

Filing Cabinet SCJB

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2003/HCV 0829

BETWEEN CARL WEST CLAIMANT  
AND THE SUGAR COMPANY OF JAMAICA LTD DEFENDANT

CLAIM NO. 2003/HCV 01660

BETWEEN WINSTON JAMES CLAIMANT  
AND THE SUGAR COMPANY OF JAMAICA LTD DEFENDANT

Mr. John Jackson instructed by John L. Jackson & Co. for the claimant.

Ms. Tashia McDonald instructed by Nunes Scholefield Deleon & Company for defendant.

Heard 30<sup>th</sup> May 2008 and 12<sup>th</sup> June 2008

Campbell, J.

1. The claimants were employees of the defendant's company; both appear to have worked in the industry most of their working lives. They claimed to have worked with the defendant company during its metamorphosis and evolution for the last three decades. They were both employed as Farm Managers at Monymusk Sugar Estates. In that capacity, they are in charge of a particular module to cultivate sugar cane. They were each in charge of four (4) Overseers, whose responsibilities it was to supervise the work in the field. There would be approximately 300 labourers under the control of the Farm Manager.

2. Carl West states that, one Friday morning he drove to a section of the farm where he was advised of complaints the workers had. Having made inquiries, he reported the matter to Personnel and

Industrial Relations Manager and to a representative of the union. Whilst on his duties, he was summoned to the Agriculture Manager's Office. He said he made his way through a group of placard-bearing workers and was directed to a meeting which was in session in the board room. In this room were several senior managers and a representative of the workers from Farm 4, which was then on strike.

3. The officials were not being successful, according to West, in getting the striking workers to return to work. West said he suggested a resolution to the problem which was acceptable to the workers and endorsed by both management and the union. Later the same day, he was again summoned to the boardroom where the Operations Manager handed him an envelope. He said he was told that the company was being restructured. The letter was a letter of dismissal. He said he spoke to a Mr. Calvin Brown who said he would be reinstated. He alleges, at the end of April, the company sent him a Notice and Termination pay to his bank account which was closed at the time.

4. Mr. Winston James, on the same day of the strike, after addressing the striking workers with a view of having them return to work, was summoned to the boardroom where he met Mr. Carl West coming out with his letter of dismissal, he in turn was handed a letter terminating his services. On the 30<sup>th</sup> November 2005 he filed an amended claim form to recover damages, consequential to his wrongful dismissal which was effected by letter dated March 28, 2005. He alleges the letter breaches the terms and conditions of his employment contract.

5. In his Particulars of Claim, he alleges inter alia;

3. That in paragraphs 3 and 4 of the said letter referred that consultants are being engaged to review organizational structure, prepare job description and recommend a job grading systems.
4. It was understood by the claimant and the defendant that the exercise would result in terms and conditions that would become part and parcel of the employee contract of employment and did indeed become so.

5. That the exercise produced, among other recommendations, two documents entitled Employee Rights and Responsibilities, and Employee Relations Industrial Discipline which have over the years been treated as being part and parcel of the claimant's contract.
6. That the document entitles Employee Relations Rights and Responsibilities issued in 1995 (a copy of which is attached hereto marked "B" for identity) the claimant category of work was established as a grade M6-M4 mandated and established certain procedure to be followed in taking disciplinary action against these grades of workers.
7. That the claimant being Grade M4 worked under these terms incorporated in his contract was entitled to receive the benefit of these procedures.

6. On the 28<sup>th</sup> February 2008, Winston James filed an amended claim form to recover damages for wrongful or unfair dismissal.

The claim was particularized, inter alia;

That in breach of the contract of employment made between the claimant and the defendant company, the defendant company has wrongfully and unfairly in breach of the said contract terminated the claimant's employment for disciplinary reasons, without observing the provisions in respect of disciplinary action set out in the said contract and in the collective labour agreement, which governs the claimant's employment with the defendant company.

7. West admitted in cross-examination that his attorney had been sent notice payment and outstanding vacation pay. He testified that an important term of his contract is that contract will be reviewed following the completion of the Consultants' Report. That report specified certain procedures which had to be implemented prior to dismissal. These procedures were not followed in his case. He stated that he had not had any discussions with anyone as reflected in the letter. The last time his employment was reviewed was in 2001. The farm managers are not unionized, they are considered a part of management. He admits in cross-examination that his contract of employment does not expressly support the incorporation of the consultations review. He admitted in cross-examination that his letter of dismissal never alleged that he committed an offence.

8. It was submitted on behalf of the claimants that the disciplinary procedures were incorporated in both claimants' terms of employment. It was further submitted that if they were not incorporated then the Masters and Servants law would apply and they would be properly terminated. The procedures would be incorporated as a whole. The terms of the letter of employment was not challenged. Submitted that terms were changed mutually as evidenced by the staff appraisal form which expressly refers to grade M5, which is a grade incorporated into the Employee Relations – Industrial Discipline issued 1995. The procedure that ought to have been followed in both cases is mandated for dismissal of staff grades M6-M4.

9. The dismissal letter, according to Mr. Jackson, recognizes this need for a review, by stating, "Further to discussions" whilst both claimants deny that there were any discussions involving them. Counsel submitted that the rules of natural justice have become applicable through incorporation of the Consultants' Report into the contract of employment of the claimants. Norman Selwyn, Law of Employment, Eleventh Edition, Wrongful Dismissal, 16. 11 (d), where the learned authors relied on *Gunton London Borough of Richmond*.

Mr. Jackson submitted that the court ought to infer a period of three months or more as a reasonable notice period, the contract being silent as to notice. He relied on **Godfrey v Allied Stores Ltd. (Clarke)** 1990, 27 JLR 421 at page 425.

"Where there is no just cause for summary dismissal statute merely prescribes minimum periods of notice required to terminate a contract of employment for an indefinite period. As the plaintiff was dismissed after being employed for a continuous period of four years, the minimum period of notice required by statute was two weeks; see section 3 of the Employment (Termination and Redundancy Payments) Act."

10. Ms. McDonald submits that, the relevant law is the common law regarding contracts between master and servant. (**Kaiser Bauxite Co. vs Vincent Cadien** 20 JLR 16- letter) Counsel submitted that **Godfrey v Allied Store Ltd.** (1990) 27 JLR 421 is authority for the proposition that where there is no

express provision for notice, the court will infer a reasonable period. However, both claimants had agreed the period of notice with the defendant.

11. It was further submitted on behalf of the defendant that there was no support for the proposition that the contract of employment has been amended by the Consultants' Report. Under cross-examination, neither of the claimants was able to show anywhere in their contract of employment where the Consultants' Report was incorporated. Appraisal report did not speak to incorporation, only to evaluation of performance. In the absence of any evidence that the express terms of the contract were changed, they have remained unaltered.

12. The procedure outlined by the Consultants' Report, is relevant for the applicants' grade but only in regard to questions of discipline, not for termination of the agreement. The document shows the stage from verbal warning to dismissal. The report outlines certain types of conduct that attract a disciplinary report. If there is conduct that falls within the types of behaviour outlined, then it would fall within that definition, and would attract the specified procedure. However, if his conduct is excluded, he could be dismissed without that procedure.

### Analysis

13. The claimants' contracts deal with termination; paragraph 2 refers to the offensive conduct, as opposed to paragraph 1, which enshrines the employer's right to terminate contract on giving notice. The conduct referred to in paragraph 2 is consistent with the behaviour that is listed in the Consultants' Report on which the claimants rely. Disciplinary offences are clearly defined and understood by the parties to the contract. It was not expressed in the letter of dismissal or in the evidence that the claimants were accused of any disciplinary conduct to which the procedure would apply. The claimants have not put themselves in any of the procedure groups that would trigger the disciplinary procedure.

14. There is no requirement at common law for an employer to give reasons for termination. The only obligation of the employer is to give a reasonable period of notice or give pay in lieu thereof. It cannot be inferred from the letter of dismissal or the surrounding circumstances that the claimants' conduct has been unsatisfactory. No proper inference concerning misconduct or any other conduct that would warrant the implementation of the disciplinary procedure can be drawn.

15. **Cocoa industry Board and Cocoa Farmers Development Company Ltd. And F.D. Shaw v Burchell Melbourne** (1993), 30 JLR 242, it was held:

“The manual clearly states that dismissal for cause attracts summary dismissal, that is dismissal without the necessity to give notice or wages in lieu of notice. Having stated that there were reasons for the dismissal, the appellants were entitled to dismiss the respondent without notice or wages in lieu of notice. The tendering of one months wages in lieu of notice is cogent evidence that the dismissal was not for cause. The appellants, in terminating the contract, employed one of the methods permitted by the manual, ex. 10, to terminate the contract.”

More particularly, the contract was terminated by the method stipulated in the letter of appointment. Notice Contract terminated in keeping with provision of item 1 of the contract. The evidence is that they have been paid.

#### **On the question of damages**

Even if wrongfully dismissed, the measure of damages to which the claimant is entitled to is his pay for the period of notice. In **Cocoa Industry Board (supra)**, the court held that even if defendant was liable, the claimant has been fully compensated. Damages for wrongful dismissal do not recognise the injured feelings and the diminished prospects for obtaining employment due to the circumstances of the dismissal. In **Kaiser Bauxite Company v Cadien** (1983), 20 JLR 168 at page 179;

“The additional damage to which Lord Cleridge C. J. thought the plaintiff in **Maw v Jones** (supra) was entitled, related to the fact that his dismissal without notice implied a slur on his character which would render it more difficult for him to obtain future employment elsewhere. All the law lords

in ADDIS Gramophone Company Ltd. (supra) were one in holding that damages for wrongful dismissal cannot include compensation for the manner of dismissal for his injured feelings or for the loss he may sustain from the fact that the dismissal of itself makes it more difficult for him to obtain fresh employment.”

Wrongful dismissal is a claim for special damages which must be specifically pleaded and proved (See **Arthur Baugh v Courts (Ja.) Ltd.** CL. B 099/1997). Judgement for the defendant. Cost to be agreed or taxed.

