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Landmark Ruling by CCJ Brings Clarity to ERA

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The judgement handed down by the Caribbean Court of Justice (CCJ) on May 7, 2020 in the matter of Chefette Restaurants Limited vs Orlando Harris marks a watershed moment in the short history of the Employment Rights Act (ERA). Certainly, the judgment is welcome news for employers who to date have been hard pressed to understand the exorbitant sums awarded to employees, even in circumstances where the determining factor in the outcome of the case was based on a procedural mis-step by the employer, void of discriminatory and proscribed reasons such as trade union activities, HIV/AIDS infection, racial discrimination.

The Employment Rights Tribunal (ERT) handed down a judgment in this case in April 2016 which found that Mr. Harris had been unfairly dismissed, and which awarded him compensation in the amount of $106,630.01.

The award comprised a basic award of $31,274.78, compensation for lost wages from the date of termination to the date of judgement in the amount of $80,420.85 and vacation pay in the sum of BDS$6,644.46 to cover the same period. Employers were especially concerned with the heavy weighting on compensation for the period after the dismissal.

The Court of Appeal later upheld the judgement of unfair dismissal, but reduced the award by $11,540.88 which represented the amount paid to Mr. Harris in lieu of notice at the time of his termination. While the CCJ upheld the unfair dismissal, and held that Mr. Harris was entitled to retain the sum paid in lieu of notice, the CCJ drastically reduced the award to a total of $31,274.78. The reasons for the reduction in the award are of major import, and will certainly directly impact all subsequent decisions from the ERT.

In reviewing the structure and intent of the Employment Rights Act, the CCJ found that the basic award serves the dual purpose of compensating for past services as well as for loss of future wages. This means that there is no additional compensatory award to represent loss of wages subsequent to termination.

This has been one of the driving factors behind the exorbitant awards that have been seen to date. This addresses one of the major issues that employers have raised in relation to the Act, given that an employer had, and still has, little control over the time elapsed between termination and judgment, but was held to payments calculated on that basis. Indeed, the quantum of awards has often been so disproportionate as to appear to be a punishment to employers for having run afoul of the Act. This CCJ judgment thoroughly rubbishes any such intent with a specific and resounding statement to the effect that the object of an award of compensation for unfair dismissal is not to punish the employer, although an award may be increased to do so, when the unfair dismissal is egregious because the dismissal was for a proscribed reason. Just as important, is that the judgement also made clear, that even in such cases, the award should be capped at 52 weeks' wages.

In addition to the precedent now set in relation not only to the basic award, but also to fringe benefits and a punitive award in the limited circumstances where appropriate, the CCJ judgement made it abundantly clear that as lost wages are already compensated in the amount of the basic award, there is no need to include wages in the meaning of benefits. The judgement went further to say that although the ERT may award an amount it thinks fit in respect of benefits other than future wages that might have been had but for the dismissal, the unfairly dismissed employees should identify the benefits they claim. This clarification that wages are not to be included in the calculation of benefits is important because historically tribunals have done so, absent specific guidelines to avoid excessive awards, leading to compensatory awards that were viewed as disproportionate and excessive.

The bombshell of this clarification was not the only important takeaway from the judgement. Fresh on the heels of vindication of employers' long-held position on the quantum of awards, came some clear warnings to employers, not all of which have been covered in this article, that the provisions of the Act must be adhered to and that the ERT is not a body with which to trifle. As has been recognised from its inception, the ERA is highly procedural and whilst employers continue to raise concerns about how time consuming and administratively onerous compliance with the Act can be, this judgment makes it crystal clear that employers must be prepared to do so or be shown the error of their ways. The bottom line is that due process matters and employers must comply with their procedural obligations as set out in the Fourth Schedule of the ERA. Failure to do so has in most, if not all cases, resulted in a finding of unfair dismissal. In dealing with a termination, employees must be afforded their rights under the law, and employers must be able to clearly demonstrate that progressive discipline was applied except in cases of summary dismissal.

The Barbados Employers Confederation continues to lobby the Ministry of Labour and Social Partnership Relations to address the long outstanding request for amendments to the ERA including the development of enabling Regulations. However, this judgement has in one fell swoop addressed one of the major concerns and provided clarity in other areas, whilst issuing a clarion call to employers to respect and observe the rights of employees as enshrined in statute. If employers read nothing else this month but the full text of this judgement, they would have done right by themselves in making significant strides in understanding the foundations of the Act, and the rationale applied in this landmark judgment. This judgment should be compulsory reading for students of human resource management or any small business owner without human resource professionals upon whom to rely.

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