

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 8 OF 2007

BETWEEN:

AGATHA DUBLIN

Employee

And

AMERICAN AIRLINES

Employer

Before:

The Hon. Norris O. Scholar

The Hon. Dr. Hayden Thomas

The Hon. M. Glendina McKay

Chairman

Member

Member

Appearances:

**Mr. Kendrickson H. Kentish of Lake & Kentish
Attorneys-at-Law for the Employee**

Mr. Jason Martin Attorney-at-Law for the Employer

**2009: April 16, 17, 20
2011: July 7**

JUDGMENT

SCHOLAR N.:

Introduction

- [1] The Employer is one of several airline service providers which operates its business at the V.C. Bird International Airport at Coolidge in Antigua and Barbuda.

- [2] The Employee commenced employment with American Airlines during the month of September 1981. She was initially employed as a Cross Utilised Agent. She obtained promotions with her Employer. She worked with American Airlines for twenty-two and a half (22.5) years. She rose to the rank of International Security Coordinator according to her Witness Statement sometime in or about July 1991. In her Employee Memorandum Mrs. Dublin stated that on or about January 2000 she was promoted to International Security Coordinator. In her evidence to the Court she stated that she was ***“in charge of the security department for twelve and one half years”***. It is to be presumed therefore that she obtained the position of International Security Coordinator in 1991 as opposed to the year 2000. She was exposed to and did receive regular training in security procedures from the airline.
- [3] In her role of International Security Coordinator she was paid a monthly salary of EC\$6,640.80 together with a monthly allowance of EC\$681.00 and US\$250.00 per year for travel and uniforms respectively. This amounts to a gross monthly salary of EC\$7,378.04 or a net figure of EC\$6,296.83.
- [4] The Employee gave evidence that her selection as the International Security Coordinator was made by the Corporate Security Department in Dallas in the United States of America.
- [5] During her tenure as the International Security Coordinator for American Airlines, her Employer did conduct reviews of her performance. With regard to security matters the Federal Aviation Administration in the United

States of America and the Airline's Corporate Security Department did conduct security audits of her department annually.

- [6] According to Mrs. Dublin after each audit was completed, her department obtained a very high success rate. Ms. Janine Billy was the Country Manager of American Airlines for the year 2003. As a result of the completion of a Corporate Security Audit in 2003, the General Manager wrote to Mrs. Dublin a letter dated August 12, 2003 the substance of which is in the following terms:

"12 August 2003

*Agatha Dublin
International Security Coordinator
ANU*

Dear Agatha,

Congratulations on yet another outstanding Corporate Security Audit! As a result of your contribution, your department has completed its second audit in two years with absolutely no findings. This is indeed a testament of your hard work and dedication to your role as International Security Coordinator.

On behalf of the company and myself, I would like to thank you for performing such an outstanding job.

As a gesture of my appreciation you are hereby awarded two free D1 tickets in First Class to any destination flown by American Airlines

Once again, thank you for the outstanding effort. Keep up the good work!!!

Regards

*Janine Billy
Company manager
ANU
Cc: personnel file"*

- [7] Subsequent to the Corporate Security Audit of 2003, the Employer states that certain matters arose which ***“constitutes unsatisfactory job performance (which) indicates a lack of understanding of (the Employee’s) role as supervisor. This demonstrates that (the Employee’s) employment with American Airlines cannot reasonably be expected to continue”***. This description of the Employee’s performance is contained in its letter of dismissal to the Employee by the Country Manager dated March 01, 2004.
- [8] Three matters were highlighted in the letter of termination to the Employee. Firstly, it made mention of a breach of security on an American Airlines aircraft on February 03, 2004. According to the Employer this breach was not reported to the Regional Director of Security, Corporate Security through the Antigua Station (ANU) Daily Level 11 Report or verbally to the Duty Manager. Secondly, the Employer states that the Employee failed to train any employee whom she supervises to open the cabin of an American Airline’s aircraft. Thirdly, it is the Employer’s contention that on February 08, 2004 the Employee ***“verbally attacked another Supervisor, Cathy-Ann Edwards on two occasions during (an) operation”***.

Efforts at mitigation

- [9] (i) The Employee obtained alternative employment on May 04, 2004 with another organization. She earned a monthly salary of EC \$8,100.00.
- (ii) The letter of termination stated that the Employee received EC\$14,783.11 for the following matters:

(a)	Pay for March 01, 2004	\$ 307.44
(b)	29 days vacation pay	8,915.76
(c)	One month's pay in lieu of notice	6,659.80
(d)	Less deductions to Credit Union etc.	1,197.89
		\$14,783.11

(iii) These numbers just do not add to \$14,783.11

Legal proceedings

[10] A Reference was filed on the Employee's behalf by her Attorney-at-Law on August 01, 2007. In that Reference the Employee requests the Court to determine whether or not she was unfairly dismissed in circumstances where she may be entitled to compensation.

[11] The Employee's Memorandum was filed on August 01, 2007. In that document the Employee claims that she was unfairly dismissed. As a consequence the Employee submits that she is entitled to several awards. These include Loss of Protection, Immediate Loss of Earnings, Manner of Dismissal, and Exemplary Damages.

[12] The Employer's Memorandum was filed on November 04, 2008. The Employer is of the opinion that based upon the circumstances which were outlined in **paragraph [8]** above the Employer's dismissal of the Employee was not unfair.

[13] Mr. Jason Roberts and Mr. Peter Abraham filed Witness Statements on December 05, 2008 on behalf of the Employee. Her Witness Statement was also filed on December 05, 2008.

[14] Ms. Cathy-Ann Edwards' Witness Statement on behalf of the Employer was filed on February 13, 2009.

The issues

- [15] (i) **Whether or not the Employer's action to dismiss the Employee was reasonable or unreasonable.**
- (ii) **In the event that this Court holds that the Employee was unfairly dismissed what is the measure of damages to which she may be entitled?**

The law

[16] C 56 of the Labour Code provides 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."

[17] (a) C 58 (1) (a) and (2) of the Labour Code reads as follows:

"C 58 (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 C 59 (1) and (2);

- b) ;
- c) ;
- d) ;
- e) ;

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

(b) C 58 (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.”

[18] Section C 58 (1) (a) of the Labour Code must be read in conjunction with Section C 59 (1) (a). C59 (1) 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)”

[19] The test which must be used to ascertain whether certain circumstances amount to misconduct in any given case is stated at Section C59 (1) (a) of the Labour Code. The employee’s behaviour must be *“so serious that the employer cannot reasonably be expected to take any course other than termination”*.

[20] The way how the test should be applied was outlined by Lord Maugham in **Jupiter General Insurance Co. v Shroff [1937] 3 All E. R. 67**. At page 74 C Lord Maugham stated *inter alia* 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”.

[21] The degree of misconduct which Section C 58 (1) (a) of the Labour Code requires to be applied to the circumstances of this case was outlined by **Lord James in Clouston & Co. Ltd. v Corry [1906] A.C. 122**. Lord James who delivered the judgment of the Privy Council stated at page 129 as follows:

“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 a question of fact”.

The first issue

Whether or not the Employer’s action to dismiss the Employee was reasonable or unreasonable.

(a) The verbal attack on February 08, 2004.

Discussion

[22] The incident of February 08, 2004 when according to the Employer the Employee “*verbally attacked another supervisor, Cathy-Ann Edwards on two occasions during the operation*” is the first matter which I shall examine. The Employer did not adduce any evidence of its Work Environment Policy. The termination letter made reference to Rule 32 of that Policy. It states as follows:

“Behaviour that violates the company’s Work Environment Policy, even if intended as a joke is absolutely prohibited and will be grounds for severe corrective action, up to and including termination of employment. This includes, but is not limited to, threatening, intimidating, interfering with, or abusive, demeaning, or violent behaviour towards another employee, contractor, customer, or vendor, while either on or off duty. Behaviour that is also hate-related will result in immediate termination of employment, regardless of length of service and prior employment record”.

- [23] A report dated February 16, 2004 of an incident which occurred on February 8, 2004 at the Employer's place of business at V.C. Bird International Airport was prepared by Ms. Janine Billy the Country Manager. The report entitled 'American Airlines Performance Counseling Record' was admitted as "AA-13".
- [24] According to the report there was a delay on the American Airlines 1130 flight which was coded to 12B. This refers to a security delay. The code reference was done by Ms. Cathy-Ann Edwards the Lead Agent in the Operations Department. The report also mentions *"an incident in the Operations Office where Mrs. Dublin berated Ms. Edwards in the presence of a non American Airlines employee and other junior American Airlines employees"*.
- [25] Ms. Edwards was not pleased *"by these events and felt they did not bode well for team effort and for her relationship with Mrs. Dublin as a fellow supervisor. She felt disrespected and wrote to request a meeting to address the issues highlighted above and to express that she will not tolerate being spoken to in this manner by anyone at the station"*.

See page 1 of the report.

- [26] The report also states that Ms. Edwards *"is not afraid nor intimidated by Mrs. Dublin and therefore saw no reason why Mrs. Dublin could not approach her in a more professional manner. Mrs. Dublin making her comments and storming off was disrespectful to her in her view"*.

[27] Ms. Edwards is also of the view that Mrs. Dublin *“again approached her in an angry manner and demanded a reason for the delay code being used”*.

[28] The report also stated as follows:

“Agatha then asked Cathy-Ann what did she say that was offensive when she simply asked questions regarding the fact that there was no answer to her questions over the radio and it was crunch time. Cathy-Ann explained that it was the tone and the aggression and not the questions that posed the problem. Agatha went on to state again that she was upset because of the critical time and responses weren’t forthcoming over the radio. She did not see the issue, and she was speaking to Jason. Cathy-Ann stated that she did not anticipate Mrs. Dublin accepting that she had done something wrong. Whether she was directing her berage at herself or the other employee she shouldn’t verbally attack anyone on the job even if passionate about the operation.”

[29] Ms. Billy stated in the report as follows:

“I then advised them that they both could have handled it better, Agatha should have considered the gate operation and Cathy-Ann should have called when Agatha was late incoming. I then explained that we can admit that there is a problem with the radios and communication is not always clear from all access points on the airport. Cathy-Ann also accepted that there are times when her team is not diligent about answering the radio and she has accepted that in the past. She explained that sometimes you may be moving about and not close to the radio or just pre-occupied”.

[30] The report ended with the following paragraph:

“Agatha stated that Cathy-Ann has responded to her questions aggressively on occasions in the past and she has had to immediately end the discussion by saying “not to bother”. Agatha also added that Cathy-Ann does have an attitude with her when there is a vexing situation. Cathy-Ann responded to Mrs. Dublin that there are times when her responses to Mrs. Dublin are abrupt and aggressive but this is due mainly to the fact that she, Mrs. Dublin, can be extremely provoking and this makes it difficult for others to work in a spirit of cooperation”.

[31] Mr. Jason Roberts was the first witness who gave evidence in this Court. He stated that the contents of his Witness Statement are true. He worked at American Airlines for seventeen and a half (17.5) years. His last date of employment with American Airlines was June 2004. He obtained employment with the Port Authority in July 2004. In answer to Mr. Jason Martin, Attorney-at-Law for the Employee he stated that while he was employed at American Airlines he worked as a Security Agent/Acting Security Lead. He reported to Mrs. Dublin who was in charge of security for American Airlines.

[32] Mr. Roberts recalled February 08, 2004. He was at work in the American Airlines Flight Operations Room at the Airport. Mrs. Dublin came into the Flight Operations Room. Inside that room were Cathy-Ann Edwards, a baggage handler and himself.

- [33] In his Witness Statement Mr. Roberts made mention of Mrs. Dublin *“speaking to us”* and speaking *“directly to her”* referring to Cathy-Ann Edwards.
- [34] Mr. Roberts told the Court that when Mrs. Dublin entered the Flight Operations Room she was upset. She spoke in a loud voice but not excessively loud. She stormed into the room with a passion. There was a sense of urgency in the way she came into the room. He referred to Mrs. Dublin as *“a strong willed person. She speaks frankly. She speaks her mind”*.
- [35] According to Mr. Roberts *“Mrs. Dublin spoke directly to Ms. Edwards and told her exactly what was on her mind at that time. She did not storm out. She left. She was upset. There was an aircraft delay. What it was coded to I can’t speak on”*.
- [36] The Employee gave evidence of the incident which took place on February 08, 2004. She made reference to her use of the handheld radio to call *“to the gate and operations”*. This was in an attempt to obtain the cockpit departure paperwork for the aircraft’s captain. This work is done by the passenger services agent who is an operations agent.
- [37] Mrs. Dublin stated that only two minutes remained to get the required documents to the aircraft, close the aircraft’s door and remove the attending equipment before the captain could release the brakes and register a departure time. She became concerned and rushed to the operations office to assist with the expedition of the documents. In the office were three

persons. They were Cathy-Ann Edwards, Jason Roberts and the contract ramp supervisor.

- [38] When Mrs. Dublin entered the Flight Operations Room she enquired as to why is anybody not answering the radio. According to her, Jason Roberts responded that Cathy-Ann Edwards was not in the Flight Operations Room for all the time. Mrs. Dublin responded by stating that Cathy-Ann Edwards is not the sole person who has control of a handheld radio.
- [39] Mrs. Dublin stated that she did not speak to anyone aggressively, but out of *“a sense of urgency and professional concern”*.
- [40] In answer to Mr. Martin, Mrs. Dublin stated that when she returned to the Flight Operations Room she was concerned and upset. She stated that Cathy-Ann Edwards was in charge of the Flight Operations Room at that time. She stated that she addressed the two persons in the room. She did not speak to Ms. Edwards. She could not state that she *“looked at Cathy-Ann Edwards”*.
- [41] Mrs. Dublin further informed the Court that when she approached the Flight Operations Room there was no delay. The delay was however imminent. As a consequence it could not have been coded until after the flight had departed. When she therefore approached the Flight Operations Room she *“would not have known what her intentions were at the time when (she) came to ask (Ms. Edwards) about the delay”*.

- [42] Ms. Cathy-Ann Edwards gave evidence for the Employer. She has assumed the position as Country Manager of American Airlines. Ms. Edwards informed the Court that when Mrs. Dublin approached the Flight Operations Room she was rushing. She was very disturbed. She demanded why was it that no one was answering the radios. She directed her demands at Ms. Edwards who was responsible for the operations area.
- [43] Ms. Edwards stated that present in the Flight Operations Room were Jason Roberts, a ramp contract agent, a passenger service agent, and herself. According to Ms. Edwards she did not respond to Mrs. Dublin's question. She *"had a difficulty with Mrs. Dublin's manner. Her manner and tone were disrespectful in complete violation of the rules of conduct that govern us as employees. These rules were observed with respect to the respectful treatment of each other and were to be observed"*.
- [44] Ms. Edwards also stated that Mrs. Dublin *"stormed into the operations room, on a second occasion, stamped the delay message on the operations counter and asked what is this"*. Ms. Edwards responded that she had coded the delay as 12B which represents a security delay. According to Ms. Edwards, Mrs. Dublin demanded that she change the code as the reason for the delay was not her department's fault. Mrs. Dublin was upset. She left the Flight Operations Room and in her opinion Mrs. Edwards *"stormed out"*.
- [45] In answer to Mr. Kendrickson Kentish, Attorney-at-Law for the Employee Ms. Edwards stated that on the first occasion when Mrs. Dublin entered the Flight Operations Room she spoke to her, not by name. According to Ms.

Edwards, Mrs. Dublin ***“used no obscenities, she did not point her finger in my face, and used no physical violence”***. Ms. Edwards’ objection was to Mrs. Dublin’s ***“manner and tone of her speech”***.

The Employee’s submissions

[46] Mr. Kentish in his Written Submissions filed on July 14, 2009 stated that ***“the precise”*** reason for dismissal has not been provided. He further submits that ***“there is only a vague allegation of a verbal attack upon Miss Cathy Edwards”***. I disagree.

[47] The reasons as stated by the Employer are clear for the Employee to understand why she was dismissed. One of those reasons is that the Employee ***“verbally attacked another Supervisor, Cathy-Anny Edwards on two occasions during the operation”***.

[48] Mr. Martin for the Employer submits that ***“it was likely that the Employee’s manner and tone was disrespectful towards Ms. Edwards in breach of the accepted written rule and policy of the Employer”***. Mr. Martin further submits that the Employee’s behaviour on this ground warranted summary dismissal in accordance with Section C 58 (1) (a) of the Labour Code.

Discussion

[49] There must be some specific words used by the Employee or some action on her part which would constitute a threat, intimidation, interference with, abuse, demeaning, violent or other behaviour towards another employee so that Rule 32 of the Employer’s Work Employment Policy would apply. In

addition, the Court must take into consideration the view of Ms. Edwards as a consequence of the Employee's behaviour.

[50] In the American Airlines Performance Counseling Record "AA-13" Ms. Billy the then Country Manager advised the Employee and Ms. Edwards *"that they both could have handled it better, ..."*. Ms. Billy also stated that in that report *"Cathy-Ann also accepted that there are times when her team is not diligent about answering the radio and she has accepted that in the past"*.

[51] Mrs. Dublin apologised to Ms. Edwards if in this event she has offended her. Ms. Edwards *"was not happy with the flippant attitude of Mrs. Dublin's apology"*. According to the Report "AA-13" Ms. Edwards has been sometimes *"abrupt and aggressive"* in certain circumstances to Ms. Dublin.

[52] In her evidence Ms. Edwards could not state any obscenity, finger pointing or any other action used by the Employee to constitute any breach of Rule 32. According to Ms. Edwards it was the Employee's *"manner and tone of her speech"* which she found *"to be unprofessional and offensive and not at all conducive to building team spirit"*.

See paragraph [10] of her Witness Statement

[53] The Employee's action and speech in this regard must be judged in the context of the prevailing circumstances. She had used the hand held radio to obtain contact with someone in the Flight Operations Room. She was unsuccessful. She went to the Flight Operations Room to obtain information

for the American Airlines captain. It is clear that her purpose in the Flight Operations Room was to ensure that the captain received the information within the limited period of time.

- [54] A discussion between Ms. Edwards, Mrs. Dublin and Ms. Billy took place on February 16, 2004 to address the matters raised by Ms. Edwards. The nature of that discussion is chronicled in **Exhibit “AA-13”**. In that discussion Ms. Edwards stated that *“she is not afraid nor intimidated by Mrs. Dublin and therefore saw no reason why Mrs. Dublin could not approach her in a more professional manner”*.
- [55] After February 16, 2004 nothing more is heard of the incident which occurred on February 08, 2004 before the Employee was dismissed more than three weeks later by letter of March 01, 2004.
- [56] Mrs. Dublin was a senior employee of the airline with more than twenty-two (22) years experience. She had offered an apology to Ms. Edwards.
- [57] In any event however, it appears to me that the Employer having investigated the incident allowed Mrs. Dublin to resume her role as the International Security Coordinator, with the clear impression that all was well.
- [58] In the circumstances of this case Mrs. Dublin’s behaviour was not so serious that the Employer could not reasonably be expected to take any course other than to dismiss her. The reason adduced by the Employer to dismiss the Employee was unreasonable.

[59] The letter of dismissal dated March 01, 2004 at **paragraph [1]** states as follows:

“On the 3 February, 2004, there was a breach of security on the American Airlines aircraft. This matter was not reported to the Regional Director of Security, Corporate Security Department via the ANU Daily Level 11 Report or verbally to the Manager on Duty.”

[60] Mrs. Dublin gave evidence to the Court. She resides at Piccadilly. She signed a Witness Statement on December 05, 2008. According to her the contents of that Witness Statement are true. This was her evidence in chief.

[61] Mrs. Dublin recalled February 03, 2004. She indicated that on that day the number of workers in her department was less than the full complement. According to her *“American Airlines had persons on vacation, sick leave and generally the company had put a freeze on hiring at that time”*. The evidence before the Court is that on February 03, 2004 one agent in the International Security Coordinator’s Department was on leave from work due to illness. This is contained in the Daily Report of American Airlines for February 03, 2004. It was presented by American Airlines as part of a set of documents and marked **“AA-11”**.

[62] Mrs. Dublin knows Richard Gunthner. He was recently appointed as the Managing Director of Corporate Security for American Airlines.

[63] In answer to Mr. Martin, Mrs. Dublin recalled the events of February 03, 2004. She stated that the security of American Airlines aircraft was her

responsibility. Two bona fide passengers who had valid boarding passes gained entry to an American Airlines aircraft prior to boarding time without having those boarding passes firstly torn by an airport security agent.

[64] On February 03, 2004 as the International Security Coordinator her responsibility was to ensure that there was an “*American Airline charge*” at the foot of the aircraft. No non-American Airline passenger or personnel was to gain access to the American Airline aircraft without the aircraft charge granting access. Regardless of whether an airport security agent failed in his obligation to tear the American Airlines boarding pass an American Airlines trained charge should have been at the foot of the aircraft to supervise access to the aircraft.

[65] According to Mrs. Dublin the aircraft charge was not in place as prescribed because the airline operated with a shortage of staff. This was known to Dallas in the United States of America where the airline’s corporate office is located. It was also known to Ms. Billy the Country Manager.

[66] On February 03, 2004, according to Mrs. Dublin the aircraft’s charge was on board the aircraft. He was executing certain functions. Mrs. Dublin also stated that with this shortage of staff the door to the aircraft is closed and a search of the aircraft is made. It is Mrs. Dublin’s evidence that on February 03, 2004 either a flight attendant or an aircraft mechanic opened the aircraft’s door. This is how the two passengers with valid boarding passes gained entrance to the aircraft.

[67] On February 03, 2004 Mrs. Dublin was on board the American Airlines aircraft along with other un-named American Airlines security employees. Her evidence is that *“we saw them from the time they entered the door. We were in control of the situation from the time that they entered the door. The persons were not unauthorised because they had boarding passes for that flight”*. The passengers were immediately stopped and escorted off the aircraft to the gate area.

[68] (a) Mrs. Dublin also stated that the American Airlines Duty Manager acts as the Country Manager. In that capacity she is my superior officer. All important security breaches must be reported immediately to the Duty Manager in accordance with the company's policy. For a security breach of this nature it must be reported to the Regional Director of Security through the Antigua Daily Level 11 Report.

(b) According to Mrs. Dublin she did make some attempts to contact Cathy-Ann Edwards on February 03, 2004 in order that she could report the breach of security to her. Those attempts failed.

[69] Mrs. Dublin's evidence is that she failed to immediately include the breach of security in the Antigua Daily Level 11 Report. By letter dated February 03, 2004 Mrs. Dublin did write to Mr. Peter Abraham, the Chief of Security at the V.C. Bird International Airport. This letter was admitted as **“AA-1”**. She preferred to wait until she had received a report from the Chief Security Officer.

- [70] Mr. Peter Abraham resides at Coolidge in the parish of St. George. In 2004 he was the Chief of Security at the V.C. Bird International Airport. In this capacity he knew Mrs. Dublin as the International Security Coordinator of American Airlines. A Witness Statement was filed on his behalf on December 05, 2008.
- [71] Mr. Abraham investigated the breach of security which took place on February 03, 2004. He wrote a report to Mrs. Dublin dated February 09, 2004. This was admitted as **"PA-1"**.
- [72] In his report Mr. Abraham indicated that the breach occurred at approximately 1515 hours. The breach allowed two passengers to board American Airlines flight 1130 before their relevant travel documents were checked and approved by the Airport Security Agent at the gate.
- [73] Mr. Abraham's report states that the Airport Security Agent at the gate left her post unattended. In addition the Airport Security Agent at the foot of the aircraft should have observed that the two boarding passes were not torn. Mr. Abraham also found that there was no communication to his department that the flight was boarding.
- [74] Now armed with the report from Mr. Abraham dated February 09, 2004, on the same date the Employee reported the security breach to Mr. Richard Gunthner, Ms. Billy and two other parties. That electronic mail in its entirety was presented to be admitted as part of a bundle of documents by American Airlines. (It is marked **"AA-11"**). It states as follows:

From: Richard A. Gunthner
To: Dublin, Agatha
Date: 2/9/04 12:53PM
Subject: Security Breach – ANU

Agatha:

If there is no one else available at this time, then the only choice is to add another agent.

Richard

>>>Agatha Dublin 02/09/04 01:48PM >>>
Richard,

RE the attached, I have just received a copy of the Contractor's report.

I was unable to report on it earlier as we were unsure as to what the facts were. At no time did the psgrs pose a threat as they were monitored from the time they entered the aircraft. The psgr indicated that they given a boarding time of 1515 hrs and proceeded to the aircraft at that time. There were other flights boarding at the same time.

We did have an understanding with Airport security to observe/challenge anyone requiring access to the aircraft during the search. This was acknowledged by the Chief Security Officer.

We have gone through 3 Corporate Security and 5 FAA audits with this arrangement without incident. Although disciplinary actions have been taken by the authorities, I am advised that we no longer be using them for assistance.

This therefore means that we will need an additional head for this function, as we do not have an agent assigned to the door during the entire 76 minutes the aircraft is on the ground. The agent is usually in place after they have completed the aircraft search.

Regards

A

CC: Billy, Janine; Rivero, Humberto"

[75] How did American Airlines deal with this breach of security which occurred on February 03, 2004? Ms. Janine Billy the then Country Manager wrote an

electronic mail (e-mail) to Mr. Richard Gunthner dated February 09, 2004 at 12:52 p.m. It is headed "**Security Concerns**". In that e-mail letter Mr. Gunthner raised certain matters.

- (i) The first was the relationship between the International Security Department of American Airlines and the Airport Security Department whereby an Airport Security Agent was provided at the foot of the aircraft stairs during the search process. Ms. Billy enquired of Mr. Gunthner if this arrangement complied with the I S P requirements. According to her *"Agatha was of the opinion that since she advised me of this, it was in fact included in the contract"*.
- (ii) The second concern related to the closing of the aircraft door during the period when the aircraft is searched. Ms. Billy's e-mail was admitted by American Airlines as part of a bundle of documents. (It is marked "**AA-11**".)

[76] Mr. Gunthner responded to Ms. Billy's e-mail through an e-mail dated February 09, 2004 at 1:30p.m. In that e-mail he stated *inter alia* as follows:

"Janine:

Per our discussion, here are the requirements as they relate to the aircraft charge position required by the International Security Department and the TSA:

- ***Anytime an aircraft cabin door is open, there should be an "aircraft charge" there to monitor access to the aircraft. This security agent must be trained by FSU in either "NPC" or "DSP".***
- ***It is acceptable to close the aircraft door during the search and use the aircraft charge to help search the aircraft."***

[77] The e-mail of Mr. Gunthner to Mrs. Dublin dated February 09, 2004 at 12:53 p.m. reveals some further information with respect to how American Airlines dealt with the security breach of February 03, 2004. In the e-mail of February 09, 2004 which is headed '**Security Breach**' Mrs. Dublin made reference to the previous three Corporate Security and five FAA audits with the existing arrangement of obtaining assistance from the Airport Security Department. This arrangement was discontinued by Ms. Billy in a letter to Mr. Abraham dated February 10, 2004.

[78] Mrs. Dublin also states in her e-mail as follows:

"This therefore means that we will need additional head for this function, as we do not have an agent assigned to the door during the seventy-six (76) minutes the aircraft is on the ground. . . ."

[79] Mr. Gunthner in that e-mail to Mrs. Dublin made the following recommendation:

"If there is no one else available at that time then the only choice is to add another agent".

[80] A discussion was held between Ms. Billy and Mrs. Dublin on February 09, 2004. The nature and outcome of this discussion is chronicled in the American Airlines Performance Counseling Report (a Report of February 10, 2004). It was admitted by the Employer as "**AA-11**". This discussion took place to deal with the security breach of February 02, 2004.

[81] In the Report of February 10, 2004 it stated as follows:

*“Agatha also stated that she cannot close the door during the search as this is a safety hazard and if the aircraft charge needs to be at the door at all times, then she would need additional manning. I (Ms. Billy) suggested to Agatha that there must be a way to do this as the other stations are using the same procedure. She continued to insist that the door cannot be used during fueling. I advised her that I am aware of this but we have closed the door on this station because I have seen it and it is my understanding that this is the procedure we are using so I cannot understand this issue now. **I told her I would check this again with the Regional Director of Security and if it means that we need additional headcount then we will do that**”*
(the emphasis is the Court’s).

[82] Ms. Billy also raised with Mrs. Dublin the matter of her failure to record the events of February 02, 2004 in the ANU Daily Level 11 Report. Mrs. Dublin informed her that *“she did not have enough information to provide in the report”*.

[83] The Report also stated as follows:

“Agatha agreed that she would not use the Airport Security in that capacity at the foot of the stairs in the future. She then asked if she would be given additional manning and I advised her that I would find out what is the best means of accomplishing the tasks. I advised Agatha that I would get back to her once I had spoken to the Director of Security. I then forwarded an e-mail to the Regional Director of Security and he responded to me, copied Agatha and Humberto Rivero, Regional Managing Director.”

[84] Mrs. Dublin in an e-mail to Ms. Billy dated February 10, 2004 at 8:04 a.m. raised some matters. It was admitted as “AD-1”. She commenced writing the e-mail as follows:

“Janine,

Based on our discussion regarding the coverage of the aircraft door during search, please be advised that I am requesting immediate assistance for that position. Be reminded that the agent must be DSP trained.”

[85] Mrs. Dublin also mentioned the following matters:

- (i) “The results of my updated manning chart indicates a daily requirement of one (1) International Security Coordinator and nine (9) agents.....*
- (ii) The distribution of agents would be three (3) searchers, one (1) cabin observer/searcher, one (1) aircraft charge, two (2) ramp agents and two (2) bag room agents.*
- (iii) I would also like to suggest that a letter of appreciation, from your office to the Chief Security Officer, for the assistance they have rendered to us at the aircraft for the past twenty-eight (28) months. This letter should also serve to officially inform him that we no longer require his services/assistance in this area.*
- (iv) In light of the above, it may become necessary to delay the transfer of the two (2) security agents who have been accepted for passenger service vacancies, until April 2004, which is the first available date for initial security training.*
- (v) Please be reminded that I have not yet been given the required password for the E-city website.....*

(vi) *Would also appreciate some instructions as to the handling of maintenance related issues when the mechanic is off duty."*

[86] Ms. Billy wrote an e-mail to Ms. Dublin dated February 10, 2004. It is headed Re: Security Manning Requirements. That e-mail in its entirety states as follows:

"Internal Memo

*To: Agatha Dublin
ISC*

From: Janine Billy

Date: 10 February 2004

Cc: Personnel file

Re: Security Manning Requirements

Based on the e-mail response from Richard Gunthner and conversations with him you are hereby instructed in the following regarding the manning of the operation:

- *There will be a total of seven agents and 1 ISC per AA operation.*
- *This will be: 2 searchers, 1 cabin observer/searcher, 1 aircraft charge/searcher, 1 ramp observer and 2 bagroom agents (one to assist with the ramp and or search once the bagroom is closed)*
- *The aircraft charge will assume the search position once the fueling is completed and the aircraft can be closed.*
- *The cabin observer is required only as long as Non-AA employees are on the aircraft, i.e. the cleaners*
- *Carolyn Perry is due back to work on 16 February 2004. Therefore you should be able to stick with the original transfer dates, as your manning requirements remain the same.*
- *Your NIR report should be on your e-city page when you sign in, as it requested for you on the 8 Jan 2004. If it is not there please advise and I will re-send the request.*
- *As with any other maintenance issue, you will call out the AA mechanic when an issue arises that needs his attention.*

Your compliance is appreciated.

Regards
Janine Billy
Country Manager
ANU”

The Employee’s submissions

[87] Mr. Kentish for the Employee stated the principle in Section C 59 (1) of the Labour Code. Rawlins J.A. (as he then was) made reference to this principle in *The Epicurean Ltd. V Taylor Civil Appeal No. 4 of 2003*. Mr. Kentish submits that the evidence in this case does not amount to misconduct.

The Employer’s submissions

[88] Mr. Martin for the Employer made some submissions to the Court. They are as follows:

- (i) *Gross or serious negligence in the performance of one’s employment duties is a form of misconduct for the purposes of unfair dismissal.*
 - *Cowerford v Swel Foods Ltd. [1972] I R L R 17*
- (ii) *In cases where high standards are required because of the seriousness of the potential consequences, it is entirely appropriate to dismiss an employee for even one failure to perform in accordance with those standards.*
 - *per Alidair Ltd vs J D Taylor [1978] I C R 445.*
- (iii) *The Employee’s failure to ensure that unauthorised persons did not access American Airline aircraft, and her failure to ensure that her staff was adequately trained in the operation of aircraft doors are two almost immediate consecutive clear*

incidences of gross negligence which amount to misconduct warranting summary dismissal.

(b) A failure by the Employee to train any employee whom she supervises to open the cabin door of an American Airline aircraft.

- [89] The last full security audit prior to the Employee's dismissal by letter dated March 01, 2004 took place in 2003. This produced an outstanding Corporate Security Audit. The Employee's Department never failed a security audit.
- [90] Mrs. Dublin testified that the opening and closing of the cabin door is not a security function. This is the province of the passenger service agent.
- [91] In answer to Mr. Martin, Attorney-at-law for the Employer, Mrs. Dublin recalled February 06, 2004. It was her responsibility to ensure that her staff was trained in security procedures in accordance with the International Security Procedures Manual.
- [92] As the Head of Security if a new aircraft is due to arrive in the country her duty was to make sure that the security personnel are adequately trained. She pointed out however that her staff was not responsible for the aircraft door training.
- [93] According to Mrs. Dublin, Cathy-Ann Edwards was responsible for station training of the other generic areas. Mrs. Dublin stated that her security staff

was not required to open the aircraft door. They did so on some occasions because the passenger service agents were not in place to do so.

[94] Mrs. Dublin further stated that her staff did open cabin doors and other panels on the aircraft. She stated that the opening of doors if not properly done could have serious consequences.

[95] Mr. Martin referred Mrs. Dublin to an e-mail dated February 06, 2004 from Mr. Richard Gunthner to the Mexican Caribbean Latin America International Security Coordinators. The e-mail made reference to an American Airline aircraft which was *“recently air interrupted because the hydraulic compartment door was improperly closed after a security inspection and opened in flight”*. This flight did not originate from Antigua and Barbuda.

[96] The e-mail further stated that *“..... NO security agent shall ever open any door, compartment or panel that requires special doors or special training. The only exception would be the opening of an aircraft cabin door, as long as the agent has been properly trained and the E T R updated”*.

[97] The e-mail further stated as follows:

“If you feel that for security reasons, certain non-passenger accessibility areas need to be searched at your station, you must have an aircraft maintenance mechanic open and then close those areas. Under no circumstances shall a security agent perform this function”.

[98] Mrs. Dublin made reference to a meeting with Ms. Billy with regard to training. Ms. Billy informed her that it is her responsibility to ensure that this training was done. Mrs. Dublin stated that there was in existence a Training Coordinator. In her earlier testimony she identified that person as Ms. Cathy-Ann Edwards. Mrs. Dublin stated that her staff opens the hydraulic panels.

[99] Mrs. Dublin made reference to a Memorandum dated February 07, 2004. It was authored by Cathy-Ann Edwards and sent to All Airport Departments. It was copied to Janine Billy. (It was admitted as "AA-13".) This Memorandum states as follows:

"MEMO

Date: 02/07/2004

To: All Airport Departments

Cc: Janie Billy

From: Cathy-Ann Edwards

RE: 757 Training

The SAI lesson TL09/06 provides training for the opening and closing of the 757 aircraft cabin doors. The video P0307 also provides visual aids in the opening and closing procedures. The video R0757 located in the video library upstairs offers instruction on the ramp operating procedures.

Additionally, there will be a hands-on training session with the 757 aircraft doors after flight arrival and deplaning/off loading procedures on Saturday 7th February 2004. This session will be repeated from Tuesday 10th February to Saturday 14th February (as operationally feasible).

Each department will be required to create a sign-off sheet for this training that will form apart of the local training records.

This information should assist in ensuring 100% compliance with the required training requirements."

[100] Cathy-Ann Edwards gave evidence. She stated that she knew the American Airlines training policies. The Country Manager is ultimately responsible for all training at the Antigua Station. However each departmental supervisor is required to ensure that his or her department is compliant with all employee training. Each agent is held accountable for completing assigned training.

[101] Ms. Edwards was referred to the Memorandum dated February 07, 2008 (AA-13). She stated that when this Memorandum was issued she was not responsible for training Mrs. Dublin's staff. She functioned as a "top trainer" from 2000 to 2001. She ceased to perform this function. According to her this was known to other department heads.

[102] She gave an explanation for her authorship of this Memorandum. She stated that Ms. Billy questioned her about the training needs of the American Airlines 757 aircraft. Ms. Billy asked her if any videos were available. At this time she had no information.

[103] Ms. Edwards recalled that Mrs. Dublin was involved in conducting the research *"to track down how the training was to be administered"*. In that research *"we found that the station would have needed to organise first the video viewing and the physical on hand training on the aircraft"*.

[104] According to Ms. Edwards the responsibility to train the security staff to work on the American Airlines 757 fell to Mrs. Dublin the head of the security department. If a new aircraft is expected to arrive at the American Station the Country Manager convenes a meeting of the Department Heads.

They are required to state their needs for each Department if those needs originated outside of what is in the training records.

[105] Ms. Edwards stated that the American Airlines 757 training did not fall automatically within the training records. As a result each department head was required to obtain training for the staff.

[106] In answer to Mr. Kentish, Attorney-at-Law for the Employee Ms. Edwards stated that she was not the person who was responsible for training at American Airlines in Antigua in 2004. According to her she wrote and published the Memorandum "AA-13" as she *"was requested to do so by the Country Manager and Mrs. Dublin approached me and asked me for my assistance"*.

[107] Ms. Billy in a Memo to Mrs. Dublin dated February 06, 2004 informed her to make immediate arrangements to have her department trained in the American Airlines 757 Aircraft Door Operation procedures. This included all accessible panels that do not require tools to open. Ms. Billy requested Mrs. Dublin to please *"give this your immediate attention and ensure all training requirements are met"*.

[108] Mrs. Dublin replied to Ms. Billy by an e-mail of February 06, 2004. The e-mail reads as follows:

"From: Agatha Dublin
To: Janine Billy
Date: 2/7/04 12:45PM
Subject: B757 Access Door Open Trng

Janine,

It has always been the policy for training to be automatic once a new equipment is introduced or re-introduced into the system. This training is usually automated. Therefore, it would not have been necessary for anyone on the station to specifically request such training.

Additionally, no Security agent at this station is involved in opening any access panel for which they required special training/tools. The mechanic can attest to our soliciting his assistance on an almost daily basis to open/close access panels/areas that we deem to have been compromised.

However, I have requested of him to conduct (in addition to the access door), re-training on the avionics panel, (which) is the only panel we open.

Agatha”

(b) The breach of security on an American Airlines aircraft February 03, 2004

Discussion

[109] The facts show that the breach of security occurred on February 03, 2004.

This involved both the passenger access to the aircraft and Mrs. Dublin's failure to document the breach on the ANU Daily Level 11 Report or verbally to inform the Manager on Duty.

[110] Several events have transpired since February 03, 2004. Mrs. Dublin forwarded an e-mail to Mr. Richard Gunthner dated February 09, 2004. In that e-mail headed "Security Breach – ANU" Mr. Gunthner recommended that *"If there is no one else available at that time, then the only choice is to add another agent".*

[111] Ms. Billy expressed certain security concerns to Mr. Gunthner in an e-mail dated February 09, 2004. He made reference to the necessity of having the aircraft charge in place when the aircraft cabin door is open.

[112] Ms. Billy discussed the incident of February 03, 2004 with Mrs. Dublin. In that discussion Ms. Billy with regard to the future requirements of American Airlines Security staffing arrangements indicated to Mrs. Dublin that *“if it means that we need additional headcount then we will do that”*. Ms. Billy undertook to *“get back”* to Mrs. Dublin in due course.

[113] Meanwhile, Mrs. Dublin indicated in an e-mail to Ms. Billy dated February 10, 2004 the number of staff which she required to effectively perform her duties in the future. She requested a staff complement of nine (9) agents.

[114] Ms. Billy in an Internal Memo to Mrs. Dublin dated February 10, 2004 informed her that there shall be a total of seven (7) agents. In addition, Ms. Billy made other decisions for the future Security Manning Requirements of American Airlines in Antigua. For example Ms. Billy informed Mrs. Dublin as follows:

- (a) *“The aircraft charge will assume the search position once the fueling is completed and the aircraft can be closed.”*
- (b) *“Your NIR report should be on your e-city page when you sign in, as it requested for you on the 8 January 2004. If it is not there please advise and I will re-send the request.”*
- (c) *“As with any other maintenance issue you will call out the American Airlines maintenance when an issue arises that needs his attention. Your compliance is appreciated”.*

[115] (i) In the **Alidair Ltd** case (op cit) a commercial pilot made a faulty landing while flying seventy seven (77) passengers in reasonable weather conditions. No one was hurt but the aircraft sustained

considerable damage. He was dismissed following an inquiry into the incident. His claim of unfair dismissal was rejected by the Industrial Tribunal, the Employment Appeal and the Court of Appeal Tribunal.

- (ii) Lord Denning at **page 541** of the Report repeated what the Employment Appeal Tribunal stated at **pages 453 to 454** as follows:

“There are activities in which the degree of professional skill which must be required is so high, and the potential consequences of the smallest departure from those high standard are so serious, that one failure to perform in accordance with those standards is enough to justify the dismissal”.

[116] With the greatest respect to Mr. Martin, the **Alidair** case is very unhelpful to deal with the facts before this Court. Unlike **Alidair**, no damage took place to the American Airlines aircraft. In addition, the two passengers who boarded the aircraft were bona fide with valid boarding passes.

[117] But in order to ascertain whether the Employee’s action constituted misconduct which justified the Employer to dismiss her I am required to consider whether or not in the circumstances of this case the Employer’s action to dismiss the Employee was reasonable or unreasonable.

[118] Ms. Billy in “**AA-11**” reprimanded Mrs. Dublin for both security breaches which occurred on February 03, 2004. The evidence shows that in consultation with Mr. Gunthner and Mrs. Dublin a clear specific plan was put in place for the future security manning requirements of American

Airlines taking into consideration the two (2) security breaches of February 03, 2004.

[119] The last action which the Employer implemented through Ms. Billy was on February 10, 2004. In accordance with Mrs. Dublin's specific request to Ms. Billy, she later wrote to the Chief Airport Security Officer at the V.C. Bird International Airport discontinuing the existing arrangements between the two (2) entities.

[120] In **Portsea Island Mutual Co-operative Society Ltd. v Rees [1980] I.C.R. 261 (EAT) Kilner Brown J** in delivering the judgment of the Court stated at **pages 262 and 263** as follows:

"Now it has been long established, and one has only to turn to the two cases so often cited before us, W. Devis and Sons Ltd. v Atkins [1976] I.C.R. 196 and Ferodo Ltd. v Barnes [1976] I.C.R. 439 to see that what an industrial tribunal has to do is to look at the dismissing representative of the employers upon the date of the dismissal and to have regard to his knowledge or his reasonable belief, or both, at the time of the act of dismissal".

[121] In the **Portsea case (op cit)** the employee was involved in a drunken incident on July 01, 1978 for which he was reprimanded by a senior employee. Six weeks later on August 16, 1972 he was summarily dismissed by the chief executive officer.

[122] On his complaint of unfair dismissal an industrial tribunal found that the incident was a stale one for which the employee had already been

reprimanded and that the dismissal was unfair. The employer appealed to the EAT.

[123] The EAT held that since at the date of dismissal the chief executive officer knew that the incident was six weeks old and that the employee had already been reprimanded for it, the employer had acted unreasonably and the dismissal was unfair. The question whether the employee by his conduct had contributed to his dismissal was remitted to the Industrial Tribunal.

[124] The Industrial Tribunal at **paragraph [11]** of its original judgment stated as follows:

“ but the time to dismiss Mr. Rees was, in our view, shortly after July 1 ” – which was the day of the unhappy incident – “ and not some six weeks later on the basis of a complaint made with no great urgency and We therefore find the dismissal unfair. ”

[125] **Mr. Kilner Brown J.** stated at **page 263** *inter alia* as follows:

“ there was a disciplinary act on the part of management; that is to say the employers; in the conduct of Mr. Bateman who, even if it amounted to a reprimand, certainly took no further disciplinary action at that stage. In other words, what the industrial tribunal seem to be saying is that there had been a seising of jurisdiction by Mr. Bateman, who was a representative of the employers; therefore, the reason for dismissal, which occurred on August 16, had in effect been waived ”.

[126] In this case Ms. Billy played a pivotal role as Country Manager to deal with all plans and actions which related to the security breach that occurred on February 03, 2004. In this regard she communicated with Mrs. Dublin and Mr. Gunthner. All parties agreed on the plans which were put in place subsequent to February 03, 2004. Those plans were quickly formulated by all relevant parties to the satisfaction of Mrs. Dublin and American Airlines.

[127] Four weeks elapsed between February 03, 2004 and the date of her summary dismissal of March 01, 2004. During this period Mrs. Dublin continued to work for American Airlines. No evidence was led that Mrs. Dublin was uncooperative or refused to abide by the Security Manning Requirements and the guidelines which were stated by Ms. Billy in her Internal Memo to Mrs. Dublin dated February 10, 2004.

[128] Ms. Billy on March 01, 2004 certainly was aware of the security breach which occurred some four weeks previously. As well, there is every reason to draw a reasonable inference from a reading of the Internal Memo of February 10, 2004 that American Airlines required Mrs. Dublin to continue to function in her role as the International Security Coordinator.

[129] In the circumstances of this case I hold that the reason for dismissal (namely the security breach of February 03, 2004) which occurred on March 01, 2004 had in effect been waived. Whether or not this waiver amounts to reasonable or unreasonable conduct by the Employer is a matter which I shall state at **paragraph [136]** below.

(c) The Employee's failure to train employees who she supervises to open the cabin door of an American Airline aircraft.

Discussion

[130] No evidence was led by the Employer which shows that American Airlines gave notice of new equipment to Mrs. Dublin in 2003. The matter of training originated with an e-mail from Mr. Richard Gunthner dated February 06, 2004.

[131] This Court read the Memo from Cathy-Ann Edwards to All Airport Departments dated February 27, 2004. It is clear that although Ms. Edwards stated that she is not a *“top trainer”* the input of herself in collaboration with Mrs. Dublin was of some assistance to, according to the Memo, *“ensuring 100% compliance with the required training requirements”*.

[132] Three weeks elapsed between February 06, 2004 to March 01, 2004. During this period there was cooperation between Ms. Edwards and Mrs. Dublin with regard to the execution of new training for all staff to operate the American Airlines 757 aircraft. It was Ms. Edwards' own words that this training would achieve *“100% compliance with the required training requirements”*.

[133] Mrs. Dublin wasted no time whatsoever in her reply to the Country Manager. In her e-mail to her dated February 07, 2004 Mrs. Dublin requested the aircraft mechanic *“to conduct (in addition to the access door) re-training on the avionics panel, which is the only panel we open”*.

[134] No evidence was led by American Airlines which showed that Mrs. Dublin did not comply with her duty to obtain security training for her staff after she received the Memo from Ms. Billy dated February 06, 2004. The evidence clearly shows that Mrs. Dublin organized with the aircraft mechanic suitable re-training of employees with regard to the avionics panel.

[135] The evidence in this case is clear that the reason for dismissal (namely the Employee's failure to train the employees in her department to operate the cabin door) was waived as at the date of her dismissal on March 01, 2004.

Disposal

[136] Three weeks elapsed between February 06, 2004 and March 01, 2004. In the circumstances of this case the reasons for the Employee's dismissal namely the breach of security on February 03, 2004 and the Employee's failure to train her employees were not so serious that the Employee could not reasonably be expected to take any course other than to dismiss her. In any event however, such reasons were waived by the Employer. Such waiver by the Employer constituted unreasonable conduct on the part of the Employer which resulted in the dismissal of Mrs. Dublin as unfair.

The second issue

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

[137] An employee who has been unfairly dismissed may be entitled to certain awards under specific headings. The relevant awards are as follows:

(a) **Basic award**

This award is similar to severance pay. The Employee worked for twenty- two and a half (22.5) years. Her last net monthly pay was EC\$6,296.83. She is therefore entitled to EC\$6,296.83 x 22.5 or EC\$141,678.68.

(b) **Immediate loss**

The claim under this heading is for the month of April 2004. The sum of EC\$6,296.83 is allowed.

(c) **Fringe benefits**

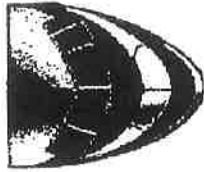
(i) **Pension loss**

Both parties agreed that the Employee is entitled to receive a certain monthly payment at age sixty (60) or at age fifty-five (55) in accordance with a letter written by American Airlines to Mrs. Dublin dated March 14, 2008. A copy of that letter is attached to this judgment in the form of a schedule.

(ii) **Travel benefits**

No credible evidence was led to sustain an award under this heading.

[138] The Employer shall pay to the Employee **EC \$147,975.51** on or before **August 31, 2011**. There shall be no order as to costs.



SCHEDULE

American Airlines®

March 14, 2008

Ms. Agatha C. Dublin
Antigua

RE: Caribbean/Atlantic Retirement Benefit Plan for American Airlines Employees in
Antigua

Dear Ms. Dublin:

I have calculated the retirement benefit to which you are entitled based on the following data regarding your service with American Airlines in Antigua.

Employee Number – 71767

Date of Hire – 9/1/1981

Date of Separation – 2/29/2004

Date of Birth – 12/11/1959

Date of Pension Commencement – 1/1/2020 (age 60) or as early as 1/1/2015 (age 55)

You are eligible to receive an annuity of XCD 2,049.17, less any applicable taxes, on a monthly basis for your lifetime if you commence your pension at the normal retirement age of 60. Should you wish to receive this benefit early at age 55, the amount will be reduced to XCD 1,536.88, less any applicable taxes, on a monthly basis. Other pay out options are available, such as period certain and joint and survivor provisions. Please see the attachment to learn more about the optional forms of payment. If you wish to receive an estimate for an optional payment, contact me.

Please sign and return the attached Election Form, after indicating your payment preference. Feel free to contact me with any questions.

Sincerely,

Daren Chastain
International Retirement Strategy

cc: Cathy-Ann Edwards, ANU Country Manager
Ana Burke-Leon, Human Resources

American Airlines
4333 Amon Carter Blvd, MD 5113
Fort Worth, Texas 76155-0921
Phone: (817) 963-8302 / Fax: (817) 963-9880

Dated the 7th day of July, 2011



NORRIS O. SCHOLAR

Chairman

I agree



DR. HAYDEN THOMAS

Member

I also agree



M. GLENDINA MCKAY

Member

Dated the 7th day of July, 2011



NORRIS O. SCHOLAR

Chairman

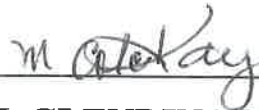
I agree



DR. HAYDEN THOMAS

Member

I also agree



M. GLENDINA MCKAY

Member