

Be Careful What You Say! Be Careful What You Do!

We live in a world where societies are becoming increasingly rights-oriented. Awareness of one's rights is not in itself bad. However, it is arguable that we often focus on our rights without recognising that those rights come with obligations. It is not strange to hear persons championing their right to do what they want and to say what they want; persons however appear less inclined to acknowledge that any right should be used responsibly, tempered by consideration of the rights of others and subject to reciprocity.

In Barbados it is quite prevalent for Codes of Discipline, whether or not embodied within Collective Labour Agreements between employers and employees, to prescribe that employees may be subject to a warning, suspension or dismissal for “abusive language”, “improper conduct”, “rudeness”, “insubordination”, etc. Against such a labour management backdrop, the case of *Eudese Ramsay v St. James Beach Hotels Services Limited* Magisterial Appeal No. 4 of 1999 is instructive, because it exemplifies that an employee's behaviour should not exceed certain boundaries; and when an employer seeks to dismiss an employee for the use of abusive and/or threatening language, the Barbadian adage ‘*it is not what you do but how you do it*’ still holds true.

The Employee's Actions

Ms. Ramsay, who had been employed as a Maid at one of the hotels owned by St. James Beach Hotels Services Limited, was allegedly involved in a verbal altercation with a Housekeeper.

The altercation apparently arose as follows. One morning, Ms. Ramsay went to the Housekeeper's office and requested her pay slip. The Housekeeper presented the pay slip to Ms. Ramsay, who noticed that her name was incorrectly spelt and so informed the Housekeeper. It was not the first time that Ms. Ramsay's name had been incorrectly spelt and Ms. Ramsay uttered words to the Housekeeper (of a nature which were subsequently found by the Magistrate to have been “a threat coupled with an obscenity”). The Housekeeper followed Ms. Ramsay out of the office and enquired about the alleged utterance; and the verbal exchange was overheard by

another employee at the hotel. Ms. Ramsay denied using the alleged words and suggested that they had been fabricated by the Housekeeper.

Ms. Ramsay was suspended with pay for five (5) days pending investigations into the alleged incident by the Manager of the hotel. Subsequent to Ms. Ramsay's return to work, a meeting was convened between the management of the hotel and Ms. Ramsay's union representatives "to investigate the charge of Eudese Ramsay using threatening remarks and obscene language to her supervisor". Ms Ramsay was subsequently dismissed without notice.

Legal Proceedings

Ms. Ramsay filed a claim for damages for wrongful dismissal before the District "E" Magistrates Court. The Magistrate assessed the following two (2) issues. Did Ms. Ramsay use the words? If she did, was the conduct such as to warrant summary dismissal? The Magistrate found that Ms. Ramsay had used the words and that "such an exhibition of behaviour to the supervisor (Housekeeper) demonstrates conduct which the Court found to be incompatible with the continuation of the working relationship....It struck at the root of the employer/employee relationship.... the summary dismissal of the Plaintiff for threatening a supervisor and using obscene language was justified."

The Appeal

Ms. Ramsay filed an appeal with the Court of Appeal of Barbados against the magisterial decision.

The Court allowed the appeal, reversed the order of the Magistrate, and directed counsel for Ms. Ramsey and St. James Beach Hotels Services Limited to compute Ms. Ramsay's entitlement to damages for wrongful dismissal in accordance with **section 45(1)** of the **Severance Payments Act, Cap. 355A** and the **First Schedule** as amended in 1991.

The Appellate Court acknowledged that an act of disobedience or misconduct by an employee will only justify summary dismissal if it represents a repudiation of the contract of employment,

and went on to state that it requires very special circumstances to entitle a servant who expresses his feelings in a grossly improper way to succeed in an action for wrongful dismissal.

The Court asserted that even though Ms. Ramsay's actions constituted disgraceful behaviour, such "threats" and obscenities were commonplace in the workforce due to contemporary cultural and social attitudes and customs in Barbados. Moreover it stated that Barbadians had traditionally expressed their annoyance with promises of assault and battery but with no real intention to act upon those empty threats. Furthermore, the Court found that the mis-spelling of Ramsay's name was not a single error, would have been perceived by Ms. Ramsay as deliberate, and constituted some provocation. However, the Court noted that, far from attempting to execute her threat, Ms. Ramsay expressed herself and then left.

The Court reflected on the fact that there had only been one (1) prior incident of unsatisfactory conduct by Ms. Ramsay in her twenty (21) years of continuous employment with the hotel and that after Ms. Ramsay returned to work from her suspension, there was no evidence that it was impossible to continue the employer/employee relationship. The Court then concluded that while such misconduct was "certainly worthy of the sternest censure" including dismissal with reasonable notice or payment in lieu thereof; summary dismissal was not justified.

This case reveals that even though obscenities and 'empty threats' uttered by an employee can be justifiable grounds for a dismissal, an employer's use of the summary form of a dismissal may be inappropriate and subject the employer to a successful claim for wrongful dismissal.

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