

**EASTERN CARIBBEAN SUPREME COURT  
SAINT CHRISTOPHER AND NEVIS  
(NEVIS CIRCUIT)**

**IN THE HIGH COURT OF JUSTICE  
(CIVIL)**

Claim Number: **NEVHCV2020/0018**

Between

**Shawn Kissoon**

Claimant

-and-

**Select Enterprises**

Defendant

**Before: His Lordship Justice Ermin Moise**

**Appearances:**

Mr. Eustace Nisbett of counsel for the claimant

Mr. Ricaldo Caines of counsel for the defendant

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2021: October, 4<sup>th</sup>

2022: January, 13<sup>th</sup>

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**JUDGMENT**

[1] **Moise, J:** In this case, the claimant seeks damages, interest and costs for unlawful dismissal pursuant to section 5(1)(b) of the **Protection of Employment Act**<sup>1</sup>. He claims that he was dismissed from his employment with the defendant company without any appropriate notice and for no lawful cause. The defendant on the other hand has pleaded that there was a valid and lawful reason for the claimant's summary termination and that he is therefore not entitled to damages. After examining the evidence, I am of the view that the claimant has made out his case and that he is entitled to the notice pay, along with interests and costs. I can however find no basis for a claim for severance pay in the circumstances of this case and would deny this aspect of the claim. These are the reasons for my decision.

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<sup>1</sup> Cap 18.27

## The Facts

- [2] Mr. Kissoon joined the defendant company in September of 2010 as a landscaping and small engineer mechanic. He claims that he was promoted to the position of Landscaping Supervisor in 2012. That post involved the supervision of a small crew of the defendant's employees. He continued in this post until he was terminated on 17<sup>th</sup> April, 2019. He was therefore employed with the defendant for less than ten years.
- [3] At about 4pm on the afternoon of 3<sup>rd</sup> April, 2019, Mr. Kissoon was arrested by the police, whilst leaving work. He was taken to the Cotton Ground, and later the Charlestown, Police Stations. He was informed that his arrest was on account of a report made by the manager of the defendant company that a weed eater and a chain saw had been stolen from the compound. It was suspected that the claimant was involved in this theft. He was kept at the Charlestown Police Station until 7am on 5<sup>th</sup> April, 2019. This was after his home had been searched and nothing was recovered. He was never charged for any offence.
- [4] The claimant pleads that at about 3pm on 5<sup>th</sup> April, 2019 he was summoned to a meeting with the defendants and/or its agents to discuss the allegations. He states that this was the first time the allegations were ever put to him. He also states that he denied the allegations during the course of this meeting. However, on 7<sup>th</sup> April, 2019 he was informed by the manager of the defendant that he should not return to work until further notice, since the matter was under investigation by the company. Mr. Kissoon goes on to state that he was not informed of the outcome of the investigation but received a letter from the attorney for the defendant on 17<sup>th</sup> April, 2019 dismissing him from his employment due to gross misconduct. The letter, which was tendered into evidence, did not state exactly what this misconduct was.
- [5] Mr. Kissoon states that he reported the matter to the Labour Department but did not receive any response. Upon enquiry by his attorney, the Labour Department informed him that another employee by the name of Anil was also arrested for a missing chainsaw and weed eater. Mr. Kissoon states that he had no access to the tools which were missing and had no authority to use them or to grant permission for anyone to use them. As such, he denied any involvement in the disappearance of the items.

- [6] In cross examination, Mr. Kissoon stated that during the meeting on 5<sup>th</sup> April, 2019 he was informed that Anil had informed management that he received the stolen items from Mr. Kissoon. He states that he was informed that the items were recovered from Anil's home. He continued to deny any involvement in the theft of the items and stated that he only met Anil through work with the company and that they did not work together in the area where the items were stolen.
- [7] The defendant did not deny that the claimant was dismissed from his employment. It did not deny that he was at least taken into police custody for questioning on the allegation that he had stolen items from the company. It was however pleaded that the meeting held on 5<sup>th</sup> April, 2019 was not the first time Mr. Kissoon was informed of the allegation. It was also pleaded that Mr. Kissoon's dismissal was not merely on account of that incident but on a continuous buildup of bad behavior and work related issues. Attached to the defence were a number of documents highlighting complaints made against Mr. Kissoon dating back to 2016. I do however make the observation that Mr. Kissoon's termination letter did not highlight any of these issues as the basis for his termination.
- [8] The defendant led evidence from Mr. Larkland Richards, who was the attorney who had written the termination letter to Mr. Kissoon. For the most part, Mr. Richards' evidence underscored the defendant's belief that Mr. Kissoon was in fact involved in the theft of the items which were missing. He states that this was the basis of his termination and that, in his view, the defendant was justified in doing so. However, Mr. Larkland conceded in his witness statement that Mr. Kissoon is entitled to his holiday and notice pay. However, that should be limited to two months wages in lieu of notice and the pay for the time during which he remained on suspension.
- [9] The Defendant also led evidence from Mr. Earl Sargeant. He states that he is the security manager of the defendant company and did carry out the investigation into the stolen items. It was his evidence that he was the one who contacted the police after receiving notification that the items were stolen. He also stated that during a search of the home of Anil Sackinchad, one of the items was recovered but the chainsaw remained missing. Mr. Sargeant's evidence was that Anil had informed the police that the items were handed over to him by Mr. Kissoon. That information was apparently relayed to Mr. Sargeant by the investigating officer. He does however state that Anil had spoken to the Garden Manager in his presence and informed them that Mr. Kissoon was involved in the theft of the items and that it was he who had taken them to Anil's home. It was Mr. Sargeant's

impression that Anil was insinuating that Mr. Kissoon had informed him that management had granted approval for the items to be taken off site.

[10] Mr. Sargeant states that he spoke with Mr. Kissoon, who denied the allegations, but came to the conclusion that Anil's statement was more credible. He subsequently learnt that they were both terminated from their employment with the defendant. Despite Anil and Mr. Kissoon being the ones identified with the theft of the items, no charges were laid against Mr. Kissoon and Anil apparently left the state within a month of the incidence.

### **The Issues**

[11] Mr. Kissoon's claim is for compensatory damages in the form of notice, holiday and severance pay. Although the defendant's pleadings denied any liability to Mr. Kissoon, the evidence presented at trial along with the closing submissions of counsel, appears to concede that he is entitled to notice pay. In any event, for the brief reasons I am about to outline, I am of the view that Mr. Kissoon's dismissal was wrongful and as such he is entitled to notice pay. The court must therefore go on to consider the period of notice which was reasonable to have been provided to Mr. Kissoon in the circumstances.

### **The Court's Findings**

[12] The facts of this case are not generally disputed. It is clear that the defendant company formed the view that Mr. Kissoon was involved in the disappearance of equipment from its premises. What the defendant did, apart from informing the police, was to carry out its own investigation into the matter. However, when one examines the evidence presented at the trial, it is difficult to conclude that this amounted to a thorough enough investigation to warrant Mr. Kissoon's dismissal without notice. The only evidence which pointed to Mr. Kissoon's involvement was that of Anil, who himself left the jurisdiction shortly after the incident. One can observe that one of the items was in fact recovered from Anil's residence. His identification of Mr. Kissoon can be seen as self-serving and apart from that there is nothing else which directly points to Mr. Kissoon's involvement. Anil did not appear in court to justify or to be cross examined on what he had allegedly relayed to the manager.

[13] I also find that the single meeting with Mr. Kissoon to discuss the issue appears to be inadequate to meet the standards of fairness which would have been required in the circumstances. I accept his evidence when he states that he received no further word from his employers after he was placed on suspension. The letter informing him of his termination did not go into much detail at all regarding the findings which were made during this investigation and didn't seem to give him much of an opportunity to respond to them. His summary termination in such circumstances was not justified.

[14] I also note that the defendant has raised a number of other infractions which Mr. Kissoon is claimed to have committed over the years. I make two observations about those issues. Firstly, some of them were alleged to have taken place some years prior to his termination and do not fall within the requirements of section 5(2) of the **Protection of Employment Act** so as to justify his dismissal on that basis. This section would require that at least two warnings be issued to the employee within a period of 6 months leading up to his termination. Secondly, none of these were identified in the letter of 17<sup>th</sup> April, 2019 as the reason for Mr. Kissoon's termination. They cannot now be relied upon as a justification for summary termination.

[15] In conclusion therefore, I find that Mr. Kissoon has made out his case that he was wrongfully dismissed in that no notice was given to him in accordance with the provisions of the Act. That much appears to have been conceded by the defendants. The issue is what amount of notice is reasonable in the circumstances.

### **Notice Pay**

[16] In Section 7 of the **Protection of Employment Act** Parliament has outlined the notice required in the case of termination of one's employment. In accordance with the legislation, Mr. Kissoon would have been entitled to 2 months' notice. However, despite the provisions contained in the Act, subsection 3 goes on to state that ***"except where the benefits to be derived by the employee are more favourable than those provided for in the Act, whether the more favourable benefits accrue or will accrue by law, custom, contract or any other arrangement."***

[17] Counsel for the claimant therefor refers the court to the case of **Maureen Webb v. NEVLEC**<sup>2</sup>, where this court recently relied on the decision of **Warren v. Super Drugs Markets Ltd**<sup>3</sup>. where the common law position was stated as follows:

*“The question, what is reasonable notice, depends upon the capacity in which the employee was engaged, the general standing in community of the class of persons, having regard to the profession to which the employee belongs, the probable facility or difficulty the employee would have in procuring other employment in the case of dismissal, having regard to the demand for persons of that profession, and the general character of the services which the engagement contemplates.”*

[18] Counsel also referred to the decision in the case of **Decca Penn v Scotiabank (BVI) Ltd**<sup>4</sup> where Ellis J stated that:

*In determining what constitutes reasonable notice of termination, the courts have generally considered all of the circumstances of the case including the nature and character of employment including seniority and stature, salary and benefits; the employee's age, the employee's experience, training and qualifications, the length of service, and the availability of similar employment.*

[19] As I have indicated, counsel for the defendant has conceded that Mr. Kissoon is entitled to notice pay. He however argues that the notice required under the Act is sufficient. As an alternative, counsel refers to the case of **St. Kitts Marriott Resort and Deborah Stevens**<sup>5</sup> where the court awarded 3 months' notice pay for an a claimant who had been employed with the defendant company for a period of almost 10 years. On the other hand, counsel for Mr. Kissoon has submitted that notice pay for a period of 1 year is reasonable. He however, did not provide any similar cases as a reference point for this submission.

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<sup>2</sup> NEVHCV2015/0098

<sup>3</sup> (1965) 54 DLR (2d) 188

<sup>4</sup> BVIHCV2009/0277

<sup>5</sup> SKBMCVAP2016/0001

[20] Mr. Kissoon was employed with the defendant for a period of 8 years and 7 months. He attained the status of supervisor, as was the case in ***St. Kitts Marriott Resort and Deborah Stevens***. In his witness statement, he speaks to the difficulty he had in obtaining subsequent employment. He states that he was unable to secure a job until September, 2020 and eventually started his own maintenance business in December, 2020. Given these circumstances I am of the view that a notice period of 3 months is reasonable and in keeping with the decision of the court in ***St. Kitts Marriott Resort and Deborah Stevens***, where the period of employment was more than that of Mr. Kissoon. As was conceded by counsel for the defendant, Mr. Kissoon is also entitled to the wages due to him during his period of suspension.

[21] According to the evidence led at trial, Mr. Kissoon earned the sum of 28.40 per hour at the time of his dismissal. It was also not disputed that the average work day was 8.5 hours five days per week. By my calculation, this amounts to approximately, \$4,828.00 on the average month. That is not generally outside of the sum outlined in the statement of claim where \$59,072.00EC was claimed for a period of 12 months. I would therefore award the sum of \$14,484.00EC in notice pay to the claimant; representing 3 months' worth of wages. It is agreed that he is owed the sum of \$2,272.00EC for wages during the period of his suspension.

[22] Although, the claimant had also claimed outstanding holiday pay, there was not much evidence presented to the court in relation to this and I would therefore decline to make such an award.

[23] Regarding Mr. Kissoon's claim for severance pay, I agree with counsel for the defendant that this is not substantiated on the basis of the evidence. Counsel for Mr. Kissoon refers to section 26(1) of the **Protection of Employment Act**. However, none of the circumstances referred to in that section in its own reference to the grounds specified in paragraph (d), (e), (f) or (g) of section 5(1) and 8(3) of the Act are similar to the circumstances of this case. There is no basis for a claim for severance pay.

[24] In the circumstances I declare that Mr. Kissoon was wrongfully dismissed from his employment and that a reasonable period of notice of 3 months ought to have been provided to him. It is therefore ordered that:

- (a) the defendant will pay the sum of \$16,756.00EC (representing 3 months' notice pay and the pay due to Mr. Kissoon during the period of his suspension).
- (b) Interest at the statutory rate from the date of this judgment; and
- (c) Prescribed costs in the sum of \$2,513.40 in keeping with the provisions of the CPR 2000

**Ermin Moise  
High Court Judge**

**By the Court**

**Registrar**