

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 14 OF 2005

BETWEEN

WALTER CAMPBELL

Employee

and

SITE & STRUCTURE INC.

Employer

Before:

The Hon. Dr. Hayden Thomas

Chairman

The Hon. Genevieve L. I. Benjamin

Member

The Hon. Jessie F. Kentish

Member

Appearances:

Miss Nina C. Joseph, Attorney-at-Law of the Legal Aid & Advice Centre for the Employee

Mr. Clement E. M. Bird, of the Bird Law Firm, Inc. Attorney-at-Law for the Employer

2009: June 2 & 5
2010: February 26

JUDGMENT

Background

- [1] Site & Structure Inc. is a duly incorporated and registered company under the laws of Antigua and Barbuda, having its registered office situate at the Bird Law Firm at Old Parham Road, St. John's, Antigua. It carries on the operations of a general construction company.

- [2] Mr. Winston Edwards is one of the Incorporators of the Company and its sole Director.
- [3] Mr. Walter Campbell resides at St. Johnston's Village, St. John's, Antigua. He filed a Reference and an Employee's Memorandum with the Court both on June 23, 2005.
- [4] The Employee commenced working for the company as a labourer in August 2001 and subsequently was employed as a labourer/driver. His net weekly earnings was \$458.12 or \$91.62 per day for a five (5) day work week. As a driver, he maintained custody of the Employer's truck.
- [5] The Employee was dismissed on June 9, 2004. He claims damages for unfair dismissal and *"any further remedy that the Industrial Court deems just and appropriate in the circumstances."*

Employee's Evidence

- [6] Walter Campbell gave evidence in a Witness Statement dated March 10, 2009 filed on March 11, 2009 and amplified in Court on June 5, 2009.
- [7] He stated *inter alia* that he began employment with Site & Structure Inc. in *"the early portion of 2001"* and reported directly to Winston

Edwards. As a labourer he bent steel or helped the mason by passing, for example, sand, cement and blocks.

- [8] From 2002 to the date of his termination on 9th June 2004, the Employee was assigned additional duties as a driver without additional pay. He was given the responsibility of collecting the Employer's workers daily by 7:00 a.m. from a specified point on Market Street and transporting them to their job sites. At the end of the day he either returned them to Market Street or as close as possible to their homes when they worked late. He also collected materials for the workmen.
- [9] Walter Campbell said in his Witness Statement that he was granted unlimited use of and access to the Employer's motor truck. His obligation included ensuring that the truck was properly maintained, cleaned, the engine checked regularly and the tyres properly maintained. He received monies Mondays through Fridays for fuel. He was personally responsible for refuelling the truck on weekends. He was afforded the opportunity to use the truck for personal matters provided there was no conflict with his responsibilities to the Employer.
- [10] The Employee recalled that on June 6, 2004, he travelled to Jolly Beach to attend a yard sale. This was done by making use of his own time and for his own personal business. Whilst at the yard sale he saw and spoke to Winston Edwards and informed him that he was attending the sale with the hope of purchasing furniture for his home.

- [11] At the sale, he met a former colleague who told him that he was also seeking to purchase furniture but had no transport. The former colleague requested of Mr. Campbell the favour of transporting any furniture which he might purchase to his residence. Walter Campbell said that in the circumstances he agreed to do so.
- [12] During the conversation with Mr. Edwards, the Employee stated that he informed him of the colleague's request. Mr. Edwards directed him to charge one hundred and seventy-five dollars (E.C\$175.00) for the service. The Employee said that he mentioned to Mr. Edwards that he was merely attempting to assist his former colleague at no cost and, therefore, in the circumstances he would then have to inform him of his inability to transport the furniture.
- [13] Walter Campbell gave evidence that he purchased furniture for himself at the yard sale. He transported them to his home in Ottos, St. John's. He further stated that he transported no furniture for his former colleague or anyone else.
- [14] On the Employee's return to work on June 7, 2004 Mr. Edwards asked him for one hundred and seventy-five dollars (\$175.00). Mr. Campbell reminded Mr. Edwards that he had told him of the change in plan and that he had not transported his former colleague's furniture.
- [15] Mr. Campbell said that later in the morning on June 7, 2004 he was feeling unwell. He asked and received permission from his foreman

to visit a Medical Practitioner. The following day June 8, 2004 a Medical Certificate of Incapacity for the period June 7 to 11, 2004 was presented. This, he said, was the first time he ever obtained leave of absence due to illness since working with the Employer.

[16] Upon returning to work following his leave of absence Mr. Campbell received a letter addressed to him dated June 9, 2004 from Site & Structure Inc. It was signed by W. Anthony Edwards as Managing Director hitherto referred to as Winston Edwards. It was admitted into evidence as **Exhibit – “WC-1”**. It was a letter of summary dismissal of Walter Campbell by Site & Structure Inc.

[17] The letter states as follows:

“June 9, 2004

Mr. Walter Campbell

Potters Village

St. Georges, Antigua

Dear Sir:

This letter serves to inform you that with immediate effect you are being discharged from employment with Site & Structure Inc. Ltd. This action is being taken as a result of the betrayal of trust placed with you as the driver of one (1) of our trucks (C4245).

On numerous occasions I have been told of your using the truck for personal use but have always given you the benefit of the doubt. You must recall my asking you to provide me with mileage records and receipts from diesel and your not doing so.

At our impromptu staff meeting on the morning of Saturday 05, June 2004 we openly discussed the use of the truck for personal reasons and the aspersion being cast on my name by you suggesting that I fail to pay you weekly. Ms. Naomi Williams of American Road can attest to this as she called my home at 6: 00 am on Saturday 5th complaining of the fact that you owe her because as you put it "I am having money trouble and I owe you."

I was surprised to see you Sunday 6th, June 2004 at Jolly Beach where you admitted to be transporting furniture. I recall instructing you to collect money for cartage and or produce receipts for diesel and deliver them to me on Monday June 7th, 2004. This has not been done.

As such it is my opinion that the employer/employee relationship which once existed has eroded and cannot be reasonably repaired due to your dishonesty.

Please arrange for the return of any company property in your possession and be guided accordingly.

Sincerely,

*(Sgd.) W. Anthony Edwards
Managing Director"*

[18] Mr. Campbell in his Witness Statement dated March 10, 2009 stated at **paragraph [36]** as follows:

"I had never before received a warning from the Employer for any dishonourable conduct on my part. The Employer never had any cause to write any warning letter to me. The Employer never had any cause to terminate me at all, much less in the manner actually done."

- [19] Mr. Campbell gave evidence that the Employer had not compensated him. Under cross-examination by the Employer's Counsel, the Employee stated that he received a cheque but it was for overtime work and not pay in lieu of 12 days vacation as suggested by Counsel. He denied using the truck for personal use. He denied being requested by Mr. Edwards to provide him with mileage records and receipts.
- [20] Mr. Campbell denied making the allegations made by Ms. Naomi Williams which were referred to in the letter of dismissal "**WC-1**".

The Employer's Evidence

- [21] The Employer Mr. Winston Edwards filed a Memorandum and a Witness Statement both on May 28, 2009. The Witness Statement was admitted as Evidence-in-Chief on June 5, 2009. Mr. Edwards said that Mr. Campbell was employed as a labourer in December 2001 and reported to a foreman, Mr. Euclyn Huggins who assigned various tasks. Mr. Edwards said that he later assigned Mr. Campbell additional duties as a driver since he possessed a valid driver's licence and exhibited a positive attitude. His duties as a driver were to collect staff from the West Bus Station in the mornings and transport them to and from the work sites. Mr. Campbell was also assigned to transport materials.

[22] Occasionally, Mr. Edwards received enquiries from third parties as to whether or not the truck was available for haulage. He gave instructions to Mr. Campbell that while the truck was idle it could be used for transporting goods for the Employer's benefit. Permission was also given to Mr. Campbell for the use of the truck to assist staff with personal matters. On those occasions, the staff and Mr. Campbell were required to make a contribution towards refuelling the truck.

[23] Mr. Campbell, in the initial period of his employment was allowed by his Employer to keep the truck at his residence overnight. Subsequently as trust developed between the two parties Mr. Campbell was afforded the privilege of having the truck remain in his custody every weekend.

[24] Mr. Edwards gave the following evidence of the arrangement between himself and the Employee with regard to the use of the truck and in particular his use of it on weekends. He stated *inter alia* as follows:

“In advising Campbell of the arrangement, I explained clearly the limits of his personal usage. To my knowledge he had no other means of transportation. Given that he was providing a service by retaining the truck, I expected in the ordinary course of events and expressly advised him and authorized that he could utilize same for the personal transportation needs of himself and immediate family.

I repeatedly stressed to Campbell the importance of my being aware of the whereabouts of the truck at all times since as

Manager I was responsible for maintaining, licensing and insuring it. He was merely asked to (which he never did) refuel the truck in time for our weekday requirements.

That was the limit of any authority ever given Campbell in respect of the truck. Specifically, Campbell was never granted "unlimited use" of the truck. He was never authorized at any time to use the truck for personal gain, by hiring it out to 3rd parties.

There was neither benefit to be derived by, nor would it have been prudent to expose the Employer to potential liability occasioned by Campbell conducting his own private commercial activity using our vehicle. To so permit Campbell would have been reckless in the extreme."

[25] The Employer noticed during the latter stages of the employment that there was a change in the attitude and demeanour of the Employee. He was concerned that his salary had not been increased. At the same time, mention was made of several incidents involving the truck. This included the problem of stolen batteries which the Employer had to replace. Mr. Campbell did not volunteer to contribute in this regard.

[26] Mr. Edwards gave evidence that on more than one occasion it was reported to him that the Employee was using the truck on weekends for his own purposes. Mr. Campbell, however, always denied this. Mr. Campbell was advised by Mr. Edwards that if he was doing this he should stop or face consequences including dismissal. Although

Mr. Campbell was supposed to refuel the truck, he habitually arrived on Monday mornings requesting monies from Mr. Edwards to do so.

- [27] (i) Mr. Edwards gave evidence that on the morning of Saturday June 4, 2004 a lady telephoned him. The substance of the conversation was to the effect this lady informed Mr. Edwards that she was told by the Employee that Mr. Edwards had failed to pay his worker.
- (ii) This had the effect of the Employee being unable to pay her his debts. According to Mr. Edwards he mentioned this allegation to the Employee in the presence and hearing of other employees. Mr. Edwards gave evidence that the Employee admitted to this allegation. One of those employees was Mr. Collin Frederick. In his Witness Statement filed on May 28, 2009 he stated *inter alia* that “**Campbell admitted this.**” The allegation was denied by Mr. Campbell.

- [28] With regard to the incident at Jolly Beach on June 6, 2004, Mr. Edwards stated at **paragraphs [18] to [23]** of his Witness Statement as follows:

“[18] The following day, Sunday 5th June, I came upon Campbell alone with the truck at a yard sale. I did not attend the yard sale. I was passing on my way to play golf at the Jolly Harbour Golf Course. I enquired what the truck was doing there. He told me he was “.... transporting furnitures....”

- [19] *My sole discussion with Campbell was to advise him that he was to refuel the truck and present the receipt to me the next morning as evidence of his having complied with the standing directive.*
- [20] *The next morning I enquired of Campbell of the receipt. He did not present it; I checked the fuel gauge in the truck and observed that it had not been refueled.*
- [21] *I left the site to attend to other business. I was subsequently advised by the foreman that Campbell had requested to, and did leave the site, ostensibly to seek medical attention for an unknown condition. He did not return that day, nor did he call or relay any message concerning his whereabouts the next day. That action adversely affected our operations given his driving duties.*
- [22] *Considering all that had transpired over the past few days, the damaging and disreputable statements acknowledged by Campbell; his reported failure to adhere to repeated instructions to refuel the truck after his personal usage - particularly given the direct order of the day before; I considered that the employment relationship had broken down irretrievably.*
- [23] *Campbell's employment was duly terminated for cause on Wednesday 8th June, for the reasons outlined in the letter (of dismissal)....."*

[29] **Mr. Collin Frederick** worked with the company as a labourer. In his Witness Statement on behalf of the Employer Mr. Frederick said *inter alia* that Mr. Campbell began working on or about December 2001 as a labourer. He later did the driving and transported workers from the West Bus Station to the work site and took them back after work. He dropped them near to their homes if they worked late. Mr. Frederick said that Mr. Campbell used the truck to transport people or goods otherwise, although he denied this to the Employer. He also said that Mr. Campbell went to Mr. Edwards every Monday morning for money to put diesel in the truck.

[30] **Mr. Euclyn Huggins** was the second witness called on behalf of the Employer. Mr. Huggins stated *inter alia* that he had witnessed Mr. Campbell driving the truck outside of working hours. He transported non-employees and items on the truck which were covered down.

ISSUES

[31] In this Court's opinion the following are the main issues for determination:

1. **Did the Employer act reasonably in dismissing the Employee summarily in accordance with Section C58 (1) (a) and (2) of the Antigua and Barbuda Labour Code?**
2. **If the Employee's dismissal is found to be unfair what compensation should be paid by the Employer to the Employee?**

The First Issue

Did the Employer act reasonably in dismissing the Employee summarily in accordance with section C 58 (1) (a) and (2) of the Antigua and Barbuda Labour Code?

The Law

[32] Section C56 of the Labour Code states as follows:

“C 56 – 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.”

[33] C58 (1) (a) and (2) of the Labour Code stipulate 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 section 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."

Section C58 (1) (a) has a relationship with section C 59 (1).

Section C59 (1) states as follows:

"C59 (1) 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)

(c)"

[34] In every employment relationship there does exist an obligation by an employee to act in good faith towards his employer. In addition, in every contract of employment an implied term of mutual trust and confidence between both parties also exists.

[35] In **Jupiter General Insurance Company v Shroff** [1937] 3 ALL E. R. 67 Lord Maugham outlined the test for misconduct stating *inter alia* as follows:

“[W]hether the misconduct was not such as to interfere with and to prejudice the safe and proper conduct of the business of the company, and therefore to justify immediate dismissal.”

[36] In **Neary v Dean of Westminster** [1999] I.R.L.R. 288 Lord Jauncy stated the type of misconduct which would justify the employer to dismiss the employee at **page 291** in the following manner:

“[C]onduct amounting to gross misconduct justifying dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the master should no longer be required to retain the servant in his employment.”

[37] Each case is required to be dealt with having particular regard to its own merits. Decisions in previous cases may be of little or no assistance in the determination of the issue which this Court is required to decide.

[38] In **Cable & Wireless Ltd. v Hill and Others** [1982] 30 W. I. R. 120 at **page 129** Berridge J. A. stated *inter alia* that “*summary dismissal constituted a ‘strong measure’ the standard of proof should be strict, persuasive and convincing..... and it would expect the evidence to be correspondingly cogent and weighty in nature and content.*”

[39] Ms. Nina Joseph of the Legal Aid and Advice Centre Attorney-at-Law for the Employee in her Written Submissions filed on June 26, 2009 at **paragraph [34]** states *inter alia* that “***the subject-matter of the Employer’s truck was the primary factor motivating the Employer to dismiss Walter Campbell.***” Ms. Joseph submitted that “***Winston Edwards on a weekly basis on every Monday morning provided the means for Walter Campbell to re-fuel the employer’s truck.***” According to Counsel, “***such means was a cheque made out in a particular sum and addressed to a particular and identifiable gas station in Antigua.***”

[40] Ms. Joseph further submits that a letter of warning should have been issued by the Employer to the Employee in accordance with Section C59 (2). In support of that submission Ms. Joseph relies upon **Civil Appeal No. 29 of 2004 Jewellers Warehouse v Cecile Norde**. The Norde case took into consideration Sections C58 (1) (b) and C59 (5) of the Labour Code. With the greatest respect to Ms. Joseph, the Norde case is of no assistance to decide whether or not misconduct took place.

[41] Ms. Joseph is of the view that having regard to all of the evidence, the facts of this case are unsupportive of misconduct by Mr. Campbell.

[42] Mr. Clement Bird of the Bird Law Firm Inc. Attorneys-at-Law for the Employer filed Written Submissions on July 28, 2009. At page 3 of Mr. Bird’s Written Submissions he cites at **paragraph [6] (b)** “***repeated warnings for failure to render account of (the truck’s)***

usage, and against suspected usage for unauthorized personal gain.”

[43] At **paragraph [7]** of Mr. Bird’s Written Submissions he states that the Employee *“did not have “unlimited” usage. Usage (was) restricted to (a)..... (b)..... (c)..... (d) personal family use on weekends.....”* In addition, Mr. Bird submits that *“The Employee’s responsibility was restricted to refueling the truck after his personal weekend usage, (and) private commercial activity was specifically forbidden.”*

[44] Counsel for the Employer also made reference to a lady who on June 05, 2004 purportedly made a telephone call to Mr. Edwards. In that conversation Mr. Edwards informed the Court that the lady criticised him for not paying Mr. Campbell his wages. This was advanced as a ground for dismissal in the letter of dismissal dated June 09, 2004.

[45] The Employer did not call this lady to give evidence. The Employee denied having made any statement to the lady. This Court finds that this allegation as part of the ground for the Employee’s dismissal is unsupported by evidence of a quality or kind which *is “cogent and weighty in nature and content.”*

[46] The other reason proffered by the Employer for the Employee’s dismissal related to an incident which took place on Sunday 6th June, 2004. This incident is referred to at **paragraphs [10] to [14]** of this

judgment. In the letter of dismissal Mr. Edwards stated *inter alia* as follows:

“I was surprised to see you Sunday 6th, June 2004 at Jolly Beach where you admitted to be transporting furniture. I recall instructing you to collect money for cartage and or produce receipts for diesel and deliver them to me on Monday, June 7th, 2004. This has not been done.”

- [47] (i) Counsel for the Employer at **paragraph [12]** of his Written Submissions stated *inter alia* that the Employee ***“neither sought, far less received permission from the Employer to ‘assist’ the ‘former colleague’ at the yard sale.”***
- (ii) This submission by the Employer’s Counsel is at variance with the Employer’s own letter of dismissal, the relevant portion of which is referred to at **paragraph [46]** above. It would appear from reading this part of the letter of dismissal that after Mr. Campbell informed Mr. Edwards that he was ***“transporting furniture”*** there was no prohibition of this activity by Mr. Edwards. On the contrary, the next statement in writing by Mr. Edwards was that he recalled ***“instructing (verbally) to collect money for cartage and or produce receipts for diesel...”***
- [48] (i) Mr. Edwards did not remain at Jolly Beach to ascertain whether or not Mr. Campbell used the company’s vehicle to benefit a third party for private gain. Mr. Campbell stated that he used the truck to transport furniture from Jolly Beach to his ***“residence in Ottos in the parish of St. John.”***

- **See paragraph [25] of his Witness Statement.**

- (ii) Mr. Campbell's version of the evidence with regard to the use of the truck on Sunday 6th June, 2004 remained unchallenged by Mr. Edwards.

[49] On Monday 7th June, 2004 Mr. Campbell presented neither \$175.00 which Mr. Edwards expected from him nor any diesel receipts to prove purchase of diesel for the weekend.

[50] In the Employer's own letter of dismissal at **paragraph [2]** Mr. Edwards states *inter alia* as follows:

"On numerous occasions I have been told of your using the truck for personal use but have always given you the benefit of the doubt."

[51] There appears to be one or two reasons outlined at **paragraph [4]** of the letter of dismissal why the Employer dismissed the Employee. These related to the Employee's failure to ***"(a) collect money for cartage and or (b) produce receipts for diesel...."***

[52] Mr. Bird, Counsel for the Employer at **paragraph [22]** of his Written Submissions, asserts ***"that the Tribunal has sufficient evidence presented by the Employer that the complained of breaches did in fact occur."***

[53] **Paragraph [25]** of Written Submissions by Counsel for the Employer states *inter alia* as follows:

“There existed a pattern of persistent disregard for and/or wilful disobedience of known operational orders.”

[54] Section C59 (2) of the Labour Code makes provision in a circumstance where an employee’s behaviour or misconduct is of such a nature where ***“the employer cannot reasonably be expected to tolerate a repetition”*** to ***“give the employee a written warning”*** which identifies the misconduct that the Employer complains against.

[55] Mr. Bird in his Written Submissions which I referred to **at paragraph [42]** of this judgment mentions the Employee’s ***“repeated warnings.”*** No evidence was presented of any written warnings which were issued by the employer to the Employee. The Employer was well within its right to do so given the facts of this case.

[56] The evidence is that for some period of the weekend and certainly on Sunday June 06, 2004 Mr Campbell used the Employer’s vehicle for his own purposes. In Mr. Edwards’ Witness Statement at **paragraph [20]** he states *inter alia* as follows:

“I checked the fuel gauge in the truck and observed that it had not been refuelled.”

[57] At **paragraph [14]** of the Employee’s Witness Statement he states *inter alia* as follows:

“On Saturdays and Sundays, the responsibility or burden was mine to put fuel in the motor truck with no expense to the Employer.”

[58] This Court therefore is called upon to decide whether the Employee's failure to presumably purchase some fuel for the Employer's vehicle is of such an act which justified the Employer to summarily dismiss the Employee.

[59] In order to determine whether or not the Employee's dismissal was fair or unfair the Court is asked to determine whether or not the Employer acted unreasonably or reasonably having regard to the facts which have been adduced into evidence.

[60] In the Witness Statement of Mr. Edwards for the Employer he describes his understandable outrage of an attack upon his integrity at **paragraph [17]**. Although this Court has some empathy for Mr. Edwards who described the act as "*scandalous and slanderous*", in the circumstances of this case, the Court holds that Mr. Edwards for the Employer acted unreasonably in dismissing the Employee.

[61] Taking into consideration all of the evidence which the Court has heard, having examined all of the witnesses and their demeanour, and having read the Written Submissions of both Counsel, the Court holds that the Employee was unfairly dismissed.

The Second Issue

If the Employee's dismissal is found to be unfair, what compensation should be paid by the Employer to the Employee?

[62] An Employee whom the Court finds has been unfairly dismissed may be entitled to certain awards under the following established headings:

- (a) Basic Award
- (b) Immediate Loss
- (c) Manner of dismissal
- (d) Future Loss

(a) **Basic Award**

The award under this heading is for one day's pay for each month of the Employee's employment. The Employer produced a letter dated December 13, 2002. It was admitted as "WC-3." Accordingly the Employee worked for 31.94 months. His daily wage was (\$458.12 /5) or \$91.62. He is therefore entitled to \$91.62 x 31.94 or \$2,926.34.

(b) **Immediate Loss**

The Employee states that after his dismissal he obtained employment in St. Maarten in October, 2004. He presented no evidence of mitigation. The Court finds that he should have obtained alternative employment as a labourer within eight weeks. He is, therefore, entitled to \$458.12 x 8 or \$3,664.96.

(c) **Manner of dismissal**

No award is made under this heading as there is no evidence to support it.

(d) **Future Loss**

No evidence of any loss was presented to the Court.

Other

[63] (a) **Vacation Pay**

No evidence was presented by the Employee to merit an award under this heading. The Employer produced a copy of a cheque dated December 24, 2003 in the sum of \$1,099.92 which represents 12 days vacation payment. No sum is due to him under this heading.

(b) **Notice Pay**

The Employee is entitled to one week's pay in lieu of notice. This amounts to \$458.12.

Summary of Awards

[64]	Basic Award	\$2,926.34
	Immediate Loss	\$3,664.96
	Manner of dismissal	-
	Future Loss	-
	Notice Pay	<u>\$ 458.12</u>
	TOTAL	<u>\$7,049.42</u>

The Employee's Conduct

[65] Mr. Campbell's conduct contributed to some extent to his dismissal. The evidence in this case was that he failed to discharge his responsibility *"to put fuel in the motor truck with no expense to the Employer."*

- See paragraph [14] of his Witness Statement.

[66] In the words of **Chairman L. Irving in G Wells and E & A West limited [1975] I.R.L.R. 269 at page 279** an employee's conduct which has contributed towards his dismissal *"must be expected to have something visited upon him for his attitude and behaviour."*

[67] No two cases are ever alike. The facts of each case must be determined having regard to all of the circumstances. In this case this Court holds that the award to the Employee should be discounted by 15 %.

[68] The Employee is entitled to \$7,049.42. After a reduction of 15% is taken into consideration (\$7,049.42 - \$1,057.41) the sum due to him is \$5,992.01.

[69] The Employer shall pay to the Employee \$5,992.01 on or before the 31st day of March, 2010.

[70] There shall be no order as to costs.

Dated the 26th day of February, 2010.



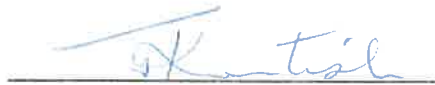
DR. HAYDEN THOMAS
CHAIRMAN

I concur



GENEVIEVE L. I. BENJAMIN
MEMBER

I concur



JESSIE F. KENTISH
MEMBER

