

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 26/17 OF 2002

BETWEEN:

KEITH JACKSON

Employee

and

STANFORD DEVELOPMENT COMPANY

Employers

Before:

The Honourable Cyril L. Maundy
The Honourable Edward T. Henry

President
Member

Appearances:

E. Ann Henry, Attorney-at-Law, for the Employee
Sharon Cort, Attorney-at-Law, for the Employers

2004: June 21, 22
August 9 & 10

JUDGMENT

Unfair Dismissal – allegations of sexual harassment by a co-worker (his junior) against the Employee (Head of Accounts Department) – Employee suspended pending an investigation – allegations not proved and Employee re-instated – Employee worked for one week after the re-instatement but resigned on the fifth day on the grounds that he had been the subject of unpleasant and embarrassing comments from his fellow employees and was compelled to resign.

Historical Background

- [1] **Maundy, P.:** In this Reference the Employee claims:
- (a) A declaration that he was unfairly dismissed by the Employers.
 - (b) Compensation for Unfair Dismissal.
 - (c) Costs.
 - (d) Such further or other relief as to the Court seems just.
- [2] The case for the Employee is set out in his Memorandum dated February 20, 2004 and in their Memorandum dated May 8, 2004, the Employers denied the allegations.
- [3] The Employee, a financial comptroller, took up employment with the Employers on June 17, 1996, as an Assistant Accountant and was appointed Accountants Supervisor in August, 1998. In the Organizational Chart of the company the Employee reported to Arnold Knoche, the President. The Employee worked with the company until January 25, 2002, when he resigned. Also employed by the company at the time was Scott Glendening, an architect, who worked in the Architectural Department. Other departments of the company were the Construction Department, the Maintenance Department and the Accounts Department. Initially there was no Human Resources Department and such matters fell under the Stanford Financial Group. In 2001 a Human Resources Department under Ms J. Swift was created and catered for Stanford Development Company, Sun Printing & Publishing Limited and Stanford Financial Group Limited.
- [4] As Accountants Supervisor the Employee had a staff of three and interacted with all the other employees of the organization and attended Management

meetings like all the other departmental managers. The Office Administrator was Carol Daley.

- [5] Up to December, 2001, the Employee had a very clean and good working relationship with all his fellow employees.
- [6] On Friday, December 14, 2001, the Employee attended work as usual and was suspended with pay for an indefinite period and asked to leave the premises – while in his office Mr Knoche invited the Employee to the office of Ms Swift and in her presence told him he was being suspended based on allegations made by a member of staff – he did not reveal the nature of the allegations or the maker. No details were given of the reason for the suspension and he was only told that an investigation is being carried out and he will be informed of the reasons.
- [7] On December 20, 2001, the Employee was invited to a meeting with Mrs Swift and attended with his Attorney, E. Ann Henry. At the end of the meeting he was given a letter stating that on Friday, December 14, a member of staff made an accusation of sexual harassment against him and that in an effort to investigate the matter he was being placed on precautionary suspension (with pay) until the matter could be properly investigated. See Exhibit KJ1. At the meeting Ms Swift informed the Employee that there was a report from Carol Daley-Brown, a fellow employee, that she had been the subject of sexual harassment by him. The Employers prohibited sexual harassment by its employees and had a written Sexual Harassment Policy document, a copy of which was given to every employee – the Employee had received a copy – See Exhibit KJ2; also, the Employers had a video on the matter.

- [8] On January 7, 2002, Miss Henry, on behalf of the Employee, wrote to Ms Swift requesting a copy of the written complaint. On January 9, 2002, and by letter dated the same day, Ms Swift outlined the allegations and said Ms Daley complained that earlier in her working relationship with the Employee he would ask her for dates to which she refused and that on one occasion he showed up at her house uninvited and she refused to go outside to meet him; also, that the Employee told her that she "would pay for this." See Exhibits KJ4.
- [9] Between January 10th and 15th, 2002, Ms Swift sent Ms Henry a Memorandum with the written complaint against the Employee from Ms Daley containing various allegations against him. A further statement (6 pages) dated January 14, 2002 (handwritten) was also supplied – See Exhibits KJ6 & KJ8.
- [10] At the beginning of his employment the Employee had a good relationship with Ms Bailey but the relationship deteriorated and immediately prior to the suspension there was no communication between them except when it was a company matter. Ms Bailey was angry with the Employee because he had sent her a letter demanding payment of monies owed by her for private telephone calls made via the Employers' telephone and earlier in July, 1999, they had an argument re vacation for employees.
- [11] The Employers did not find the allegations proved or substantiated and by letter dated January 17, 2002, they informed Ms Henry that they had concluded their investigation and did not find the allegations proved. The Employers apologised for the suspension, revoked the order and the Employee was asked to resume his duties forthwith, which he did. The

Employee had sent a letter dated January 16, 2002, to Ms Swift denying the allegations and Ms Henry wrote her a similar letter – See Exhibits KJ9, 10, 11,& 12.

- [12] In their letter of January 17, 2002, the company also warned the Employee that if there were any further substantial charges of Sexual Harassment or retaliation he will be disciplined up to the point of dismissal – See Exhibit KJ 12 – the investigation was carried out by the company as a result of complaints made by Ms Bailey.
- [13] In a letter received on January 24, 2002, by Ms Swift the Employee said that, inter alia, he was disappointed at the way the Employers handled the matter, that they should submit a letter indicating that they had found no basis on which to discipline him arising out of the complaints and that as a result the charges had been dropped and that the Employers had committed a breach of the rules of Natural Justice; he also requested withdrawal of the letter of January 17, 2002.
- [14] By letter dated January 25, 2002, the Employee tendered his resignation alleging that he was constructively dismissed and ceased working for the Employers, saying as he did so that, inter alia, the events of the previous five weeks had significantly affected him personally and also his relationship with the Employers, that the treatment he received and was subjected to was unfair and that the handling of the matter was far less than discreet. See Exhibit KJ 14.
- [15] When the Employee returned to work on January 21, 2002, his computer had been de-activated and he could not do any work. Angie Bascus had started preparing the payroll on her machine but the working environment was not

suitable – he could not send e-mails. The Employee was subjected to embarrassing comments.

- [16] On his resignation the Employee received one month's salary and eight days vacation pay – he was further entitled to five days vacation pay and three days call out pay @ 2 ½ times – these were subsequently paid to him.
- [17] When he returned to work following the suspension the Employee had to wait for some time before his computer was re-activated although this could have been done within minutes by the IT Department. No evidence was adduced whether Ms Daley was interviewed as part of the investigation by the company or whether any disciplinary measures were taken against her by the company for the allegations made against the Employee (the Sexual Harassment Policy did not permit disciplinary action against a perpetrator) and why she was not called to give evidence in the matter – the Court would certainly have liked to hear her testimony.
- [18] The Employee was unable to use his computer on the first day after he resumed work and although it contained confidential company information it could only be accessed by use of a password and this was not generally known to other employees.
- [19] During the course of the week that he worked after the suspension the Employee was the subject of some comments from his friends and fellow employees and persons who knew him and had heard of the allegations – he summed up the position thus, "I was embarrassed by the comments of Mr Michael. It was embarrassing to me. In certain instances I answered those who commented or spoke to me, others were ignored. Such persons were surprised at the allegations. One or two even sympathised towards me. I got

an opportunity to vindicate myself from the person who came forward and spoke to me." The Employee added, "When I returned to work I felt very sensitive about all I had to do." See Exhibit KJ 13. My feelings were due to certain perceived re-actions from persons whom I spoke to and who spoke to me."

[20] After he left the company the Employee made applications to a number of places, including ABIB, ACB, Cable & Wireless (West Indies) Limited, Medical Benefits Scheme and Antigua Public Utilities Authority.

[21] After the resignation the Employee requested and was given a letter of Reference by the President of the company, Arnold Knoche – his salary at the time was \$ 7,560.00 per month – See KJ18.

[22] Following the resignation the Employee finally, on November 3, 2002, obtained a job and took up employment with the St John's Development Corporation on a two year contract at a salary of \$ 7,000.00 per month and perks and a gratuity of 12.5 per cent of his salary for two years.

[23] The Employee went back to work on Monday, January 21, 2002, and when he left his car he was immediately approached by a lady who worked for a sister company and who indicated that she had heard of the allegations and wanted to know the reasons therefor.

[24] The Employers did not send out any circular or any publication stating that the Employee was back at work – several of the other employees were very surprised to see him and one employee in the presence of others was heard to say, "Keith, you are back? Imagine Keith almost got fired and he didn't even get a piece."

- [25] The Employee next wrote a letter to Ms Swift expressing his discomfort on his return to work and requested that her letter of June 17, 2001, be withdrawn and replaced by another indicating his exoneration with regard to the allegations of sexual harassment – see Exhibit KJ13. The Employee wrote the letter, as he was uncomfortable within the confines of the Employers; he was subjected to questioning by several persons including two international auditors from Houston, the Employers' Headquarters. The Employee felt marginalized by the Employers, completely ignored and embarrassed by the episode and chain of events – he said it was difficult for him to carry out his duties in the environment.
- [26] The Employers' letter of January 17, 2002, was, to the Employee, "the icing on the cake" and his resignation came immediately thereafter.

Triable Issues

- [27] The principal issues here for determination appear to be:
- (a) Did the Employers act unfairly and unreasonably in suspending the Employee following the allegations of sexual harassment made against him?
 - (b) Was the investigation carried out by the Employers fair and thorough?
 - (c) Was there any breach of the rule of confidentiality by the Employers in relation to the allegations and the investigation?
 - (d) Was there a repudiation of the Employee's contract by the Employers?
 - (e) Was there a dismissal and/or a constructive dismissal by the Employers?
 - (f) Did the Employee mitigate his loss?

The Arguments

[28] Miss Henry asked the Court to find that the Employee was constructively dismissed and contended that, inter alia:

- (a) When the Employee tendered his letter of resignation it was a direct result of the conduct of the Employers and it constituted a constructive dismissal.
- (b) The conduct of the Employers was the proximate cause of the termination.
- (c) The Employers' written policy requires that the fact that a complaint of sexual harassment be kept confidential by the company (See Exhibit KJ12).
- (d) A complaint that had been made to the Employer, which should have been treated with confidentiality, had become the subject of public knowledge.
- (e) The Employers put it in the public domain that the complaint had been made.
- (f) The Employers did not inform the Employee of the reasons for his being on suspension.
- (g) Notwithstanding its much vaunted policy regarding sexual harassment the Employers took no care to ensure that the complaint before it was genuine and sound before it suspended a management level employee and the entire treatment of the Employee was wanton and cavalier.
- (h) The period of the suspension was unlawful and contrary to Section B.3 of the Antigua and Barbuda Labour Code.
- (i) The entire process of the investigation was flawed and contrary to good industrial relations.

- (j) The only testimony coming from the Employers was that of the Chief Architect, Scott Glendening, and his testimony does not assist the Court.
- (k) The Court should disregard Mr Glendening's testimony in its entirety.
- (l) In addition to being contrary to good industrial relations the conduct of the Employers at the end of the purported investigation demonstrated exceedingly bad faith, which aggravated the discomfort felt by the Employee.
- (m) The resignation was not the voluntary act of the Employee but rather amounted in law to a constructive dismissal.
- (n) Acts by an employer which clearly demonstrates that the employment relationship cannot reasonably be expected to continue constitute constructive dismissal, particularly where the employee feels obliged to resign.
- (o) The Employers abused its power over the Employee and either destroyed or seriously damaged the mutual trust and confidence between the Employers and the Employee.
- (p) As held by Justice Kilner Brown in *Robinson V Crompton Parkinson Limited* (1978) ICR428, the obligation of trust and confidence flows mutually between the employer and employee – this was endorsed by Lord Denning in *Woods V W.M. Car Service (Peterborough) Limited* (1982) ICR693.

Lord Denning's statement resonates in the instant case and was quoted in *Courtaulds Northern Textiles Limited V Andrew* (1979) IRLR84 by Arnold, J, who said, "In our view it is clearly established that there is implied in a contract of employment a term that the employers will not without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously

damage the relationship or confidence and trust between the employer and the employee.”

- (q) The entire process of the investigation which continued for an inordinate and inexcusable length of time and the treatment meted out to the Employee on his return to work, amounts to misconduct on the part of the Employers calculated or likely to destroy or seriously damage the relationship of confidence and trust between the employers and the employee.
- (r) The investigation was not held within the time limit implied in the Employers’ policy schedule.
- (s) The Employers abused their position by putting the employee on suspension for one day short of four weeks and without informing him of the details of the charges against him.

[29] Unlike Miss Henry, Miss Cort contended that, *inter alia*:

- (a) The Suspension was not unfair or unreasonable and they relied on their written policy on sexual harassment as set out in Exhibit KJ12 and by the evidence of Scott Glendening who testified that the company had such a Policy, that the Company took the policy very seriously and that he had a similar incident involving a young female architect who had made a report to him.
- (b) There was no breach of the rule of confidentiality by the Employers. Counsel asked the Court to note that in the written complaints of Ms Daley (Exhibits K16 and K18) the author said that she spoke to other named co-workers and no reasonable inference can or should be drawn that the Employers were responsible for any “leaks”. Further, in view of the “profound hatred” the Employee claims Ms Daley had against him, it was possible that such leaks may have come from her or those persons to whom she admittedly spoke to about the

allegations. Also, the Employers usually dealt with such investigations in a confidential manner – the Employee said he had no knowledge of any similar investigations by the Employers until after it had been completed.

- (c) There was no deliberate delay, stalling tactics or malice by the Employers in carrying out the investigation: the Employers took reasonable steps in their investigation process and did not cause any injustice to the Employee. The Employee and his Solicitor had meetings with the employers on December 21, 2001, and January 16, 2002, on the matter, the allegations were put to him in writing under the hand of the complainant, the President of the company, Arnold Knoche was stationed in Houston, Texas, U.S.A, and the Christmas and New Years holidays fell during the investigation period. The Employee had an opportunity to reply to the allegations both orally and in writing.
- (d) There was no constructive dismissal.
- (e) The de-activation of the computer and the time taken to have it re-activated is not an unusual occurrence in the circumstances. It is to be observed that the evidence of the Employers is that de-activation is a procedure to protect their electronic data and files and is done by the IT Department who also re-activates it and the time within which this is done varies according to priority – the financial institutions (sister companies) have first priority.
- (f) The Employee's own sensitivities were the catalyst to his resignation rather than any breach on the Employer's part.
- (g) The Employee had intended prior to returning to work to adopt the course of action he took and had no interest in continuing his employment – the Employee had taken legal advice on constructive

dismissal and his actions were a pre-determined move to leave the company but claim compensation.

- (h) The Employee did not satisfy the requirement to constitute constructive dismissal.
- (i) There was no breach of contract of employment by the Employers nor any act or omission by them that was sufficiently serious to entitle the Employee to breach his employment position.
- (j) The allegations of breach of confidentiality, the de-activation and re-activation of the computer and the Employers' failure to comply with the Employee's demands for withdrawal of the complaints (drop the case) and write a letter of apology are not a series of incidents that justify resignation.
- (k) It was not justified or reasonable for the Employee to repudiate his contract of employment.

[30] In support of her contentions Counsel cited the following:

- (a) Western Excavating (ECC) Limited V Sharp (1978) IALLER713
- (b) London Borough of Camden V Pederson (1981) IIRLR173
- (c) Edward Smith V Stanford Financial Group Limited 2001, Industrial Court Reference No. 16 of 1998
- (d) Woods V WMCAR Services (Peterborough) Limited (1981) IRLR347
- (e) Bliss V South East Thames Health Authority (1985) IRLR308
- (f) Lewis V Motorworld Garages Limited (1985) IRLR100
- (g) Bracebridge Engineering Limited V Darby (1990) IRLR3
- (h) Lamont V Frys Metals Limited (1985) IRL200

The Law

[31] The Law relating to Unfair Dismissal is set out in the Antigua and Barbuda Labour Code, Cap. 27, Laws of Antigua and Barbuda, Revised Edition, 1992, and Section C.56 grants an employee the right not to be unfairly dismissed; the Section also prohibits an employer from dismissing an employee without just cause.

[32] Section C.58(1) sets out the instances when a dismissal will not be unfair, viz:

- (a) relates to misconduct of the employee on the job, within the limitations of Section C.59 (1) and (2);
- (b) relates to the capability or qualifications of the employee to perform work of the kind he was employed to do, within the limitations of Section C.59 (5);
- (c) is that the employee was made redundant;
- (d) 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
- (e) is prolonged 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.

[33] Section C.58(2) of the Act lays down the test to be applied in deciding whether or not a dismissal was unfair and provides that it is whether or not, under the circumstances, the employer acted unreasonably 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.

[34] Section C.59 (1) deals with the issue of misconduct and provides that: "An Employer 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) committed a criminal offence in the course of employment without the consent, express or implied, of the employer, or
- (c) behaved immorally in the course of his duties."

[35] Section C.59(2) deals with written warnings in lieu of dismissal and provides thus: "Where an employee is guilty of misconduct in or in relation to his employment that is not sufficiently serious to permit his employer to terminate his employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and state the action the employer intends to take in the event of:

- (a) a repetition of the misconduct, or
 - (b) the commission of another misconduct which is as serious as the one in respect of which the written warning was given.
- (3) The action to be taken under subsection (2) may include suspension without pay for such period as may be specified in the written warning.

- (4) Where within six (6) months of the receipt of the written warning under subsection (2) the employee is guilty of the same misconduct or is guilty of another misconduct in relation to his work which is as serious as the one in respect of which the written warning was given, the employer may terminate the employment of the employee or take such other action as may have been specified in the written warning.
- (5) Where an employee is no longer performing his duties in a satisfactory manner, the employer may give the employee a written warning which shall describe the unsatisfactory employment in respect of which the written warning is given and state the action the employer intends to take in the event of repetition; and, thereafter, if the employee does not, during the period of three months following the receipt of the written warning, demonstrate that he is able to perform and has performed his duties in a satisfactory manner, the employer may terminate the employment of the said employee."

The Decision

- [36] To my mind this case is not basically a complex matter but has been "blown up" so to be. The correspondence that passed between the parties are quite lengthy and so too are the Memorandums, not to mention the written Submissions. It is to be noted that Counsel for the Employee, rather than citing the cases in *The Law of Unfair Dismissal*, Second Edition by Steven A. Anderman, published by Butterworths, London, 1985, photocopied pages 48 to 95 of the volume, attached them to her final Submission and sent them to the Court. One can only hope that this wholly unsatisfactory procedure does not again raise it unwelcomed head.

- [37] I have already referred to what I consider to be the Triable issues and I will now embark upon an examination of these starting with the Suspension. It is to be noted that the Employers did not consider it most appropriate to conduct the investigation while the Employee was still on the job and this seems the reason for the Suspension. Also to be noted is that the Suspension was with full pay and was within the terms of the Disciplinary Code that was binding on all employees of the company. Miss Henry was very critical of the Suspension but this is not an unusual procedure in Antigua and Barbuda and is not regarded as unlawful or unreasonable. Further many of the Suspensions that take place in the State are without pay, no consideration being given to whether or not the suspended employee has financial or other commitments e.g. Mortgage commitments, house rent, school and University fees and car loans to pay, but to mention a few.
- [38] It is to be admitted that at the time of the Suspension the Employee was told he was being suspended "based on allegations made by another employee" but not the name of the employee nor the nature of the complaint. However, there is no provision in the Labour Code to disclose such information at the time of the dismissal and even though on the very evening the Employee's brother, who was visiting the State, was able to inform him that the Suspension was as a result of an allegation of sexual harassment – a week later the Employers communicated to the Employee the reasons for the Suspension (See Exhibit KJ1).
- [39] I do not see how it can be said that the Employers were in breach of confidentiality as laid down in their Disciplinary Code (Exhibit KJ2) – no one testified to this effect and there was no evidence as to how the information reached the Employee's brother or the other persons. Even if the maker of the complaint was not summoned to give evidence on the issue by the

Employers the Employee was at liberty to do so or ask the Court so to do if they considered her evidence so crucial.

[40] I do not find that, even if the complaint had become the subject of general public knowledge, this was as a result of any breach by the Employers or that they had put it in the public domain. I do not see and have not been persuaded why an employer cannot put an employee on Suspension based on an allegations of sexual harassment made to the Human Resources Manager.

[41] I do not find that his computer had been de-activated during the Employee's period of suspension and had remained out of full use for some time (a day) after he returned to work that this was done to penalise the Employee or harass him.

[42] As a general rule, where a complaint is made against an employee, an employer is obliged to carry out an investigation and give the employee an opportunity to be heard in keeping with the rules of natural justice (*audi alteran partem*). Further, the investigation is required to be full and thorough. The above requirements were complied with and the Employers had meetings on the issue not only with the Employee but also with and in the presence of his legal adviser. At the end of the investigation the Employers did not find the allegations proved, so informed the Employee and re-instated him with no loss of pay or otherwise. The company further apologised to the Employee. The Suspension was a "precautionary suspension" with pay until the matter could be investigated properly (See Exhibit KJ1). It was not challenged or asserted that the investigation was not thorough or otherwise

and the Court does not find that there were any deficiencies or defects in the procedure followed or non-compliance with the process.

[43] In her letter to the Employers dated January 16, 2002, Ms Henry, on behalf of the Employee, made accusations against the Employers who she said had infringed the provisions of the Labour Code even though the excess was but by a single day and failure to follow their own policy in maintaining the confidentiality of the issue. Counsel said that she was instructed that the matter should be resolved in a specific manner, viz:

- (i) that Ms Daley should write a letter of apology to the Employee completely withdrawing the complaints, a copy of which was to be delivered to the Employee;
- (ii) the Employers should write a letter of apology to her client for the manner in which they handled the investigation with particular reference to their alleged failure to maintain the confidentiality of the compliant, and
- (iii) the Employers should expunge the incident from the Employee's personal files. See Exhibit KJ11.

Not more than a day after receipt of the above letter, i.e. on January 17, 2002, the Employers responded by writing to Ms Henry denying her allegations, and stating that they were not proved; they also said that Mr Jackson will not be disciplined, that they were immediately revoking the suspension and that he was to immediately resume his employment – See Exhibit KJ12. But Mr Jackson did not regard the foregoing as sufficient and in an undated letter to the company, which was received on January 24, 2002, gave a negative synopsis of the greetings he received which needs to be looked at. It has to

be observed that the Employee had not been charged with committing a heinous sexual offense e.g. Rape, Indecent Assault or Molestation and to my mind the reactions of the fellow employees were not directed towards causing embarrassment, snares and humiliation but was more in line with general gossip as exemplified by the co-worker who is reputed to have said, "Imagine Keith Jackson was nearly fired and he did not get a piece."

[44] I do not find that the warning contained in the said letter of January 17, 2002, was unreasonable and justified the tender of his resignation by the Employee – he suffered no loss of pay, status or benefits as a result of the Suspension and allegations and had been re-instated in his position with full pay and conditions as if the events never occurred. And, having done all the foregoing, I do not think the Employers should be called upon to pay compensation. The Court will order any employer to pay compensation to an employee for an Unfair Dismissal but not otherwise. As regards the Warning, and it was not inappropriate for an Employer with a strict "Sexual Harassment" Policy to send reminders to its employees especially, as is here the case, when an employee was the subject of suspension and investigation for such an allegation.

[45] The Labour Code, unlike its U.K. counterpart, makes no mention of Constructive Dismissal, however, this has become an integral part of our jurisprudence and victims thereof are eligible for compensation. There being no statutory definition we have to look elsewhere and see how the Courts have interpreted the matter and dealt with it. In his book, *The Law of Unfair Dismissal* by Steven A. Anderman, the learned author states that the creation of a contractual basis to the requirement of dismissal has, inter alia, prompted

an extension of the statutory definition of dismissal to resignation by the employee in response to certain types of conduct by the employer, such as unfavourable transfers, downgradings, suspension without pay and changes in the contractual nature of work, hours of work or place of work as well as other types of unreasonable or abusive treatment provided that they amount to a contractual repudiation by the employer. It was with these in mind that this Court held in *Edward Smith V Stanford Financial Group Limited*, Reference No: 16 of 1998, where a manager who had a staff of twenty was transferred to an office where he had virtually nothing to do, nobody to supervise and was generally ignored and in *Juliet Harley V Blue Waters Beach Hotel* Reference No: 17 of 1995, where a housekeeper accused of the theft of the property of guests and acquitted by the Magistrates was transferred to the Gardens Department. These were instances of Constructive Dismissal. Anderman states that under English Law the employee has to show not only that the employer repudiated the contract but also that the employee has behaved in such a way as to "accept" the repudiation turning it into a termination rather than waiving the repudiation by affirming the contract.

- [46] This was a "self-dismissal" and to succeed the Employee is also required to show that the Employers repudiated the contract or committed a breach of a fundamental clause therein, neither of which occurred, caused or contributed to the resignation and that the resignation was reasonable in the circumstances and he had no choice but to resign. I accept that the Employee must have suffered some degree of embarrassment by the chain of events but I do not accept that these were grave, serious or likely to affect his career and reputation. It was not shown that the allegations rendered the Employee unlikely to find employment (less employable), more prone to dismissal, left a

confidentiality but rather because the Employers refused to publish his demands and warned him of steps they will take if he ever engaged in any sexual harassment. See Exhibit KJ13 and 14.

Conclusion

[47] I am not satisfied that there was a repudiation of the contract by the Employers or that they were guilty of any act, acts or omission that justified the resignation. To me the resignation was very unfortunate as in the circumstances the Reference cannot stand and is dismissed.

DATED the 8th day of October, 2004



Cyril L. Maundy
President

I concur



Edward T. Henry
Member