

Original

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 15 OF 2004

BETWEEN:

JOANNE DEFREITAS & OTHERS **Employee**
vs

STICKY WICKET RESTAURANT & BAR **Employer**

Before:

The Hon. Norris O. Scholar	Chairman
The Hon. Glendina M. McKay	Member
The Hon. Samuel R. Aymer	Member

Appearances:

**Sir Keithlyn Smith of the Antigua & Barbuda Workers Union
for the Employee**
Ms. Gail Christian – Attorney-at-Law for the Employer

**2008: September 24, 25
November 17
December 8
2010: April 22**

JUDGMENT

SCHOLAR, N.:

1. The Stanford Group of Companies was at all material times the operator of a Restaurant and Bar known as the Sticky Wicket Restaurant and Bar (**hereinafter called “the Sticky Wicket or the**

Employer”). The Sticky Wicket is located in close proximity to the VC Bird International Airport.

2. On June 22, 2004 a dispute arose between Management of the Sticky Wicket and some of its employees. The names of the fourteen [14] employees in this reference are Ms. Joanne Defreitas, Jermaine Edwards, Mrs. Karen Dyett, Ms. Phara Ambrose, Ms. Shonnette Simon, Mrs. Karen Stanislaus, Ms. Latoya Cabral, Ms. Sharon Christian, Mr. Peter Joseph, Mr. Kerry White, Mr. Barry DeSilva, Ms. Charissa Barnes, Mr. Hennis Joseph and Mr. Samuel Baltimore.
3. As a consequence of the dispute between the two parties they were all suspended from the performance of their duties pending a full investigation of the incident of June 22, 2004. The letter of suspension was dated June 22, 2004 and was similar for all of the Employees. The employees were suspended from June 22, 2004 to June 26, 2004.
4. The Employee's attended a meeting presumably at the Antigua Athletic Club on June 26, 2004. Dr. Austin Josiah, the Director of Public Relations for the Stanford Group of Companies chaired the meeting. Attendees at that meeting were simply referred to by Dr. Josiah as ***“the recalcitrant employees”***. (See paragraph [7] of his **Witness Statement**). However the Court learned that in attendance were the fourteen employees listed in **paragraph [2]** above. During the meeting Dr. Josiah inquired of any problems which the employees were experiencing at the Sticky Wicket. He was informed that the

Employees were experiencing certain problems. After this Dr. Josiah informed the Employees to return our uniforms. The Employees were also advised to collect their final payments from Mrs. Barbara Street.

5. By letter dated June 28, 2004 the fourteen [14] employees in this Reference were all dismissed. All the letters of dismissal were similar for all Employees.

Legal Proceedings

7. The Employees commenced legal proceedings by filing a Reference on October 15, 2004. The Employees' Memorandum was filed on January 28, 2005. In that Memorandum the Employees claimed the following relief:-
 - i. A declaration that they were unfairly dismissed
 - ii. Compensation
 - iii. Damages
8. The Employer filed its Employer's Memorandum on March 10, 2005. It contends that the dismissal of the Employees was fair and was due to ***"The serious misconduct of the employees (which) clearly demonstrated that the employment relationship could not reasonably be expected to continue. (Accordingly) the Employer acted reasonably in dismissing the Employees"*** In effect, the dismissal was based on Section C59 (i) (a) of the Antigua & Barbuda Labour Code (afterwards referred to as ***"the Labour Code"***).

In light of Ms. Christian's Submissions Counsel contends that "*The Employees were thus properly dismissed for conduct which falls squarely within C59 (i) of the Antigua & Barbuda Labour Code.*"

No cases were cited by Ms. Christian in support of her Submissions.

9. Sir Keithlyn Smith who appeared for the Employees decided that Mrs. Karen Stanislaus, Ms. Joanne Defreitas, Ms. Phara Ambrose, Ms. Jermaine Edwards and Mr. Samuel Baltimore would give evidence on behalf of the fourteen (14) Employees.
10. A Witness Statement for each of the fourteen (14) Employees was filed in this Court (including the five (5) mentioned in **paragraph [9]** above.
11. The evidence of all five Employees revealed a common theme with regard to the incident of June 22, 2004.
 - (a) In order to avoid unnecessary repetition of the evidence of each witness and prolixity, I shall detail the evidence for the Employees which emanated from that of Mrs. Karen Stanislaus.
 - (b) In addition, the specific evidence of each witness with regard to (i) length of employment and (ii) mitigation of loss shall be referred to.

Employees' Case

12. Mrs. Karen Stanislaus was the first witness for the Employees. She stated that she resides at Potters. She began working at The Sticky Wicket on July 31, 2002. Her weekly wage was \$500.00.
13. She recalled the events of June 22, 2004. Mrs. Stanislaus stated that she was at home on the said date when she received a call from Ms. Joanne Defreitas, a co-worker who told her that she should be at work. She continued that she inquired of Ms. Defreitas as to who had changed the work schedule since she was listed off on Monday June 21 and on Tuesday June 22, 2004. Notwithstanding, she said that she got ready and reported for duty.
14. Mrs. Stanislaus continued that shortly after her arrival at the Restaurant she was called into a meeting with Mr. Alfredo Diedrick, the General Manager, and Ms. Jacquelyn Carr, the Restaurant Manager. She recalled that during the meeting she was asked by Mr. Diedrick, ***“You have a problem? Why didn’t you show up for work?”*** to which she replied, ***“It was my day off”***. It was at this point that Mr. Diedrick told her to go home.
15. She recounted that she left the meeting crying. Ms. Defreitas asked her if she was experiencing some difficulties. She informed Ms. Defreitas that Mr. Diedrick sent her home. She continued that she stayed around crying. Subsequently a decision was taken along with other Employees

to seek redress from the Human Resources Department. This is located in the Bank of Antigua Building.

16. In reply to a question from Sir Keithlyn Smith, Mrs. Stanislaus confirmed that she always knew that Mrs. Valarie Acosta was the Human Resources Manager.
17. Other co-workers heard her cries and decided to come to her aid by seeking redress through the Human Resources Office, whom the workers claimed was headed by Mrs. Valarie Acosta.
18. Fourteen (14) workers journeyed to the Bank of Antigua Building which is about 3 minutes walk from the Sticky Wicket. On their arrival, they did not get to see Mrs. Acosta. She was at lunch. A message was relayed to the workers by Ms. Jennifer Roman, Mrs. Acosta's Assistant, advising that they should all return to work including Mrs. Stanislaus and that she, Mrs. Acosta, would come to see them after lunch. The workers returned to work. They performed their usual duties until 4:00 pm. For herself Mrs. Stanislaus clocked in at 12:56 pm. **See Exhibit "KS-1"**.
19. The letter of suspension referred to at **paragraph [5]** hereof was admitted into evidence. It reads as follows:

"June 22, 2004

Dear Phara Ambrose

The Sticky Wicket Restaurant was plunged into disorder today because you walked off the job for no reason of which we are aware. Your conduct was unprofessional, irresponsible, and unreasonable and cause severe trauma and discomfort for our guests.

You are hereby suspended with immediate effect, and until Saturday 26th June, 2004, pending a full investigation into this matter. Please visit the restaurant at 9.00 a.m. on the said date for a final position.

*Sincerely
Alfredo Diedrick
General Manager*

*cc: Linda Wing Field
Austin Josiah”*

20. The letter of dismissal referred to at **paragraph [6]** of this judgment was admitted into evidence. It reads as follows:

“June 28, 2004

Dear Mrs. Karen Stanislaus

On June 22, 2004 at approximately 12:30p.m. Sticky Wicket Restaurant was plunged into disorder and had to be hurriedly closed, because you incited some of your colleagues to walk off the job for reasons of which we are unaware. Your action caused serious damage to the reputation of the business and a significant loss of revenue as a result of our forced closure. Your action also caused subsequent unfavourable publicity of the incident. After our meeting with you on June 26, 2004, we are still not any wiser on the cause of your action, especially as we had just concluded a meeting with you on the day in question and asked you to

take the day off. Even so you demonstrated no remorse for the damage you have caused our business.

We deem your behaviour on that occasion to be of such a manner as to clearly demonstrate that the employment relationship cannot reasonably be expected to continue.

You are hereby terminated with immediate effect in accordance with Section C59 (1) (a) of the Antigua and Barbuda Labour Code.

Please contact, Mrs. Barbara Streete at 480-6800, to return your Eagle pin and company uniform, at which time you will be presented your final check. It will include wages through to June 26, 2004, plus any earned vacation pay.

Sincerely

*Alfredo Diedrick
General Manager."*

21. The Employee denied abandoning her job, causing any disruption or blocking the entrance to the restaurant. She also denied that the restaurant was closed. The 4 o'clock shift had already arrived when they were cleaning up.
22. Under cross examination by Gail Christian, Attorney-at-Law for the Employer it was suggested to Mrs. Stanislaus that the last posting of the work schedule was on June 16, 2004. Mrs. Stanislaus agreed. She maintained however that she last worked on June 20, 2004. She had

the opportunity to see the schedule. It showed that she was off duty on June 21 and June 22, 2004. Ms. Christian also suggested to Mrs. Stanislaus that she did not work on June 20, 2004. Mrs. Stanislaus disagreed. No evidence was adduced to dispute Mrs. Stanislaus claim that she had worked on that date.

23. Mrs. Stanislaus claimed that since her dismissal, she sought employment at Hawksbill Hotel, Pineapple Beach Hotel, and the Bargain Centre. She obtained employment at Bargain Centre where she worked for \$12.00 per hour.
24. The second witness was Ms. Joanne Defreitas. She resides at Cedar Grove Village. She was employed at the Sticky Wicket from July 31, 2002 as a cashier. She was later promoted to the post of Office Assistant. She was paid a weekly wage of \$640.00.
25. After Ms. Defreitas' dismissal she indicated that she sought to find other employment at Carib Sports but was unsuccessful. On August 29, 2004 she began working at Sandals Grand Resort at a weekly wage of \$575.00.
26. The third witness was Phara Ambrose who resides in Cedar Grove. She was employed with Sticky Wicket as a waitress from July 31, 2002 until her termination on June 28, 2004. Her weekly wage was \$500.00.
27. She claimed that since her termination she sought employment from Sun Sail Hotel, Hawksbill Hotel and Cocos. She also stated that she

did laundry duties. She made an average of \$100.00 per week. On December 1, 2004 she began working at Jolly Beach Hotel. She earned a basic pay of \$304.00 per week, and service charge which averaged \$100.00 per week.

28. The fourth witness was Ms. Jermaine Edwards who resides at Golden Grove. She was employed at the Sticky Wicket from July 31, 2002 as a Hostess/Cashier/Shop Attendant until her dismissal on June 28, 2004. Her weekly wage was \$640.00.
29. After her dismissal, Ms. Edwards claimed that she sought employment at World Sports Exchange, Jolly Beach Hotel, Ministry of Health and Antigua Public Utilities Authority. She finally got a job at the Immigration Department. Her earnings are not stated.
30. The final witness for the Employee was Samuel Baltimore. He resides in Yorks. He was employed with Sticky Wicket from July 16, 2003 until his dismissal on June 28, 2004. At the time of his dismissal he was employed as a cook. His weekly wage was \$720.00.
31. Mr. Baltimore claimed that after his dismissal he sought employment at Public Works, Jolly Beach Hotel and Sandals. Eventually he gained employment at the deli in Bargain Centre at \$600.00 per week.

The Employer's Evidence

32. Ms. Latechia Thomas was the first witness for the Employer. She started working at the Sticky Wicket Restaurant from February 20th 2006 well after the events of June 2004. She testified that she had perused records relative to the Company and had spoken with personnel who had been employed at that time. Ms. Thomas went on to say that from the records perused and from what **she was told**, she believed that there was no Human Resource professional as such for the Sticky Wicket during the time of the incident on June 22, 2004. She was advised that Ms. Barbara Streete performed related functions.
33. In cross examination by Sir Keithlyn Smith, she said that she spoke to Ms. Ilean Ramsey and Mrs. Acosta. She was unaware who set up the Human Resource Department. She claimed that matters were handled by departmental managers but she found no letters to that effect. She agreed with Sir Keithlyn that if the dispute centered around Mr. Diedrick that no offence would have been committed to by pass him and go to personnel.
34. Dr. Austin Josiah was the second witness for the Employer. He stated that he is the Director of Public Relations, Caribbean Stanford Financial Group Limited. In amplification of his Witness Statement, Dr. Josiah said that if there was an issue with a direct supervisor it would be prudent to report to the Employer for it to know that the Employee has a difficulty.

35. He continued that he chaired the meeting of June 26, 2004 and confirmed that he clearly asked the Employees to outline what happened. He stated that he would be surprised if any Employee came and said he did not ask about the events of June 22, 2004.
36. Under cross examination, Dr. Josiah confirmed that he was asked to investigate the matter. He did so. He convened a meeting. He could not recall who attended. He spoke to Mr. Diedrick at the meeting and spoke to him afterwards on the phone.
37. In response to a series of questions from Sir Keithlyn Smith in respect of **paragraph [7]** of his Witness Statement, Dr. Josiah said that the statement, *“at the meeting the employees claimed that they abandoned their posts”* was true and *“a fellow Employee had been dismissed”* was false. He denied that Mr. Diedrick referred to anybody as ‘cockroaches.’
38. Dr. Josiah confirmed that there was no union contract in place but individual contracts were issued. The contract of Ms. Phara Ambrose was admitted into evidence: **See Exhibit PA 2.**
39. Dr. Josiah admitted that Clause 8 of the contract spoke to Rules and Regulations. It did not refer to the settlement of disputes. He went on to say that there was a Procedural Manual Handbook prior to 2004. He could not recall who wrote it.

40. Under further questioning, Dr. Josiah said that if an Employee leaves his job without the consent of the Supervisor or manager, he would have abandoned his job and that the ***“Employment Agreement”*** would be applicable. When asked if the Employees were told that they could have a representative present at the meeting of June 26, 2004, Dr. Josiah replied in the negative.
41. Mrs. Valarie Acosta was the third witness for the Employer. She stated that she was employed by the Stanford Group of Companies for nine (9) years. She was formerly the Human Relations Manager of the Stanford International Bank Limited. She is now the Operations Manager of the Bank of Antigua Limited. She never spoke to any Employee on June 22, 2004.
42. In cross examination by Sir Keithlyn Smith, she confirmed that she was not the Human Resource Manager for the Sticky Wicket. She would be surprised if a witness said that she was.
43. She received a telephone call from Mr. Fletcher who said that the Employees wanted to speak to her. She further stated that she relayed a message through Melinda that after lunch she would venture to the Sticky Wicket.
44. When asked why she would go to the Sticky Wicket when she was not the Human Resource manager she replied, ***“they asked for me. I was the only Human Resource Manager on island at the time and if a***

group of Employees asked, I did not see any problem in assisting in any way that I could”.

45. On further questioning from Sir Keithlyn Smith, Mrs. Acosta said that she did not go to Sticky Wicket because **she was told by Ms. Roman that the workers returned to their duties.** She was also informed by the Management of Sticky Wicket that the matter was already handled. **She was also not aware of any disciplinary procedure or any union representation at Sticky Wicket.**
46. Mr. Trevor Isaac was the next witness for the Employer. He resides at Tyrells. He was employed at the Sticky Wicket since 2002 as a Bartender.
47. He was on duty on June 22, 2004. He did not know of any grievance the Employees had at the time they left their posts. He confirmed that he did not go to the Human Resource Department. He continued that 15 or 16 employees worked at Sticky Wicket on the Shift on the morning of June 22, 2004. Mr. Isaac said that when the workers left, Mr. Diedrick told him that after serving the guests they would close since they were not taking anymore guests.
48. During cross examination, Mr. Isaac confirmed that the door was closed, but he did not know when this was done. He continued that the workers who had gone to the Bank returned in about 15 minutes after they left.

49. Ms. Corienne Ettiene also gave evidence for the Employer. She states that she resides in Cedar Grove. She was employed as a Shop Attendant. She worked at Sticky Wicket on June 22, 2004.
50. She recalled doing additional chores on that day. She could not recall whether the restaurant was full or not. She however knew that guests were in the restaurant.
51. Under cross examination, she indicated that she had signed a contract of employment. She was unaware how disputes should be settled. Ms. Ettiene also stated that she was not sure who the Personnel Manager was at the time. She could not recall if any disputes were settled by the Personnel Manager.
52. The final witness for the Employer was Ilean Ramsey. She resides at Mount Pleasant. She was the Human Resource Manager of the Stanford Trust Company.
53. She recalled that on the day in question she was hosting representatives from the Company's core suppliers, Pfifer Corporation. She further recounted that although she and Mr. Derrick were served their main course on time, she waited in vain for her overseas guests to be served. It was obvious to her that something was wrong. Her guests were finally served by a gentleman who apologized for the delay.

54. Under cross-examination by Sir Keithlyn Smith, she confirmed that she had noticed that there were no servers around. She could not give a time for the delay.

The Employees Submissions

55. Sir Keithlyn Smith filed his submissions on February 16, 2009 on behalf of the Employees. He submits at **paragraph [24]** that, *“there is no evidence before the Court that the Employees acted recklessly and irresponsibly and endangered the business to the extent that the Employer and Employee relationship could only be severed as stated by Dr. Josiah”*.
56. Sir Keithlyn further submits that at **paragraph [14]** of the Employer’s memorandum which states that: *“the Employees were dismissed because of their misconduct on the job. The serious misconduct of the Employees clearly demonstrated that the employment relationship could not be expected to continue”*, was a mere recital of C58 and C59 of the Labour Code. He also submits that the Employer’s statement omitted the most important words found at the end of C58 of the said Labour Code which are, *“provided however that there is a factual basis for the assigned reason”*.
57. Sir Keithlyn Smith cited **Reference No. 7 of 1978, Novelle Martin v Geo.Bennett Bryson** and especially **page 8 paragraph [24]** of that Judgment where C60 (1) (e) was commented on thus: *“The requirement of this Section that the reason for dismissal should be*

of a substantial nature gives adequate warning to an employer that a reason which is either of a fanciful or farfetched character will be unacceptable to a tribunal charged with the responsibility of deciding whether the dismissal of an employee in the circumstances of any case is fair or unfair”.

The Employer’s Submissions

58. Ms. Christian, Attorney-at-Law for the Employer filed her Employer’s Submissions on March 3, 2009. Essentially Ms. Christian repeated the evidence which was given by all the witnesses in this case.
59. As a consequence of all the evidence tendered by all of the parties Ms. Christian contends that *“on the evidence there was no ascertainable dispute between management and the Employees.”*
60. According to Ms. Christian, *“All of the Employees (save Karen Stanislaus) were expected to perform the duties required of them during the luncheon period and none sought permission to leave or to make arrangements for the continuation of their duties in their absence.”*
61. Ms. Christian finally submits *“that it is unreasonable to conclude that the Restaurant could have functioned efficiently and effectively without waitresses, bartenders and the hostess and cashier. Of strict relevance is the fact that the Restaurant was closed prior to their return. This fact enhances the Employers assertion that the*

Restaurant could not function effectively without the complement of the staff that left”.

62. The matters for determination are: (i) Whether in the circumstances of this case the Employees conduct justify the Employer summarily dismissing the Employees having regard to C59 (1) (a) of the Antigua and Barbuda Labour Code **(after wards called “The Labour Code”)** and (ii) If the Employees are held to be unfairly dismissed what is the measure of damages to which they are entitled?

The Law

63. C56 of the Labour Code states as follows: *“C56. Every employee whose probationary period with an employer has ended shall have the right not to be unfairly dismissed by his employer and no employer shall dismiss any such employee without just cause”.*

C58 (1) (a) and (2) of the Labour Code reads as follows:

“C58 (1) a dismissal shall not be unfair if the reason assigned by the employer therefor

(a) relates to misconduct of the employee on the job, within the limitations of sections C59 (1) and (2);

(b);

(c).....;

(d).....;

(e).....;

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

C58 (2) states as follows:

“(2) The test, generally, for deciding whether or not a dismissal was unfair is whether or not, under the circumstances, the employer acted unreasonably or reasonably but, even though he acted reasonably, if he is mistaken as to the factual basis for the dismissal, the reasonableness of the dismissal shall be no defence, and the test shall be whether the actual circumstances which existed, if known to the employer, would have reasonably led to the employee’s dismissal”.

64. C58 (1) (a) must be read in conjunction with C59 (1) and C59 (1) (a) which states as follows:

“C59 (1) an employee may terminate the employment of an employee where the employee has been guilty of misconduct in or in relation to his employment so serious that the employer cannot reasonably be expected to take any course other than termination. Such misconduct includes, but is not limited to situations in which the employee has

(a) conducted himself in such a manner as to clearly demonstrate that the employment relationship cannot reasonably be expected to continue;

(b);

(c);

C59 (1) of the Labour Code establishes the test which must be utilized so as to determine whether the employee has been guilty of misconduct. The behaviour of the employee is therein described as being “so serious that the employer cannot reasonably be expected to take any course other than termination”. C59 (1) (a) and (b) are only examples of an employee’s behaviour in which his dismissal is fair.”

65. In **Clouston and Co. Ltd. v Corry (1906) A.C.** Lord James in delivering the judgment of the **Privy Council** stated *inter alia* at page 129;

“There is no fixed rule of law defining the degree of misconduct which will justify dismissal of course there may be misconduct in a servant which will not justify the determination of the contract of service by one of the parties to it against the will of the parties to it against the will of the other. On the other hand, misconduct inconsistent with the fulfillment of the express or implied conditions of service will justify dismissal..... In such a case the question whether the misconduct proved establishes the right to dismiss the servant must depend upon facts – and is a question of fact”.

66. With regard to the burden and standard of proof which are to be met in this case, I derive much assistance from **Berridge J.A. in Cable & Wireless Ltd. v Hill & Others**. At page 129 of the judgment, **Berridge J.A.** stated *inter alia* that the “*burden of proof was on the*

company to show “just cause” for dismissing the Employees and that summary dismissal constituted a “strong measure” the standard of proof should be strict, persuasive and convincing. Further, notwithstanding the fact that this is a matter of a civil nature requiring proof on the balance of probabilities, since the matters to be proved were of a grave and weighty nature, it would expect the evidence to be correspondingly cogent and weighty in nature and content”.

ISSUE NO. 1

Whether in the circumstances of this case the Employees conduct justify the Employer summarily dismissing the Employees having regard to C59 [1] [a] of the Antigua and Barbuda Labour Code?

67. The Employer in its Memorandum gave the reasons for the dismissal of the Employees at **paragraph [13]** as follows:-

“(a) their conduct in leaving their duties on the 22nd June 2004 was reckless irresponsible and endangered the business of their Employer and or

(b) by leaving their duties on the 22nd June 2004 without permission and or notification to Management they abandoned their employment and or

(c) their conduct on the 22nd June 2004 caused severe disruption and negative publicity to the business and reputation of their Employer and or

(d) their conduct resulted in closure of the restaurant and significant loss of revenue to the restaurant.”

68. Further at **paragraph [15]** of the Employer's Memorandum states:

"The Employer shall rely on the published newspaper articles and photographs as evidence of the Employees' misconduct and the detrimental publicity caused to the employer as result of the misconduct".

69. On close examination of the Employer's Memorandum at **paragraph [13]** and the evidence adduced, this Court agrees with Sir Keithlyn Smith's submission that no evidence was led before the Court to substantiate the claim by the Employer that the Employees acted recklessly and irresponsibly when they left their post on June 22, 2004. All the Employees who testified, denied this claim but Counsel for the Employer failed to challenge their denial by providing the evidence to prove the contrary.

70. Further, the Employer claimed that the restaurant was closed as a result of the Employees' conduct thus causing the restaurant to lose significant revenue. Again, all the Employees testified that they returned to work. Ms. Phara Ambrose for the Employees during cross examination said, *"we all returned to work and I continued serving tables as usual"*. She further contends in cross examination that it was Ms. Jacquelyn Carr for the Employer who had posted a notice closing the restaurant after 2:00 p.m.

71. In respect of the Employer's Memorandum referred to at **paragraph [15]**, no evidence was ever led before this Court whether by way of

photographs, newspaper articles to show that the Employer suffered adverse publicity because of the Employees' conduct on that day June 22, 2004. Also no financial statements were produced into evidence to show that the Sticky Wicket suffered financial loss due to the Employees action.

72. In the Court's view the only claim left to be decided is whether or not the Employees in leaving their posts on June 22, 2004 amounted to an abandonment of their employment. In other words did any dispute arise on the facts.

Did the Employees Abandon their Employment?

73. On June 22, 2004 the fourteen (14) Employees supported Mrs. Stanislaus by leaving their posts and journeyed to see the Human Resources Manager in the Bank of Antigua building. They sought redress from Mrs. Acosta after Mrs. Stanislaus was sent home. From the evidence before this court it is uncertain whether or not Mrs. Stanislaus was dismissed or sent home for the remainder of the day. Neither Mr. Diedrick nor Ms. Jacquelyn Carr appeared to give evidence. What is a fact is that the Employees were subsequently dismissed by letter of June 28, 2004 for abandoning their jobs.
74. The employees were not off the job for more than approximately 15 minutes as stated by the Employer's witness, Mr. Trevor Isaac. They met with Mr. Diedrick for the Employer on June 22, 2004; the same

day of the dispute. They subsequently met with Dr. Josiah and others on June 26, 2004; at the request of the Employer. In the circumstances a dispute arose upon the evidence.

- See the Industrial Court Judgment in Reference No. 8 of 1984 Sundry Workers and Antigua Hotel & Tourist Association which was upheld by the Privy Council in Privy Council Appeal No. 35 of 1981.

75. Further, on the converse even if the Employees took part in an illegal strike (which on the facts they did not) their contracts of service would still exist and the fact that they returned to work was a clear indication that they had no intention of discharging their contract with the Employer.

76. It is a basic principle of natural justice that an employee who is accused of committing an offence is deserving of a fair hearing before that employee is dismissed. The Employer carried out an investigation headed by Dr. Austin Josiah in the absence of any representative present on behalf of the Employees. This would have been fair and reasonable to do in the circumstances.

77. Mr. Baltimore in his Witness Statement at paragraph 8 stated as follows:

“Dr. Josiah said that our explanation was not good enough, and if we were his staff he would have fired us long ago”.

78. There was no evidence presented to this Court by the Employer which shows (a) the nature and extent of the investigation; (b) the

investigative findings or (c) whether or not the findings (if any) were presented to the Employees for their response. No mention of any of these details was made by Dr. Josiah in His Witness Statement filed on May 30, 2008. I find that no investigation was carried out by the Employer. It intended to dismiss the Employees without executing any investigation.

79. In my view the Employer through the evidence presented has failed to prove on the balance of probabilities, that the Employees conduct justified the employer to summarily dismiss them.
80. In all the circumstances of this case, this Court finds that the Employer acted unreasonably when it dismissed the Employees. The Employees were unfairly dismissed.

ISSUE NO. 2

In the event that the Employees are held to be unfairly dismissed what is the measure of damages due to them?

81. An Employee is entitled to certain awards under specific headings upon a finding of unfair dismissal. The awards to which the Employees are entitled are as follows:

a) **Basic Award**

This award is similar to severance pay. The Employees were weekly paid.

b) **Immediate Loss**

The Efforts which each Employee made to obtain suitable alternative employment. In this case and having regard to all the circumstances an award of 12 weeks has been made to each Employee.

c) **Manner of Dismissal**

No award is made under this head.

d) **Notice Pay**

The sum awarded is 2 weeks.

1. **Joanne Defreitas**

Weekly Wage	\$640.00
Notice Pay	$\$640.00 \times 2 \text{ weeks} = \$1280.00$
Basic Award	Employment from July 31, 2002 to June 28, 2004 = 23 months Daily rate $\$128.00 \times 23 \text{ months} = \$2944.00$
Immediate Loss	$\$640.00 \times 12 \text{ weeks} = \$7,680.00$
<u>Total Due \$11,904.00</u>	

2. **Jermaine Edwards**

Weekly Wage	\$640.00
Notice Pay	$\$640.00 \times 2 \text{ weeks} = \$1280.00$
Basic Award	Employment from July 31, 2002 to June 28, 2004 = 23 months Daily rate $\$128.00 \times 23 \text{ months} = \$2944.00$
Immediate Loss	$\$640.00 \times 12 \text{ weeks} = \$7,680.00$
<u>Total Due \$11,904.00</u>	

3. **Karen Dyett**

Weekly Wage	\$640.00
Notice Pay	$\$640.00 \times 2 \text{ weeks} = \$1280.00$
Basic Award	Employment from July 31, 2002 to June 28, 2004 = 23 months Daily rate $\$128.00 \times 23 \text{ months} = \$2944.00$
Immediate Loss	$\$640.00 \times 12 \text{ weeks} = \$7,680.00$
	<u>Total Due \$11,904.00</u>

4. **Phara Ambrose**

Weekly Wage	\$640.00
Notice Pay	$\$640.00 \times 2 \text{ weeks} = \$1280.00$
Basic Award	Employment from July 31, 2002 to June 28, 2004 = 23 months Daily rate $\$128.00 \times 23 \text{ months} = \$2944.00$
Immediate Loss	$\$640.00 \times 12 \text{ weeks} = \$7,680.00$
	<u>Total Due \$11,904.00</u>

5. **Shonnette Simon**

Weekly Wage	\$500.00
Notice Pay	$\$500.00 \times 2 \text{ weeks} = \$1000.00$
Basic Award	Employment from July 31, 2002 to June 28, 2004 = 23 months Daily rate $\$100.00 \times 23 \text{ months} = \$2300.00$
Immediate Loss	$\$500.00 \times 12 \text{ weeks} = \$6,000.00$
	<u>Total Due \$9,300.00</u>

6. **Karen Stanislaus**

Weekly Wage	\$500.00
Notice Pay	$\$500.00 \times 2 \text{ weeks} = \$1000.00$
Basic Award	Employed from July 31, 2002 to June 28, 2004 = 23 months Daily rate $\$100.00 \times 23 \text{ months} = \$2300.00$
Immediate Loss	$\$500.00 \times 12 \text{ weeks} = \$6,000.00$
	<u>Total Due \$9,300.00</u>

7. **Latoya Cabral**

Weekly Wage	\$480.00
Notice Pay	$\$480.00 \times 2 \text{ weeks} = \$960.00$
Basic Award	Employment from July 31, 2002 to June 28, 2004 = 23 months Daily rate $\$96.00 \times 23 \text{ months} = \$2,208.00$
Immediate Loss	$\$480.00 \times 12 \text{ weeks} = \$5,760.00$
	<u>Total Due \$8,928.00</u>

8. **Sharon Christian**

Weekly Wage	\$540.00
Notice Pay	$\$540.00 \times 2 \text{ weeks} = \$1,080.00$
Basic Award	Employment from July 31, 2002 to June 28, 2004 = 23 months Daily rate $\$108.00 \times 23 \text{ months} = \$2,484.00$
Immediate Loss	$\$540.00 \times 12 \text{ weeks} = \$6,480.00$
	<u>Total Due \$10,044.00</u>

9. **Peter Joseph**

Weekly Wage	\$540.00
Notice Pay	\$540.00 x 2 weeks = \$1080.00
Basic Award	Employment from July 31, 2002 to June 28, 2004 = 23 months Daily rate \$108.00 x 23 months = \$2484.00
Immediate Loss	\$540.00 x 12 weeks = \$6,480.00
	<u>Total Due \$10,044.00</u>

10. **Kerry White**

Weekly Wage	\$540.00
Notice Pay	\$540.00 x 2 weeks = \$1080.00
Basic Award	Employment from July 31, 2002 to June 28, 2004 = 23 months Daily rate \$108.00 x 23 months = \$2484.00
Immediate Loss	\$540.00 x 12 weeks = \$6,480.00
	<u>Total Due \$10,044.00</u>

11. **Barry DeSilva**

Weekly Wage	\$460.00
Notice Pay	\$460.00 x 2 weeks = \$920.00
Basic Award	Employment from July 31, 2002 to June 28, 2004 = 23 months Daily rate \$92.00 x 23 months = \$2116.00
Immediate Loss	\$460.00 x 12 weeks = \$5,520.00
	<u>Total Due \$8,556.00</u>

12. **Charissa Barnes**

Weekly Wage \$403.00
Notice Pay \$403.00 x 2 weeks = \$806.00
Basic Award Employment from July 31, 2004 to June 28, 2004
 = 23 months
 Daily rate \$80.60 x 23 months = \$1853.80
Immediate Loss \$403.00 x 12 weeks = \$4836.00
Total Due \$6689.80

13. **Hennis Joseph**

Weekly Wage \$600.00
Notice Pay \$600.00 x 2 weeks = \$1200.00
Basic Award Employment from October 28, 2002 to June 28,
 2004 = 20 months
 Daily rate \$120.00 x 20 months = \$2400.00
Immediate Loss \$600.00 x 12 weeks = \$7,200.00
Total Due \$10,800.00

14. **Samuel Baltimore**

Weekly Wage \$720.00
Notice Pay \$720.00 x 2 weeks = \$1440.00
Basic Award Employment from July 16, 2003 to June 28, 2004
 = 10 months
 No Basic Award is due. Has not worked 1 year
Immediate Loss \$720.00 x 12 weeks = \$8640.00
Total Due \$10,080.00

Conclusion

The Employer shall pay to the Employees the total sum of \$131,359.80 on or before the 31st day of May 2010

There shall be no order as to costs.

Dated this the 22nd day of April, 2010.



NORRIS O. SCHOLAR
CHAIRMAN

I agree



GLENDINA M. MCKAY
MEMBER

I also agree



SAMUEL R. AYMER
MEMBER

