

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 30 OF 2023

BETWEEN:

CRAIG COCHRANE

Employee

and

CHIEF IMMIGRATION OFFICER/DEPARTMENT OF IMMIGRATION
THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Employer

Before:

The Hon. Charlesworth O.D. Brown

President

The Hon. Samantha May- Francis

Vice President

The Hon. Hesketh A. Williams

Member

The Hon. Collin R. Maynard

Member

Appearances:

Mr. Samuel James and Mr. Simon Leonard of Antigua & Barbuda Free Trade Union
Representatives for the Employee

Mrs. Joy Dublin, Crown Counsel of the Attorney General's Chambers for the
Employer

2023: September 19, 25
November 28
December 15

Employee appointed by Governor General as Immigration Officer – Employee accused of fraud, deception and racketeering – suspension pending investigation – whether investigation in accordance with good industrial relations practices – Chief Immigration Officer purporting to dismiss Employee – Whether dismissal effective and unfair – Whether Employee entitled to reinstatement and compensation.

JUDGMENT

May -Francis, VP

Background

1. The Employee was employed at the Immigration Department of Antigua, and last held the position of Immigration Officer Grade IV, earning a monthly salary of



\$3,713.92 plus a Travelling Allowance and a Duty Allowance in the sums of \$261.00 and \$550.00, respectively.

2. The Employee was assigned to the Employer's Prosecution Unit and his duties included the processing of individuals determined to be unqualified to remain in Antigua and Barbuda.
3. The Employer alleged that the Employee had engaged in fraud, deception and racketeering in relation to his employment which placed the Immigration Department in disrepute. After being placed on administrative leave with pay pending investigation, by letter dated September 16, 2019, the Employer deemed the Employee to be unworthy to be an Immigration Officer and purported to dismiss him for gross misconduct.
4. By the Reference filed herein on April 28, 2023, the Employee claims that he was unfairly dismissed and alternatively, that he is still an employee pursuant to Section 5 of the Passport and Immigration Act No. 6 2014 of the Laws of Antigua Barbuda. In his Reference, supported by his Memorandum filed on April 28, 2023, he seeks reinstatement and /or compensation.

The Dispute

5. The Employee's contentions, as set out in his Memorandum, may be summarised as follows:
 - (a) By letter dated August 21 2019, he was placed on administrative leave with pay commencing August 22, 2019, to August 30, 2019, pending an investigation into his alleged breach of confidentiality and proper work ethics.
 - (b) He reported back to work on September 2, 2019. By letter of even date, the Employer extended the administrative leave to September 13, 2019.
 - (c) While on administrative leave, he was not contacted by the Employer except on September 15, 2016, when he was instructed to report to Mr. Nigel Emmanuel upon his return to work on September 16, 2019.
 - (d) He reported for duty on September 16, 2019, as instructed. He was not allowed to resume his duties and was informed that based on the investigation conducted by the Employer, a decision had been made to dismiss him.
 - (e) He was not afforded due process and natural justice in that the Employer did not advise him of the allegations against him and did not conduct a proper investigation.

- (f) Additionally, prior to being dismissed, the findings of the investigation were not put to him, and he was not given an opportunity to answer the allegations which formed the basis of his dismissal.
 - (g) In any event, the Chief Immigration Officer did not have the authority to dismiss him. He relies on Section 5 of the Immigration and Passport Act No. 6 of 2014 of the Laws of Antigua and Barbuda. He, therefore, remains a duly appointed Immigration Officer.
6. In its Memorandum of Defence filed on July 25, 2023, the Employer disputed the Employee's claim and contended the following:
- (a) The Employer received information that the Employee had shared photographs of a passport belonging to Raquel Wright, who, by Order of the Court, was deported to her native country, Jamaica.
 - (b) The Employer had divulged to Mr. Derrick Ramsey, then fiancé' now husband to Ms. Wright, the name of the immigration officer who had prosecuted Ms. Wright's deportation, thereby placing the immigration officer's reputation and safety at risk.
 - (c) Prior to being placed on administrative leave, the Employee was invited to a meeting where he was informed of the allegations of misconduct against him and was invited on several occasions to submit a response to the allegations. However, he failed to provide a written response.
 - (d) On August 21, 2019, the Employee had been informed of the findings of the investigation, and the Employer requested a written statement in response from the Employee. However, he failed to provide the same.
 - (e) The Employee is no longer employed as he was informed of his dismissal and the reasons for it in the dismissal letter of September 16, 2019. Since then, the Employee has been removed from the schedule, and salary payments to him have ceased.
 - (f) Additionally, the Employee accepted his dismissal, having not reported for duty and having failed to make any queries regarding non-payment of his salary.
 - (g) Following its investigation, it was determined that the Employee's actions amounted to gross misconduct, which is a good cause for dismissal, and therefore, its decision to dismiss the Employee was justified;
 - (h) The Employee's misconduct placed it into disrepute and its reputation at risk.
 - (i) The dismissal was an exercise of its right to dismiss the Employee summarily; and was effected in accordance with good industrial relations practices.

The Main Issues

7. Having regard to the Memoranda, the main issues arising are:

- (a) Was the investigation before dismissal fair and proper?
- (b) Was the Employee properly dismissed?
- (c) Was that dismissal unfair?
- (d) Is the Employee entitled to reinstatement and/or compensation?

The Law

8. Section C 56 of the Antigua and Barbuda Labour Code (The Labour Code) establishes the statutory right of an employee not to be unfairly dismissed. It states:

"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".

9. Section C 58 (1) of the Code states:

"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) ...;**
- (c) ...;**
- (d) ...;**
- (e) ...;**

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

10. C 58 (2) states as follows:

"(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."

11. C 59 (1) states:

"An employer may terminate the employment of an employee where the employee has been guilty of misconduct in or in 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 that the employment relationship cannot reasonably be expected to continue;**

- (b) committed a criminal offence in the course of employment, without consent, express or implied, of the employer; or
- (c) behaved immorally in the course of his duties."

12. C 59 (2) states:

- "Where an employee is guilty of misconduct in or in relation to his employment that is not sufficiently serious to permit his employer to terminate his employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and state the action which the employer intends to take in the event of
- (a) a repetition of the misconduct; or
 - (b) the commission of another misconduct which is as serious as the one in respect of which the written warning was given.

Resolving the Issues

Issue No. 1: Was the investigation prior to the dismissal of the Employee fair and proper?

13. The Employer gave evidence that prior to being placed on administrative leave, the Employee was spoken to on three occasions: on July 25, 2019, when Mr. Marvin Hall, the Employer's Strategic Consultant, met with the Employee and informed him of allegations made by an individual from the Dominican Republic residing in Antigua and Barbuda; on about July 30, 2019, when Mr. Hall met with the Employee to advise him of a report of misconduct within the Prosecution Unit; and August 21, 2019, when the Employee met with Ms. Katrina Yearwood the Chief Immigration Officer and others and was advised that the Employer was conducting further investigations into his alleged breach of confidentiality and proper work ethics.
14. The Employee was placed on administrative leave from August 22, 2019, until September 13, 2019 pending further investigation. At the end of the administrative leave, the Employer met with the Employee only to advise him that he was being dismissed. The Employer provided no evidence of any other meetings held with the Employee.
15. We examined the evidence related to these meetings to determine whether the investigation conducted by the Employer can be considered to be fair, proper and reasonable. Based on the Employee's evidence and that of Mr. Hall, the meetings of July 25 and July 30 can be viewed as fact-finding at best. We note in particular that during the meeting on July 30, 2019, the Employee was told by Mr. Hall that there was no allegation made against him directly and informed him that there was a report of *"misconduct within the unit and an individual is alleging that the*

Department has fabricated court documents in order to have his girlfriend deported...and has indicated that he spoke to you about it. What can you tell me about this incident?" It is equally noteworthy that during that meeting, in response to questions posed to him, the Employee recounted that the photographs had been sent to him by Mr. Ramsey and that he had sent them back to Mr. Ramsey.

16. In relation to the meeting of August 21, 2019, unfortunately, we did not have the benefit of the minutes of that meeting. Mr. Hall gave evidence that once he had submitted his report, he never met with the Employee. Ms. Yearwood accepted that prior to the meeting on August 21, 2018, she had not informed the Employee that the meeting was disciplinary in nature. Having failed to disclose the nature of the meeting, the Employer did not afford the the Employee a reasonable opportunity to consider a response to the accusations against him and to obtain representation.
17. Both Mr. Hall and Ms. Yearwood accepted that they did not provide the Employee with any correspondence setting out these very serious allegations against him and the likely consequences should it be found that he had engaged in misconduct. Similarly, they both admitted to not sharing with the Employee the report of August 8, 2019, which was obtained more than a month before his dismissal and which, in our view, was fundamental, given Ms. Yearwood's evidence that she relied greatly on the report of August 8, 2019, in arriving at a decision to dismiss the Employee. It is noteworthy that the Employer provided no evidence of either the focus or the result of any further investigations it might have conducted after August 8, 2019.
18. Mr. Hall also gave evidence that he never considered Mr. Ramsey's written report dated August 14, 2019, in his investigation, as a copy had not been disclosed to him, and he had only seen a copy of the report in preparation for the trial. There is no evidence that during the meeting with the Employer on July 30 and August 21, 2019, the Employee was shown the photographs and invited to comment or provide an explanation of the same. At no time during the period of investigation was the Employee given a copy of Mr. Ramsey's statement and invited to comment on same. Neither did the Employer disclose to the Employee that Mr. Ramsey had provided a statement that supported his explanation insofar as it related to the photographs.
19. Having examined all the documentary evidence, it is clear that the Employer failed to particularize and set before the Employee the allegations against him despite having the opportunity to do so in both letters placing the Employee on administrative leave. The letter merely stated in the caption that the Employee had been placed on administrative leave for breach of confidentiality and proper work ethics. It did not identify the subject of the accusation nor the grounds on which the accusation was based. Additionally, the evidence supports the Employee's contention that he was unaware that the meeting of August 21, 2019, was a

disciplinary hearing. The absence of the minutes prevents us from being able to determine whether, during that meeting, the allegations were put to the Employee in a clear and concise manner to the extent that he knew the charge against him and that he was given an opportunity to explain himself and told of the consequences should the investigation reveal that he had engaged in gross misconduct.

20. Additionally, the Employer omitted the very crucial evidence of Mr. Ramsey, which goes to the root of the Employee's defence to the allegations. Although the Employer contended that it gave the Employee the opportunity to submit a report in answer to the allegations, it is noteworthy that there are no written requests to the Employee whether requesting the same or reminding the Employee to provide the same. It was, therefore, difficult for us to reconcile the evidence of the Employee that no request was made of him and the Employer's evidence that it had so requested. In the end, we resolved this issue in favour of the Employee as, ultimately, the greater responsibility to ensure that these matters are properly documented falls squarely on the Employer. In any event, in our view, the Employer had completed its investigation as early as August 8, 2019.

21. After careful analysis of the evidence of the Employee, Mr. Hall and Ms. Yearwood, we hold that the Claimant's contention that the investigation was unfair is well-founded. Equally, the evidence does not support a finding that the Employee was afforded due process.

Issue No. 2 – Was the Employee properly dismissed?

22. The Employee contends that he remains an Immigration Officer as the Chief Immigration Officer did not have the legal authority to dismiss him. Section 5 of the Immigration and Passport Act No. 6 of 2014 states:

(1) The appointment of immigration officers to offices in the Department of Immigration and, subject to section 4(2)(c) and subsection (2), the removal of immigration officers from offices in the Department of Immigration shall –

(a) in the case of offices in the public service, be made and carried out in accordance with the Constitution and the Public Service Commission Regulations; and

(b) in the case of any other offices, be made by the Governor-General in accordance with the Regulations.

(2) The power to exercise disciplinary control over persons holding or acting in offices in the Department of Immigration to which subsection (1)(b) applies shall vest in the Chief Immigration Officer, acting in accordance with Regulations respecting discipline made under subsection (3).

(3) For the purposes of subsection (1)(b), the Minister may make Regulations respecting the appointment of, and exercise of disciplinary control over, immigration officers (including the removal of immigration officers) to the offices in the Department of Immigration that are not in the public service.

23. The Employee in this Reference received his appointment as an Immigration Officer from the Governor General. We agree with Learned Representative Mr Samuel James that until such time as the Minister makes Regulations to allow the Chief Immigration Officer to remove immigration officers, the Governor General is one with the power to revoke the appointment of immigration officers not in the public service. This is so despite the Chief Immigration Officer having disciplinary control over the immigration officers.
24. Learned Representative Mr. James contended that the Employee remains employed, and his purported dismissal has no legal effect. We have examined the cases of **Philbert Raynes and Dianelle Otto v Permanent Secretary and Ministry of National Security and Labour ANUHCv2011/0375** and **Leslie Dunnah v Permanent Secretary and Ministry of National Security and Labour ANUHCv2013/0522**, in which Justice Henry relying on the case **Chief Constable of the Northern Wales Police v Evans [1982] 1 WLR 1155** and **Jhagroo v teaching Service Commission** stated: “the Board agreed even where a dismissal is invalid the court does not necessarily hold that the officer has remained in office”. In our opinion, the Employer intended to dismiss the Employee even though the dismissal was not done by the Governor General as required by Section 5. Under the circumstances, we conclude that the Employee was not properly dismissed.

Issue No. 3 -Was the dismissal unfair

25. The Employer admitted to “dismissing” the Employee; therefore, the burden is on it to prove that the dismissal was fair. Section C58 (1) of the Labour Code conditionally provides that misconduct may properly constitute a good cause for dismissal. The primary condition is that there must be a factual basis for that assigned reason. Moreover, the assignment of misconduct as a good cause for dismissal is subject to the limitations imposed by Section C58.
26. Accordingly, for the dismissal to be fair, the onus is on the Employer to prove: (a) it had just cause for the “dismissal” under section C58 (1) of the Labour Code in that it had reasonable grounds to believe based on its investigation that the Claimant had engaged in gross misconduct, and (b) it acted reasonably in dismissing the Employee in the particular circumstances prevailing at the material time.
27. Based on the dismissal letter of September 16, 2019, the allegation of gross misconduct was grounded on the Employer’s findings that:

- (i) The Employee had repeated allegations of fraud, deception and racketeering made against him.
 - (ii) The Employee, by sharing with Mr. Ramsey the name of another immigration officer who prosecuted the deportation of Raquel Wright and the Employee having stated that the immigration officer had been vindictive and operated out the scope of her duties, compromised the immigration officer and brought the integrity of the Immigration Department into disrepute.
 - (iii) The Employee had shared copies of Ms. Wright's passport with Mr. Ramsey while she was being held at the Detention Center, which was against protocol and established procedures.
28. The Employee gave evidence that he never shared any confidential information with Mr. Ramsey. His evidence is that Mr. Ramsey had shared a copy of Ms. Wright's passport with him after she had arrived in Jamaica having been deported. He stated that Mr. Ramsey had requested that he resend the photographs to him as he could no longer find them.
29. In relation to the allegation that he had divulged the name of his colleague to Mr. Ramsey, the Employee denied this.
30. In relation to the other allegation that an individual from the Dominican Republic had paid him \$300.00 to secure an extension of time to remain in Antigua and Barbuda, the Employee vehemently denied that. His evidence is that when the matter came to his attention, he went to Mr. Hall to inquire whether he had spoken to the individual's boyfriend as he could shed light on the matter. He testified that Mr. Hall confirmed that he had. Mr. Hall subsequently advised him that he found nothing for which he could be implicated in wrongdoing.
31. Mr. Ramsey gave evidence on behalf of the Employee. His testimony is that he had known the Employee for a number of years and considered him a friend. He admitted speaking to the Employee about Ms. Wright's deportation. His evidence is that the Employee advised him to go to the Immigration Department and speak to the Chief Immigration Officer.
32. Upon Ms. Wright's arrival in Jamaica on July 29, 2019, she took copies of her passport and shared them with him. He, in turn, shared it with the Employee. His evidence is that he could not find the photographs, and on his way to the Immigration Department after Ms. Wright's deportation and after having spoken to the Employee, he asked the Employee to resend the photographs to him. He admitted to showing Mr. Hall the photographs.

He, however, denied telling Mr. Hall that the Employee had given him confidential information. His evidence is that Mr. Hall took screenshots of the photographs of Ms. Wright's passport.

33. In relation to the allegation that the Employee told him the name of the immigration officer who was handling Ms. Wright's deportation, Mr. Ramsey's evidence is that he was in Court when the immigration officer entered an appearance informing the Court of her name. He had also heard other immigration officers call her by name and had spoken to her when Ms. Wright was in custody.
34. Mr. Ramsey stated that the Employee was not present in Court when the order was made to deport Ms. Wright, and the Employee never provided him with any confidential information. He simply advised him to attend the Immigration Department and speak to the Chief Immigration Officer.
35. Ms. Wright also gave evidence in support of the Employee's case. She is presently lawfully residing in Antigua and Barbuda. Her evidence supports that of Mr. Ramsey. She stated that she had taken the photographs upon her arrival in Jamaica when her passport was handed back to her. She recognized the finger in one of the photographs as hers. Her evidence is that although she had seen the Employee while at the Detention Center, she did not know that Mr. Ramsey was acquainted with him.
36. The Employer relied on the evidence of Mr. Hall and Ms. Yearwood. Mr. Hall testified that he received a report of an allegation on July 25, 2019, from a lady from the Dominican Republic. According to Mr. Hall, the lady reported that she had paid the Employee \$300.00 to process an extension of time to remain in Antigua and Barbuda. His evidence is that the Employee was informed of the allegation against him. He stated that having heard the Employee's explanation, he advised him that things were not looking good for him and inquired why members of the public were identifying him as the person they have been paying to get their extension of time to remain in Antigua and Barbuda. His evidence is that the Employee responded and said that **"people are trying to ruin him"**. Mr. Hall said that he had informed the Employee that the matter would be further investigated. The Employee then volunteered to provide a report.
37. Mr. Hall also gave evidence that on July 30, 2019, Mr. Ramsey came to the Immigration Department and complained about an immigration officer. He gave evidence that Mr. Ramsey showed him photographs of Mr. Wright's passport, showing the deportation stamp. His evidence is that there were exchanges via WhatsApp between Mr. Ramsey and a telephone number which he knows to be that of the Employee. A meeting was subsequently held with the Employee where the allegations were put to him, and he was given an opportunity to respond.

38. After the meeting and based on the Employee's responses and previous allegations against the Employee, Mr. Hall compiled a report dated August 8, 2019, in which he concluded that the Employee was an imminent threat to the security and transparency of the Department of Immigration.
39. We appreciate the Employer's contention of potential risk and disrepute to the Immigration Department, should it be proven that an immigration officer has engaged in the behaviour as alleged by the Employer. However, to support this contention, the evidence must be found to be probable. In other words, pertinent facts must emerge when all the evidence is taken together and evaluated.
40. We note in particular that the Employer failed to conclude its investigation in relation to the allegation made against the Employee by the individual from the Dominican Republic. Additionally, the Employer failed to provide any evidence to support its contention that the Employee had taken the photographs of Ms. Wright's passport and shared it with Ramsey while she was being detained at the Detention Centre or at any time during her detention and deportation.
41. There is no evidence of any exchanges between Mr. Ramsey and the Employee during Ms. Wright's detention. Based on the evidence, the communication between Mr. Ramsey and the Employee took place after Ms. Wright's deportation. Noteworthy is the evidence that the Employee was not present in Court when Ms. Wright was being prosecuted. Additionally, the Employee was on his day off when Ms. Wright was being deported, and no evidence came forth that he had attended the workplace on that date.
42. We also accept Mr. Hall's evidence that it is a standard protocol that once a deportation order has been made, the passport remains in possession of the authorities until the deportee arrives in his or her homeland. There is no evidence that the Employee had possession of Ms. Wright's passport at any point.
43. Having examined the evidence, we accept Ms. Wright's evidence that she took the photo and sent it to Mr. Ramsey and Mr. Ramsey's explanation as to how the Employee came into possession of the same. The explanation given by the Employee, Mr. Ramsey and Ms. Wright is reasonable and probable. In the final analysis, the Employer's evidence did not provide any other reasonable explanation that was evidentially supported.
44. In relation to the evidence that the Employee divulged the identity of the immigration officer who handled Ms. Wright's deportation, the evidence in that regard is sketchy at best.

45. Therefore, based on the evidence submitted in this case, the Employer has not met the burden of proving the factual basis for its conclusion. The evidence strongly suggests that the Employer had already contemplated the dismissal of the Employee when he was placed on investigatory suspension. Certainly, by August 8, 2019, having received Mr. Hall's report, an investigation had not only been initiated but had already been concluded, and the Employer was already contemplating dismissal. We also note that the Employer on the conclusion of its investigation, did not give the Employee the opportunity to state his case prior to dismissal.
46. We reminded ourselves of the three-pronged test of reasonableness as established in the case of **British Home Stores v Burchell [1978] IRLR 379**, namely that the employer must (1) have entertained a genuine belief that the Employee was guilty of misconduct (2) must have reasonable grounds for that belief and (3) must have carried out as much an investigation into the matter as was reasonable in all the circumstances of the case.
47. In our view, the Employer failed the second limb in that we see no sufficient basis based on the evidence submitted by the Employer that it had reasonable grounds to dismiss the Employee. In relation to the third limb of the test in **Burchell**, we have already determined that the Employer failed to conduct a fair and proper investigation. We also find that the Employer's failures were so fundamental that the Employer can under no circumstances be found to have acted reasonably. In the end, the Employer also failed the reasonableness test. As a result, the dismissal was unfair.

Issue No. 4- Is the Employee entitled to reinstatement and or compensation?

48. However, based on the facts of this case, we agree with Learned Counsel Ms. Dublin that the Employee accepted that he was dismissed. Apart from a correspondence written by the Employee's Legal Counsel, Dr. David Dorsett, on September 20, 2019, four (4) days after his dismissal declaring that he **"has not been lawfully removed from office and remains an immigration officer"**, the Employee made no further attempt to demonstrate to the Employer that he considered himself still employed. There were no further letters; he did not show up for work, and he did not query the fact that he was not being paid. Even when he received payment of vacation pay in the months immediately after his dismissal, there was no indication that he queried non-payment of his wages. In our view, he accepted that he had been dismissed even though he was correct in his assertion that his termination was not in accordance with the law.

49. Nonetheless, the circumstances require us to determine an effective date of dismissal. In our view, having taken no further action to declare himself still employed in the six (6) months following Dr. Dorsett's letter to the Employer, an effective date of termination can be reasonably deemed to be March 31, 2020. This, in any event, coincides with the Employee's last payment received from the Employer for outstanding vacation pay.
50. Additionally, having heard the evidence, there is no doubt in our minds that the relationship of trust and confidence has broken down on both sides and certainly irretrievably on the part of the Employer having regard to the fact that the Employee has been deemed an **"imminent threat to the security and transparency of the Department of Immigration"**. Therefore, despite our finding that the dismissal was unfair, it is not practicable for the Employee to be reinstated.
51. The Employee is, therefore, entitled to compensation for unfair dismissal.

Compensation

52. The Employee having been unfairly dismissed and reinstatement not being practicable, we considered the following heads of compensation:

(a) Loss of Protection from Unfair Dismissal

The Employee worked for 16 years and 2 months from January 2004 until the date of his dismissal, which we have determined to be March 31, 2020. Accordingly, we award loss of protection equivalent to severance pay at one month per year for every year worked in the sum of **\$60,016.94** (3,713.92 x 16.16).

(b) Outstanding Wages

Having determined that the Employee's effective date of termination is March 31, 2020, we award the Employee 6 months' salary and allowances in the sum of **\$27,149.52** (4,524.92 x 6)

(c) Notice Pay

We award to the Employee the sum of **\$4,524.92**, which is one month's basic salary and allowances.

(d) Immediate Loss

This head is considered when an Employee who has been unfairly dismissed suffers loss between the date of dismissal and the date of assessment of the loss, subject always to the employee's duty to mitigate. During his evidence in Chief, the Employee stated that since his dismissal, he has been unable to find work. He applied for jobs at online betting companies and The Antigua Public Utilities Authority and made numerous applications for customer service positions at

various places. On Saturdays, he assisted a family member in a cooking business and attempted vending for a while.

The Employee provided no evidence of when he commenced vending or the income derived therefrom. The same applies to the cooking business on Saturdays. Nonetheless, we have to do our best to determine a reasonable sum for compensation in that regard. Taking into account our award of Notice Pay, we, therefore, award the sum of \$18,099.68 ($\$4,524.92 \times 4$).

(e) Vacation Pay

During cross-examination, the Employee testified that after his dismissal, the Employer continued to pay him until March 2020 for vacation accumulated during his tenure. The Employee provided no other evidence to suggest that he did not receive all his vacation pay up to September 2019. To this end, the Employee is entitled to accrued vacation days between October 2019 and March 2020.

(f) Outstanding Pay for Days in Lieu

During cross-examination, the Employee stated that he had not been paid for the accumulated lieu days. This evidence was not challenged by the Employer. We note that the Employee did not advance any evidence or make any submissions in that regard. However, we are under a duty to ensure that the Employee receives any outstanding entitlement. Therefore, we award the Employee any outstanding pay in respect of lieu days due to him and for which he has not been paid.

Order

53. In the premises, we order that:

- i. The Employer shall pay compensation to the Employee for unfair dismissal in the aggregate sum of **\$109,791.06** comprised as follows:

(a) Loss of Protection from Unfair Dismissal	\$ 60,016.94
(b) Outstanding Wages	\$ 27,149.52
(c) Notice Pay	\$ 4,524.92
(d) Immediate Loss	\$ 18,099.68
TOTAL	\$109,791.06

- ii. The Employer shall pay the aggregate sum of **\$109,791.06** on or before January 31, 2024.

- iii. Additionally, the Employer shall determine and pay to the Employee any outstanding vacation and lieu days due to him on or before January 31, 2024.

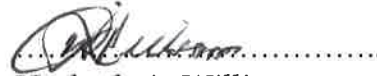
Dated this 15th day of December 2023.



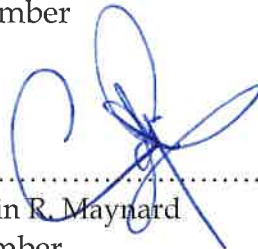
.....
Charlesworth O. D. Brown
President



.....
Samantha May-Francis
Vice-President



.....
Hesketh A. Williams
Member



.....
Collin R. Maynard
Member

