



Orlando Harris vs. Chefette Restaurant Limited

Mr. Orlando Harris was dismissed in January 2014 by Chefette Restaurants Limited. At the time of his dismissal, he had been employed as a manager. Mr. Harris filed a claim for unfair dismissal before the Employment Rights Tribunal (ERT), which concluded that he had been unfairly dismissed and that he was entitled to compensation in the sum of \$106,630.01. This ruling was appealed by the Company to The Barbados Court of Appeal. The Court of Appeal upheld the findings of unfair dismissal, but it adjusted the award to \$95,089.13, taking into consideration that Mr. Harris had received payment in lieu of notice, which had not been deducted in the first calculation by the ERT.

Chefette was then granted leave to appeal this decision to the Caribbean Court of Justice and their case was heard on December 10, 2019. From this ruling, there are two pertinent factors that must inform the future rulings of the Employment Rights Tribunal.

Compensation Award

The Caribbean Court of Justice (CCJ) delivered its decision on May 07, 2020 and upheld the previous decision that Mr. Harris was unfairly dismissed. However, they further reduced the award by a percentage of 67%, awarding to Mr. Harris \$31,274.78.

The CCJ emphasised that the Tribunal under the provisions of the Fifth Schedule of the ERA, does not have the facility to make an award for lost wages and is restricted to the basic award prescribed by Section 1(a) of the Fifth Schedule of the ERA.

The Fifth Schedule of the ERA allows the tribunal to award compensation for unfair dismissal, which includes (a) a basic award; (b) an amount in respect of any benefit the employee may have reasonably expected to receive had he still be employed and (c) an amount not exceeding 52 weeks if the reason for dismissal fell within those specified in Section 30(1)(c) or where it is ascertained that there was more than one reason for dismissal and one of these reasons fall under Section 30(1) ©.

The CCJ further said that the power given to the ERT to make an award for lost benefits is limited to awarding for fringe benefits once the Employee proves this loss. At Paragraph 126 of its 59 page judgment the CCJ stated: "The meaning of the word benefit in this area of employment law is commonly accepted as including pension rights, salary increases, tips, allowances, and what are called fringe benefits. Clearly, the meaning may include wages but, as is apparent, it may also not include wages.

By this ruling, the CVJ is purporting that lost wages is taken care of by the basic award as outlined in Section 2 of the Fifth Schedule. In Paragraph 16 of the Judgement Summary, the CCJ determined that the basic award which is comparable to severance pay is meant to compensate for years of service and future loss of income.

Contrary to the ruling given by the Barbados Court of Appeal, payment in lieu of notice and vacation pay were not to be deducted from the figure of \$31,274.78 as these are not listed in the Fifth Schedule under Section (2)(5), as items which could reduce the award figure.

Reason for Dismissal

The CCJ also determined that the ERT contradicted itself when stating the reason for dismissal in this case. While confirming that the ERT could undergo fact finding to determine the true reason for a dismissal, if it found that the employer was being untruthful or withholding information, in this case, the ERT had no substantive information to conclude that the reason for the termination of Mr. Harris' employment contract, was either untrue or misleading. From inception, the Company maintained that the reason for dismissal was failure to follow company procedures. In its decision, the ERT concluded that while the conduct of Mr. Harris was serious enough to warrant disciplinary action, and it was the reason given for the dismissal, it was not the 'real reason'. The ERT then proceeded to state that the 'real reason' for the dismissal was 'theft'. Without finding that the reason given by Chefette to be untrue or having evidence of other reasons, the CCJ determined that the Tribunal could not then insert a reason of their own into the proceedings.