

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 17 OF 2015

BETWEEN

PATRICIA JULIAN

Employee

And

ANTIGUA AND BARBUDA TRANSPORT BOARD

Employer

REFERENCE NO. 33 OF 2015

BETWEEN

HUDSON JOSEPH

Employee

And

ANTIGUA AND BARBUDA TRANSPORT BOARD

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. Hayden Thomas

Member

The Hon. Samuel R. Aymer

Member

Appearances:

Ms. Kathleen Bennett of Lake & Kentish, Attorneys-at-Law for the Employees

Mr. Hugh Marshall Jnr. and Ms. Kema Benjamin of Marshall & Co., Attorneys-at-Law for the Employer

2018: April 24

2019: November 25

JUDGMENT



Brown, P;

Introduction

1. These two References involve the dismissal of the above-named Employees on the ground of redundancy. Based on the commonality of the background facts, the issues arising, and the legal representation of the parties, it was agreed that they be heard together. The central issues are:
 - (1) Whether a genuine redundancy situation existed at the material time.
 - (2) Whether the Employer acted reasonably or unreasonably when it dismissed the Employees.

Background Facts

2. The Employer, the Transport Board, is a statutory body established under the Transport Board Act, 1995. It is referred to in this Reference as Antigua & Barbuda Transport Board. The body was reconstituted in July 2014 following national elections in the preceding month.
3. Ms. Patricia Julian (Mrs. Julian) commenced her employment as the Employer's Facility Manager, Terminals Division under a three-year fixed-term contract commencing on July 1, 2008. After the expiration of that contract, she continued her employment and received increases in her emoluments in October 2011. By letter dated May 19, 2014, the Employer acknowledged her "tremendous contribution" to the organization and confirmed the renewal of her contract.
4. As at October 2, 2014, Mrs. Julian had been employed as Facility Manager, Motor Pool Division under a fresh three-year fixed-term contract with a starting date of July 1, 2014. Her emoluments were further increased so that she received a salary of \$7,000.00 per month, as well as a travelling allowance of \$500.00, a duty allowance of \$1,500.00 and a telephone allowance of \$250.00 monthly. She was also entitled to a gratuity payment equivalent to 12.5% of her salary. Her duties included "the management and supervision of all staff within or attached to the Motor Pool Division."
5. By letter dated October 2, 2014, Mrs. Julian's services were terminated with immediate effect on the ground that she had been "slated for retrenchment effective immediately". By that letter, the Employer also stated that her contract of employment "is now varied to the period July 1, 2014 to October 2, 2014".
6. The pertinent parts of the dismissal letter under the hand of Mr. Hubert Jarvis, Acting General Manager, are as follows:

"Dear Mrs. Julian,

During the past 8 years the Transport Board has been increasing its labour cost while its revenue has remained constant. Last year the general revenue of the Board was 38% less than the employee cost. At this time, including the Loan cost to the Board, which includes Government loan placed on the Board to pay, along with the other myriads (sic) of Government expenses placed on the Board, it has become crucial for the Transport Board to retrench staff to bring the situation into balance with revenue and for its very survival and as part of its reorganization and restructuring.

Regrettably, you are one of the managers slated for retrenchment effective immediately.

You (sic) contract of employment with the Board is now varied to the period July 1, 2014 to October 2, 2014."

7. Mr. Hudson Joseph (Mr. Joseph) commenced his employment with the Employer in 2004. He held the position of Deputy General Manager since 2008. As at October 2, 2014, he was employed in that position under a fresh three-year fixed-term contract with effect from August 1, 2014. In addition to his monthly salary of \$9,000.00, he received monthly telephone and duty allowances of \$250.00 and \$1,800.00 respectively as well as a clothing allowance of \$2,000.00 per annum. He was also entitled to a gratuity payment equivalent to 12.5% of his salary.
8. Like Mrs. Julian, Mr. Joseph's services were terminated with immediate effect by letter dated October 2, 2014. The pertinent parts of Mr. Joseph's dismissal letter are substantially the same as that addressed to Mrs. Julian. It notified him that he had been "slated for retrenchment effective immediately". Regarding his contract, the Employer stated that his contract "is now varied to the period August 1, 2013 to October 2, 2014".

The Memoranda

9. At paragraphs 5, 6 and 7 of her Memorandum of Claim filed on April 16, 2015, Mrs. Julian pleaded as follows:
 - "5. The Employee contends that her dismissal was unfair as the Employer acted unreasonably in terminating her services. Contrary to good industrial relations practice the Employer failed to inform the employee in advance of, and meet with the Employee to discuss, her pending termination. The Employer also unlawfully varied the Employee's contract unilaterally.

6. The Employee further contends that no redundancy situation existed as at the date she was terminated. This is because another person has been hired to carry out the functions the Employee previously performed.
7. The Employee asserts that she was dismissed without cause and that there was no factual basis for her termination".
10. Those pleadings of Mrs. Julian are virtually reproduced at paragraphs 5, 6 and 7 of Mr. Joseph's Memorandum of Claim filed on June 01, 2015. In particular, at paragraph 6 he contended that "no redundancy situation existed as at the date he was terminated...because the functions (he) previously performed are still being carried out".
11. In response to Ms. Julian's claim, at paragraphs 2, 7 and 9 of its Memorandum of Defence filed on August 25, 2014, the Employer pleaded that:
 - "2. The Employee Patricia Julian was employed with the Board as "facility manager of the motor pool" which was made redundant in October 2014.
 - ...
 7. Contrary to the assertions of the Employee the termination resulting from the retrenchment and reorganization and were solely **to reduce the payroll cost of the Employer; especially due to the reduced or diminishing revenue**. In the circumstances The Employer denies the allegations of the Employee as set out in paragraphs 5 and 7 of her memorandum.
 - ...
 9. In the circumstances, the Employer disputes that there is any unfair dismissal of the employee. Section C3 of the Antigua and Barbuda Labour Code categorizes Retrenchment as a Redundancy and Section C58 states that dismissal due to Redundancy cannot be unfair".
12. In response to Mr. Joseph's claim, at paragraphs 8, 9, 10 and 12 of its Memorandum of Defence filed on August 26, 2015, the Employer pleaded as follows:
 - "8. In the circumstances, the Employer rejects the Employee's position that he was unfairly dismissed and asserts that retrenchment was based on no other reason than the fact that there was the urgent need to reduce the Employer's payroll cost which is what retrenchment is, especially due to the reduced or diminishing revenue to sustain the payroll as outlined to the employees during the consultations.

9. Furthermore, the Employer rejects the Employee's assertion that the functions he previously performed are still being carried out and the Employee is put to the strictest proof thereof.
10. The position of Deputy General Manager was made redundant as there was no basis financial or otherwise to retain it. The Deputy General Manager position was not created by the governing statute. Section 9 of the Antigua and Barbuda Transport Board Act 1995 (the Act) speaks specifically to the appointment of a General Manager only. It is clear that it was not Parliament's intention to create the position of Deputy General Manager.
- ...
12. As the position of Deputy General Manager was not created by statute, the Employer's Board took the position that as there was no statutory requirement for that position, it would be made redundant, saving the employer approximately \$134,600.00 per annum."

The Legal Framework

13. We will determine the central issues within the legal framework established by (a) the Antigua and Barbuda Labour Code (the Labour Code); (b) judicial precedents; and (c) the Industrial Court Act (the Act).

The Labour Code: Redundancy and Unfair Dismissals

14. Redundancy is defined in Section C 3 of the Labour Code as follows:

"Redundancy" means a situation in which by virtue of lack of customers orders, retrenchment, the installation of labour saving machinery, an employer's going out of business, a *force majeure*, of any other reason, work which a person was last employed to perform has ceased or substantially diminished;"

15. An employee's statutory right not to be unfairly dismissed is established by Section C 56 in the following terms:

"Every employee whose probationary period with an employer has ended shall have the right not to be unfairly dismissed by his employer; and no employer shall dismiss any such employee without just cause."

16. As to what constitutes a just cause for dismissal, Section C 58 (1) provides:

"A dismissal shall not be unfair if the reason assigned by the employer therefor

...

(c) is that the Employee was made redundant;

...

(e) is...some other substantial reason of a kind which would entitle a reasonable employer to dismiss an employee holding the position which the employee held:

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

17. Notwithstanding the existence of good cause, the determination of what constitutes an unfair dismissal requires the application of the test of reasonableness as provided under Section C 58 (2) as follows:

"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 defense, 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."

Judicial Precedents: Redundancy and Reasonableness

18. As to the burden of proof, at paragraph 31 of its Judgment in Reference No 66 of 2015 **Antigua and Barbuda Workers' Union v. Cable & Wireless (Antigua & Barbuda) Ltd.** (the Cable & Wireless case), this Court emphasized the burden on the Employer to prove the existence of a redundancy:

"Having made the assertion and declared its right to dismiss the selected employees, the onus is on the Employer firstly to establish that a redundancy situation existed. In order to discharge this burden, the Employer must prove the factual basis as required under Section C 58 (1) of the Labour Code."

19. Regarding the definition of redundancy before it was amended in 1998, in Reference No 20 of 1988: **Antigua & Barbuda Workers' Union v. Antigua Gases**, (the Antigua Gases case), it was held:

"What this definition seems to contemplate therefore is that redundancy may occur as a result of retrenchment which itself is ordinarily defined as removing what is superfluous, or reducing the amount, or economizing. Thus the situation can arise where the task or work still exists but the

employer requires fewer employees ...Redundancies may also arise because the work has been re-organized thus requiring fewer employees to do the same work...Thus a re-organization which results in a reduced workforce is a redundancy.. ”

20. In Civil Appeal No. 28 of 2001: **Sundry Workers v. Kings Casino Limited**, (the Kings Casino case) Chief Justice (as he then was) Sir Dennis Byron emphasized the “cause” and “effect” components of a redundancy.

“I think that the main point of relevance to this case is that it is pellucid that for a redundancy there must be cause and effect. The effect being that the work has ceased or substantially diminished.”

21. In the **Antigua Gases case**, the requirement for reasonableness on the part of the Employer when handling a redundancy was underscored in the following terms:

“Nonetheless the mere fact that a genuine redundancy does exist does not per se lead to the conclusion that the dismissal was fair: for the determining factor is whether the employer acted reasonably in handling the situation. When, therefore, redundancies are being considered it might be regarded as good industrial relations practice to follow the guidelines laid down in *Williams v. Compair Maxam Ltd.* 1982 I.C.R.156. In particular, the employer should seek to establish selection criteria which can be objectively checked ...”

22. In the **Kings Casino case**, after adopting the expressions regarding the definition of redundancy made in the **Antigua Gases case**, the Chief Justice also highlighted the requirement for reasonableness as follows:

“This brings me to point out, however, that the existence of a cause, such as a hurricane, does not mean that any dismissal subsequent to it is fair. The employer must have acted reasonably and the dismissal must be shown to have resulted from the cessation of work or the substantial diminishing of work as a result of the hurricane.”

The Industrial Court Act: Statutory Powers

23. The powers of this Court derive from the Industrial Court Act. When exercising its powers, we are expressly required to have regard for the principles and practices of good industrial relations. Section 10(3) provides:

“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 Evidence

- 24. The Witness Statements of the Employees respectively filed on June 19 and August 18, 2015 are consistent with their pleadings. Both Employees asserted that since there was no factual bases for their dismissals, they were dismissed without cause. Further, both testified that the Employer acted unreasonably and contrary to good industrial relations practices as it failed to inform them in advance that they were "slated for retrenchment"; failed to consult with them about the same; and unilaterally and unlawfully varied their contracts of employment.
- 25. Mr. Carlton Brodie, the Employer's Financial Controller, was its only witness. In accordance with his Witness Statements filed on 10th September 2015, he testified as to the "dire financial state" of the Employer and referred to its Revenue and Expenditure Statements for the years 2011, 2012 and 2013. In particular, Mr. Brodie testified about the high "employee cost" relative to the Employer's other expenditures which rendered its financial position "unsustainable". As a result, the Employer embarked on retrenchment and re-organization processes. It is not necessary to repeat details of Mr. Brodie's evidence regarding the financial state of the Employer. Suffice it to say, his evidence was convincing.
- 26. As to "new hires" and new positions resulting from the re-organization, Mr. Brodie testified under cross-examination that the Employer's new Commercial Manager, as shown on the new organization chart, was hired in 2015 and "replaced" Ms. Julian. He was paid the same monthly salary of \$7,000.00 which she was receiving at the date of her dismissal. Further, according to Mr. Brodie, the new position of Traffic Manager as shown on the new organization chart, came into existence after the dismissal of Mr. Joseph. Moreover, he testified that the new Traffic Manager replaced Mr. Joseph and that his duties were the same as those previously carried out by him.

Resolving the Issues

Issue 1. Was there a genuine Redundancy situation?

27. The necessary "effect" component of redundancy could only arise where the evidence discloses that there was (a) a cessation or (b) a diminution of the work or (c) a genuine requirement for fewer employees to do the work which each of the Employees and other workers performed, and which resulted in a reduction of the workforce required to do the same work.
28. The evidentiary burden is on the Employer to prove the required effect. In that regard, it is important to note that Mr. Brodie was the only witness called to testify on its behalf. Naturally, therefore, the Employer's evidentiary burden rested squarely on his shoulders.
29. Pursuant to section 58 (1) of the Labour Code we are required to ascertain whether there were factual bases for the redundancies. Thus, the Employer must prove both the "cause" and the "effect" components in relation to each of the two Employees. Having regard to the Efficiency Study Report, the policy directives of the then new Government and Mr. Brodie's undisputed evidence, we are convinced that the common "cause" component of retrenchment or re-organization was fully proved.
30. Clearly, the Employer's evidentiary burden was not fully discharged by that proof. It was also required to prove the "effect". To that end, it relied on the evidence of Mr. Brodie in relation to its "old" and "new" organization charts. Those charts give only limited evidence as they bear no cross- references or explanatory notes. Further, Mr. Brodie did not address or refer to them or either of them in his Witness Statements. However, when his attention was directed to the two charts while he was being cross-examined, he identified the Commercial Manager and Traffic Manager as new positions shown in the new chart. He confirmed that neither position was shown in the "old" chart.
31. It is noteworthy that, in response to the suggestion put to him by Counsel, Mr. Brodie testified, "I agree, the Commercial Manager has replaced Ms. Julian. He is being paid a base salary of \$7,000.00, which is the same as the amount which Ms. Julian received. The Commercial Manager is a new hire. He was hired in 2015 after Ms. Julian's services were terminated". Continuing under cross examination, in agreement with further suggestions, he testified, "I agree, the Traffic Manager is a new position. I agree, the Traffic Manager replaced Mr. Hudson Joseph. His duties are the same duties previously carried out by Mr. Joseph."
32. Most strikingly, under further cross examination, Mr. Brodie testified, "From what I told the Court, I agree that there was no true redundancy in both cases."

Not surprisingly, those admissions buttressed learned Counsel's submission on behalf of the Employees that there was no genuine redundancy situation.

33. Given his senior position and his role in advising the Employer generally and providing critical input data for the Efficiency Study Report, in particular, it is obvious that Mr. Brodie was a key player in informing the financial grounds for the retrenchment and re-organization processes. For those reasons, we find that his evidence is very weighty.
34. Notwithstanding his important role, Mr. Brodie had no part to play in the actual selection of the Employees for redundancy. He testified, "I did not participate in the selection of staff for termination". In any event, his evidence did not advance the Employer's case in relation to any of the required "effect" components. In fact, in relation to component (a) - cessation, Mr. Brodie's evidence is to the effect that duties of the Employees still existed after the re-organization. He offered no evidence either in relation to component (b) - the substantial diminution the work, or component (c) - requirement for fewer workers.
35. In the final analysis, although the Employer established the "cause", it has failed to go on to prove the "effect" which is expressly required or contemplated in the definition of redundancy.
36. In the circumstances, we find that no genuine redundancy situation existed at the material time. Accordingly, we would resolve the first issue in favour of the Employees. That resolution is sufficient to ground a declaration of unfair dismissal.
37. However, we are mindful of Mr. Marshall's submission, in the alternative, that we should consider whether the re-organization could constitute "some other substantial reason" under section C 58 (e) of the Labour Code and thereby justify the dismissals. It is clear that that sub-section has an inherent requirement for the Employer to be "reasonable". Thus, in any event, for a successful reliance on that subsection, like any other one under section C58, the Employer would have to illicit cogent evidence to convince us that it acted reasonably. This aspect requires our consideration of the second issue.

Issue 2: Did the Employer Act Reasonably or Unreasonably?

38. In our view, it is important to place the actions of the Employer in proper context and have particular regard to the following:
 - 1) The Employees' contracts included no clause for termination before the expiration of the respective three-year fixed term.

- 2) They were two of the five senior managers ranking, at least on paper, at the same level immediately below the General Manager and reporting directly to him.
 - 3) As members of the Executive Management Team, they held influential positions of high status.
 - 4) Ms. Julian had been employed for over 6 years. Her “tremendous contribution” was acknowledged and she received a second significant increase in her emoluments at the commencement of her new three-year contract, a mere three months before her dismissal.
 - 5) As the second highest ranking executive officer of the Management Team, Mr. Joseph had been employed for approximately 10 years. His dismissal took place 22 months before the end of his contract period.
 - 6) Since 2013, at the latest, the “difficult decision” of making “staff cuts” had been deferred by the Employer because it did not then have the required “political will”.
 - 7) The dismissals were effected in an abrupt and discourteous manner, less than three months after the general elections in June 2014.
39. The principles set out in the **Compair Maxam case**, are all largely grounded on natural justice the “principles and practices of good industrial relations”. We will adopt the settled approach used by this Court in cases of redundancy and consider the Employer’s conduct under the following selected heads.

Fair Selection

40. As the Employer’s sole witness, Mr. Brodie disclosed that he did not participate in the process of selecting the Employees for dismissal. He provided no evidence regarding the Employer’s selection criteria. Moreover, he offered no particular explanation or reasons for the dismissal of the Employees. As a result, the Employer has failed to discharge its evidentiary burden of proving that the Employees were fairly selected. Clearly, it acted in breach of the fundamental fairness and the guiding requirement for a fair selection process. That breach constitutes a critical element of unreasonableness.

Fair Consultation

41. The principles and practices of good industrial relations also demand that the Employer engage in a fair consultation process. That process was initially acknowledged by the Employer’s Chairman in his memorandum dated September 29, 2014 as a component of its “Action Agenda”. However, the evidence discloses that Employer did not follow through with any or any adequate consultation with the Employees as two of its key stakeholders.

42. Although both Employees became aware that the Employer was experiencing “financial challenges” and that there was “talk of overstaffing”, they were never provided with adequate information and given a reasonable opportunity to participate in meaningful consultation. More significantly, it was not brought home to the Employees in advance that their individual positions would have been affected. As a result, they had no opportunity to contemplate their individual future in or departure from the organization. In our opinion, the lack of consultation or sufficient consultation is also a clear indication of unreasonableness on the part of the Employer.

Warning and Notice of Redundancy

43. Based on the guiding principles stated in the **Compair Maxam case**, employers should seek “to give as much warning as possible of impending redundancies”
44. On the evidence before us, at best, the Employees had only a very general and vague awareness of the possibility of consequential redundancies among all the Employer’s workers. What was disclosed to the Employees before their dismissals could not suffice as adequate warnings much less notices of “impending redundancies”. Their selection for redundancy was not brought home to the Employees until they received their dismissal letters advising them of that they were “slated for retrenchment effective immediately”. The obvious lack of notice is a further striking indication of unreasonableness on the part of the Employer.

Unilateral Variation of the Contracts

45. By both dismissal letters, the Employer purported to unilaterally vary the terms of the contracts of employment. In our view, those variations were wholly misguided and appear to be no more than futile attempts to bring some semblance of legitimacy to the dismissals. In the circumstances, suffice it to say, those actions of the Employer were contrary to natural justice, contract law, the Labour Code and the principles and practices of good industrial relations. Clearly, those actions are also glaring aspects of unreasonableness.

Alternative Employment or Re-employment

46. The principles and practices of good industrial relations imposed an obligation on the Employer to endeavor to offer alternative employment or re-employment to Employees when they were being considered for dismissal. It is noteworthy that the Employer offered no evidence to prove any effort to re-deploy or re-employ the Employees. In our view, the re-organization provided substantial opportunities for their continued employment. The Employer’s failure to

observe or its deliberate disregard of those opportunities also reflect unreasonableness.

Resolution

47. We have noted above our finding that there was no genuine redundancy situation. Further and in any event, we conclude that the actions of the Employer were unreasonable. Taken as a whole, those actions were outside the range of reasonable conduct which a reasonable employer would have adopted in those circumstances.
48. In the final analysis, the Employer has failed (a) to establish a factual basis for the assigned reason of redundancy under section C 58 (1) (c) of the Labour Code; (b) to prove that it acted reasonably upon application of the test of reasonableness under section C 58 (2), and (c) to prove that it was entitled to rely on section C 58 (1) (e) to dismiss the Employees, given the positions which they held. Accordingly, we would determine this Reference in favour of the Employees and make a declaration and order of compensation.

Compensation: Contractual and other Entitlements

49. The general measure of compensation is the quantum of emoluments which the Employees would have earned, respectively, if they had worked for the unexpired portion of the fixed contract period, subject to the discharge of their individual duty to mitigate. Guided by section 10 (3) of the Act, we assess compensation which we consider to be "fair and just" as follows.

Mrs. Julian: Contractual Entitlements

50. Mrs. Julian testified that after her dismissal when she was between 62 and 63 years old, she engaged in organic gardening from which she earned "little or nothing". However, she said that for the purpose of tithing, she assessed the value of her produce or her earnings to be \$1,500.00 per month.
51. Having regard to her age, we are satisfied that Mrs. Julian took reasonable steps to mitigate her loss. In our estimation, making allowance for a reasonable implementation or start-up phase, her returns from gardening would have begun to accrue approximately 6 months after her dismissal. Accordingly, **we award her the sum of \$55,500.00** (\$9,250 x 6) being the equivalent of her full contractual emoluments for the first 6 months after her dismissal.
52. Additionally, we would award the equivalent of an additional 6 months' emoluments less her earnings from gardening for the second six month period

after her dismissal. Thus, **we also award the sum of \$46,500.00** $\{(\$9,250 - \$1,500) \times 6\}$.

53. As to the remaining 21 months of the contract period, in our opinion, Mrs. Julian should have been able to increase her income from her gardening and/ or alternative employment up to at least \$2,000.00 per month during that period. Accordingly, **we award the further sum of \$152,250.00** $\{(\$9,250 - \$2,000) \times 21\}$, being the equivalent of 21 months' emoluments less her deemed earnings for that period.
54. As to **Gratuity**, we award the sum of **\$28,875.00**, $\{(\$7,000 \times 33) \times 12.5\}$, being her contractual gratuity entitlement, as claimed by Mrs. Julian.
55. In terms of the **Thrift Fund**, we note that the Employer paid only 75% of contribution. Doing the best we can with the available evidence, **we award the sum of \$1,381.79** $\{(\$4,145.36 / 75) \times 25\}$, being the outstanding portion of the Employer's contribution.

Mr. Joseph: Contractual Entitlements

56. Mr. Joseph provided no evidence regarding his efforts, if any, to mitigate his loss by finding alternative employment. Further, the lack of evidence precludes us from making any finding regarding his age.
57. In the circumstances, for present purposes, Mr. Joseph is deemed to have a level of qualification and experience commensurate with his former position of Deputy General Manager. Accordingly, applying the same approach as used in the case of Mrs. Julian, **we would award the sum of \$67,300.02** $\{ \$11,216.67 \times 6 \}$ being the equivalent of his emoluments for the period of 6 months immediately after his dismissal.
58. We are of the opinion that, with diligent efforts, Mr. Joseph should have found alternative employment and earned no less than \$2,500.00 per month after the first six-month period after his dismissal. As a result, **we also award the sum of \$52,300.02** $\{ (\$11,216.67 - \$2,500) \times 6 \}$, being the equivalent of his total emoluments less what he should have earned during that period.
59. In our opinion, after the period of one year after his dismissal, Mr. Joseph should have been in a position to earn no less than \$3,500.00 per month for the remaining ten-month period of his contract term. Accordingly, **we also award the sum of \$77,166.70** $\{ (\$11,216.67 - \$3,500) \times 10 \}$, being the equivalent of his emoluments less his deemed earnings for that period.

60. As to gratuity, **we award the sum of \$24,750.00** $\{(\$9,000 \times 22) \times 12.5\}$, to which he was entitled for the unexpired 22 months of his contract.

61. In relation to the Thrift Fund, again doing the best we can with the available evidence, **we award the sum of \$2,787.50** $\{(\$8,362.52 / 75) \times 25\}$, being the outstanding portion of the Employer's contribution.

Exemplary Damages:

62. In our opinion, this is a clear case where the Employer acted in blatant breach of the contracts of employment, wholly disregarded the rudimentary principles and practices of good industrial relations and meted out harsh and oppressive treatment to the Employees. In the exercise of our statutory powers, **we award exemplary damages in the sum of \$20,000.00**, to each of the two Employees.

Costs:

63. We do not think it necessary to repeat the reasons for our findings above. Suffice it to say, on the evidence as a whole, we are of the opinion that those reasons are exceptional and would justify an order for costs. Accordingly, **we would order costs in the sum of \$2,500.00** for each of the two Employees.

Declaration and Order

64. Having regard to the evidence, the law and the submissions of Counsel, we declare that the Employees were unfairly dismissed and are entitled to compensation.

65. And we order that:

1. The Employer shall pay compensation and costs to Patricia Julian as follows:

(a) Adjusted contractual emoluments	\$254,250.00
(b) Gratuity entitlement	28,875.00
(c) Thrift Fund entitlement	1,381.79
(d) Exemplary damages	20,000.00
(e) Costs	2,500.00

Total	\$307,006.79
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2. The Employer shall pay compensation and costs to Hudson Joseph as follows:

(a) Adjusted contractual emoluments	\$196,766.74
(b) Gratuity entitlement	24,750.00

(c) Thrift Fund entitlement	2,787.50
(d) Exemplary damages	20,000.00
(e) Costs	2,500.00

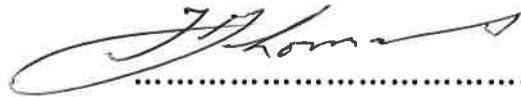
Total	\$246,804.24
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3. The Employer shall pay compensation and costs in the aggregate sums of \$307,006.79 and \$246,804.24 respectively to the Employees no later than December 31, 2019.

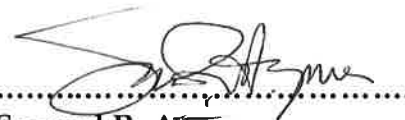
Dated the 25th day of November 2019



Charlesworth O.D. Brown
President



Dr. Hayden Thomas
Member



Samuel R. Aymer
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Hon. Charlesworth O.D. Brown, President
Hon. Dr. Hayden Thomas, Member
Hon. Samuel R. Aymer, Member