



CARIBBEAN COURT OF JUSTICE

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CCJ GIVES GUIDANCE ON UNFAIR DISMISSAL IN BARBADOS APPEAL

Port of Spain, Trinidad and Tobago. In a judgment released today, the Caribbean Court of Justice (CCJ) dismissed an appeal against the finding of unfair dismissal and partly allowed the appeal against compensation in the matter of *Chefette Restaurants Limited v Orlando Harris [2020] CCJ 6 (AJ)*. Additionally, the CCJ ordered that 75% of the Respondent's costs be paid by the Appellant, Chefette Restaurant.

Mr. Harris was dismissed on 27 January 2014 from his position as an assistant manager with Chefette after he was blamed for failing to follow cash handling procedures, resulting in the misappropriation of a Bds \$40 cheque of another manager. Prior to his dismissal, he was invited to three meetings with senior managers of the company. After the first meeting, he was suspended without pay pending further investigation, and was dismissed after he did not attend the third meeting.

The Employment Rights Tribunal (ERT), established by the Employment Rights Act of 2012, found that Mr. Harris had been unfairly dismissed, as the procedure detailed in the Act was not followed by Chefette. As a result, the ERT awarded Mr. Harris compensation in the sum of Bds \$106,630.01, inclusive of 27 months compensation for lost wages. The Court of Appeal upheld the finding of unfair dismissal but deducted the sum that Mr. Harris had been given as vacation pay and payment in lieu of notice and adjusted the award to Bds \$95,089.13.

In its appeal to the CCJ, Chefette's main argument was that the Court of Appeal had erred in upholding the decision of the ERT that Mr. Harris had been unfairly dismissed. However, the CCJ found that Chefette had failed to follow the required legal procedure, which was designed to ensure due process, by not informing Mr. Harris of the accusation against him and giving him an opportunity to respond. Therefore, Chefette's dismissal of Mr. Harris was unfair and that conclusion was the final decision on the question of unfairness. Additionally, the Court also considered the substantive fairness of the decision to dismiss Mr. Harris. Although purely academic, this will provide guidance on the interpretation of the Act for future cases.

The CCJ found that the compensation for an unfairly dismissed employee provides for a basic award, an award for benefits that the employee may have expected had it not been for the dismissal, and a punitive award if the dismissal was for certain reasons identified in the Act. The Court found that the basic award includes compensation for past services as well as for wages lost as a result of the dismissal, and as such

there is no need for a separate award for lost wages. The punitive award was not applicable to this case and Mr. Harris had not provided any evidence of expected benefits, so the CCJ reduced the award of compensation to the amount of the basic award of Bds \$31,274.78. In addition, the Court held that Mr Harris was entitled to retain the money paid to him as salary in lieu of notice and vacation pay which sum amounted to a further Bds \$11,540.88.

As the appeal was allowed only in part, Chefette was ordered to pay 75% of Mr. Harris' cost at both the CCJ and the Court of Appeal.

The panel hearing the case comprised CCJ President, the Honourable Mr Justice Adrian Saunders, and the Honourable Messrs. Justice Wit, Anderson, Barrow and Jamadar. The judgment was jointly delivered by Justices Anderson and Barrow. Mr Satcha Kissoon and Mr Benjamin Drakes appeared for Chefette Restaurant Limited and Mr Gregory Nicholls, Mr Kashka Mottley and Mr Demetrie Adams appeared for Mr Harris.

The full judgment of the Court and a judgment summary are available on the Court's website at www.ccj.org.

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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