

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 4 OF 2015

BETWEEN

ANDERSON CARTY

Employee

And

ANTIGUA AND BARBUDA TRANSPORT BOARD

Employer

REFERENCE NO. 8 OF 2015

BETWEEN

ANIQUE FRANCIS

Employee

And

ANTIGUA AND BARBUDA TRANSPORT BOARD

Employer

REFERENCE NO. 11 OF 2015

BETWEEN

JAMES SEBASTIAN

Employee

And

ANTIGUA AND BARBUDA TRANSPORT BOARD

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. Hayden Thomas

Member

The Hon. Megan Samuel-Fields

Member



Appearances:

Mr. Anderson Carty of Antigua & Barbuda Tradesmen & United Workers' Federation, Representative for the Employees

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

2018: April 20

2018: May 18

2020: August 28

JUDGMENT

Brown, P:

Introduction

1. In these three References the Employees respectively claim that they were unfairly dismissed in October and November 2015 on the purported ground of redundancy arising from retrenchment and reorganization processes carried out by the Employer. In their dismissal letters, each of the Employees was informed that he /she had been "slated for retrenchment".
2. The trials were held together with the consent of the parties. The main issues are substantially identical to those in Reference No.17 of 2015: **Patricia Julian v. Antigua & Barbuda Transport Board** and Reference No. 33 of 2015: **Hudson Joseph v. Antigua & Barbuda Transport Board**, which were also heard together. Based on the background facts and the pleadings, we will adopt the same approach, use the same legal framework and apply the relevant principles as was done in this Court's recent judgment in latter two cases (the Julian case).
3. The two 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

4. The Employer, referred to in these References as Antigua & Barbuda Transport Board, was established as the "Transport Board" under the

Transport Board Act, 1995. In accordance with that Act, its members are appointed by Cabinet from time to time. As a result of fresh appointments, the statutory body was reconstituted in July 2014 following national elections in the preceding month which resulted in a wholly new government.

5. Mr. Anderson Carty (Mr. Carty) commenced his employment on April 18, 2006. He first held the position of Human Resource and Training Officer. By letter dated September 8, 2009, he was re-appointed to the executive management team for a term of 3 years "with effect from May 1, 2009 for a period of three (3) years to expire on April 30, 2012". Upon his re-appointment, he was promoted to the position of Operations Manager with responsibility for four of the Employer's divisions, namely, the National School Bus System; the Government Motor Pool; Highway Patrol and Road Safety – Traffic Wardens; and the Public Service Demerit System. He was required to report directly to the General Manager.
6. At the date of his dismissal on October 15, 2014, Mr. Carty was still engaged as Operations Manager under an implied or inferred three-year contract for the period April 18, 2012 to April 17, 2015. He was earning a monthly salary of \$7,300.00 and allowances totaling \$2,250.00 per month, including a duty allowance of \$1,500.00. He was also entitled to a gratuity, equivalent to 12.5 % of his aggregate salary for the contract period.
7. During his tenure, Mr. Carty contributed to a Thrift Fund, the operation of which by the Employer required it to deduct 2.5% of his salary and pay the same together with its contribution of a matching sum into a designated thrift fund account.
8. While Mr. Carty was on approved vacation leave for the period September 1 to October 14, 2014, the Employer issued a memorandum and a notice to its staff dated September 29 and October 3, 2014 respectively, informing them that:
 - (a) As a result of its performance, which was 20% below expectation, there would be some restructuring of the organization to bring about a satisfactory level of efficiency.
 - (b) As a result of the Employer's revenue being less than its employee cost, it was necessary to retrench staff to bring a balance to the situation.
9. Mr. Carty received neither the said memorandum nor the notice from the Employer and did not otherwise receive any official communication regarding their contents.

10. On October 3, 2014, while he was still on approved vacation, the Daily Observer newspaper published an article, entitled "Transport Board managers fired", informing the general public that the Employer had taken a decision to terminate the employment of several of its managers including Mr. Carty. He received no notice or any other communication from the Employer in respect of the termination of his employment.
11. On October 15, 2014 when Mr. Carty returned to work, he was invited to the office of the General Manager where the Acting General Manager delivered his letter of dismissal, bearing the same date, to him. Excerpts from that letter, which had immediate effect, are as follows:

"October 15, 2014

...

Dear Mr. Carty,

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 include Government loan placed on the Board to pay, along with the other myriads of Government expense 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 October 15, 2014.

While we are satisfied there was no written extension of your previous contract, we have in good faith accepted your latest employment with the Board to end October 15, 2014.

..."

12. Ms. Anique Francis (Ms. Francis) commenced her employment as Personal Assistant to the Operations Manager (Mr. Carty) on September 2, 2013. Apart from her salary of \$2,850.00 she also received travel and telephone allowances totaling \$400.00.
13. Ms. Francis' employment was subject to the Collective Bargaining Agreement then in force between the Employer and the Antigua & Barbuda Workers' Union.

14. Apart from the general information she gleaned from the Employer's memorandum and notice referred to in paragraph 8 above, Ms. Francis was not officially informed of the probability or likelihood of her dismissal.
15. On November 14, 2014 Ms. Francis was called to the Human Resources Department where her letter of dismissal, bearing that date, was delivered to her terminating her services with immediate effect. The first paragraph is identical to that in Mr. Carty's letter as stated above. The second and third paragraphs are as follows:

"November 14, 2014

...

Dear Ms. Francis,

...

Regrettably, you are one of the employees slated for retrenchment effective November 14, 2014.

You commenced employment with the Board on September 2, 2013 and will end on November 14, 2014. Your weekly rate of pay was \$660.00, resulting in a daily rate of \$132.00.

..."

16. Mr. James Sebastian (Mr. Sebastian) commenced his employment as Manager, Motor Pool Division on September 2, 2004. During the term of his employment he also held the positions of Security Manager, Road Safety and Highway Patrol Manager and Property Maintenance Manager. In the last position, which he held at the date of his dismissal, he earned a monthly salary of \$6,000.00 together with which he also received duty, telephone and gasoline allowances. In addition, one of the Employer's vehicles was assigned to him.
17. As a member of the management team, Mr. Sebastian was aware of the Employer's general concerns about its "efficiency level" and the existence of "overstaffing in certain areas". However, the Employer did not formally communicate to him that there was any probability or likelihood that his particular employment was or could be in jeopardy.
18. On October 2, 2014 Mr. Sebastian was invited to the office of the Acting General Manager where his letter of dismissal, bearing that date and having

immediate effect, was delivered to him. In that letter, after the same opening paragraphs as those in the letters to Mr. Carty and Ms. Francis, the Employer stated:

"October 2, 2014

...

Dear Mr. Sebastian,

...

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

..."

The Opposing Cases

19. Although some of the facts on which the Employees rely in their Memoranda of Claim differ, their main assertions which ground their claim of unfair dismissal are strikingly similar, if not identical. They all contend that there was no redundancy situation; that their dismissals were politically motivated; that they received no notice of the termination of their employment; that the Employer failed or refused to consult with them regarding its retrenchment exercise; and that the Employer offered them no alternative employment. In pursuing their claims, the Employees emphasized and amplified those assertions in the context of the background facts outlined above.
20. Mr. Carty emphasized the timing and manner of his dismissal. He was virtually dismissed while he was on approved vacation leave and given his letter of dismissal on the very day he returned to work.
21. Further, in disputing the redundancy alleged by the Employer, Mr. Carty testified that after his dismissal, the Employer hired a new employee to fill the position of Commercial Manager to perform the duties he previously performed as Operations Manager. He also pointed out that on September 26, 2014 a new employee was hired to fill the position of Human Resources Manager and perform the duties previously discharged by him.
22. As to the political motivation for his dismissal, he noted that during parliamentary sessions, which were aired live on national radio and television, the Employer's Chairman, who had been newly elected as a Member of Parliament, berated and insulted him along with the Employer's entire management team.

23. For her part, Ms. Francis also highlighted the main grounds of her claim outlined at paragraph 19 above. She emphasized the abrupt manner of her dismissal and pointed out that prior thereto, the Employer did not implement any temporary austerity measures as it was required to do under the Collective Agreement. Instead, the Employer hired several new employees including management and line staff.
24. Like Mr. Carty, Ms. Francis maintained that the termination of her employment was “politically motivated”. She grounded that assertion largely on verbal exchanges she had with the Employer’s Chairman, who was on the opposite side of the political divide, during the political campaign leading up to the elections. In particular, she testified that the Chairman threatened to dismiss her after the elections if his party was successful.
25. As to Mr. Sebastian, in addition to the main aspects of his pleadings outlined at paragraph 19 above, he noted that despite the Employer’s financial position, of which he had basic knowledge, no alarm was raised at any of the management meetings which he attended.
26. Further, according to Mr. Sebastian, the basis for the Employer’s political motivation to dismiss him was his role as a “major player” in the opposition political party prior to the national elections.
27. Mr. Sebastian also corroborated the evidence of both Mr. Carty and Ms. Francis to the effect that the Employer hired new managers and line staff after their dismissals. According to him, the new hires were needed to carry out duties which he previously performed in earlier positions and which he was still capable of performing.
28. The Employer disputed the three claims on the grounds stated in its Memoranda of Defence. In reliance on the evidence of its sole witness, the Employer contended that the Employees were dismissed as part of a retrenchment and restructuring exercise aimed at reducing employment costs in light of the dire state of its financial affairs. According to the Employer, the exercise was necessary because of inefficient management and overstaffing.
29. The Employer also contended that since the retrenchment process itself brought an end to the employment relationships, the Employees were not unfairly dismissed since the “Antigua and Barbuda Labour Code categorizes Retrenchment as a Redundancy and Section C58 states that a dismissal due to Redundancy cannot be unfair.” Further, the Employer contended that it implemented its retrenchment and restructuring exercise “solely to reduce

payroll cost" and get it out of its unsustainable financial position. Accordingly, the resulting "dismissal due to redundancy cannot be unfair under section C 58 of the Labour Code".

30. In disputing Ms. Francis' claim, the Employer contended that since it had retrenched Mr. Carty, who held the position of Operations Manager, it followed that her position as his Personal Assistant also became redundant.

31. Further, the Employer contended that both Ms. Francis and the Union, as her bargaining agent, were aware of the retrenchment process and had been given opportunities to make suggestions but failed to do so.

The Legal Framework

32. For present purposes, we think that it is appropriate to repeat and adopt this Court's statement of the Legal framework at paragraphs 13 to 23 of the judgment in the **Julian case** as follows:

"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, or 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

33. In their Witness Statements, the Employees all confirmed the background facts and otherwise substantiated their claims. As to Mr. Carty, he testified passionately about the political motivation for his dismissal and contended that the Employer's own pattern of hiring new employees and their relative salaries demonstrated that there was neither a genuine redundancy nor any serious efforts to reduce costs. In that regard, under cross examination, he testified that by the date of trial the Employer had increased the number of its Managers from 7 to 9, of which 5 or 6 were new hires and 4 were hired within a year after his dismissal.
34. Ms. Francis testified that in her former position of Personal Assistant, her duties were generally clerical and administrative in nature, not dissimilar to other clerical and administrative positions within the Employer's organization. According to her, since her dismissal, the Employer hired several new staff to do work which she was capable of performing. In emphasizing her contention of political motivation, Ms. Francis cited open exchanges between herself and the Employer's Chairman during his campaign leading up to the national elections in June 2014.
35. In turn, Mr. Sebastian testified regarding his several managerial positions during the 10 years of his employment. He stated that there was no

indication that labour costs and financial considerations were major factors informing the Employer's decision to dismiss him. He maintained that his dismissal was also politically motivated and that there was no redundancy situation. In particular, he emphasized that several managers were hired after his dismissal at least one of which was carrying out some of the identical functions which he previously performed.

36. As in the **Julian case**, the Employer's only witness was its Financial Controller, Mr. Carlton Brodie. His witness statement in each of the three References are substantially the same as the ones given in the Julian case. He testified as to the state of the Employer's financial affairs which caused it to be "struggling financially". In particular, he referred to the Employer's Revenue and Expenditure Statements for the years 2011, 2012 and 2013 and testified that the Employer was "grossly overstaffed". Further, he testified about the high "employee cost" relative to the Employer's other expenditures which rendered its financial position "unsustainable". According to him, the Employer's "dire financial state" justified its retrenchment and reorganization processes.

Resolving the issues

Issue 1: Whether a genuine redundancy situation existed at the material time.

37. As defined, a redundancy must necessarily have both a cause and an effect component. The potential causes named in the definition include "retrenchment". As to the required effect, in order to properly ground a genuine redundancy, the Employer must prove that there existed (a) a cessation, or (b) a substantial diminution of the work which the Employee was last employed to perform, or (c) a genuine requirement for fewer workers in the organization to perform the required work.
38. We are satisfied that Mr. Brodie's evidence fully discharged the evidentiary burden establishing the dire financial state of the Employer as the cause for the retrenchment and reorganization. However, The Employer's exclusive reliance on his testimony has left much of the Employees' evidence largely unchallenged. As a result, the Employer has failed to prove the required effect in any of the three forms identified at paragraph 37 above. Thus, in the words of Byron, CJ in the Civil Appeal No 8 of 2001: **Sundry Workers v. Antigua Port Authority**: "The essence of redundancy therefore was not established".
39. Accordingly, we reject the submissions of Learned Counsel, Mr. Marshall, to the effect that there was "Redundancy by Retrenchment". Moreover, we

consider the Employer's contention in its Memorandum that a "dismissal due to redundancy cannot be unfair" to be wholly misguided. That position totally disregards the Employer's obligation to prove the required factual bases as well as the reasonableness of its actions and omissions.

40. As he did in the **Julian case**, Mr. Marshall also submitted that, in the alternative, the retrenchment/ restructuring could amount to "some other substantial reason" under section C 58 (1) (e) of the Labour Code. If he is right and /or if we are wrong in our finding that there was no genuine redundancy situation, we are obliged to apply the test of reasonableness under Section C 58 (2) of the Labour Code which brings us to the second main issue.

Issue 2: Whether the Employer acted Reasonably or Unreasonably

41. Reasonableness is grounded on principles of natural justice. It is an inherent component of the principles and practices of good industrial relations. Accordingly, we considered whether the Employer acted reasonably or unreasonably in dismissing the Employees having regard for their respective tenure, position and rank. Given the limited evidence adduced on behalf of the Employer, it will suffice to summarize our findings in respect of reasonableness as follows:

Fair Selection Process

42. Given its compliment of approximately 238 staff members, the Employer did not establish any or any fair selection process during the retrenchment / reorganization process. In particular, it adduced no evidence to prove that it engaged in a fair selection process in relation to the Employees or any of them. Mr. Brodie testified that the Employer took the decision to terminate the services of 5 of its 7 managers but was in no position to give an explanation as to why Mr. Carty and Mr. Sebastian were included in that group. Similarly, he could not provide any evidence in relation to the selection of Ms. Francis. In fact, he testified that he did not know what process of selection was used by the Employer. As a result, we find that no fair selection process was followed. The Employer's failure in that regard is an important element of unreasonableness.

Fair Consultation

43. The Employer adduced no evidence to establish that it consulted adequately or at all with the Employees or any of them. In relation to the Efficiency Study Report commissioned by the Employer in August 2014, the clearest

express indication of the Employer's failure to consult with the Employees came from Mr. Sebastian. His testimony, which we accept, is that although he knew it was being carried out, he was never approached to give any suggestions or otherwise make an input. His testimony is echoed by both Mr. Carty and Ms. Francis. In the circumstances, we find that the Employer failed or refused to give the Employees any reasonable opportunity to engage in meaningful consultation regarding the contemplated retrenchment / restructuring exercise. This is also an important element of unreasonableness.

Adequate Warning and Notice of Redundancy

44. None of the Employees received proper or adequate warning or notice of the termination of their services on the ground of redundancy. In fact, we find that the dismissals were all effected in an abrupt and discourteous manner. Mr. Sebastian and Ms. Francis testified that they were at work on October 2 and November 14, 2014, respectively, when they were both dismissed with immediate effect. The timing and manner of Employer's actions in dismissing Mr. Carty, taken largely while he was on approved vacation leave, are most egregious. Essentially, the Employer effectively communicated his dismissal to the general public via the print and electronic media during his absence before informing him of its decision to do so. Taken as a whole, the Employer's failure to warn the Employees and give them notice of their impending dismissals is an additional significant instance of unreasonableness.

Manner of Termination of Employment

45. We have noted above our conclusion that each of the dismissals was affected in an abrupt and discourteous manner. This is especially noteworthy in relation to Mr. Carty and Mr. Sebastian in light of their relatively long tenure, positions, seniority and ranks. In the case of Mr. Carty, his dismissal involved a flagrant breach of the fixed term employment agreement, which had been agreed to expire approximately 6 months later on April 18, 2015. Clearly, apart from being very unreasonable, the Employer's action in dismissing Mr. Carty, and allowing the same to come to the attention of the general public, while he was on approved vacation constitute aggravating circumstances

Alternative Employment

46. The Employer failed to prove that it seriously considered alternative employment for the Employees or any of them. The evidence as a whole discloses that they were all at least potentially suitable for alternative

employment within the Employer's organization. It is noteworthy that Mr. Brodie himself testified that at the date of trial, almost four years after the declared redundancies, the Employer's staff complement had been reduced by only 18, from 238 to 220. Moreover, Mr. Brodie also testified that the reorganization resulted in the hiring of several new workers to "replace" some of those, including the Employees, who were displaced. In relation to Mr. Carty and Mr. Sebastian in particular, he admitted that their duties were being performed by newly hired employees. In our view, in light of the several management positions previously held by Mr. Sebastian and Mr. Carty and the clerical and administrative duties which Ms. Francis had been required to perform, the Employer's failure to seriously consider them for alternative employment was also very unreasonable.

Conclusion as to Liability

47. In the final analysis, within the legal framework stated at paragraph 27 above, we find that the Employer failed the test of reasonableness by acting unreasonably when it dismissed the Employees. Accordingly, based on the absence of a genuine redundancy situation and the lack of reasonableness, we are constrained to declare that the Employees were unfairly dismissed and are entitled to compensation as awarded below.
48. In making our assessment of the compensation, we are obliged to discharge our statutory mandate in accordance with the provisions of section 10 (3) of the Industrial Court Act. We are of the opinion that the following awards are fair and just.

Mr. Carty

(a) Pay in Lieu of Notice:

We note that he was paid the equivalent of one month's salary under this head. In our estimation, as a senior member of management on a fixed term contract, he should have received no less than the equivalent of 2 months' salary. Accordingly, **we award the additional sum of \$7,300.00**

(b) Loss of Earnings:

The General measure of compensation payable to Mr. Carty for loss of earnings is the quantum of the emoluments he would have earned if he had worked for the unexpired portion of his fixed term contract, subject to the discharge of his duty to mitigate. At the date of his dismissal the unexpired portion of the fixed term contract was 6 months. However, he was paid the equivalent of his emoluments up to the end of October 2014.

We are satisfied that he made reasonable efforts to mitigate his loss during the 6 months immediately after his dismissal.

In the circumstances, **we award the sum of \$52,525.00** ($\$9,550 \times 5.5$), being the equivalent of his total emoluments for the unexpired and unpaid portion of his fixed term contract. Since Mr. Carty had no guaranteed employment beyond the fixed term, we made no further award in respect of loss of earnings.

(c) Gratuity:

Although he claimed gratuity payment for the period October 15, 2014 to April 17, 2015 in the sum of \$5,018.75, the documentary evidence shows that he was credited with that sum when he received his final net payment on or about October 30, 2014. Moreover, under cross examination he admitted that he had received his gratuity payment. In the circumstances, we make no award under this head.

(d) The Thrift Fund:

Based on the evidence before us, we accept that Mr. Carty is entitled to 100% of his Thrift Fund entitlement. Since he was paid the sum of \$7,111.18 representing 75%, **we award the sum of \$2,370.39** being the 25% portion that was withheld.

(e) Retroactive and Other Payments

We note Mr. Carty's claim for 4 items of retroactive and "promissory" payments. However, having regard to the Employer's statement of Mr. Carty's emoluments by letter dated August 8, 2014 the evidence does not justify any awards under this head.

(f) Exemplary Damages

There are several grounds for an award of exemplary damages to Mr. Carty, these include the following:

- i. He was virtually dismissed while he was on approved vacation leave.
- ii. Notice of his imminent dismissal was repeatedly published in the media before he received any official notice of the same.
- iii. Generally, there was a blatant disregard for the principles and practices of good industrial relations.

- iv. Mr. Carty was prevented from collecting his personal items from the Employer's premises and had to resort to making a complaint to the Police Commissioner.
- v. Although he had a contractual arrangement to repay the government advance (loan) by monthly installments of \$343.33 per month, the Employer unreasonably deducted the full outstanding balance of \$16,823.37 from his final payment without consulting with him.
- vi. Overall, we are of the opinion that the treatment meted out to Mr. Carty was harsh and oppressive.

For the foregoing reasons **we award exemplary damages in the sum of \$25,000.00** to Mr. Carty.

Ms. Francis

(a) Pay in lieu of Notice:

Ms. Francis testified that after her dismissal she received payment for "severance, outstanding vacation and notice pay". She did not disclose the amount paid or make a claim for any further sum under this head.

(b) Loss of Protection

Under this head, Ms. Francis is entitled to compensation at the rate of one month's salary for each year of work. Although she did not disclose the amount she received as severance pay, based on her daily rate of \$132.00 as stated in her dismissal letter, we conclude that she was paid the sum \$1,914.00 ($\$132 \times 14.5$). Since she worked for 14.5 months, **we award the sum of \$1,534.50** ($\$2,850 \times 1.21$) less ($\$132 \times 14.5$).

(c) Immediate Loss

In our opinion, Ms. Francis made reasonable efforts to mitigate her loss. Since she was not successful in doing so until approximately four months after her dismissal, **we award the sum of \$13,000.00** ($\$3,250 \times 4$), being the equivalent of four months' emoluments. In addition, **we award the sum of \$2,250.00, being the shortfall** in her earnings during her temporary employment for the ensuing three (3) months making a total award of **\$15,250.00** under this head.

(d) Exemplary Damages

Based on her evidence, we conclude that Ms. Francis' dismissal was harsh and oppressive without regard for the principles and practices of good

industrial relations. In the circumstances, **we award the sum of \$2,500.00 as exemplary damages.**

Mr. Sebastian

(a) Pay in Lieu of Notice:

Since Mr. Sebastian was paid the equivalent of one month's salary, we make no further award under this head.

(b) Loss of protection

Mr. Sebastian was employed for a period of 10 years and 1 month. At the rate of one month's pay per year of service, his entitlement under this head is \$60,500.00. Since he was paid the sum of \$41,445.99 as his severance pay, **we award the additional sum of \$19,054.01 under this head.**

(c) Immediate Loss of Earnings:

Mr. Sebastian made reasonable efforts to find alternative employment but was not successful. For present purposes, doing the best we can with the available evidence, we would fix the value of his allowances at the same level as that of Mr. Carty in the sum of \$2,250.00 bringing his total monthly emoluments to \$8,250.00. Having regard for his age, **we award the sum of \$49,500.00, being the equivalent of 6 months' emoluments under this head.**

(d) The Thrift Fund:

Since he was paid the sum of \$5,978.29 representing 75% of the Employer's contribution, **we award the sum of \$1,992.76, being the 25% portion that was withheld.**

(d) Exemplary Damages

Like those of the other two Employees the dismissal of Mr. Sebastian was harsh and oppressive. He was dismissed without regard for the principles and practices of good industrial relations. In the circumstances, **we award exemplary damages in the sum of \$10,000.00.**

Costs

49. In our opinion, the exceptional reasons disclosed above will justify an award of costs in the sum of \$2,500.00 to each of the three Employees.

Declaration and Order

50. In the premises, we declare that the Employees were unfairly dismissed and are entitled to compensation.

51. And we order that:

(1) The Employer shall pay compensation and costs to Mr. Carty as follows:

(a) Additional pay in lieu of notice	\$ 7,300.00
(b) Loss of Contractual Emoluments	52,525.00
(c) Thrift Fund entitlement	2,370.39
(d) Exemplary damages	25,000.00
(e) Costs	2,500.00

Total	\$ 89,695.39

(2) The Employer shall pay compensation and costs to Ms. Francis, as follows:

(a) Loss of Protection (balance due)	\$ 1,534.50
(b) Immediate Loss	15,250.00
(c) Exemplary damages	2,500.00
(d) Costs	2,500.00

Total	\$ 21,784.50

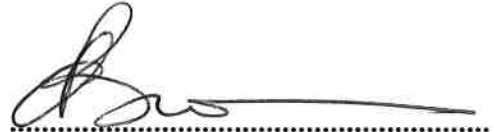
(3) The Employer shall pay compensation and costs to Mr. Sebastian as follows:

(a) Loss of Protection (balance due)	\$ 19,054.01
(b) Immediate Loss	49,500.00
(c) Thrift Fund Entitlement	1,992.76
(d) Exemplary damages	10,000.00
(e) Costs	2,500.00

Total	\$ 83,046.77

- (4) The Employer shall pay compensation and costs in the aggregate sums of \$89,695.39, \$21,784.50 and \$83,046.77, respectively, to the Employees no later than October 31, 2020.

Dated this 28th day of August 2020



Charlesworth O.D. Brown
President



Dr. Hayden Thomas
Member



Megan Samuel-Fields
Member

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 4 OF 2015

BETWEEN

ANDERSON CARTY

Employee

And

ANTIGUA AND BARBUDA TRANSPORT BOARD

Employer

REFERENCE NO. 8 OF 2015

BETWEEN

ANIQUE FRANCIS

Employee

And

ANTIGUA AND BARBUDA TRANSPORT BOARD

Employer

REFERENCE NO. 11 OF 2015

BETWEEN

JAMES SEBASTIAN

Employee

And

ANTIGUA AND BARBUDA TRANSPORT BOARD

Employer

JUDGMENT

Hon. Charlesworth O.D. Brown, President

Hon. Hayden Thomas, Member

Hon. Megan Samuel-Fields, Member