

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COLONY OF MONTSERRAT
(CIVIL)
A.D 2019



CLAIM NO: MNIHCV2016/0015

BETWEEN:

SIMON RILEY

Claimant

And

HONOURABLE ATTORNEY GENERAL ✓

Defendant

Appearances:

Mr. Sylvester Carrott for the Claimant
Mrs. Sheree Jemmotte-Rodney for the Defendant

2019: June 26 and 27
2019: July 01

Judgment

- [1] **Evans, J. (Ag):** By a claim form accompanied by a Statement of Claim, the Claimant launched an action against the Defendant sued in the capacity as a representative of the Crown.
- [2] The Claimant claimed damages exceeding \$329,278.67
- [3] The matter appeared before Morley J. in 2018 and was subsequently ordered to be tried by another Judge because Morley J. had recused himself.

- [4] The matter now appears before me and I heard evidence and submissions on June 26th and 27th. In addition I have received e-mail answers from the advocates as a result of a query that I raised by e-mail on June 29th.
- [5] By the time that the matters appeared before me an Amended Statement of Claim and an Amended Defence had been filed.
- [6] In addition updated written submissions had been lodged to accompany the original submissions.
- [7] At all material times the Claimant has been an employee of the Government of Montserrat. The history of his employment, changes in job titles, wage structure/upgrading and what has been called "promotion" are set out in the pleadings
- [8] As can be seen from paragraph 4 of the Amended Statement of Claim, the Claimant was as a reward for the extra work that he had to do as the result of the relocation of government to Olveston House given on top of his basic salary a further allowance/payment equal to half of his basic salary. That was intended to compensate him for the overtime that he had to do.
- [9] That extra half payment persisted for over 11 years and the Claimant made no claims for overtime during that time. He was happy with that arrangement.
- [10] That "half" allowance was withdrawn in February 2007 and the Claimant was given a "new" contract that made the Claimant financially less off - see paragraph 6 of Amended Statement of Claim. The Defendant calls what happened an upgrading but accepts in paragraph 6 of the Amended Defence that "the remuneration package of the upgraded post was less than what the Claimant had received prior to January 2007. Such a reduction was unlawful and steps were taken to remedy the situation.
- [11] If in fact the calculation of the upgraded salary had been correctly carried out then the Claimant would not be worse off and importantly in my judgement would not be entitled to claim overtime because he would be still being paid what I call a salary and a half as compensation for having to work overtime.
To pay him overtime and a salary based upon the old one and a half's salary would in my view give him an element of double compensation
- [12] The calculation that was carried out to remedy the situation was wrong and resulted in a shortfall of \$660 pcm and is continuing. Whilst the Defendant does not admit the shortfall no evidence was adduced before me to dispute it. In fact the Attorney General deals with this matter in her helpful

written further submission at paragraph 6 where she explains and mathematically corrects Morley J's error in increasing the shortfall.

[13] In October 2007 the Claimant was "promoted" to a managerial post. That was as a result of a meeting that occurred on 15/10/07. A meeting that I find was interpreted in 2 distinctly different ways.

The Defendants thought that the promotion and salary increase prevented the Claimant from claiming overtime as it was in reality a re-instatement of the old salary and a half basis plus a bit-\$29 pcm.

The Claimant thought that he was in effect going to retain his old package (that in essence contained compensation for overtime) without the need to work any overtime, which he believed, was going to be done by new recruits over whom he had managerial control.

[14] I find In essence that the parties were not ad idem as to what was agreed at that meeting. The Defendants had no intention of paying the Claimant overtime and the Claimant did not expect to have to work overtime after the appointment of an underling.

[15] He was not and never has been provided with any security officers despite the fact that the appointment document (see p.24 Claimant's bundle) stated under the heading of Main Responsibilities/duties that his new job involved:

**"Coordinate, schedule and supervise the activities of maintenance staff, ground workers and security officers on compound and other government sites.

**"Continually monitor the facility to ensure that it remains safe, secure and well maintained"

[16] I accept that the Claimant was expecting at least one other security officer to be appointed soon who would have relieved him of the necessity to do overtime. On that basis, the new deal was a good one for him as he would be paid slightly more than his old salary and a half calculation and not be obliged to work any overtime

[17] I find that the failure to appoint any help for the Claimant over the last 11 plus years to be the best evidence to support my suspicion that the upgrading to a managerial post was as Mr. Carrott says nothing but a device.

[18] Turning now to the claim itself. In essence, despite the amount of paragraphs that have appeared in the pleadings and in the submitted lengthy submissions the Claimant's claim can simply be stated to be :

(a) A claim for underpayment at the rate of \$660 pcm from 22/2/07 and continuing. This occurred because Mrs. Cassell unlawfully reduced the Claimant's basic salary and the calculation of his half salary resulting in an underpayment of \$660

