



BARBADOS

IN THE EMPLOYMENT RIGHTS TRIBUNAL

Case: ERT/2014/070

Natalie Hurley

Claimant

AND

Gatsby Incorporated

RESPONDENT

DATES: September 10th, 2019 and July 7th, 2020

BEFORE: Christopher Blackman Esq, GCM; Q.C. Chairman
Edward Bushell, Esq. Member
Beverley Beckles Member

APPEARANCES: Ms. Desiree Browne, Attorney-at-Law for the Claimant
Ms. Cicely Chase Q.C with Ms. Sade Williams and Mr. Shaquille Newton,
Attorneys-at-Law on September 10, 2019 for the Respondent;
Mr. Stewart Mottley and Ms. Kimberley Moe, Attorneys-at-Law for the
Respondent on July 7, 2020.

RULING

1. The Claimant was employed as a Sales Assistant by the Respondent in December 2003 and terminated from that position in April 2014. The Respondent contended that the dismissal was for purposes of business re-organisation, and so was fair.
2. The Claimant, however, pointed out that the Termination Certificate filed with the National Insurance Office stated that she had been dismissed for misconduct for *“refusal to adhere to company’s amended Commission structure in light of company’s economic downturn.”* As a consequence, the Claimant’s right to claim from the NIS for unemployment benefits was negatively impacted before the issue was resolved.
3. On written submissions by Counsel for the Claimant to which Counsel for the Respondent replied also in writing, the Tribunal on September 10, 2019 upheld the contention that the Claimant’s dismissal was unfair, in that there had been a failure to observe the requirements of the Fourth Schedule, in that notwithstanding the allegation of misconduct, there had been no hearing to rebut the allegation of misconduct.
4. The Tribunal invited the parties to make submissions on the remedies to be considered. The Claimant had no interest in either reinstatement or re-engagement. While Mr. Mottley for the Respondent agreed the basic award amount sought by Counsel for the Claimant, he challenged that claim under Section 30 (1) (C) (iv).
5. The Tribunal has considered the correspondence between the Claimant particularly those dated March 13, 2014 and March 24, 2014, marked as Exhibits NH 7 and NH 8, to the Claimant’s witness statement. We are satisfied the true reason for the dismissal was for a complaint which involved the contract of employment, or practice by the employer. In such circumstances, an award pursuant to paragraph 1(c) of the Fifth Schedule is appropriate.

6. There is consensus between the parties that the quantum of the basic award be \$18,657.87. This takes into account the base salary, commissions and travel allowance, a merger of the provisions of paragraphs 1 (a) and (b) of the Fifth Schedule.
7. The award pursuant to paragraph 1(c) of the Fifth Schedule is \$32,339.84 being \$621.92x52.
8. The Respondent is ordered to pay the Claimant the sum of \$50, 997.71 within 30 days of this date.

Dated this 23rd day of July 2020.

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

Edward Bushell, Esq
Member

Beverley Beckles
Member