

**ANTIGUA AND BARBUDA**

**IN THE INDUSTRIAL COURT**

**REF. NO. 15 OF 2015**

**BETWEEN:**

**NERISIA HARRIS**

**Employee**

**and**

**NCO FINANCIAL SERVICES (ANTIGUA) LIMITED**

**Employer**

**Before:**

The Hon. Charlesworth O. D. Brown

President

The Hon. John Benjamin

Member

The Hon. Judith Dublin

Member

**Appearances**

Mr. Anderson Carty of Antigua & Barbuda Tradesmen & United Workers' Federation  
for the Employee

Ms. Safiya Roberts of Roberts & Co, Attorney-at-Law for the Employer

2016: November 7

2017: February 24

**Brown, P:**

**Background**

1. The Employer was incorporated in Antigua & Barbuda and carries on business as a "Call Centre" providing customer service support and debt collection services.
2. The Employee's employment with the Employer as a Customer Service Representative commenced on November 2, 2009. At the date of her dismissal on December 19, 2014, she was earning a salary of \$1,766.44 per month.



3. By a written warning, under the heading: **"Final Warning...Call Avoidance (Performance)" dated June 24, 2014** the Employer reminded the Employee that "meeting performance expectations is a requirement of her position". In that letter the Employer stated that:
  - "...On June 19, 2014 you headset out of the phone without notifying your supervisor or manager on site...
  - ...You were caught calling the IVR to avoid taking calls, your actions constitute call avoidance...
  - ...Your actions violate NCO and client policy; call to question your ability to adequately perform the tasks assigned to you, and will not be tolerated...
  - **...Final Warning. Your performance must be improved immediately...** Any future violations of your performance requirements will result in further progressive discipline, up to and including termination..."
4. By a written warning under the heading **"First Warning...Attendance" dated July 16, 2014**, the Employer wrote to the Employee stating that:
  - "...NCO's Attendance policy states that your regular attendance and punctuality are essential for the operation of the company...
  - ...A review of your overall attendance for the month of June has revealed that you ended the month at 73.8095% which is 21.1905% below the required attendance goal of 95%...
  - ...Your actions violate NCO's attendance policy and will not be tolerated...
  - **...First Warning. Your attendance must improve immediately.** Any further violation of NCO's attendance policy, including but not limited to unexcused absence, unexcused tardiness or failure to follow proper call-in procedures will result in appropriate disciplinary action, up to and including termination..."
5. By a further warning under the heading **"Second Warning...Attendance" dated on October 7, 2014**, the Employer stated:
  - "...A review of your overall attendance for the month of September has revealed that you ended the month at 68.1818% which is 26.8182% below the required attendance goal of 95.00%...
  - ...Your actions violate NCO's attendance policy and will not be tolerated...
  - **...Second Warning. Your attendance must improve immediately.** Any further violations of the NCO's attendance policy, including but not limited to unexcused absence, unexcused tardiness or failure to follow proper call-in procedures will result in appropriate disciplinary action up to and including termination..."

6. By a letter of termination under the heading of "**Termination...Performance (Quality)**" dated **December 19, 2014** the Employer stated that:

- "...You received a final warning on June 24, 2014 for call avoidance...
- ...A review of your overall performance for the month of November has revealed that you have fallen below the company's requirements of 95%, you finished the month of 67%...
- ...Your actions violate NCO's performance procedures, places our relationship with our client at risk, call into question your ability to satisfactorily meet your performance standards and will not be tolerated...
- **...Termination. As a result of your consistent performance violations, the company has decided to terminate your employment effective Friday 19<sup>th</sup> December, 2014...**"

#### The Employee's Memorandum

7. By her Memorandum filed on May 6, 2015, the Employee stated the following grounds for her claim.

- (1) The alleged breaches stated in the "Final Warning" dated June 24, 2014 are related to unsatisfactory performance. Based on the Employer's labelling, the breaches alleged were regarded as separate and apart from misconduct.
- (2) The labour laws in this jurisdiction provide for performance and misconduct issues to be treated separately and distinctly.
- (3) In relation to its "Final Warning" the Employer issued no other warning within the previous six (6) months.
- (4) In light of the Employee's denial, there was a burden of proof on the Employer to factually prove its allegations made in the "Final Warning."
- (5) The Employer's "Second Warning" dated October 7, 2014 did not meet good industrial relations practices or reasonable expectation because it failed to spell out the specific nature of the offences alleged committed by the Employee. As a result, the Employee was unclear as to the reason for the Employer disciplinary action against her as contained in the "Second Warning."
- (6) At the time of delivery of the termination letter on December 19, 2014, alleging that the Employee failed to meet performance standards during the preceding month, the Employer failed to give the Employee a fair opportunity to state her case in relation to the allegations against her.
- (7) The Employer's action in dismissing the Employee was contrary to the law and good industrial relations practices in that it failed to follow the procedure in cases where the Employee was no longer performing satisfactorily.

- (8) In light of the "Final Warning" and the "Second Warning" the Employee was not aware that her performance was under review prior to receiving the termination letter on December 19, 2014.
- (9) The Employee was unfairly dismissed and is entitled to compensation.

#### The Employer's Memorandum

8. By its Memorandum filed on May 29, 2015 the Employer disputed the Employee's claim on the following grounds:
  - (1) The "Final Warning" dated June 24, 2014 refers back to the Employer's memorandum dated September 28, 2012 when the Employee was made aware of the policy on call avoidance and that a breach thereof would not be tolerated and could result in termination.
  - (2) The Employee's dismissal was in accordance with Section C59 (5) of the Antigua & Barbuda Labour Code "on the basis that she was no longer performing her duties in a satisfactory manner."
  - (3) The "First Warning...Attendance" given on July 16, 2014 showed that the Employee's performance was assessed at 73.81% in violation of the Employer's attendance policy. Further, the second warning...Attendance given on October 7, 2014 showing that for the month of September her attendance was 68.2% in violation of the Employers attendance policy.
  - (4) Within three (3) months of the "Second Warning...Attendance" dated October 7, 2014 the Employer assessed the Employee's performance. During the month of November the overall performance was an unsatisfactory 67%. The Employee had failed to demonstrate that she was able to perform and had performed her duties in a satisfactory manner.
  - (5) Both the "First Warning...Attendance" and the "Second Warning...Attendance" issued in July and October 2014 stated that in the event of repetition the Employer intended to terminate the employment relationship.
  - (6) The Employer further assessed the Employee performance within three (3) months of the "Second Warning...Attendance" in October 2014 and found that during the month of November the overall performance was an unsatisfactory 67%.
  - (7) The termination memorandum dated December 19, 2014 detailed aspects of the Employee's unsatisfactory performance.
  - (8) The Employee was given the opportunity to address the allegations of call avoidance prior to the "Final Warning...Performance" in June 2014 but did not refute the allegations.
  - (9) The issuance of the warnings were done in accordance with Section C59 (5) of the Labour Code.

- (10) The termination letter dated December 19, 2014 determined the unsatisfactory performance of the Employee within three (3) months after the "last warning" in accordance with C59 (5) of the Labour Code.
- (11) The Employee was given an opportunity to address her failure before the issuance of the termination letter on December 19, 2014 but refused to comment thereon.
- (12) The written warnings in July and October 2014 were in relation to her performance.

### The Main Issues

9. The main issues for determination are:

- (1) Whether by reason of the Employee's "consistent performance violations" the Employer had good cause for dismissing the Employee.
- (2) Whether the Employer gave the Employee adequate and proper written warning of her unsatisfactory performance.
- (3) Whether the Employer acted unreasonably or reasonably, under the circumstances, in dismissing the Employee.

### The Law

10. Relevant provisions of the Antigua & Barbuda Labour Code (the Labour Code) are as follows:

**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 C 59 (1) and (2);**
- (b) relates to the capability or qualifications of the employee to perform work of the kind he was employed to do, within the limitations of section C59 (2);**
- (c) ...**
- (d) ...**
- (e) ...**

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

**C 58 (2) The test, generally, for deciding whether or not a dismissal was unfair is whether or not, under the circumstances, the employer acted unreasonably or reasonably but, even though he acted reasonably, if he is mistaken as to the factual basis for the dismissal, the reasonableness of the dismissal shall be no defence, and the test shall be whether the**

actual circumstances which existed, if known to the employer, would have reasonably led to the employee's dismissal.

**C59 (5) Where an employee is no longer performing his duties in a satisfactory manner, the employer may give the employee a written warning which shall describe the unsatisfactory employment in respect of which the written warning is given and state the action the employer intends to take in the event of repetition; and, thereafter, if the employee does not, during the period of three months following the receipt of the written warning, demonstrate that he is able to perform and has performed his duties in a satisfactory manner, the employer may terminate the employment of said employee.**

#### The Employer's System of Progressive Discipline

11. In its policy for progressive discipline the Employer, as set out in its Handbook, identifies four (4) stages of progressive discipline where employees fail to meet and maintain its standards for **(a) work performance (b) attendance and (c) personal conduct.**
12. Depending on the seriousness of the policy violation in respect of any one of the three categories, progressive discipline may be administered at one of the following four stages: **(i) Verbal Warning (ii) Written Warning (iii) Final Warning (iv) Termination.**
13. It follows that in situations where an employee is in breach of any of the Employer's policies in any of the three categories of work performance, attendance and personal conduct, and such breach is not serious enough to justify immediate dismissal under section C59 (1) of the Labour Code, the Employer should follow the stages of progressive discipline before termination.
14. Under cross examination, the Employee admitted that she received a copy of the Employee's handbook setting out the progressive stages of discipline.
15. As to procedure, the Employer implemented a procedure for evaluating the performance of employees through a scoring system whereby employees are scored for quality of calls and attendance.
16. According to Carol Richardson who testified on behalf of the Employer: "The company requires minimum performance score of 90% for quality of calls and a minimum performance score of 95% for attendance. Progressive disciplinary measures are taken to manage performance issues. Initially the Employee receives a documented verbal warning. If the employee does not meet the performance requirement at the conclusion of that month, a First Warning is

issued and the same principle applies for the issuing of the Second and Final Warnings. If the employee fails to improve their performance within a three month time period after the warnings have been issued, this could result in termination. Depending on the severity of the performance violation the Employee can be taken directly to a final warning.”

17. At first blush, the general approach by the Employer in relation to progressive discipline is commendable provided that it is applied consistently and subject always to the provisions of the Labour Code generally and Sections C58 and 59 in particular.
18. Clearly, misconduct and unsatisfactory performance constitute separate potentially good reasons for dismissal under Section C58 (1) of the Labour Code. Barring the immediate dismissal of an employee, the steps which an employer is required to take and the related time frame are distinguished under sections C59 (2) and (4) in cases of misconduct, on the one hand, and C59 (5) in cases of unsatisfactory performance, on the other hand.
19. Although the Labour Code does not specifically mention poor attendance as a potentially good reason for dismissal, this Court has always recognized it as such. In that regard, we consider it to fall in the category of “some other substantial reason” under section C 58 (1) (e).
20. In order to decide whether the Employee was unfairly dismissed in relation to misconduct we must consider (a) whether she received an adequate description of her misconduct (personal conduct) and (b) proper notice of the intended action of the Employer if she repeated the misconduct or committed similar misconduct within six (6) months after receipt of the warning.
21. Similarly, in order to determine whether the Employee was unfairly dismissed in relation to unsatisfactory performance, this Court must consider (a) whether she received an adequate description of her unsatisfactory performance and (b) proper notice of the intended action of the Employer if she did not demonstrate an improvement in her performance during the period of three (3) months following receipt of the warning.
22. Further, in order to determine whether the Employee was unfairly dismissed in relation to attendance, this Court must determine (a) whether she received an adequate description of her poor attendance and (b) proper notice of the intended action of the Employer if she did not demonstrate improved attendance within a reasonable time.

23. Ms. Richardson's testimony is that: "The Employer also has a company policy to minimize call avoidance by employees. Call avoidance is where the agent: fails to answer an inbound or outbound call within five seconds; leaves work station while available for calls without obtaining permission; engages in unauthorized use of Aux codes; uses Aux, hold time, or mute to engage in non-business activities; transfers a call to another department or desk that could have been handled by the agent or the supervisor, hangs up on a customer; escalates a call to a supervisor when the customer has not requested to speak to a Supervisor; places a call on hold for longer than two minutes..."
24. In two memoranda dated April 26, 2010 and September 28, 2012 respectively the Employer issued "guidelines" in relation to Call Accordance. The latter memorandum describes Call Avoidance as "any action(s) taken/made by a representative in order to avoid answering calls". The guidelines stipulate that failure to comply would result in immediate termination.
25. Under cross-examination, the Employee acknowledged receipt of the two memoranda. Accordingly, she was mindful that "call avoidance" could result in the termination of her employment.
26. As we understand it, "call avoidance" may be more accurately labelled as an offence of misconduct, so that it would fall under the provisions of Section C58(1) (a) as a potentially good cause for dismissal.

#### The Warnings in the Context of the Progressive Discipline

27. Under cross examination the Employee admitted that she had a history of poor attendance and unsatisfactory performance in respect of which she received seventeen (17) warning letters in the 4 year period between September 2010 and the date of her dismissal.
28. The content of the letter dated June 24, 2014, headed "...Final warning...Call Avoidance (Performance)" is reproduced as follows:

**"Date: June 24<sup>th</sup>, 2014**  
**Name: Nerisia Harris**

....

**Re: Nature of Discussion: Final Warning Topic of Discussion: Call Avoidance (Performance)"**

Dear Ms. Harris,

As an employee of NCO, meeting performance expectations is a requirement of your position.

On June 19<sup>th</sup> 2014, you headset out of the phone without notifying your supervisor or manager on site. The log-in log out report shows that you headset at 10:14pm without permission, also you were caught calling the IVR to avoid taking calls, your actions constitute call avoidance.

Your actions violate NCO and client policy; call to question your ability to adequately perform the tasks assigned to you, and will not be tolerated.

**Actions To Be Taken:**

Final warning. Your performance must be improved immediately. If you have any questions on proper procedures, please contact me your department Manager. Any future violations of your performance requirements will result in further progressive discipline, up to and including termination.

**Employee Comments:**

Regards,  
...."

29. In that letter, we note that under the Section "Action to be Taken" the Employer focuses on performance. We have already expressed our reservation regarding the categorization of "call avoidance". In our view, although "call avoidance" could impact the Employee's "performance" it was not proper to apply the latter term to the allegations made in the second paragraph of the letter. Be that as it may, if the Employer had reason to advance the progressive disciplinary process to dismissal, it should have acted within three months after the issuance of the "Final Warning" in June 2014.
30. To further complicate matters, between the "Final Warning" for "Call Avoidance" in June 2014 and the "Termination" for "Performance" six months later in December 2014, the Employee also received the two warnings, in substantially the same terms, about "Attendance" in July and October 2014. The full content of the "...Second Warning... Attendance", is as follows:

""Date: October 7, 2014  
Name: Nerisia Harris

....

Re: Nature of Discussion: Second Warning Topic of Discussion:  
Attendance

Dear Ms. Harris,

NCOs' Attendance policy states that your regular attendance and punctuality are essential to the operation of the company. All employees are required to be at their work stations prior to their scheduled start time so they are ready to begin working at their scheduled time. Tardiness and unscheduled absences place an unfair burden on your co-workers. Excessive absences, tardiness, early leaves or false reporting of reasons of absence will result in disciplinary action up to and including termination. Employees who are unable to report for work at their scheduled start time are required to call their supervisor directly at least one half hour prior to start time, failure to do so will result in progressive discipline, up to and including termination.

A review of your overall attendance for the month of September has revealed that you ended the month at 68.1818% which is 26.8182% below the required attendance goal of 95.00%.

Your actions violate NCO's attendance policy and will not be tolerated.

**Action to Be Taken:**

**Second Warning.** Your attendance must improve immediately. Any further violation of NCO's attendance policy, including but not limited to an unexcused absence, unexcused tardiness or failure to follow proper call-in procedures will result in progressive disciplinary action, up to and including termination.

**Employee Comments:**

Regards,  
...."

31. All things being equal, if the Employer wished to escalate its disciplinary process in relation to "Attendance", it should have followed up with a Final Warning and /or Termination in respect of "Attendance" within a reasonable time, say, three months after the issuance of the "Second Warning...Attendance".
32. The letter of termination bears the heading "...Termination... Performance" and is dated December 19, 2014. Its full text is reproduced as follows:

"Date: December 19<sup>th</sup>, 2014

**Name: Nerisia Harris**

....

**Re: Nature of Discussion: Termination Topic of Discussion:  
Performance (Quality)**

**Dear Ms. Harris,**

**As an employee of NCO, good customer service and meeting performance requirements are essential to properly service our client. Your supervisor has had several conversations with you regarding your performance as it relates to your job responsibilities.**

**You received a final Warning on 6/24/ 2014 for call avoidance because you headset out the system without a supervisors or manager permission, you also was (sic) caught calling the IVR to avoid taking calls which puts not just your job in jeopardy but the jobs of the entire site.**

**A review of your overall performance for the month of November has revealed that you have fallen below the company's requirements of 95%, you finished the month at a 67%**

**Below are some of your areas of opportunities for the month of November:**

- **Not interacting with the customer**
- **Providing incorrect information to the customers**
- **Not closing your calls**
- **Incomplete memo**
- **Tone of voice being flat and no use of courtesy words**

**You were provided with coaching and Con-Ed Training on providing professional Customer Service and have been equip with the tools to ensure that correct policies and procedures are followed to avoid deductions.**

**Your actions violate NCO's performance procedures, places our relationship with our client at risk, call into question your ability to satisfactorily meet your performance standards and will not be tolerated.**

**Action To Be Taken:**

**Termination. As a result of your consistent performance violations, the company has decided to terminate your employment effective Friday 19<sup>th</sup> December, 2014.**

**Employee Comments:**

**Regards,  
...."**

33. In order to be consistent with the Labour Code and its own requirements for progressive discipline, the termination letter, based on unsatisfactory performance, should have been grounded on a valid warning letter for the same or similar offence issued within the preceding three (3) months. There was no such warning letter. Instead, the Employer relied on the "Final Warning...Call Avoidance" dated June 24, 2014.

#### The Evidence

34. In her witness statement filed on June 22, 2015, and admitted as evidence in chief at the trial, the Employee gave evidence consistent with her Memorandum.
35. Further, the Employee acknowledged that she had been late or absent several times and that the Employer was concerned about the same as well as her "performance". In relation to the Employer's assertions about her performance scores, the Employee said she had to "agree" that she was not performing in accordance with the Employer's requirements and that the Employer had the right to dismiss her. Most importantly, the Employee said, "I could only agree because it is what they wanted".
36. As to the "Final warning" in June 2014, the Employee denied the allegations against her and challenged the Employer's assertion that, based on those allegations, she was not performing satisfactorily. Moreover, the Employee testified that she had received no first or second warning within the six (6) months immediately preceding the final warning.
37. The Employee further testified that after the "Final Warning" in June 2014 the ensuing months up to October 7, 2014 were "uneventful". However, on the latter date she was issued the "Second Warning" alleging that she was in breach of the Employer's attendance policy.
38. In relation to the "Second warning" regarding her absences, the Employee contended that the Employer failed to give her details of the same. She testified

that she always gave the Employer a good reason for her absences but admitted that she had been late due to her personal domestic situation.

39. Further, the Employee testified that the period up to December 18, 2014 following the "Second warning" in October were "uneventful" since no disciplinary issues or performance failures were brought to her attention.
40. The Employee's further testimony is that on December 19, 2014 she was issued with the letter of termination stating that she had failed to meet the Employer's performance standards for the month of November 2014. In that regard, she testified that, contrary to good industrial relations practices, she was not told the details of the allegations against her and/or given a fair hearing before her dismissal.
41. In addition, the Employee testified that apart from the "Final warning...Call Avoidance" in June 2014 and the "Second Warning...Attendance" in October 2014, no allegations were made against her regarding her performance prior to receiving the termination letter.
42. As noted above, Carol Richardson, the Employer's Operations Manager, gave evidence regarding the scoring system utilized by the Employer.
43. As noted before, while the term performance may be appropriately used to describe the aspect "quality of calls", it is doubtful that the same term should be applied to the aspect of attendance. Accordingly, the Employer may be misguiding itself by using the term "performance score" for "attendance". In any event, we note the very high scores of 90% and 95% that the Employee was required to make and maintain for call quality and attendance respectively. Most instructively, it is clear that those aspects were assessed separately and distinctly.
44. Further, when Ms. Richardson testified that "employees who continue to fall below the performance requirement are placed on Performance Improvement Plans". That would suggest that where an employee is guilty of "poor performance" in relation to "attendance" she would be placed on a Performance Improvement Plan. Having said that, I note Ms. Richardson's evidence that the Employee was placed on two Performance Improvement Plans in May 2012 and April 2013. We also note that those Plans are stated to be "performance enhancer tools". Both refer to the need for improvement in the "quality" of her performance. They have nothing to do with attendance.
45. By reason of the different required scores and the terms of the Performance Improvement plans, it is our view that the Employer may be misguiding itself by

somehow merging "call quality" and "attendance" under the heading of "performance".

46. Given Ms. Richardson's testimony, we have stated our view that the offence of "call avoidance" would be better classified as an offence in the category of misconduct. By merging it under the head of performance, the Employer again may be unwittingly misleading itself.
47. Be that as it may, it is doubtful that it is fair to say that "Throughout the employment of the Employee, the Employee continuously failed to perform her duties satisfactorily", as stated at paragraph 7 of Ms. Richardson witness statement. Again, it is doubtful if the seventeen (17) warning letters referred to were properly classified as being in respect of unsatisfactory performance. Moreover, if that evidence is to be accepted, then it would be open for us to conclude that the Employer tolerated the unsatisfactory performance over the 4 year period, 2010 to 2014.
48. Further, it is doubtful whether it is accurate to say that "the Employee's poor performance of her duties culminated in the two warnings issued to her which led to her termination in accordance with C59 (5) of the Labour Code. On July 16, 2014, the Employee was issued with a first warning describing her unsatisfactory performance, particularly in relation to her attendance" as stated at paragraph 8 of Ms. Richardson Witness Statement.
49. Perhaps most importantly, at paragraph 9 of her Witness Statement Ms. Richardson explains the basis for the dismissal as follows:

"9. Within three months of the written warning dated October 7, 2014, the Employer assessed the Employee's performance. The Employee had failed to improve her performance within this three month period. During the month of November, the Employee's overall performance was at an unsatisfactory 67%. The employee unsatisfactory performance included poor interaction with customers, providing incorrect information to the customers, not closing her calls, incomplete memo, tone of voice being flat and no use of courtesy words. The Employee had failed to demonstrate that she was able to perform and had performed her duties in a satisfactory manner. The Employee was therefore terminated by the letter dated December 19, 2014"
50. Our analysis of the substance of the "Final Warning", the "First Warning", the "Second Warning" and the "Termination" are respectively in relation of misconduct, poor attendance and unsatisfactorily performance, all of which are potentially good causes for dismissal under Section C58 1 (a), 58 1 (e) and 58 1 (b) of the Labour Code.

51. In relation to misconduct (personal conduct) for which the "Final warning" was issued on June 2014, for the dismissal to be in compliance with the Labour Code the Employee would have to be guilty of a repeated misconduct of the same or similar kind during the six (6) months period up to December 2014 when the termination was effected. However, as stated by the Employer itself the dismissal was grounded on unsatisfactory performance not misconduct.
52. With respect to the issue of poor attendance, for which the "First Warning" and the "Second Warning" were issued in July and October 7, 2014, for the dismissal to be in compliance with the Labour Code the Employee must have been dismissed because of continuing poor attendance. The termination letter discloses no reference to the Employee's attendance.
53. In relation to the unsatisfactory performance in respect of which the termination was effected on December 19, 2014, for the dismissal to be in compliance with the Labour Code, the Employee should have received a valid prior warning about her unsatisfactory performance within the preceding three (3) months. The evidence discloses no such prior warning.
54. Ultimately, in making our decision regarding the dismissal of the Employee, we are obliged to apply the test of reasonableness under Section C58 (2) of the Labour Code. When we apply this test, we find that the Employer applied its own progressive disciplinary procedures in an illogical and unreasonable manner, contrary to the Labour Code. Accordingly, we feel constrained to conclude that the Employee was unfairly dismissed and is entitled to compensation.

#### The Award of Compensation

55. The Employee is entitled to compensation as follows:

(a) Payment in lieu of Notice

Since the Employee was a monthly paid worker, she is entitled to **\$1766.44** being one month's pay in lieu of notice.

(b) Loss of Protection from Unfair Dismissal

Loss of Protection is equivalent to severance pay. Since the Employee's period of employment was from November 2, 2009 to December 19, 2014, a period of 5.13 years, she is entitled to one month's pay per year or major part thereof. Accordingly, we award the sum of **\$8,832.20** (\$1,766.44 x 5) under this head.

(c) Immediate Loss

Under this head we assess the loss between the dismissal date, December 19, 2014 and the trial date, November 7, 2016. A dismissed Employee is under a duty to take reasonable steps to mitigate her loss. The Employee gave no or no sufficient evidence of her efforts to mitigate her loss. In the circumstances, we award her the equivalent of 3 months' salary in the sum of **\$5,299.32** ( $\$1,766.44 \times 3$ ) under this head.

(d) Future Loss

The evidence discloses no basis for an award under this or any other head of loss.

Order

56. In the premises, we order as follows:

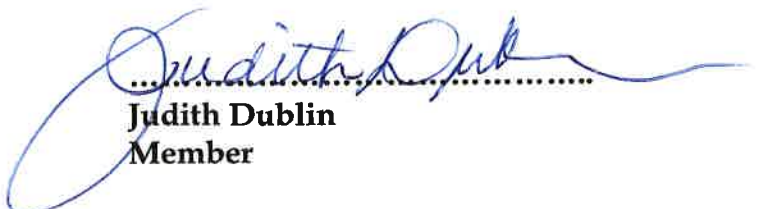
- (1) The Employer shall pay the total sum of **\$15,897.96** to the Employee as compensation for her unfair dismissal.
- (2) Payment of the said total of **\$15,897.96** must be made by the Employer to the Employee on or before the 31<sup>st</sup> day of March 2017.

Dated 24<sup>th</sup> February, 2017



  
.....  
**Charlesworth O.D. Brown**  
President

  
.....  
**John Benjamin**  
Member

  
.....  
**Judith Dublin**  
Member