

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 9 OF 2012

BETWEEN:

SAMUEL BRAZIER

Employee

And

CASCAL WATER (ANTIGUA) LIMITED

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. St. Lawrence DeFreitas

Member

***The Hon. Althea M. Crick**

Member

Appearances:

Mr. Kem Riley and Mrs. Cindy Blanchard, Industrial Relations Officers of the Antigua & Barbuda Workers' Union for the Employee

Mrs. Stacy Richards-Roach, Attorney-at-Law of Richards & Co. for the Employer

2014: June 25

2015: November 11

JUDGMENT

BROWN, P.:

Introduction

1. The Employer, now named Sembcorp (Antigua) Water Limited, is a company engaged in the production of potable water by desalination at its reverse osmosis plant at Crabbs, Antigua and supplying the same to Antigua Public Utilities Authority (APUA).

2. The Employee commenced his employment on November 1998 as an Operator/ Maintenance Technician and was promoted to the position as Shift Leader/ Supervisor in July 2004. His last salary was \$3,617.97.
3. In the course of its operations the Employer imports equipment and other items in protective wooden casings which are disassembled on site. The pieces of the casing materials are usually given to employees, upon their request, who are then authorized to take them from the Employer's premises.
4. The exit gate of the Employer's premises is manned by security officers, employees of Special Security Services (an independent security company), whose duties include the inspection of vehicles leaving the Employer's premises to ensure that none of the Employer's property is taken away without authorization.

The Employee's Case

5. By his Memorandum filed on June 24, 2014, the Employee contended that he was unfairly dismissed on the following grounds:
 - (i) As a Shift Leader, he was accustomed to giving permission to employees to take pieces of the wood casings from the Employer's premises.
 - (ii) On Sunday 5th December, 2010 he attempted to contact Derrick Sylvester, the Employer's Project Manager, (Sylvester) by telephone to obtain permission to remove 3 pieces of plywood casing board which were generally either given to employees or thrown away.
 - (iii) Having completed his shift, he stopped at the exit gate in his vehicle carrying the 3 pieces of plywood; he invited the Security Officer Avis Palmer(Palmer) to conduct the usual search and told her he had no pass since he was not able to contact Sylvester and that he would get it the following day; the Security Officer allowed him to leave the premises with the plywood.
 - (iv) Approximately 15 minutes later Sylvester called him by telephone and requested that he return the material. The Employee immediately complied.

- (v) The Employee worked normally on December 6, 2010 in the presence of Sylvester who said nothing to him about the incident. On December 7, 2010 he was suspended for 2 weeks pending an investigation.
- (vi) On December 14, 2010 the Employee was invited to a meeting scheduled December 17, 2010 to discuss the findings of the investigation. However, there was no investigation of and no discussion about the incident.
- (vii) On December 17, 2010, the dismissal letter bearing that date was delivered to the Employee dismissing him on the grounds that he appropriated the Employer's belongings without the Manager's consent and that he misled the Security Officer.
- (viii) The Employee denied that allegations against him and contended that the Employer's stated assertion about the seriousness of his conduct was a cover for the harsh treatment meted out to him.

The Employer's Case

6. By its Memorandum filed on February 21, 2014; the Employer contended that the Employee was not unfairly dismissed. It relied on the following grounds:
 - (i) The Employer denied the Employee's account of the incident and asserted that it was the Security Officer, Rosemarie Thomas (Thomas) who observed the plywood in the Employee's vehicle; that it was she who asked the Employee for the gate pass and the Employee then responded that he had Sylvester's permission to take the pieces of plywood.
 - (ii) When Thomas made contact with him by telephone, Sylvester denied giving the Employee permission.
 - (iii) As part of its investigation, the Employer arranged for the Employee to attend the premises of Special security Services to be interviewed by the Devon Thomas, Operations Manager of that company. He subsequently issued a written report to the Employer.
 - (iv) In his report, Devon Thomas informed the Employer that Employee stated that the pieces of plywood were scrap to be thrown out and that he also

told the Security Guard that he would inform Sylvester about the plywood the following day.

The Issues

7. The main issues for determination in this Reference are:

- (1) Whether there was a policy or rule, with sanctions for its breach and known to the Employee, in existence at the material time governing the removal of the casing material from the Employer's premises.
- (2) Whether the Employee willfully acted in breach of the policy or rule, if any.
- (3) Whether the Employer acted reasonably or unreasonably in the circumstances when it dismissed the Employee.

The Evidence

8. The Employee's evidence is largely consistent with his Memorandum. He testified that:

- he had been employed by the Employer for approximately 12 years during which period it was the practice that employees could remove shipping (casing) materials from the premises.
- During the period of his employment, he had been promoted to the position of Shift Leader, but never received the correct rate of pay.
- In exercise of his discretion as Shift Leader, he had given permission to other employees to take away shipping materials.
- There is a distinction between the removal of shipping materials and the removal of other items such as tools.
- Apart from a written pass, permission could be given orally. It was not true to say that only senior management had the authority to approve the removal of shipping materials.
- He attempted to get permission in advance from Sylvester but was unable to reach him by telephone.
- Although the boom was open and he could have driven out without stopping, he stopped and declared the pieces of plywood to Ms. Avis Palmer (Palmer) and promised to get the pass and return it as soon as possible. Palmer noted the items and gave him the "OK" to leave with them. Afterwards, Palmer passed on the information to Thomas.

- He did not see or have any conversation with Thomas at that time.
 - Fifteen minutes after he left the premises, he received a telephone call from Sylvester who told him to return the items. He promptly complied.
 - Sylvester was present at work with him on December 6, 2010 but said nothing to him about the incident.
 - He was not aware of the content of the report issued by Devon Thomas after their meeting at Special Security Services.
 - After his suspension on December 7, 2010 no investigation was held and he heard nothing from the Employer about the incident until December 17, 2010 when he was dismissed.
 - When he showed up for the meeting convened by the Employer on December 17, 2010, he was not allowed to say anything or otherwise given the opportunity to clear his name.
 - In his view, the dismissal letter was unfair and misleading. He denied “appropriating the company’s belongings or misleading the Security Guard” as stated in the dismissal letter. Further, he said that although he did not have a gate pass, he could get one the following day.
 - The skills which he had as a reverse Osmosis Technician are not common in Antigua and Barbuda. Since his termination, he sent out several applications but found no regular employment. However, he did find odd jobs for which he was paid between \$200.00 and \$400.00 per fortnight.
9. On the other hand, Sylvester, Thomas and the Operations Manager, Rickey Buckley, (Buckley), testified on behalf of the Employer. The most instructive parts of their testimony are as follows.
 10. At the commencement of her testimony leave was granted for Thomas to amend her witness statement filed on February 26, 2014 by deleting paragraph 3. In effect, her testimony was corrected to show that at the material time, contrary to the Employer’s Memorandum, she had no conversation with the Employee at the exit gate.
 11. By the date of the incident, Thomas had been assigned to work at the Employer’s premises for approximately 3 years. She said that her instructions were that persons

leaving the premises with any material were “supposed” to present a gate pass. She continued that:

“there are times when items leave without a gate pass. They would call and say that “so and so” is coming with a drum or something and to allow the person to pass. The call would come from Mr. Buckley or Mr. Perry or Mr. Mason as Shift Leaders. I don’t know how long, but he call me at least two particular times when he was Shift Leader. Normally, it would be Mr. Perry who call”

12. Further, Thomas explained that the procedure was that if there was no pass, she was supposed to call the Manager or highlight it in the log book. At the material time, Palmer, with whom she was working, let the Employee through the gate.
13. Thomas also testified that because of the incident, the Employer subsequently put other measures and procedures in place.
14. Sylvester’s testimony is largely contained in his witness statement filed on March 4, 2014. In particular, he recounted the telephone call between himself and Thomas and his subsequent telephone call to the Employee.
15. Under cross examination, Sylvester also testified as to a preexisting strain in his working relationship with the Employee. He said that when he started to work for the Employer he met the Employee there and that although the relationship was good at first, things broke down a few months later. He said that the Employee was disrespectful and always late for work. Further, he said that although he never wrote to him, he warned the Employee several times.
16. Sylvester also said that apart from the brief telephone conversation on December 5, 2010 when he told the Employee to return the pieces of plywood, they never spoke again about the incident and he never requested a written report from him. He said he knew of no investigation conducted by the Employer which involved the Employee. In particular, Sylvester said that he had no meeting or discussion with the Employee on December 6, 2010 or at any subsequent time before his dismissal on December 17, 2010.
17. In relation to the policy about persons leaving the Employer’s premises with the Employer’s material, Sylvester said that the company had a written policy which was in place when he started working there and remained in place up to the date when he left.

He said that he gave no one authority to allow items to leave the Employer's premises without a pass. He maintained that if it happened no one told him about it.

18. For his part, when testifying on behalf of the Employer, Buckley said that he took up his position as Operations Manager in 2009. He also confirmed that Mr. Perry was the Maintenance Manager and that Jermaine Mason was at one time a Shift Leader who was subsequently promoted to the position of Supervisor.
19. Buckley testified that the policy was that no item should leave the compound unless a security pass, issued by management, was shown to the Security Officer at the gate. In contradiction of Sylvester's testimony, he continued that if a pass is not issued, permission would be given by management who would tell the Security Officer to allow the employee to leave with the item. According to Buckley, in such a case, a pass would be issued subsequently for the record.
20. Further, Buckley said that there was a procedure in place whereby after 4.00 pm when the office was closed and no gate passes could be issued, individuals would call Management who would in turn call Security giving permission for individuals to leave with pieces of material.
21. Buckley recalled the meeting on December 17, 2010 when the Employee was given his letter of dismissal. In particular, he recalled that the Employer rejected the request from Mr. Esrome Roberts, the Employee's Union Representative, that the Employer carry out an actual check to confirm the Employee's assertion that he was not the only employee who was allowed to take away pieces of material without a gate pass.
22. In relation to the Employer's policy regarding vehicles leaving the compound without a gate pass, Buckley said that there was no written policy. In further contradiction of Sylvester, he said that a list of employees who were exempt from the requirement for a gate pass was communicated to the Security Officers but the Employee's name was not on the list.
23. Further, Buckley, like Sylvester, said that the Employee was a good worker when he started in his employment but later on he had personal issues and his behavior changed. However, the Employer never wrote to him in that regard.
24. Buckley acknowledged that whenever materials left the Employer's premises without a gate pass, the incident would be highlighted in red. He also confirmed that as a Shift

Leader, it was “OK” for Mr. Mason to call the Security Officer to give permission for materials to be allowed to leave without a Pass.

The Legal Framework

25. For present purposes, the foundation of the legal framework is provided by Antigua and Barbuda Labour Code, Cap. 27, (the Labour Code) which identifies the bases for the determination of whether a dismissal is fair or unfair. Subject to the statutory test of reasonableness, a dismissal may not be unfair if the reason assigned for it is the misconduct of the employee.
26. Section C58 of the Labour Code provides :
- (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)**
 - ...
 - Provided, however, that there is a factual basis for the assigned reason.**
 - (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”**
27. The “limitations” of Section C59 relate to situations, on the one hand, where the misconduct is serious enough to justify dismissal and situations, on the other hand, where dismissal would not be justified at once, but no repetition of the misconduct would be tolerated.
28. Section C59 of the Labour Code provides:
- (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.....**
 - (2) Where the employee is guilty of misconduct in or in relation to his employment that is not sufficiently serious to permit his employer to terminate his employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning.....**

29. The final plank in the legal framework for present purposes is furnished by the Industrial Court Act, Cap. 214 which sets the mandatory context for the exercise of the powers of this Court. Section 10 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 the 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.”

The Burden on the Employer

30. It is well settled that in cases of unfair dismissal, once the employer has admitted dismissing the employee, the onus is on the employer to prove that the dismissal was fair. In that regard, the employer would have to establish that it had a valid reason for the dismissal and that it acted reasonably in effecting the dismissal.

The Reason for the Dismissal

31. There are certain categories of misconduct which are usually labelled gross misconduct. Theft is one such category, which, once established by the evidence, will destroy the employer / employee relationship and justify dismissal under Section C59 (1) of the Labour Code .

32. At paragraph 13 of its Memorandum the Employer identifies the reasons for its decision to dismiss the Employee as follows:

- (i) “The Employee took the decision to appropriate the Employer’s property without express or implied consent”.
- (ii) “The Employee misled the Security Guard in informing him (sic) that he had permission when he had none”

33. In light of the evidence, I am of the view that the Employee’s action does not constitute an obviously or clear case of gross misconduct sufficient to trigger the automatic

operation of Section C59 (1). In other words, given the statutory provisions, although the reasons stated by the Employer fall within the scope of Section C58 (1) (a), I will refrain from concluding that they justify dismissal pending further analysis.

34. In the circumstances, I feel obliged to resolve the issues in sequence as follows to examine the fairness of (i) the Employer's labeling of the Employee's conduct and, (ii) the Employer's overall conduct in dismissing the Employee.

Resolving the Issues

Issue No.1: Whether there was a policy or rule, with a sanction for its breach and known to the Employee, in existence at the material time in relation to the removal of the Employer's property from its premises.

35. Although Sylvester testified that a written policy existed he produced no documentary evidence of it. His testimony was contradicted by that of Buckley who said that there was no written policy. Both those witnesses as well as Thomas and the Employee himself acknowledged that a rule or policy existed. Based on the overwhelming evidence, I find that there was in existence an ill-defined unwritten policy or rule against the removal of the Employer's casing/ shipping materials from its premises without a gate pass. Having said that, I hasten to add that there was no evidence of a sanction for a breach of that rule.
36. It may be argued that, based on common law principles, it is not necessary for an employer to spell out a rule and related sanctions against theft of its property. Each case must turn on its own facts. In this case, both the pleadings and the evidence suggest that it would have been useful, if not necessary, for the Employer to do so in relation to its casing/ shipping materials.
37. Significantly, the lack of a clearly defined rule and related procedure was confirmed by both Buckley and Thomas. Thomas said that as a result of the incident, the Employer put other measures and procedures in place.
38. I conclude that the seriousness of the rule, its strict application and the possible consequence for its breach were not brought home to the Employee. He was not put in a position to contemplate that removing the three pieces of plywood casing material from the Employer's premises, in the circumstances, would have resulted in his dismissal.
39. Given the failure of Employer to clearly define the policy or rule and the consequences for its breach, I would resolve this issue in favour of the Employee.

40. The foregoing resolution does not rule out a finding that the dismissal was fair if the Employee is guilty of theft and misrepresentation as alleged by the Employer (if he deliberately took the decision to “appropriate” the Employer’s property and deliberately “misled” the Security Guard)

Issue No. 2: Whether the Employee willfully acted in breach of the policy or rule.

41. The Employer’s own evidence discloses that it not only failed to enforce the rule consistently, it routinely allowed exceptions to it. In that regard, both Buckley and Thomas, like the Employee, testified as to the existence of a procedure where employees were allowed to leave the premises with materials although they did not have a gate pass provided that a Shift Leader or a Manager called to notify the Security Guard at the exit gate.
42. The Employee said that he had effected such a procedure in his capacity as a Shift Leader. Thomas said that she had participated in the procedure by receiving oral instructions from Shift Leaders or Management on the basis of which she had allowed employees to leave with materials without a gate pass.
43. The evidence discloses that the informal procedure was well settled and widespread although it had no clear guidelines. What is clear is that the procedure took effect when a gate pass was not available such as when the office was closed or when the authorizing officer was absent. This informal procedure was usually effected after 4.00pm on weekdays and on weekends.
44. At the time of the incident giving rise to the dismissal of the Employee, being Sunday December 5, 2010, Sylvester, the General Manager, was not on the Employer’s premises. It follows that the Employee was justified in relying on the informal procedure anticipating that a gate pass for the record would be issued the following day.
45. I accept the evidence of the Employee in respect of his conversation with Palmer at the exit gate. She did not testify at the trial, Thomas corrected her witness statement to confirm that the Employee did not speak to her as she had earlier stated. In the circumstances, I cannot rely on what Thomas said that she said to Sylvester. It is obvious that what Sylvester heard from Thomas shaped his reaction and the Employer’s subsequent decision to dismiss the Employee.

46. In my view, the Employee's conduct at the gate was not consistent with someone with an intention to deceive. He said that although the boom was open and he could have driven through without stopping, he stopped and declared to Palmer that he had the items in his possession but did not have a gate pass. He told her that he would get one the next day.
47. It is noteworthy that the Employee voluntarily subjected himself to Palmer's discretion. It was her decision to allow him to proceed when she apparently could have refused to allow him to leave with the pieces of plywood.
48. Under cross examination, the Employee admitted that he didn't have a pass but maintained that he did not steal from the Employer. He said that it was the regular practice of the Employee to give away shipping materials like the pieces of plywood which he had. As Shift Leader, he had on previous occasions, exercised his discretion and gave away similar shipping materials.
49. Further, I find the Employee's prompt reaction of returning the material is also instructive. Based on the evidence adduced, I am in no position to conclude that the Employee intended to appropriate the Employer's property and / or mislead the Security Guard.
50. I find that the prevailing practice at the material time was that the Employer allowed employees to remove shipping materials from its premises without a gate pass. Further, I find that the Employee exhibited no dishonest motive to steal from the Employer when he approached the gate and spoke to Palmer. He did not willfully act in breach of the unwritten rule. In fact, he was following the settled informal procedure.
51. As to the allegation that the Employee misled the Security Officer (the second ground for the dismissal), given the Employee's testimony, the content of the report of Devon Thomas as to what he said to Palmer and in the absence of any evidence from Palmer, I am obliged to find that the Employee did not mislead her.
52. Notwithstanding my conclusions so far, I am still not in a position to declare with finality that the dismissal was fair or unfair. In order to reach that point, I must apply the test of reasonableness under section C58 (2) of the Labour Code.

Reasonableness of the Decision to Dismiss

53. In assessing the reasonableness of the Employer's decision to dismiss the Employee, I will take into account the following:
- The Employee's tenure of approximately 12 years;
 - the failure of the Employer to clarify the rule convey to the Employee the consequence of its breach;
 - the Employer's informal procedure for allowing materials to leave its premises without a written pass;
 - the lack of a demonstrated criminal intent or dishonesty on the part of the Employee;
54. With the background of those findings, I will now apply the test under Section C58(2) of the Labour Code and consider the reasonableness of the Employer's action in dismissing the Employee.
55. Sylvester testified that after he told the Employee to return the materials, they never spoke again about the incident and he never requested a written report about it. He said he knew of no investigation conducted by the Employer which involved the Employee. In particular, Sylvester said that he had no meeting or discussion with the Employee on December 6, 2010, the day immediately after the incident or on December 7, 2010, when the Employee was suspended, or at any subsequent time before his dismissal on December 17, 2010.
56. In this regard, I am mindful that the rule requiring a gate pass was unwritten and not enforced on a regular basis. Further, I recall the evidence that Shift Leaders and other senior employees were empowered to exercise their discretion and grant permission for materials to leave without a gate pass. This practice was confirmed by Thomas. Moreover, it was established on the evidence that it was the norm for the Employer to give the shipping materials to its employees.
57. Further, I take into account the fact that after the incident, the Employer put other measures and procedures in place to enforce the rule.
58. In addition, I accept the Employee's evidence that no investigation was done by the Employer and that he never saw the report prepared on behalf of the Employer by Devon Thomas of Special Security Services. Further, the Employee did not see the report prepared by Sylvester which he submitted to the Director of the Employer, which,

together with the report of Devon Thomas formed the basis for the dismissal of the Employee.

59. Incidentally, I note that the explanation given by the Employee to Devon Thomas is consistent with his testimony that he told Palmer that he would get the gate pass the following day from Sylvester. I accept the Employee's evidence that he did not tell Palmer that Sylvester gave him permission to remove the materials.
60. I also note that the Employee was suspended on December 7, 2010, one day after Sylvester had issued his report to the Director and one day before Devon Thomas had issued his. In the letter of suspension dated December 6, 2010, the Employer stated that the Employee was being suspended "pending further investigation". However, there is no evidence of any such further investigation by the Employer.
61. Further, according to Buckley, on the date of dismissal, the Employee's Union Representative asserted that there was a widespread practice of removing materials from the Employer's premises without a written pass. He suggested that the Employer should conduct an actual inquiry on the spot to confirm the existence of the practice but the Employer declined to do so.
62. The resolution of the issue as to whether or not the Employer acted reasonably must take into account not only the investigative procedure adopted by the Employer but also the foregoing surrounding circumstances.
63. In the final analysis, I conclude that the Employer failed to conduct any or any proper investigation; failed to give the Employee any or any proper opportunity to state his case; failed to give the Employee a copy of each of the reports of Sylvester and Devon Thomas so that he would know what was being alleged against him and failed to give the Employee an opportunity to confront Palmer about what he told her and what she in turn told Thomas and what Thomas in turn reported to Sylvester.
64. In my view, those failures on the part of the Employer are critical. On the facts of this case, had a proper procedure been effected or had the Employee not been deprived of his right to natural justice, the outcome could easily have been different.
65. At the end of the day, I find that the Employer has failed the test of reasonableness. My conclusion is that the Employee was unfairly dismissed and is entitled to compensation.

The Collective Agreement

66. Naturally, the amount of compensation must be determined in accordance with the Employee's claim and the evidence given at trial. In that regard, in his Memorandum the Employee claimed "Notice Pay"; "Severance Pay"; "Immediate Loss" and "Future Loss". However, in his closing submissions Mr. Riley submitted that, based on the 'Collective Agreement', the Employee is entitled to "Retroactive Pay" in the total sum of \$205,303.97. Mr. Riley also submitted that the computation of compensation should be based on a salary of \$6,963.76 to which he said the Employee was entitled under the Collective Agreement.
67. Although the Employee made a passing mention of negotiations with "the Union" about the rate of his pay, no or no sufficient evidence was given about a Collective Agreement or details of the amount of "Short Pay" to which he was entitled. In fact, at paragraph 2 of his witness statement, the Employee stated that matter of the negotiations about his rate of pay was "separate and distinct to the instant case". I adopt that statement as a clear expression of the Employees intention not to pursue the issue of "short pay" in this Reference.

The Award

68. In the circumstances, based on the evidence, the Employee is entitled to an award comprised under the respective heads as follows:

Payment in lieu of Notice

Under Section C9 of the Labour Code, an employee is entitled to receive notice of his termination equivalent to the interval of his pay days. Since the Employee received no notice and was paid monthly, I award the sum of **\$3,617.97** being the equivalent of one month's salary, under this head.

Loss of Protection from Unfair Dismissal

Under Section C56 of the Labour Code, an employee has the right not to be unfairly dismissed. The basic measure of compensation under this head is the equivalent of severance pay which, for monthly paid employees, is calculated at the rate of one month's pay for each year of service. The Employee worked from November 1998 to December 17, 2010 making a total of 12 years and 2 months. Accordingly, the award under this head is **\$44,030.69** (\$3,617.97 x 12.17)

Immediate Loss

An employee who is unfairly dismissed is entitled to compensation for his loss during the period immediately after his dismissal up to the date of judgment provided that he made adequate attempts to mitigate his loss. Taking into account the Employee's efforts to find alternative employment, his special skills as a Reverse Osmosis Technician and his earnings of \$600.00 on average per month from odd jobs, I award the sum of \$14,471.08 being the equivalent of his full pay for 4 months. In addition, I award a further sum of \$12,071.89, being the equivalent of the difference between his salary and the average amount he earned from odd jobs for four months $(\$3,617.97 - \$600.00) \times 4$. The total award under this head is **\$26,543.76**.

Future Loss

Given the many imponderables, any award under this head is necessarily speculative. Since the Employee's skills were specialized and he had very limited options for alternative employment of the of the kind he had with the Employer, I would conclude that in the short term going forward he is not likely to find alternative employment from which he would earn the salary he earned from the Employer. Assuming he has been making diligent efforts, I would fix the amount he is likely to be earning at this stage at approximately \$2,000.00. In the circumstances, I award the sum of **\$9,706.82**, being the difference between his previous salary and the amount I deem to be his current earnings for a period of 6 months $(\$3,617.97 - \$2,000.00) \times 6$.

The Delay in the Delivery of Judgment.

69. I believe that something should be said about the delay in the delivery of this judgment. Since the end of the trial the Court has been engaged in the time consuming effort of reviewing and revising its policies and procedures which have largely remained stagnant for almost 40 years. The intention is to issue new rules in the near future. In that regard, significant progress has been made to the extent that the Draft Civil Procedure Rules (2015) are now in the hands of the Attorney General and should be published before the end of 2015. That revision process as well as the many technical, administrative and manpower challenges which we face account for the delay, for which I apologize.

Conclusion

70. Having regard for the provisions of Section 10 (3) of the Industrial Court Act generally and upon the application of the statutory test of reasonableness under Section C58 (2) of the Labour Code in particular, I conclude that the Employee was unfairly dismissed and is entitled to compensation in the total sum of \$83,899.24 as constituted under the various heads above.
71. Accordingly, I order that the Employer shall pay the total award of **\$83,899.24** to the Employee on or before December 15, 2015.

Dated the 11th day of November, 2015



.....
Hon. Charlesworth O.D. Brown
President

I agree



.....
Hon. St. Lawrence DeFreitas
Member

***The Honourable M. Althea Crick, Member, died on 29th November 2014 before settling the final draft of this Judgment.**