



BARBADOS

IN THE EMPLOYMENT RIGHTS TRIBUNAL

Case: ERT/2015/031

David King

CLAIMANT

AND

Nassco Finance Limited

RESPONDENT

DATES: 24<sup>th</sup> August 2020

BEFORE:	Christopher Blackman Esq, GCM; Q.C.	Chairman
	Dr. Hartley Richards	Member
	Frederick Forde, Esq.	Member

APPEARANCES: Stephanie Brathwaite, Attorney-at-Law for the Claimant  
Marcel El Daher in association with Lamar Quimby,  
Attorneys-at-Law for the Respondent

## RULING

1. Mr. King the Claimant held the position of General Manager of NASSCO FINANCE LIMITED the Respondent from June 1, 2006 until his resignation from that post on April 2, 2014. His contract required three months' notice and consequently he went on 'garden' leave immediately on his resignation and was paid up to July 2, 2014, while continuing to enjoy the benefits of his contract which included a fully maintained company car.
2. Mr. King said that his dismissal was in the circumstances provided for in Section 26 (1) (c) of the Employment Rights Act (the Act) which states that an employee is dismissed by his employer where "the employee terminates the contract under which he is employed with or without notice in circumstances in which he is entitled so to terminate it by reason of the conduct of the employer"
3. In his written statement, and further clarified under cross-examination Mr. King said that he became aware on March 31, 2014 of certain occurrences that appeared fraudulent to him and with which another employee of the company seemed to be implicated. Mr. King was of the view that the imputed employee should be fired immediately, and consequently was "flabbergasted" to be told by the Managing Director, Mr. Roger Hill "I really don't know what due diligence you were doing and in any event I have to get S's side of the story."
4. Mr. King was further perplexed by the response of Mr. Hill to the proposal he made to repossess a vehicle leased to a customer, whom he felt was an undesirable person for the Company to be associated with. Under cross-

examination, he conceded that the terms of the lease had not been breached and moreover that the contract was with a different entity.

5. Mr. King was not satisfied with the responses or reactions from the Managing Director over the following days and formed the view that “my superior was entirely accommodating to the fraud.” As he was not willing to condone this behaviour, he felt compelled to resign his job as General Manager. As stated in paragraph 26 of his Witness Statement, Mr. King then went to his office, wrote a letter of resignation dated April 2, 2014 addressed to the Managing Director and gave a copy to Financial Controller and the Human Resources Manager. Less than 72 hours had elapsed from the ‘discovery’ of fraudulent activity on March 31 to the resignation on April 2.
6. After a very brief re-examination, Counsel for the Claimant advised the Tribunal that she had no further witnesses and that she was closing her case. As it was about 1.00pm, the session was adjourned to a date to be determined for the Respondent to present its’ case.
7. At the start of the hearing, Counsel for the Respondent queried the basis of the matter as in his view, the Claimant having resigned, there was no dismissal, unfair or otherwise. Consequently, the application should be dismissed. The Tribunal however took the view that it needed to **hear** (emphasis added) Mr. King and that it was not appropriate to consider the matter only on the written statements.
8. The Tribunal having heard and considered the evidence given by the Claimant has determined that there was no basis for reliance on Section 26(1) (c) of the Act, and that the matter should now be concluded without

the need for the Respondent Company or Mr. Roger Hill to be heard. There are two reasons for this determination.

9. The first, is that Mr. King resigned his position of General Manger. In the case of ***Greater Glasgow Health Board v. Mackay*** [1989] SLT 729, the employee had an altercation with her superior. The employee stated that she was leaving and then wrote out a letter of resignation which she delivered to the department manager, which he accepted. Three weeks after writing her letter of resignation, she sought to withdraw it, and the employer declined to agree. Thereafter, she complained that she had been unfairly dismissed. While the lower courts agreed that she had been unfairly dismissed, the Court of Session allowed the employer's appeal.
10. **Lord Ross** said at page 732 ".....it appears that her resignation bore all the hallmarks of a deliberate and conscious act.....she did not merely say that she was leaving but she took time to sit down and write a letter of resignation. That letter is well expressed and clear in its terms." In the opinion of the Tribunal the same can be said of Mr. King's letter. While unlike Mackay, Mr. King did not seek to withdraw his letter, he has relied on the conduct of the employer provisions of the Act to support the contention for unfair dismissal.
11. In the text, **Commonwealth Caribbean Employment and Labour Law** by Corthesy and Harris-Roper, under the heading **Constructive Dismissal** at page 166, a number of examples of what may be considered as an actionable breach of contract amounting to constructive dismissal have been given. These include unilateral changes in the terms of the contract, bullying, harassment, verbal abuse and 'other such behaviour which cut

against the grain of good industrial relations or actions which undermine the relationship of trust and confidence.’

12. In 2013, the Caribbean Court of Justice affirmed the statement of the Barbados Court of Appeal in the case of ***Sandy Lane Hotel Company Ltd v. Brigitte Laurayne*** (2013) 81 WIR 75 that ‘*actions for constructive dismissal must be founded on conduct viewed objectively by the employer and not the subjective perception of that conduct by the employee*’.
13. Against the observation that this area of the law is fact sensitive, and the absence of any evidence that the employer or its Managing Director pursued any of the behaviours mentioned at 11 above or made any serious breach of the Claimant’s contract, the Claimant has failed to prove that he was constructively dismissed. There was no dismissal, constructive or otherwise. The Claimant chose to resign, may be prematurely, but that was his decision.
14. These proceedings by the Claimant against the Respondent are therefore dismissed.

Dated this 7<sup>th</sup> day of September 2020.

**Christopher Blackman, Esq, GCM; Q.C.**  
Chairman

**Dr. Hartley Richards**  
Member

**Frederick Forde, Esq.**  
Member