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**IN THE INDUSTRIAL COURT
ANTIGUA AND BARBUDA**



REF NO. 13 OF 2012

BETWEEN:

GAYLE STRATTON-MATTHEW, ARITHA DURAND

MARY OTTO

And

KINGS CASINO LIMITED

Before:

Hon. Samuel R. Aymer

Chairman

Hon Dr. Hayden Thomas

Member

Appearances:

Ms. Joy Dublin and Ms. Judith Dublin, Attorneys-at-Law of James Dublin & Associates, for the Employees

Mr. D. Raimon Hamilton, Attorney-at-Law of Hamilton and Associates for the Employer

2014 January 27

2015 July 24

JUDGMENT

AYMER – Chairman

Background

[1] The Employer is a Company duly incorporated under the laws of Antigua and Barbuda carrying on the business as Kings Casino, situate at Heritage Quay in the City of St. John's.

[2] A Reference dated 30th April 2012 was filed on 1st May 2012 on behalf of Employees Gayle Stratton-Matthew, Aritha Durand and Mary Otto that they had been unfairly dismissed by Kings Casino.

[3] The said Employees were employed by the Employer for periods of 16, 14 and 6 years respectively, their last positions being Dealer, Cashier and Cashier respectively.

[4] After a number of adjournments because of unavailability of key witnesses for the Employer, the substantive trial was held on 27th January 2014.

[5] On the 27th January 2014, Counsel for the Employer did not arrive for the scheduled 9.00am start nor was the Court informed of his whereabouts and had not arrived up to 9.30am when the hearing commenced. The Court then decided to commence its sitting and, based on a submission made by their Attorneys, considered the cases of Aritha Durand and Mary Otto separately from that of Gayle Stratton-Matthew as these two employees had been given letters of dismissals.

Preliminary Submission Re: Employees Aritha Durand and Mary Otto

[6] Their Attorneys' submission was that trial of the issue for these two employees be in accordance with C 10(4) of the Antigua and Barbuda Labour code and that the Employer be estopped from providing any further information as to the reason for the fairness of the dismissal and invited the Court to make an order of unfair dismissal based on the imprecision of the reasons given in the letters of dismissal. The Court agreed to consider this submission and adjourned to deliberate on the matter.

[7] The Employees Aritha Durand and Mary Otto were employed with the Employer for a period of 15 years and 6 years respectively up until January 6, 2011 when their services were terminated by the Employer.

[8] Both Employees received letters of termination via their Attorney on February 9th, 2011. Neither of the said letters, which were dated January 6th, 2011, provided the Employees with a precise statement as to the reason for their dismissal.

[9] Both letters contained the identical wording and were addressed to Ms. Durand and Ms. Otto and stated:

“Because of gross violation of company policies and procedures, King’s Casino has left with no other alternative but to terminate your service forthwith”. The letters were signed by “Emilio Fagalde, General Manager”.

[10] The Court deliberated on the submission made on behalf of two employees, Aritha Durand and Mary Otto, by their Attorneys that the letters of termination were not in accordance with Section C 10(4) of the Antigua and Barbuda Labour Code in that the reason given for termination was imprecise and that the Employer was estopped from providing further information in relation to the reason for, and the fairness of the dismissal.

[11] In the absence of representation from the Employer, the Court after deliberation , and based on the submissions, made an order on the resumption of the sitting, that the reason for the dismissal provided in the letters of dismissal of the two employees was indeed imprecise and ruled that the Employees were unfairly dismissed and that the issue of quantum was to be determined by the Court.

[12] Counsel for the Employer arrived after the order had been made and was informed of the action taken and of the Court’s decision as regards the two employees Aritha Durand and Mary Otto.

[13] Counsel apologized to the Court for his late arrival which he claimed was due to some misunderstanding.

EMPLOYEE GAYLE STRATTON-MATTHEW

Background.

[14] Up until December 2010, the Employee was employed on a full time basis for an indefinite term. At the date of her termination she held the position of Dealer and had been employed for a period of over 16 years.

[15] On December 22, 2010, without explanation, the Employee was demoted to the position of Bar Waitress and her work-week reduced from a full week of 5 or 6 days to 3 days per week.

[16] On January 6, 2011 the Employee, upon reporting for duty was barred from entering the principal premises. The explanation then given by the Employer was that the Employee had resigned on December 23, 2010.

The Employee's Case

[17] By its Memorandum filed on March 04, 2012, the Employee sets out its case. In it the Employee contended that:

- (1) The Employee was treated unfairly when her work week was arbitrarily reduced to a three day week
- (2) The Employee was treated unfairly when she was arbitrarily demoted to work as a Waitress in the Employer's business, after having been employed and having worked as a Dealer in the Employer's establishment for several years.
- (3) The Employee was constructively dismissed on January 6, 2011 when she was barred from continuing to work and requested to leave the Employer's premises.
- (4) The Employee was treated unfairly when she was not given the opportunity to respond to the allegations of misconduct raised by the Employer.

In summary, the Employee urged the Court to find that it had been constructively and unfairly dismissed, as a result of which it had suffered loss and damage for which the Employer is liable.

The Employer's Case

[18] By Memorandum filed on January 22, 2014 the Employer denied that it constructively or unfairly dismissed the Employee as alleged or at all and contends that the Employee resigned.

The Issues

[19] The issues arising from the pleadings are as follows:

- (1) Did the Employee resign?**
- (2) Was the Employee constructively dismissed?**
- (3) If there was constructive dismissal, was it fair or unfair?**

The Evidence

[20] The Employee's evidence was tendered through her Witness Statement filed on May 31, 2013 and oral testimony given **under oath**.

[21] The Employee stated that her usual work week consisted of 5 to 6 days a week at an hourly rate of \$17.50. This amounted to \$3,033.33 monthly. She indicated that on December 24, 2010, upon reporting for work the General Manager, Mr. Emilio Fagalde, arbitrarily and without notice or explanation reduced her work week to three (3) days.

[22] Bewildered and concerned about this development she immediately inquired of the General Manager as to the reason for the reduction in her work week and in response the General Manager merely walked away without responding. She also made similar enquiries of her immediate supervisor who advised that she, too, did not know the reason.

[23] While in this state of bewilderment, on the same day the Employee further complained about the same matter by overseas telephone to the Managing Director, Mr. Elliot Wexelman, who resides overseas. She claimed that the Managing Director advised that she should continue to work as scheduled pending his arrival in Antigua.

[24] The Employee stated that she remained at work for that day, performing duties as a Dealer from 10.00am to 6.00 pm despite not having been provided with a satisfactory answer. She stated that her next scheduled work day was December 27, 2010.

[25] The Employee admitted to returning to the premises on December 24, 2010 at approximately 10.00pm and cleaned out her locker and at the same time making the statement: **"Emilio is always frustrating people to the point where they**

want to quit or resign..." but asserted that in making the statement, it was not her intention to resign nor sever the employer/employee relationship.

[26] Upon reporting for duty on December 27, 2010, the Employee was advised by the shift manager, Ms. Sherry-Ann Peters, that the General Manager, Mr. Emilio Fagalde had left instructions that she should not be allowed to work that evening and that she should go and see him the following day.

[27] During the meeting the following day the General Manager alluded to his disappointment with the Employee. The Employee inquired as to the reason for the statement and was informed that she would find out upon the arrival on the island of the Managing Director, Mr. Wexelman.

[28] The general Manager also alluded to the Employee alleged resignation. Upon the Employee denying the allegation of resignation, she was advised that effective immediately she was being demoted to work as a waitress and that she should report for duty at the bar that evening. She claimed that the junior position of waitress was one that she held some ten years earlier. Nevertheless, the Employee reported to the bar as instructed.

[29] The Employee also stated that she was presented with a two line letter by the Employer to be signed consenting to the demotion. Upon inquiring as to the consequences if she refused to sign the letter, she asserts that she was advised that it would be concluded that she gave up her job. She therefore signed the letter under duress.

[30] The Employee continued to perform the duties of Waitress up to and including December 31, 2010 after which she was then scheduled to work on January 6, 2011.

[31] On January 6, 2011 when she reported to work, the Employee received an oral message from her Shift Manager, Ms. Sherrey-Ann Peters advising that Mr. Wexelman, who was then in Antigua, had barred her from continuing to work and requested that the Employee leave the premises because he understood that she had quit the job. Again the Employee denied that she had resigned.

[32] The Employee stated that as a result she had no choice but to leave and stay away from work pending formal correspondence or further word from the Managing Director.

[33] The Employee considered that she was treated unfairly when she was not given the opportunity to respond to allegations of misconduct raised by the Employer.

[34] In its Memorandum, the Employer stated that the Employee resigned and that her resignation was accepted by the Employer. Moreover, the Employee well knew of the allegations made against her and that she was informed orally and placed on reduced hours.

[35] Under oath and during his testimony, Mr. Emilio Fagalde the General Manager, when asked if the Employee had resigned replied:

“She knew there was an investigation and she was afraid so she resigned. She never came to me, she went to the other managers and said she resigned”.

While still under oath Mr. Fagalde further stated that:

“Sherrey-Ann Peters is the person who claimed that Ms. Stratton resigned”.

[36] Mr. Erin Peters, Surveillance Operator at the Casino gave evidence for the Employer and stated, inter alia:

“I am not aware that there was a resignation from Ms. Matthew”.

[37] Mr. Stevhen Paul Selim, also gave evidence for the Employer. He is the “Slot Machine Technical Operator” for the Casino and seemingly well acquainted with the matter at hand. When asked under cross-examination whether he was privy to any conversation about resignation by the Employee he responded:

“Just from Mr. Fagalde. I did not hear directly but through Sherry-Ann and Mr. Fagalde.”

Issues To Be Decided

- **Did the Employee resign?**
- **Was the Employee Constructively Dismissed?**

- **Was the Dismissal Fair?**

Issue No 1 - Did the Employee Resign?

[38] Reviewing the evidence of Messrs. Fagalde, Peters and Selim, as outlined in paragraphs [35], [36] and [37] above none of these senior employers of the Company who appear to be relatively *au fait* with the matter, furnished the Court with any proof of a resignation by the Employee but merely made anecdotal references mainly from Ms. Peters and sometimes through a third party. Ms. Peters was not brought as a witness in the case and no written evidence was produced.

[39] The only reference to “resignation” in the instant case was the Employee’s admission that after some frustration brought about by what she perceived to be unfair treatment by the Employer she made a statement to the effect that:

“Emilio is always frustrating people to the point where they want to quit or resign”

[40] This incident took place on December 24, 2010. And the Employee’s uncontroverted evidence was that on December 26, 2010 she called the Managing Director overseas, to complain about what she perceived to be the unfair way she was being treated. She recalled that he stated:

“He could not speak to the matter from that distance. He was coming to Antigua on January 5, 2011 and advised me to go back to work on my scheduled day which was December 27, 2010. On December 27, 2010, I was scheduled to work at the Paradise Casino Branch. I went in to work as usual and as scheduled, and Ms Sherry-Ann Peters was shop Manager and she informed me that Emilio said I should not work that evening, to send me home and have me come to him the next day which was December 28, 2010”.

[41] On December 28, 2010 the Employee stated, still under oath and uncontroverted, that the Managing Director told her *inter alia*:

“You are coming to work tonight at the bar area, you are demoted to a waitress”.

And the Employee retorted:

“I don’t care where you put me you cannot touch my money”.

[42] Counsel for the Employee submitted that, upon strict interpretation, the words uttered by the Employee do not amount to a resignation; that the words merely portrayed the Employee’s feelings rather than an intention on her part to take a particular course of action.

[43] In support of Counsel’s submission the Court’s attention was drawn to the dicta of Kilner Brown J. in the ruling of **Martin v Yeoman Aggregated Ltd [1983] IRLR** where the learned Judge stated that:

‘once clear and unambiguous words are used either by the employer in saying “You are dismissed” or by the employee saying “I resign,” at that moment the contract irreversibly comes to an end’.

Further support is to be found in: **Tanner v D.T.Kean Ltd [1978] IRLR 110** as referenced in the decision of the Court in **B. G Gale v Gilbert [1989] ICR 1149**.

[44] In the instant case based on the evidence, the words used by the Employee were clear and unambiguous but did they constitute a resignation? The statement has to be examined together with the chain of events both before and after it was made.

[45] The evidence is that the Employee continued to be engaged in the employ of the Employer after December 24, 2010 whether as a dealer or dealer-demoted-to waitress and had established contact with the Managing Director with a view to having the matter satisfactorily resolved on his next scheduled visit to Antigua on January 5, 2011.

[46] Based on these actions it is reasonable for the Court to infer that the Employer did not construe the Employee’s words as her resignation; did not accept them and did not view the employer-employee relationship as having been severed.

[47] Having regard to the foregoing, we are of the view that the Employee did not resign nor set out to sever her employment with the Employer.

Issue No. 2 - Was the Employee Constructively Dismissed?

[48] It is instructive that critical areas of the evidence on this aspect were not contradicted. What are these?

[49] In late December the Employee's evidence was that the number of working days per week of the Employee was reduced to three from a regular working week of 5 or 6 days, without explanation. When queried, the General Manager allegedly walked away and the Supervisor allegedly did not know the reason. This evidence was not contradicted.

[50] On December 27, 2010 the Employee reported to work as scheduled at the Paradise Casino. The evidence was that on reporting for work Ms. Sherry-Ann Peters who was then Shop Manager informed the Employer that: *"Emilio said that I should not work that evening – to send me home and have me come in to see him the next day"*.

[51] On December 28, 2010 the Employee met with the General Manager who, after voicing his displeasure with her about as yet undisclosed infractions allegedly committed by her, instantly demoted her to the position of waitress at the bar to commence the same night – a junior position which the Employee held some 10 years earlier.

[52] Further evidence of the Employee, not contradicted, was that after she started to work that evening a Mr. Thomas Nelson handed her a two line letter which stated that she accepted the responsibility to be demoted to the bar which she signed under duress. She allegedly asked for a copy and was refused. This letter was not produced to the Court by either party.

[53] By way of countering the Employee's statement that she had no knowledge of the reason for her demotion and other actions taken against her during the period in question, Counsel for the Employer suggested to the Employee that between November 16, and 23, 2010 she was told that monies were missing from the two periods mentioned. The Employee insisted that she was not told.

[54] Counsel for the Employer further suggested that the Employee was told of the video footage on which the Employer based its case and its allegation of theft. And again the Employee stated that she was never told. She admitted that she heard

“veiled allegations” but did not know what the allegations were until January 6, 2011 when apprised by another member of staff.

[55] It emerged from the evidence that the allegation of theft stemmed from what was described as suspicious movements among some staff on November 16 and 23, as they carried out counting duties. Under cross examination it was admitted that the staff in question, including the Employee, were engaged in exchanging US currency for EC dollars. The Employee insisted that this was not an isolated case as Staff were engaged in this practice from time to time.

[56] Mr. Fagalde, in giving evidence, when asked about this practice suggested that to do this the Employer **‘was breaking procedures’** and there was a written policy on this matter. It is instructive, however, to note that under examination he admitted: ***“I had allowed it in special cases”*** and went on to explain that such transactions are done in the cashier’s cage and within the coverage of the cameras. Apart from the suspicious movements already mentioned, no evidence was adduced to confirm theft.

[57] The Employee stated, and again without contradiction, that when she reported for work on January 6, 2011, a message was delivered to her by the Shift Manager, Sherrey-Ann Peters advising that Mr. Wexelman who was then in Antigua, had barred her from continuing to work and requested that she leaves the premises, which she did. Accordingly, the Employee is asking the Court to find that she was constructively dismissed.

[58] Constructive Dismissal is not defined by the Antigua and Barbuda Labour Code, but a body of law has developed around this issue which is relevant to the determination of this matter and the Court must look to the common law.

[59] At the end of the hearing, Counsels on both sides were invited to make written submissions. However only one submission was received by the Court: that from Counsel for the Employee.

[60] Counsel for the Employee pointed to Section C59 of the Code which treats as misconduct sufficient to justify a summary dismissal, acts of the employee which clearly demonstrate that the employment relationship cannot reasonably be expected to continue. Following on this, Counsel submitted that if such acts on the

part of an employee are treated by the law as a fundamental breach warranting summary dismissal, then similar acts on the part of an employer must be treated as constructive dismissal particularly where the employee feels compelled to leave the job.

[61] Counsel cited a number of cases in relation to the applicable law which the Court found to be helpful.

The Main Issues: Constructive Dismissal or Abandonment of Employment.

[62] As already stated in paragraph [58] above, in the absence of specific provision in the Code in respect of Constructive Dismissal or abandonment of employment, this Court must look to the common law and has indeed adopted a well settled approach in matters where there are no relevant provisions in the Code. Apart from the *Romig Michael v Dews (No.1 of 1986 case*, this Court has relied on the common law to determine other cases of constructive dismissal, such as *Edward Smith v Stanford Financial Group Limited (No.16 of 1998)* and this approach was tacitly approved by the Court of Appeal.

[63] In a recent case in this Court, *Wayne Weaver v St. James Club (3of 2012)*, Brown P stated:

“Quite apart from express terms, there are implied terms imposed by law which are incidental to every contract of employment. One such term imposes an obligation of mutual trust and confidence between employer and employee”

In relation to the conduct of employers, in *Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666* Browne-Wilkinson J stated:

“In our view it is clearly established that there is implied in a contract of employment a term that the employers will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee...”

[64] In the leading case of **Western Excavating** also cited in the case mentioned at paragraph [63] above, it was established that a constructive dismissal will be fully constituted when:

- (1) the conduct is such that it demonstrates that the employer no longer intends to be bound by the contract of employment;
- (2) the repudiatory conduct must be such that it undermines or erodes or destroys the contractual relationship;
- (3) the employee's response to the employer's repudiatory breach is directly referable to the employer's conduct;
- (4) the employee must get his timing right. He must not work too long after the breach and must not conduct himself in such a way as to waive his right and thereby affirm the contract.

[65] Counsel for the Employee submitted that the actions of the Employer, taken collectively or individually, were an abuse and amounted to a breach of a fundamental term of the employment contract and that the Employer abused its power over the Employee and either destroyed or seriously damaged the mutual trust and confidence between the Employer and the Employee.

[66] In the instant case, the evidence indicated that the Employee was subjected to unfavorable treatment about which she complained. The Employee's work week was arbitrarily reduced to a three day work week from an accustomed 5 or 6 day work week without explanation. Further, the Employee was demoted from Dealer to a junior position of Waitress, the latter post which she had held some ten (10) years earlier. And when she sought to inquire as to the reasons, she was told to leave the premises and was met with allegations of wrongdoing on her part of the kind that not only questioned her integrity but also her character.

[67] Based on the evidence also, and having regard to the **Western Excavating Case** (*op cit*) I am of the view that the Employee acted promptly and that her action was "directly referable to the Employer's conduct" and by her conduct did not waive her right and thereby affirm the employment contract.

[68] Accordingly, I conclude that the Employee was constructively dismissed and did not abandon her job. She merely accepted the Employer's repudiatory breach of the contract of employment by being arbitrarily sent home without explanation.

ISSUE NO 3 Was the Dismissal Fair?

[69] Section C59 of the Code sets out clearly the circumstances within which an employer can be deemed to have been fairly dismissed including the process to be followed in each case.

[70] Did the Employer provide the Employee with a precise reason for her dismissal? The evidence does not support this. Was the alleged misconduct claimed by the Employer proven? The evidence does not support this. Did the Employer follow the principles of natural justice in this case? Again the evidence does not support this. The Employee was not presented with details of her alleged misconduct and indeed when she inquired, the evidence given under oath and not controverted, she was told *“you will find out when Wexelman gets here on January 5th”*. Further the Employee became aware of the nature of her alleged misconduct through another employee.

[71] Taking the totality of events into consideration, I am of the view that the Employee was unfairly dismissed.

QUANTUM of the AWARDS

[72] When considering the heads and quantum of compensation, the Court is mindful of **Section 10 (3) of the Industrial Court Act Cap. 314** which provides:

“(3) Notwithstanding anything in this Act or in any other rule of law to the contrary, the Court in the exercise of its powers shall –

a) make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of persons immediately concerned and the community as a whole;

b) act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations and, in particular, the Antigua and Barbuda Labour Code.” With these provisions in mind, I make the following awards:

[73] **Aritha Durand:**

(1) Loss of Protection from Unfair Dismissal

An award under this heading is arrived at in the same manner as the computation of severance payment. An employee is entitled to one month's pay for every year that he has worked at his last basic wage. The award in this case is therefore in the amount of Employee's last basic salary, \$2,940.00 per month, over 15 years. She is therefore entitled under this head to an award of (\$2,940.00 x 15) or **\$44,100.00**

(2) Notice Pay

The Employee is entitled to one month's pay in lieu of notice in the sum of **\$2,940.00**

(3) Vacation Pay

An award of 15 days vacation pay is awarded under this head in the sum of **\$2035.38**

(4) Immediate Loss

An employee who is unfairly dismissed has a duty to mitigate his loss. The Employee attempted to find alternative employment but was unable to do so. These attempts, supported by written applications, included Blue Waters Hotel, Sagikor Financial Centre, Grand Bay Casino, Karib Cable, APUA, Crossroads Centre and Hadeed Dental Clinic at which latter place the Employee found employment at a salary of \$2000 per month. Notwithstanding her efforts, I am of the view that with more diligence this employee should have been able to find alternative employment after 6 months. Consequently we make an award in two stages:

Loss for the first period of 6 months of unemployment, at the rate of \$2,940.00 per month amounting to **\$17,640.00**

Loss for succeeding 12 months at the rate of \$940, being the difference between her salary at the Employer and that which she earned subsequently, amounting to **\$11,280.00**

Resulting total award under this head is **\$28,920.00**

Future Loss

The current legislation has not imposed any statutory limit on awards including an award for future loss.

See Dennis Byron JA in Antigua Village Condo Corporation and Jennifer Watt Civil Appeal No.6 of 1992 at page 11.

The following principles of law emerge from a reading of the cases:

- i. *“There must be some evidence of future loss and the scale of future loss to enable the industrial tribunal to make any award under this heading. The tribunal must have something to bite on, and if an applicant produced nothing for them to bite on, he will have only himself to thank if he gets no compensation for loss of future earnings.”*

See Adda International v Curcio [1976] I.C.R. 406, per Bristow J. at page 412, Letter D.

- ii. *“[T]he onus is on the unfairly dismissed employee to prove the probability of loss upon which an award of compensation is based and to prove the probable duration of that probability.”*

See Antigua Village Condo Corporation and Jennifer Watt per Sir Vincent Floissac at page 9.

In the instant case no evidence was produced to enable an informed decision to be made under this head. Consequently no award has been made.

(5) Exemplary Damages

It is the evidence of the Employee that her work week was arbitrarily reduced from 5 or 6 days to three (3) without explanation while several subordinate junior staff enjoyed their usual full work week. Her evidence in this regard was not challenged during the hearing. During a meeting with the General Manager, the Employee's denial to an allegation of theft was met with a directive to leave the premises and not return until contacted by the Employer. That was on January 6, 2011.

The Employee, not having heard anything further from the Employer, hand delivered a letter to the General Manager on January 27, 2011. It was not until February 9, 2011, upon inquiry from the Employee's Attorney, that the Employer advised that he had letters of termination for the Employee but did not know of their whereabouts. The Employee stated that her address and telephone number had not changed and ought to have been in the file of the Employer.

As a result of the Employer actions, it is reasonable to infer that the Employee was embarrassed in the eyes of the work colleagues and associates.

Having regard to the above I find the dismissal of the Employee in this case to be harsh and oppressive. I therefore make an award for exemplary damages to the Employee of **\$10,000.00**

[74] Mary Otto:

The circumstances surrounding this and the case of Aritha Durand are similar except in the specifics of the duration of their employment and their salary details. Accordingly this is reflected in the heads of awards.

(1) Loss of Protection from Unfair Dismissal

Employee was employed with Employer from November 2004 to January 6, 2011. She worked for \$17.00 per hour for an average of 8 hours per day, five days per week. Her salary was therefore \$2946.67 per month. She was employed for 6 years and 3 months the award under this head is therefore for (\$2946.67 x 6.25) or **\$18,416.69**

(2) Notice Pay

The Employee is entitled to one month's pay in lieu of notice in the sum of **\$2,946.67**

(3) Vacation Pay

The Employee gave evidence that she had no outstanding vacation.

(4) Immediate Loss

As already stated in paragraph [73] (4) above, the Employee has a duty to mitigate his loss. In this regard she stated that she made attempts to find alternative employment at a number of

establishments, including Diamond International, Sandals, Pineapple Beach Hotel, Colombian Emeralds and the new Majestic Casino, without success. She did not keep copies of any applications. However she produced a copy of an employment contract with The Blu Pineapple Restaurant and Bar dated September 18, 2013 where her salary was calculated at EC \$10.00 per hour plus service charge.

For her loss between the date of her dismissal on January 6, 2011 and the date of the trial January 27, 2014 the following award is made:

Loss for the first period of 6 months of unemployment at the rate of \$2946.67 per month amounting to **\$17,680.02.**

Loss for the succeeding 12 months at the rate of \$1213.33 being the difference between her salary at the Employer and that earned subsequently amounting to **\$14,560.**

Resulting in the total under this head of **\$32,240.02**

Future loss

For the reasons given in [73] (5) above no evidence was given to assist the Court to make an informed quantum decision. No award is therefore given under this head.

(5) Exemplary Damages

For the similar reasons already given at paragraph [73] (6) I award the Employee as exemplary damages an amount of **\$10,000.00**

[76] Gayle Stratton-Matthew

(1) Loss of Protection from Unfair Dismissal

The Employee was employed with the Employer for 16 years from January 1995 to January 2011. Her last wage was \$2,946.67 per month. She is therefore entitled under this head to an award of (\$2946.67 x 16) or **\$47,146.72**

(2) Notice Pay

The Employee is entitled to one month's pay in lieu of notice in the sum of **\$2,946.67**

(3) Vacation Pay

No evidence was tendered that the Employee had accrued any vacation. Consequently no award is made under this head.

(4) Immediate Loss

An employee who is unfairly dismissed has a duty to mitigate his loss. That is, her loss between the date of dismissal on January 6, 2011 and the date of the trial on January 27, 2014. There is no evidence of this Employee's attempt(s) to do so. In this case I award the equivalent of 6 months wages in the sum of (\$2946.67 x 6) i.e. **\$17,680.02**

(5) Future Loss

For reasons already adumbrated in paragraph [73](5) no award is given under this head.

(6) Exemplary Damages

For similar reasons already given in the case of the other two employees at paragraphs [73] (5) and [74] (6), I award the Employee as exemplary damages an amount of **\$10,000.00**

(7) Manner of Dismissal

This award is given in situations where the manner in which the employee is unfairly dismissed and the circumstances surrounding the dismissal could cause an employee to be less attractive to future employers than other job applicants, when seeking employment.

In the instant case the Employee was subjected to allegation of misconduct and subsequent police detention. Included in the allegations was that of theft which was not proven.

Moreover the video footage on which the allegation was based was never shown to the Employee, as admitted during cross examination by the Employer's 'Slot Technician' because that was considered to be the property of the Employer. It is reasonable to infer, that this would have destroyed the Employee's credibility in the eyes of her co-workers.

This Court was required to examine the issue of an employee's *manner of dismissal* in **Madeline v The Epicurean Ltd. Ref. No. 56 of 1996**. In that case the employee was charged by the police with

theft of money. She was acquitted. She was subsequently dismissed for the same offence of theft. Maundy P. held that her dismissal was unfair. In that case Maundy P. stated, *inter alia*, as follows:

"Even though subsequent to the dismissal the Employee did obtain employment where she was again concerned with monies, I believe that it is correct to say that as a general rule the employer is usually reluctant to employ such a person to deal with his monies. And even if the allegation is found to be false or unsubstantiated, it nevertheless will leave an indelible mark on the individual's character and she will have fingers pointed at her perhaps for the balance of her life, especially in a small community like ours."

Maunday P. stated further:

"I am of the view that the dismissal of an Accounts Supervisor who deals with money and indeed, large sums of money, struck directly at her reputation and character and would make her more liable for dismissal and less liable to find employment. To my mind this is a fit and proper instance for an award under this head....."

In all the circumstances I am of the view that the Employer embarked on a course of action without regard for the damage to the reputation and character of the Employee and without regard for the requirement of good industrial relation with its employees and consequently I award an amount under this head of **\$10,000.00**

[77] Summary of Awards:

Aritha Durand

i.	Loss of Protection	\$ 44,100.00
ii.	Notice Pay	\$ 2,940.00
iii.	Vacation Pay	2,035.38
iv.	Immediate Loss	\$ 28,920.00

v.	Future Loss	\$ No Award
vi.	Exemplary Damage	<u>\$ 10,000.00</u>
	Total	\$ 87,995.38

Mary Otto

i.	Loss of protection	\$ 18,416.69
ii.	Notice Pay	\$ 2,946.67
iii.	Vacation Pay	No award
iv.	Immediate loss	\$ 32,240.02
v.	Future Loss	\$ No Award
vi.	Exemplary Damage	<u>\$ 10,000.00</u>
	Total	\$ 63,603.38

Gayle Stratton

i.	Loss of protection	\$ 47,146.72
ii.	Notice Pay	\$ 2,946.67
iii.	Vacation Pay	No award
iv.	Immediate Loss	\$ 17,680.02
v.	Future Loss	\$ No award
vi.	Exemplary Damage	\$ 10,000.00
vii.	Manner of Dismissal	<u>\$ 10,000.00</u>
	Total	\$ 87,773.41

Grand Total **\$239,372.17**

[78] There shall be no order as to costs.

[79] The total amount awarded is to be paid by the Employer to the Employees on or before 31st August 2015.

Dated the 24th day of July 2015



SAMUEL R. AYMER
CHAIRMAN



I Agree

DR. HAYDEN THOMAS
MEMBER