

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. F.103 of 1993

BETWEEN

HAMI FORD

PLAINTIFF

A N D

MUSSON JAMAICA LIMITED

DEFENDANT

Ms Marion Rose-Green for plaintiff

Ransford Braham, instructed by
Livingston, Alexander & Levy for
defendant

Heard: November 23 and 28, 1995

PANTON, J.

The plaintiff was the manager of the cosmetics department of the defendant. He was the only employee assigned to that department. The evidence indicates that the defendant, without giving the plaintiff an opportunity to be heard, terminated the plaintiff's employment which had up to then been for a period of nineteen (19) years and ten (10) months. He had no notice and he received no pay in lieu of notice. This was, unquestionably, in my view, a wrongful dismissal. At the time of dismissal he was receiving \$703.13 per week.

The defendant offered to re-employ the plaintiff in his post, but with variations which the plaintiff found unacceptable. The plaintiff was, in my view, justified in rejecting this offer by the defendant as his new relationship with the defendant would have meant an abandonment of his right to a lunch break and would have added the duties of a security guard to his portfolio without additional remuneration.

No employee is entitled to his job for life. Where, however, an employer desires to terminate the employment of an employee, adequate notice has to be given. The Employment (Termination and Redundancy Payments) Act has, since 1986, provided that in such a situation in which the plaintiff found himself, he was entitled to not less than eight weeks' notice. I need not emphasize that this is a minimum period.

Mr. Braham, on behalf of the defendant has submitted that the plaintiff is entitled only to that sum which is the equivalent of the pay he would have received for the minimum period of notice. He has cited in support the unreported judgment of Clarke, J. in Godfrey v. Allied Stores Ltd. (C.L. G.134 of 1983) which was delivered on October 26, 1990. There, a supermarket manager was dismissed and paid the equivalent of three (3) months' salary although there was no provision for such payment in his contract. The legislation referred to earlier provided for two (2) weeks minimum period of notice seeing that he had been employed for four (4) years. The learned trial judge implied a term in the contract that the employment could be terminated by reasonable notice. He went on to hold that three (3) months' notice was reasonable in the circumstances of that case.

In the case before me, the plaintiff has been employed for nearly twenty (20) years in a weekly paid job. It seems to me that a reasonable period of notice in these circumstances would have been thirteen (13) weeks. This, I feel, would have given him sufficient time to seek and find alternative employment - considering the nature of his employment. He is not entitled to salary until he finds a job, even if that takes years. He is of course entitled to his vacation leave pay.

The plaintiff has sought redundancy payments in addition to his claim for salary. The claim for redundancy payments is misconceived as the plaintiff has not been made redundant.

Judgment is therefore entered in favour of the plaintiff for \$11,250.08. Interest is awarded at the rate of 15% per annum from the date of dismissal (November 11, 1991). Costs to the plaintiff are to be agreed or taxed.