

**THE REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE**

CV 2017-00772

BETWEEN

BRENT FERREIRA

CLAIMANT

AND

NATIONAL HELICOPTER SERVICES LIMITED

DEFENDANT

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Alvin Fitzpatrick SC leading Ms Shari Fitzpatrick for the Claimant

Mrs Lesley-Ann Lucky-Samaroo for the Defendant

Date: 2 May 2018

JUDGMENT

1. The Claimant was a helicopter pilot with the Defendant. He has been a helicopter pilot since 1982.
2. He worked there in different positions. His last assignment was an attachment as a pilot at the National Operations Centre (NOC).
3. On 5 September, 2016 he was served with a termination letter dated 30 August, 2016. He received a month's salary.
4. He contends that the notice period under his contract was three months. He should therefore be paid two months' salary, having been already paid one month's salary. Alternatively, a reasonable notice period would be a minimum of three months. Thus, he should be paid two months' salary.
5. The Claimant had a series of one year contracts. Some were in writing. Some were not. In December 2015, a written contract came to an end. He continued working into 2016. He got no written contract. He was terminated in September.
6. The confusion in this case is the result of the inconsistent practice adopted by the parties over the time the Claimant worked with the Defendant. Unfortunately, the ad hoc nature of how contract arrangements are made is pervasive across the State sector.
7. The Defendant's case is that after 2015 the Claimant had to have been employed on a month to month basis and accordingly he has been paid his correct termination benefits.
8. There were just two witness, the Claimant and the Human Resource Manager of the Defendant, Mr Ricky Herbert.
9. Mr Herbert gave evidence that from time to time the Defendant enters into contracts for persons to perform services for the operations of the government Air Division.

10. He confirms the Defendant who was over sixty years at the time entered into a contract with the Claimant to serve as a pilot for 2015.
11. That contract provided for either party terminating the agreement with three months' notice. The contract also provided that if the Defendant offered the Claimant further employment after that it would be for such periods or terms as are mutually agreed.
12. He said at the end of 2015 the Defendant received no instructions to enter into a new contract with the Claimant so the Defendant paid the Claimant on a month to month basis. He said at no time did the Defendant mutually agree to renew the 2015 contract.
13. He stated the arrangement was on a month to month basis and thus there was no intention to replicate the terms of the 2015 agreement. Thus the termination only required one month's notice.
14. In cross-examination certain matters came out. The Defendant knew the Claimant was over sixty years of age when he got the one year contract in 2015. This was important because the Defendant contended that there was a rule that persons over sixty years could not fly certain types of helicopters for the Defendant. Nonetheless, he was employed in 2015.
15. Mr Herbert was instructed after 2015 to continue to pay the Claimant's salary. He was not aware of anyone offering the Claimant a month to month contract. He was not aware of any discussions between the Claimant and the Defendant. The Defendant was paid the gratuity as had been provided for in the 2015 written contract. Thus for 2016 he was paid a gratuity of 20% of his salary pro-rated up to September 2016. Mr Herbert had no instructions to enter into any contract of any kind with the Claimant.
16. The Claimant also gave evidence and was cross-examined. He gave evidence that he had been employed at different periods with the Defendant. He had worked elsewhere in between. But he was there from 2011 to September 2016. His last written contract was in 2015.

17. At paragraph 10 he stated that his work arrangements were very rarely formalized in writing, but he just continued to work. He stated:

“In fact, throughout the history of my employment with NHSL, I can only recall having three written contracts, two of which were unsigned but sent to me by NHSL. Two unsigned contracts were both for one-year durations in 2009 and 2010 and both contained similar three-month notice periods for termination.”

18. He noted after December 2015 there was never any meeting to discuss his arrangements. He continued to perform his assigned duties.

19. This evidence relating to the written contracts was not challenged in evidence or cross-examination. What follows, therefore, is that the general practice in the Claimant’s eleven years was not in fact to have a signed, written contract and that this had been done only once in 2015.

20. It is therefore odd that the Defendant would advance that the fact of there being no written contract meant the working relationship was converted from January 2016 to a month to month arrangement. No discussions had taken place. It seems reasonable to conclude that the contract arrangements simply continued as before.

21. There was some evidence about rumours circulating that the NOC was re-structuring so that jobs would be affected after the change of government in 2015. However, I know of no case where rumours have found their way into the consideration of the contract relations between employer and employee.

22. The further point that because there was some rule that the Claimant could not fly single pilot helicopters because he was over sixty years meant that his contract could be considered to have been a month to month one did not gain traction. If the Defendant chose to employ a pilot who could not fly, as a pilot, that was a matter for them. There is no evidence that the Claimant was not willing and available to fly other aircraft such as two pilot aircraft. Whether the Defendant or the NOC had such aircraft at the time was irrelevant as far as the Claimant’s employment was concerned. He could not be faulted for that. If there were no two pilot aircraft that was not the Claimant’s doing. He had previously been employed with three months’ notice in his contract when he was already over sixty.

23. I also find that the payment of a gratuity was inconsistent with a month to month arrangement. I also find it unacceptable that the Claimant would have had a history of one year contracts with a 3 month notice period when he got a written contract, but once he did not get such written contract he would then be employed on a month to month basis. As noted before there is only one occasion that the Claimant referred to where he had a signed written contract. The fact that the Defendant did not have its house in order as far as managing the preparation and execution of written contracts is concerned is no fault of the Claimant.
24. I conclude that the three month notice period previously part of the Claimant's contract continued to apply in 2016. What appears to me is that the Claimant had a series of oral contracts, the terms of which were reflected in the 2015 signed document and the previously unsigned documents, a core term of which was three months' notice.
25. The Claimant's case on the alternative is that given his position as a pilot a notice period of at least three months should apply under the common law as being reasonable.
26. In considering this issue the Court has to consider all of the relevant factors applicable to the contract arrangements to arrive at a reasonable period of notice to end the contract: **James –v- Kent [1951] 1KB 551 per Sommervell LJ at p. 555 and Denning LJ at p. 556.**
27. The factors the Court can consider include:
- (i) The character of the employment;
 - (ii) The length of service (seniority);
 - (iii) The age of the employee;
 - (iv) The availability of similar employment;
 - (v) The experience, training and qualification of the employee;
 - (vi) The rate and period of pay.

(See Honeywell J. in **Rodney Phillip –v- GE Electric International Limited, CV 2015-03699** and **Lynch –v- Public Transport Service Corporation, CV 2011-02123** per Alexander M.)

28. Any damages would be tied to the earnings due for the reasonable notice period.
29. Considering these factors, I note that the Claimant was employed as a helicopter pilot. This is a high level employment where considerable training and experience is necessary. It is a fairly closed profession where it cannot be said that there would be many sources of employment.
30. The Claimant would be senior in his profession. This goes both ways. The ability of a pilot to fly is affected by increasing age. While for some professions a person over sixty years may yet still have a long employment path if he wishes and health permits, for a pilot, this may not apply.
31. Thus, the Claimant's ability to have found alternative employment would to my mind have been somewhat restricted. This suggests a longer period than one month would apply.
32. The Claimant was also very experienced in his profession. He had performed senior management functions before. His evidence is that at the NOC he also did that. Again, this suggests a longer notice period would apply. He would have taken a longer period to find alternative employment, assuming this was possible.
33. He had also been employed with the Defendant for at least eleven years. He had been there at least from 2011 continuously. He had been in different jobs in the state and private sector also. Again, this suggests that a longer period would apply.
34. The previous written agreement had also provided three months' notice. This could also be said to be an indication of what would be reasonable in the industry for his experience and training.
35. Consequently, based on these factors above, I am of the view that a reasonable period of notice, in any event, would have been three months. In consequence on either the first or alternative basis, the Claimant succeeds.
36. He is entitled to damages as claimed, which is \$110,064.84. This figure was his net income after statutory deductions.

37. Interest will run on this sum at the rate of 3% per annum from November 2016 to the date of judgment.

38. The Claimant is also entitled prescribed costs based on the judgment sum and interest to the date of judgment. There is a stay of execution of twenty (28) days. I thank the attorneys on both sides for their helpful submissions.

Ronnie Boodoosingh
Judge