



CARIBBEAN COURT OF JUSTICE

134 HENRY STREET

PORT OF SPAIN

REPUBLIC OF TRINIDAD AND TOBAGO

Telephone: (868) 623-2CCJ Fax: (868) 624-4710

Website: www.ccj.org

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CCJ AGREES THAT SANDY LANE HOTEL WRONGFULLY DISMISSED EMPLOYEES

Port of Spain, Trinidad and Tobago. In a judgment released today, the Caribbean Court of Justice (CCJ) dismissed the appeal in the Barbadian case of *Sandy Lane Hotel Co Ltd v Juliana Cato, Wayne Johnson and Charmaine Poyer* [2022] CCJ 8 (AJ) BB. The Court held that Cato, Johnson and Poyer (the employees), were wrongfully dismissed and entitled to the damages that they claimed. The employees were also given their legal costs.

Sandy Lane Hotel (the company) had employed the employees for periods between six and eleven years, when they were each dismissed in January 2012 with one week's payment in lieu of notice. The reason for each dismissal was alleged to be poor performance in relation to their treatment respectively of a particular hotel guest. The employees brought wrongful dismissal actions claiming damages under the Severance Payments Act (the Act). The company's defence was that the employees had been lawfully dismissed.

The magistrate and the Court of Appeal of Barbados (CoA) both held that the employees had been wrongfully dismissed and were entitled to damages under the Act. The magistrate's decision was based on the finding that the collective agreement executed by the Barbados Workers Union and the Barbados Employers Confederation for the Barbados Hotel and Tourism Association was incorporated into the employees' contracts, and the dismissals were in breach of that collective agreement. The CoA, on the other hand, concluded that the company was required to follow the disciplinary process set out in the employees' terms and conditions of service. Those terms were contained in a separate document but incorporated into the respective contracts of each employee. The CoA decided that the Company's failure to follow those processes in dismissing the employees rendered the dismissals unlawful. The company appealed to the CCJ.

The CCJ found that the provision in the employees' contracts for dismissal with one week's payment in lieu of notice conflicted with other contractual provisions requiring a specified disciplinary process to be followed in cases of alleged poor performance. Dismissal with a week's payment in lieu of notice also conflicted with the further contractual provisions for employees to 'be given every opportunity through counselling, training and re-training before being terminated for poor performance'. The CCJ held that these conflicts must be resolved against the Company as it was the Company that had drawn up the employees' contracts and the Company was in the dominant position. The CCJ noted that these employees were unable to bring an action for unfair dismissal, as is now provided in Barbados by the Employment Rights Act of 2012 that was passed months after they were dismissed.

The CCJ held that since the real reason for the employees' dismissal was alleged poor performance, the company could not simply dismiss the employees without following those provisions in their terms and conditions that specifically addressed how poor performance should be treated. By acting in the manner that it did, the company not only breached those provisions of the employees' terms and conditions of service that stipulate how alleged poor performance should be treated but also the company was in breach of the implied term of mutual trust and confidence. This term, the CCJ noted, is implied by the common law into every contract of employment to ensure that employees are treated fairly and that employers do not conduct themselves in a manner that destroys or seriously damages the relationship of confidence and trust between employer and employee.

The Court therefore held that the employees should be awarded damages of at least the amount they would have been entitled to receive as severance pay under the Act. The CCJ dismissed the Company's appeal with costs to the employees calculated in accordance with Rule 17.15(3)(b) of the CCJ Appellate Jurisdiction Rules, 2021.

The judgment was delivered jointly by the Honourable Mr Justice Adrian Saunders, President, and the Honourable Mme. Justice Maureen Rajnauth-Lee, with the other judges on the Bench being the Honourable Justices Jacob Wit, Winston Anderson and Denys Barrow.

Mr Satcha Kissoon and Ms Joia Reece appeared for the Appellant. Mr Edmund King QC and Ms Nailah Robinson for the Respondents.

The full judgment of the CCJ and a judgment summary are available on the Court's website at www.ccj.org.

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

For more information please contact:
The Public Education & Protocol Unit
Tel: (868) 623-2225 exts. 2296, 2252
Email: pecu@ccj.org