



ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REF: NO. C/51 of 2017

BETWEEN:

NICOLETTE CHARLES

Employee

and

DICKENSON BAY HOTEL MANAGEMENT LTD  
t/a SANDALS GRANDE ANTIGUA RESORT & SPA

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. John H. R. Benjamin

Member

The Hon. Collin R. Maynard

Member

**Appearances:**

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

Ms. E. Ann Henry, QC of Henry & Burnette, Attorneys-at-Law for the Employer.

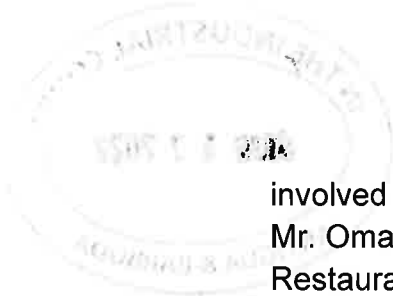
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2022: June 28  
August 12  
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### JUDGMENT

**Brown,P:**

#### Background

1. The Employer is a company incorporated under the laws of Antigua and Barbuda. It operates an all-inclusive hotel resort and spa.
2. The Employee commenced her employment with the Employer on August 05, 2007. She performed the tasks of a Server/Waitress up to October 03, 2014, when her services were terminated by letter of the same date on the ground of her misconduct on October 01, 2014, which the Employer described as "**Behaviour unbecoming of a Team Member**".
3. In the dismissal letter the Employer stated that the Employee was



involved in a loud argument with two other Waitresses, Miss Natoya Lyte and Mr. Omari Etienne in the presence and hearing of guests dining in the Barefoot Restaurant. In the letter, the Employer also stated that the Mr. Kenyatta Thomas, the Banquet Manager, was unsuccessful in his attempt to quell "commotion". The Employer further stated that when the Employee was asked to explain her actions, she showed no remorse and exhibited disturbing body language and demeanour.

4. On those bases, the Employer concluded that as a result of the Employee's behaviour on Wednesday October 01, 2014, it was left with no alternative but to terminate her employment.

#### The Evidence

5. The Employee's evidence is that there was an argument between Natoya Lyte and Omari Etienne, in which she was not involved but could hear the exchange between them both. While maintaining that she was never involved, the Employee testified that she witnessed when Kenyatta, the Banquet Manager approached her colleagues in his attempt to end the argument. She also testified that she was surprised to learn that it was reported to the Human Resources Manager that she was involved in the heated argument.
6. The Employee's trial exhibits included Natoya's written statement dated January 23, 2017 in which she stated that she did not have any misunderstanding or quarrel with the Employee and that argument was exclusively between Omari and herself.
7. The Employee's Trial Exhibits also included Omari's similar written statement dated January 31, 2017 in which he also stated that he did not have any misunderstanding or quarrel with the Employee and that he had no issue with her. Like Natoya did in her statement, Omari also stated that the argument was exclusively between Natoya and himself.
8. Generally, the Employee stood by her witness statement and confirmed that she had been suspended from work in May 2014 for four days without pay.
9. Miss Donna Jean Samuel, the Employer's Human Resources Manager with effect from January 2020, testified on its behalf. Her evidence was largely based on documents which were in her possession or under her control since her appointment. As such, it was of limited value in our determination of the facts. Her evidence was most instructive when she confirmed that Omari remained in

his job although he had engaged in the use of expletives and threatening language to his colleague, Natoya.

### Conclusions

10. Based on the evidence before us, and having particular regard to the unchallenged statements of Omari and Natoya, both of which unequivocally absolved the Employee of any wrong-doing, we find that the Employee did not engage in the misconduct alleged by the Employer. In the circumstances, the Employer failed to discharge its evidentiary burden of proving the requisite factual basis of the misconduct which it assigned as the reason for the dismissal.
11. In any event, as to the decisive statutory test of reasonableness, suffice it to say, the Employer has also failed to establish that it acted reasonably under the circumstances. Accordingly, we are constrained to find and declare that the Employee was unfairly dismissed and is entitled to compensation.

### Compensation

12. In the premises, we award compensation as follows:

#### Notice Pay

**We award the sum of \$437.50**, the equivalent of one week's pay under this heading.

#### Basic Award

The Employee worked for 7.16 years or 86 months. In accordance with the rates agreed in the Collective agreement, we award the sums of \$4,200.00 for the first 4 years, \$3,937.50 for the fifth to the seventh years and \$175.00 for 2 months in the eight year making a **total award \$8,312.50** under this heading.

#### Immediate Loss

The Employee provided only sketchy evidence of her attempts to mitigate her loss. Her testimony under cross-examination revealed that she should have been more diligent. Moreover, we are of the opinion that she was not as forthcoming as she should have been. In the circumstances, **we award the sum \$7,583.33**, the equivalent of her full former weekly pay for the first 4 months after her dismissal, In addition, **we also award \$1,895.83**, being 50% of her former total pay for the ensuing two months.

### Fringe Benefits

The Employee's evidence that she earned an average of \$350.00 per week as her share of the service charge fund was not challenged. Accordingly, **we award the sum of \$7,583.33**, the equivalent of her average service charge for 5 months.

### **The Thrift Fund**

13. We have noted from the dismissal letter that the Employee was paid her "personal contributions" to the Employer's Thrift Fund. In light of our finding that she was unfairly dismissed, the Employee is also entitled to the Employer's contribution on her behalf to the Fund plus interest thereon.

### Order

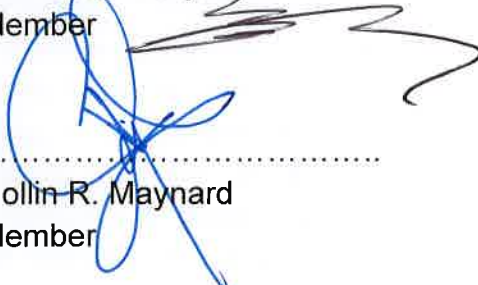
14. By reason of matters aforesaid, we order that:
- (1) The Employer do pay the total sum of \$25,812.49 as compensation for her unfair dismissal, no later than September 16, 2022.
  - (2) The Employer do immediately authorize the ACB Mortgage and Trust Company Limited or such other financial institution holding the relevant trust fund account, to release to the Employee the full amount of the Employer's contribution that had been paid into the account on behalf of the Employee plus accrued interest thereon up to October 3, 2014 and thereafter up to the date of payment under this order.
  - (3) There shall be no order as to costs.

Dated this 12<sup>th</sup> August, 2022



  
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Charlesworth O. D. Brown  
President

  
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John H.R. Benjamin  
Member

  
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Collin R. Maynard  
Member