

IN THE SUPREME COURT OF BELIZE A.D. 2003

ACTION NO. 19 of 2003

(HILARIO CASTILLO PLAINIFF
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BETWEEN (AND
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(PERFECTO CORTEZ SR DEFENDANT

Mr. N. Dujon for the Plaintiff
Mr. Leo Bardley, Esq. For the Defendant

AWICH J.

JUDGMENT

1. Notes:- *Labour Law: overtime hours; break hours, Sunday or agreed rest day, public holiday, minimum wage, SS: 115, 116, 117 and 118 of Labour Act Cap. 297.*
2. On 8.5.2003, Mr. Hilario Castillo, the plaintiff, had a writ of summons issued under Order 74 of the Rules of the Supreme Court, Cap. 81 of Statutory Instruments, commencing action by “summary procedure” of the Court. His claim was for \$9,374.00, against Mr. Perfecto Cortez Sr., the defendant, for what the plaintiff said was, “the balance of monies owed by the defendant”, for overtime hours worked by the plaintiff over six years at the defendant’s tortilla factory in San Ignacio, Cayo District. The plaintiff said he worked at the factory from 1991 to 27.4.2002, when he resigned. He

stated the period as 10 years. He made claim for 6 of the 10 years, presumably because of limitation of action.

3. The defendant accepted that he employed the plaintiff at the tortilla factory to make and sell tortilla. The defendant explained that it was a family business, and that later he handed over the management of the business to Eriselda Cortez (PW2), his daughter-in-law, and that profit was split between his two sons. No issue was raised about that.

4. ***The Basis of the Claim.***

On 20.5.2002, the plaintiff made a complaint to the Labour Department in San Ignacio. The complaint was: “essentially that his services had been terminated and he was quarrelling about his benefits”, Mr. Calbert Barber (DW2), the labour officer, testified. Mr. Barber said he determined that the plaintiff was owed \$10,539.00 in all, for overtime worked over 6 years dating back to 27.4.1996. Mr. Barber did not make determination that the plaintiff was owed any other benefit at termination or otherwise. On his determination, the officer made demand on the defendant to pay the sum owed. Eriselda who was then in charge of the business made small payments beginning, 13.6.2002; to 12.9.2002; the total sum she paid was \$895.00. The plaintiff’s claim is the balance from \$10,539.00 that remained unpaid, which would be \$9,644.00. The plaintiff, however, stated the sum as \$9,374.00, so that is the sum the subject of this case.

5. It was in evidence that the place of work was a factory. Accordingly, the

applicable law is the *Labour Act, Cap 297 Laws of Belize* and not, the *Shops Act, Cap 286 Laws of Belize*. More than 9 hours would be regarded as overtime under S: 116 of the Act. Each party pursued his case apparently with a view to proving: for the plaintiff, that he worked for more than 9 hours each day, and for the defendant, that the plaintiff never worked for more than 9 hours each day. That seems to have been due to a misunderstanding of the basis of the determination made by the labour officer, and which determination provided the figure for the sum claimed. The labour officer testified that by his calculation, he determined that the plaintiff worked 13 hours overtime in a week. From that I conclude that his determination was based on the number of hours the plaintiff worked per week, not on the number of hours that the plaintiff worked each day. The officer calculated that the plaintiff worked for 58 hours each week. He then took 45 hours as the prescribed regular hours of work per week, as the result, he determined that the plaintiff worked some 13 hours overtime each week for 6 years. He then charged \$2.25 per hour for each hour and arrived at \$10,539.00 as the sum owed to the plaintiff in overtime payments.

6. The plaintiff testified that at the commencement of his employment, he worked from 5:00 am to 3:00 pm or 3:30 pm, he had only 5 minutes break. In crossexamination he said that the break was for 10 to 20 minutes and that was not time taken off the place of work. So for that period he would have worked for 10 to 10 ½ hours each day. The plaintiff went on to say that in later years work hours changed to 6:00 am to 3:00 pm or 3:30 pm. That would be 9 to 9 ½ hours each day. He added that he worked “from Sunday to Sunday.”

7. The defendant stated different hours of work. In his testimony he stated the periods of work each day, for the period 1991 to 1997 before he handed over supervision to Eriselda, as: 6:30 am to 7:00 am, and 8:30 am to 1:30 pm. He said they took 1 ½ hours break from 7:00 am to 8:30 am. So according to the defendant, during 1991 to 1997, the plaintiff worked for 7 hours each day. Out of that is to be deducted 1 ½ hours. The hours worked was therefore 5 ½ hours each day. The defendant also said that if the plaintiff worked on a Sunday, he was paid \$20.00 for the work on Sunday. Neither the plaintiff nor the defendant suggested that the plaintiff would work longer or shorter hours on the sundays.
8. Luis Lisbey (PW3), testified that he worked at the factory from 1991 to 1995 with the plaintiff. The rest of his testimony would confirm the hours stated in the testimony of the defendant. However, Lisbey's testimony was about the period not relevant to the plaintiff's claim which was for the period 1996 to 27.4.2002. I regard his testimony as of no value.
9. The periods of work each day, testified to by Eriselda were: 6:30 am to 1:30 pm with a break of 1 ½ hours between 8 to 9:30 am. Again, according to Eriselda, the plaintiff worked for 7 hours less 1 ½ hours for break. The net hours was 5 ½ hours.
10. Both the defendant and Eriselda said that the plaintiff was free to leave the place of work at breakfast break and after 1:30 pm to go home.

11. *Determination.*

My finding of fact is that the plaintiff never worked for up to 10 to 10 ½ hours in the period 1991 to 1997, and later up to 9 ½ hours each day. If that was the case, his complaint to the labour officer would have been about overtime, not about benefits on termination. In my view the claim for overtime hours worked was conceived by the labour officer who gave it in the form of advice to the plaintiff who seized on it as the claim he would make. From his testimony the officer took the work on sundays as overtime work. That was wrong. Sunday work is separately and specifically provided for under the Act. Further, it is my view that the testimonies of the defendant and his witness were clearer about hours of work. I accept that the plaintiff never worked for more than 7 hours a day, and that he was not required to be at the place of work during break hours or after 1:30 pm. I also accept that Eriselda made payments on the demand by the labour officer as the result of fear.

12. I accept, further, that the plaintiff worked on some sundays. The defendant admitted that the plaintiff worked on some sundays. The plaintiff would be entitled to one and-one half times the hourly wage for each hour worked on Sunday. The defendant said that the plaintiff was paid \$20.00 “if he worked on Sunday”. I note that the plaintiff has not claimed that he was underpaid for work on Sunday; I cannot question the sum of \$20.00 paid if he worked on Sunday. I cannot grant any claim for work on sundays without evidence of underpayment for hours worked on sundays. In any case, it was not the basis of the plaintiff’s claim that he was not correctly paid for the sundays

on which he worked at the factory.

13. Crucially, I was unable to see how the labour officer came to the conclusion that the plaintiff worked for 58 hours a week. Certainly it did not come from the testimony of the plaintiff which was that he worked for up to 10 ½ hours for 7 days. That would total to 73 ½ hours in 7 days, or 63 hours in a six day week. By law a week is regarded as 6 days - see *S: 116 of the Labour Act*.
14. Prescribed hours of work and the rate of pay for overtime work and for work on Sunday or agreed rest day are stated in *the Labour Act, Cap. 297, Laws of Belize*. The relevant parts of the Act state:

“Hours of Work, Overtime and Holidays

115. No worker shall be obliged to work on any holiday or on any Sunday, if Sunday is the agreed rest day, or other agreed rest day substituted for a Sunday by agreement between an employer or an organisation of employers, on the one hand, and a worker or organisation of workers, on the other hand, entered into not less than seven days before such rest day is taken.

116. -(1) No worker shall be obliged to work on more than six days in any week, for more than nine hours actual work in any day or forty-five hours of actual work in any

week.

117 ...

118 (1) If any worker works for and at the request of his employer on a public holiday or a Sunday or other agreed rest day or for more than nine hours in any day or forty-five hours in any week, he shall be paid wages for such extra work at the following rates-

(a) ... (b) ...

(c) On Sundays or other agreed rest days - at a rate of not less than one and one-half his ordinary rate of pay; and

(d) for hours worked in excess of nine hours in any day or forty-five hours in any week - at a rate of not less than one and one half times his ordinary rate of pay.”

15. In my view the intentions are that: employees whose employments are based on a day to day arrangement must be regarded as having worked overtime hours if they work for more than 9 hours a day; those whose employments are based on a weekly arrangement must be regarded as having worked overtime hours if the total hours worked in the week exceeds 45 hours; and

if an employee works on a Sunday or on any other day agreed as a rest day, he or she must be paid one and one-half times the daily wage for every hour worked.

16. I repeat that I do not see how the determination of 58 hours per week arose on the facts of this case. If the labour officer picked any number of hours between the 9 to 10 ½ hours testified to by the plaintiff, the officer had to point out which one he picked. The officer said he took all the hours said to have been worked on all the sundays. He made an assumption; there has been no evidence about the hours worked on each Sunday. I preferred the defendant's testimony to the effect that the plaintiff worked on some sundays not all sundays. The officer would also be wrong because Sunday hours are not regarded as part of overtime hours in the week, Sunday hours are treated on their own as earning one and one-half wages per day right from the first hour worked.

17. ***Orders Made.***

The facts to back the plaintiff's claim have not been proved, let alone to the standard of a balance of probability. The plaintiff's claim is dismissed with costs to be taxed.

18. The defendant did not counterclaim. I make no determination in respect of the \$895.00 that he has paid to the plaintiff.

19. Pronounced this Thursday the 30th day of September, 2004.

At the Supreme Court,

Belize City.

Sam Lungole Awich

Judge

Supreme Court