

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 8 OF 2008

BETWEEN:

**XAVIER MASON
CORNELL HUMPHREYS
COLIN BARNES
CAMERON THOMAS
LYNDON GREENE**

Employees

And

ANTIGUA PORT AUTHORITY

Employer

Before:

**The Hon. Philip A. Pilgrim
The Hon. Dr. Hayden Thomas
The Hon. M. Glendina McKay**

**President
Member
Member**

Appearances:

**Mr. Kendrickson Kentish of Lake and Kentish
Attorneys-at-Law for the Employees
Mr. Colin Derrick - Attorney-at-Law for the Employer**

**2011: March 15
June 16**

JUDGMENT

PILGRIM, P

Background

- [1] The Employer is a statutory body which was created in 1973 by the Port Authority Act Cap. 333 of the Laws of Antigua and Barbuda. It is charged with the duty to manage the operations of the St. John's Port situate at the Deep Water Harbour, Dickenson Bay Street in St. John's.

[2] Mr. Mason is employed by the Port Authority as the tug boat captain. Mr. Humphreys was employed from 1987 to 2009. He worked as an engineer. Mr. Barnes became a tug boat captain in 2005. Mr. Thomas is the tug boat's chief engineer. Mr. Greene is the tug boat's junior engineer. They are all employed in the Marine Division of the Port Authority. They are represented by the Antigua Trades and Labour Union (the Trade Union).

[3] (i) Mrs. Agatha Dublin is the General Manager of the Port Authority. She assumed this position in September 2007. She signed a Witness Statement on behalf of the Employer dated September 30, 2008.

(ii) At **paragraphs [4] and [5]** of that Witness Statement she stated as follows:

"4. Sometime in or about the year 2002, it came to the attention of the then Port's Management that there existed an anomaly in the day to day operations of the Marine Department staff where the said employees are assigned.

5. It was observed that the functions of the Marine Crew which include the said Junior Pilot, Tug Captain and Engineer were such that their duties were not that of a standard employee. Moreover, the daily functions of the Marine Crew did not require them to work for more than 4 to 6 hours during any 24 (hour) period."

[4] (i) Mr. Xavier Mason stated that in the peak season he worked for an average monthly overtime payment of \$7,000.00 to \$7,200.00. In the non-peak season he worked for an average monthly overtime payment of \$2,500.00.

(ii) Mr. Cornell Humphreys stated that in the peak season he worked for between \$6,000.00 and \$7,000.00 per month. In the non-peak season his average monthly overtime pay was between \$2,000.00 and \$2,500.00.

(iii) Mr. Colin Barnes testified that he earned in the peak season \$3,000.00 to \$4,000.00 or \$5,000.00 per month in overtime pay. In the non-peak season he earned between \$1,900.00 to \$2,500.00 per month in overtime pay.

(iv) Mr. Cameron Thomas in his evidence stated that before September 2002 in the peak season from October to April 2002 he was paid a monthly sum of between \$6,000.00 to \$7,000.00 for overtime work. In the slow season his average monthly overtime payment was between \$1,500.00 and \$2,000.00.

[5] It was these payments of overtime pay to these Employees which caused the Employer and the Trade Union to commence negotiations in 2002 to seek to achieve a comprehensive Collective Bargaining Agreement or Memorandum of Agreement.

[6] This process commenced in the form of a letter which was written by the President of the Trade Union on behalf of the Employees to the Chairman of the Antigua Port Authority. It is dated July 29, 2002. This letter was admitted as “**AD-1**”. That letter states as follows:

“29th July 2002

The Hon. Sen. Llewellyn Smith

Chairman

*Antigua Port Authority
Deep Water Harbour
St. John's*

Dear Senator Smith:

The Antigua Trades and Labour Union received your proposed wages/salaries adjustment dated 15th July 2002.

On 22nd July 2002, both the Union and its Works Committee met and carefully examined the document. However, acceptance of the full document is dependant on one concern with respect to any further classification of individuals identified in the Labour Commissioner's evaluation.

In keeping with previous agreements, the following confirms our position:

- (1) The Union and Workers agreed to the proposed wages and salaries adjustments;*
- (2) That the adjustments take effect from May 2002 from which date the Labour Commissioner's Recommendations were implemented;*
- (3) That there will be a freeze on wages and salaries for a further two (2) years, i.e. May, 2003 to April, 2005;*
- (4) That a substantial adjustment in the wages and salaries for top personnel on the Tug and the Pilot Staff will elevate them to the Management positions thus eliminating all over-time. The workers so affected, will be deemed to be on duty at all times;*
- (5) The negotiations on the remainder of the Collective Agreement be ongoing.*

The Union has also discussed with the workers and has agreed that the adjustments for weekly-paid workers be reflected from week ending 2nd August, 2002 and monthly-paid workers from 31st August, 2002. Retroactive payments to workers to be paid on the difference between that which was recommended by the Labour Commissioner and the adjustments proposed by your Board dating back to May 2002.

My Union is quite pleased that we have been able to reach such an amicable settlement of all related matters and looks forward to continuing cordial relationship between our two entities.

Sincerely yours,

Wigley N. F. George
President

Hon. M. Joseph”

- [7] In accordance with the position of the Trade Union on behalf of the Employees they received in the words of Mr. Cameron Thomas a **“substantial increase in their wages and salaries”** with effect from May 2002. The old and new salaries and the percentage increase recorded by the Employees are as follows:

Names	Old Salary	New Salary	% Increase
Xavier Mason	\$4,400.00	\$6,500.00	68%
Cornell Humphreys	\$4,200.00	\$6,000.00	70%
Colin Barnes	\$4,400.00	\$6,500.00	68%

Cameron Thomas	\$4,200.00	\$6,000.00	70%
Lyndon Greene	\$ 2,600.00	\$4,500.00	58%

- [8] The Employer by a letter dated September 02, 2002, informed each Employee of his increase in salary effective from May 01, 2002. (This letter was admitted as “XM-1”)
- [9] By letter dated September 12, 2002, the Employer informed each Employee that he was entitled to a travelling allowance of \$275.00 per month with effect from September 01, 2002. (This letter was admitted as “XM-2”.)
- [10] Both letters also informed each Employee that he was *“now considered to be Middle Management thereby deemed to be on call at all times twenty-four (24) hours, seven (7) days a week. Hence no overtime will be paid when you are required to perform duties beyond normal working hours.”*
- [11] By letter dated March 20, 2003, the Employer wrote to the Trade Union. In that letter it stated that the Employees *“are not management but are a part of the current Collective Agreement.”* (This letter was admitted as “AD-2”)
- [12] Both parties concluded negotiations which led to the signing of a Memorandum of Agreement on September 14, 2006 for the period November 01, 2002 to October 31, 2005. Mr. Stafford Joseph, the Trade Union’s General Secretary, signed that first agreement.

[13] Further negotiations commenced between the Trade Union on behalf of its Employees and the Employer. These discussions culminated in the conclusion of a second agreement. It is dated July 24, 2008. Mr. Stafford Joseph signed the agreement on behalf of the Trade Union. It is for the period November 01, 2006 to October 31, 2009. It continued thereafter until cancelled by a subsequent agreement. To date this agreement is still in effect.

[14] By a letter dated April 26, 2006 from the Employer to Mr. Stafford Joseph of the Trade Union, the Employer proposed to make a payment of a sum of money called a “**Risk Allowance**” to most Employees, in lieu of an overtime payment. The recommendation was that Mr. Greene should be paid a “Risk Allowance” and still be paid for work done in overtime.

[15] Article 29(3) of the second agreement states as follows:

“Special Allowances for Pilots, Tug Captains, Tug Engineers

This special allowance is based on the recommendation of the Management of the Antigua Port Authority and the Labour Commissioner dated November 27th, 2007.

Allowance in lieu of overtime

<i>Senior Pilots</i>	<i>\$2,000.00</i>
<i>Junior Pilots</i>	<i>\$1,000.00</i>
<i>Tug Captains</i>	<i>\$1,200.00</i>
<i>Tug Engineers</i>	<i>\$1,000.00</i>

On-call Allowance

<i>Senior Pilots</i>	<i>\$300.00</i>
<i>Junior Pilots</i>	<i>\$300.00</i>
<i>Tug Captains</i>	<i>\$300.00</i>
<i>Tug Engineers</i>	<i>\$300.00</i>

[16] The salary, allowance and travelling payments made to each Employee which became effective sometime after October 2006 is as follows:

Employee	Salary	Risk Allowance	On-call Allowance	Travelling Allowance
Xavier Mason	\$6,500.00	\$1,200.00	\$300.00	\$350.00
Cornell Humphreys	\$6,000.00	\$1,000.00	\$300.00	\$350.00
Colin Barnes	\$6,500.00	\$1,200.00	\$300.00	\$350.00
Cameron Thomas	\$6,000.00	\$1,000.00	\$300.00	\$350.00
Lyndon Greene	\$4,500.00	\$1,000.00	\$300.00	\$350.00

Legal Proceedings

[17] The Employees commenced legal proceedings against the Employer by filing a Reference dated July 15, 2008. In their Employees' Memorandum filed on the same day they seek the following relief:

- (a) The payment of overtime pay from September 2002 to the present date;
- (b) Interest at the rate of 10% per annum upon any overtime payment from September 2002 to the present date;
- (c) Mr. Greene, a junior pilot, should be paid the same risk allowance as a senior pilot;

[18] The Employer in its Employer's Memorandum filed on September 29, 2008 states as follows:

(i) That the Employees are not entitled to the payment of overtime or interest thereon;

(ii) That the risk allowance paid to Mr. Greene is appropriate having regard to his job classification.

The Issues

[19] The issues are as follows:

(i) Are the Employees entitled to be paid overtime payments for the period September 2002 to October 31, 2006?

(ii) If the Employees are so entitled, what is the sum of money that is due to them?

(iii) Are the Employees entitled to be paid overtime payments for the period November 01, 2006 to the present date?

(iv) If the Employees are so entitled what sums of money are due to them?

(v) Is Mr. Lyndon Greene, a junior pilot, entitled to be paid the same risk allowance as the senior pilot?

The First Issue

Are the Employees entitled to be paid overtime payments for the period September 2002 to October 31, 2006?

Employees' Witness Statements

[20] (i) Witness Statements for each Employee were filed on September 09, 2010. Each Employee gave evidence in Court. All of the Employees are of the opinion that "*the actions of the Employer in designating the Employees*

as middle management was and remains a sham designed to avoid paying overtime to the Employees.”

See the Witness Statement for example of Mr. Cameron Thomas at paragraph [17].

(ii) The Witness Statement of Agatha Dublin for the Employer is referred to at **paragraph [2]** above.

The Employees’ Submissions

[21] Mr. Kentish, Attorney-at-Law for the Employees made the following submissions:

(i) The Employees were regularly paid premium pay as a result of working a great deal of overtime.

(ii) On a regular basis the Employee’s monthly payments amounted to thousands of dollars in overtime compensation. There has been no suggestion that the overtime was not incurred or that it was inflated.

(iii) Mr. Kentish cites Section C27 of the Antigua and Barbuda Labour Code. It states as follows:

“For any hour of work in excess of eight in any twenty-four hour period or in excess of forty-eight in any one hundred and sixty-eight hour period, an employer shall give premium pay to the involved employee.”

(iv) Mr. Kentish submits that **Employees of Caribbean Relay Company Ltd. v Caribbean Relay Company Ltd. Ref. No. 13 of 1983** is of assistance to determine the issue. Counsel made reference to the Chairman’s

ruling at **page 7** of the judgment. The Chairman stated with regard to Section C29 (now Section C27 of the Labour Code) as follows:

“These words must be given their ordinary meaning. That provision means just what it says-Any employee who works in excess of 8 hours in a given day is entitled to receive premium pay. So where an employer institutes a shift system which requires an employee to work in excess of 8 hours as in the present case, that employer is in contravention of the Antigua Labour Code if it fails to pay the entitled employee premium pay.”

(v) Premium pay is defined in Section C26 of the Labour Code in the following manner:

“Premium pay shall consist of at least one-and-one half times an employee’s basic wage per hour.”

(vi) Mr. Kentish submits that the Employees were not paid premium pay after they were issued letters dated September 12, 2002.

(vii) Mr. Kentish also cites Sections C6 and 7 (a) and (c) of the Labour Code. Those Sections state as follows:

“C6. An employer shall not provide employment, and an employee may not accept employment; under terms and conditions which do not conform to the provisions of this Code.

C7. It shall be lawful for an employer and employee to enter into an individual contract of employment; covering terms of employment; but

- (a) *any provision thereof which establishes conditions which fall below the minimum employment standards established by this Code shall be null and void;*
- (b) *.....*
- (c) *any provision thereof which to the employee's disadvantage, conflicts with the terms of a collective bargaining agreement in effect between the employer and trade union which is the sole bargaining agent of the bargaining unit of which the employee is a part, within the definition of Section J 4 shall be null and void."*

(viii) Mr. Kentish submits further that the Labour Code *"proscribes against the elimination of premium pay from an employee's emoluments, even with the employee's consent. In other words, any purported waiver of their statutory right to payment of premium pay was unlawful, null, and void."*

(ix) According to Mr. Kentish, the Employees are entitled to premium pay in accordance with the terms of the first Collective Agreement.

The Employer's Submissions

[22] Mr. Colin Derrick, Attorney-at-Law for the Employer made the following submissions:

- (i) The Employees were compensated for the loss of overtime pay by virtue of the grant to them of substantial increases and a travelling allowance with effect from September 01, 2002;

(ii) The burden is upon each Employee to provide evidence of the actual instances when they were denied their entitlement to overtime pay. The evidence provided by the Employees does not substantiate their claim for premium pay for the period September 2002 to October 31, 2006;

(iii) A shift system of work was introduced at the Port which reduced the necessity to perform overtime work that the Employees would have been required to perform.

Discussion

[23] This is not the first occasion in which Employees have commenced proceedings against the Antigua Port Authority to obtain certain benefits against a background of the introduction of a new shift system.

[24] **Sundry Workers of the Antigua Port Authority and Antigua Port Authority Civil Appeal No. 8 of 2001** was *“the sequel to long arduous negotiations between the appellant and the Union over the terms and conditions of a new Collective Agreement to replace the agreement that had commenced in 1993 and expired since 19th July 1993.”*

See **Byron C. J.** at page 2 of the judgment.

[25] At **paragraph [4]** of the judgment **Byron C. J.** stated as follows:

“In brief, the proposals put forward by the Union included improvements in the terms and conditions of work resulting in further expenditure by the employers. The Port Authority on the other hand made proposals to increase efficiency of operations and to reduce the operating expenses in matters that were significantly

less beneficial to the workers. These proposals included the virtual elimination of overtime work and a reduction of overtime rates where payable; a substantial reduction of earnings for the employees; the creation of a seven day week and the elimination of extra pay for work on weekends.”

[26] **Byron C. J.** stated at **paragraph [7]** of the judgment as follows:

“It was apparent that the most significant issue was the introduction of the new shift system... Under the new system there would be two shifts from 2 pm to 10 pm. Normal rates would be paid during those shifts. Overtime would only be paid when more than 8 hours work is performed or for work done between 10 pm and 6 am.”

[27] Article 4 under Schedule I of the Agreement for the period from November 01, 2002 to October 31, 2005 states as follows:

“HOURS OF WORK

(i) The normal working hours on a shift system are Mondays to Sundays, from 6 am to 2 pm and 2 pm to 10 pm.”

[28] Article 6 under Schedule III which concerns overtime pay states as follows:

“Subject to the hours of work prescribed at Schedule I to this Agreement, the rates of authorized overtime pay are as follows:-

(1) On a normal day, in respect of work performed in excess of the normal hours of work, the rate shall be time and one half of the basic hourly rate for the first four (4) hours and double time thereafter.

(2)

(3) *The hours of overtime worked must be reflected on the employees' pay envelope or cheque stubs and distinctly from the normal hours worked."*

[29] At **paragraph [21] (iv)** above Counsel for the Employees cited the **Caribbean Relay** case. He submits as follows:

"Prima facie then, the Employer is in breach of the Code unless there is an answer to this complaint."

[30] What is the nature and quality of the evidence which the Employees are required to produce to this Court to show that they are entitled to be paid premium pay in accordance with Section C 27 of the Labour Code? The **Caribbean Relay** case provides some guidance.

[31] In that case the Employees submitted that they were entitled to be paid overtime pay as a consequence of work performed by them in excess of eight hours in a given day.

[32] At **pages 3 and 4** of the judgment **Chairman Hill** stated as follows:

"On the employees side the Court heard testimony from Albert Willett. (The employees) were required to work shifts in the day, evening and night. Some of these shifts lasted eight hours, others more than eight and others less than eight. The Employees who worked this shift system received 1 hour meal break but at first were not allowed to leave the premises. Only those employees who were actually required to work a double shift and on public holidays

received overtime pay. No employee was required to work all three shifts.”

[33] At page [8] of the judgment **Chairman Hill** stated as follows:

“So where an employer institutes a shift system which requires an employee to work in excess of 8 hours as in the present case, that employer is in contravention of the Labour Code if it fails to pay the entitled employees premium pay.”

[34] At page 9 of the judgment **Chairman Hill** stated as follows:

“The evidence may therefore be summarised thus:

Between 1976–1978 there existed a rota cycle which required the employees to work over an average weekly maximum of 40 hours. Some of those daily shifts were less than eight (8) hours, others lasted for eight (8) hours and others were in excess of eight (8) hours. For that period the 1 hour meal break had not been included in the calculation of the working hours. It follows then that premium pay would be payable to those employees whose shift exceeded 9 hours.

From the effective date of the first Collective Agreement, the situation changed. The Union negotiated better terms and conditions than those provided for in the Labour Code. The one hour meal break was included in the 8 hour shift.

It is therefore the ruling of the Court that:

- (1) For the period 1976 to 1978, premium pay should be paid to all employees who performed work for 8 hours and whose shift was in excess of 9 hours.*
- (2) From the effective date of the first Collective Agreement, that is, November 1st 1978 to 1983, premium pay should be paid to all employees who performed work during the meal break and anytime after 8 hours in accordance with the terms of the Collective Agreement between the Employer and the Antigua Workers Union”.*
- (3)*

[35] I quoted extensively from the judgment of the **Caribbean Relay Company** case to show the nature and quality of evidence which the employees were required to put forward to the Court in that case to substantiate their case to be paid premium pay.

[36] The actual evidence which was produced by the employees in the **Caribbean Relay Company** case included (a) proof of actual shift work beyond eight (8) hours in one day, (b) proof of actual shift work beyond nine (9) hours in one day, and (c) proof of commencement of overtime work. The employees were successful in their case against the Employer.

[37] In this case the evidence put forward by the Employees is that for some period prior to September 2002 they were paid premium pay for overtime work. According to Mr. Kentish, as the Employees *“were not paid premium pay after they were issued letters dated 12th September 2002 prima facie*

then, the Employer is in breach of the Code unless there is an answer to this complaint.”

[38] I do not accept Mr. Kentish’s submission at paragraph 37 above. In accordance with the decisions of *Caribbean Relay Company, and Sundry Workers of the Antigua Port Authority* (op cit) each Employee in the later case is required to put forward clear evidence that he has worked for more than eight (8) hours or for work done between 10:00pm and 6:00am. As **Byron C. J.** stated in the later case at **paragraph [7]:**

“Overtime would only be paid when more than 8 hours work is performed or for work done between 10:00 pm and 6:00 am.”

[39] One document was produced in this case by Mr. Mason to show that he was paid an overtime payment of \$1,317.48 for the period 18 – 31 July 2002. (It was marked “**XM-2**”.)

[40] No evidence was produced in this case by any Employee to show that he worked *“in excess of eight hours in any twenty four hour period”* as is required by Section C 27 of the Labour Code.

[41] In addition, no Employee testified of having worked in excess of eight hours at the Antigua Port Authority *“between 10:00pm and 6:00am”* which would have entitled him to be paid premium pay in accordance with Section C 27 of the Labour Code.

[42] I am ever mindful of the fact that these Employees were granted a substantial increase in their salaries with effect from May 2002. From the

outset there was a clear understanding between the Trade Union and the Port Authority that the “*substantial adjustment in the wages and salaries for top personnel on the Tug and Pilot Staff*” was obtained on their behalf in lieu of the payment of overtime.

[43] The sole reason therefore for the payment to the Employees of a substantial increase in their salaries was to deal with “*the virtual elimination of overtime work*” at the Antigua Port Authority.

See Byron C. J. (op cit) at paragraph [4] of the judgment.

[44] I hold that none of the Employees is entitled to be paid overtime payments for the period September 2002 to October 31, 2006.

The Second Issue

If the Employees are so entitled what is the sum of money that is due to them?

[45] In light of my finding at **paragraph [44]** above this issue does not arise for consideration.

The Third Issue

Are the Employees entitled to be paid overtime payments for the period November 01, 2006 to the present date?

[46] There is in existence a Memorandum of Agreement between the two parties. It is for the period November 01, 2002 to October 31, 2009. It is dated July 24, 2008. It continues in force.

[47] The hours of work for the Employees is governed by Article Four of the Agreement. It states as follows:

“Tug Crew, Pilots, Berthing Officers and Pilot Boat Crew:

6:00 am – 10:00 am

6:00 am – 3:00 pm

7:00 am – 4:00 pm

1:00 pm – 10:00 pm

9:00 am – 6:00 pm

3:00 pm – 7:00 pm

with 1 hour meal break”

[48] The matter of overtime pay is regulated by article 6 of the Agreement.

Article 6(c) (1) states as follows:

“On a normal day, in respect of normal hours performed in excess of the normal hours of work, the rate of pay shall be time and one half of the basic hourly rate for the first four(4) hours and double time thereafter.”

The Employee’s Submissions

[49] Mr. Kentish for the Employees stated that the Memorandum of Agreement is not ***“foreshadowed anywhere in the Employer’s Memorandum and Witness Statements.”*** of the Employer. I disagree. The Risk Allowance mentioned at Article 29 of the Agreement is referred to at **paragraph [14]** of Agatha Dublin’s Witness Statement. It is also referred to at **paragraph [12]** of the Employer’s Memorandum.

[50] Mr. Kentish made reference to a letter dated December 01, 2008. It was written by Mr. Stafford Joseph the General Secretary of the Trade Union. I shall refer to it at paragraph 53 below.

The Employer's Submissions

[51] Mr. Derrick Attorney-at-Law for the Employer referred to Exhibits CT 1 and 2. These were Invoices numbered 2-062-08 dated February 28, 2008 (CT 1) and 4-193-10 dated April 22, 2010 (CT 2) respectively. Mr. Derrick stated that there was no guidance as to the composition of the crew who performed the overtime work as stated in both invoices.

[52] Mr. Derrick also submitted that apart from CT 1 and 2, the evidence of the Employees is speculative and a guestimate. There was no guarantee that the level and extent of overtime which the Employees enjoyed prior to September 2002 would have remained at the same level after September 2002 to date. In addition a shift system of work was introduced at the Port which reduced the overtime work that the Employees would be required to perform.

Decision

[53] This Memorandum of Agreement was signed by Mr. Stafford Joseph the General Secretary of the Trade Union. He wrote a letter dated December 01, 2008 to the Human Resources Manager of the Antigua Port Authority. In that letter he stated as follows:

“2. ARTICLE: 29 – SPECIAL ALLOWANCES Etc.

3. Special Allowances for Pilots, Tug Captains, Tug Engineers

The Antigua Trades and Labour Union is very much aware that a **Risk Allowance** was agreed to and not **Allowance in lieu of Overtime**.

Hence, we request that Management correct this to read **Risk Allowance** as recommended by the Port Management in its correspondence dated 26th April, 2006”.

- [54] I do not know if the General Secretary actually read the letter of April 26th, 2006. For if he had done so, he would have realized that with the exception of Mr. Greene, all references to the payment of Risk Allowance required the virtual elimination of a payment for overtime work. For example, with respect to Tug Captains the following proposal was made by the Employer.

“(b) Tug Captains

We recommend that they remain at a salary of \$6,500.00, and that they be paid a Risk Allowance of \$1,200.00 monthly. They would not be paid for work done in overtime.”

- [55] Did the Employees lead any evidence that they worked ***“in excess of eight (8) hours in any twenty four hour period.....”*** This is required to be done before the entitlement to premium pay is considered. In this case no Employee led any evidence that he worked in excess of eight (8) hours in any twenty four period for any period between November 01, 2006 to the trial of this matter.

- [56] As there is no evidence that any Employee worked in excess of eight (8) hours for any twenty four hour period, the Risk Allowances made payable to them created no disadvantage for them in light of Section C 27 of the Labour Code.

[57] I hold that none of the Employees is entitled to be paid overtime payments for the period November 01, 2006 to the present date.

The Fourth Issue

If the Employees are so entitled what sums of money are due to them?

[58] In light of my finding at **paragraph [57]** above this issue deserves no consideration.

The Fifth Issue

Is Mr. Lyndon Greene who is a junior pilot entitled to be paid the same risk allowance as the senior pilot?

[59] Mr. Greene filed a Witness Statement on September 09, 2010. I derive nothing from this Statement which assists his submissions. However, in his evidence to the Court he stated that he should be earning the same risk allowance as the senior pilot. According to him, ***“there is more risk going aboard the tankers which carry petroleum products.”*** These are within his license capacity.

[60] He readily concedes that he is not qualified to work on the same ships as the Senior Pilot. His license does not allow him to perform duties on Cruise Ships.

[61] Agatha Dublin gave evidence for the Employer. In her evidence she stated that a Junior Pilot is qualified initially to deal with 3,000 gross tons of

weight. He then graduates to 7,500 gross tons. Mr. Greene was promoted from 7,500 gross tons to 10,000 gross tons.

- [62] According to Agatha Dublin, the Senior Pilots have unlimited licences. They are qualified to work vessels in excess of 100,000 gross tons. Most tankers which are operated by the Port weigh over 10,000 gross tons. These are operated by Senior Pilots. Insurance policy coverage at the Port is based on several factors. One of them is the distinction between the Junior and Senior Pilots.

The Employees' Submissions

- [63] Mr. Kentish correctly conceded *“that on the evidence, the Senior Pilot is required to pilot ships of a certain tonnage. The Junior Pilot does not have this certification.”* However, Mr. Kentish submits that the Junior Pilot *“is exposed to risk on a day to day basis (and that) there is no evidence that the Senior Pilot is engaged so frequently.”*

The Employer's Submissions

- [64] Mr. Derrick Attorney-at-Law for the Employer submits that the licence granted to a Senior Pilot demands qualifications and experience far greater than that required of a Junior Pilot. This correctly accounts for a difference in pay between the two workers.
- [65] No evidence was led in this case that the Junior Pilot is exposed to risk on a day to day basis. In any event however, there are two reasons why a differential of \$1,000.00 should remain between the two parties.

[66] Firstly, the Junior Pilots do not have a certification to deal with ships in excess of 10,000 gross tons. As a prudent insurer takes this fact into consideration in the issuance of an insurance policy, this is a fair and adequate reason why Mr. Greene should be paid \$1,000.00 less than the Senior Pilots. Secondly, the payment of a Risk Allowance in lieu of overtime was freely negotiated by the Trade Union and the Employer. It is contained in the Memorandum of Agreement dated July 24, 2008. It was signed by both parties.

[67] It is for these two reasons that I find no merit whatsoever in the Employee's Submissions that he be paid the same risk allowance as the Senior Pilot.

Disposal

[68] The implementation of the shift system at the Antigua Port Authority has resulted in a virtual elimination of overtime work and a substantial reduction of earnings for the Employees. Correspondingly they have received substantial increases in their wages and salaries to compensate them for the reduction of the overtime work. These increases they were otherwise not entitled to receive. This may very well be in the long term best interest of the Employees.

[69] If the Employees are of the view that they are entitled to overtime payments which is calculated on an hourly basis then any future negotiations ought to take into consideration a substantial reduction of their wages and salaries which took overtime into account. But the Employees are simply not entitled to receive both higher wages and salaries and overtime payments, in

circumstances where no evidence exists that they have performed overtime work.

[70] It is apt to quote Byron Chief Justice at **paragraph [25]** of the judgment.
He stated as follows:

“I would only hope that future negotiations between the parties will provide results in which both sides could find equal comfort.”

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

Dated this the 16th day of June 2011


Philip A. Pilgrim
President

I agree


Dr. Hayden Thomas
Member

I also agree


M. Glendina McKay
Member