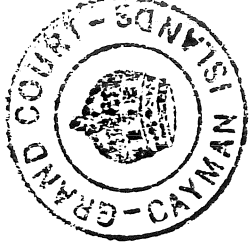


C.J



CAUSE NO. 308/92
309/92

13-01-93

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

SHIRLEY ROULSTONE AND KELLY COFFEE
v.
CAYMAN AIRWAYS LIMITED

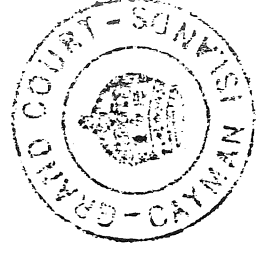
Mr. Murray for the plaintiffs
Mr. Barrie for the defendants

ORDERS

Schofield J.

These are consolidated applications by the defendant, Cayman Airways Ltd., to strike out the writs of summons and statements of claim in the two actions. The plaintiffs were both employed by the defendant as flight attendants on similar contracts of employment. Their employment was terminated on the 13th August, 1992. The plaintiffs claim that such termination was unfair and wrongful. The defendant claims that the plaintiffs were justly dismissed from their contracts of employment.

Prayer (a) in each statement of claim seeks "Eleven months salary for unfair dismissal". Reference is made in two other paragraphs of the statements of claim to the dismissal of the plaintiffs being unfair. This Court does not recognize unfair dismissal as a cause of action. An employee who is wrongfully dismissed has his remedies before this Court at common law. But the common law does not provide a remedy for unfair dismissal. Unfair dismissal is recognized by the Labour Law, 1987, and the remedy open to an employee under that Law is a complaint to the Director of Labour (see section 48 of the Law), and thereafter, by a party aggrieved by the Director's decision to an Appeals Tribunal. A final appeal lies to this Court from the Tribunal's decision. No cause of action in the first instance lies with



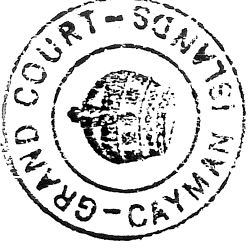
Court.

Accordingly I strike out the prayer in the statement of claim for damages for unfair dismissal.

There is an alternative claim for damages for wrongful dismissal. It is an arguable point whether the plaintiffs' dismissals were wrongful or not. The letters terminating the plaintiffs' employment are dated 13th August, 1992 and are in similar terms. They were informed that they would receive one month's severance pay for each year they had been employed by the defendant "in lieu of notice", plus the vacation pay to which each was entitled. The letter did not refer to any period of notice nor offer salary in lieu of notice. However, a subsequent letter to each plaintiff, dated 26th August, 1992, informed them that a cheque had been prepared for each plaintiff to cover severance and vacation pay plus, for each, one months salary in lieu of notice. Those offers, I am informed, are still open to the plaintiffs. It seems, therefore, that the defendant initially treated the dismissals of the plaintiffs as summary dismissals, but on reflection the defendant was prepared to give them salary in lieu of notice.

It is normally lawful for an employer to give an employee salary in lieu of notice (see Halsbury's Laws of England, Fourth Edition, Vol. 16 para 288). I can see nothing in the plaintiffs' employment agreements, which were annexed to the affidavits of Janice M. Ebanks the Personnel Manager of the defendant company, or in the nature of the plaintiffs' employment, to lead me to conclude that payment of salary in lieu of notice was improper or inappropriate in this case.

In the English Court of Appeal in the case of Gunton v. Richmond-upon-Thomas London Borough Council [1981] 1 Ch. 448, 469, Buckley LJ had this to say:



"Where a servant is wrongfully dismissed, he is entitled, subject to mitigation, to damages equivalent to the wages he would have earned under the contract from the date of dismissal to the end of the contract. The date when the contract would have come to an end, however, must be ascertained on the assumption that the employer would have exercised any power he may have had to bring the contract to an end in the way most beneficial to himself; that is to say, that he would have determined the contract at the earliest date at which would properly do so: see McGregor on Damages, 13th ed. (1972), paras 884, 886 and 888."

That, as I understand it, is the existing state of the law in relation to damages for wrongful dismissal.

The employment agreements of both plaintiffs contain the following paragraph:

"SECTION 10 - TERMINATION OF SERVICE

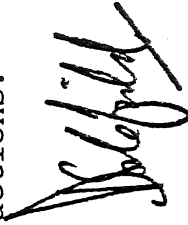
The service of a Flight Attendant may be terminated without cause by the Company or the employee only after giving fourteen (14) days notice in writing. It is understood and agreed that the services of a Flight Attendant may be terminated by the Company at any time for cause if the performance of his/her duties he/she is negligent or he/she fails to comply with the Flight Attendant's Manual or Personnel policies herein mentioned."

It is clear from that clause that the defendant could have lawfully terminated the services of both plaintiffs without cause by giving them two weeks notice, or, as I have indicated earlier, by giving them two weeks salary in lieu of such notice. The defendant would also, of course, have to pay such other allowances to which the plaintiffs were entitled.

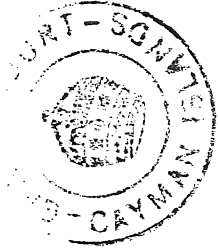
In this case the defendant has tendered to each plaintiff their due allowances and one months salary in lieu of notice. This is in excess of their entitlement if their employment was terminated without cause and in excess of any damages which this Court could award the plaintiffs even if they managed to prove

that their dismissals were wrongful. The actions for wrongful dismissal are, therefore, an abuse of this Court's process.

On receiving Counsel's undertaking that the defendant considers itself bound by the terms of its letter to each plaintiff of the 26th August, 1992. I shall strike out the writs and statements of claim in these actions.



Judge



Dated this 13th day of January, 1993