COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
2011/COM/lab/FP/0007

BETWEEN

ANTHONY RAHMING

Plaintiff

AND

GRAND BAHAMA POWER COMPANY LIMITED

Defendant

BEFORE	The Honourable Mrs Justice Estelle Gray Evans
APPEARANCES:	Mr Obie Ferguson for the plaintiff
	Mr Robert K Adams and Mr Edward J Marshall II for the defendant
HEARING DATES:	2016: 23 February; 28 April; 17 November
Supplemental Closing Submissions: Defendant:	2016: 6 December
Plaintiff:	2017: 15 May
JUDGMENT DELIVERY:	2017: 30 June

JUDGMENT

Gray Evans J.

1. The plaintiff, Anthony Rahming, commenced this action on 5 July 2013 by a specially indorsed writ of summons in which he stated his claim as follows:

1) The defendant is a company duly registered under the laws of the Commonwealth of the Bahamas and carrying on business as a supplier and distributor of electricity.

2) At all material times the plaintiff was employed by the defendant for 29 years.

3) On the 11th day of February 2011 the plaintiff resigned his employment with the defendant.

4) During his tenure with the defendant the plaintiff was a member of the bargaining unit of the Bahamas Industrial Engineers, Managerial and Supervisory Union.

5) The Bahamas Industrial Engineers, Managerial and Supervisory Union and the defendant were parties to an industrial agreement dated the 1st day of January 2011 (the agreement).

6) Section 10.4 of the agreement provides that "where an employee voluntarily resigns he will be paid a gratuity of two (2) weeks pay for each year of service except where the resignation is within 2 years of normal retirement.

7) Normal retirement in the plaintiff's case would be sixty (60) years.

8) Section VIII of the agreement states that "for employees not subject to overtime policy the following will apply, where a non-overtime eligible employee is required to work more than 40 hours per week (except for those workers in the accounts and purchasing department, the employee will be granted time in lieu on a one for one basis."

9) The defendant's refusal to pay overtime payments to the plaintiff for overtime hours worked is a breach going to the root of the employment entitling the employee to claim constructive dismissal.

10) As at the time of his resignation the plaintiff was not within 2 years of the normal retirement age, consequently, he is entitled to a gratuity of 2 weeks' pay for each year of service at 29 years x 2 weeks = 58 weeks x $1,187.50 per week = $68,875.00.

11) The plaintiff is also entitled to lieu time pay of 4,212 hours x $44.53 hourly rate at time and a half - $187,565.63 together with vacation pay of 6 months x $4,750.00 = $27,500.00.

12) In the premise the plaintiff is owed by the defendant the sum of $222,418.75 or alternatively the plaintiff is entitled to be paid overtime pay pursuant to Section 8 and 10 of the employment Act 2001 which would be the sum of $284,940.00.

13) The defendant has refused and failed to pay the plaintiff the said sum or any part thereof.

14) By reason of the defendant's failure to pay the plaintiff the sum owned, the plaintiff has suffered loss and damage.

Particulars of Special Damages

Lieu time

1)	Gratuity pay for 29 years x 2 wks = 58 wks x $1,187.50 wkly salary	$ 68,875.00
2)	Lieu time (4,212 hrs x $445.20 hourly rate @ time and a half	125,043.75
3)	Vacation pay (6 months x $4,749.92)	28,500.00
4)	Total Owed	222,418.75
5)	Interest at 6.75% from March 10, 2011 and continuing	18,550.54
6)	Total owed plus interest	$240,969.39

Alternatively

Overtime

1)	Gratuity pay for 29 yrs x 2 wks – 58 wks x $1,187.50 wkly salary	$ 68,875.00
2)	Overtime (4,212 hrs x $445.20 hourly rate @ time and a half	187,565.63
3)	Vacation pay (6 months x $4,749.92)	28,500.00
4)	Total owed	284,940.63
5)	Interest at 6.75% from March 10, 2011 and continuing	23,765.22
6)	Total owed plus interest	**$308,765.22** [sic]

And the Plaintiff claims

1) The total sum of $222,418.75 inclusive of lieu time or alternatively the sum of $284,940.63 inclusive of overtime
2) Damages
3) Interest pursuant to the Civil Procedure (Award) of Interest Act 1992;
4) Costs;
5) Such further or other relief as the Court deems just.

2. In its defence filed 1 October 2013, the defendant avers as follows:

1) Paragraph 1 of the statement of claim is admitted.
2) Paragraph 2 of the statement of claim is denied. The plaintiff commenced his employment with the defendant on 1st March 1988. Thereafter, the plaintiff was employed by the defendant for a period of 28 years until the plaintiff voluntarily resigned from his employment with the defendant on 11th February 2011.
3) Paragraphs 3 through 8 of the statement of claim are admitted.
4) Paragraph 9 of the statement of claim is denied and the plaintiff is held to strict proof of the allegation contained therein. The plaintiff voluntarily resigned from his employment with the defendant on 11th February 2011.
5) Paragraph 10 of the statement of claim is denied. Pursuant to clause 10.4.1 of the Industrial Agreement made between the Bahamas Industrial Engineers Managerial and Supervisory Union ("the Union") and the defendant on 1st January 2011 ("the agreement"), upon the resignation of his employment with the defendant, the plaintiff was entitled to receive a gratuity of (2) weeks pay for each year of service. On 11th February 2011, the plaintiff voluntarily resigned from his employment with the defendant. At the time the plaintiff resigned from his employment with the defendant, the plaintiff earned a salary of $55,000.00 per annum and had been employed by the defendant for a period of 28 years. Consequently, the defendant avers that upon the resignation of his employment with the defendant, the plaintiff was entitled to receive a gratuity in the amount of $59,231.20 representing (2) weeks of the plaintiff's basic pay in the amount of $1,057.70 per week x 28 years.
6) Paragraph 11 of the statement of claim is denied and the defendant repeats paragraph 10 [sic] herein.

7) Paragraph 12 of the statement of claim is denied and the plaintiff is held to strict proof of the statement contained therein.

8) Save that the defendant has refused to pay the plaintiff the sum of $222,418.75 or the sum of $284,940.63 in overtime pay, paragraph 13 of the statement of claim is denied.

9) Paragraph 15 of the statement of claim is denied and the defendant is put to strict proof of any loss suffered as a result of the defendant's alleged breach.

10) Save where expressly admitted herein the defendant denies each and every allegation contained in the plaintiff's statement of claim as if the same were set out herein and traversed in seriatim.

3. The issues that arise for determination include the following:

1) Was the defendant obligated to pay a gratuity to the plaintiff following his resignation?

2) Did the defendant compensate the plaintiff for the accrued and untaken vacation due to him upon his resignation?

3) Was the defendant obligated to compensate the plaintiff in respect of the alleged "in lieu time hours" being claimed by the plaintiff following his resignation?

4) Alternatively, was the defendant obligated to compensate the plaintiff for alleged overtime hours being claimed by the plaintiff following his resignation?

4. Evidence at the trial came from the plaintiff, Mrs Evis Missick and Mr Zervago Cox, the latter two on behalf of the defendant. Each of the witnesses provided witness statements which they adopted as their evidence-in-chief, and each was subjected to cross-examination.

5. The evidence shows that the plaintiff commenced his employment with the defendant on 1 March 1983. By letter dated 11 February 2011 the plaintiff voluntarily resigned his employment with the defendant. The defendant accepted the plaintiff's resignation in its letter dated 14 February 2011 and offered payment to the plaintiff in the sum of $78,916.60 made up as follows:

1) $59,455.15 – resignation gratuity;

2) $19,207.69 - accrued vacation pay; and

3) $ 253.76 - a prorated Christmas Bonus payment.

6. The defendant also informed the plaintiff that all monies owed to him under the defendant's savings plan would be made available to him at Commonwealth Bank Limited, upon his presentation to that bank of the defendant's aforesaid letter dated 14 February 2011.

7. The plaintiff pleads (paragraph 5 of the statement of claim) and the defendant admits (paragraph 3 of the defence) that the defendant and the Union were parties to an industrial agreement dated 1st day of January 2011.

8. It is, however, common ground that at the date of the plaintiff's resignation on 11 February 2011, the last registered industrial agreement between the defendant and the Union was the agreement dated 4 December 2000 ("the 2000 industrial agreement"), the express 5-year term of which had expired on 1 January 2005 and that by the date of the plaintiff's resignation, no new industrial agreement between the defendant and the Union had been executed and or registered with the Industrial Tribunal.

9. It is also common ground that on 21 March 2012, after the plaintiff's resignation but prior to the commencement of this action on 5 July 2013 the defendant and the Union executed another industrial agreement ("the 2012 industrial agreement"), which provides at clause 14.1 thereof that it "shall become effective as of 12:00 AM of the 1st day of January 2011 and shall continue enforced [sic] and

effect until 12:00 AM of the 1st day of January 2016." The 2012 industrial agreement was registered on 13 March 2013 and the registration certificate states that it was effective from that date.

10. Both industrial agreements contain, inter alia, the following terms:

> ""8.2...For those employees not subject to normal overtime policy the following will apply. When a non-overtime eligible employee is required to work more than 40 hours per week (except for those workers in the Accounts and Purchasing Department who will continue at 37.5 hours, (5) days per week) in order to complete tasks related to planned shutdown, plant and/or transmission & distribution maintenance and project activities then the employee will be granted time-in-lieu on a one for one basis. The department head will coordinate time taken off under the terms of this provision. However, request for leave will not be unreasonably withheld."
>
> 10.4.1. Where an employee voluntarily resigns he will be paid a gratuity of two (2) weeks pay for each year of service except where the resignation is within 2 years of normal retirement."

Gratuity

11. At paragraph 10 of his statement of claim, the plaintiff alleges that at the time of his resignation, he was entitled to a gratuity of two weeks' pay for each year of service. He alleges further that at the time he had been in the defendant's employ for 29 years and was entitled to gratuity in the sum of $68,875.00, being 58 weeks x $1,187.50 per week.

12. The defendant at paragraph 5 of its defence avers, inter alia, that "upon the resignation of his employment with the defendant, the plaintiff was entitled to receive a gratuity in the amount of $59,231.20 representing two weeks of the plaintiff's basic pay in the amount of $1,057.70 per week x 28 years."

13. In light of the aforesaid admission by the defendant, I find that the defendant was obligated to pay a gratuity to the plaintiff following his resignation.

14. At paragraph 6 of his witness statement, the plaintiff asserted that he was entitled to the said sum of $68,875.00, made up as aforesaid.

15. However, under cross-examination the plaintiff agreed with counsel for the defendant that at the date of his resignation, he had been working with the defendant for approximately 28, not 29, years and that his annual salary was $55,000.00 per annum or $1,057.70 per week.

16. In the circumstances, I find that at the time he resigned from the defendant's employ on 11 February 2011, the plaintiff had been working with the defendant for approximately 28 years (actually 27 years 11 months and 11 days), and had been earning an annual salary of $55,000.00, or $1,057.70 per week.

17. As indicated, Clause 10.4.1 of the 2000 industrial agreement provides that where an employee voluntarily resigns he is to be paid a gratuity of two weeks' pay for each year of service except where his resignation is within two years of normal retirement.

18. It is common ground that at the date of his resignation, the plaintiff was not within two years of the normal retirement age of 60 years.

19. So, based on his salary of $1,057.70 per week or $55,000.00 per annum, the plaintiff would, pursuant to Clause 10.4.1 of the industrial agreement, have been entitled to receive gratuity in the sum of $59,231.20, being two weeks salary of $2,115.40 for each year of employment, that is, approximately 28 years.

20. Mrs Missick's evidence is that after the defendant accepted the plaintiff's resignation, the defendant offered the plaintiff a resignation gratuity in the sum of $59,455.15, approximately $224.51 more than, by the aforesaid calculation, he was entitled to receive under the industrial agreement.

21. In the circumstances, then, I agree with counsel for the defendant, and I find, that in light of the sum offered to the plaintiff by the defendant, the plaintiff's claim against the defendant for failing to pay him gratuity in accordance with the industrial agreement fails.

Vacation

22. Except for an allegation at paragraph 11 of his statement of claim, and an averment at paragraph 9 of his witness statement that he is entitled to vacation pay for six months in the sum of $28,500.00, that is, $4,750.00 per month, the plaintiff adduced no other evidence in support of that claim.

23. However, Mrs Missick's evidence is that when the defendant accepted the plaintiff's resignation, the defendant also offered him the sum of $19,207.69 as compensation for untaken vacation which he had accrued according to the defendant's records. That evidence has not been refuted by the plaintiff.

24. I, therefore, find that in offering the plaintiff the sum of $19,207.69 as compensation for untaken and accrued vacation, the defendant has fulfilled its obligation to compensate the plaintiff for his accrued and untaken vacation.

25. I find, further, that, in the circumstances, the plaintiff has failed to prove his claim for six months accrued and untaken vacation in the sum of $28,500.00 and that claim also fails.

In lieu time hours

26. At the end of the day, the crux of the plaintiff's claim was in relation to compensation for "in lieu time."

27. Indeed, counsel for the plaintiff commenced his written closing submissions with the following statement:

> "These submissions are made in support of the plaintiff's claim for lieu days due and owing to him at the time of his resignation on the 11 day of February 2011 having worked for the defendant for 28 years."

28. He ends those submissions with the following statement:

> "7.1 A cursory glance of the industrial agreement....clearly shows that there is no provision in the industrial agreement for termination by Common Law or the Employment Act. It follows therefore that lieu hours worked and not paid on resignation is still due and owing the plaintiff in the amount of $137,953.94.

29. In his statement of claim, the plaintiff alleges, inter alia, at paragraphs 11 and 12 as follows:

> "11. The plaintiff is entitled to lieu time pay of 4,212 hours x $44.53 hourly rate at time and a half = $187,565.63..."
>
> "12. In the premise the plaintiff is owed by the defendant the sum of $222,418.75 or alternatively, the plaintiff is entitled to be paid overtime pay pursuant to sections 8 and 10 of the Employment Act 2001 which would be the sum of $284,940.63."

30. At paragraph 15 of his statement of claim the plaintiff lists among his particulars of special damages a claim for "Lieu time (4,212 hrs x $445.20 [sic] hourly rate) @ time and a half in the sum of $125,043.75"; and "in the alternative, Overtime (4,212 hrs x $445.20 hourly rate) @ time and a half in the sum of $187,565.63.

31. It is clear from his pleadings that the plaintiff got his figures for "lieu time" claim ($125,043.75) mixed up with his alternative claim for "overtime" claim ($187,565.63). It is, however, unclear how counsel for the plaintiff arrived at the sum of $137,953.94 mentioned in his closing submissions.

32. In support of his claim for monetary compensation for lieu time, the plaintiff, at paragraphs 7 through 11 of his witness statement, states that prior to his resignation he worked 4,212 hours overtime

and in breach of section 8 of the agreement, the defendant has refused to compensate me for the overtime worked.

33. At paragraphs 9, 10, and 11 of his witness statement, the plaintiff avers that he is "entitled to lieu time pay of 4,212 hours at $44.53 rate at time a half = $187,565.63...or overtime in the sum of $284,940.63 pursuant to sections 8 and 10 of the Employment Act, 2001; that he has written several letters to the defendant seeking settlement of the overtime pay owed to him, but the defendant has still refused to pay him.

34. At paragraph 15 of his witness statement the plaintiff avers that "as a result of the defendant's failure to pay the sum owed to me, I have suffered loss and damage for $240,969.39 or in the alternative $308,765.22 as stated in my statement of claim."

35. I note here that those sums included the plaintiff's claim for gratuity and vacation pay, as well, in the case of the latter sum, interest at 6.75% from 10 March 2011 and continuing. I note also that the plaintiff resigned his employment on 6 September 2011.

36. As indicated, Clause 8.2 of both of the aforesaid industrial agreements provides, inter alia, that:

> "8.2...For those employees not subject to normal overtime policy the following will apply. When a non-overtime eligible employee is required to work more than 40 hours per week (except for those workers in the Accounts and Purchasing Department who will continue at 37.5 hours, (5) days per week) in order to complete tasks related to planned shutdown, plant and/or transmission & distribution maintenance and project activities then the employee will be granted time-in-lieu on a one for one basis. The department head will coordinate time taken off under the terms of this provision. However, request for leave will not be unreasonably withheld."

37. It is common ground that the plaintiff was an employee "not subject to normal overtime policy" for the purpose of Clause 8.2 aforesaid and, therefore, he was entitled to "time-in-lieu on a one for one basis." I understand that to mean that for every hour which the plaintiff worked in excess of his normal working hours, he was to be compensated with equal hours off from work.

38. As I understand the plaintiff's claim, prior to his voluntary resignation from the defendant's employ, he had worked some 4,212 hours in excess of his regularly scheduled hours; that pursuant to Clause 8.2 aforesaid, he was entitled to "time-in-lieu", so that, but for his resignation on 11 February 2011, he would have been entitled to be given those hours back by way of time off with pay. However, having resigned his employment before being given such time-in-lieu, he is now entitled to receive monetary compensation for those extra hours which he worked. In that regard, counsel for the plaintiff asserts that where an employee who is entitled to time-in-lieu retires before taking or being given his time, he is entitled to be paid therefor upon his retirement.

39. I note here that the plaintiff did not retire. He resigned.

40. When asked for the authority for his assertion, counsel for the plaintiff cited the Industrial Tribunal case of Vylana Leanice Ferguson v Sun International No. 85 of 1997, a case of wrongful dismissal in which the employer had admitted liability.

41. In that case, the Tribunal accepted the applicant's testimony with respect to compensation outstanding and due from the respondent with respect to "work on 34 days as outlined in her letter to Mr Ernie Cambridge dated 15 November 1997" [sic]. (The judgment was dated 7th August 1997). However, it is unclear on the face of that decision whether Ferguson's contract of employment provided for payment of overtime or time-in-lieu and the contents of her letter to Mr Cambrige were not included in the judgment

42. In any event, Ferguson was terminated. The plaintiff in this case resigned.

43. While there was some dispute among the parties as to whether or not there was a registered industrial agreement between the Union and the defendant in force at the date of the plaintiff's

termination (see the discussion in the cases of Alexander Brown v Grand Bahama Power Company Limited, 2011/COM/LAB/FP00010 and Leon Cooper v Grand Bahama Power Company Limited, 2011/COM/LAB/FP00010, judgments in which were handed down on even date herewith), in light of the defendant's admission that the Union and the defendant were parties to an industrial agreement dated 1 January 2011, I do not propose to rehash those arguments or my findings, except to say that I found in those cases, as I find in this case, that at the date of the plaintiff's resignation, 11 February 2011, the express term of the 2000 industrial agreement having expired, there was no legally enforceable industrial agreement in force between the Union and the defendant.

44. In a nutshell, the defendant contends that even if the terms of the 2000 industrial agreement were in force at the date of the plaintiff's resignation, that agreement makes no provision for money to be paid as compensation for extra hours worked by the plaintiff as a member of the bargaining unit of the Union.

45. In that regard, counsel for the defendant points out, the compensation provided to the defendant's employees by clause 8.2 aforesaid, for the time in lieu hours they accumulated was in fact "time off"; and, he argues that the reason the plaintiff did not receive his time off for any in-lieu hours which he may have accumulated was because he voluntarily resigned before receiving such compensation; thereby, counsel submits, walking away from that benefit.

46. Indeed, as counsel for the defendant pointed out, during his cross-examination, the plaintiff confirmed that it was his understanding that the terms of the 2000 industrial agreement did not require the defendant to give monetary compensation to employees within the bargaining unit for time in lieu hours; and he accepted that except for one time, following Hurricanes Frances and Jeanne, he was always compensated with time off, rather than with money. Furthermore, in response to counsel for the defendant's question as to whether he understood that "time off in lieu of overtime pay was not the same as vacation; that vacation was completely separate?" The plaintiff responded: "Always."

47. Therefore, counsel for the defendant submits, based on the evidence led at trial, it is obvious that the plaintiff understood that the granting of time in lieu hours was an alternative form of compensation afforded to members of the Union only, which were not compensable by the defendant when the defendant and a member of the Union separated. Further, that it was a benefit that was borne completely out of the terms of the 2000 industrial agreement which is a greater benefit than the benefits afforded to supervisory employees under the provisions of the Employment Act, because 'supervisory' and 'managerial' employees are not entitled to overtime pay under the Employment Act.

48. It is, in my view, clear from the terms of Clause 8.2 aforesaid that the plaintiff was entitled to be compensated with time off for extra hours worked and that the reason he was not so compensated is because he resigned, in my view, prematurely.

49. As I indicated during the trial, it seems to me that before resigning the plaintiff ought to have taken into consideration the in-lieu-hours he had accumulated and factor those hours into his effective resignation date. In other words, he ought to have confirmed with the defendant the amount of in-lieu-time compensation he was entitled to at the time and then tender his resignation to take effect at the expiration of the agreed in-lieu-time. Regrettably for him, he did not.

50. Further, I accept the submission of counsel for the defendant that the plaintiff has failed to show that he was entitled, pursuant to the 2000 industrial agreement, or otherwise, to monetary compensation for hours worked in excess of his regular work schedule of 40 hours per week.

51. Moreover, in my judgment, the plaintiff has failed to prove on a balance of probabilities that he in fact worked the 4,212 extra hours he alleges. The rule is, he who alleges, must prove and the plaintiff under cross-examination accepted that his claim of having worked 4,212 extra hours had never been substantiated by the defendant prior or subsequent to his resignation.

52. In support of his claim for 4,212 hours of time in lieu, the plaintiff adduced a series of time sheets showing accumulated hours of 3,114 as time in lieu which he alleges remained untaken as at October 2009; plus 1098 hours of time in lieu as at July 2010 for a total of 4,112 hours of time in lieu.

53. In response to the plaintiff's claim for 4,212 hours of time in lieu, the defendant adduced documentary evidence which showed that in 2009 it conducted an internal review of the time in lieu hours being claimed by its employees in its Technical Services Department which revealed that the amounts of time being claimed by, inter alia, the plaintiff at that time were either extremely inaccurate or untruthful.

54. In that regard, the defendant's documentary evidence showed that on 3 December 2009, Mr Leon Cooper, the plaintiff's direct supervisor at the time, reported to Mrs Missick, the defendant's Director of Human Resources, that as of 23 November 2009, the plaintiff had accrued 301 hours of time in lieu, compared to 3,125 hours of time in lieu which the plaintiff's documentary evidence suggests he had accumulated as at 19 November 2009.

55. In addition, as counsel for the defendant pointed out, according to Mr Cooper's email message dated 20 November 2009, the records he reviewed for the purpose of preparing his report dated 4 December 2009 reflected that all lieu time hours accumulated by the defendant's employees in the Technical Services Department, including the plaintiff, up to July 2009 had been "duly signed off" and that nothing had been submitted since that date.

56. Counsel for the defendant submits that in light of the overwhelming evidence showing that the amount of time in lieu hours being claimed by the plaintiff is either untruthful or severely inaccurate, the plaintiff's claim for monetary compensation equivalent to 4,212 house of time in lieu hours should be dismissed for being spurious and one that plainly ought not to succeed.

57. I agree accept the submission of counsel for the defendant that even if one accepts that as a matter of contractual right the plaintiff was entitled to be compensated in monetary terms for extra hours worked, which I have found he was not, he still has an obligation to adduce evidence to prove his claim, which, in my judgment, he has failed to do.

58. In the result, I find that the plaintiff has failed to prove that he had, at the date of his termination, accumulated 4,212 in-lieu-time hours for which he had not been compensated and or for which he was entitled to be compensated monetarily. Therefore, his claim in that regard fails.

Overtime in the alternative

59. The plaintiff claims in the alternative, that he is entitled to be paid overtime pay, at time and a half, pursuant to sections 8 and 10 of the Employment Act, 2001, which sum he calculates as $187,565.63.

60. Sections 8 and 10 of the Employment Act, so far as they relate to the issue at hand, are set out hereunder:

> 8. (1) Except as otherwise provided by or under this Act, no employer shall cause or permit any employee to work in excess of eight hours in any day or forty hours in any week (in this Part referred to as the "standard hours of work") without the payment of overtime pay in respect of any such excess in accordance with section 10:
>
> Provided that the standard hours of work shall be —
>
> (a) forty-four hours in any week for the period February 1, 2002 to February 1, 2003;

(b) forty hours in any week after February 1, 2003.

(2)...

(3)...

(4) This section shall not apply to a person who holds a supervisory or managerial position.

9...

10. Where an employee is required or permitted to work in excess of the standard hours of work, he shall be paid in respect of such work at a rate of wages not less than —

(a) in the case of overtime work performed on any public holiday or day off, twice his regular rate of wages;

(b) in any other case, one and one-half times his regular rate of wages.

61. As indicated, the plaintiff was an employee "not subject to normal overtime policy" for the purpose of clause 8.2 of the 2000 industrial agreement and as such he was, in my judgment, for the purpose of the Employment Act, a supervisor or a manager. Therefore, as can be seen from the provisions of sections 8 and 10 aforesaid, he was not entitled to overtime pay under the Employment Act. Indeed, under cross examination, the plaintiff admitted that as a member of middle management and as a chemist with the defendant company he was not eligible for overtime.

62. As opined by Barnett C.J. in the case of Mario A. Newry v Land Shark (Bahamas) Limited, 2011/COM/LAB/00022:

> "There is no statutory right under the Employment Act to overtime pay. The standard hours of work under section 8 of the Employment Act does not apply to persons who hold a supervisory or managerial position. The plaintiff can only be entitled to overtime pay if there was a specific agreement between him and the defendant that he would receive such pay. I do not find that there was any general agreement that the plaintiff would receive overtime pay for periods worked over any minimum period."

63. I respectfully agree with and adopt those views as, in my judgment, they apply equally in this case.

64. As argued by counsel for the defendant, the entitlement to time-in-lieu was a benefit borne out of the terms of the 2000 industrial agreement which is a greater benefit than the benefits afforded to supervisory employees under the provisions of the Employment Act, but that provision, even if the 2000 industrial agreement was still in force or its terms incorporated either expressly or by implication into the plaintiff's contract of employment with the defendant, which, in my view, were not, did not provide for the plaintiff to receive monetary compensation for extra hours worked.

65. In the circumstances, I accept the submissions of counsel for the defendant, that the defendant did not act in breach of section 8 of the Employment Act when it agreed with the Union not to give monetary compensation to members of the bargaining unit, including the plaintiff, for any hours worked in excess of eight hours per day or 40 hours per week and it did not contravene the provisions of that section when it chose not to compensate the plaintiff by way of money for any time in lieu hours he allegedly accumulated.

66. If I am incorrect in that finding, and the plaintiff was indeed entitled to be paid overtime for extra hours worked, the plaintiff must still prove his claim. In my judgment, he has failed so to do. As I said, the plaintiff has failed to prove that he had, at the date of his termination, accumulated 4,212 overtime hours for which he had not been compensated monetarily, or otherwise.

67. In the result, the plaintiff's claim for overtime pay for 4,212 overtime hours also fails.

68. For the foregoing reasons, the plaintiff's claim is dismissed in its entirety with costs to the defendant to be taxed if not agreed.

DATED this 30th day of June A.D. 2017

Estelle G. Gray Evans, J.