

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 10 OF 2012

BETWEEN:

TULIP WARNER

Employee

and

LIAT (1974) LTD.

Employer

BEFORE:

The Hon. Charlesworth O. D. Brown

President

The Hon. Samuel R. Aymer

Member

The Hon. Dr. Hayden Thomas

Member

APPEARANCES:

Mr. Dane Hamilton QC with Mrs. Cindy Peters-Blanchard, Senator David Massiah and Kem Riley of the Antigua and Barbuda Workers' Union for the Employee.

Mr. Kendrickson Kentish, Kathleen Bennett and Amaya Athill of Lake and Kentish for the Employer.

.....
2014: May 21

2015: June 26
.....

JUDGMENT

Brown , P

BACKGROUND

1. The Employee commenced her employment with the Employer on November 15, 1991.

At the date of her dismissal she held the position of Special Services Supervisor earning a salary of \$4,767.00 and a travelling allowance of \$440.00 per month.

2. Apart from the Antigua and Barbuda Labour Code, Cap. 27, the Employee's terms and conditions of employment were subject to a Collective Agreement between the Employer and the Antigua and Barbuda Workers Union.
3. On December 30, 2010 the Employee was suspended with pay until January 7, 2011 when a disciplinary hearing was convened. At the hearing the Employer was dissatisfied with the Employee's explanation for certain actions which she admitted that she had taken and which the Employer asserted were in breach of its policy.
4. By letter dated January 17, 2011, the Employee's employment was terminated with immediate effect on the ground that the Employer could no longer be reasonably expected to continue the employment relationship. In the dismissal letter the Employer listed six actions taken by the Employee in violation of its policy.
5. The Employee commenced these proceedings by Reference filed on April 5, 2012 claiming that she had been unfairly dismissed.

THE EMPLOYEE'S CASE

6. By her Memorandum filed on April 18, 2013, the Employee contended that the termination letter failed to outline precise and just reasons for her dismissal. Moreover, the Employee contended that her dismissal was harsh, unfair and unjust. She urged the Court to find that she was unfairly dismissed and award her compensation therefor.

THE EMPLOYER'S CASE

7. By its Memorandum filed on September 5, 2013, the Employer denied that it failed to state the precise reasons for the dismissal. It contended that it gave specific details of the actions of the Employee which were contrary to company policy. The Employer also contended that it followed the correct disciplinary procedure.

THE ISSUES

8. The issues arising from the pleadings are as follows:

- (1) Whether the Employee was furnished with a written statement of the precise reasons for the termination of her services.
- (2) Whether the Employer had communicated its credit shell policy to the Employee and warned her of the penalty if she contravened it.
- (3) Whether the Employee's actions violated the Employer's credit shell policy.
- (4) Whether the Employer acted reasonably or unreasonably in dismissing the Employee in the circumstances.

THE EVIDENCE

9. In her witness statement filed on October 15, 2013, the Employee stated as follows:
 - (1) In her suspension letter received on December 30, 2010, she was advised of an ongoing investigation regarding the creation and use of the credit shells.
 - (2) At the disciplinary hearing held on January 7, 2011, she explained the practice that, at the request of the credit file owner, credit shells were used to purchase tickets for persons other than the credit owners.
 - (3) In response to the branch manager's assertion that there was a written policy against the stated practice, the Employee stated that she was not aware of such a policy. When she requested to see a copy of it, she was told that it was displayed on the notice board. The Employee was not aware of the existence of such a notice board.
 - (4) The Branch Manager, Ms. Millette, also stated that several memos had been sent out indicating that the credits were not transferable but she was unable to produce copies of any of them. In turn, the Investigating Officer, Mr. Quashie, rejected the Employee's suggestion that a check of the daily sales receipts would confirm that transferring credits was the norm.
 - (5) After reading the termination letter, she requested that Ms. Ramsey, the Director, Human Resources, provide her with a copy of the policy but she refused to do so.
 - (6) The Employee also gave evidence that "the use of credit files for payment of tickets for persons other than the name on the credit had been accepted during my tenure with a proviso. A credit request must be authorized by the owner. At no time in my tenure did I do otherwise."

10. Under cross-examination, the Employee stated that prior to her dismissal she held the position as Special Services Supervisor for 5 years. She did not agree with Counsel's suggestion that the Employer's policies were sometimes issued by email or posted on the notice board.
11. The Employee maintained that she was not familiar with the Credit shell policy and that she had never received a copy of that policy.
12. Under cross-examination, the Employee also testified that it was the Manager of the Navitaire System, Morvin Peterson who was authorized to and did re-open the flights to facilitate her use of the credit shells. Mr. Peterson was not at the disciplinary hearing.
13. Patricia Spencer, a former employee of the Employer, also gave evidence on behalf of the Employee. She too was suspended on the same day as the Employee for a similar breach of the Credit Shell Policy. In her witness statement filed on March 14, 2014, Ms. Spencer stated:
 4. "A hearing was convened on July 7, 2011 where I was shown a copy of a booking to which I had applied a credit shell payment. There was nothing unusual about the particular transaction as credit shell payments, application and transfers were done by all ticketing agents on a regular basis.
 5. Ms. Millett also told the panel that several internal memos were circulated and a copy of a company policy on credit shells existed. I advised the panel once more that I had never seen any of these memos or even knew that this written company policy existed. I must state here that a copy of the company's policy was never shown to me at the hearing.
 6. ...
 7. As there were no written policies on credit shells, as long as the passenger comes to the office and request that the credit be used by someone else, it was a done deal...."
14. Ms. Spencer also testified that she received a written warning on January 17, 2011, the same date on which the Employee was dismissed with immediate effect.

15. Ms. Ilean Ramsey, Director Human Resources, testified on behalf of the Employer. She said that at the disciplinary hearing on January 17, 2011, the Employee said that she was not aware of the policy regarding the use of credit shells. She stated that she believed that the Employee was aware of the policy but knowingly used credit shells in violation of the same.
16. Under cross-examination, Ms. Ramsey stated that she personally was not aware of any policy directive regarding the use of credit shells. She admitted that the notice in relation to "Fraud and Theft" did not address the issue of the use of credit shells. Further, she admitted that the credit shells in relation to the Employee's dismissal were opened by Mr. Peterson and that the disciplinary action taken against him was limited to a written warning.
17. The Employer's second witness was Lennie Quashie, the Assistant Security Manager. He testified that he was aware of the policy regarding credit shells because "a number of memos had been circulated by former CEO, Mr. Mark Darby and also Mr. Brian Challenger..."
18. Mr. Quashie testified that his investigations revealed that 2 months after Mr. Charles failed to show up for two flights, Mr. Peterson reopened both files and created two credit shells. He also stated that "Once a credit shell has been created, the use of that credit to book another flight can only be done by and for the person whose name was on the original booking or by the person who had made the booking on behalf of another person".
19. Mr. Quashie also confirmed that at the disciplinary hearing the Employee explained that she was not previously aware of the Credit Shell Policy and that other persons in the company were using credit shells by doing what she did.

THE EMPLOYER'S SUBMISSIONS

20. In submissions filed by Kendrickson Kentish, Kathleen Bennett and Amaya Athill on July 16, 2014, the Employer highlighted the applicable law to be Sections C10 (1), C56, C58 (1) and (2), and C59(1) of the Antigua and Barbuda Labour Code (the Labour Code).
21. Counsel submitted that the dismissal letter sets out the details of the precise reason for the dismissal as required by Section C10 (1) of the Labour Code.
22. As to the Employee's knowledge of the Credit Shell Policy, Counsel submitted that the Employer took all reasonable steps to bring the Policy to the attention of the Employee. According to him, those steps were the email issued by Wayne Watson dated April 2, 2008; the posting of the Policy on the notice board; the "Fraud and Theft at LIAT" announcement in December 2008 and the "Access Code Abuse" memo in January 2010.
23. The Employer also submitted that the Employee used her Access Code in an unauthorized manner to deprive the Employer of revenue.
24. In relation to the letter issued by Mr. Charles on January 6th, 2011, Counsel noted that at the material times in 2009 and 2010 no permission had been obtained. In any event Mr. Charles's letter was not relevant because under the Policy the shell could only be used by himself.
25. As to the reasonableness of the termination, Counsel submitted: "...in using the credit shells of passengers contrary to company Policy, the Employee was essentially taking money from the Employer without its permission, for her own personal benefit and that of others".
26. In support of the latter submission, Counsel cited **Selwyn's Law of Employment**, 13th Edition, to make the point that there is implied in a contract of employment a term that every employee must serve his employer faithfully. Any breach of that obligation is a good ground for dismissal. In further support of that submission Counsel also cited the

cases of **Christopher v Geotech Company Limited**, Reference No. 1 of 2009 and **Neary v Dean of Westminster**, [1999] IRLR 288.

27. In conclusion, Counsel submitted that by her conduct, the Employee undermined the trust and confidence between herself and the Employer, which conduct amounted to misconduct as defined under Section C58 (1) of the Labour Code.

THE EMPLOYEE'S SUBMISSIONS

28. On behalf of the Employee, Cindy Peters-Blanchard reviewed the evidence and submitted that neither the Employee nor Patricia Spencer received any communication from the Employer concerning the Credit Shell Policy; that it was Morvin Peterson, the Navitaire System Manager who was responsible for creating Credit Shells; that the Employee could not have reopened the flights and applied the Credit as she did without the approval and assistance of Mr. Peterson; that the Employee had received permission from Mr. Charles to issue the tickets; that unlike the Employee who was dismissed, both Mr. Peterson and Mr. Spencer received only warning letters.
29. Mrs. Peters-Blanchard further submitted that the issue at the heart of this reference is contained in the sentence "the Credit can only be applied to bookings for the passenger(s) it was created for." In that regard she submitted that when properly construed, the Policy must lead to the result that the passengers for whom a Credit was created can utilize that Credit by making any desirable booking and/or can give directions for such use. According to her the Employer's Reservation Staff including Mr. Peterson, Ms. Spencer and the Employee all conducted transactions on that basis.
30. Further Mrs. Peters-Blanchard submitted that that basis of conducting the transactions was the reason for the issuance of the memorandum by Mrs. Julie Reifer-Jones on December 31st, 2010. She concluded that based on that interpretation of the Policy, as confirmed by Mrs. Reifer-Jones, both Trevor Simon, Revenue Accounting Manager, and Orville Knight, Assistant Manager, were allowed to sanction variations to the Policy.

31. As to the reasonableness of the Employer's action in dismissing the Employee, Mrs. Peters-Blanchard noted that the Employee was not accused of theft or fraud but merely committing a breach of the Policy. She also noted that the Employer made no attempt to ascertain from other staff members the prevailing practice in dealing with Credit Shells at the material time.
32. Further, Mrs. Peters-Blanchard pointed to the clause in the suspension letter which reads: "...should our investigations reveal that the sum held on credit for our customers was used without authority or contrary to company policy..." According to her, the question is: whose authority was being referred to? If it was the "authority" of the customer, Mr. Charles gave the necessary approval. On the other hand, if it was the "authority" of the Employer, then Mr. Peterson gave the necessary approval.
33. Continuing with her submissions, Mrs. Peters-Blanchard stated that the Employee's conduct was not incompatible with the due and faithful discharge of her duties. She contended that the Employee's conduct had as its basis a misconception of the application of the Policy. She maintained that the Employee's conduct was untainted by fraud and dishonesty and was not sufficiently grave and weighty in character to amount to a breach of the confidential relationship.

ANALYSIS

34. It is well settled that once an employer acknowledges that it dismissed an employee, the onus is on the employer to prove on a balance of probabilities that it not only has a good reason for doing so but also that it acted reasonably in the prevailing circumstances. If the employer fails to discharge that burden of proving just cause, then the employee will be held to have been unfairly dismissed. I approach the resolution of the above stated issues with that fundamental principle in mind.

Issue No. 1 – The Precise Reason

35. Section C10 (1) of the Labour Code provides:

“Upon termination by an employer of an employee’s employment subsequent to the expiration of the latter’s probation period, the employer shall, within 7 days of the termination or notice thereof, furnish to such employee a written statement of the precise reason for the termination.”

36. The dismissal letter itemized six separate and distinct “actions” performed by the Employee in violation of the Policy in the following terms:

“At the hearing you acknowledged having performed the following actions in violation of Company Policy:

1. On 17th September 2009 use credit file WZBZCQ FOR PNR OZG1AX
2. On 30th September 2009 use credit file WZBZCQ for PNR DZHNCT
3. On 27th October 2009 use credit file WZBZCQ for PNR MZIZCV
4. On 29th October 2009 use credit file GZB3CS for PNR NZIFAW
5. On 22nd June 2010 use credit file GZB3CS for PNR SZELLI
6. On 16th July 2010 use credit file GZB3CS for PNR QZG2CI

37. In my view, the dismissal letter dated January 15, 2015 did include a statement of the precise reasons in sufficient detail to satisfy the requirement of Section C10 (1) of the Labour Code.

Issue No. 2 – Communicating the Policy and the Penalty of Dismissal

38. The conduct of an employee which is in breach of his employer’s policy is a potentially fair reason for dismissal. Section C58 of the Labour Code provides for the fair dismissal of an employee if he is guilty of misconduct within the limitations of section C59(1). Those sections provide:

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

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

(b)

(2) The test generally, for deciding whether or not a dismissal was fair is whether or not, under the circumstances, the employer acted unreasonably or reasonably.....and the test shall be whether the actual circumstances which existed....would have reasonably led to the employee's dismissal"

"C59(1) An employer may terminate the employment of an employee where the employee has been guilty of misconduct in or in relation to his employment so serious that the employer cannot reasonably be expected to take any course other than termination. Such misconduct includes, but is not limited to situations in which the employee has

(a) conducted himself in such a manner as to clearly demonstrate that the employment relationship cannot reasonably be expected to continue; "

39. According to Steven D. Anderman at page 59 of his textbook, **The Law of Unfair Dismissal**, the first stage of the test of fairness requires the employer to establish his reason for dismissal. The burden of proof lies with the employer. To meet the burden of proof the employer must show that his reason is one that can justify dismissal.
40. In the present case, the Employer has established its reason for dismissal as one falling under Section C58 (1) (a) of the Labour Code. However, its burden does not end there. It must go on to show that the reason assigned justifies the dismissal.
41. In my view, as a prerequisite for deciding whether the Employee was guilty of misconduct, it is necessary to determine as a matter of fact whether or not the Policy and the penalty for its breach were communicated to her.
42. As to the significance of the warning, Anderman at page 90 states that **" in addition to ensuring specific content of the warning, there is a need for employers to make reasonable efforts to ensure that the warning is effectively communicated, that is to say, that the warning is actually known to the employee"**

43. Both the Employee and Ms. Spencer denied ever receiving a copy of the written Policy as stated in Mr. Watson's email dated April 8, 2008. They asserted that there was no written Policy. According to the Employee, it was the settled practice that upon the instructions of the owner, Credit Shells were used to purchase tickets for persons other than the owner himself.
44. Apart from the said email, which started with the words "Just a reminder", the Employer has produced no statement of the Policy which it says was provided to the Employee. The fact that the Employee's name was listed among the intended recipients is not sufficient proof that a written Policy was ever brought home to her.
45. Further, and in any event, Mr. Watson's email included no statement of the penalty for any breach of the Policy. Instead, it requested that questions and comments should be directed to two senior employees Trevor Simon and Orville Knight.
46. As I understand the email, it could have resulted in inconsistency and uncertainty not only about the terms of the Policy itself but also about the consequences of failure to comply with it. At that point in April 2008, it would have been appropriate for the Employer to restate its Policy in terms of either the "emailed version", "the website version" or a combination of both. In any event the policy should have been in clear and unambiguous terms. The required restatement should have then been followed by a clear statement of the penalty for breach of the Policy.
47. Further, the last sentence of Mr. Watson's email, by itself, leaves room for doubt and uncertainty. He requested that the intended recipients circulate his email to all sales staff. To my mind, this is inconsistent with the expected conduct of the Employer to ensure that the Policy was brought home individually to all concerned staff.
48. It is noteworthy that although the Employee requested a copy of the written Policy at the disciplinary hearing, the Employer was in no position to produce anything separate and apart from the email itself, which the Employee maintained she never received. In that

regard, the Employee said she specifically requested a copy of what the Employer said was posted on the notice board but the Employer was in no position to provide it.

49. In the absence of a copy of the written statement of the Policy and evidence that it was brought home to the Employee, I am left to consider what happened on the ground after Mr. Watson's email of April 2008.
50. Patricia Spencer's evidence is that: "As there was no written Policy on Credit Shells, as long as the passenger comes to the office and request that the Credit be used by someone else, it was a done deal". For her part, the Employee said: "the use of Credit files for payment of tickets for persons other than the names on the credit had been accepted during my tenure with a proviso. A credit request must be authorized by the owner".
51. It is important to note that Ms. Spencer's tenure was over 20 years while that of the Employee was approximately 19 years.
52. I also note the times of occurrences of the alleged breaches of the Policy by Ms. Spencer and the Employee. They occurred over a period of approximately 10 months between September 2009 and July 2010.
53. In moving forward with this analysis, I am mindful that the use of the Credit Shells could not have been opened or effectively applied without the approval and/or the assistance of Mr. Peterson. It is noteworthy that he was not called as a witness.
54. I find that the Employee was always aware of the terms and conditions stipulated on all passenger tickets which in part is identical to what Mr. Watson referred to as "the emailed version of the rules" which reads: **"all fares are non-refundable but maybe retained in a Credit facility to expire one year from the cancellation date. The credit can only be applied to bookings for the passenger(s) it was created for"**.
55. According to Mr. Watson, the website version of that rule is as follows: **"if a change or cancellation resulting in overpayment any remaining balance will become a credit**

with LIAT and may be applied to future travel for one year. The credit can only be applied to bookings for the passenger(s) it was created for.”

56. In my view, neither the rules as stipulated on the passenger ticket nor the emailed version nor website version can constitute a written statement of the Policy issued to the Employee for present purposes. The significance of clarity as a key component of the Policy and the Employees knowledge of it cannot be overemphasized.

57. As to the implementation of the unwritten Policy referred to on the passenger ticket and quoted by Mr. Watson, I am of the view that over time the employees in the Reservation Department, including Ms. Spencer and the Employee, established or followed settled procedures and practices. Those procedures and practices prevailed at least up to the issuance of the memo dated December 31, 2010 by Julie Refer-Jones, the Employer’s Chief Financial Officer.

58. The email from Mrs. Refer-Jones dated December 31, 2010 was clearly issued after the suspension of the Employee. Most importantly, that email discloses that variations of the Policy were permitted or permissible. In her words; **“Any variations from this Policy must be authorized by the Manager, Revenue Accounting, Mr. Trevor Simon or Assistant Manager, Orville Knight. LIAT’s Management will be monitoring adherence to this Policy and disciplinary action will be taken in the event of any breaches.”**

59. In that quotation from Mrs. Refer-Jones’s memo, it is also very noteworthy that the warning of “disciplinary action” was general. There was no specific warning that breaches could result in dismissal. That warning, without more, was not sufficient to put any employee on notice that his employment would be terminated if he breached the Policy. Logically, the employees would not be faulted if they came to the conclusion that a breach of the Policy would be sanctioned by a measure less drastic than dismissal.

60. At page 91 of his textbook, **Anderman** asserts:

“Where an employer’s practice has created exceptions, these must be taken into account in the communications to the employee.....

.....where an employer has tacitly accepted or condoned a particular practice and decides to take a firmer disciplinary line, it follows that he must give adequate warning to the employees that he is taking a new approach....

....where the employer has previously tended to interpret a disciplinary rule rather lightly, a sudden decision to dismiss employees for breaking the rule without a warning of a change in approach may be unfair.....”

61. Since Mrs. Reifer-Jones’s memo, allowing for “variations”, was issued after the Employee’s “actions” were uncovered, then it should be safe to conclude that the mischief which the Employer sought to cure at that stage was in fact previous unauthorized variations and not variations per se.
62. In the circumstances, having regard to the content and timing of Mrs. Rifer-Jones’s memo, I conclude that the state of affairs that existed at the date of the Employee’s dismissal was at best oblique or equivocal.
63. In light of all the evidence and taking the surrounding circumstances into account, I find as follows:
- (1) There was no clear written statement of the Credit Shell Policy;
 - (2) There was in existence an unwritten policy of which the Employee was aware.
 - (3) The importance of the Policy was not brought home with any or any sufficient force to the Employee.
 - (4) The Policy was not enforced by the Employer with the result that variations of the Policy itself, as well as the related procedures and practices, occurred.
 - (5) The Employer provided no clear procedural guidelines for the execution of the Policy.

(6) No penalty was associated with a breach of the Policy. In particular, there was no warning of dismissal in the event of a breach.

64. Clearly, the Employer has failed to discharge its burden of proof in relation to this issue.

Issue No. 3 – Violation of the Policy

65. This issue tends to fall away in light of my conclusions in relation to issue No. 2 above.

The Employer had left it open to the Employee and other employees to conduct its reservation business on their interpretation and understanding that the owners of the Credit Shells could utilize their credit to make such subsequent bookings for themselves or others as they saw fit. The Employer itself permitted that interpretation and understanding.

66. In resolving this issue, I find that the Employer has failed to discharge its evidentiary burden of establishing that the Employee acted in violation of its Credit Shell Policy.

Issue No. 4 – Whether the Employer acted reasonably in dismissing the Employee

67. Notwithstanding my determination of Issues 2 and 3 above in favour of the Employee, I am obliged to consider the overall reasonableness of the Employer's action in dismissing the Employee.

68. In determining this issue, apart from my earlier conclusions in respect of Issues 2 and 3 above, I take into consideration the procedure adopted by the Employer and the results thereof after the Employee's suspension on December 30, 2010.

69. The Employer adopted the correct procedure by providing the Employee with the opportunity to state her case. A similar opportunity was provided to Ms. Spencer. After the disciplinary hearings, convened on January 7, 2011, the Employer wrote to the Employee, by letter dated January 17, 2011, terminating her employment and advising her, inter alia, that '...the Company now wishes to advise you of our dissatisfaction with

your explanation”. The termination was expressed to be in accordance with the provisions of Section C 59 (1) of the Labour Code.

70. Ms. Spencer was more fortunate in that on the same date, January 17, 2011, she received only a written warning with a similar advice that “..the Company now wishes to advise you that we are not satisfied with your explanation”. In the letter Ms. Spencer was warned that in the event of a repetition she would be suspended without pay and that if she repeated the misconduct she “may” be dismissed. This type of warning is consistent with Section C59 (2) – (4) of the Labour Code.

71. The evidence discloses that Mr. Peterson, who facilitated the use of the credit shells and was senior to both the Employee and Ms. Spencer, received the same punishment as Ms. Spencer. It is obvious that inconsistent punishments were meted out to the Employee on the one hand and Mr. Peterson and Ms. Spencer on the other hand. The Employee was dismissed without a warning while the other two employees received a written warning only. In my view, there is no or no sufficient evidence to justify the wide disparity in the severity of the punishments and the application of the different sub-sections of the same Section of the Labour Code.

72. At page 120 of his textbook, **Anderman** points out that:

“ a failure to apply disciplinary rules with a reasonable degree of consistency may call into question the reasonableness of the employer’s decision to dismiss.

An inconsistency in the application of penalties, for example, may call into question the justification for a dismissal decision. For example, where an employee can show that other employees have committed a similar offence but have received a less serious penalty, the employer’s inconsistency may be taken by an industrial tribunal as evidence that a dismissal is unwarranted and hence unfair.”

73. As to loss of revenue, the evidence leaves me in no position to conclude that the conduct of the Employee deprived the Employer of revenue. The use of the credit shells was referable to funds already in the hands of the Employer. The Employer did not lose that revenue and there is no convincing evidence to suggest that additional revenue would have been gained if the Shells were not used.

74. In the final analysis, given the evidence generally and the surrounding circumstances in particular, I do not accept Counsel's submission on behalf of the Employer that the Employee's conduct was such that it severely undermined the trust and confidence and amounted to misconduct sufficient to justify dismissal under Section C58 (1) of the Labour Code.

75. For all the reasons stated above, I am constrained to conclude that the Employer failed the test of reasonableness set out in Section C58 (2) of the Labour Code. The result is that the Employee was unfairly dismissed and is entitled to compensation.

76. My conclusion that the Employee was unfairly dismissed does not absolve her from blame. In my view, having regard for her position, her tenure and the overall circumstances, she contributed to her dismissal.

THE AWARD

77. I award compensation to the Employee as follows:

(1) Pay in Lieu of Notice

I award the sum of **\$4,767.00**, being the equivalent of one month's pay, under this head.

(2) Loss of Protection from Unfair Dismissal

The Employee worked for a period of 19 years and 2 months. Based on the Collective Agreement, she is entitled to 5 weeks pay at her last monthly rate of \$4,767.00 for each year of service. I approve and adopt the calculations

below as submitted by Mrs. Peters-Blanchard and award the sum of **\$105,424.33** under this head:

Weekly rate: \$ 1,100.08 ($\$4,767.00 \times 12 / 52$)

5 weeks pay: 5,550.40

19 years pay: 104,507.60 ($\$5,500.40 \times 19$)

2 months pay: 916.73 ($\$5,550.40 / 12 \times 2$)

Total \$105,424.33

(3) Immediate Loss

At the trial, the Employee did not testify regarding her efforts to find employment or otherwise mitigate her loss after her dismissal. Accordingly, her claim for loss under this head has no basis in the evidence. However, I am mindful of the displacement caused by her dismissal in the normal course of things. In the circumstances, I award the nominal sum of **\$9,534.00**, the equivalent of two months salary, under this head.

(4) Future Loss

There is no evidence before the court to ground a claim under this head.

(5) Travel Allowance

Given my earlier comments regarding the lack of evidence, I award the nominal sum of **\$880.00**, the equivalent of two months travel allowance, under this head.

(6) Costs

I find no exceptional reasons to justify an award of costs.

THE EMPLOYEE'S CONTRIBUTION

78. In assessing the Employee's contribution to her dismissal, I have carefully considered the evidence, the submissions of Counsel and the Representative of the Employee, the authorities and the overriding provisions of the Industrial Court Act. In doing so, I am mindful that no exact criteria or parameters are disclosed in the authorities. I simply have to exercise my discretion and do the best I can in the circumstances.
79. In particular, I am mindful of the Employee's overall tenure of 19 years and her tenure of 5 years in the position of Special Service Supervisor as at the date of her dismissal.
80. Moreover, although the Employer did not prove the existence of a written Credit Shell Policy, I find that the Employee was well aware of the unwritten Policy as evidenced by the declaration printed electronically on the passenger tickets.
81. Further, as acknowledged by her, the Employee was aware of the Employer's concerns about "Access Code Abuse" and "Fraud and Theft at LIAT". By her "actions" for which she was dismissed, the Employee failed to have sufficient regard for the concerns of the Employer.
82. In the circumstances, I assess the percentage of the Employee's contribution to her dismissal to be 35%. Accordingly, the total award in the sum of \$120,605.33 is reduced by 35% to \$78,393.47.
83. In the premises, I order that the Employer do pay the said sum of \$78,393.47 to the Employee no later than 31st July 2015.

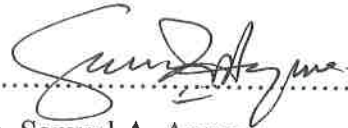
84. I make no order as to costs.

Dated the 26th day of June 2015



Hon. Charlesworth O.D. Brown
President

I concur.



Hon. Samuel A. Aymer
Member

I also concur.



Dr. Hayden Thomas
Member