

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NOS: 5, 6 & 7 OF 1999

BETWEEN:

SAMUEL LEONARD, DULCIE RICHARDS & EION LAURIE

Employees

and

SANDALS (ANTIGUA) LIMITED

Employers

Before:

The Hon. Cyril L. Maundy
The Hon. Hubert Hood
The Hon. E. T. Henry

President
Member
Member

Appearances:

Kelvin John for the Employees
Radford W. Hill for the Employers

2000: August 30
September, 1, 5 & 6

JUDGMENT

Unfair Dismissal – Summary Dismissal – thefts of hotel stores and other property – exits of the hotel manned by security guards – entire compound under the patrol of the company's security guards – bags of employees searched (inspected) by security guards when leaving the premises – keys to storeroom and other keys kept by the Night Auditor – at times Night Auditor gave keys to security guards to enter rooms to turn off the Air-Condition or a television set that was disturbing a guest – Night Auditor placed the Front Desk under the care of security guard when

absent – investigation by employers – no evidence of who committed thefts – dismissals based on suspicion – mitigation.

- [1] **MAUNDY, P.:** These References have certain features in common and on account of this the parties agreed to have them heard together. In each of the References the issue is one of Unfair Dismissal and they were referred to the Court by Arthur G.B. Thomas, Solicitor, of Thomas, John & Company, by References dated March 4, 1999, and filed on March 9, 1999.
- [2] In their Memorandum the Employees alleged that the dismissals were unfair, contrary to Law and to established industrial practice.
- [3] In response to the Employees, the Employers contended that after an exhaustive investigation they formed the view that the thefts of some television sets and other company property were committed by one or more of a group of security guards, to which the Employees belonged, all of whom were capable individually of stealing the said items.
- With regard to Samuel Leonard, it was also alleged that he had failed to observe the procedures in place for the issuance of keys to the storeroom and thereby caused financial loss to the company.
- The Employers further contended that in the premises they were entitled to dismiss the Employees on the grounds that:
- (i) The conduct complained of clearly demonstrated that the employment relationship could not be expected to continue, and or, alternatively,
 - (ii) Such conduct at the workplace was reason of a substantial kind which would entitle any reasonable employer to dismiss an employee holding the position the employee held.

Historical Background

(a) Eion Laurie

- [4] The Employee commenced working with the Employers on June 13, 1991, as a security guard and was dismissed on December 22, 1993. The Employee's duties were set out in a Job Description and were to protect life and property and he had three Supervisors apart from the Head of the security Department, David James.
- [5] When on duty the Employee used to patrol the property to see if there were any unauthorised persons thereon or man the Main Gate and the Back Gate where staff entered the compound.
- [6] The Employee used to "check" the bags of staff as they were leaving the compound to see if they were in possession of any stolen goods or hotel property.
- [7] The hotel operated three shifts, viz, 7:00am to 3:00pm, 3:00pm to 11:00am and 11:00pm to 7:00am, and three officers and a Supervisor worked on each shift.
- ↓
- [8] When he commenced his employment the Employee's salary was \$ 250.00 per week and on September 6, 1992, he was promoted to security guard No. 3 at a salary of \$ 300.00 per week – See Exhibit EL1. The Employee was the recipient of several further tokens of appreciation for satisfactory performance from the employers, thus:
- (a) By letter dated July 1, 1992, from the General Manager, the Employee was congratulated for his work performance, paid an extra \$ 150.00 and his wife and himself were invited to Dinner – See Exhibit EL2.
- (b) By letter dated August 11, 1993, from Cheryl Carter, the Executive Assistant Manager, she acknowledged a payment by the Employee of US\$ 2.00 to the Staff Sports Fund – the money was given to the Employee as a "tip" but

it was prohibited to accept tips and anything given as a tip had to be surrendered or would result in dismissal – See Exhibit EL3.

(c) On August 19, 1993, the Employee was given a short term appointment as a Supervisor – See Exhibit EL4.

- [9] On December 7, 1993, the Employee was on the 11:00pm to 7:00am shift and at about 11:45 to 12:00pm he was summoned to a meeting with the General Manager, Mr Zepherin, in his office. At the meeting, in addition to the General Manager were Miss Carter, Mrs Bondalyn Adams, the Financial Comptroller and Mr Calvin Malcolm, the Group Financial Comptroller. The Employee was questioned by the General Manager about the larceny of hotel property, accused of knowing about the thefts, the house that he had built in Antigua and that he was once seen leaving the Main Gate with another security guard, "Wilty" carrying a box of tiles owned by the hotel.
- [10] The Employee denied Mr Zepherin's allegations and his radio was taken from him, and he was told to go home and return for another meeting on the following day, he was escorted off the premises by another security guard.
- [11] The Employee reported for the meeting at 10:00am on December 8, 1993, and was taken to the Conference Room. Present at the Conference Room were Mr Zepherin, Mrs Adams, Mrs Coates, the Executive Assistant Manager, Mr Malcolm, Mr Brown, the Group Chief of security and Mr Radford Hill, the company's Solicitor. The Employee was again questioned about the thefts of company property including television sets and a pail of meat. The Employee again denied the allegations and said he did not know of the thefts. The Employee was suspended for two weeks pending further investigations and escorted off the property.
- [12] No further questioning of the Employee by the hotel was made during the period of suspension and the Employee was never interviewed by the Police.

- [13] On or about December 22, the Employee went to the hotel to collect his annual bonus and was given a termination letter – See Exhibit EL5 – he did not get the bonus.
- [14] The Employee did not have access to the storeroom and did not have any keys and it was only to the Back gate that security guards had keys.
- [15] The Employee said he only knew of thefts noted in the security guards' log book including the televisions and the pail of meat but did not know of any wholesale thefts.
- (b) Dulcie Richards
- [16] The Employee commenced working with the Employers as a security guard on June 3, 1991, and was later made a Supervisor and was dismissed on December 22, 1993, on the ground that she was one of a group of security guards involved in the stealing of property from the company and failure to follow procedures.
- [17] The Employee was responsible for the screening of the hotel guests, protect guests and guarding the company's property and when she arrived in the mornings she would examine the Log Books, then send the guards to their respective posts and thereafter patrol the property on the look out for burglars and other unauthorised persons. The Employee worked all the shifts and used to check staff in addition to the above. The Employee had a set of keys to the Back Gate only.
- [18] On December 12, 1993, the Employee was on the 7:00am to 4:00pm shift. There was a Heads of Department meeting and she sat in for the Head of Department, Daniel Gilkes. After the meeting the Employee was summoned to the office of the General Manager for a meeting.

[19] At the meeting the Employee was told that she was seen with vegetables in a bag at the back gate. The Employee said that on Friday and Saturday mornings, if she was working, she would stop at the market and buy fresh vegetables. On one occasion while working with Mrs Adams in the storeroom the Employee was given four spoons, four forks, four plastic glasses and two plates. The Employee was suspended for the day with pay and at a meeting in the Conference Room the following day she was suspended for two weeks without pay – she was also accused of stealing potatoes from the company. About two weeks later when the Employee went to collect her bonus, like Mr Laurie, she was given a termination letter – See Exhibit DR1.

(c) Samuel Leonard

[20] Mr Leonard entered the employment of the company in October, 1991, as a receptionist and later became Night Auditor. The Employee used to work the 3:00pm to 12:00am shift and the 12:00am to 7:00am shift and occasionally the 7:00am to 4:00pm shift, and was dismissed on the 29th of December, 1993.

[21] The duties of the Employee were to check in and check out guests, make telephone calls for guests, make out the bills and he kept the keys for the various departments of the hotel. The keys were kept in a drawer at the Front Desk and were issued by the Employee when on duty – when he was not on duty or absent from office they were kept by someone else.

[22] The Employee worked at the Front Desk and, at other times, in the Accounts Office and the Reservations Office. There were about ten sets of keys for different Departments and it was not possible to stay in the Accounts Room and see what happened at the Front Desk.

[23] Between 1:00 and 2:00am the Employee would shut down his computer at the Front Desk and go to the back room to deal with the Bills and make his report on the main

computer. When at the back office, the Employee would call one of the security guards and assign him to guard the Front Office with instructions to call him if anyone came by. The Front Desk was only accessible from the Accounts Office.

- [24] Keys could be given to certain authorised persons, viz, the Night Manager or the Head of security , but no manual or written instructions were ever given to the Employee re the issuing of keys nor was he ever given any policy directives as to where they were to be kept or to whom only they should be given.
- [25] On the Employee's day off he had a replacement who followed the same procedure. It was not part of the Employee's duties to go to the storeroom and retrieve items.
- [26] On the night of December 7, 1993, the Employee was called to a meeting at the General Manager's Office with himself and Mr Browne. At the meeting the Employee was told that a number of items were missing from the storeroom, e.g. cutlery, articles of food and utensils, that he was the person in charge of the keys, security had been taking items from the storeroom and as he was responsible for the storeroom he knew what was going on. The Employee denied the allegations and was told he was lying; he was escorted off the premises by a security guard and sent home. At a meeting in the Conference Room on the following day, the employee was again grilled about the keys. The Employee said that he would give the keys to a security guard to go to a guest room, e.g. to shut down a television set that was left on by a guest and was disturbing another in another room or where the Air Condition was left on in an empty room. The Employee was then sent home and told that he would be contacted after further investigation. The Employee later received a letter terminating his employment as from December 29, 1993 – See Exhibit SL1.
- [27] The Employee denied that he used to issue keys to the security guards willy nilly and insisted that, apart from the special cases, the only persons to whom he ever

issued keys were the Head security guard and the Night Manager; also, that every issue was entered in the Log Book and signed.

- [28] Calvin Malcolm gave evidence on behalf of the Employers and confirmed that the thefts had taken place although he could not identify the individuals responsible.
- [29] Also, said Mr Malcolm, management held several meetings among themselves re the thefts and on December 7th and 8th with six security guards who they had under suspicion including the Employee – the Employee denied he had committed any of the thefts and that he committed a breach of any procedure or that he issued keys to unauthorised persons – he was suspended for two weeks after the second meeting and on December 22, 1993, dismissed.
- [30] Mr Malcolm confessed that he could not remember all that transpired but said that no search was made of rented vehicles when entering or leaving the hotel, neither were private cars or persons who came onto the compound including persons invited by Departmental Heads for Dinner or a show.
- [31] The Financial Comptroller, Bondalyn Adams, also gave evidence on behalf of the Employers. Mrs Adams said that between October and December, 1993, she became concerned at the high incidents of theft at the hotel. The witness did a monthly stock taking of the goods, including cutlery, china, glassware, towels, beverage items and other pertinent matters and around December 7 and 8, 1993, she compiled a report for the period 1st – 8th on the missing items and the value of the losses was in the region of \$ 18,346.31.

Triable Issues

- [32] In determining whether the dismissals were fair it will have to be shown that, inter alia, whether the Employers acted on a mere suspicion, whether a mere suspicion can be a ground for dismissal, whether in the circumstances, it was reasonable to

dismiss, whether there was any misconduct or breach of procedure by the Employees, whether the investigation was thorough, whether there was a sufficient nexus between the thefts and the Employees to establish misconduct, whether there was reasonable or just cause. If the dismissals are found to be unfair it will have to be determined whether the Employees mitigated their loss.

The Arguments

[33] Mr Hill submitted that the dismissals were not Unfair and lamented the fact that no time frame has been laid down within which proceedings have to be instituted in the Court and as a result of the delay in commencing these proceedings some of his witnesses have left the Employers' employ and their whereabouts unknown, some cannot remember precisely what happened, some have emigrated to other shores and some have died thus leaving himself and the Employers in a very difficult situation. Counsel submitted that:

- (1) The Employers suspected the Employees, Leonard apart, to be part of a group involved in the theft of company property. In the case of Mr Leonard, the allegation was that, inter alia, he was guilty of dereliction of duty and misconduct on the job in handing out keys to unauthorised persons and failing to take proper and sufficient care of keys under his control and in his custody. Mr Hill submitted that the cases fell within:

Monie V Coral Racing Limited (1981) ICR109 and Parr V Whitbread & Co PLC (1990) EAT427 in which the courts in England held that:

- (a) Where acts complained of could only have been committed by one or a group of persons and it was not possible to identify the guilty person or persons, the Employers would be justified in dismissing the entire group if they carried out a thorough investigation and their suspicions were reasonable and based on solid and sensible grounds.
- (b) Dulcie Richards took articles from the kitchen while Samuel Leonard used to give keys to the security guards and would leave

the keys unattended when he left his post and thereby allowed others to have access to them.

- (c) The Employers carried out an investigation before the dismissals and even if these were defective this was not fatal – Polkey V Edmund Walker Holdings Limited (1987) IRLR13.
- (d) A mere suspicion is sufficient and guilt is not required – Monie's Case.
- (e) In an appropriate case an Employee can be dismissed summarily.
- (f) The Employees did not mitigate their loss.

[34] In his submission Mr John asked the Court to find that the dismissals were Unfair, that the Employees had mitigated their loss and to award them compensation for Unfair Dismissal. The main contentions of Mr John were that:

- (i) The Employers' evidence is based on hearsay and is uncorroborated.
- (ii) The Inventory makes no mention of television, tiles, onions or potatoes as being among the stolen goods.
- (iii) There was no evidence that Laurie or Dulcie had exclusive control of the storeroom or that Mr Leonard gave keys to anyone or that at any time he ever gave the keys to the storeroom to any unauthorised persons or that the keys were at all times under his control and never that of another.
- (iv) Implied in the Judgment in Juliet Harley V Blue Waters Hotel Limited, Reference No 17 of 1995 is the right of a person to be presumed innocent until proved guilty.
- (v) Both Parr's Case and Monie's Case are distinguishable. In Parr's case the Court had a specific time when the thefts took place, all the parties had keys and all four persons knew the code and were the only ones with keys and who knew the Code to the safe.
- (vi) The Investigation was not thorough and there is not anything in the evidence that narrowed the thefts down to the Employees.

The Law

- [35] The Law relating to Unfair Dismissal is set out in the Antigua and Barbuda Labour Code, Cap 27, Revised Edition, 1992 Laws of Antigua and Barbuda, hereinafter referred to as "the Labour Code". The Code lays down the fundamental rule that an employee earns an equity in the job that requires protection and that once he has completed his probation, the first three months, he may not be dismissed without just cause, that there must be a factual basis for the reason for dismissal and that the Employer must have acted reasonably; the Code gives instances where an employer may dismiss without liability, and the relevant Sections are:

Section C.59 (1) and (2), viz, where;

- (a) It relates to the capability and qualifications of the employee to perform work of the kind he was employed to do, within the limitations of Section C.59 (5);
- (b) It is that the employee was made redundant;
- (c) It is that the employee could not continue to work in the position he held without contravention (on his or on the employer's part) of a requirement of law; or
- (d) ⁴prolonged illness or some other substantial reason of a kind which would entitle a reasonable employer to dismiss an employee holding the position which the employee held:

Provided, however, that there is a factual basis for the assigned reason.

However, as an alternative to dismissal, in an appropriate case, an employer may give the employee a written warning, as set out in Section 59(2) of the Labour Code.

- [36] Summary Dismissals – An employer may, without notice, terminate the employment of any person for misconduct related to his work within C.58(1) or (2) but as a general rule the employer must give advance notice to an employee of an intended termination as follows, i.e. at least 24 hours where he has not completed his probation period and in respect of other employees (Contracts apart) the advanced

notice shall be at least equivalent to the interval of time between the affected employee's pay days – payment in lieu of notice can be made – See Section C.9.

- [37] In keeping with the rule of Natural Justice as found in the maxim *audi alteram partem*, both parties to a dispute must be heard and thus the employer is under a duty to give an employee involved in a trade dispute an opportunity to present his case without fear, intimidation and/or coercion.
- [38] Where there are allegations of misconduct by an employee, then apart from a situation where the employee is caught "red-handed" or admits the wrong, an employer is under a duty to carry out an investigation. Also, such investigation must be thorough and complete.
- [39] Is a dismissal based on hearsay fair, reasonable and acceptable?
- [40] Is a dismissal based on a mere suspicion fair, reasonable and acceptable?

Decision

- [41] One cannot help but be surprised that throughout the course of these proceedings no reference was made by either side as to whether there was a Collective Agreement in effect at the hotel and whether any of its provisions was applicable in the circumstances, therefore, we have to proceed without consideration of any such Agreement.
- [42] As was said by Sir David Cairns in *Monie's Case* (P120)(E), "the principal reason for dismissal is to be sought at the time of Mr Batkin's dismissal and not later", and thus we will consider the reasons for the terminations as contained in the termination letters. In the case of Eion Laurie and Dulcie Richards, the reasons are literally identical, viz, that over a period of several months, one or more of their number (the security guards) were wholly responsible for the theft of a number of items

previously referred to including beverage, cutlery, plumbing fixtures and fittings from the storeroom and other areas of the premises and had committed a dereliction of duty – See Exhibits ELS1 and DR1. In the case of Samuel Leonard, the reasons given were that at various times he handed over the keys to the storeroom to one or more of the security guards in direct conflict with the rules established by the hotel for the issuance of keys and thereby occasioned material loss to the Company – See Exhibit SL1.

[43] It is noteworthy that no Job Descriptions for the Employees was adduced in evidence and this would have been most helpful in the case of Mr Leonard.

Mr Leonard, as Receptionist and Night Auditor, had to leave his post at times during his shift and go to the Accounts Office in order to, e.g. prepare the bills for the guests and I do not think it was unreasonable and a breach of duty if at such times he left a security officer to oversee the area until his return – there was no evidence that this was prohibited by the rules and to my mind a security officer is an appropriate person for this responsible service; what was he to do on such occasions?

[44] Although employees' bags were searched for stolen hotel property as they left the premises at the end of their shifts, it is of interest to note that rented vehicles that came onto the premises were not and there is a possibility that the missing property could have been removed by these at such times.

None of the security officers was found in possession of any of the stolen property and Dulcie Richards explained the origin of some vegetables that were found in her possession at the security hut but had not been declared in keeping with the rule so to do – the goods were not identified as being the property of the hotel. I do not find any nexus between the Employees and the thefts. It was not proved that tiles owned by the hotel were stolen or found in the possession of any of the Employees – the situation would have been different if it were so found.

[45] The Employers did carry out an investigation prior to the dismissals and gave the parties an opportunity to be heard but it is rather worrying to find that the two investigations carried out by them were carried out by the General Manager and top management personnel. And at the second of the two interviews, Mr Radford Hill, Counsel for the Employers, was also present. The Employees were not represented at the interviews and although they did not incriminate themselves, this could easily have happened out of "fright" or intimidation.

Counsel for the Employers was at a major disadvantage as the person at the centre of the issue, Mr Andrew Zepherin, did not attend to give evidence and "Ginger", "Brodie" and Wilty, who are reputed to have told the General Manager who had been committing the thefts, were not present to give evidence. Nor was Sgt. Thomas of the C.I.D. of the Royal Police Force of Antigua and Barbuda and who was present at the second interview. Indeed, the Employers' evidence is based on hearsay and suspicion and it begs the question, if over a period of three months they knew that these thefts were taking place and who were involved, could they not have put machinery in motion to apprehend those responsible? Could not an ambush have been set up even with the assistance of the Police? In his own interest an employer should take reasonable steps to protect his property and to apprehend those who may attempt to deprive him of his goods.

[46] This Court has no Criminal Jurisdiction and none is here being exercised but it must be observed that even though a report was made to the Police and a sergeant in the C.I.D. Department attended the second interview, the Police never carried out an investigation, interviewed the Employees or laid any charges against them.

It is to be observed that the Inventory (Report) prepared by Mrs Adams (BA1) is unreliable in that in some instances it states that the quantity of goods actually in stock following a count is more than what should be there according to the computer and vice versa.

[47] It seems that the Employers relied on suspicion only in deciding upon the dismissals. In *Harley V Blue Waters Beach Hotel*, Reference No 17 of 1995, this

Court said at P.14 in dealing with Constructive Dismissal, "We agree that the Employers have a right to operate their business as they consider fit and to protect their interests. But the contractual rights of the Employee cannot be overlooked or eroded away into "nothingness". There has to be a just cause and a factual basis for the dismissal and an Employer is required to have acted reasonably as per the test set out in Section C.58(2) of the Labour Code." Also, that we do not think a dismissal based on a mere suspicion is enough to render a dismissal fair – See P.14. Monie's Case was not cited to the Court at the time and thus the statement has to be reconsidered in the light thereof. It is clear that the principal reasons for the dismissals were based on suspicion and there was no evidence that either the Employee or the Assistant Manager had committed theft. Nevertheless, the Court of Appeal in England held that the dismissals were fair, on the ground that the Employers, in addition to the suspicion had a belief that only the Employees could have committed the thefts.

In view of Sections 56 & 58 of the Labour Code and where there is doubt it is my belief that the "reasonable" test applies. It was not shown or even alleged that the thefts were committed on days or at times when the Employees were on duty – they could have been on vacation at such times, out of the State or when they were on their days-off and had replacements performing their duties. It is possible that persons other than the six persons dismissed including the Employees could have committed the thefts and given keys to unauthorised persons and this suspicion of the Employers could not have been reasonable in all the circumstances. One is mindful of Section 10(3)(b) of the Industrial Court Act, Cap. 214, Laws of Antigua and Barbuda, Revised Edition, 1992, which states: "the Court is required to act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations and, in particular, the Antigua and Barbuda Labour Code."

There are too many possibilities and uncertainties for the suspicions to be reasonable. The basis of the suspicion was something told to the Employers by some fellow security officers who never attended Court to give evidence, never

attended any of the two interviews, never faced the Employees, never made the allegations before them and were never cross-examined.

To permit dismissals on a mere suspicion would open a floodgate and lead to disaster in the workplace and the prime intent of the Labour Code is to maintain harmony in the workplace.

The Court accepts the decision of the Court of Appeal (U.K.) in Parr's Case that the employer had made a sufficiently thorough investigation as a result of which he reasonably believed that more than one person could have committed the act, that he had acted reasonably in identifying the group of employees who could have committed the act, and that each individual was capable of so doing but that the employer could not identify which of the group was the perpetrator, then provided the belief was held on solid and sensible grounds at the time of the dismissal, the Court was entitled to reach the conclusion that the employer had acted reasonably and the dismissals were not unfair – the suspicion and belief have to be based on solid and sensible grounds and here there is no solid and sensible grounds on which the employers can rely.

[48] A dismissed employee is under a duty to mitigate his loss by taking reasonable steps to find new employment or alternate employment or in the appropriate case, start his own business and is not entitled to sit on his laurels and "put his foot up" at the expense of the employer. In the case of Eion Laurie and Samuel Leonard I am satisfied that they did mitigate their loss and the steps taken by them to find employment were reasonable. With regard to Dulcie Richards, however, I do not think it was unreasonable for her to refuse a job where she had to live on premises approximately 12 – 14 miles distant and share a room with a male but having said that, she herself made it clear that her job hunting was not done with any urgency and that at one stage she deliberately remained at home to "look after" her grandchild. It is rather interesting to note that no copies of job applications were presented to the Court and for that matter, no Job Description, Handbook or Copies of Rules and Regulations or Procedures.

I find that the Dismissals were Unfair.

The Award

[49] A person the victim of an Unfair Dismissal is entitled to compensation under the established heads and it is to the consideration of these that I will now turn:

[50] The Awards are as follows:

- (a) Basic Award for Loss of Protection – The Award under this head is computed as in the case of Severance Pay and is as follows:
 - (i) Eion Laurie – The Employee worked for the Employers from June 13, 1991, to December 22, 1993, so that the period worked is approximately 2 years and 6 months or 30 months and his last wage was approximately \$ 312.00 per week or \$ 62.40 per day so the Award is $30 \times \$ 62.40 = \$ 1,872.00$
 - (ii) Samuel Leonard – This Employee commenced working for the Employees in October, 1991, and was dismissed on December 22, 1993. At the time of his dismissal, the Employee's wage was approximately \$ 273.00 per week or \$ 54.60 per day. The amount of the Award is therefore $31 \times \$ 54.60 = \$ 1,692.60$
 - (iii) Dulcie Richards – The Employee worked with the Employers from June 3, 1991, to December 22, 1993, i.e. 31 months approximately and his wage was approximately \$ 385.00 per week \$ 72.00 per day. The amount of the award is therefore $31 \times \$ 72.00 = \$ 2,387.00$
- (b) Immediate Loss (of earnings) –With due diligence the Employees should have been able to find new or alternative employment within 4 months and here is where the cut off point is being made. Thus the awards are as follows:
 - (i) Eion Laurie – The Award is $\$ 512.00 \times 16 = \$ 8,192.00$.
 - (ii) Samuel Leonard – The Award is $\$ 398.00 \times 16 = \$ 6,368.00$.
 - (iii) Dulcie Richards – The Award is $\$ 585.00 \times 8 = \$ 4,680.00$.

- (c) Manner of Dismissal – There shall be no Award as there is no evidence the dismissal made by the Employees less employable or more likely for dismissal if employed
- (d) Future Loss – Under this head the Award consists of a guesstimate and a look into the future, the amount of the Award is the difference between the Employees' last earnings and his presumed future earnings. The cut off period is 4 months and so the difference is estimated @ \$ 50.00 per week and the amount payable is therefore
 - (i) Eion Laurie - \$ 50.00 x 16 = \$ 800.00
 - (ii) Samuel Leonard - \$ 50.00 x 16 = \$ 800.00
 - (iii) Dulcie Richards - \$ 50.00 x 16 = \$ 800.00

[51] The Employees are entitled to one week's "Notice Pay" as they were summarily dismissed and thus, one week's pay (Eion Laurie \$ 512.00, Samuel Leonard \$ 398.00 and \$ 585.00 in the case of Dulcie Richards) is to be added to the Awards so that the total is as follows less a deduction in keeping with the Court of Appeal's decision in the Jennifer Watt Case as follows:

- (a) Eion Laurie = \$ 11,376.00 less 15% = \$ 9,669.06
- (b) Samuel Leonard = \$ 9,258.60 less 15% = \$ 7,869.81
- (c) Dulcie Richards = \$ 8,452.00 less 15% = \$ 7,184.00

Conclusion

[52] In arriving at a decision I carefully scrutinized all the evidence adduced, observed the demeanours of the witnesses, noted the statutes referred to and, in particular, the Labour Code and the Industrial Court Act, the works of the authorities cited and, in particular, Andermans Law of Unfair Dismissal, 2nd Edition, 1985, and published by Butterworths, London, the cases cited and all other relevant matters and at the end of the day find that the dismissals were unfair and the Employees are entitled to compensation in the above sums subject to a deduction of 15%.

The Court is becoming concerned with the incidents of thefts at hotels and it has to be made clear that it is taking a long hard look at dismissals based on this ground and will not hesitate to apply the Law when satisfied on the facts. The Court wishes to send a clear message to hotel employees that thefts from their employers will not be entertained and trust that all parties concerned will regard this matter as being extremely serious. And it is serious even though the alleged employee was not charged by the Police or even acquitted. Indeed, a dismissal can be fair even though the suspect was neither charged nor convicted of the theft. An employer has to be vigilant before resorting to dismissal.

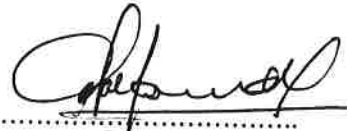
[53] The Employers will therefore pay to the employees as follows:

- (i) Eion Laurie.....\$ 9,669.06
- (ii) Dulcie Richards.....\$ 7,184.00
- (iii) Samuel Leonard.....\$ 7,869.81

payment to be made by the ~~7th~~ day of November 2000.

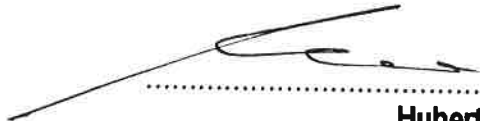
There shall be no Order as to costs.

DATED the 6th day of October 2000



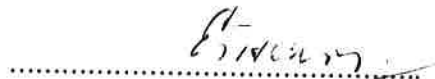
Cyril L. Maundy
President

I concur



Hubert Hood
Member

I concur



E.T. Henry
Member