

REPUBLIC OF TRINIDAD AND TOBAGOL

IN THEE HIGH COURT OF JUSTICE

H.C.A. NO. S-1311 of 1994

BETWEEN

HERMAN HERNANDEZ

Plaintiff

VS.

PORT AUTHORITY OF TRINIDAD & TOBAGO

Defendant

Before the Honourable Justice R. Narine

Appearances

Mr. R. Dass for the Plaintiff

Mr. E. Prescott for the Defendant

JUDGEMENT

This is a claim for damages for fraudulent misrepresentation and/or warranty made by the Defendant's servant or agent on 24th October 1988, at a meeting between representatives of the Defendant and the Seaman and Waterfront Workers Trade Union (the Union), to the effect that the Plaintiff would be given deferred benefits calculated as if he had retired at the age of 55, rather than his actual age of retirement. There was a further claim for rescission of the agreement by the Plaintiff to retire under the Early Retirement/Voluntary Separation Plan on the ground that it was procured by fraud and/or undue influence. However no evidence was led in support of this claim nor was it pursued in the submissions of the Plaintiff.

THE FACTS

The Plaintiff was born on 3rd November 1938. He became an employee at the Port in April 1960. He retired on 1st September 1989, at the age of 50 years. He was a Longshoreman. His age of retirement would have been 55 years, under his terms of service. He claimed

that he elected to retire early in reliance on representations made by representatives of the Defendant at a meeting with the Union on 24th October 1988.

The Plaintiff and the Defendant submitted an Agreed Statement of Facts dated 29th November 2005. The agreed facts are:

- (1) In 1989 the Defendant introduced an Early Retirement/Voluntary Separation Programme which comprised of two plans, namely:**
 - (a) The Early Retirement Programme; and**
 - (b) The Voluntary Separation Plan.**

- (2) The Early Retirement/Voluntary Separation Programme was the culmination of discussions between the Defendant and the Seamen & Waterfront Workers' Trade Union ("the Union") during the period 1988 and 1989. These discussions took place on various dates including a meeting on 24th October 1988 between a team comprising Management of the Defendant and representatives of the Union including the Plaintiff.**

- (3) The Plaintiff did not attend all meetings between Management and the Union during the period 1988 and 1989.**

- (4) The Voluntary Separation Plan was offered to workers who did not qualify for the Early Retirement Programme in that:**
 - (a) they had not yet attained an age within 10 years of retirement age; or**
 - (b) they had not completed the required years of service to qualify for pension.**

- (5) The Plaintiff had first been employed by the Defendant from the 4th day of April 1960.**

- (6) The Plaintiff applied in June 1989 to participate in the Early Retirement/Voluntary Separation Programme and was accepted by the Defendant under the Voluntary Separation Plan.**
- (7) At the time the Plaintiff applied to participate in the Early Retirement/Voluntary Separation Programme the Plaintiff had not yet attained the age of 55 years.**
- (8) The Plaintiff was paid a lump sum/voluntary separation payment of \$90,826.77 under the Voluntary Separation Plan.**
- (9) The Plaintiff was a contributing member of the Defendant's Pension Plan and as at 28th February 1989 had accumulated some 93 months of pensionable service.**
- (10) The pension plan was established by the provisions of a trust deed between the Defendant and the Union and was governed by the Rules established thereunder.**
- (11) On 3rd November 1993 on attaining the age of 55 years, the Plaintiff was paid a deferred lump sum pension of \$12,450.53 and thereafter received a monthly deferred pension of \$258.01. These sums represented the Plaintiff's pension payable under the Pension Rules which was an actuarially reduced pension.**
- (12) As a result of removing the actuarial reductions the Plaintiff's monthly pension payment was increased from \$258.01 to \$612.85.**
- (13) 1997 the Defendant approved the removal of pensions actuarial reductions. On**

22nd December 1997 the Plaintiff received an additional deferred lump sum payment of \$12,063.57. The total deferred lump sum pension payment received by the plaintiff was therefore \$24,514.10 (\$12,450.53 + \$12,063.57).

(14) In or about 27th March 1998 the Defendant paid to the Plaintiff the arrears of monthly pension which had accrued prior to the decision to pay an unreduced monthly pension. The arrears of pension payments for 35.933 months was paid to the Plaintiff on 27th March 1998: a sum of \$12,721.24

THE EVIDENCE

The evidence in this case was taken by the late Mr. Justice Bharat on 29th September 1998, 30th September, 1998, and 1st October 1998. Certain exhibits were admitted into evidence at the trial. Unfortunately the learned Judge passed away before the trial was completed.

On 28th November 2005, the parties agreed that the evidence and exhibits that were before Mr. Justice Bharat should stand, and submissions in writing were subsequently filed by both parties.

In his evidence the Plaintiff stated that he was a member of the SWWTU, and there was a Collective Agreement in force with respect to pension benefits, payable to daily paid workers, which applied to him. This agreement was admitted into evidence.

The Plaintiff attended a meeting on 24th October 1998. The minutes of this meeting are in evidence. According to the Plaintiff, he understood that “the agreement” meant that if he left the service before age 55 his pension would be computed as if he left at age 55, and that “this rule” would apply only to those who took early retirement. As a result he applied for early retirement according to the incentive offered under “the early retirement voluntary separation scheme”.

The Plaintiff called one David Barrett, a retired Senior Clerical Officer of the Port, who was attached to the Pensions Department. His duties entailed computing pensions for all monthly and daily paid workers.

He was given instructions by a Manager, Ms. Lee Chin to prepare a form for the purpose of computing pension. He did some of the calculations for persons taking early retirement, following guidelines given to him by Ms. Lee Chin. According to those guidelines, persons retiring between ages 50 – 55 would receive benefits calculated to age 55.

In cross-examination, it became clear that Mr. Barrett was acting at all times under the instructions of Ms. Lee Chin. He received minutes of a meeting from Ms. Lee Chin, which he used to help him with his computations. She did not give him any written directions from the management of the Defendant Authority.

Unfortunately, Ms Lee Chin was not called as a witness to give evidence of the guidelines she gave to Mr. Barrett, or the basis for these guidelines. Without her evidence, the evidence of Mr. Barrett is of little value in determining the basis on which the Plaintiff's pension benefits are to be calculated. In addition, it is to be noted that Mr. Barrett assumed throughout that the Plaintiff's benefits were to be calculated on the basis that he took early retirement, rather than voluntary separation.

It is not in dispute in this case that the Plaintiff applied to participate in the Early Retirement/Voluntary Separation Programme and was accepted under the Voluntary Separation Plan. Pursuant to this, he was paid his benefits under the latter Plan.

The Defendant called Ms. Elva Stewart Toussaint, a Personnel Assistant employed at the Human Resource Department of the Defendant. From 1988 to the time of giving evidence she performed the function of secretary to the Management Committee of the Pension Scheme.

During the period 1988 – 1989, she was engaged as Supervisor of the Computation Clerk. During that time the Defendant introduced a programme of Voluntary Separation. There were two plans – the Early Retirement Plan and the Voluntary Separation Plan.

Circulars were sent to employees setting out the terms for Early Retirement Benefits and Voluntary Separation Benefits. The Plaintiff applied for Voluntary Separation. He did not qualify under the Early Retirement Plan, since he did not have 30 years service. His benefits were computed under the Voluntary Separation Plan, and a memorandum was sent to him which he accepted. He was paid \$90,826.77 under the Voluntary Separation Plan.

FINDINGS OF FACT

From the evidence before me, I have come to the following findings of fact:

1. There was a meeting between representatives of the Defendant and representatives of the SWWTU on 21st October 1988, at which the Plaintiff was present.
2. At that meeting discussions took place with respect to proposed plans for workers to be voluntarily separated, or take early retirement. Discussions took place with respect to proposals for both plans.
3. Under discussion of early voluntary retirement, the Chairman (Mr. E. Wilson) stated that the basis of the agreement was that all the employees under the plan would be paid monthly pension as if they had worked to their compulsory retirement age. He further stated that employees who had five years and less before attaining compulsory retirement age would get their lump sum as if they had attained their compulsory age.
4. There was also discussion on a voluntary separation plan. The Defendant's representatives proposed a three-tier system, with respect to years of service, while the Union proposed a three-tier system. There was no agreement. The

Chairman asked for an adjournment, on the basis that the Defendant did not want to make any offer or any proposal without arriving at a package which the Union would accept.

5. The Defendant and the Union eventually agreed on an Early Retirement Programme and a Voluntary Separation Plan, the terms of which are reflected in the circulars sent to employees
6. The Plaintiff made an application to the Defendant which was accepted by the Defendant under the Voluntary Separation Plan.
7. By letter dated 6th June 1989, the Defendant informed the Plaintiff of his benefits under the Voluntary Separation Plan. The letter is headed "Early Retirement/Voluntary Separation offer". It refers to a "Lump Sum/Voluntary Separation Payment" of \$90,826.77. A separate note attached to the letter is headed "Voluntary Separation". It shows how the sum of \$90,826.77 is calculated.
8. The sum of \$90,826.77 was paid to the Plaintiff.
9. On 13th October 1983, the Plaintiff wrote to the Human Resources Department acknowledging receipt of a memorandum which stated that he was entitled to a lump sum payment of \$12,450.33 and a monthly pension of \$258.01. The Plaintiff claimed in this letter that he was entitled to a lump sum of \$53,016.40 and a monthly pension of \$1,325.41 on the basis of an agreement reached between the Defendant and the SWWTU at a meeting at the Port Authority Board Room on 24th October 1998 at 3.50 p.m.. According to the letter this meeting was to work out "formulas for an early retirement voluntary separation exercise"

10. It is clear from the above that the Plaintiff was under the mistaken impression that there was one plan involved – not two separate plans.

11. If the Plaintiff was under that impression, his confusion should have been dispelled upon receipt of the Circulars from the General Manager dated 22nd February 1989, one of which dealt with the Early Retirement Programme, and the other with the Voluntary Separation Plan. The circulars make it clear that there were two separate plans. The latter circular states the benefits to be provided for "employees who opt for voluntary separation".
I find on a balance of probabilities that these circulars would have been received by the Plaintiff, or would have come to his notice through his interaction with his colleagues.

12. Having opted to receive his full benefit under the Voluntary Separation Plan, the Plaintiff is not entitled to also receive benefits under the Early Retirement Plan. If the Plaintiff had qualified under the Early Retirement Programme he would have been entitled to his pension as if he had attained the compulsory retirement age. The Plaintiff claims to be entitled to a lump sum of \$53,016.40 under the Early Retirement Programme on this basis. However, he has already received the much larger lump sum of \$90,821.77 under the Voluntary Separation Programme. Clearly, in working out the packages the parties must have taken into account the size of the lump sum to be derived under both schemes together with the amount of the monthly pension. In laying claim to the larger lump sum under both schemes, the Plaintiff is attempting to claim the best of both plans without having to choose between the plans, as any other employee would have to do.

The Plaintiff has based his claim upon an alleged misrepresentation by the Chairman of the meeting, one Mr. E. Wilson who was at the time the Deputy Chairman of the Defendant, according to the minutes of the meeting held on 24th October 1988.

According to the minutes of the meeting the statements were made in the context of a discussion on a proposal for "Early Voluntary Retirement". The meeting went on to discuss proposals for voluntary settlement. No agreement was reached with respect to this proposal. The meeting was then adjourned since the Defendant did not want to make any offer or any proposal without arriving at a package which the Union would accept.

It follows from this that at this stage there was no agreement between the Defendant and the Union. Statements made by the Deputy Chairman of the Defendant were made in the process of negotiations between the employer and the Union. The terms of the agreement between the parties were not finalised or formalised in any way. The meeting ended on the note that the employer did not want to make any offer or any proposal without arriving at a package which the Union would accept. In other words negotiations were still in progress.

In the circumstances of this case, I hold:

- (1) The statements made in the context of a meeting between the employer and the Union were not intended to be relied on or acted upon by the Plaintiff.
- (2) The Plaintiff did not act reasonably in relying on the statements without first ascertaining whether the statements had become terms of an agreement between the parties.
- (3) The statements were not made fraudulently or were made with an intention to mislead the Plaintiff.
- (4) The statements do not amount to a misrepresentation. In fact the proposal did eventually become a term of the Early Retirement Programme

This is sufficient to dispose of this matter. However, in his written submissions Mr. Prescott argued that the High Court has no jurisdiction to deal with this matter since the Plaintiff is seeking to have the Court adjudicate on the terms and conditions of a collective agreement between the Plaintiff's employer and the representative Union. In this regard I

uphold the submission of Mr. Dass that the Plaintiff in this case is not seeking to enforce the terms and conditions of a collective agreement. His case is based on an alleged misrepresentation made by a representative of the Defendant, which was made before any agreement came into being. Accordingly, I hold that this Court has jurisdiction to deal with this claim.

In the result, the Plaintiff's claim must be dismissed. In the circumstance of the case, however, I will make no order as to costs.

Dated this 16th day of March 2006.

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RAJENDRA NARINE
Judge