

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2012/0511

BETWEEN:

TAMEKA HAMILTON

Claimant

AND

CARLISLE BAY RESORT

Defendant

Appearances:

Mrs. Stacey Richards-Anjo for the Claimant

Mr. Charlesworth Browne for the Defendant

2014: October 07
November 10

JUDGEMENT

[1] **Cottle, J.:** The claimant was employed at the defendant's luxury resort as a room service co-ordinator. As part of her duties she was required to carry trays with meals for guests. She would also have been obliged to shift and move objects such as tables and chairs. In her statement of claim the claimant avers that on 22nd July, 2009 she was lifting a dinner table from the beach in the course of her employment when she felt immediate severe pain to her back and neck. She attended a chiropractor, Dr. Ward Allred the following day.

[2] According to Dr. Allred's report the claimant suffered sacroiliac subluxation syndrome. The claimant also relied on a medical report of Dr. Jason Belizaire MD. He found a herniated disc at

level C6, C7 with some pressure placed on the spinal cord. As his examination was on 19th July, 2011 he was not able to give an opinion as to whether this was related to any incident on 22nd July, 2009. Interestingly the doctor noted that the claimant had told him she had no significant past medical or surgical history.

[3] In their defence, the company denies that the claimant was required to lift or move heavy objects. They say that the claimant was aware that she was entitled to manual assistance from other employees if she deemed it necessary to move any heavy objects. The defendants also say that the claimant made no report of injury until September 2009.

[4] In her witness statement the claimant testified that she was lifting a wooden 2x2ft table to load it onto a buggy when she heard a crack and felt excruciating pain in her back and neck. She immediately reported the incident to Mr. Steveroy Anthony the night manager as the duty supervisor had left before the end of the shift. She filled out an accident report form and left it in the log book at the manager's station. The manager did not sign the form. One other worker Mr. Winston Simeon came in later and saw her in pain on the floor.

[5] When the claimant was cross examined it was put to her that she had offered different versions of how her injury occurred. The claimant filled out an injury advice form for her employers. She did not sign or date the form. She detailed the accident or injury as follows:

"After doing the jetty dinner my mid and lower back developed a sharp pain and stiffness. I also had an unbearable headache which made me feel slightly dizzy."

[6] At the instance of the defendant, the claimant attended Dr. Belizaire. In his report he describes the history presented by the claimant in the following terms:

"She also stated that she put a table on her head and subsequent to leaving work that day she had pains in her neck as well as her lower back."

- [7] As indicated earlier, the version in the claimant's evidence in chief does not mention her placing the table on her head to carry it. The claimant did not agree with the suggestion put to her by counsel that these versions of the genesis of her injury differ.
- [8] In further cross examination the claimant admitted that she knew she had the right to object to carrying objects she considered too heavy. She made no complaint on the night in question that the objects she needed to carry were too heavy.
- [9] It also emerged in the cross examination that the claimant had suffered a dislocation of her back and neck some time before the 22nd July, 2009. She never informed her employers of this.
- [10] Before the claimant can recover any damages she must demonstrate that her injury was a result of her employment activity. Taken at its highest, the claimant's evidence fails to discharge this burden. She has adduced no supporting medical evidence. The first medical practitioner she attended was Dr. Belizaire some 2 years after the date she says she was injured. The doctor was not able to give any opinion as to the cause of her condition. I am not minded to accept the report of the chiropractor. I have been provided with no evidence that he has any medical expertise.
- [11] The claimant failed to complete and submit a medical injury form to her employers at the time of her alleged injury. Indeed up to the date of trial the form remained undated and unsigned despite the claimant's admission that she knew this was required by her employers to process any claims for injury related to her workplace.
- [12] The evidence led by the claimant falls far short of the standard needed to fix the defendants with liability. I dismiss the claim. The claimant will pay the defendants prescribed costs in this claim in the sum of 7,500.00

Brian Cottle
High Court Judge