

INDUSTRIAL TRIBUNAL

Ind Case 7 of 2005

Mary Pansy Pizarro

Complainant

-and-

Club Class Holidays Limited

Respondent

Mary Pansy Pizarro representing herself
No appearance by the Respondent

JUDGMENT

Background

According to the originating application dated the 11th July 2005 filed by the Complainant she was unfairly dismissed as a clerical assistant on the grounds of negative attitude at work. At the time of the filing of the originating application, and for some years afterwards, the Complainant was represented by Charles A. Gomez & Co; eventually due to rising legal costs the Complainant dispensed with the services of that firm and proceed to represent herself with the assistance of her husband.

By Notice of Appearance dated the 16th August 2005 the Respondent entered an appearance and contested the Complainants allegation of unfair dismissal on a number of grounds; namely:-

- (i) that the Tribunal had no jurisdiction to hear the case since the Complainant had not been employed with the Respondent for the required statutory period of fifty two weeks; and
- (ii) in the alternative, the Complainant was guilty of gross misconduct which gave the Respondent sufficient cause to dismiss her; and
- (iii) in the alternative, the Respondents dismissal was fair and proper in all the circumstances of the case.

At the time the Respondent was represented by Attias & Levy; a position which continued until some time in 2009.

On the 15th August 2005, Mr. Anthony Lombard was appointed as the Chairman of the Tribunal for the purposes of this case; a post he held until his sudden resignation in June 2014 as Chairman of

the Tribunal for reasons totally unconnected with this case. It would appear that during the time that Mr. Lombard acted as Chairman in this case, he held over the years various practice direction hearings, and indeed in February 2006 heard various witnesses who gave evidence with respect to the preliminary point raised by the Respondent as to whether the Tribunal had jurisdiction to hear the Complaint filed. I am unable to say on the documentation before me whether Mr. Lombard heard all witnesses who were to be called by both parties with reference the said preliminary point but most certainly he:-

- (a) heard the evidence of the Complainant, as well as of Mrs Eileen Mesilio and Victor Utal over two separate days in February 2006; and
- (b) he was in possession of the witness statements given by the Complainant, Louis Bruzon, Victor Utal, A Caruana and Eileen Mesilio.

It may be that Mr. Lombard did not hear the evidence of all the witnesses that were to be called and/or that he wished to hear but events overtook matters with the intervention of two separate but connected investigations began by the Royal Gibraltar Police after February 2006. There is no need to go into any detail whatsoever with regard to said investigations save to say that for one reason or another it would appear that matters were not resolved until some time in early 2009. Thereafter a combination of extraneous factors conspired to ensure that Mr. Lombard never continued to hear other witnesses with regard to the preliminary point, if indeed that was his intention, or gave a ruling on the validity of the preliminary point raised. As to why this was it is not for me to say.

In the course of 2011, the Respondent company was struck off the Register of Companies and therefore ceased to exist. It would appear the Respondent Company was struck off the Register by the Registrar rather than liquidated, voluntarily or by order of the Court. It would further appear that Mr. Lombard was aware of the company having ceased to exist.

On the 24th day of June 2014, I was appointed as Chairman of this case and on the 11th September 2014 the matter came before me.

I point out at this stage that prior to the 11th September 2014 hearing I had read the following documents that had been previously filed by both parties between 2005 and 2014; namely:-

- (a) the Originating Application;

- (b) the Respondents Notice of Appearance and the letter of dismissal dated 11th April 2005;
- (c) the Witness Statement of the Complainant with exhibits attached;
- (d) the Respondents' skeleton arguments;
- (e) the witness statement of L. Bruzon with exhibits attached;
- (f) the witness statement of A. Caruana;
- (g) a receipt dated the 12th April 2005 signed by the Complainant which she denies having signed;
- (h) the witness statement of Victor Utal with exhibits attached;
- (i) the witness statement of E Mesilio with exhibits attached;
- (j) all correspondence exchanged between Attias & Levy and Charles A. Gomez & Co and the Tribunal; and
- (k) all correspondence sent to the Tribunal by the Complainant and/or her husband.

On the 11th September 2014, I heard both the Complainant and her husband put before me their respective views, concerns, anger, objections etc. I cannot but whole heartedly agree with their main complaint; with all due respect to all concerned, this matter should under no circumstances, and notwithstanding the strange set of events that arose, have taken so many years to get to this stage.

Ruling

In the light of the incontrovertible fact that :-

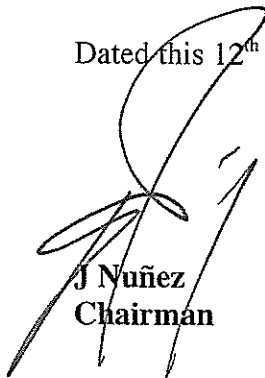
- (i) the Respondent company no longer exists in form or substance;
- (ii) the location of the former directors/employees of the Respondent company are unknown to us and could not reasonably be ascertained;
- (iii) the Respondent company is not represented either legally or by a liquidator/receiver etc;

- (iv) there is no way that notice of any hearing before the tribunal can be meaningfully communicated to the legally non-existent Respondent;
- (v) I would have to deal with the case as if it were before me afresh; and
- (vi) at the end of the day any order made against the Respondent would have no benefit or serve any function;

I feel I have no other cause of action open to me but to dismiss the Complaint filed. I do this in the full realization that it could well be argued that I do not have the power and/or authority to do so under the terms of the Employment Act and/or the Industrial Tribunal Rules/Regulations but believing firmly that it is neither reasonable or justifiable to keep the diminishing hopes of the Complainant and her husband alive any longer bearing in mind the contents of the next paragraph; they have suffered enough over the years with false expectations.

I would add that even if I was of the view that the law required me to continue with the case and rule on the preliminary point raised as to jurisdiction all those many years ago, I have come to the clear conclusion that I would rule against the Complainant and hold that she was not employed by the Respondent for the required period of 52 weeks specified by section 60 (1) (a) of the Employment Act and consequently would dismiss the complaint filed on that ground. In reaching such a conclusion I have taken account of the contents of all the witness statements filed as well as the contents of letters sent to the tribunal by the Complainant herself and the comments/statements made to me by the Complainant and her husband and my research on the law with respect to this point. I am of the opinion that the Complainant was dismissed on the 12th April 2005 and that any monies paid by the Respondent to the Complainant for the period 13th April onwards (which incidentally the Complainant avers were underpaid to the tune of £384.76) did not extend the effective date of termination so as to take the Complainant over the 52 week requirement.

Dated this 12th day of September 2014.



J Nuñez
Chairman