COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity

2011/CLE/GEN/FP00161

BETWEEN

ALPHONSO TODD

Plaintiff

And

NASSAU ISLAND DEVELOPMENT COMPANY LIMITED

Defendant

BEFORE: The Honourable Mrs Justice Estelle G. Gray Evans

The Plaintiff: Mrs A. Kenra Parris-Whittaker

The Defendant: Mr Philip McKenzie and Miss Olivette J. Missick

Hearing dates: 17 March 2014; 3 June; 3 July 2014

# JUDGMENT

Gray Evans, J.

1. This is a claim for damages for breach of a contract of employment and for wrongful or constructive dismissal.

2. The plaintiff, who was born on 3 February 1948, is a former employee of the defendant. He was hired by the defendant as a deckhand on or about 25 June 2007. The defendant is a company incorporated under the laws of The Bahamas and carrying on business therein as a shipping company.

3. Although there is disagreement as to the nature of their relationship, the parties maintained a working relationship from June 2007 until on or 4 July 2011,according to the plaintiff, or November 2010, according to the defendant.

4. The plaintiff commenced this action by a generally indorsed writ of summonson 4 July 2010 claimingdamages for breach of contract; wrongful or constructive dismissal and severance pay due to him by the defendant together with interest and costs.

5. In his statement of claim filed 12 August 2011, the plaintiff alleges, inter alia, that he was hired as a full time employee of the defendant on 25 June 2007 with a salary of $35,360.00 per annum and that he has been in continuous employment with the defendant since that date; that the defendant, in breach of its contract of employment with the plaintiff, has failed to pay him for hours worked, overtime and vacation pay since 31 May 2009 and he is, therefore, owed a substantial amount of back pay therefor.

6. The plaintiff says that as a result of the defendant's breach of the said contract and its duties under the Employment Act, he has suffered loss and damage as follows:

1) Salary from May 31, 2009 to present;

2) General damages;

3) Severance pay;

4) Damages for wrongful dismissal, alternatively, damages for constructive dismissal.

7. In its defence filed 5 September 2011, the defendant denies the plaintiff's claim and avers that the plaintiff's employment was terminated in July 2009 due to a lack of business for the defendant; that from September 2009 to March 2010 the plaintiff worked for the defendant on a trip-by-trip basis and was paid between $400.00 and $500.00 per trip; that in March and April 2010 the plaintiff went to Nassau, New Providence, voluntarily, and stayed on a landing craft belonging to one Hugo Barry, during which period the plaintiff performed no duties for the defendant, or at the defendant's request; that in May 2010 the plaintiff returned to Freeport and volunteered to check on the defendant's premises; that the defendant advised the plaintiff that it could not pay him any monies; that in November 2010 the defendant became aware that its equipment and materials were being removed from its premises without its authorization; that agents of the defendant were reliably informed that the plaintiff had given other persons permission to remove materials and equipment from the defendant's premises.

8. Evidence at the trial came from the plaintiff, Alphonso Todd and from the defendant's president and chief executive officer, Larry Ferguson, both of whom provided witness

statements which each adopted as their respective evidence-in-chief and each of whom was subjected to cross-examination.

9. The plaintiff's evidence is that he was hired as a full time employee of the defendant on 25 June 2007 at a salary of $35,360.00 per annum; that he was continuously employed by the defendant in accordance with his contract of employment and that he attended work daily from June 2007. He worked as a deckhand on the defendant's vessels

10. His duties included assisting with the maintenance and painting of the defendant's vessels.Although in his witness statement the plaintiff stated, as alleged in his statement of claim, that he has not, since 31 May 2009, received any salary from the defendant and that prior to May 2009, the pay which he did receive from the defendant was not consistent, as he was not paid his full salary much of the time, under cross-examination and again on re-examination, the plaintiff said that he stopped receiving his full salary of $680.00 in September 2009.

11. The plaintiff says that on several occasions he went to the defendant's office in Freeport and inquired about his salary, but he was advised by the defendant's agent that the money "was coming". He was subsequently told by Mr Ferguson, a director of the defendant company, that he would be paid when the defendant sold its barge, "The Blessed 300". The plaintiff says that the barge was sold "on or around 2011", but he was still not paid by the defendant.

12. The plaintiff says that he was never terminated or made redundant by the defendant; that at no time was he advised by the defendant that his salary or hours worked would be, or had been, reduced; that although he was aware that other workers had been laid off and paid, he was neither terminated nor paid; nor was he ever told by Mr Ferguson or Mr Smith of the defendant company that his services were no longer required. The plaintiff also said that he was never accused of trespassing or stealing.

13. Under cross examination, the plaintiff said that despite not having being paid since September 2009, and being owed moneys by the defendant, he nevertheless continued working for the defendant at its premises in Freeport, Grand Bahama; that he went to the Labour Board after the defendant failed to pay him when its barge, "The Big Blessed 300", was sold.

14. According to the plaintiff,shortlyafter the aforesaid barge was sold, he was told by one of the workers who had been laid off by the defendant that Mr Ferguson was at the office paying them, so the plaintiff went and spoke to Mr Ferguson who told him that no one had told him, Mr Ferguson, anything about the plaintiff and that he, Mr Ferguson, would get back to him, but, the plaintiff says, Mr Ferguson never did.

15. Under cross examination the plaintiff denied that he had been laid off at the same time as other workers. His evidence is that at the time Mr Ferguson paid those workers, he was still workingon the defendant's boat in Freeport. He said that he only worked on the boat; that there was nothing else for him to do; that he never provided security services for the defendant; that he was aware that the defendant had a security guard on the boat. He attended work daily; that he would pump water out of the boat daily; that he would chip and paint the boat when it became rusty and that he workedin the engine room, "because the defendant had only had one engineer on the boat", and he would "take shift with him".

16. According to the plaintiff, he was never told by the defendant or anyone on its behalf that he was not wanted on the defendant's premises.

17. Mr Larry Ferguson, president and chief executive officer of the defendant company confirmed that the plaintiff was hired by the defendant on 25 June 2007 as a Deckhand Labourer. Although in his witness statement he had said that the plaintiff's salary at the time

was $600.00 per week, under cross examination he admitted that that was an error and confirmed that the plaintiff's salary was indeed $680.00 per week or $35,360.00 per annum.

18. In any event included amongst the documentary evidence is a letter from the defendant to the plaintiff confirming his salary at $680.00 per week or $35,360.00 per annum.

19. Mr Ferguson's evidence is that the plaintiff was stationed to work on the defendant's barge, "the Big Scoop". That barge sunk in Nassau Harbour in November 2008, as a result of which the defendant terminated about ten of its employees, retained the plaintiffat fewer work hours and a reduced salary of about $400.00 per week. That, later, in July 2009, the defendant was ordered by the Government of The Bahamas to vacate its premises at Arawak Cay and the defendant had to terminate the plaintiff's employment. However, from September 2009 to March 2010, the plaintiff worked for the defendant on a trip by trip basis, earning $400.00 to $500.00 per trip. He said that between March 2010 and April 2010, the plaintiff voluntarily went to New Providence and stayed on a landing craft owned by Hugo Barry for eight (8) weeks. According to Mr Ferguson, the defendant did not have an agreement with the plaintiff for any services by him nor any arrangement to pay the plaintiff during his tenure on the landing craft. That in May 2010, the plaintiff returned to Freeport and volunteered to assist the defendant by securing the defendant's equipment on its premises at the Port near Bahama Rock; that the defendant agreed to allow the plaintiff to watch its equipment for a small fee, "but nothing binding", as the defendant already had a security guard at the said premises. That in November 2010, the defendant realized that its equipment and materials were being removed from its premises in Grand Bahama without its authorization; that he and Hugo Barry visited the premises and were told by a man removing scrap metal from the yard that the plaintiff and the security guard had given him permission to do so. He said hereported the matter to the police.

20. Under cross examination, in response to counsel for the plaintiff's question as to when the plaintiff was terminated, Mr Ferguson said that "initially", he thought, "it would have been in June, between May and July, when the company's business at Freeport Harbour shut down" in 2009; "and finally in November 2010". When asked how the plaintiff was told that he was terminated, Mr Ferguson said that he had a meeting with the entire staff, including the plaintiff, and notified them, verbally, that due to the fact that the defendant had no business, they were all terminated. In response to counsel for the plaintiff's question as to whether he would have given the plaintiff a cheque for the amounts owed to him for vacation pay and pay in lieu of notice, "all of that", Mr Ferguson responded "I would have paid Mr Todd. I don't have the supporting documents to support that." In response to counsel's question as to whether he had correspondence with regard to the plaintiff's termination, Mr Ferguson said he did, but he could not produce it because he was not able to locate the plaintiff's file, which had gone missing.

21. Mr Ferguson disagreed with counsel for the plaintiff's suggestions that he did not provide the plaintiff with a termination letter or a cheque; and that he did not terminate the plaintiff. He also disagreed with the suggestion that the plaintiff's salary was not reduced and said that if he had the privilege of having all of the documents that had "gone missing", he would have been able to prepare a better statement for himself.

22. On re-examination, Mr Ferguson could not say whether a computer generated payroll spreadsheet included amongst the bundle of documents was a standard generated document or whether it was adjusted regularly. According to Mr Ferguson, "only the accountant would be able to say."

23. The defendant's accountant was not called as a witness.

24. As for the missing file, Mr Ferguson said that he only realized that the defendant's file for the plaintiff was missing when he was informed by his attorneys that the plaintiff had made a

complaint, in this action, that he had not been paid, but as far as he could recall the plaintiff was effectively terminated in 2009, because the business had shut down.

25. It is common ground that the plaintiff's employment with the defendant has been terminated. As counsel for the defendant pointed out, that is the only way the plaintiff can maintain an action for wrongful or constructive dismissal.

26. What is in issue, however, is when and by who was the plaintiff's employment with the defendant terminated?

27. The defendant contends that it terminated the plaintiff's employment with the defendant and counsel for the defendant argues that such termination, admittedly without cause, occurred in or about September 2009.

28. In support of thatcontention, counsel for the defendant relies on Mr Ferguson's evidence that the plaintiff's services were terminated, along with others, in 2009; the plaintiff's evidence that he has not received a salary from the defendant since September 2009; andacopy of a monthly contribution statement (C1) for the month of August 2009 allegedly submitted by the defendant to the National Insurance Board (NIB), which statement shows the plaintiff's name amongst the names of the "employees leaving this month".

29. In counsel's submission, "leaving 'this month'" could only be construed to mean that the plaintiff's services were terminated by the defendant "this month", meaning August 2009, which counsel submits, would account for why the plaintiff's salary would have stopped in September 2009. In his submission, the NIB form, which, he argues, has been accepted by both parties, is clear evidence of communication between the defendant and NIB, well before litigation was in the air.

30. Counsel for the defendant submits further that when the aforesaid NIB Form is read with the plaintiff's evidence regarding his last salary, it is strong evidence to suggest that the plaintiff's employment contract with the defendant ended in September 2009 and, he argues, the plaintiff led no evidence that he had a new contract after September 2009.

31. The plaintiff disagrees with the defendant's position. In counsel for the plaintiff's submission, one cannot assume when the aforesaid NIB form was created. In that regard, she points out, the form does not bear the NIB stamp as evidence that it had been received by NIB, nor is there any other evidence that the document was in fact forwarded to NIB. In any event, counsel for the plaintiff points out, the document clearly states that the report was for the month of August 2009 and, therefore, does not support the defendant's contention that the plaintiff was terminated in September 2009.

32. To my mind, whether or not the aforesaid NIB form was in fact forwarded to NIB was capable of better proof. So that, if the form had in fact been submitted to NIB, a letter from NIB or a copy of the form duly stamped by NIB, acknowledging receipt thereof, could and should have been produced in evidence.

33. In any event, it seems to me that even if the defendant had forwarded that information to NIB, that is not evidence that the defendant had informed the plaintiff that he had been terminated, particularly as the defendant's evidence is that the parties continued a working relationship up to November 2010.

34. Furthermore, I agree with counsel for the plaintiff that the aforesaid NIB form does not support the defendant's contention that the plaintiff was terminated from the defendant's employ in September 2009. Nor does it accord with the defendant's witness' evidence.

35. As indicated, the defendant's evidence regarding the plaintiff's termination came from Mr Larry Ferguson, the defendant's president and chief executive officer.

36. In his evidence-in-chief Mr Ferguson said that in November 2008, the defendant terminated about ten of its employees, but retained the plaintiff at a reduced salary of about $400.00 per week. Under cross examination, in response to counsel for the plaintiff's question as to whether he would have given the plaintiff a cheque for the amounts owed to him, "his vacation pay, pay in lieu of notice, all of that?" Mr Ferguson said he would have paid the plaintiff although he had no supporting documents, for example, a copy of the cheque.

37. Then, in response to counsel for the plaintiff's question as to when the plaintiff was terminated, Mr Ferguson responded: "initially, I think it would have been in June, between May and July... 2009...when the business...at Freeport Harbour... had closed down... and finally in November of 2010."

38. It appears from Mr Ferguson's evidencethat the plaintiff, who was engaged as a deckhand in June 2007, was "terminated" by the defendant, or his contract of employment "altered", on at least four occasions: firstly, in November 2008 when other workers were laid off but the plaintiff retained on a reduced-hours-reduced-salary basis; secondly between May and July 2009, when the Government ordered the defendant to vacate the premises in Arawak Cay and the plaintiff continued working with the defendant, but on a trip-by-trip basis; thirdly, in August/September 2009 as argued by counsel for the defendant; then finally, in November 2010.

39. Notwithstanding the various dates of the plaintiff's alleged termination by the defendant, the defendant produced no evidence, other than Mr Ferguson's "say-so" as proof thereof. Moreover, Mr Ferguson admitted that whether in November 2008, between May and July 2009, September 2009 or November 2010, on none of those occasions was the defendant given anything in writing notifying him of, or obtaining his consent to, any changes in his employment status; nor was there anything in writing terminating the plaintiff's services; nor was there any evidence of the defendant paying the plaintiff any severance pay.

40. While I accept counsel for the defendant's submission that the termination need not have been in writing, although other changes in the terms of service were evidenced in writing, the onus is on the defendant to prove that the plaintiff was terminated by the defendant on a particular date and in my judgment the defendant has failed to do so. Indeed, evenMr Ferguson conceded that the documents before the court did not support the defendant's contention that it had terminated the plaintiff from its employ.

41. Moreover, I have considered, but reject counsel for the defendant's argument that the plaintiff's contract of employment had somehow, without his consent, been converted from a contract of services to a contract for services. In its letter dated 23 April 2008 to the plaintiff, notifying him of changes to his terms of employment and requiring his consent to such changes, the defendant and the plaintiff agreed that the plaintiff's hours of work "will be scheduled by management and [the plaintiff would] be working according to the demands of the business". There is no indication in that letter that the plaintiff's salary would be reduced depending on the amount of hours or the number of trips he worked. So, whether at a reduced number of hours or a reduction in the trips taken, until the plaintiff was terminated or he consented to another change in the terms of his employment, in my judgment, he remained an employee of the defendant at a salary of $680.00 per week.

42. Mr Ferguson also testified that the plaintiff worked with one Hugo Barry for two months, March and April 2010, of the time which the plaintiff says he was employed by the defendant. I understood that bit of evidence to be in support of the defendant's suggestion/contention that after September 2009 the plaintiff somehow became an independent contractor.

43. While the plaintiff admitted that he did some work for Mr Barry in Grand Bahama, pumping water out of Mr Barry's barge and that Mr Barry gave him "something couple times", he was of the view that Mr Barry was "a part of Nassau Island Development too". He was not asked specifically about spending two months on Mr Barry's landing craft.

44. No questions were put to Mr Ferguson about the relationship between Mr Barry and the defendant and the only other mention of Mr Barry was in Mr Ferguson's witness statement where he says that he and Hugo Barry visited the premises and were told by a man that the plaintiff and the security guard had given them permission to remove scrap metal from the defendant's premises, which suggests to me that there may have been cause for the plaintiff to believe that Mr Barry was a part of the defendant company, particularly in light of the averment in the defence that: "Agents of the defendant" had been informed that the plaintiff had given others permission to remove materials and equipment from the defendant's premises.

45. As counsel for the defendant in her opening arguments accepted, there is a presumption in law that employment is continuous unless the contrary is proved and the plaintiff's evidence is that he was never told by the defendant that he was terminated; that he was never paid any severance pay; that he remained in the employ of the defendant from June 2007.

46. Furthermore, Mr Ferguson admitted that the documentary evidence supports the plaintiff's contention that he was never terminated by the defendant.

47. As difficult as it may be to understand how someone can remain on a job, working for approximately two years without being paid, except for Mr Ferguson's evidence that the plaintiff spent two months during March and April 2010 working on Mr Barry's landing craft in New Providence, which, as I said, was not put to the plaintiff, the plaintiff's evidence that he showed up to work at the defendant's premises every day until July 2011, was not refuted.

48. The plaintiff's evidence that he had been promised by the defendant that he would be paid his wages when the defendant sold its barge, "The Blessed 300", was also not refuted.

49. In the circumstances, I accept the plaintiff's evidence that he was never terminated by the defendant.

50. The plaintiff's uncontroverted evidence is that notwithstanding the defendant's promise to pay him his wages when the aforesaid barge was sold, despite the barge being sold in 2011 or thereabouts, the defendant failed or refused to pay him.

51. Indeed, the plaintiff's evidence, again not controverted, is that the defendant paid other workers who had been laid off, and when he inquired about his pay, Mr Ferguson told him that no one had told him about the plaintiff and promised to "get back to him", but he never did; and that at the date of the commencement of this action the plaintiff had not yet been paid.

52. It is accepted that the payment of wages is a primary obligation of an employer and failure to do so is a fundamental breach of a contract of employment. See Photo Production Ltd v Securicor Transport Ltd. [1980] A.C. 827.

53. Further, where there is a fundamental breach of contract, the innocent party can choose one of two courses; he can affirm the contract and insist on its further performance or he can accept the repudiation, in which case the contract is at an end. The innocent party must at some stage elect between these two possible courses: affirm the contract or accept the defendant's repudiation thereof, and to sue for damages for losses suffered as a result of such breach. See judgment of Browne-Wilkinson J (as he then was) in W.E. Cox Toner (International) Ltd v Crook [1981] I.C.R. See also Halsbury's Laws of England 4th Ed. Volume 9(1) page 727 at para 989.

54. It is unclear exactly when "The Blessed 300" was sold or when the plaintiff became aware of the defendant's breach as aforesaid. However, in my judgment, by commencing this action for damages for breach of contract, the plaintiff evinced an intention to accept the defendant's repudiation of his contract of employment and to discharge himself from any further obligations thereunder.

55. I, therefore, find that 4 July 2011 was the date on which the plaintiff's employment with the defendant was effectively terminated.

56. In the circumstances, the plaintiff claims that his employment with the defendant was wrongfully terminated or, alternatively, that he was constructively dismissed from the defendant's employ.

57. Failing to give an employee proper notice or payment in lieu of notice when terminating such employee's contract of employment is a wrongful dismissal. See Vine v National Dock Labour Board [1957] A.C. 488; Ferguson v Bahamar [2011] BHS J. No. 23; Cash Sr and another v Bahamas National Baptist Missionary & Education Convention and others [2007] 3 BHS J. No. 18.

58. On the other hand, constructive dismissal is the term applied to the resignation by an employee in circumstances such that he or she is entitled to terminate the contract without notice because of the employer's conduct. In Western Excavation (ECC Ltd.) v. Sharp [1979] IRLR 27, the Court of Appeal affirmed that the question whether an employee is entitled to terminate without notice should be answered according to the rules of the law of contract. Lord Denning M.R.,at page 28, said:

> "An employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once. Moreover, the employee must make up his mind soon after the conduct of which he complains. If he continues for any length of time without leaving, he will be regarded as giving elected to affirm the contract and will lose his right to treat himself as discharged."

59. The authorities are clear. In order to maintain an action for wrongful dismissal, the employee must show that he has been dismissed by his employer, which he may do by actual or constructive dismissal.

60. I accept the plaintiff's evidence that he was forced to leave the defendant's employ after the defendant failed to pay him his wages, and that as a result he was constructively dismissed. I also accept the plaintiff's evidence that at the time of his dismissal, albeit constructive, he was not given any notice or severance or other pay.

61. In the circumstances I find that the plaintiff's dismissal was wrongful.

62. Section 29 of the Employment Act, chapter 321, Statute Laws of The Bahamas, provides as follows:

> "29. (1) For the purpose of this Act, the minimum period of notice required to be given by an employer to terminate the contract of employment of an employee shall be -
>
> (a) where the employee has been employed for six months or more but less than twelve months -
>
> (i) one week's notice or one week's basic pay in lieu of notice; and

(ii) one week's basic pay (or a part thereof on a pro rata basis) for the said period between six months and twelve months;

(b) where the employee has been employed for twelve months or more

(i) two weeks' notice or two weeks' basic pay in lieu of notice; and

(ii) two weeks' basic pay (or a part thereof on a pro rata basis) for each year up to twenty four weeks;

(c) where the employee holds a supervisory or managerial position

(i) one month's notice or one month's basic pay in lieu of notice; and

(ii) one month's basic pay (or a part thereof on a pro rata basis) for each year up to forty-eight weeks;

(2) An employee shall not terminate his employment until after the expiry of:

(a) two weeks' notice to the employer if the period of employment is one year or more but less than two years; or

(b) four weeks' notice to the employer if the period of employment is two years or more,

unless the employer has been guilty of a breach of the terms and conditions of employment.

(3) Notwithstanding subsection (1), the employer shall have the right to appropriate any monies owing to him by the employee from any monies payable under subsection (1) a pro rata basis) for each year up to forty eight weeks."

63. By section 12(1) of the Act, employees are entitled to at least two weeks' vacation upon the completion of each twelve months of employment and section 13 of the Act provides that the vacation pay in the case of an employee who has been employed for one year or more but under seven years, shall be two weeks basic pay earned by the employee during the year of employment in respect of which he is entitled to the vacation.

64. Section 15(1) of the Act provides, inter alia, that where the employment of any employee ends before the completion of a year of employment, the employer shall forthwith pay to the employee, vacation pay then owing to such employee in respect of any completed year of such employment.

65. In addition to his claim for arrears of salary for the period 31 May 2009 to 4 July 2011, the plaintiff also claims compensation for wrongful, or, in the alternative, constructive, dismissal.

66. In support of his claim for arrears of salary, the plaintiff relies on the aforesaid copy of a computer-generated payroll spreadsheet which shows a beginning balance of $12,009.24 at 29 May 2009 and an ending balance of $44,162.00 at 11 June 2010. The document also shows the plaintiff's salary accruing at the rate of $2,887.73 per month as well as five credits of $500.00 eachin 2009: two in June and one in each of the months of July, August and October, being applied thereto.

67. Regrettably, neither the plaintiff nor Mr Ferguson was able to tell the Court what to make of the information thereon. According to Mr Ferguson, only the defendant's accountant could speak to the spreadsheet, but, as indicated, he was not called as a witness.

68. Counsel for the plaintiff submits that the aforesaid computer-generated payroll spreadsheet is "uncontroverted evidence" of what the defendant was owed during his employment with the defendant and, in her submission, this Court should be guided by that document.

69. On the other hand, while the plaintiff claims to be entitled to salary from 31 May 2009, and notwithstanding his evidence-in-chief that he was not always paid his full salary, the plaintiff's evidence under cross examination as well as on re-examination is that he received his full salary up to September 2009.

70. In that regard, although the plaintiff said that his salary was paid into his bank account by the defendant, no documentary evidence was provided by either side in that regard.

71. It seems to me that either or both parties ought to have been able to produce evidence by way of cancelled cheques or bank statements or deposit slips to prove or disprove the payments made to the plaintiff during his employment with the defendant between June 2007 and May or September 2009, as the case may be.

72. While there is included amongst the documentary evidence copies of two deposit slips dated 13 February 2009 in the sums of $300.00 and $975.00 respectively, and a copy of a cheque dated 31 August 2009 in the name of the plaintiff, for $500.00, there is no evidence as to who made the aforesaid deposits, or what they represented; nor is there any indication from the copy of the cheque, for example, a bank stamp, that it had been deposited to a bank account or cashed and no evidence was led to that effect. Nor was any evidence led as to what the cheque was for, although it appears from a note on the cheque that it was for some type of salary. A part of the note is illegible.

73. The plaintiff was employed by the defendant for a period of approximately 4 years and earned a salary of $680.00 per week or $35,360.00 per annum. He did not hold a supervisory or managerial post. He is, therefore, entitled to be compensated in accordance with section 29(1)(b) of the Act.

74. So, doing the best that I can on the evidence, the plaintiff, in my judgment, is entitled to the following:

| | |
|---|---|
| (a) Two weeks pay (2 x $680.00) in lieu of notice | $ 1,360.00 |
| (b) Two weeks per year for 4 years of service (2 x 4 x $680.00 per week) | 5,440.00 |
| (c) Vacation for the period October 2009 to July 2011 at two weeks per annum (2 x 2 x $680.00) | 2,720.00 |
| (d) Arrears of wages for the period 1 October 2009 to 4 July 2011 (Approximately 21 months) at $35,360.00 per annum (1.75 x $35,360) | $61,880.00 |
| TOTAL | $71,410.00 |

75. In the result, judgment is to be entered for the plaintiff for the said sum of $71,410.00 together with interest at the rate of 5% per annum from the date of the filing of the writ and thereafter pursuant to the Civil Procedure (Award of Interest) Act, 1992 (as amended), and costs, to be paid by the defendant, to be taxed if not agreed.

DELIVERED this 3rd day of November A.D. 2014

Estelle G. Gray Evans

Justice