



EMPLOYMENT RIGHTS TRIBUNAL

Case: ERT/2015/104

KEITH LEWIS
(Represented by the Barbados Secondary Teachers' Union) **CLAIMANT**

AND

BOARD OF MANAGEMENT OF THE LODGE SCHOOL **RESPONDENT**

DATES: **May 9 and 10, 2019,**

BEFORE: **Christopher Blackman Esq, GCM; Q.C; Chairman**
Edward Bushell Esq and Mrs. Beverley Beckles Members

APPEARANCES: Patrick Frost Esq SCM; with Mrs Mary Redman, President of the Barbados Secondary Teachers Union for the Claimant

Owen Estwick Esq, GCM for the Respondent on May 9, 2010

Miss Jennifer Small Crown Counsel, for the Respondent on May 10, 2019

DECISION

- [1] At the conclusion of the hearing on May 10, 2019, the Tribunal unanimously determined that the Claimant Mr. Keith Lewis (hereinafter referred to as Mr. Lewis) had been unfairly dismissed by the Respondent, the Board of Management of the Lodge School (hereinafter referred to as the Board). The Tribunal requested and received submissions as to the quantum of compensation, having previously declared that neither re-engagement nor reinstatement were options to be considered.
- [2] This judgment briefly provides a background to the issues considered by the Tribunal and the reasons for its determination of unfair dismissal, as well as a computation of the amount to be awarded.

BACKGROUND

- [3] Mr. Lewis commenced work at the Lodge School as a General Worker on a temporary basis, on March 10, 2008 after being interviewed and sent a letter dated February 25, 2008 offering him the position. The duties to be performed were inter alia, keeping grounds and external areas of the school clean, on a daily basis; taking out garbage; mowing the lawns when necessary and responsibility for the proper care of the tools. His hours of work, Monday to Friday was 7.30 a.m. to 4.30 p.m. with one-hour break for lunch.
- [4] In the Board's Statement of Case, it alleged that over the years Mr. Lewis was given several verbal warnings relating to his work habits, and one written warning dated March 1, 2011 from the then Secretary Treasurer of the Board, Miss Judith Murrell which particularly related to his non-compliance with the requirement to work to 4.30 p.m.

- [5] On March 3, 2011 Mr. Lewis authorised the Board to deduct union dues in favour of the Barbados Secondary Teachers Union (The Union). In November 2013, Union wrote to the Board raising concerns as to Mr. Lewis's continued temporary status. The Union was advised that the provisions of the Public Service Act required that the post of General Worker be advertised, before it could be filled on a permanent basis, and that Mr. Lewis was eligible to apply.
- [6] Mr. Lewis was interviewed on July 18, 2014 by the Appointments and Disciplinary Committee of the Board for the position of General Worker. Miss Judith Murrell, the former Secretary Treasurer of the Board, who had been summoned as a witness on behalf of the Claimant, testified that whilst the Minutes of the meeting held that day indicated her presence at the meeting, the contents of the resulting minutes in some material aspects were not what she may have recorded. Miss Murrell was not cross examined by Mr. Owen Estwick, the Board's representative. He was also the Chairman of the Appointments and Disciplinary Committee panel.
- [7] The critical highlights of the Minutes are (i) para. 2.5, which listed the persons for interview; (ii) para. 2.6, which listed the questions that were to be asked of the candidates; (iii) para. 2.8, which focused on "the demeanour and lack of knowledge of the duties of the post exhibited by Mr. Keith Lewis who had been acting in the post since March 2008"; (iv) para. 2.9, which stated that Mr. Cleverson Husbands, the first candidate interviewed was ranked first and should be offered a temporary post effective 1st August, 2014. The Claimant Mr. Lewis was ranked 7th.
- [8] Under examination by Mr. Frost, Miss Judith Murrell, the former Secretary Treasurer of the Board informed the Tribunal that Mr. Cleverson Husbands, the selected candidate, was an employee of the Board in the role of Watchman at the time of the interview.

- [9] July 29, 2014, a day before proceeding on his vacation, Mr. Lewis was hand delivered a letter dated July 23, 2014 advising that his application for the position of General Worker of The Lodge School was ***“not successful at this time”***.
- [10] The Board at a date in August 2014, ratified the decisions and actions of the Appointments and Disciplinary Committee taken at the July 18, 2019 meeting.
- [11] Following unsuccessful attempts to resolve the matter with the Chief Labour Officer, pursuant to Section 42 of the Employment Rights Act, the matter was referred to the Tribunal for hearing.

DETERMINATION AND COMMENTS

- [12] The Tribunal notes with concern, that Mr. Lewis’s employment was terminated by (i) a Subcommittee of the Board of Management, and (ii) in breach of all the conventions and norms, just before he was due on his 21 working days’ vacation. In all the circumstances, the Tribunal is satisfied that Mr. Lewis was unfairly dismissed and accordingly, we so **DECLARE**. The Tribunal would wish to record its appreciation, for the candour and forthrightness of the testimony given by Miss Judith Murrell, the former Secretary Treasurer of the Board.
- [13] The Tribunal would also wish to recommend that the Board reviews its Rules of Governance. A Sub Committee performs an advisory role to the Board. The Board on receipt of the report of the Sub Committee, would then accept, reject or modify the recommendations. Accordingly, the Minutes of the Sub Committee, should reflect that a matter is ***recommended*** for particular action. It is contrary to all proper norms, for a letter of dismissal to be issued prior to Board approval, and the Tribunal strongly deprecates, the seemingly cavalier approach by the Board as to how Mr. Lewis’ matter was handled.

THE AWARD

- [14] The basis for Mr. Lewis's awards is found in Sections 22 (2) (minimum notice) and 37 (1) (a) and 37 (2) (a) (basic pay) of the Employment Rights Act. In Section 22 (2) (b) 4 weeks' notice is required for a fortnightly paid employee, where the period of continuous employment of the employee is 5 years or more but less than 10 years.
- [15] At the time of his dismissal, Mr. Lewis received \$968.52 gross, fortnightly. The Tribunal declines to follow the previous decisions, namely *Orlando Harris v. Cheffette Restaurants Limited Claim No. ERT 065/2014* and *Anne-Marie Holderv. AVG Investments Inc Claim No. ERT 002/2014* where the computation was made on the net amount received by the Claimant. In our view, NIS deductions should not be considered in computing the award as the NIS relationship came to end with the dismissal. The amount to which Mr. Lewis is entitled under Section 22 (2) (b) is **\$1937.04**.
- [16] The calculation of the basic award is as provided in the Fifth Schedule to the Act. The entitlement is two and a half weeks wages for each year where the period is 2 years or more but less than 10 years. In accordance with the schedule, the amount due as basic pay is $2.5 \times \$484.26 \times 6 = \7263.90 .
- [17] Mr. Frost in his written submissions has urged the Tribunal to make a declaration requiring the Board to make a payment to Mr. Lewis of the full amount of his loss, consequent to his dismissal. However, Mr. Frost did not particularise that loss. As a result, the Tribunal declines to make the declaration sought.

[18] The Board is ordered to pay the sum of \$9200.94 to Mr. Lewis by 31st August, 2019.

Dated this 30th day of July 2019

Christopher Blackman
Chairman

Edward Bushell
Employer's Representative

Beverley Beckles
Employee's Representative