

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(CIVIL)
A.D. 2015**

CLAIM NO. SKBHCV2013/0287

BETWEEN:

ROHAN WALTERS

Claimant

And

[1] THE LABOUR COMMISSIONER

First Defendant

**[2] THE ATTORNEY GENERAL
OF ST. KITTS AND NEVIS**

Second Defendant

Appearances:-

Mr. Terrance Byron with Ms. Talibah Byron for the claimant

Mrs. Simone Bullen Thompson, Solicitor General for the defendant

2014: November 17

2015: October 23

JUDGMENT

[1] **CARTER J.:** The claimant entered into a contract with British American Insurance Company Limited (“BAICO”) on the 1st April 1997 which contract was entitled “Career Agent Agreement” (“the Agent Agreement”). During the course of his employment with BAICO the claimant also held the titles of Insurance Advisor and of Personal Financial Advisor. BAICO, being part of the CL Financial Group, was directly affected by the demise in the fortunes of that conglomerate in 2009 and as

a result suspended its operations in St. Kitts on 18th March 2009. The claimant tendered his resignation with BAICO on the 22nd September 2009 to become effective on 23rd October 2009.

- [2] The course of events that has led to the filing of the present claim began with the claimant's application to the first defendant for severance payment subsequent to his resignation. By letter dated 9th December 2010, the first defendant denied the claim for severance payment and informed the defendant as follows:

*"With regards to your Severance Payment Claim submission, I am to inform you that the Attorney General have reviewed the matter at hand and has advised the Department of Labour that your relationship with the British American Insurance Company was a contract service. Consequently, as you remained an independent contractor throughout the relationship with British American Insurance; there is no entitlement to severance pay."*¹

- [3] The claimant sought a reconsideration of this decision by letter dated 13th December 2010. The claimant has never received a response from the first named defendant to this latter letter.

- [4] Based on these facts the claimant sought the following declaratory relief:

"(1) He was an employee of British American Insurance Company Limited from 1st April 1997 to 23rd October, 2009 within the meaning of "employee" under section 2 of the Protection of Employment Act Cap 18:27 of the Laws of St. Christopher and Nevis.
(2) A declaration that he is entitled to severance payment in accordance with section 26 of the Protection of Employment Act Cap 18:27 of the Laws of St. Christopher and Nevis.
(3) A declaration that he is entitled to interest on his severance payment at the rate of 6% from 23rd October, 2009 to the date of Judgment in this matter, pursuant to section 27 of the Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act.
(4) The Claimant also seeks costs and interest."

¹ See Tab K of Trial Bundle Volume 3 – Letter from the first defendant to the claimant dated 9th December 2010

Issues:

- [5] The issues that arise for the court's determination are as follows:
- (i). Was the claimant employed under a contract of service with BAICO from 1st April 1997 to 23rd October 2009
 - (ii). Was the claimant an employee within the meaning of Section 2 of the **Protection of Employment Act ("the Act")**
 - (iii). Is the claimant entitled to severance payments in accordance with the Act
 - (iv). Is the claimant entitled to interest on his severance payment at the rate of 6% from 23rd October, 2009 to the date of Judgment in this matter, pursuant to section 27 of the **Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act**
 - (v). Is the claimant entitled to interest and costs

Issue 1: Was the Claimant Employed under a Contract of Service with BAICO from 1st April 1997 to 23rd October 2009?

- [6] Counsel for the parties referred the court to the approach taken by Chief Justice Simmons in the Barbados case of **Sagikor Insurance Company v Livingstone Carter & others**² as a starting point for the determination of whether an individual worker is an employee or an independent contractor. In that case the Learned Chief Justice carefully and meticulously considered and documented the legal route by which the courts had navigated its way to what he found to be the present position on this aspect of the law. His conclusion was stated at paragraphs 38 – 39 of his judgment as follows:

"[38] A proper approach to the issue on this case requires a thorough consideration of all aspects of the relationship between the parties including an examination and construction of the terms expressly set out in the written contracts as well as the manner in which the contracts were performed. The written contracts are the principal, though not the only, sourced of information as to the nature of the contractual relationship between the parties. There are other factors or features of the relationship that require examination. No single factor or feature is likely to be decisive in itself. Each may vary in weight or direction pointing either towards a contract of service or a contract for services. Having given such balance

² (2007) 71 WIR 74

to the respective factors as seems warranted on the evidence, I then have to determine the ultimate question, namely, whether the worker is carrying on business on his/her own account or not. As Lord Wright advised in **Montreal v Montreal Locomotive Works Ltd.** (*supra*) at p.169: “In many cases the question can only be settled by examining the whole of the various elements which constitute the relationship between the parties.”

[39] As I conceive it, the question whether these defendants are engaged under a contract of service or not is a mixed question of fact and law because my determination does not depend solely upon a construction of the written contracts but requires also an investigation and evaluation of the factual circumstances in which the work was performed...”

[7] This approach has been applied in such cases as **American Insurance Co v Henderson Franklyn**³ and **Hanna v Imperial Life Assurance Company of Canada**⁴ also cited by the claimant. Indeed these earlier cases were also referred to in **Sagicor** by the Learned Chief Justice.

[8] There are a number of factors that the court must consider in arriving at a conclusion as to whether a contract of service or contract for services exists. In the context of this case, the court must undertake the investigation and evaluation of the particular factual circumstances in order to arrive at a conclusion on this issue.

(i) **The Statement in the Written Contract**

[9] The claimant’s written contract with BAICO dated 1st April 1997 was entitled ‘Career Agent Agreement’. In paragraph 1 under the heading “General Conditions”, it reads:

“The Agent [the claimant] is an independent contractor. Subject to underwriting restrictions established by the Company [that is, BAICO], he is free to exercise his own judgment as to the persons within the Territory from whom he will solicit business and the time and place of such solicitation. Nothing in this Agreement or in the Agent’s relationship with the Company shall be deemed to constitute the relationship of employer and employee between the Company and the Agent.”

³ Civil Appeal No. 15 of 2006 (Barbados)

⁴ [2007] UKPC 29

- [10] The claimant's contention is that notwithstanding this clause of his contract with BAICO that this provision in the contract does not conclusively determine whether or not he was an employee of BAICO or whether he was an independent contractor. The claimant relies on the case of **Franklyn**⁵ wherein the contract in question contained an express clause that the worker was an independent contractor, as in the instant case, as well as an express appointment of the agent to "*solicit, procure and transmit applications for insurance and annuities*" on behalf of the company, yet these clauses were held not by themselves "*to either exclude a contract for service or create the relationship of an independent contract.*"
- [11] The defendants take the contrary view and submit that the claimant was not employed under a contract of service and that the claimant is an independent contractor as stated in clear terms in his employment contract.
- [12] While acknowledging the approach in **Sagicor**⁶, and also that in **Franklyn**, where the court examined a number of factors including the factual circumstances of the working arrangements with the company, the Learned Solicitor General for the respondent has submitted that the court must consider that the claimant relied upon the contract in his evidence. Further, that the claimant knew and understood the content and effect of the agreement that he signed and which included the clear provision at paragraph 9 above. The Learned Solicitor General invited the court to consider that the contract was silent with regard to many of the factors upon which the claimant now relies to show a course of conduct during the period of this employment with BAICO, in support of his claim that he was an employee and not an independent contractor.
- [13] On this issue the court will adopt the approach expressed by Simmonds CJ in **Sagicor**:

⁵ Ibid., pg.4.

⁶ Ibid., pg.3.

“The courts have held that the fact that the parties make a consensual declaration of the nature of their relationship and attach a label to their relationship is not necessarily conclusive of the legal status of that relationship. However it may be appropriate in cases of ambiguity to resort to a label clause to determine the true nature of the relationship.”
“A label is not therefore conclusive but may be a factor pointing in favour of the relationship so characterized if the court finds an ambiguity upon a construction of the agreement between the parties. In the final analysis however, the court must still look at the overall contractual relationship between the parties to determine its true nature...”⁷

[14] The designation of the claimant as an independent contractor is clearly not conclusive of the nature of the relationship. The court must look to the many factors that underpinned the employment relationship between the claimant and BAICO to find whether the claimant was employed under a contract of service with the company or a contract for services. If at the end of this evaluation there is some ambiguity as to the nature of the relationship, the court will revert and pay further heed to that which the parties agreed and which was expressed in the contract, including the express term that the claimant was an independent contractor.

(ii) Insurance Coverage and Pension Plan Enrolment

[15] The claimant in his evidence-in-chief stated:

“g) Health Insurance Plan – I was included in their automatic enrolment with BAICO’s health insurance plan from the inception of my tenure and contribution for the health plan was made jointly between BAICO and myself. Later on during my employment with BAICO I was again placed on another health benefit plan which was referred to as a disability plan, which meant that if I had become disabled whilst being employed with BAICO, BAICO would continue paying my attained salary.

h) Pension Plan – I was also required to pay into BAICO’s mandatory pension plan. All Agents had to enroll in the pension plan and I could not opt-out of it. BAICO deducted 5% from my monthly salary for contributions to the Pension Plan.

o) Insurance Coverage – BAICO insured all Agents including myself under the Company’s Group Life Insurance Coverage. I was insured in the sum

⁷ (2007) 71 WIR 74 at para. 90 pg. 101 and para. 92 pg. 102

of \$807,000.00. The monthly premium was 50% paid by me and 50% paid by BAICO.”⁸

[16] The Learned Solicitor General submitted on behalf of the defendants that although the claimant indicated that he was required to enroll in the company's pension plan upon joining the company and that he received the benefit of other insurance coverage, that the claimant did not produce in evidence any documentation to show that his enrolment in these plans was a requirement of his employment. She further submitted that in any event the court should view the claimant's participation in BAICO's pension plan, health insurance plan and insurance coverage as matters having only a neutral effect in so far as determining whether the claimant was an employee or an independent contractor.

[17] At trial the claimant explained further in relation to the pension plan enrolment that:

“Paragraph H. I say I could not opt out because during my employment with BAICO there was a point in time when the company sought to change over the company system from one program to another. This took a period of time to be effective and payment of salary not being paid on a regular basis as a result of the mix-up. I approached the company as a result of the irregularity to access a portion of my pension that I had acquired up to that point in time and I was told it could not be done. I asked for full pay out so that I could manage my pension and I was told if I did so it would be tantamount to resigning or leaving BAICO.”

[18] The court notes also the evidence produced by the claimant in Volume 3 of the Agreed Bundle of documents which highlights the claimant's correspondence with the Senior Manager - Human Resource Department of BAICO, Ms. Hazel Beckles, wherein Ms. Beckles acknowledged that the claimant joined the company's pension plan upon joining BAICO, and confirmed that he could only be granted disbursement of pension funds if he left the company or upon retirement from the company.

[19] Further, the claimant produced emails from Ms. Vanessa Friday-Ramesar, attorney to BAICO, to the effect that *"they {new employees} must participate in the*

⁸ Pages 3 and 4 of the Claimant's witness statement filed on the 13th June 2014.

*pension plan once they are employees" as "the provisions of the Plan support this position."*⁹ These were emails in response to the claimant's query with regard to his pension entitlements. These matters were never questioned by the defendants at trial.

[20] The court finds that the claimant was required to participate in the company's pension plan and accepts his evidence with regard to life insurance and health insurance coverage. The court notes the dicta of Simmons CJ in **Sagikor** that these latter factors, life and health insurance coverage are matters that may be considered of neutral effect in determining the relevant question. However, the court also accepts that a pension plan feature leans in favour of a contract of service, this view being reinforced in this case by the evidence presented on behalf of the claimant above.

(iii) **Statutory Contributions/Deductions**

[21] The claimant stated in evidence that BAICO deducted Social Security and severance payments from his salary. In written submissions, Counsel for the claimant stated that this was another factor that pointed to the claimant being employed under a contract of service. Counsel drew a parallel with the claimant's position to that which was under consideration in the case of **Franklyn** and invited the court to take a similar approach to that adopted by the court in that case. The defendants' submission was that on the totality of the facts of the case that the court should not consider these deductions conclusive of the fact that the claimant was an employee, employed under a contract of service.

[22] The court considers on the authorities that this factor is an indication of a contract of service but that it is not conclusive on this issue.¹⁰

⁹ Trial Bundle Volume 3 of Agreed Documents, Tab F - Email correspondence dated 25/6/2009 between Mrs. Vanessa Friday-Ramesar and Rohan Walters and others, pg. 1 of 4

¹⁰ Sagikor Insurance Company v Livingstone Carter & others at para 43.

(iv) Payment on Commission

[23] The Learned Solicitor General accepted that the claimant was paid on a commission basis for the work that he undertook on the company's behalf. She argued however that the method of payment is not determinative of the status of the claimant. It is not disputed that this is a proper statement of the law. In seeking to conclude which of the two types of contract the claimant was engaged upon, the court can look to see whether the payments on commission are met by one principal employer and examine the degree of control that the employer exerts over the worker to resolve this issue.

[24] In the instant case, the claimant's only source of income was BAICO. His evidence was:

"b) Interests of BAICO – During my employment with BAICO, I could not, and I did not, become employed by another insurance agency or by any other business which would conflict with the interests of BAICO.

c) Personal contract – I was not allowed to, nor did I ever, contract personally with clients solicited on behalf of BAICO. All solicitations were strictly done for and on behalf of BAICO and all forms, receipts, payment record books issued to clients were the property of BAICO. Application forms used to capture clients' personal data and other such instruments were all property of BAICO."¹¹

[25] In the circumstances of this case, this evidence taken together with the manner of payment, points to a contract of service.

(v) Hours of Work

[26] The claimant stated in his evidence-in-chief that:

"a) Working hours – I was advised by my superiors of my regular hours of work, being 8:30 am to 5:00 pm. I was expected to devote the whole of this time to working for BAICO. However, in actual practice, the demands of the job meant that I saw clients and prospects from 7:00 am at time, and on weekends and at other times way beyond the 5:00 pm office hours."

¹¹ Witness statement of the Claimant filed on 13th June 2014.

[27] In cross-examination his evidence was:

“The business did not have to be conducted at BAICO’s office. Based on the agreement there was no need for an 8 to 4 day. There is nothing in the agreement that stipulated 8am to 4pm. Nothing that I have to be at Cayon Street between 8am to 5pm.”

[28] The court cannot and must not divorce its consideration of these factors from the evidence of the nature of the work that the claimant was engaged upon. As the claimant stated in his evidence, his duties involved, *“a) Proving the Company’s clientele with advice with their need, b) Sales in various types of Life Insurance products; Investment products; Annuities; Group and individual Pension plans, Group and individual Health Insurance Plans, and Commercial and Home Owners Insurance, c) Liaising with banks and clients to have documents to assign Life, Annuities and Property Insurances for mortgage purposes, d) Liaising with medical doctors to clarify medical exam results and determine the level of medical exam clients should take, e) Reviewing medical claims for errors and denials by the company, f) Collecting premiums for BAICO’s clients, following up with delinquent clients with a view to collecting outstanding premiums, reinstating lapsed policies, delivering policy contracts to clients.”*¹²

[29] The claimant called Eugene Hamilton as a witness in support of his case. On this point Mr. Hamilton stated: *“He was expected to work ...the hours quoted there were the hours the company expected all persons working with the company to access the office and to access the office working environment. The work that Rohan did required him to work in the field and it was at any time convenient to him outside the regular working hours.”* *“The nature of the work precluded me from insisting that they [career agents] were in the office. They were expected however to be conducting BAICO work during this time.”*

[30] Having regard to the nature of the insurance business, the fact that the claimant could and did work outside of normal business hours or company hours and that

¹² Tab 1 of Trial Bundle 2 – Witness statement of Rohan Walters filed 13st June 2014 at para.7

he was free to do so at a time convenient to himself and a potential customer these are no more indicative of a contract for services than a contract of service. The evidence of Eugene Hamilton establishes that despite the terms of the contract which stated that the claimant was free to exercise his own judgment as to the persons within the territory from whom he will solicit business, free to establish the time and place of such solicitation, and that the claimant did not have set hours, the work that the claimant was engaged in was on behalf of the company and the conduct of the company's business, not his own. The court is unable to agree with the submission of the Learned Solicitor General for the defendants that the claimant's case should be distinguished from Franklin or Hanna on this point.

(vi) Tools of Trade/Work Station

[31] BAICO provided the claimant with a workstation at its company office. He was also provided with all the equipment supplies and appliances with which he was required to carry out his work. The claimant did not contract personally with clients and with regard to payment from clients all receipts were issued by and in the name of BAICO. Again the claimant submitted that these factors were evidence of a contract of service. Learned Solicitor General suggested to the claimant in cross-examination that the provision of the office space/work station was merely evidence of a convenient arrangement between him and BAICO and in closing submissions stated that these were suggestive of the status of an independent contractor.

[32] The claimant in answer to questions posed by the Learned Solicitor General in cross-examination stated that the setting up of his own office outside of the company, that this, in practice, would amount to an entirely different arrangement from that which he enjoyed with BAICO. He stated that in his opinion such an agent would cease to be an insurance agent, he would become an independent contractor, "*a businessman selling insurance products as a broker.*"

[33] He went on in his evidence to state:

“I understood that the arrangement of broker was different from me. The difference are that persons who worked outside of BAICO having set up an office would have formed an agency and called himself different names and employed persons to work for him, invoiced BAICO for his services and BAICO would pay his company and then he would have been paid by his company for providing services to BAICO. That did not happen in my case.”

[34] Having considered the evidence of the claimant and his supporting witness, the court finds that these factors point to a contract for service.

(vii) Leave Entitlement

[35] The Learned Solicitor General submitted that because the claimant gave no evidence of any entitlement to leave as agreed between him and the company and that also because there was no leave entitlement outlined in the contract between the claimant and BAICO that these factors points to the existence of a contract for services versus a contract of service between the claimant and the company. The Learned Solicitor General pointed to the provisions of the **Holiday with Pay Act** Cap 18:15 to support her contention on this point. Her submission was that leave is an entitlement accorded to all employees.

[36] The claimant stated that BAICO did provide for him to take sick leave or time off for holidays, although he never took leave. He agreed with the Learned Solicitor General under cross-examination that the career agent agreement did not outline any entitlement to leave but submitted that this factor must be viewed with the other aspects of his employment to determine the status of the career agent agreement. The claimant invited the court consider that he was afforded vacation leave and further that he had been also granted study leave by BAICO.

[37] In the circumstance of this case, the court finds that the claimant's entitlement to leave has but neutral effect on the issue of whether he was employed under a contract of service or a contract for services.

(viii) Bond Placement and Mortgages

[38] The claimant drew to the attention of the court that –“4) Mr. Walters was placed on a bond with BAICO which was repaid to him after the first 5 years of his tenure with BAICO. 5) Mr. Walters entered into two mortgages with BAICO that he was unable to secure as a consequence of his relationship with BAICO.”¹³

[39] With regard to these factors, the court agrees with the submission of the Learned Solicitor General that: *“these matters are neutral to the determination of whether the claimant was in fact an employee or independent contractor. A company must in accordance with good business practices put in place practices to safeguard its finances and make such investments and or decisions that will cause income to accrue to it. These matters are in no way determinative of the status of the claimant's relationship with the company.”*

Court's findings

[40] Having considered all the circumstances of this case and the having carefully analyzed the many matters which underpinned the contract of employment between the claimant and BAICO, and having considered too the detailed submissions of counsel for the claimant as well as for the defendants, this Court finds that the claimant was employed under a contract of service with BAICO. There is no ambiguity that remains to be clarified that requires the court to go back to consider in any further detail the provision of Paragraph 10 of the contract to resolve such ambiguity. The court's review of the overall contractual relationship has produced a firm conclusion on this issue.

¹³ Claimant's written closing submissions, filed November 27th 2014 page 5

[41] The court finds that the language of the Agent Agreement was not determinative of the employment relationship between the claimant and BAICO. The elements of personal performance and control that point more in favour of a contract of service are apparent from a close consideration of the overall contractual arrangement between BAICO and the claimant. The relevant factors in the instant matter include, the claimant's pension plan enrolment, hours of work, payment on commission, the provision of a work station and tools of the trade all viewed in the context of the nature of the work in which the claimant was engaged by BAICO. Supervision by officers of BAICO, and the fact that the claimant could contract or solicit clients personally but only for and on behalf of BAICO all evidence an element of control sufficient to designate the claimant as being employed under a contract of service and this Court so finds.

Issue 2 : Whether the Claimant was an Employee Under the Protection of Employment Act?

[42] Section 2 of the Act defines employee as *“any person who works with an employer under a contract of service in any capacity whether such contract is expressed or implied, oral or in writing”*.

[43] The court's finding is that the claimant was an employee within the definition of Section 2 of the Act.

Issue 3: Whether the claimant is entitled to severance payments in accordance with the Act

[44] Section 26 of the **Protection of Employment Act**, chapter 18.27 of the Laws of St. Christopher and Nevis (“the Act”) establishes the right to severance payment:

“26. Right to severance payment

(1) Where an employee has been continuously employed for a period of not less than one year and the employer terminates the services of that

employee on any grounds specified in paragraph (d), (e), (f) or (g) of section 5(1), or the employee has terminated his or her services in pursuance of section 8(3), the employee shall be entitled to severance payment.”

[45] In order to be eligible for severance payment the claimant must therefore satisfy three criteria:

- (1) He must show that he was an employee;
- (2) He must show that he was continuously employed for a period of not less than one year; and
- (3) And thirdly he must show that his employment was terminated in the manner stipulated by Section 26.

[46] In this regard, the court has already concluded in answer to Issue 2 that the claimant was an employee within the meaning of Section 2 of the Act.

[47] The court also finds and accepts the evidence of the claimant that he was continuously employed by BAICO for a period in excess of one (1) year. The uncontradicted evidence of the claimant was that he was employed by BAICO for approximately twelve (12) years during the period 1st April 1997 to 23rd October 2009.

[48] The defendant conceded that the claimant terminated his contract under section 8(3) of the Act having regard to the state of affairs at BAICO and that the circumstances which led to termination are not in issue in this matter.¹⁴

[49] Section 8(3) states:

“(3) An employee may terminate his or her services without notice if the conduct of his or her employer is of such a nature that the employee cannot reasonably be expected to continue his or her employment and any such termination shall be deemed to be termination by the employer.”

¹⁴ Page 2 of the defendants' written closing submissions filed on the 27th November 2014.

[50] The circumstances which led to the claimant's termination of employment are directly tied to the suspension of operations of BAICO in St. Kitts on 18th March 2009 due to the change in fortunes of its parent company, the conglomerate CL Financial Group, the effects of which were felt throughout the region. There is therefore agreement that the manner in which the claimant's employment was terminated was within one of the grounds specified by section 26 of the Act.

[51] In light of the foregoing, the court finds that the claimant is entitled to severance payments in accordance with the **Protection of Employment Act**.

Issue 4: Is the Claimant entitled to Interest from the 23rd October 2009 to the Date of Judgment

[52] The claimant has submitted that he is entitled to interest on the severance payment at the rate of six percent (6%) to compensate him for the inordinate and unreasonable length of time throughout which he has been deprived of his due entitlement. He therefore seeks interest from the date of submission of the claim up to the date of judgment.

[53] The claimant argued that the court should consider that the 1st named defendant did not respond to the claim for severance payment until some thirteen (13) months after the claim was submitted, although such a claim was usually determined within three (3) months after the submission of an application for payment of severance pay. Further that the claimant asked this court to consider the provisions of Regulation 28 of the Protection of Employment (Severance Payment) Regulations, at the second schedule to the Act, which reads as follows:

"1) Any claim duly made to the Commissioner shall be determined by him or her within a period not exceeding four weeks from the date of the claim unless the claim presents particular difficulty, in which event it shall be determined as expeditiously as possible within a period not exceeding three months:

Provided, however, that in exceptional circumstances this latter period may be exceeded.

(2) For the purposes of paragraph (1) the date of receipt of the claim at the office of the Commissioner shall be deemed to be the date of the claim.
(3) Where, in respect of any claim under this Act or these Regulations, any employer fails or refuses to sign any form, if the Commissioner determines that such claim for payment is valid, he or she may, with the approval of the Minister, effect such payment.”

[54] The claimant’s conclusion on this issue was that “*this was not a case of exceptional difficulty which would have required the defendant to launch an extensive, costly or time consuming investigation into the working environment and conditions at BAICO, which may have led to a delay. Instead, the Labour Commissioner’s denial was based on a read of the written contract signed between BAICO and Mr. Walters. It is submitted that it ought not to have taken over thirteen months to complete a response in those circumstances as there was really no good reason for such an inordinate delay.*”¹⁵

[55] The claimant referred the court to a number of authorities wherein interest on severance payment had been awarded. The court has carefully considered the rulings in **Dowdy**¹⁶ and in **Williams**¹⁷ and do not find them particularly useful as the basis for such award is not clearly stated. The claimant also referred the court to the case of **Maria Caines v The Labour Commissioner and The Attorney General of St. Christopher and Nevis**.¹⁸ In **Caines**, the court’s decision to grant pre judgment interest on an application for judicial review of the decision of the Labour Commissioner was premised on a finding of malfeasance on the part of the Labour Commissioner. There is none of the unreasonableness, lack of good faith or misfeasance as was found in **Caines** on the facts of the instant case. This case is concerned entirely with a determination of the entitlement to severance payment.

[56] The evidence the 1st named defendant is that upon receipt of the claim for severance payment he forwarded same to the Attorney General’s Chambers for

¹⁵ Page 8 of the Claimant’s written closing submissions, filed on November 27th 2014

¹⁶ Dowdy et al v Ryan, AG 1977 IC 3

¹⁷ Williams v Bank of Antigua Ltd. AG 2002 IC 8

¹⁸ SKBHCV2011/0177

legal advice. The court notes that there is no evidence of the dates of forwarding of the claim to the Attorney General or the date of the receipt of the advice. However, there was nothing offered or suggested to the 1st named defendant to contradict this evidence that he offered as the reason that a decision on the claimant's claim for severance payment was not made sooner.

[57] The court has a discretion to award pre-judgment interest.¹⁹ The court declines to do so in this case.

[58] The court declares and orders as follows:

- (i). The claimant was an employee of BAICO from 1st April 1997, to 23rd October, 2009 within the meaning of "employee" under section 2 of the **Protection of Employment Act** Cap 18.27 of the Laws of St. Christopher and Nevis.
- (ii). The claimant is entitled to severance payment in accordance with section 26 of the **Protection of Employment Act** Cap 18.27 of the Laws of St. Christopher and Nevis.
- (iii). The claimant is entitled to interest on the severance payments at the rate of 5% from the date of judgment until payment in full.
- (iv). Costs to the claimant to be prescribed costs.

Marlene I Carter
Resident Judge

¹⁹ Section 29 of the Eastern Caribbean Supreme Court (St. Kitts and Nevis) Act, Cap 3.11. See also *Peters and Grenada Electricity Services Ltd. Civil Appeal No.13 of 2005 per Barrow J.A. at page 17*