Kevin Williams for the Defendant

2013: September 29th

2014: January 24th

JUDGMENT

[1] **THOMAS, J. [Ag.]:** In this action Joyce Laronde Matthew of Giraudel of in the parish of St. George, in the Commonwealth of Dominica, seeks certain remedies against Fine Foods Inc. of Jimmit, in the parish of St. Paul, in the Commonwealth of Dominica.

[2] The following are the reliefs claimed:

1. Redundancy benefits due and owing to her in the sum of $51,805.70 for 52 weeks.
2. Two months' salary in lieu of notice being $3805.00.
3. Interest at the rate of 5% per annum from the date of the issue of claim to date of judgment.
4. Such further or other relief as may be just.

5. Costs

[3] The claimant's case is that from 1972 she was employed by J.E. Nassief and Company Limited until 2010 until the defendant company took over the same and opened a supermarket named (Save-A-Lot) in its stead. At the time of the take over the former employees of J.E. Nassief and Company Limited were told that their years of service would continue under the defendant company.

[4] The following events are pleaded as part of the claimant's case: on or about 22nd June 2010 the claimant was advised by the Personnel Manager of the company that she would be made redundant with effect from 28th June 2010 and the benefits would be given on said date; on 28th June 2010 the redundancy was not received and was advised to return the next day to uplift a letter from the company; on the following day a letter was delivered containing certain advice, and also advising that the claimant returns to work; the claimant believed that the criticism leveled against her in the letter were tainted with constructive dismissal and did not amount to an offer.

[5] The claimant avers that she is entitled to and claims the redundancy benefits and two months salary in lieu of notice.

Defence

[6] The defendant denies paragraph 3 of the Statement of Claim and avers that the claimant was employed by E. Nassief and Company from 1st September, 1973 and by the defendant from 25th May, 2010.

[7] The defendant also denies paragraph 4 of the Statement of Claim and contends that when the defendant purchased E. Nassief and Company it informed the employees of E. Nassief and Company including the claimant that their employment and years of service would be carried over from their former employer to the defendant.

[8] It is the claimant who made it clear to the Human Resource Manager that she wanted to be 'paid off'.

[9] The further pleadings in this regard are as follows: the claimant was not advised that she would be made redundant as alleged, and the claimant was not advised to deliver up her uniform forthwith

and to collect her benefits on 28th June, 2010; the claimant was not advised to return on 29th July, 2010 to collect a letter; the letter given to the claimant on 29th July , 2010 did not contain the words detailed at paragraph 8 of the Statement of Claim; no offer was made to the claimant which was open for acceptance by the claimant; the defendant could not entertain the claimant's request to be paid off due to the position of the new defendant company; and no offer was made to the claimant to return to 'Save-A-Lot' as the defendant had not terminated the employment of the claimant.

[10] Finally, the defendant avers that the claimant is not entitled to redundancy benefit and salary in lieu of notice as the defendant did not terminate the employment of the claimant.

Reply

[11] In reply the claimant avers that she was never referred to management as pleaded by the defendant at paragraph 6 of its Defence.

[12] In essence the claimant maintains her services were terminated when she was advised of the redundancy benefit and told to deliver up her uniform.

Evidence

[13] In her witness statement the claimant gives an account of her employment with E. Nassief and Company over a period of 37 years, inclusive of changes in her terms and conditions. The witness also gives details of her employment with Save-A-Lot.

[14] At paragraph 11 to 14 the claimant gives details of a meeting on 22nd June, 2010 with the Personnel Manager at which she was informed that a decision was taken to pay her off. According to her, she understood this to mean that she was going to be made redundant and a cheque would be forthcoming.

[15] According to the claimant, rather than receiving a cheque she received a letter in which she was criticized whereupon the matter was referred to the Labour Division.

[16] On the day of the trial the claimant was permitted to amplify paragraph 11 of her witness statement. In so doing, the claimant gave further details of the meeting on 22nd June, 2010 with the Personnel Manager of Save-A-Lot, at which time she was informed of the decision by Karl Nassief to pay her off and the fact that she was happy to hear this. It is the claimant's further

evidence that based on calculations made by the Personnel Manager she would receive $52,000.00 for the amount of years working with the Company. According to the claimant the Personnel Manager told her she would have enough money to enjoy her retirement.

[17] Under cross- examination the witness testified that she received the contract in the last week which was the same week of the meeting. She added that she signed but she was confused.

[18] In re-examination the witness said she did not oppose anything they did.

Karl Nassief

[19] In his witness summary stated his connection to Fine Foods which owns and operates Save-A-Lot Supermarket in Roseau.

[20] At paragraph 3 of the Witness Summary the witness states that all workers of E. Nassief and Company were employed by Fine Foods Inc as there was no need for the employees in the new business of Save-A-Lot.

[21] It is Karl Nassief's evidence that he had some indication of Joyce Laronde Matthew's desire to be made redundant and his position on such a desire. The witness went on to say that he did not give anyone the impression that he was going to terminate Joyce Laronde Matthew; and in fact he did not do so; nor did he authorize anyone to do so. The witness went on to say that it is not company policy to make a person redundant upon request.

[22] Under cross-examination Karl Nassief testified that he was not sure as to the time when he took over E. Nassief but it was possibly April 2010. In this connection the witness said that he recalls a meeting with all staff of E. Nassief.

[23] When the matter of the Human Resource Manager came into issue Karl Nassief said that all employees of E. Nassief were being transferred to Fine Foods, the witness agreed and added that Freda Blaize was the Human Resource Manager. It was then put to the witness that he told the meeting that Freda Blaize was the Human Resource Manager and what she says he agrees with. This was denied by the witness and he added that it was not said in that context. He added further that Freda Blaize does not hire and fire and she is responsible for the paper work.

[24] Concerning the making of the claimant redundant; the witness said that this was not discussed with Freda Blaize. The witness also denied that the redundancy payment would amount to $50, 000.00

[25] In re-examination Karl Nassief testified that he did not make the claimant redundant and he did not authorize it. The witness went on to say that Freda Blaize could not make the claimant redundant without his approval.

[26] In response to a question from the court; Karl Nassief responded by saying that when the figures are added up the amount is less than $50,000.00

Freda Blaize

[27] Freda Blaize in her witness statement gives the process by which employees of E. Nassief and Company Ltd. were transferred to Fine Foods. With respect to the claimant, the evidence is that she was transferred with effect from 25th May, 2010 as a Lead Stocker/ Packer and Assistant Cashier in the grocery department of Save-A-Lot Supermarket. The claimant's written contract was signed on 21st May, 2010 and the supermarket was opened to the public on 27th May, 2010.

[28] The circumstances giving rise to a meeting with the claimant is next addressed by the defendant. The meeting concerned complaints by the claimant about the work at Save-A-Lot. According to Freda Blaize based on what the claimant said at the meeting she outlined to her the option to resign but on the matter of redundancy this would have to be made in conjunction with the Managing Director and the Supermarket Manager and promised to discuss the matter.

[29] It is the witness' evidence that she did not terminate the employment of Joyce Laronde Matthew at the meeting or at any other time as she does not have the power so to do.

[30] According to the witness, the matter of the redundancy was discussed with the Managing Director but he did not agree. Further, that when she tried to contact the claimant on 23rd June, 2010 the claimant was not at work and that as a result messages were left on her telephone and a letter was sent to her on 29th June, 20101 at Save-A-Lot.

[31] According to Freda Blaize, she received a letter from the Labour Department, Ministry of Labour concerning payments made to Joyce Laronde Matthew. The witness also detailed a letter received

from the claimant's attorney seeking $53, 809.00 from the Company on the basis that I told her she would be made redundant with immediate effect.

[32] At paragraph 19 the Witness Statement ends with these words: "I was surprised when I saw the letter because I did not tell her anything of the sort."

[33] Under cross-examination in relation to what the Managing Director indicated were her powers, the witness said that she did not recall him saying that she can hire and fire. According to her, she shared the responsibility of hiring and firing with the Managing Director and the Store Manager.

[34] On the question of the selection of cashiers for Save-A-Lot, Freda Blaize testified that none of those selected were from E. Nassief and that the claimant was not selected; and in this regard the witness said that she could not recall the claimant asking her where she was going to be placed.

[35] Under further cross-examination Freda Blaize said that she remembered what each employee was trained to do, but she did not remember that the claimant was given a cloth to clean the freezer door, put to cut card board boxes, asked to take empty boxes to the garbage, or to pack shelves.

[36] With respect to matters of religion, the witness said that it was company policy to give a day off for religious purposes.

[37] It is Freda Blaize's evidence that she did not tell Karl Nassief about the meeting with the claimant, nor did she have a meeting with the said person for that purpose. The witness continued: "I did not tell the claimant that she (Blaize) and Karl Nassief had decided to pay her off. The claimant did not say she was happy to be paid off. I left the meeting and came back with the Labour Book. I did not calculate the amount of redundancy. I did not tell her $50,000.00. I told her about $25,000.00. I did not tell her it was $50,000.00. I did not tell the claimant she will have enough money to enjoy her retirement. I did not tell her to go home. I did not wish her well. I did not tell her to hand in her uniform as she was no longer an employee of Save-A-Lot. I did not tell her to return on Monday for her redundancy check."

[38] Referring to a document at page 32 of the Trial Bundle, the witness said that it was a letter she wrote, and agreed that it was full of typographical errors which was due to the fact that she did not have a Secretary. The witness explained further that the letter was done speedily so that the claimant could get it, and that at the end of the meeting I asked the claimant to go home and return

on the next scheduled day. The witness then went on to deny that Karl Nassief was fuming about the meeting concerning the claimant's redundancy.

[39] Concerning the letter at page 32 of the Trial Bundle, Freda Blaize did not agree that she criticized the claimant in the letter.

[40] In re-examination the witness said that the claimant was distressed and she did not see it fit to return to the supermarket but she did ask the claimant to return to work on the next scheduled day. The witness ended up saying: "I did not terminate the employment of the claimant".

Mathilda Dejean

[41] In her witness statement Mathilda Dejean identified herself as the Manager of Save-A-Lot Supermarket which is owned by the defendant company.

[42] The witness gives details of the work the claimant was given to do and the various complaints made by the claimant causing her to report the matter to Freda Blaize.

[43] It is the further evidence of Mathilda Dejean that she was aware of the meeting between the claimant and Freda Blaize and as a result she expected the claimant to be at work on 23rd June, 2010.

[44] Under cross-examination Mathilda Dejean gave details of the claimant's duties as Lead Stacker/Packer and Assistant Cashier.

[45] Evidence was also given of the meeting where Karl Nassief introduced Freda Blaize as the Human Resource Manager and went on to say that Karl Nassief did not say that whatever she says he agrees.

[46] Concerning tasks complained of by the claimant, Mathilda Dejean said that she was not aware that the claimant was required to clean the freezer doors, or to cut boxes and place them in a designated area. The witness went on to say that if the claimant did these tasks, she did so of her own free will.

[47] Mathilda Dejean continued her cross-examination by giving an account of what transpired when the claimant returned the uniform on 28th June, 2010 and told me she was no longer an employee with us anymore.

[48] In re-examination the witness said that she was never informed that the claimant was no longer an employee of Save-A-Lot Supermarket.

Issues

[49] The issues for determination are:

1. Whether redundancy benefits are due and owing to the claimant in the amount of $51,805.70 for 52 weeks;
2. Whether the claimant is entitled to 2 months salary in lieu of notice, being $3805.00;
3. Whether any party is liable to pay costs.

Issue No. 1

Whether redundancy benefits are due and owing to the Claimant in the amount of $51, 805.70 for 52 weeks

[50] The claimant's case in effect is that she was made redundant by the defendant, her employer. As such the narrow question in relation to the issue is whether or not the law relating to redundancy support the claimant's case.

[51] **The Protection of Employment Act** [1] is an Act to make provisions for protecting the employment of workers in the State and for purposes connected therewith.

[52] In section 2 of the Act the definitions "employee", "employer" and "termination on account of redundancy" are contained. "Employee" is an extended definition, and "includes a person who was formally an employee but whose employment has been terminated"; "employer" means a person who employs one or more employees and in relation to an "employee whose employment has been terminated", means the employer who so terminated the employment of that employee"; and

[1] Cap. 89:02 of the Laws of Dominica

"terminated on account of redundancy" means, in relation to an employee, that the employment of the employee has been terminated pursuant to section 11."

[53] Section 3 of the Act establishes a right to work and the manner of terminating employment. These are the actual words:

> "A right to work is hereby established and an employer may terminate the employment of any employee employed by him only in accordance with sections 4, 5, 6, 11 or 15."

[54] As noted before, "terminated on account of redundancy" points to five provisions of the Act which are the only legal circumstances under which employment may be terminated. Of relevance in this context is section 11 which prescribes the circumstances under which 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 the employer.

[55] By way of a preliminary statement of the law in issue and applying the **Doctrine of Purposive Construction**[2], it is clear that the purpose of the Act is to protect employees and in particular sections 2, 3, and 11 provides a mandatory methodology whereby an employer can make an employee redundant. However, any redundancy must fall within one of paragraphs (a) to (g) of the said section. Further safeguards are provided by a requirement of certain advance notice of redundancy depending on the period of employment.

Submissions

[56] Learned Counsel for the claimant, Mrs. Dawn Yearwood-Stewart, in her submissions on behalf of the claimant places heavy reliance on a meeting between the claimant and Freda Blaize, Human Resource Manager of the defendant.

The principal submissions are as follows:

"6. The Claimant's case is that at the meeting held with Freda Blaize, Human Resource Manager, she was told that Karl Nassief, the Managing Director of the Defendant Company and herself had taken a decision to make her redundant.

[2] Pepper v Hart [1993] 1 ALL ER 42, 50 per Lord Griffith

8. The Claimant says that she had a very cordial meeting with Ms. Blaize who sympathized with her about her ailments, told her about her own mother's ailments, thanked her about her honesty regarding her distress with the hours of work, assured her that she will pay her redundancy benefits as it was agreed between her and Mr. Karl Nassief to pay her off, told her to hand in her uniform, thanked her and sent her home. She was also told not to worry that she would have enough money for her retirement.

9. The Defendant's representative, Ms. Freda Blaize denied that:

   (a) She told the Claimant about her mother's ailment
   (b)Told her that she and Karl Nassief decided to make her redundant
   (c) Told her to enjoy her retirement as she would have enough money
   (d) Told her to hand in her uniform as she was no longer an employee of the Defendant company.

10. She admits that she told her to go home after the meeting but indicated that the reason for advising her to do so was because she the Claimant looked distressed and unfit to return to work."

[57] Other submissions on behalf of the claimant relate to: Karl Nassief's evidence regarding the policy of the company on redundancy is not to do so when requested by an employee; the claimant's evidence that at a meeting held with staff of the former E. Nassief and Company, Karl Nassief told the staff that Freda Blaize was his Personnel Manager and he agrees with whatever she says and further Freda Blaize is responsible for hiring and firing.

[58] The following are the final submissions on behalf of the claimant:

"We submit as follows:

(a) The Claimant was able to advance her testimony that she and Freda Blaize spoke about redundancy and that the amount due and owing to her was calculated. This Freda Blaize agreed with.
(b) The Claimant spoke about her medical issues, and about Freda Blaize's mother having had similar issues. Freda Blaize denies this but this Honourable Court is asked to find that the Claimant could not have known about this unless told to her by Freda Blaize.
(c) The Claimant handed in her uniform as she was told that she should do so since she was no longer an employee of Save-A-Lot. This Mathilda Dejean corroborated at it relates to the Claimant handing in her uniform.

[59] Learned Counsel for the defendant, Mr. Kevin Williams, in his submissions on behalf of the defendant begins with an analysis of sections 2, 11,12,15 and 16; and the factual matrix needed to satisfy redundancy as defined in section 2 of the Act, the pleadings and the issues arising from the meeting of 22nd June, 2010 between the claimant and Freda Blaize.

[60] The submissions on behalf of the defendant continue thus:

"There is no dispute that the Claimant was not happy in her job. She expressed her displeasure at the meeting with Freda Blaize on the 22nd of June, 2010 in her undated letter to Karl Nassief after she received the Defendant's letter of the 20th June, 2010 to the Manager, Mathilda Dejean and in her Statement of Claim and Witness Statement. The evidence from the Defendant's witnesses especially that of Mathilda Dejean addresses the concerns which confirm that the Claimant was not happy with her employment. The said issue however is whether or not the Defendant terminated the employment of the Claimant thereby entitling the Claimant to a redundancy benefit of $51,805.70 and payment of $3805.00 in lieu of notice.

Having regard to the Statutory Provisions and the evidence on a balance of probabilities. The following is submitted:

(a) No redundancy benefit was payable to the Claimant on the purchase by the Defendant of E. Nassief and Company as per section 12 of the Act;
(b) No redundancy situation arose after the purchase by the Defendant's Company of E. Nassief Company as per section 11 of the Act and as such there was no termination on account of redundancy as defined by section 2 of the Act;
(c) There being no termination on account of redundancy no notice in writing was served on the Claimant pursuant to section 15 of the Act;
(d) No notice having been served, there was no termination, the Claimant cannot be entitled to two months pay in lieu of notice.
(e) There being no termination on account of redundancy there cannot be an entitlement to a redundancy benefit under section 21 of the Act.

Reasoning

[61] In a real sense, the extent of the evidence and submissions have been rendered superfluous , in part, by the central point in this matter, being that of statutory interpretation. In this case the court is faced with a situation where an individual leaves employment or told to leave employment which it is claimed establishes the issue of redundancy within the meaning of sections 2 and 11 of the Act.

[62] Section 11 of the Act requires full ventilation and it reads thus:

" An employer may terminate the employment of an employee where that termination is or is part of a reduction in the workforce employed by him that is a direct result of the fact that:

(a) The employer has modernized, automated or mechanized all or part of his business;
(b) The employer has discontinued or ceased to carry on all or part of his business;
(c) The employer has sold or otherwise disposed of all or part of his business;
(d) The employer has re organized his business to improve efficiency;
(e) The employer's need for employees in a particular category had diminished or ceased;
(f) It has become impossible or impractical for the employer to carry on his business at its actual rate or level or at all due to-
 (i) a shortage of materials;
 (ii) a mechanical breakdown;
 (iii) a *force majeure;*
 (iv) an act of God; or
(g) A reduced operation in the employer's business has been made necessary by economic conditions including a lack of or change in markets, contraction in the volume of work on sales, reduced demand on surplus inventory."

[63] *Ab initio* it is clear that cordiality, sympathy and friendly conversations are not constituents of the prescriptions of section 11 of the Act. With that said, the court notes that Learned Counsel for the claimant grounds her submissions essentially on the meeting of 22nd June, 2010 and the subsequent events. On the other hand, Learned Counsel for the defendant targets the legislation and consequences of the actions taken and required to be taken.

[64] It will be recalled that part of the claimant's pleaded case is the averments contained at paragraphs 6 and 7 of her Statement of Case reads thus:

"6. On or about 22nd June 2010 the Claimant was advised by the Personnel Manager of Save-A-Lot, Ms. Freda Blaize, acting on behalf of the Company that she would be made redundant with effect from 28th June, 2010 and that she should deliver up her uniform forthwith. The Claimant was further advised to check with the Company on 28th June, 2010 for her benefits.

7. On 28th June 2010 the Claimant did not receive her redundancy benefit and was advised by the Manger of Save-A-Lot, one Mathilda Dejean, that she should return on the following day to uplift a letter from the Company."

[65] In its Defence the defendant answers as follows:

"9. The said Freda Blaize acting on behalf of the Defendant did not advise the Claimant that she would be made redundant with effect from the 28th June 2010 as alleged or at all. Further the said Freda Blaize did not advise the Claimant to forthwith deliver up her uniform and check with the Company on 28th June, 2010 to collect her benefits.

10. In relation to paragraph 7 of the Statement of Claim the Defendant admits that no redundancy benefit was paid to the Claimant on 28th June, 2010 because the Claimant was not made redundant by the Defendant. The Defendant denies Mathilda Dejean told the Claimant to return the following day 29th [June], 2010 to collect a letter from the Company."

[66] Based on the evident the court finds as a fact that Freda Blaize did tell the claimant she would be paid off which she understood to mean redundancy. One aspect of the evidence is the fact that the said Freda Blaize went for the labour book and calculated the amount of money the claimant would be paid. This is the evidence of the claimant. And it is also her further evidence that Freda Blaize told her to enjoy her retirement. The court considers the claimant to be a witness of truth.

[67] A letter was written by the said Freda Blaize to the claimant. It is dated June 29, 2010 and is substantially negative in its content. The claimant acknowledged that she received the letter. Of importance to the case is the following extract:

> "A monetary figure was discussed with you and I told you let me get back to you on that. After careful consideration and the company's inability to pay, we realized that we are unable to present you with redundancy as there is work to be done. Layoff is not an option [in] this case."

[68] It is clear to the court that despite the labour book Freda Blaize speaks of redundancy without a legal context. However, Karl Nassief did say, in his evidence in chief, in speaking to the claimant's

redundancy, in part that "…there was no way that I would make her redundant and have to pay redundancy benefit when there was no redundancy situation existing at the Company."

[69] Was there a redundancy situation? The answer can only come from the evidence being applied to any one of paragraphs (a) to (g) of section 11. In this connection on the evidence there is no indication of a reduction of the workforce as a direct result of: modernization; cessation of part of the defendant's business; selling of part of the business; re-organisation; cessation of the need of a category of employee; impractical or impossible to carry on business at its usual rate or level due to shortage of materials, mechanical breakdown, force or act of God, or reduced operation of the employer's business due to economic conditions.

[70] The protection afforded to employees does not end at sections 3 and 11 but goes on in sections 15 and 16 of the Act to require advance notice to be given to the employee stating the reason for the redundancy which reason cannot be changed or added to by the employer. In this case there is no evidence of compliance with sections 15 and 16 of the Act.

[71] A further point is that it must be contradictory for the law to be safeguarding employees against redundancy on the one hand while on the other hand permitting the employee to seek redundancy. This is not the law.

[72] The court therefore agrees with the submissions on behalf of the defendant that the claimant is not entitled to redundancy benefits in the amount of $51,805.70 since there was no redundancy within the meaning of sections 2 and 11 of the Act; and there was no need for compliance with sections 15 and 16 of the said Act.

Issues No. 2

Whether the Claimant is entitled to two months salary in lieu of notice, being $3805.00

[73] The question of notice only arises in the context of a redundancy within the meaning of sections 2 and 11 of the Act of which there is none in this instance. Accordingly, the matter of late notice or lack of notice cannot arise in relation to the claimant so as to give rise to an entitlement to $3805.00

Issue No. 3

Whether any party is liable to pay costs

[74] By virtue of Part 64.6(1) of CPR 2000 the court may order the unsuccessful party to pay the costs of the successful party. In this case the costs payable on the value of the claim, but having regard to Rules 64.6 (3), (5) and (6) of CPR 2000, and the evidence the claimant is ordered to fifty percent of such prescribed cost.

ORDER

[75] **IT IS HEREBY ORDERED** as follows:

1. The claimant is not entitled to redundancy benefits in the amount of $52, 805.70 since no redundancy exists within the meaning of sections 2 and 11 of the **Protection of Employment Act**; and there was no need for compliance with sections 15 and 16 of the said Act.
2. The claimant is not entitled to the payment of $3805.00 in lieu of notice under section 15 and 16 of the Act as such a question cannot arise without the existence of redundancy.
3. The claimant must pay the defendant fifty percent of the prescribed costs.

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Errol L. Thomas

High Court Judge [Ag.]