

ANTIGUA & BARBUDA**IN THE INDUSTRIAL COURT****REFERENCE NO: 1 of 2009****BETWEEN:****DONNA CHRISTOPHER****Employee****and****GEOTECH COMPANY LIMITED****Employer****Before:****The Hon. Philip A. Pilgrim****President****The Hon. M. Althea Crick****Member****The Hon. M. Glendina McKay****Member****Appearances:****Mr. Samuel James of Antigua and Barbuda Free Trade
Union for the Employee****Mr. Charlesworth Brown, Attorney-at-Law for the Employer**

2011: February 15, 16**2011: April 27**

JUDGMENT**PILGRIM, P:****INTRODUCTION**

[1] Donna Christopher was born on July 02, 1972. She is 38 years of age.

[2] Geotech Company Limited is a company which was incorporated under the Laws of Antigua and Barbuda. Its registered office is situate at Burma Road in Antigua and Barbuda. It is a company which provides civil engineering, construction and quarrying services.

- [3] The Employee commenced employment with the Employer in March 1992 initially as a Secretary. In this position she earned \$1,000.00 per month.
- [4] She subsequently held the position of Accounts Clerk. In accordance with a letter from her Employer dated April 06, 2006 the position of Accounts Clerk was reclassified as Accounts Supervisor with effect from April 01, 2006 *“in recognition and acknowledgment of the work that (she was) doing over the last twelve months.”* Her salary was increased to EC\$45,600 per annum. (This letter was admitted as “DC-1”.)
- [5] In accordance with the letter of April 06, 2006 she was offered assistance through the appointment of an Administrative Assistant as well as help from a certified accountant whose task it was to supervise the accounting functions within the accounting department.
- [6] The Employer states that for the period April 06, 2006 to November 16, 2007 the Employee was responsible for a multiplicity of functions which included the ensuring of all transactions being recorded on a daily basis, a review of all vouchers and cheques which related to disbursements, the provision of financial statements to the General Manager and the Board of Directors on a monthly basis, and ensuring that accounting controls, internal and administrative controls were functioning efficiently and effectively.
- [7] It is the Employer’s case that several deficiencies arose in the accounting department of which the Employee was aware and took no proper steps to rectify them.
- [8] Matters which concerned the Employer relative to the purchase of two LIAT (1974) Ltd. airlines tickets, the non-deduction of her staff loans and other

loans, the findings of certain deficiencies and weaknesses in the companies accounting department, and her failure to maintain files and to accurately report on loan accounts to management caused the Employer to dismiss the Employee by letter dated November 16, 2007.

Employee's mitigation efforts

- [9] The Employee obtained employment with Pegasus in November 2007. In March/April 2008 she worked with Francis Driving School for a weekly wage of \$750.00. Due to non-payment of some wages with this establishment she resigned in August 2008. She presently works in a part time capacity for about \$150.00 per week.

Legal proceedings

- [10] The Employee commenced legal proceedings by filing a Reference and Employee's Memorandum on January 07, 2009. In the Memorandum she claims that she was unfairly dismissed. As a consequence the Employee asks that this Court do award her damages for unfair dismissal, immediate loss, future loss, and manner of dismissal.
- [11] (i) The Employer's Amended Memorandum was filed on February 04, 2009. The Employer states that the Employee's conduct amounted to gross misconduct in accordance with **Section C59 1(a)** of the Labour Code. According to the Employer this misconduct entitled it to dismiss the Employee.
- (ii) In addition the Employer claims that the Employee should repay the Employer EC \$35,382.72.

- [12] The Employee filed a Witness Statement on January 07, 2009. In addition a Witness Statement of Mrs Sonia Benta-Joseph was filed on the Employee's behalf on September 09, 2010.
- [13] Mr. Arthur Bostic, Ms. Dorothy Gittens and Mr. Dorbrene O'Marde filed Witness Statements on behalf of the Employer on May 14, 2010, May 17, 2010 and January 27, 2011 respectively.

The issues

- [14] The relevant issues are as follows:
- (i) Whether in the circumstances of this case was the Employee's conduct of such a nature or kind which justified the Employer to summarily dismiss the Employee in accordance with **Section C58 (1) (a) of the Antigua and Barbuda Labour Code** (afterwards called "**the Labour Code**").
 - (ii) Did the Employer act reasonably to dismiss the Employee?
 - (iii) In the event that the Employee was unfairly dismissed what is the measure of damages to which she may be entitled?
 - (iv) Are any sums of money due by the Employee to the Employer?

The Employee's submissions

- [15] Much of the Written Submissions of Mr. James for the Employee was a repetition of the evidence. He submitted that the Employee followed the required company policy with regard to the purchase of the two LIAT (1974) Ltd. airline tickets.
- [16] Mr. James also submitted that the Employee's non-deduction of payments for her staff loans and other employee loans is not a matter which should be

the subject of instant dismissal. Mr. James submits that the Employer should have sent to the Employee a letter of warning if it was of the view that the Employee was no longer performing her duties in a satisfactory manner.

[17] With regard to the Employee's rental which was paid for with the company's funds, Mr. James submits that Mr. Maurice Potter of the Employer facilitated the rental Employee's rental having received instructions from management.

[18] Mr. James cited **Cable and Wireless (WI) Ltd. v Hill and others (1982) 30 WIR 120** in support of his submissions.

The Employer's submissions

[19] Mr. Charlesworth Brown, Attorney-at-Law for the Employer made a number of submissions. Learned Counsel stated that an implied term exists in every contract of employment. It is that there must be mutual trust and confidence between the employer and the employee. He cited **Sinclair v Neighbour [1966] 3 All ER 988** and **Robinson and Crampton v Parkinson Ltd. [1978] ICR 401**.

[20] Any breach of this implied term would entitle the Employer to terminate the contract of employment. In this circumstance the dismissal is fair. He cited **Courtnalds Northern Textiles Ltd. v Andrew [1979] IRLR 84** in support of this submission.

[21] The employee must always perform his duties honestly, in good faith and in the best interest of the employer. The employee must at all times exercise due care, diligence and skill in the performance of his duties.

[22] Mr. Brown further submits that the Employer's investigation of certain circumstances afforded the Employee an opportunity to explain her performance.

[23] In all of the circumstances of this case Mr. Brown submits that the Employer as justified in its dismissal of the Employee having regard to **Section C58 (1) (a) of the Labour Code.**

THE LAW

[24] C56 of the Labour Code states as follows:

“C56. Every employee whose probationary period with an employer has ended shall have the right not to be unfairly dismissed by his employer; and no employer shall dismiss any such employee without just cause.”

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

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

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

b).....;

c).....;

d).....;

e).....;

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

C58 (2) states as follows:

“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."

- [26] In this case Section C58 (1) (a) must be read in conjunction with Section C59 (1) (a). C59 (1) (a) states as follows:

"C 59 (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)"

- [27] In **Nicole Potter v Jeweller's Warehouse Ref. No. 38 of 2003** I outlined some matters which the Industrial Court considered as important in a determination of whether certain circumstances amount to misconduct in the context of **Section C58 (1) (a)** of the Labour Code. I stated as follows:

- [28] *"An employee owes his employer an implied duty of care in carrying out his duties. The basic authority for this is usually said to be Harmer v Cornelius (1858) 5 C B N S 236 – see Smith & Wood's Employment Law,*

Ninth edition, Oxford University Press, London 2008, authored by Ian Smith & Gareth Thomas at page 163.”

[29] The matter of the employee’s duty to take care arose to be considered in *Lister v Romford Ice & Storage Co Ltd*. [1957] A. C.555. Lord Radcliffe, although dissenting on the main issue stated *inter alia* as follows at page 586:

“On the first point I think it is plain that the law does impute to an employee a duty to exercise reasonable care in his handling of his employer’s property.”

[30] In addition to the duty of the employee to discharge his responsibilities to his Employer with care, there also exists between the Employer and the Employee a fiduciary relationship of trust and confidence. This duty was defined in *Neary v Dean of Westminster* [1999] I.R.L.R. 288. Lord Jauncy articulated the duty at page 290 paragraph 18 in the following manner:

“It has long been recognised that there exists between master and servant a fiduciary relationship of trust and confidence.”

[31] *“The duty of trust and confidence can be seen as a hallmark of the employment relationship”.*

See the text “Principles of Employment Law”, Fourth Edition authored by Michael Jefferson, Cavendish Publishing Ltd; London 2002 at page 116.

[32] In *Neary’s* case (op cit) Lord Jauncy also commented upon the degree of trust which is required of the Employee. He stated *inter alia* at page 290 paragraph 19 as follows:

“The character of the institutional employer; the role played by the employee in that institution and the degree of trust required of the employee vis-à-vis the employer must all be considered in determining the extent of the duty and the seriousness of any breach thereof.”

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

- [34] **Lord Maugham in Jupiter General Insurance Co. v Shroff (op cit) at 74 B** articulated the test for misconduct in the following manner:

“[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.”

- [35] **Lord Maugham** also gave an indication of the manner in which the test should be applied. He stated *inter alia* at page 74C as follows:

“It must be remembered that the test to be applied must vary with the nature of the business and the position held by the employee; and that decisions in other cases are of little value.”

- [36] (i) What is the degree of misconduct which is necessary to be obtained in order that there be compliance with C58 (1) (a) of the Labour Code?

(ii) In **Clouston & Co. Ltd v Corry** [1906] A. C. 122 Lord James in delivering the judgment of the Privy Council stated *inter alia* at **page 129**;

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

[37] (i) Whether or not the employee’s action amounts to misconduct became an issue to be determined in **Sinclair v Neighbour (op cit)**. In this case the manager of a betting shop took £15 from the till without his employer’s knowledge. He used the money to place a bet and replaced it on the following day. On this date the employer discovered what the employee did. The employer dismissed the employee. The trial judge held in favour of the employee. He found that the employee did not act dishonestly. The employer appealed.

(ii) The Court of Appeal held for the Employer. The headnote reads as follows:

“The manager’s conduct, even if it was not dishonest, was inconsistent with his duty towards his employer and with the continuance of the confidential relationship of master and

servant between them; accordingly the employee had been entitled to dismiss the manager summarily on account of it.”

(iii) **Sellers, L J.:** stated *inter alia* at **page 989 Letters C and D.:**

“[I] do not think that it matters whether the conduct is to be described as dishonest misconduct or not. Views might differ. It was sufficient for the employer if he could, in all the circumstances, regard what the employee did as being something which was seriously inconsistent – incompatible – with his duty as the manager in the business in which he was engaged. To take money out of the till in such circumstances is on the face of incompatible and inconsistent with his duty.”

(iv) **Sachs, L. J.:** at **page 991 Letter A** described the employee’s conduct

“as quite simply.....to (him) enough to make plain that here indeed there was beyond a peradventure misconduct of a type which justified instant dismissal.”

[38] In **Neary (op cit) Lord Jauncy at page 291 Letter 22** described the nature of the misconduct which would undermine the relationship of trust and confidence sufficient to justify the instant dismissal of the employee. **Lord Jauncy** stated *inter alia* as follows:

“[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.”

[39] With regard to the burden and standard of proof which are to be met in this case, I derive much assistance from **Berridge, J.A. in Cable & Wireless Ltd. v Hill & Other (op cit)**. At page 129 of the judgment, **Berridge J. A.** stated *inter alia* that the ***“burden of proof was on the company to show just cause” for dismissing the employees and that summary dismissal constituted a “strong measure” the standard of proof should be strict, persuasive and convincing. Further, notwithstanding the fact that this is a matter of a civil nature requiring proof on the balance of probabilities, since the matters to be proved were of a grave and weighty nature, it would expect the evidence to be correspondingly cogent and weighty in nature and content”***.

The first issue

Whether in the circumstances of this case was the Employee’s conduct of such a nature or kind which justified the Employer to summarily dismiss the Employee in accordance with Section C58 (1) (a) of the Labour Code.

(a) Loans by the Employer to the Employee in March 2001, November 2002, December 2004, and July 2005.

[40] Ms. Christopher received loans from the Employer on the above stated occasions. She gave evidence in support of her case. The Employee stated that in her capacity as Accounts Clerk for the period 1999 to March 31, 2006 she prepared cheques, disbursements, receivables, assisted in the reconciliation of accounts which included bank reconciliation. She also prepared invoices and statements under the supervision of her former supervisor.

- [41] Ms. Christopher stated that her staff loans were carrying a monthly repayment. At the outset she started to repay the monthly payments. She did not repay in full any of the four loans.
- [42] She further stated that the company has no policy with respect to when an employee defaults in the repayment of a loan. She did not repay the loans for March 2001 and November 2002 because she “*was having financial difficulties*”.
- [43] The evidence shows that a salary deduction of \$300.00 for the repayment of these loans was made in 2006. In addition in 2007 a salary deduction of \$2,576.44 was made.
- [44] Mr. James for the Employee states that the Employee’s failure to make the necessary deductions from her salary for the repayment of her loans “*was not as serious as the company had made out*”. He further submitted that the Employer should have utilized **Section C59 (5) of the Labour Code**.
- [45] Ms. Christopher worked in the Accounts Department of the Employer from 1992 to November 2007. Her position was a responsible one. She owed a duty of care and trust to the Employer to take proper care of any monies which were lent to her. She borrowed the monies upon certain terms. One of them was that it was her duty to repay the monies every month.
- [46] I am also aware that the evidence reveals that between July 2006 and July 2007 she received EC\$25,874.17 from the company for annual leave.

[47] (i) The loan of \$2,500.00 in March 2001 carried an interest rate of zero percent and a repayment amount of \$200.00 per month.

(ii) In November 2002 she obtained a loan of \$2,000.00. It was interest free. She was required to repay it by instalments of \$200.00 per month;

(iii) In December 2004 she borrowed \$2,000.00. She was granted four months to repay this loan.

(iv) Again in July 2005 the sum of \$2,000.00 was lent to her by the company. She was required to repay it in monthly instalments of \$200.00

[48] In July 2006 Ms. Christopher received \$9,469.44 from the company for unpaid annual leave for the period 1993 and 1994. In September 2006 she again received \$5,500.00 for unpaid vacation leave for 1997. These two sums amount to EC \$14, 969.44. This is in excess of the combined figure of EC\$8,700.00 for the four loans which she borrowed from the company. She was therefore in a financial position to completely repay all of her loans. She failed to do so.

[49] I find that her failure to repay her staff loans to the company showed a reckless disregard for her duty as Accounts Clerk or Accounts Supervisor. In all of the circumstances of this case her actions were incompatible with the performance of her duties as Accounts Supervisor.

(b) Rental of a motor vehicle by the Employee from St. John's Car Rental for the period July 31, 2004 to August 04, 2004.

[50] The evidence is that Ms. Christopher rented a motor vehicle from St. John's Car Rental for the above stated period. This rental was charged to the

account of her Employer for payment. There is no evidence that she used the vehicle on behalf of the company.

[51] The cost of the rental was EC \$540.00 According to Ms. Christopher she entered this rental in the company's accounts as **"equipment rentals."**

[52] Ms. Christopher stated that an employee of the company made the necessary arrangements for this to be done. This employee was not called to give evidence.

[53] (i) Ms. Christopher testified that a former principal of the company gave her this rental. Mr. James submits that the system at Geotech ***"does not allow for the employee to arbitrarily utilize the company's facility/arrangement with St. John's Car Rentals to rent a vehicle for her private use."*** In the absence of evidence to the contrary this Court is left with no other alternative but to conclude that Ms. Christopher did arbitrarily utilize the company's facility/arrangement with St. John's Car Rentals to rent a vehicle for her private use.

(ii) In these circumstances I hold that her actions in this regard were not in keeping with her performance of her duties as Accounts Supervisor.

(c) Purchase of two LIAT (1974) Ltd. airline tickets for herself and daughter on or about August 22, 2007 by making use of the Employer's Corporate Account.

[54] Mr. Dorbrene O'Marde gave evidence on behalf of the company. He was employed as the company's General Manager for the period between February 2006 and December 2007. He gave evidence that the company

instituted an arrangement with LIAT (1974) Ltd. soon after the commencement of his tenure as General Manager.

- [55] The arrangement to which he made reference is contained in a Memorandum dated August 31, 2006 from himself as General Manager to all staff members. It concerned the privileges offered by LIAT (1974) Ltd.
- [56] The Memorandum contains several benefits which a staff member may obtain when he makes use of the Employer's Corporate Online Account with LIAT (1974) Ltd. These include a 24 hour access to the airline's website, the ability to book, manage and track all completed reservations and a free name change up to two (2) hours prior to the scheduled time of departure. **(It was admitted as "AB-7")**.
- [57] All bookings were to be made through Sonia Benta-Joseph an employee of Geotech. It was a term of the Memorandum that ***"All fares must be paid in advance of confirmation"***.
- [58] Ms. Christopher gave evidence of this Corporate Account. She stated that she was aware of how it works. According to her Sonia Benta-Joseph makes all preparations for the purchase of the tickets. A member of management is required to give to Sonia Benta-Joseph approval for these tickets to be bought.
- [59] Ms. Christopher was shown the Memorandum (AB-7). She stated that when it was issued she was away from the jurisdiction. She returned after August 31, 2006.

- [60] On or about August 22, 2007 Ms. Christopher made private bookings with LIAT (1974) Ltd. She purchased two airline tickets for herself and her daughter for non-business travel. She subsequently used the Employer's Corporate Account with the assistance of Sonia Benta-Joseph. She did not complete her repayment of the cost of the tickets.
- [61] Ms. Christopher gave evidence that Sonia Benta-Joseph informed her that deductions were to be made from her salary for the purchase of the two airline tickets. She was aware of other persons who purchased airline tickets, paid a part of the cost and subsequently repaid the balance to the Employer.
- [62] In her answer to Mr. Brown, Attorney-at-Law for the Employer, she stated that she knew of the Memorandum (AB-7) when she was purchasing the tickets. She was not aware however that she was required to pay for the tickets before the bookings were completed. She agreed with Mr. Brown that she obtained the airline tickets without paying in full for them.
- [63] She informed the Court that she made an entry in the company's account to show that she owed the company for the tickets. This entry was placed in the general ledger and in the loans account which made reference to the LIAT (1974) Ltd. Corporate Account. A perusal of the Loans Account shows that the cost of the tickets was EC\$1,266.84
- [64] In further evidence, Ms. Christopher stated as follows *"The first time I saw this Memorandum (AB-7) was yesterday. The two tickets were bought on 22nd August, 2007 for EC\$1,266.84. I am aware that this money would have to be repaid to Geotech. The terms of the repayment were that I*

would repay the sum by paying \$300.00 or \$400.00 in September 2007 and the balance in monthly instalments of \$300.00 or \$400.00 every month.”

[65] Mrs Sonia Benta-Joseph gave evidence in support of the Employee. She resides at Jennings in Antigua. She was employed by Geotech from March 09, 1999 to June 30, 2008 as the company’s Administrative Assistant/Manager. She was familiar with the company’s LIAT Corporate Account. She was the sole officer of the company who could make reservations on the company’s Corporate Account.

[66] Mrs. Sonia Benta-Joseph informed the Court that upon Mr. O’Marde’s instructions, she prepared the Memorandum (AB-7). She explained to the Court how the Liat airline bookings were made.

[67] In order for an employee to use the Corporate Online Account she was required to do the bookings.

Her evidence in this regard is as follows:

“The person would come to me and I would make the booking. The procedure is that the employee has to pay Geotech for the ticket before I make the reservation. The employee must be in funds. I would inform the Accounts Department that the tickets are to be paid. No staff member paid for the tickets in cash. The employee contacts management who would give the approval to buy the tickets. This money has to be deducted from the employee’s next salary at the end of the month. A copy of the itinerary is printed to give Ms. Christopher for her to deduct from the employee’s salary at the end of the month. Instructions to staff as far as I can recall were given verbally. Only in one case was that approval given in a written form. The staff member would return to me and inform

me that Mr. O'Marde has given his approval. I verified with Mr. O'Marde that he gave the employee the required permission."

[68] Mrs. Sonia Benta-Joseph informed the Court that Mr. O'Marde had given approval to Ms. Christopher to purchase the two airline tickets. It is Sonia Benta-Joseph's evidence that she telephoned Mr. O'Marde who verified to her that he gave Ms. Christopher the required approval.

[69] Having received Mr. O'Marde's approval she telephoned LIAT's office and gave the relevant employee the necessary instructions to apply the Geotech's LIAT Corporate Account to the tickets which were purchased by Ms. Christopher.

[70] It is Mr. O'Marde's evidence that he gave no approval to the Employee with respect of the purchase by her of any airline tickets from LIAT (1974) Ltd. through the medium of the Employer's Corporate Account. He further informed the Court that Mrs. Sonia Benta-Joseph did not get confirmation from him. He did not sign a cheque to facilitate the purchase of the Employee's two airline tickets.

[71] In answer to Mr. Browne, Mrs. Sonia Benta-Joseph's evidence is as follows:

"Every member of staff including Ms. Donna Christopher knows of the Memorandum. When Ms. Christopher came to me to buy the tickets I said to her are you paying for the tickets? She said no. I reminded her of the procedure that she has to pay for the ticket right away and I printed a copy of this Memorandum right away and gave it to her. Donna called me and asked me for the password for the Corporate Account. I told her that these passwords are confidential to certain persons. Donna told me she has the Liat

Memorandum at home. Mr. O'Marde and myself signed a cheque to facilitate the account having enough money to pay for the two tickets."

- [72] Mrs. Sonia Benta-Joseph was called as a witness for Ms. Christopher. I find her testimony to be absolutely truthful. She was a witness whose evidence was frank and relevant. It is very clear that the purchase of the two tickets was paid for by Geotech.
- [73] Mrs. Sonia Benta-Joseph's evidence is that she gave a copy of the Memorandum to Ms. Christopher. Ms. Christopher's evidence is that the first time she saw the Memorandum was when she appeared in this Court. Mrs. Sonia Benta-Joseph's evidence makes it very clear that Ms. Christopher is not a truthful witness in this regard.
- [74] Mrs. Sonia Benta-Joseph's evidence is also that she informed Ms. Christopher that she was required *"to pay for the tickets right away."* Alternatively the full cost of the tickets must be deducted from the next month's salary. In this respect it would have been September 2007.
- [75] It was Ms. Christopher's evidence that a loan was granted to her by the company to repay the cost of the two tickets in monthly or any other instalments of \$300.00 or \$400.00 I do not accept Ms. Christopher's evidence that any loan was granted to her to repay the company the cost of the airline tickets in monthly or any other instalments. I prefer to accept Mrs. Sonia Benta- Joseph's evidence that (a) either the full sum was to be paid before the tickets were purchased or (b) that the full payment was to be made from the next month's salary.

[76] The evidence is clear that with regard to the purchase of the two airline tickets by Ms. Christopher, she abused her position as Accounts Supervisor. She knew that Geotech had paid for these tickets. She was aware that the repayment for those tickets was to be made on or before September 30, 2007. No loan was granted to her by the Employer. It was not repaid in full by her. She must take full responsibility for her actions. Her failure to repay the said cost of the airline tickets has resulted in a loss to the Employer. Her actions were not in keeping with her position as Accounts Supervisor.

Conclusion

- [77] Ms. Christopher seems to have been prepared to use the company's resources for her own personal benefit. An accounting officer has the responsibility to set a proper example to all other staff members. She has a duty to act responsibly. It is also her duty to use the company's financial resources in such a manner so as to benefit the company and not for her own personal use.
- [78] Ms. Christopher refused to repay her staff loans in their entirety when they became due. She obtained a further financial benefit with respect to the rental of the vehicle. In addition she obtained free personal travel at the company's expense.
- [79] Here is an employee who has used the company's financial resources for her own personal gain. In the circumstances of this case I hold that her activities undermined the trust and confidence which is so vital in the relationship of employee and employer. Her actions clearly demonstrated that she was unable to command the trust and confidence of the Employer. Her actions amounted to misconduct as defined in **Section C58 (1) of the Labour Code.**

[80] Mr. James for the Employee stated that management did not carry out a proper investigation. I am satisfied that an investigation was carried out. In any event however, if no adequate investigation was effected, the same findings would have been obtained by the Employer. These were (a) that the Employee did obtain four loans, (b) that she rented the vehicle and (c) that she bought two LIAT airline tickets. The case of **Kelly-Madden v Manor Surgery [2007] I.C.R. 203 (E.A.T.)** is helpful reading.

[81] Certain deficiencies and weaknesses in the company's accounting department which arose as a consequence of an assessment of that department in September 2007 were not substantiated by the evidence.

The second issue

Did the Employer act reasonably to dismiss the Employee?

[82] The Employer conducts a business which requires that its employees conduct their affairs in an honest manner. In the circumstances of this case I hold that the Employer acted reasonably in its dismissal of the Employee. It's dismissal of the Employee was fair.

The third issue

In the event that the Employee was unfairly dismissed what is the measure of damages to which she may be entitled?

[83] In light of my findings at **paragraphs [78] – [81]** above, this issue does not require any determination.

The fourth issue

Are any sums of money due by the Employee to the Employer?

[84] The Employer claims that the Employee is indebted to it in the sum of EC\$35,382.72. This sum comprises matters which this Court has taken into consideration in the unfair dismissal claim. They are (i) \$7,090.40 for staff loans and (ii) \$540.00 for the car rental. I am not of the opinion that I should take them again into consideration.

[85] There remains the sums of \$1,878.15 for unaccounted cash and \$25,874.17 for overpayment of annual leave and salary. The sum of \$1,878.15 relates to petty cash. The Employee gave evidence that Mr. Arthur Bostic obtained sums from the petty cash for her. No clear evidence exists to support the Employer's claim that the Employee owes it \$1,878.15 or any part of that sum.

[86] The sum of \$9,469.44 is part of the larger sum of \$25,874.17. Mr O'Marde for the Employer was shown the cheque for \$9,469.44. He stated that he signed the cheque. In addition he stated that that payment to Ms. Christopher was made to her as a result of seeing the calculations which led to that sum. According to him this cheque was paid to ***"clear up a backlog in respect of payments for vacations and other things. (He) would not have signed the cheque based only on the payment voucher"***.

[87] In accordance with Mr. O'Marde's evidence I hold that this part of the larger sum is not repayable to the company by Ms. Christopher.

[88] In Mr. O'Marde's evidence he stated that the sums paid to Ms. Christopher were for ***"vacations and other items"***. The benefits must therefore be given

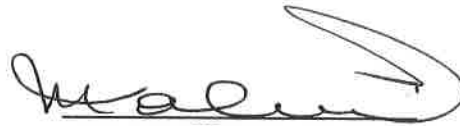
to Ms. Christopher that payments made to her by the company may have been for ***“other items”***. I hold that no sums are repayable by the Employee to the Employer.

[89] The Employee's Reference is dismissed. There shall be no order as to costs.

Dated the 27th day of April, 2011


PHILIP A. PILGRIM
President

I agree.


M. ALTHEA CRICK
Member

I also agree.


M. GLENDINA MCKAY
Member