

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 18 OF 2006

BETWEEN:

CLARICE BROWNE

Employee

and

ANTIGUA COMMERCIAL BANK LTD

Employer

Before:

The Hon. Samuel R. Aymer

Chairman

The Hon. Edward T. Henry

Member

The Hon. Jessie Kentish

Member

Appearances:

Sir Keithlyn Smith –Antigua Workers’ Union - for the Employee

**Sir Clare Roberts Q.C. and Ms. Kamila Roberts - Attorneys-at
Law for the Employer**

2008: October 17

2009: June 06

2010: June 03

JUDGMENT

AYMER S: Chairman

Some essential facts

- [1] Clarice Browne was born in the parish of St. John on August 04, 1935. She is now aged 74. She resides at Browne’s Avenue, St. John’s in Antigua and Barbuda.

- [2] Ms. Browne commenced employment with the Antigua Commercial Bank (afterwards called "**the Bank**") from June 18, 1993 until September 03, 1993. This was done in accordance with a **Statement of working conditions** (afterwards called "**the Statement**") addressed to her, dated June 24, 1993. She performed the duties of a Messenger/Janitor. Ms. Browne signed the Statement and it was returned to **the Bank**. It was admitted into evidence as "**CB-1.**"
- [3] The first Statement of employment with the Bank referred to at **paragraph [2]** was extended to December 28, 1994. The extension incorporated similar terms and conditions as in the first Statement. Ms. Browne signed it. It was returned to the Bank. The Statement is dated November 14, 1994. It was admitted as "**CB-2.**"
- [4] (i) By a letter or Statement dated January 23, 1995 the ACB Mortgage and Trust Co. Ltd (which means Antigua Commercial Bank Mortgage and Trust Company Limited and shall afterwards be called "**the Trust Company**") offered Ms. Browne employment in accordance with a Statement to commence from February 06, 1995 to February 01, 1996. She did so and performed duties as Messenger/Cleaner. Ms. Browne signed the Statement. It was returned to the Trust Company.
- (ii) In this first Statement of employment with the Trust Company Mr. P. A. R. Waldron, the Manager wrote to Ms. Browne *inter alia* as follows:

“Our Company is a subsidiary of Antigua Commercial Bank and is governed by an independent Board of Directors. We commenced operations on October 01, 1987.”

This first Statement with the Trust Company was admitted into evidence as **“TC-1”**.

[5] Ms. Browne wrote a letter addressed to the Manager of the Trust Company dated December 30, 1995. She requested the Trust Company to extend the provisions contained in the existing Statement with the Trust Company beyond February 01, 1996. The letter was admitted as **“TC-2”**.

[6] The Trust Company by a second Statement dated February 06, 1996 extended Ms. Browne’s appointment with effect from February 01, 1996 to February 01, 1997. Ms. Browne signed the Statement. It was admitted as **“TC-3”**.

[7] By a letter dated April 10, 1996 from the Trust Company to Ms. Browne, the Company informed her that she was ***“granted an increase of 5% on (her) weekly wage effective October 1st, 1995.”***

This letter was admitted as **“TC-4.”**

[8] In a third Statement dated February 06, 1997 the Trust Company granted Ms. Browne a further one year period of employment to commence from February 01, 1997 to February 01, 1998. It was admitted as **“TC-5”**.

- [9] Ms. Browne was informed by the Trust Company in a letter dated August 10, 1997 that she was *“granted an increase of 5.5% on (her) weekly wage effective October 01, 1996.”* This was admitted as *“TC-6”*.
- [10] In a letter from the Trust Company dated October 16, 1997 the Company informed Ms. Browne that she was *“granted an increase of 6% on (her) weekly wage effective 1st October -1997.”* This letter was admitted as *“TC-7”*.
- [11] Ms. Browne’s fourth Statement from the Trust Company is dated February 04, 1998. It extended her period of employment to February 01, 1999. Ms. Browne signed the Statement. It was admitted into evidence as *“TC-8.”*
- [12] By a letter dated October 23, 1998 the Trust Company informed Ms. Browne that she had *“been granted an increase of 6.5% on (her) weekly wage effective October 01, 1998.”* This letter was admitted as *“TC-9.”*
- [13] Ms. Browne wrote letters to the Trust Company dated February 05, 1999, February 10, 2000, February 01, 2001, February 02, 2002 and January 21, 2003. In each of these letters, Ms. Browne informed the Trust Company in summary, that her relevant present **“contract”** would soon cease and she requested the Trust Company to *“consider renewal for a further period.”* These letters were admitted *as “TC-10 to “TC-14.”*

- [14] In response to the written requests of Ms. Browne to extend her **“contract”** of employment with the Trust Company, the Trust Company in letters addressed to her, extended her employment with it from (a) February 01, 1999 to February 01, 2000 (the fifth period) (b) February 01, 2000 to February 01, 2001 (the sixth period) (c) February 01, 2001 to February 01, 2002 (the seventh period) (d) February 01, 2002 to February 01, 2003 (the eighth period) and (e) from February 2003 to January 31, 2004 (the ninth period). These Statements were admitted into evidence as **“TC15 – 19”** ✓
- [15] The Trust Company in its letter to Ms. Browne dated January 30, 2004 enclosed a cheque for EC\$9,486.00. According to the Trust Company this sum represented **“eight years of service and fellowship with us, and (wished her) all the best on (her) retirement.”** This was admitted as **“TC-20”**. However, by letter dated February 11, 2004 from Mr. P.A.R Waldron to Ms. Browne, the Trust Company modified its earlier letter of January 30 2004 in which it acknowledged her **“nine years of service”** (and not eight), and paid her an additional EC\$1224 representing payment for the ninth year. This was admitted as **“TC -21”**.

LEGAL PROCEEDINGS

- [16] Ms. Browne was dissatisfied with the sums of \$9,486.00 and EC\$1224 which were paid to her. She filed a Reference in this Court dated **July 24, 2006**. In that Reference she claims **“wages severance pay and vacation.”** On July 11, 2008 a Witness Statement and an

Employee's Memorandum were filed on Ms. Browne's behalf in the Industrial Court.

- [17] In addition to Ms. Browne's Witness Statement, other Witness Statements on her behalf were filed by Messrs. Melchonie Lewis, Leonart Matthias and Senator David Massiah on June 09, 2009.
- [18] The Employer's Memorandum was filed on October 10, 2008. Mr. Eurel Hodge, the Training & Recruitment Officer of the Antigua Commercial Bank filed his Witness Statement on June 05, 2009.

THE ISSUES

- [19] The following issues are required to be determined.
- (i) **Was the Employee employed by the Antigua Commercial Bank for the period June 18, 1993 to January 31, 2004?**
 - (ii) **Were the Statements of Working Conditions of the Employee for the period June 18, 1993 to January 31, 2004 contracts of employment and if so, were they governed by the provisions of the Collective Agreements between the Antigua Commercial Bank and the Antigua Workers' Union for the period 1993 to 2004?**
 - (iii) **Was the Employee dismissed? If a dismissal did occur was Ms. Browne unfairly dismissed or is she otherwise entitled to any awards?**

THE EMPLOYEE'S SUBMISSIONS

- [20] Sir Keithlyn Smith of the Antigua Workers Union (afterwards called "*the Trade Union*") on behalf of the Employee filed his Written Submissions on August 25, 2009. He submits that Ms. Clarice Browne was employed by the Bank as a Messenger/Cleaner for the period June 18, 1993 to January 31, 2004.
- [21] According to Sir Keithlyn Smith, Ms. Browne's contracts of employment were governed by the Collective Agreements signed between the Bank and the Trade Union until her employment was terminated in January 2004.
- [22] Sir Keithlyn Smith submits that the administration "**of the Collective**
X **Agreements (for) Antigua Commercial Bank and the Antigua Commercial Bank Mortgage and Trust Co. are one.**"
- [23] He drew the Court's attention to *Sections C7 (c) and 5 (3)* of the Antigua and Barbuda Labour Code. He referred the Court to the decision of the **Antigua Workers' Union and the West Indies Oil Company Ref. No. 1 of 1969.**

THE EMPLOYER'S SUBMISSIONS

- [24] Sir Clare Roberts, Q.C. filed his Written Submissions on behalf of the Bank on July 01, 2009. Essentially learned Counsel repeated references either to the Employer's Memorandum or the Employee's Memorandum.
- [25] In addition however, Counsel for the Employer submits that *"the evidence that the Trust and the Bank were separate legal persons was not challenged by the Employee."*
- [26] Learned Counsel also asserts that Ms. Browne *"was employed by the Trust and not the Bank and that she was not a part of the bargaining unit."*
- [27] Counsel for the Employer submits that Ms. Browne's claim that she was unfairly dismissed is without merit. No cases whatsoever were cited by Counsel in support of his submissions.

ISSUE NO. 1

Was the Employee employed by the Antigua Commercial Bank for the period June 18, 1993 to January 31, 2004?

- [28] In the Witness Statement of Clarice Browne she states *inter alia* as follows:

"I began working with Antigua Commercial Bank from June 1993 until January 31, 2004."

[29] In her evidence to this Court, Ms. Browne indicated that she was employed by Mr. Waldron, Manager of the Trust Company in 1995. According to her, the Bank and the Trust Company *“were the same thing.”*

[30] When she was shown the ten Statements from the Trust Company by Sir Clare Roberts, Q.C. Counsel for the Employer, Ms. Browne replied as follows:

“If I got the letters I signed them but did not read them.”

[31] In response to Counsel for the Employer with regard to whether or not she made any contributions to a pension fund she replied as follows:

“I do not know if the Trust had a pension scheme.”

[32] Mr. Eurel Hodge gave evidence on behalf of the Employer. His Witness Statement was admitted into evidence. Mr. Hodge stated that the Employee was employed by the Bank from June 18, 1993 to December 28, 1994. After this period it was Mr. Hodge’s evidence that Ms. Browne was employed by the Trust Company from February 06, 1995 to January 31, 2004.

[33] Ms. Browne entered freely into short term periods of employment with the Bank and herself for the period firstly, between June 18, 1993 to September 03, 1993 and secondly, for the period November 14 to December 28, 1994.

[34] The terms of those Statements between herself and the Bank were clearly outlined. They included (a) hours of work; (b) salary; (c)

her duties; (d) sick leave; (e) statutory deductions; and (f) notice requirement.

[35] The Bank is a financial institution. It is required to obtain a licence to perform banking business in Antigua and Barbuda. In accordance with the relevant provisions of the Banking Act, Cap. 40, of the Laws of Antigua and Barbuda, the Minister responsible for Finance is authorised to grant a licence to the Bank to commence banking business.

[36] The Trust Company was first established as a public company limited by shares in accordance with the Companies Act Cap. 358 of the Laws of Antigua and Barbuda on the 11th day of September 1987. A Certificate of Continuance was issued to the trust Company on November 30, 1999.

[37] The Statements between the Employee and the Trust Company for the period February 06, 1995 to January 31, 2004 contained clear provisions which were similar in content to the terms in her Statements with the Bank except for the duration of her employment.

THE LAW

[38] A matter of this nature arose to be considered in the case of **B M Kemp v Robin Knitwear Ltd [1974] 1 RLR 69.**

The headnote reads as follows:

“The applicant worked in the warehouse of Robin Knitwear Ltd as an order seeker. She had worked in the warehouse since 1971. Prior to this, the applicant had worked for Robin Wool Limited, an associated company. The applicant was dismissed following her refusal to assist in the warehouse of Robin Wool Limited on a day when there was little work to do in the Robin Knitwear warehouse.”

[39] The parties in the **B M Kemp** case did not perform their obligations pursuant to a written contract. The Tribunal’s task was to determine who were the parties to the contract. The applicant claimed that she was unfairly dismissed. The Industrial Tribunal upheld her claim.

[40] The argument for Robin Knitwear Limited was that the applicant’s contract of employment was with Robin Wools Limited. She was *“on loan to Robin Knitwear Limited.....as a separate company in 1971.”*

[41] The Tribunal in its judgment stated at page 70 as follows:

“Our decision is as follows:

Since the applicant was not given a written contract of employment; we have had to determine the parties to the contract of employment itself. We find that the contract was between the applicant and Robin Knitwear Limited. How the applicant was paid, what administrative benefits flow to the group by the warehouse employees all being on Robin Wools Limited’s books, does not affect the issue.

There is nothing in the documents which we have seen which shows that she was under contract with Robin Wools Limited. Indeed all the indications point to the contrary.....

The applicant was exclusively employed by Robin Knitwear Limited.

This finding goes to the root of the whole case. If, in fact, the applicant was employed by Robin Wools Limited; how can it be said that an order to work for another separate legal entity (albeit an associate company and another subsidiary of Robert Glew Ltd) was within the scope and terms of her contract of employment? We have held that it was not, until the contrary is proved.”

[42] At page 70 of the judgment the Tribunal stated *inter alia* as follows:

“Of course the whole crux of this case turns on the fact that nobody (certainly not the applicant) has been given a written contract of employment in the first place. If she had been given a contract of employment.....none of the problems which have flowed from that omission would have been in front of us today. In those circumstances the applicant was unfairly dismissed.”

[43] The *ratio decidendi* of **B M Kemp** applies *a fortiori* to a determination of this issue. According to the facts which have been disclosed to the Court, Ms. Browne entered into certain written Statements with the Trust Company. On a number of occasions she

applied to the Trust Company to extend these written Statements with the Trust Company. There is nothing in those Statements with the Trust Company which make any reference whatsoever to the Bank.

[44] In accordance with the first and second Statements, I hold that Clarice Browne worked for two short periods with the **Bank**. Having examined the Statements for the period February 06, 1995 to January 31, 2004 I hold that the Employee was employed by **the Trust Company** for the duration of this period.

ISSUE NO. 2

Were the Statements of Working Conditions of the Employee for the period June 18, 1993 to January 31, 2004 contracts of employment and if so, were they governed by the provisions of the Collective Agreements between the Antigua Commercial Bank and the Antigua Workers' Union for the period 1993 to 2004?

[45] In the Witness Statement of the Employee she stated *inter alia* as follows:

“My terms of employment are covered by the Collective Agreement signed between the Antigua and Barbuda Workers Union and the Antigua Commercial Bank. The Union and the Bank signed several Agreements from the time I began working and up to the time I was dismissed. The Bank refused to apply the Union’s agreements to me and not only denied me benefits but also paid me less as well.”

- [46] In her answer to Counsel for the Employer who asked her if during her period of working with the Trust Company, the Collective Agreement applied? Ms. Browne said *“I never heard of a collective agreement at that time.”*
- [47] Ms. Browne also informed the Court that she approached Mr. Matthias, a shop steward of the Trade Union to ascertain whether the terminal payments she received were computed correctly.
- [48] Mr. Leonart Matthias gave evidence. He was employed at the Bank from September 15, 1988. He is the second Vice President of the Trade Union. He was part of the negotiation team that formulated the first Collective Agreement between the Trade Union and the Bank. He was not aware of any agreement that removes employees of the Trust Company from the Collective Agreement between the Bank and the Trade Union.
- [49] In answer to Sir Clare Roberts Q.C. Counsel for the Employer, Mr. Matthias stated that no dialogue took place between the Employee and himself before her period of employment ended in January 2004. He was unable to disclose any provision in the Collective Agreements which dealt with temporary employees or the deduction of union dues from them.
- [50] Collective Agreements between the Trade Union and the Bank were agreed upon for the period 1993 to 2004. These Agreements dealt with a number of items which included (a) statutory holidays; (b) filling of vacancies; (c) disciplinary and grievance procedures; (d) job

security (e) staff training (f) conditions of employment (g) hours of work (h) vacation leave (i) sick leave, compassionate leave, maternity leave and (j) scales of pay.

[51] It was a feature of the Collective Agreements that the parties which were represented therein were the Bank, its employees and the Trade Union.

[52] The opening paragraph of the Collective Agreement between the two parties for the period October 01, 2002 to September 30, 2005 reads as follows:

“The Parties to this Agreement are Antigua Commercial Bank (hereinafter called “the Bank”) and the Antigua and Barbuda Workers’ Union (hereinafter called “the Union”) on behalf of the employees of the Bank who are included in the Bargaining Unit.”

[53] **Article 1:** In the Collective Agreement 2002 to 2005 the following is stated under the heading entitled “**Purpose**”.

1.01 “The purpose of this Memorandum of Agreement is to record agreement between the Bank and the Union on the regulation of salaries, hours of work and general conditions of employment applicable to the employees of the Bank covered by this Agreement....”

[54] **Article 2:** The following is written under the heading titled “**Recognition**” in the Collective Agreement for 2002 to 2005.

2.01 “The Bank accords full recognition to the Union for so long as the Union remains a properly constituted Trade Union registered in accordance with the Laws of Antigua and Barbuda and continues to observe the terms of this Agreement.”

[55] Other Articles in the Collective Agreement for 1996 to 1999 make clear reference to the two parties, namely the **Bank and the Trade Union**. These Articles include Article 3 (Scope of the Agreement), Article 4.02 (General Principles), Article 5 (Secrecy), Article 8 (Disciplinary Procedures) Article 10 (Job Security) and Article 12 (Representation).

[56] Mr. Melchonie Lewis gave evidence on behalf of the Employee. He informed the Court that he was employed by the Bank. He was requested by the Bank on some occasions to execute assignments for the Trust Company. His substantive employment remained with the Bank. He stated in his Witness Statement:

“My conditions of employment did not change”

[57] Senator David Massiah gave evidence for the Employee. He has worked with the Trade Union from 1986 as an Industrial Officer. He became the current General Secretary of the Trade Union from

December 2002.

- [58] (i) In his evidence to the Court, he indicated that as General Secretary of the Trade Union he has successfully negotiated Collective Agreements with various companies, individuals and organisations on behalf of their respective employees.
- (ii) Some of these companies are separate legal entities but are part of Industrial Agreements that govern terms and conditions of employment for their respective companies.
- [59] Sir Keithlyn Smith submits *“that even if there was no agreement between the Union and the Bank for the employees of the Antigua Commercial Bank Mortgage and Trust Co. to be included in the Collective Agreement, the Bank’s action to use its subsidiary or any other company to undercut the rates /conditions of the bargaining unit could not be sustained. There would be as many individual contracts as employees.”*
- [60] Sir Keithlyn Smith is of the opinion that should this Court hold in favour of the Bank then *“it would inevitably destroy the fabric of good industrial relations in Antigua and Barbuda.”*
- [61] The term *“collective agreement”* is defined at Section A5 of the Labour Code. It states as follows:
- “collective agreement” means any contract between an employer or his bargaining unit and a group of employees or*

their bargaining agent, governing the working conditions of such employees;"

[62] The Employee's Statements of working conditions for the year 1993 to 2004 were prepared by the Employer. They embodied most of the requirements which are outlined in *Section C5 (2) of the Labour Code*.

[63] **Simon Deakin and Gillian S. Morris** in the textbook entitled *"Labour Law", Fifth Edition, Hart Publishing, Oxford and Portland, Oregon 2009* at **paragraph 4 .24** clearly state the legal principles with regard to Statements of working conditions, contracts of employment and their relationship with collective agreements. They state *inter alia* as follows:

"Particular difficulty arises from the practice of employers of issuing statements which either purport to be contracts in their own right or which depart in some respect or other, from the entitlements which are meant to vest in employees by virtue of incorporation from a collective agreement or some other external source. Since the written statement is merely declaratory of the contract terms, it cannot prevail over terms which are expressly or impliedly agreed by the parties, including those which are incorporated from a collective agreement. On the face of it, the statement is only the employer's view of the contract's contents.

Although it may be evidence of what the parties have agreed, and to this extent may need to be considered alongside other

factors, such as their conduct in construing the agreement, there is a presumption that it cannot be relied on by the employer to derogate from what would otherwise be clear contractual entitlements of the employee: this can only be done if there is clear evidence that the statement represents the contractual intentions of both parties”.

[64] The Statements for the period June 18, 1993 to January 31, 2004 were all signed by the Employee. In the first and second Statements the Employee was employed by the Bank pursuant to short term contracts. When she commenced work pursuant to the first Statement she was 57 years of age.

[65] The Statements for the period 1995 to 2004 were each for a duration of one year. The Employee signed these Statements and those referred to at **paragraph [64]**. She returned them to the Trust Company.

[66] All of the Statements embodied terms of employment which were clearly understood by the Employee. They included (a) her hours of work; (b) salary; (c) duties; (d) sick leave; (e) statutory deductions; and (f) provision for notice.

[67] (i) In the circumstances of this case, I hold that all of the Statements entered into between the Employee and the parties represented the contractual intentions of both parties.

(ii) I am fortified in this view by reference to **Gascol Conversions**

Ltd v Mercer [1974] 1CR 420.

In February 1972 the employee was sent a written statement of the terms of his contract of employment by his employers. On March 21, 1972 the employee signed a receipt which he sent to his employers confirming the **“new contract of employment which sets out, ... The terms and conditions of my employment.”**

(iii) **Lord Denning MR** stated *inter alia* at page 426 Letter F:

“It was well settled that where there is a written contract of employment, as there was here, and the parties have reduced it to writing, it is the writing which governs their relations. It is not permissible to say they intended something different.”

[68] (i) Do any other contractual terms exist which are different from those in the contracts between the Employee and the Trust Company?

(ii) Are there any terms of the contracts of employment between the Employee and the Trust Company which are referable to the Collective Agreement?

[69] The learned author of **Selwyn’s Law of Employment, 15th edition** authored by **Norman Selwyn, Oxford University Press 2008 at page 89 paragraph 3.57** states as follows:

“Frequently the terms of a collective agreement will be expressly incorporated into the individual contract by means of the statement given to the employee....”

[70] Terms of a Collective Agreement may also be incorporated into an employee’s contract of employment by implication.

- See Selwyn (op cit) at paragraph 3.62

[71] (i) I am mandated to examine the contracts of employment between the Employee and the Trust Company.

(ii) In **Burroughs Machines Ltd v P. Timmoney** [1977] 1RLR 404 the Inner House of the Court of Session stated at page 406 *inter alia* as follows:

“What is important is not what the collective agreement says but what are the terms and conditions of the respondent’s individual contract with the company.”

(ii) In **Burroughs** the employee’s contract of employment was referable *“to the guaranteed week provisions in the National Agreement.”*

– See page 406 of the judgment.

[72] No evidence was led by Mr. Matthias or any other witness for the Employee to show how the Collective Agreements functioned between the trade Union and *“employees of the Trust Company”* who

Mr. Matthias made reference to in his evidence. In summary, the Employee led no evidence which revealed that “*employees of the Trust Company*” were governed by the Collective Agreements.

[73] (i) There is no express term which is contained in the contracts of employment between 1995 and 2004 which refer to the Collective Agreements between the The Trust Company and the Trade Union.

(ii) I also hold that no term in the Collective Agreements may be implied from a reading of the contracts of employment.

[74] (i) A term may also be incorporated in a contract of employment by reference to custom and practice. No evidence was led in this case which established that a custom or practice had developed between the Bank, the Trade Union and the Trust Company that established the relationship called for by the Employee.

(ii) In any event, in a modern industrial environment the parties to collective agreements are always clearly stated and identified which renders the use of custom to be unnecessary.

[75] (i) The question of whether or not an employee has affirmed the existence of a contract of employment by his actions arose to be considered in **W E Cox Toner (International) Limited v Crook [1981] IRLR 443**

- (ii) **Mr. Justice Browne-Wilkinson** stated at page 446 of the judgment as follows:

“Affirmation of the contract can be implied. Thus, if the innocent party calls on the guilty party for further performance of the contract, he will normally be taken to have affirmed the contract since his conduct is only consistent with the continued existence of the contract, such acts will normally show affirmation of the contract. However, if the innocent party further performs the contract to a limited extent but at the same time makes it clear that he reserving his rights to accept the repudiation or is only continuing so as to allow the guilty party to remedy the breach, such further performance does not prejudice his right subsequently to accept the repudiation.”

- (iii) The principle in **W E Cox Toner (op cit)** was applied in **Henry v London General Transport Services Ltd [2002] 1 RLR 473.**

-See the judgment of **Lord Justice Pill** at page 475.

- [76] In the Witness Statement of Clarice Browne she stated at **paragraph [4]** as follows:

“I went to the Union and representation was made on my behalf as well as many others. The Union wrote the Bank on November 14, 2003 asking that persons who were short paid be paid correctly. Some persons were

paid, but the Bank discriminated against me and refused to adjust my wages in line with the Collective Agreement.”

[77] Ms. Browne commenced employment with the Trust Company in 1995. Her last contract of employment was dated February 06, 2003. As she had *“passed the retirement age”* her contract ceased on January 31, 2004. She would have reached age 68 at January 31, 2004.

-See the letter from The Trust Company to Ms. Browne dated February 06, 2003.

[78] So she worked from February 06, 1995 to the end of her final contract of employment on January 31, 2004 **and did not make any complaint whatsoever either to the Mortgage Trust Company, the Bank or the Trade Union, with regard to her contracts of employment.**

[79] The letter of November 14, 2003 was written by the Trade Union to the Manager of the Bank. Whilst it did make reference to *“All staff who have been short paid to be paid in retrospect, all outstanding amounts.....”* no mention whatsoever was made of Clarice Browne in this letter. The very first mention of Clarice Browne by the Trade Union **was contained in a letter by the Trade Union to the Bank dated December 07, 2004 – nearly eleven (11) months after her employment ceased.**

[80] Applying the principle which is stated in the **Cox Toner and Henry cases (op cit)** to the facts of this case, I find it extremely difficult to conclude other than that Ms. Clarice Browne had accepted the terms of the contracts of employment between herself and the Trust Company between 1995 and 2004, without any reservation.

[81] In the circumstances of this case, I hold that the Employee's contracts of employment with the Trust Company between 1995 and 2004 were not governed by the provisions of the Collective Agreements between the Bank and the Trade Union for the period 1995 to 2004. It does not appear that her two short-term contracts between 1993 and 1994 were governed by the Collective Agreement between the Bank and the Trade Union.

ISSUE NO. 3

Was the employee dismissed? If a dismissal did occur was Ms. Browne unfairly dismissed or is she otherwise entitled to any awards?

[82] This issue does not arise for a full consideration except for what is stated at **paragraph [81]** and in light of a determination of the above issues.

CONCLUSION

[83] I have examined the evidence led in this case, the submissions of both parties and the relevant legislation. No dismissal or unfair dismissal of Ms. Browne occurred in this case. She is not otherwise entitled to any awards.

The Reference is dismissed.

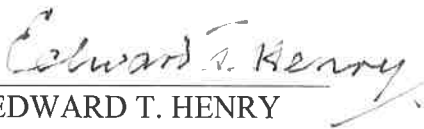
[84] There shall be no Order as to costs.

Dated the 3rd day of June, 2010



SAMUEL R. AYMER
Chairman

I agree



EDWARD T. HENRY
Member

I also agree



JESSIE F. KENTISH
Member

