

IN THE INDUSTRIAL COURT
ANTIGUA AND BARBUDA

REFERENCE NO. 9 OF 2011



KISTON BROWNE

Employee

And

JUMBY BAY RESORT

Employer

Before:

Hon. Charlesworth O.D. Brown
Hon. Samuel Aymer
Hon. St. Lawrence deFreitas

President
Member
Member

Appearances:

Mr. Egbert Joseph and Ms. Cicely Charles of Antigua Hotel Management Association
for the Employee

Mr. Justin L. Simon QC, with him, Ms. Fiona Murphy of Simon Rogers Murdoch,
Attorneys-at-Law for the Employer

2015: May 27
2019: March 25

JUDGMENT

Brown, P.

Background

1. The Employer, referred to by its trade name in these proceedings, is a company incorporated under the Laws of Antigua & Barbuda. It is engaged in the business of renting estate homes and villas at its premises situate at Jumby Bay, Long Island in the Parish of St. Peter in Antigua & Barbuda. Apart from its rental business, the Employer also provides meals to its guests in respect of which it employs chefs, cooks, stewards and other kitchen staff.

2. As a member of the Antigua Hotels and Tourist Association, the Employer is a party to the Collective Agreement, then in force for the period January 1, 2007 to December 31, 2009 between that Association and the Antigua and Barbuda Workers' Union, the exclusive bargaining agent for the bargaining unit of which the Employee was a member.
3. By reason of its nature, the Employer's business is subject to seasonal "closure" during its "low season", between the months of April/ May and October/ November, and a corresponding annual "reopening" at the start of "high season", between October/ November and April/ May, from year to year.
4. As part of its "standard operating procedure" the Employer holds a training session at the end of its period of seasonal closure in preparation for the commencement of the new season.
5. The Employer operates a ferry service between Antigua and Long Island, by means of which its employees commute.
6. By employment letter dated October 23, 2009 the Employee was employed by the Employer as a Pool Grill Cook for an indefinite term commencing November 16, 2009 at the weekly wage rate of \$419.60. Prior to that commencement date, he was employed by the Employer as a Chef Trainee under two separate fixed-term contracts.
7. As detailed in his job description, the Employee's incidental responsibilities and duties required him to "...inspect the cleanliness and working condition of all tools, equipment and supplies... inspect the cleanliness and organization of the line and work stations and rectify any deficiencies". In addition, he was also required to "...disinfect and sanitize cutting boards and work tables... direct and assist Stewards in order to make clean up a more efficient process if required;"
8. Prior to October 6, 2010, all the foregoing duties and responsibilities were satisfactorily discharged and met by the Employee during the ordinary course of his employment.
9. On October 6, 2010, during a training session then in progress after a seasonal six-week closure of the Resort, the Employee's supervisor, Mr. Nigel Joseph, instructed him to begin cleaning the work area in preparation for the receipt of a fresh supply of food in the Pool Grill kitchen.
10. The Employee objected to the cleaning which Mr. Joseph had instructed him to do on the grounds that (a) the instructions were given during the training

session and (b) the cleaning required of him was not something that he would ordinarily do on a day-to-day basis.

11. Ultimately, following his meeting with the Resort Manager, Mr. Edward Gannon and the Director of Human Resources, Mrs. Marcia Brown-Kelly on October 12, 2010, the Employee was dismissed by letter dated October 18, 2010.

The Reasons for the dismissal

12. At pages 4 and 5 of the dismissal letter the Employer stated the reasons for the dismissal. For emphasis, we underline parts of the stated reasons as follows:

“The record of events above shows that you have conducted yourself in a manner that is unacceptable and seriously below the standard that we expect of the resort’s employees in that:

- (a) Your job is that of cook. The tasks assigned to your job include preparing your work area in accordance with acceptable food health and safety standards. The terms of your employment also include you performing such tasks incidental to your employment as are reasonably required of you. Your refusal to carry out such tasks is a breach of the terms of your employment.
- (b) You were insubordinate and disrespectful to your supervisor Nigel Joseph on 6, October, 2010 when you repeatedly refused his reasonable instructions to carry out light cleaning and sanitization of the refrigerators and work surfaces to get it ready for the safe handling of food items.
- (c) Your repeated refusal to complete the tasks assigned to you was disruptive of the work of the Pool Grill team.
- (d) You left your assigned position on Monday without notifying your supervisor to seek out Mr. Gannon for the meeting.
- (e) You were less than truthful when Mr. Gannon asked you if your supervisor knew where you were. You had in fact left your work station and had not alerted Mr. Joseph.
- (f) After your meeting with Mr. Gannon on Monday you were again insubordinate by again repeatedly refusing to carry out the instructions of your supervisor.

- (g) You were disrespectful to the resort manager on Sunday 9 October in that you insisted that you would come to work on Monday 10 October, and that he could not stop you when he clearly told you to take the 12:45pm ferry on Tuesday for a scheduled meeting.
- (h) You were insubordinate to management when you attempted to board the ferry on Monday 10 October despite Mr. Gannon's clear instructions to the contrary. Your explanation of your reasons for boarding the ferry on Monday is not acceptable since you had already made clear to Mr. Gannon during the telephone conversation on Sunday that you were prepared to disregard his instructions and that they could not stop you.
- (i) You disrupted the smooth operation of the ferry by insisting on boarding on Monday morning despite being instructed by the security officer not to do as you were not scheduled to be on the island until the scheduled meeting on Tuesday.
- (j) You further disrupted the smooth operation of the ferry by refusing to remove yourself when requested to do so and by having the security officer enlist the assistance of the ferry mate to get you off.
- (k) You failed to show appreciation for your actions in the meeting held on Tuesday 12 October, 2010 after one full week during which you had ample opportunity to reflect on your conduct. You failed to show or express any remorse for your insubordination or for your disrespect and insisted that you were not prepared to clean and should not be asked to do this.

Your actions above are part of a trend of insubordination, disrespect and total disregard of reasonable requests of management.

In the circumstances you are advised that your behaviour as described above is misconduct which demonstrates that the employment relationship cannot reasonably continue and is of such a nature that the resort has no choice but to terminate your services with immediate effect."

The Dispute

13. In his Memorandum of Claim, filed on October 3, 2011, the Employee asserted that he commenced his employment on October 18, 2008 and that during his tenure he "was never told verbally or written to about any dissatisfaction as it

pertains to his job performance.” Most importantly, the Employee contended that termination of his employment was unfair and claimed compensation for “Unfair Dismissal” and “Severance Payment”.

- (a) In its Memorandum of Defence, the Employer substantially restated its reasons for the dismissal and maintained that the Employee was not unfairly dismissed. In particular, it stated that he was dismissed on the grounds of misconduct and insubordination pursuant to Clause 26 of the Collective Agreement and sections C58 and C59 of the Antigua & Barbuda Labour Code.

The Main Issues

14. The main issues for determination are as follows:

- (1) Whether the Employer had good cause for dismissing the Employee.
- (2) Whether the Employer acted reasonably or unreasonably in dismissing the Employee for the assigned reasons.

The Legal Framework

15. We will consider the issues within the parameters of (A) the Antigua and Barbuda Labour Code, (B) the Collective Agreement, and (C) the burden of proving that a dismissal was not unfair.

A. The Labour Code:

16. Section C 58 of the Antigua and Barbuda Labour Code provides:

“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) ...”**

C58 (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. ”

17. Section C 59 provides:

“C 59 (1) An employer may terminate the employment of an employee where the employee has been guilty of misconduct in or relation to his employment so serious that the employer cannot reasonably be expected to take any course other than termination. Such misconduct includes, but is not limited to situations in which the employee has

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

(b) ...”

B. The Collective Agreement: Disciplinary Code:

18. Under Appendix 1 to Clause 26 of the governing Collective Agreement, the Disciplinary Code itemizes offences in categories or bands which may be committed by employees and the corresponding disciplinary action agreed to be taken by the Employer. Excerpts from the Disciplinary Code are as follows:

<u>“APPENDIX 1</u>	DISCIPLINE
1. Poor time keeping	1st Occasion- Reprimand
2. ...	2nd Occasion- Warning
3. ...	3rd Occasion- Suspension
4. ...	4th Occasion- Dismissal
5. Failure to perform duties.	
6. ...	
7...	1st Occasion - Warning
...	2nd Occasion- Suspension
11. Insubordination	3rd Occasion- Dismissal
...	
20. Fighting...	Dismissal
...	
...	
26. Immoral Conduct	Summary Dismissal
27. Stealing...”	

C. The Burden of Proof:

19. Given the statutory prohibition on unfair dismissals, it is well settled that in cases like this, where an employer has dismissed an employee, the onus is on

the employer to prove by cogent and convincing evidence that the dismissal was not unfair. In that regard, in Reference No. 9 of 1988, **Wesley Wade v. St. James' Club Ltd.** at page 3 of the judgment of this Court, it was held:

“Since the Employer has admitted dismissing the Employee on these grounds they will have to justify this action and accordingly the burden of proving that the Employee was fairly dismissed rests with the Employer. This is the central issue in this case. If the Employer fails to establish it to the satisfaction of the Court, then it follows that the Employee must inevitably be deemed to be unfairly dismissed as he claims to be and is entitled to the relief sought. The Court is therefore charged with the responsibility of determining whether that dismissal was fair or unfair in accordance with Section C60 (2) of the Antigua Labour Code,.....”

We note that under the amended Labour Code the provisions previously contained in Section C60 now appear as section C58.

20. Further, in the context of summary dismissals, the requirement for cogent and weighty evidence from the Employer was confirmed by the Court of Appeal in **Cable & Wireless (West Indies) Ltd. v Dalma Hill et al.** At page 15 of its judgment, Berridge J.A., as he then was, approving the approach of this Court, stated:

“The Court held the view that within the ambit of Section C58 of the Labour Code the burden of proof was on the Company to show “just cause” for dismissing the Respondents and that since summary dismissal constitutes a “strong measure” the standard of proof should be strict, persuasive and convincing. Further, notwithstanding the fact that this is a matter of a Civil nature requiring a standard of proof on a balance of probabilities, since the matters to be proved were of a grave and weighty nature, they would expect the evidence to be correspondingly cogent and weighty in nature and content.”

The Employee's Evidence

21. The Employee gave oral testimony on his own behalf. In doing so, he stood by the content of his witness statement filed on February 1st, 2012. For present purposes, it is important to set out significant parts of his testimony.
22. In particular, the Employee testified that on the 6th October, 2010, the second day of the pre-opening training session, Mr. Joseph, asked him to do cleaning. In response, he asked Mr. Joseph if cleaning was part of his training. Mr. Joseph, in turn, told the Employee that if he had a problem doing the cleaning he (the Employee) would have to take up that issue with “higher authorities”.

23. Based on his Witness Statement and oral testimony, it is clear that the Employee considered the cleaning which his supervisor asked him to do was "deep cleaning", a type of cleaning which he was not previously required to do on a day-to-day basis in accordance with his job description referred to at paragraph 7 above. He said that, in his view, that type of cleaning would usually be done by the Kitchen Steward.
24. Further, the Employee distinguished "deep cleaning" from the customary daily cleaning of the work area which he previously performed to ensure that his work area was always in a "clean and workable condition".
25. The Employee also testified that he sought the permission of Mr. Joseph and on his instructions he went to Mr. Gannon's office but he was not there.
26. According to the Employee, when he eventually spoke to the Resort Manager about his concerns, Mr. Gannon's response was that "training was not up for questioning". Further, the Employee stated that Mr. Gannon "seemed annoyed by the question I posed to him". In addition, he said that "Mr. Gannon was very aggressive, shouting and to a point insulting".
27. The Employee further testified that during the exchange between them on October 6, 2010 the Resort Manager told him to leave the Resort immediately and that he would be contacted. The Employee said he was contacted by Chef. Bockensiki via telephone on October 09, 2010 and instructed to call Mr. Gannon.
28. During the ensuing conversation with Mr. Gannon on October 10, 2010 the Employee was told for the first time that he had been suspended. He was also instructed to board the 12:45 Ferry on Tuesday 12th October to attend a meeting with Mr. Gannon.
29. During his testimony, the Employee expressed the view that "In my mind, I thought they were trying to set me up to say I abandoned my job". He said that, in the circumstances, on the 11th October, 2010 he made an attempt to go to the Resort to deliver a letter to Mrs. Brown- Kelly. He said he boarded the Ferry and made eye with her but was soon asked by the Ferry Captain to leave. He said he attempt to explain his position but the Captain insisted that he leave the vessel. He said he complied but before doing so he attempted to give his letter to Mrs. Brown-Kelly but she refused to accept it.
30. The Employee testified that, as requested, he attended the meeting on the 12th October, 2010 but he could not recall what happened during the meeting, save

to say that there was no hint of the termination of his employment. However, he recalled that after the meeting he was told to leave the Resort and that management would contact him again.

31. Continuing his testimony, the Employee testified that, having left the Resort on the 12th October, 2010 he never “set foot” on the property again until he received the termination letter on October 19, 2010.
32. The Employee also agreed with Counsel that his last period of employment commenced on November 16, 2009. Moreover, the Employee also agreed with Counsel that it was a part of his duties to keep his work station and equipment clean at all times. He said that he did carry out some form of cleaning on a day to day basis at his work station. In particular, he said that he had no problem with cleaning, he just wanted to know if cleaning was a part of training, which issue was the subject of his concerns expressed to both Mr. Joseph and Mr. Gannon.
33. Further, the Employee testified that Mr. Joseph told him that he didn’t think that he (the Employee) would have to do cleaning during the training sessions. He said that, based on what Mr. Joseph told him, he decided to speak to Mr. Gannon. However, he admitted that he did decide not to do the cleaning when instructed by Mr. Joseph to do so.
34. In addition, under cross examination, the Employee maintained that when he left his work station on October 6, 2010 he did so with permission of Mr. Joseph. He also maintained that Mr. Joseph instructed him to go see Mr. Gannon.
35. The Employee explained that, acting of Mr. Joseph’s instructions, he met Mr. Gannon on the compound. He said that Mr. Gannon promised to get back to him. In response to a question put to him by Counsel, the Employee denied going back to Mr. Gannon office prematurely. To the contrary, he said that, it was Mr. Gannon who called the Pool Grill indicating that he was available to meet with him.
36. Under further cross examination, the Employee explained that his attempt to visit the Employer’s premises of the 11th was to deliver a letter because at that time when he was told of his suspension he had no letter. Further, the Employee explained that the letter was addressed to Mr. Gannon and written on cards.

37. As to the dismissal letter, the Employee explained that he was called to the Resort to collect the letter. He also repeated his admission that he refused to do the cleaning which Mr. Joseph had instructed him to do.
38. Under continuing cross examination, the Employee also expressed the view that he was dismissed because of incidents which occurred before the issue of cleaning arose during the training session. He said that, in his view, the incident regarding his obligation to clean during the training session was blown out of proportion.
39. Importantly, when pressed further under cross examination, the Employee conceded that, his employment with the Employer from which he was dismissed, commenced on November 16, 2009.

Employer's Evidence: Marcia Brown-Kelly

40. At the end of its Memorandum of Claim the Employer disclosed its intention to call 3 witnesses: Mr. Gannon, Mr. Joseph and Mrs. Brown-Kelly. However, no witness statement was filed for Mr. Gannon and, although his witness statement was filed, Mr. Joseph was not called to testify at the trial. As a result, the only evidence before the Court on behalf of the Employer is that of Mrs. Brown-Kelly.
41. Mrs. Brown-Kelly confirmed the content of her witness statement filed on December 20, 2011. She testified that her information about what happened on the 06th October, 2010 was based on information she received from the Resort Manager. She said that she was informed that the Employee had refused to carry out instructions given to him by his Supervisor.
42. In addition, Mrs. Brown-Kelly testified that on 11th October, 2010 she observed the Employee at the Employer's Ferry docking station. At her request, Security Officer Garnett approached the Employee, whose body language she observed was "clearly defying" the instructions which the officer had given him. When the Employee approached her to deliver a letter she "advised" him to leave but he did not comply. She said she also overheard Officer Byrne and the Ferry Mate ask the Employee to leave. She said she "observed" the Employee refusing to leave". She continued that the employee "eventually left the ferry and the ferry departed "shortly" afterwards to the Resort.
43. Mrs. Brown- Kelly went on to describe the meeting held on 12th October, 2010 between the Employee, Mr. Gannon and herself. She said that "during the meeting the Employee was invited to state the matters which were of concern to him". In response the Employee (a) spoke about his willingness to resign,

(b) requested a letter of "confirmation" confirming his employment (c) expressed his feeling that he was being recorded (d) referred to matters which needed ventilation and rectification, and (e) stated that he was intelligent and educated and should not have to clean the kitchen. As to the latter, according to Mrs. Brown-Kelly, the Employee stated that "... it was not his responsibility to clean the Kitchen and the he would rather stand the consequences of going home without a day's pay."

44. As to why he "disregarded" Mr. Gannon's instructions by returning to work on the October 11, 2010 Mrs. Brown-Kelly said that the Employee explained that he wanted to "clock in" because he understood that if he remained absent for 3 days he would lose his job.
45. Mrs. Brown-Kelly also testified that "the Employee was advised that the matter would be considered further and that he would be contacted when a decision was made on the appropriate course of action". She continued by stating that after further consideration of the matter the Employer decided to terminate the employment of his Employee and did so by letter dated October 18, 2010.
46. Under cross examination, Mrs. Brown-Kelly testified that there was nothing on the Employee's records about him not doing his job. Prior to the 6th October, 2010 there was no record of him refusing to clean. As to her involvement in the matter, Mrs. Brown-Kelly stated that she became involved when she received a call from Mr. Gannon that the Employee was disrupting the training process. However due to her unavailability, the Employee was sent home. As to the reason why the meeting was convened on 12th October, 2010 Mrs. Brown-Kelly testified that "it was designed to allow the Employee the opportunity to explain his concerns".

Main Issue 1: Was there Good Cause for dismissal?

47. As stated clearly in the letter of dismissal, the Employer concluded that the Employee was guilty of "misconduct which demonstrates that the employment relationships cannot reasonably continue and is of such a nature that the resort has no choice but to terminate (his) services with immediate effect".

48. In their joint closing Submissions, learned Queen's Counsel Mr. Simon and Ms. Murphy, quoting from **Civil Appeal No. 28 of 2001 Sundry Workers v. King's Casino Ltd**, reminded us of the requirement for the assigned reasons to be supported by facts and that there must be factual links between the assigned reasons and the dismissal.
49. In our analysis of the evidence we are obliged to look for supporting facts, in the absence of which the respective assigned reasons cannot be substantiated or sustained. Going forward in this vein, we note the summary nature of the dismissal and remind ourselves of the Employer's obligation to advance sufficient cogent and weighty evidence to prove that the dismissal was not unfair.
50. We are not persuaded that the Employee refused to carry out his main duties as a Cook in the ordinary course of his employment or that there was a breach of the terms of his employment sufficient to justify his dismissal.
51. It was important for us to hear evidence regarding the nature and form of the alleged insubordination and disrespect which allegedly occurred on 6th October, 2010. Several questions arise. What were the precise instructions given? Under what circumstances were they given? How were the insubordination and disrespect constituted or demonstrated? What was Mr. Joseph's reaction?
52. Having already noted the absences of Mr. Joseph and Mr. Gannon at the trial, it follows that the only available direct evidence as to what happened on October 6, 2010 is that of the Employee which we accept as being credible. In the circumstances, although the Employee admitted that he refused to comply with Mr. Joseph's instructions, we have no or no sufficient evidence of intentional insubordination and disrespect. In our opinion, the Employer has failed to discharge its evidentiary burden.
53. As to the several assigned reasons for the dismissal - set out in the dismissal letter and reproduced at paragraph 12 above - upon careful consideration of the evidence of Mrs. Brown-Kelly and in the absence of credible testimony from Mr. Joseph and /or Mr. Gannon, there is no or no sufficient evidence to establish factual bases so as to render any of those reasons a good cause for dismissal.
54. The foregoing resolution of the first main issue may be sufficient to dispose of the matter in favour of the Employee, as we are inclined to do. However, before doing so, we believe that it is also important to consider and resolve the second main issue.

Main Issue 2: Did the Employer act reasonably or unreasonably?

55. As a starting point for our consideration of the reasonableness of the Employer's action in dismissing the Employee, we note that the only established fact on which the Employer could reasonably contemplate disciplinary action against the Employee is his admitted refusal to do the cleaning as requested by Mr. Joseph on October 6, 2010.
56. That only potentially good reason must be considered in the context of Section C58 and 59 (1) of the Labour Code. The key question that emerges is: whether the Employee's alleged misconduct was sufficient to justify his summary dismissal under Section C59 (1)?
57. Section C59 (1) allows for summary dismissal on the basis of gross or serious misconduct. Given the evidence before us, we do not find any gross or serious misconduct. In our opinion, the alleged misconduct could not reasonably be considered to be serious enough to justify the application of section C59 (1). In our opinion, a reasonable employer wishing to pursue disciplinary action under the Labour Code, would have proceeded under subsection (2).
58. Secondly, when we consider the Employer's action in the context of the Disciplinary Code outlined in the Collective Agreement - the pertinent parts of which are set out at paragraph 18 above - the key question is: whether there is any good basis for departure from the agreed disciplinary procedures?
59. At first blush, it appears obvious to us that the offence of "Insubordination", like the others in the band in which it falls in the Disciplinary Code, does not attract summary dismissal. As agreed between the parties, dismissals for those offences are only permitted upon the third occurrence.
60. At the end of the day, whether the Employer proceeded under section C59 of the Labour Code or Clause 26 of the Collective Agreement, it was unreasonable to dismiss the Employee summarily.
61. In the wider context, we find that there was no clear demarcation made or explanation given by the Employer in respect of the differences, if any, in the Employee's duties during regular work days when the Resort was open vis-à-vis the training sessions prior to the commencement of a new season. In the circumstances, it was not unreasonable for the Employee to be concerned and raise the matter with his Supervisor and the Resort Manager. Further, it appears that there were valid grounds for the Employee to question whether

the cleaning required of him was in fact “deep cleaning” which should properly have been done by the Kitchen Stewards.

62. In addition, we note that it was common ground that the Employee received no or no written explanation as to why he was sent home and the duration of the time that he was required by Mr. Gannon to stay away from the workplace after October 06, 2010. In that regard, we also note that 4 days passed after he was sent home before he was told that he had been suspended. And he was not told of the duration of the suspension. Neither at the date of suspension nor at any subsequent date before his dismissal was there any allegation put to the Employee to ground the suspension.
63. Further, we find that it was not unreasonable for the Employee to be concerned about the state of affairs and to take steps to ensure that it could not be deemed that he had abandoned his job. Hence, in our opinion, his efforts to board the ferry and deliver his letter to Mrs. Brown-Kelly on October 11, 2010 and his exchanges with the Security Officer and the Ferry Mate, as described by Mrs. Brown-Kelly, do not constitute punishable offences.
64. Moreover, we find that the meeting convened on October 12, 2010 was not a disciplinary hearing. Indeed, up to that point, no allegations of wrong-doing, in writing or at all, had been made against the Employee regarding his suspension or any possible further disciplinary action. In fact, at the meeting, the Employee was merely “invited to state the matters which were of concern to him”.
65. More fundamentally, the Employer deprived the Employee of his right to natural justice. In particular, he was deprived of his right to know what exactly was alleged against him and to have the opportunity to confront his accuser. In that regard, we note the absence of Mr. Joseph from the meeting held on October 12, 2010 and his absence as well as that of Mr. Gannon at the trial.

Conclusion

66. In the final analysis, we find that the Employer’s evidence, being that of Mrs. Brown-Kelly exclusively, lacked the required specificity, completeness, clarity and cogency. As a result, the Employer failed to discharge its evidentiary burden of establishing that the Employee was guilty of “serious misconduct”, as contemplated under section C59 (1) of the Labour Code, which would render his continued employment untenable.

67. In relation to its contractual obligation, we find that, although it was mindful of its provisions, the Employer disregarded and acted contrary to the relevant parts of the agreed Disciplinary Code as stated at Clause 26 of the Collective Agreement.

68. In the premises, apart from not having a sound factual basis for the dismissal, the Employer failed the test of reasonableness. It acted unreasonably in dismissing the Employee in the circumstances. As a result, the Employee was unfairly dismissed and is entitled to compensation which we assess as follows.

Compensation

69. Bearing in mind that he received two weeks pay in lieu of notice, we award compensation to the Employee under the respective heads as follows:

i. Loss of Protection from Unfair Dismissal

The Employee worked from November 16, 2009 to October 18, 2010, approximately 22.333 months at the rate of \$419.60 per week. He is entitled to one day's pay per month worked. Accordingly, **we award the sum of \$1,874.19: $(419.60 \div 5) \times 22.333$.**

ii. Immediate Loss

Despite his several attempts, the Employee did not find alternative employment for a "good time" but he could not recall precisely how long. Eventually he found a job as an Office Attendant earning \$10.00 per hour for a period of 1 to 3 months. He said he never found a permanent job until he was employed by SLICE in the Piggott's Mall after which he did a stint at Island Pizza in Bolans. Having heard the Employee's evidence, **we award the global sum of \$10,909.60**, the equivalent of 6 months or 26 weeks pay.

iii. Exemplary Damages

In our opinion, apart from being unfair, the Employee's dismissal was harsh, oppressive and contrary to the principles and practices of good industrial relations. In that regard, we are obliged to convey to the Employer our disapproval of its conduct towards the Employee and attempt to deter it from the same or similar actions in the future. In the circumstances, **we award the sum of \$15,000.00** under this heading.

Order

70. In the premises, it is ordered that:

- (1) Employer do pay to the Employee the total sum of \$27,783.79, as compensation for his unfair dismissal, no later than April 30, 2019.
- (2) There shall be no order as to costs.

Dated the 25th day of March, 2019



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Hon. Charlesworth O.D. Brown
President

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Hon. Samuel Aymer
Member



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Hon. St. Lawrence deFreitas
Member