

C. Cousins Esq.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1987/H235

BETWEEN ROBERT HAMILTON PLAINTIFF
AND AGRICULTURAL PRODUCTS OF
JAMAICA LIMITED

Clark Cousins instructed by Rattray, Patterson, Rattray for Plaintiff.
Robert Baugh for Defendant.

30th July, 1990

CHESTER ORR J:

ORAL JUDGMENT

I find the following:

In 1983 and 1984 the Plaintiff requested Clifton Grandison his subordinate to use the Company's vehicle assigned to him, Grandison for the purpose of transporting brewer's grain from Desnoes and Geddes in Kingston to the plaintiff's farm at Summerfield in Clarendon. That Grandison complied on at least 6 occasions.

In 1986 the plaintiff requested Collin Morris his subordinate to use the company's vehicle assigned to Morris to transport goods from Candon Enterprises in Spanish Town to the plaintiff's relatives' shop at Mineral Heights, May Pen. That Morris complied and transported goods on 4 or 5 occasions.

Employees were permitted to use the company's vehicles assigned to them for private purposes.

In 1985, 1986 and 1987, the plaintiff leased land owned by him at Summerfield, Clarendon to third parties for valuable consideration in order that such parties could supply tobacco to the company. The plaintiff did not participate in the cultivation of the tobacco on the land nor did he derive any other benefit from the transaction. Plaintiff was not related to the lessors. Plaintiff informed the then Managing Director, Mr. Reid of the lease. Plaintiff had previously leased land to the company for the same purpose.

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The directive on contracts is contained in Exhibits 5 and 6 which prohibit contracts with relatives or intended relatives of persons in the plaintiff's management grade.

It is not explicitly stated that contracts between employees and third persons are prohibited.

Paragraph 4 of Exhibit 6 states inter alia -

"The principle which must have universal compliance in the future is that no member of management staff may gain or be seen to have the possibility of gaining, either directly or indirectly, monetary benefit from the activities of this Division other than through their terms of employment."

The Plaintiff should have considered it prudent to ascertain whether his lease came within the ambit of this prohibition.

Was the defendant justified in dismissing the plaintiff?

Mr. Hall the Chief Executive Officer admitted that in a list of penalties for breaches, dismissal was not stipulated as a penalty for mis-use of the Company's vehicles. The list however did not purport to be exhaustive.

In Jupiter General Insurance Company Limited v. Shroff [1937]

3 ALL ER 67, Lord Maugham said at 73

"Their Lordships recognise that the immediate dismissal of an employee is a strong measure."

I too recognise this.

At 74 Lord Maugham describes the test as follows -

"Whether the misconduct of the (respondent) employee was such as to interfere with and prejudice the safe and proper conduct of the business of the company and therefore to justify immediate dismissal."

It must be remembered that the test to be applied must vary with the nature of the business and the position held by the employee."..."

I appreciate that the Plaintiff occupied a position of responsibility and trust and that the breaches with regard to the mis-use of the vehicles were not isolated incidents and involved his subordinates.

However, I take into account the particular circumstances of this case and the fact that the General Manager did not consider dismissal an appropriate penalty.

I am of the opinion that in all the circumstances a lesser penalty than dismissal would be condign punishment for the breaches.

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I hold that the Plaintiff was wrongfully dismissed.

It is agreed that the measure of damages is governed by Kaiser Bauxite Company v. Cadien C.A. 49/81 29th July, 1983 (unreported) in which it was decided that the measure of damages must be related to the period of notice in the absence of agreement, held to be reasonable.

There is no period of notice stipulated in the plaintiff's letter of appointment.

The Plaintiff had approximately 14 years of service with the company. Under the Employment (Termination and Redundancy Payments) Act, Section 3(1)(c) the plaintiff would be entitled to a minimum of six (6) weeks notice.

I have considered the authorities cited and hold that a reasonable period of notice in this case is four (4) months.

Calculated on the Plaintiff's Claim for one year's salary
@ \$94,338.00 = \$31,446.00.

I award Interest @ 16% from 4/11/87.

There will therefore be Judgment for the Plaintiff for \$31,446.00 with interest @ 16% from 4/11/87 to 30/7/90 with costs to be agreed or taxed.