

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 58 OF 2002

BETWEEN:

CECILE NORDE

Employee

and

JEWELLER'S WAREHOUSE

Employers

Before:

The Hon. Cyril L. Maundy

President

The Hon. Genevieve Benjamin

Member

Appearances:

Cherissa Thomas, Attorney-at-Law, for the Employee

Gerald A. watt, Q.C., Attorney-at-Law, for the Employers

2004: May 4, 5 & 6
June 2

JUDGMENT

Manager of jewellery store with responsibility for the general management of the store and inventory under the supervision of Sue Ross, the country manager – cataloguing and placing of inventory in display cases carried out by sales staff under the management of Employee – Employee discharged her duties with satisfaction until her termination – by error an item that should have been sold at full price was sold at half price by another employee – letters of complaint and a letter of warning issued to Employee – items of

jewellery found in the vault and not displayed – allegations against Employee not corroborated and denied – checks made of inventory in the absence of the Employee and complaints of breach of company policy allegations – allegations denied – Employee dismissed without Notice.

Historical Background

- [1] **Maundy, P.:** By a Notice dated November 18, 2002, Marshall & Co., Attorneys-at-Law, notified the Court of the existence of a Trade Dispute between Jewellers Warehouse of Heritage Quay, St John's, Antigua, and the Employee, Cecile Norde of Fitches Creek, St George's, Antigua.
- [2] In her Memorandum dated March 31, 2003, the Employee claimed:
 - (a) A declaration that the Employers' action on November 6, 2001, amounted to wrongful and unfair dismissal.
 - (b) Compensation for wrongful and/or unfair dismissal.
 - (c) Vacation pay for 1995 and payment in lieu of notice of dismissal.
 - (d) Such interest as the Court may deem fit.
 - (e) Costs.
 - (f) Exemplary Damages
- [3] In their Memorandum the Employers denied that the dismissal was unfair and the Employee was entitled to the relief sought. The Employers contended that, inter alia, the Employee was responsible for the sales staff and she failed to ensure that they carried out their duties in an efficient manner and followed the Employers' policies and procedures; also, that there were certain breaches of company policy of which the Employee had knowledge and she failed to ensure that members of staff under her

authority followed these procedures and that the breaches were not minor and involved the security of high valued merchandise.

- [4] The Employee commenced working with the Employers in 1988 as a sales person at its clothing store (Mosaic Designs) and within a few months was made manager. The company owned several companies and stores. The Mosaic Designs was closed and the Employee was next made a sales person in Colombian Emeralds International. After a short time she was promoted to Assistant Manager, West Indies Ice, now Jewellers Warehouse. In 1995, the Employee was made Manager of Jewellers Warehouse and retained the position until November 6, 2001, when she was dismissed.
- [5] As store manager the duties of the Employee were to:
- (a) Open and close the store.
 - (b) she was responsible for:
 - (i) The everyday running of the store
 - (ii) Staff training
 - (iii) Display of merchandise
 - (iv) Ensuring that the cash of the day was correct and banked.
- [6] The Employee was assisted by an Assistant Manager and when she was not on duty the Assistant Manager performed the duties on her own.
- [7] The company had a procedure for displaying the merchandise – they would be displayed in showcases, highlighting the pieces. The items of high value and eye-catching would be presented to the customers. At nights the items would be checked and then put in the vault of which only Sue Ross, the Country Manager, and the Employee had access; they were also checked

each morning before being put on display. In addition, Head Office carried out its own checks once every three months.

- [8] The merchandise was checked twice every day.
- [9] A physical count of every item in the store was done every quarter by senior management.
- [10] At the last quarterly check prior to her dismissal, i.e. in September, 2001, the Employee was absent on vacation at the time of the count.
- [11] One day in October, 2001, the Employee went on her lunch break and on her return a member of her staff informed her that he (the staff member, Mr Etienne) had made a big sale. It transpired that the merchandise that was sold was a ring, the property of another company, Colombian Emeralds. At this stage a member of the staff of Colombian Emeralds appeared with an identical ring to the one sold by Mr Etienne. The true selling price of the ring was US\$ 3,390.00 less 50% but the tag that was put on it by mistake at Head Office gave the full price as US\$ 1,695.00 and it was sold at that price less a discount of 50% – the ring was for Colombian Emeralds and was sent by mistake to Jewellers Warehouse – the company suffered a loss of US\$ 847.50. It was impossible to display every item in the store and those not displayed were kept in the vault.
- [12] Some time before the sale the mistake was discovered, the Employee noticed that the ring did not look like one for sale by Jewellers Warehouse. The Employee informed Head Office of the error and they gave her certain instructions as a result of which the Employee put the ring back into the display case with a hand written tag stating the true selling price.

- [13] The tag that came with the ring stated that the selling price was US\$ 1,695.00. Someone removed the hand written tag, placed the tag from Head Office for US\$ 1,695.00 on it and it was sold at 50% discount (of that price). The Employee's assistant, Nicole Potter, was asked to pay the loss. (Mrs Ross sent the Employee a letter of complaint re the matter – Exhibit CN1).
- [14] Occasionally Head Office made mistakes on merchandise (stock) which belonged to its other jewellery store; jewellery for Colombian Emeralds were sent to Jewellers Warehouse – the staff used to get a computer printout from Head Office to correspond with the tag from Head Office but in this instance the printout and the tag from Head Office both gave the wrong price.
- [15] On October 24, 2001, the owner of the company, Steve Crane, came to do his quarterly checks. The Employee was absent at the time, but on her return he asked her to open one of the vaults. Mr Crane looked inside the vault, took out some trays with silver bracelets and took them to the area where bracelets were displayed and pointed out one or two bracelets that were not in the case. Mr Crane told the Employee that the bracelets should be put on display, however, at the end of the exercise he told her that her store looked wonderful and that she should continue to do a good job and get the figures up. The Employee had some difficulty in opening the vault and the exercise took her about ten minutes although she knew the combination – the lock had been tampered with and was faulty.
- [16] The Employee, from time to time, received communications re inventory and maintained, which is denied by Mrs Ross, that she always carried out directions given. Up and until 1998, Mrs Ross was satisfied with the

Employee's performance of her duties but from about that date the situation changed drastically and she was sent repeated letters of complaints, criticisms and allegations re her management of the store, culminating in her dismissal without notice and without any written or other warning within the last six months of her employment.

[17] As a result of the events of September 11, 2001 in the United States, the tourism sector was badly hit and the business suffered a slowdown as the company relied heavily on business from tourists and it now had to rely on purchases from nationals, which was much less. However, management did not take any steps to rectify the decrease in revenue.

[18] This was a Summary Dismissal without Notice and at the time of the termination the Employee was owed two weeks vacation for 1995 – she received two days' pay only.

After termination the Employee sought employment but was not successful and in April, 2002, she started her own business, decorating for companies, making cakes and gift baskets. The business never made a profit or broke even and whereas at Jewellers Warehouse the Employee received a basic salary of \$ 7,000.00 per month, the business realised but only about \$ 2,800.00 per month so that each month the Employee suffered a loss of \$ 4,200.00.

[19] The Employee was not in office when the mistakes occurred and prior to September, 1998, Mrs Ross never had occasion to write to her about deficiencies.

Between 1998 and the date of dismissal the Employee was written to approximately eleven times but only once returned a written answer or

explanation. However, she did have discussions with Mrs Ross on the issues identified by her in her letters.

- [20] The Employers identified several instances of fault by the Employee including items she alleged to have gone missing but these were all denied by the Employee and not verified. However, no warnings were given to the Employee.

The Employers admitted that the Employee was an honest and dedicated worker.

Triable Issues

- [21] The principal issues here for determination appear to be:
- (a) Was the dismissal unfair?
 - (b) Was there just cause for the dismissal and was it based on reasonable grounds, i.e. was there a factual basis for the dismissal?
 - (c) Was the Employee entitled to and given any written warning prior to the dismissal?
 - (d) Did failure to respond in writing to the letters of complaint constitute guilt?
 - (e) Did the Employee mitigate her loss?
 - (f) Was the Employers' conduct in dismissing the Employee based on reasonable grounds?

The Arguments

- [22] Mrs Thomas asked the Court to find that the dismissal was unfair and contended that, inter alia:

- (a) The Employers' case is based on a number of factual inaccuracies without any legal basis and that there was no evidence that the Employee had ever held a meeting with the staff or that she had taken any steps to ensure that the matters complained of were improved or enhanced.
- (b) The Employee responded to each of the correspondences in a reasonable manner and in accordance with company policy – she discussed each issue with Mrs Ross and followed up with staff meetings addressing the Employers' concerns.
- (c) The Employers addressed the objections raised by the Employee to the letters upon which they relied as the basis and/or grounds for the dismissal and has in effect attempted to add to the grounds for dismissal stipulated in the termination letter.
- (d) Pursuant to Section C(10) of the Antigua and Barbuda Labour Code (hereinafter referred to as the Labour Code) the Employers are conclusively bound by the reasons given in the letter dated November 6, 2001, as to the precise reasons for the termination, viz:
 - (i) That the Employee seemed unable to open the vault on the 24th day of October, 2001, during a store visit by Senior Management for a period in excess of ten minutes.
 - (ii) The inability of the Employee to run the boutique is not one of the original reasons contained in the termination letter and the Employers cannot now add to the list of reasons contained in same.
 - (iii) Cases of conduct or misconduct and not of capability as the Employers now wish to add or substitute for the reasons given to the Employee on termination are not permissible.

- (iv) Section C.58(1)(b) of the Labour Code does not apply as the Employers' reasons for dismissal are grounded on allegations of negligent conduct by the Employee.
- (v) With regard to the reasons for termination as set out in the letter of termination, "Exhibit CN3", the Employee was not in the store but went on an emergency on the day in question when the inspection took place; also the combination lock for the particular safe she was asked to open was usually difficult to open as it was located behind a crate and it appeared that it had been damaged and thus this reason is without merit and no reasonable employer or Court would consider this as sufficient ground for summary dismissal.
- (vi) With regard to the second reason given in the termination letter, the evidence suggests that not all the merchandise could be displayed; also the inspection took place at the end of the day when there would usually be space in the showcases as the merchandise sold during the course of the day would not have been yet replaced. Further there was not enough space in the display cases to hold all the merchandise.
- (vii) Regarding the 4th and 5th reason for the termination, the explanation given by the Employee was not sufficiently rebutted by the Employers as they too admitted that there was a downturn in business (sales) following the events of September 11, 2001,

(in the United States of America) and which caused the business to suffer.

- (viii) The Employers have not provided any evidence, e.g. the financial records of the store, in support of their contention of decline or that the said decline in revenue was due to any fault of the Employee or that she was in any way personally responsible for the exceptionally low sales and fall in revenue. And the Employers accepted that the Employee usually met targets set for her and would receive bonuses for sale achievements – the last bonus was received in July, 2001, for the quarter ending June, 2001, the last quarter prior to the events of September 11, 2001.
- (ix) Any letters bearing date prior to December 6, 2000, do not fall within “the precise reasons for termination” pursuant to Section C.10(1) of the Labour Code – the Employers are only bound by Exhibit SR7 (letter of May 23, 2001), “SR9” dated August 14, 2001, “CN1” letter dated September 28, 2001, and the termination letter “CN3”.
- (x) The concerns raised in Exhibit “SR9” were the responsibility of the Assistant Manager, Ms Nicole Potter. By company policy, any employee who removed merchandise from the store was responsible for keeping a careful record of its ultimate disposition.
- (xi) With regard to “CN1” the Employee admitted the problem did not originate at store level and in her

evidence she testified that the item was first sent to the store in error and was tagged with an incorrect price and on discovering this she took all reasonable steps to rectify the situation by contacting Head Office and seeking their directions which she followed – Head Office promised to send the correct price tag but when it arrived it was incorrectly priced and this did not come to the attention of the Employee before the item was sold – the sale took place during the Employee's lunch break when the store was under the supervision of the Assistant Manager.

- (xii) “SR2”, “SR3”, “SR4” and “SR6” refer to periods during which the Employee was absent from work and the Assistant Manager had assumed her duties and the matters referred to in the remaining letters, “SR5” and “SR8” are but minor issues which do not merit termination.
- (xiii) The Employee was absent from the store when the concerns raised in “SR2” and “SR6” surfaced and she was subsequently absent due to illness at the time of the concerns contained in “SR3” and “SR4” – during this period of absence the Assistant Manager was in charge and responsible for the store.
- (xiv) The Employers conducted an audit in the absence and without the knowledge of the Employee contrary to good business practice, and removed merchandise from the store and nevertheless held the Employee responsible for items found missing.

- (xv) The Employers did not act reasonably.
- (xvi) There was no reasonable and thorough investigation by the Employers into the missing merchandise.
- (xvii) The Employee did address the Employers' concerns following discussions with Mrs Ross and the Employers misdirected themselves in holding that the buck stopped with the Employee and this was unreasonable and unfair.

In support of her contentions Counsel cited:

- (a) Sutton & Gates (Luton) Limited V Bucall (EAT) (1976) ICR67
- (b) Whitebread & C. Ple V Thomas & Others ICR(1988)135.

[23] In his submission Mr Watt admitted that the Employee was an honest and conscientious worker and said that no one said that she retained the pieces; his area of criticism was her competency, which came into question when she was made Manager of the store – she adopted a position of “hands off”. Counsel referred to the series of letters from Mrs Ross relating to the Employee, which he said pointed out lack of inventory control. Counsel said that the Employee did not take any steps to ensure that the matters complained of, i.e. inventory control and competence, were improved or enhanced and her mindset was that she was not personally responsible. Mr Watt stated that the Employee was a good “Vice Captain” but a poor “Captain”, using a cricketing analogy.

Mr Watt asked the Court to find that the letters of Exhibit are admissible despite Sections C.59 (2 & 3) of the Labour Code – nothing in Section 59 (2 & 3) made the documents inadmissible.

- [24] Counsel said that the Employee could be dismissed under Section C.58 (1) and referred to Modern Employment Law 8 Ed. By Michael Windcup, para 9.8 the issue is whether the dismissal is for incapacity see PP 154-155. Mr Watt said that the Employee received more than four warnings to improve her inventory control but she never replied nor refuted the various allegations and this is a classic case of irredeemable incapability.
- [25] Counsel said that there had been adequate warnings of the dismissal, opportunities for the Employee to be heard and to remedy her deficiencies.
- [26] In support of his contentions Mr Watt cited:
- (a) Modern Employment Law 8 Ed. By Michael Whincup. Para 9.8, published by Butterworth/Heinemann.
 - (b) Sutton and Gates (Luton) Limited V Boxall (1979) ICR 67.
 - (c) Labour Law, Cases & Materials by Patrick Elias, Brian Napier & Peter Wallington, published by Butterworths PP. 592-595.

The Law

- [27] 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.
- [28] 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.

[29] 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.

[30] 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."

[31] 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

- [32] It has to be mentioned at the outset that the Court was very impressed with Mr Watt’s final submission, which was an exhibition of legal brilliance and eloquence, more of which will be welcomed. Those Junior Counsel present at the presentation will no doubt have benefited enormously from the submission and one can only hope that they will regard it as part of their learning experience and an example of the level, which they are expected to attain.
- [33] The eloquence and brilliance of Counsel can be very persuasive but at the same time whether or not a dismissal can be deemed unfair depends upon the evidence presented to the Court, which then is given the task of analysing same against the prevailing Law including the Rules of Natural Justice. The demeanours of a witness as he/she gives his/her testimony can often be of assistance to the Court especially in situations where there is no corroborated evidence hence the importance of such evidence. Indeed, it is an inherent weakness of this case that neither the Employers nor the Employee called any witnesses to support their contentions – this, of course, did not inhibit the Court from arriving at a decision based on the facts which it believes is fair, just, reasonable and in the best interests of good industrial relations and the community as a whole.
- [34] I accept the evidence of the parties but find it difficult to understand why, after a period of about eleven years, three as Manager, in the service of the

Employers and not found wanting the Employee came “under fire” and was later painted as being “irredeemable incapable to perform her tasks”? Was she really a “good Vice Captain” but a “weak Captain” as alleged?

[35] The answer to all the allegations against the Employee and the counter-allegations are to be found in the evidence but before looking at these in detail I would like to say that I accept the Employee’s evidence that even though she did not respond in writing to the complaints of Mrs Ross, she took steps to correct the various issues complained of in her letters. Indeed I find it difficult to understand that if the transgresses complained of were serious and were being committed over such a long period (ten years) termination would not have been earlier in coming. It is to be observed that Mrs Ross admitted that the Employee was an honest and dedicated worker. Also that following a quarterly check by the owner of the business and who was based at Head Office in Miami, as before stated, he gave her praises for her work and expressed satisfaction with what she was doing at the store.

[36] The Employee testified and this was not denied that the complaints and allegations made against her related to checks made when she was not present, i.e. either when she was absent ill, on vacation or otherwise not present. I believe that if a check was at any time to be carried out, whether a surprise or “spot” check or a merely routine check, in fairness to all the stakeholders this should comply with the rules of transparency and done in the presence and hearing of the person responsible for the store and its contents, especially where these contents consist of jewellery and other valuables which could be easily removed and are very desirable. No explanation was offered why the checks never took place before or in the presence and hearing of the Employee – virtually no mention is made of the other persons who worked at the store.

[37] Looking at some of the principal allegations:

- (a) The ring that was sold at a loss – although the Employee was the one in charge of the store it must be noted that the sale was made by a member of staff while the Employee was absent! It is possible that, if present, she would have clarified the price before completion of the sale. But more importantly, the whole series of errors started with Head Office, which sent the ring to the wrong store and attached to it a tag with the wrong price and entered the same wrong price in the computer. Even though Head Office later tried to remedy their mistakes by sending another tag with what they thought was the correct price the sale was effected without knowledge of the correct price.
- (b) I find it difficult to understand how a ten-minute delay in opening a combination lock safe (vault) could constitute incompetence and negligence? And it is to be noted that the Employee testified that as a result of some previous unauthorised tampering the lock was damaged and difficult to open.
- (c) Mrs Ross said she made a check and 92 pieces were found missing and were never recovered, but the Employee doubted the accuracy of this check. No evidence was adduced to show that this was pursued any further and her evidence was not corroborated.
- (d) The reason why some items were found in the vault when they should have been on display was explained by the Employee and I have not been persuaded that she should not be believed or the explanation is not palatable – the Employee admitted that the merchandise was in the vault and not on display but gave a satisfactory explanation of why this was so.

- (e) If a party alleges that there has been a downturn in sales, which can of course happen, then the onus is on him to so prove and he is obliged to adduce evidence to this effect and in support thereof. Indeed, the Court cannot and should not reach a decision solely on his word, as a ground for termination. Of course where there is a downturn in business an Employer can resort to, temporary termination or in an appropriate case, Redundancy and payment of Severance Pay. But, in my view, Summary Dismissal and even Dismissals, are not permissible under the Labour Code without satisfaction of the principles/conditions there laid down. And, unless this decision is based on its special facts, and in accordance with the decision of the Court of Appeal in *Sundry Workers V Kings Casino Limited*, Civil Appeal No. 28 of 2001, will require very strong evidence to support a Dismissal/Summary Dismissal based on loss of revenue due to a downturn in business. In this case the Court of Appeal rejected a submission that a downturn in business at a casino due to a slow down in visitors to the country as a result of closure of several hotels, a cessation of visits by cruise ships and damage to the casino were not sufficient and held, overruling a decision of this Court, that the dismissal was based on the refusal of the Employees to accept an alteration in their Collective Agreement made by the Employers without their consent.
- (f) Warnings: A dismissal without a warning, a Summary Dismissal, though it does not, per se, render the dismissal unfair, is frowned upon by the Court, certain special circumstances excepted, e.g. in cases of theft, where the person is caught in *pari delicto* ("red handed"). Section C.59(2) of the Labour Code provides that where an employee is guilty in or in relation to his employment that is not

sufficiently serious to permit his employer to terminate his employment under sub-section (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning describing the misconduct in respect of which the warning is given and state the action the employer intends to take in the event of a repetition of the misconduct or the commission of another misconduct which is as serious as the one in respect of which the written warning was given. Although the sub-section does not make a written warning mandatory prior to a dismissal or make the dismissal unfair, an employee may have to suffer grave hardship if he is suddenly “put out of a job” without warning; he might have school fees to pay, house rent, a bank loan to repay, but to mention a few. It seems the legislators had this in mind when under Section C.9 it is provided that an employer must give advanced notice to the affected employee of an intention to terminate his employment. The Section penalises the employer who fails to give an employee any advanced notice by making the employer liable for “Notice Pay”. (Payment in lieu of notice of termination).

- [38] The overwhelming abundance of the Employers’ evidence consists of complaints and allegations against the Employee and very little credit is given to her. But it must not be ignored or left untouched that she had a “good” side too and when Mrs Ross asked the staff to agree to a 20% deduction in salary even though the decision so to do was never discussed with her and the decision was taken without and before obtaining her prior consent, she agreed to “tow the line” and suffer the loss without offering any resistance.

[39] It was suggested that at times Employers would seek to terminate the employment of senior staff in an effort to cease payment of high wages. If this is a fact then the practice should be condemned and discontinued. The Employee worked her way up from being a sales-girl to Manager over a period of years and acquired an equity in her job – in fact, it is now advocated that an employee's job is his "property". Indeed, Michael Windcup in his book states at P.155, "The law in fact presumes the dismissal unfair, the effect of which is that a person's job becomes his or her property. It cannot be taken off the employee without some very good reason and the burden of proving that reason is on the employer." It is submitted that this too is the law in Antigua and Barbuda.

[40] In arriving at a decision I carefully reviewed and analysed the evidence of the parties and noted their demeanours. I considered the authorities cited and the provisions of the Labour Code, the Industrial Court Act, Cap. 214 and the relevant case law and endeavoured to arrive at a decision that is fair, just, equitable and in the best interests of good industrial relations and the community as a whole and find that the dismissal was unfair.

The Award

[41] Where a dismissal is found to be unfair the dismissed employee becomes entitled to compensation as per the established heads but firstly to be determined is whether the Employee took reasonable steps to mitigate her loss. The Employee said that subsequent to the dismissal she made applications for employment to various places and sent them her Resumé but did not succeed in finding a job. Finally, in April 2002, she decided to start her

own business decorating for other companies and making cakes and gift baskets. From her business the Employee earns approximately \$ 2,800.00 per month and suffers a loss of approximately \$ 4,200.00 per month. Consequently, the quantum of the Award is as follows:

- (a) Basic Award for Loss of Protection – As Management the award here is one month's pay for each year of service at the Employee's last basic salary; she appears to have commenced working for the Employers in 1988 and was terminated on November 6, 2001, approximately 13 years: the award under this head is thus $13 \times \$ 7,000.00 = \$ 91,000.00$
- (b) Immediate Loss – Further to the dismissal the Employee did not obtain any employment for approximately six months, however, with due diligence I believe she should have been able to find new or commensurate employment/self-employment within three months so that the Award here is $\$ 7,000.00 \times 3 = \$ 21,000.00$.
- (c) Manner of dismissal – No award as the dismissal did not make the Employee prone to dismissal from any new employment she may find or make it more difficult than ordinarily the case to find employment.
- (d) Future Loss – As a result of the dismissal the Employee is suffering a monthly loss of \$ 4,200.00 and up to the time of this hearing this situation was still continuing. Other things being equal I would venture that it would be approximately another ten months before the reduction in earnings would cease and so the Award under this head is $10 \times \$ 4,200.00 = \$ 42,000.00$ less a deduction of 10% or \$ 4,200.00 in view of this being a lump sum payment, so the net amount is \$ 37,800.00.

- (e) Notice Pay – The Employee is entitled to one month's pay in Lieu of Notice.

Conclusion

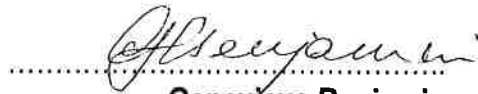
[42] I find that the dismissal was unfair and the Employers shall pay to the Employee the sum of \$ 153,030.77 plus two weeks holiday pay @ \$ 3,230.77 (\$ 160,030.77), payment to be made by August 16, 2004. There shall be no Order as to Costs.

DATED the 16th day of *July*, 2004



Cyril L. Maundy
President

I concur



Genevieve Benjamin
Member