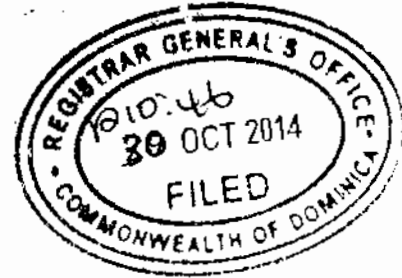


EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2001/0359



BETWEEN:

ANNE-MARIE MARONIE

Claimant

And

FORT YOUNG HOTEL (1986) LTD

Defendant

Appearances:

Ms. Cara Shillingford for the Claimant

Mrs. Hazel Johnson for Respondent

.....  
2014: July 24<sup>th</sup>

October 30<sup>th</sup>  
.....

### REASONS FOR ASSESSMENT

[1] **THOMAS, J: [AG]** Given the narrow issue for decision the determination must be made on the basis of the undisputed facts, the submissions and the law respecting unfair dismissal. The facts that are not in dispute are the following:

1. The claimant was employed by the defendant from 6<sup>th</sup> November 1989 to 29<sup>th</sup> March 2001
2. The claimant began her employment as a kitchen assistant and ended as accounts receivable clerk
3. At the time of her termination in 2001 the claimant earned \$1,854.40 per month

4. At the time of termination the claimant was paid one month's salary in lieu of notice being \$1,854.40 plus, \$865.60 service charge and \$680.00 in respect of vacation leave.
5. The claimant was paid a further payment of \$3,565.20 representing an additional month's salary of \$1854.40, service charge of \$437.00 and vacation pay of \$1,273.00.

#### Wrongful dismissal

- [2] A number of cases<sup>1</sup> have upheld the principle that an employer may dismiss an employee upon giving reasonable notice. But what is reasonable notice depends on all the circumstances.

#### Circumstances of the claimant:

1. Is 48 years of age
2. Worked for 11 years with the defendant first as a kitchen assistant and latterly as accounts receivable clerk
3. Holds a certificate of Culinary Skills Catering from ICS, Certificate in Practical Word Processing from London Chamber of Commerce and Industry Examination Board, and started the ACCA Accounting programme and completed a Customs Brokerage and Conflict Management Programme with N.D.F.D.
4. In terms of remuneration received \$1,854.40 as salary plus a payment based on the proceeds from the 15% service charge paid by hotel guests on their bills.
5. In terms of the service charge the claimant was at the level of point 5 which carried a value of \$173.00 but which varied.

#### Conclusion

- [3] One of the submissions on behalf of the claimant is that the claimant should receive 9 months' salary in lieu of notice; while on behalf of the defendant the figure advanced is 3 months. In this connection, too, learned counsel for the defendant submits further that the claimant has failed to mitigate her loss.

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<sup>1</sup> Deca Penn v Scotiabank BVIHCV2009/277; Arlene Wyllie v RBTT Bank; Kenrick Ambo v Dominica Air and Seaport Authority DOMHCV2010/0279; Margaret Penn v BVI Ports Authority BVIHCV2003;

- [4] The court considers that the submission regarding notice on behalf of the claimant ignores entirely the case law in respect of reasonable notice in the context of wrongful dismissal. At the same time, while the court does not agree entirely with the contrary submission on behalf of the defendant, it is more realistic having regard to the law.
- [5] As noted above, the courts in this context look especially at the claimant seniority, salary responsibilities, age and the period of the employment. Applying these considerations to the claimant, it cannot reasonably be concluded that the claimant held a senior position with the defendant although she did supervise some staff, and her salary was above that of a junior staff. At the same time the claimant is now 48 and without any competitive qualifications for the job market. Further the short periods of employment speak to this issue.
- [6] In all the circumstances it is the determination of the court that reasonable notice would be five months. At the same time in terms of mitigation, the court does not consider it reasonable to say that the claimant failed to mitigate her loss, despite the absence of evidence in terms of her seeking employment for part 2012, 2013 and part of 2014, plus the claimant's lapses of memory. The fact that remains however is that the claimant had some 8 employers for various periods since her dismissal. And it is the claimant's testimony in re-examination that between 2001 and 2003 she worked in her garden and also sent out applications.
- [7] Damages to be paid to the claimant consist of salary plus her entitlement to a portion of the service charge. The evidence is that this charge is derived from the expenditure by guests at the hotel which in turn is dependent on occupancy at the hotel which varies fortnightly or monthly. In fact the claimant's total payments derived from the service charge for April to September 2000 show figures of \$845.45, \$1,637.55, \$1,734.35, \$1,160.70, \$1,576.51 and \$1,262.51, respectively.<sup>2</sup>
- [8] The court has no legal basis upon which to determine what the claimant's portion of the service charge would be for 5 months after March 2001. In the circumstances the court agrees with the submission on behalf of the defendant that an average should be used.

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<sup>2</sup> The payment for October 2000 is excluded since the claimant testified that she received an advance with her salary and the exact figures are not before the court

- [9] Based on the available evidence, the total of the service charge paid to the claimant for the period April to September 2000 was \$8,217.07 and divided by 6 the average would be \$1,369.50. This in turn must be multiplied by 5, given the court's determination above regarding reasonable notice. The yield is \$6,847.55.
- [10] In summary the court awards the claimant, by way of damages, 5 months' salary at \$1,854.40 per month; plus 5 months service charge payments of \$1,369.50 per month. The totals are \$9,272.00 and \$6,847.55.
- [11] All prior payments consisting of \$3,708.40 for salary and \$1,302.66 for service charge made to the claimant at the time of termination of the claimant's services and beyond must be deducted from these totals.

Costs

- [12] The claimant is entitled to prescribed costs based on the award of damages by the court.

**ORDER**

**IT IS HEREBY ORDERED** as follows:

1. In the circumstances of the claimant, she is entitled to 5 months notice of her termination.
2. Based on paragraph 1 above the defendant must pay the claimant 5 months' salary at \$1,854.40 per month plus \$1,369.50 as proceeds of the service charge the claimant would have earned had she not been terminated.
3. The total yields are \$9,272.00 and \$6,847.55, respectively.
4. The payments of \$3,708.40 for salary and \$1,302.60 for service charge made to the claimant since her dismissal must be deducted from the total aforesaid.
5. The claimant is entitled to prescribed costs.





**Errol L. Thomas**

High Court Judge [Ag]