

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. C/UD/16 of 2021



BETWEEN:

PIERRE RICHARDSON

Employee

and

THE MEDICAL BENEFITS SCHEME

Employer

Before:

The Hon. Samantha May- Francis

President

The Hon. Hesketh A. Williams

Member

The Hon. Collin R. Maynard

Member

Appearances:

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

Ms. Gail Christian and Ms. Jessica Zueter of Montgomery Chambers Inc., Attorneys-at-Law for the Employer

2024: October 15, November 4,
2025: March 28

Employer is a Statutory Corporation governed by a Board of Directors; Employee was the CEO; Employee dismissed for gross misconduct; Cabinet Decision stating Employee should be reinstated and seconded; Board of Directors refusing; Did the Employer have good cause for dismissing the Employee; Did the Employer act reasonably or unreasonably in dismissing the Employee for the assigned reasons; The effect if any of the Cabinet Decisions; Is the Employee entitled to compensation?

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JUDGMENT

P; May-Francis

Introduction

1. By a Reference dated April 27, 2021, the Employee commenced a claim against the Employer. In his Memorandum filed on the said date, the Employee alleged that on February 3, 2016, he was dismissed by the Employer, that his dismissal was unfair and that he is entitled to compensation for Unfair Dismissal. In their Memorandum filed on June 1, 2021, the Employers contend that there was no unfair dismissal and that they were justified in dismissing the Employee for misconduct.

Background

2. The Employee's Memorandum shows that he was permanently employed on October 1, 1987, at the youthful age of eighteen (18). After a period spanning 26 years, he was appointed Chief Executive Officer (CEO) on May 1, 2013, and held the same until his dismissal.
3. According to the Employee's account, his issues with the Employer commenced with the appointment of Mr. Leroy Adams as Chairman of the Board of Directors ('the Chairman'). The Employee averred that Mr. Adams' leadership style frustrated, degraded, defamed, and undermined him and the members of the Management Team.
4. The Employee alleges that between September 2014 and December 5, 2015, several incidents and correspondences support his contention that Mr. Adams was on a quest to terminate his employment as the CEO of the Medical Benefits Scheme (MBS).
5. Matters came to a head when the Employee responded on December 5, 2015, to Mr. Adams' correspondence of December 3, 2015, which he, the Employee, considered to be a direct attack on his competence as CEO of the MBS.
6. Two months after issuing his response to the December 3, 2015 letter, the Employee was invited to a meeting with the Board scheduled for January 29, 2016. The meeting, however, did not take place and was rescheduled for February 2016.
7. The Employee was dismissed on February 3, 2016, for misconduct based on his December 5, 2015, letter. According to the Employer, the employment relationship had broken down beyond repair.
8. However, this was not the end of the matter. The Employee alleges that after his dismissal, the Minister of Health and Environment, the Honourable Sir. Molwyn Joseph, assured him that the Cabinet of Antigua and Barbuda (Cabinet) would reinstate him.
9. The Cabinet of Antigua and Barbuda recommended that the Board be advised of its policy to pursue a national health insurance scheme and pharmaceutical procurement system and to reinstate the Employee to be seconded to the Ministry of Health, Wellness and the Environment, amongst other things. However, the Board refused to reinstate the Employee.
10. Eventually, on March 13, 2017, the Employee met with the Honourable Attorney General Sir Steadroy C.O. Benjamin, the Honourable Sir Molwyn Joseph, Mr. Wigley George, the then Acting Chairman of the Board and the Employee's Representative,

Mr. Samuel James. The Employee alleges that an agreement was entered to reinstate him so that he could be seconded to the Ministry of Health without any loss of benefit. In support of his contention, he exhibited into evidence a correspondence to the Attorney General from his Representatives dated March 14, 2017, and Cabinet Decision #119 dated March 15, 2017.

11. On May 18, 2017, Mr. Samuel James, on behalf of the Employee, wrote to the Honorable Sir Molwyn Joseph, threatening to commence legal action should the Board fail to implement the Cabinet Decision of March 15, 2017, on or before June 5, 2017.
12. On August 18, 2017, Mr. James wrote to the Chairman of the Board, reminding the Board of the decision of the Cabinet. The letter also indicate that the Employee had accepted the repudiation of the Cabinet Decision of March 15, 2017 and disclosed that the Employee had taken up employment overseas.
13. The matter was referred to the Labour Department without resolution.
14. Eventually, approximately two years after his dismissal, the Employee left the jurisdiction to take up employment and subsequently filed a Reference before this Court on April 27, 2021.

The Dismissal

15. The Employer dismissed the Employee from its employment by letter dated February 3, 2016 ("the letter of dismissal"). The letter of dismissal, signed by Mr. Leroy Adams, former Chairman of the Medical Benefits Scheme (MBS) Board of Directors, states in pertinent parts;

" ...

The Board of Directors found your letters to be utterly distasteful, disrespectful and most unprofessional. Amongst others, the following statements were particularly offensive:

"I refer to your letter dated December 3, 2015 and respond as follows. Your prejudiced premature conclusion," that the current management of the MBS is incapable of proving the required management needs of the organisation is laughable. In fact, the said small-minded assertion epitomises the phrase that, people who live in glass houses shouldn't throw stones. This is indisputably evident by the fact that, as the politically appointed Chairman of the Medical Benefits Board, your tenure thus far manifests that you are incompetent,

unqualified and completely out of your depth as supported by, but not limited to, the following..."

The foregoing rationale is substantiated by the fact that it intrinsically represents why the near "XCD\$150,0000.00" you alluded to was recently discovered and further so, given the fact the former Internal Auditor in addition to KPMG (the Scheme's external audit firm) found no "near XCD\$150,000.00 discrepancy, but perhaps in your daft mind's eye they are incapable too.

Having heard you and your representatives, Mr. Joseph and Mr. Samuel James, today February 3 2016, the Board remains resolute that the specified contents of your letter dated December 5 2015, amount to misconduct, which has damaged the employee/employer relationship beyond repair. You are, therefore, terminated as Chief Executive Officer of the Medical Benefits Scheme with immediate effect.

..."

16. It is instructive to note that the reason for the dismissal, as advanced in the dismissal letter, is disrespectful and insubordinate behaviour based on the Letter of December 5, 2015, written by the Employee in response to a letter written on December 3, 2015, by Mr. Adams, the then Chairman of the Board of Directors.

Evidence and Arguments

17. Both Parties presented written evidence and arguments to the Court, and we also heard the Employee's oral evidence. The Employer called as witnesses Valsena Karen Tannis, former Board Secretary and Candine Roberts, former Director of the Board.

The Employee's evidence

18. The Employee identified and stood by the evidence in his witness statement filed on April 27, 2021, and his oral evidence. Concerning the reasons for the dismissal, the Employee gave testimony that he enjoyed an excellent relationship with past Boards since his appointment on May 1, 2013.
19. He denied showing little regard for Mr. Adams and the other Board Directors' perspectives and always carried out all directives issued by the Board. He testified that he did his best to assist the Board by providing guidance and reminders to the Board. He stated that the Board is not an Executive Board and, at times, the Directors lacked understanding of the established procedures, mainly when it gave rise to a conflict. At no time did he try to wield power over the Board.

20. He gave evidence that the Chairman undermined the management team, directed them to execute improper and unethical tasks, and openly commented on their incompetence. He relied on letters dated October 3, 2014, and September 25, 2015, to Mr. Adams from Mr. Hue Brown, the Deputy CEO and an Email exchange between Arianne James, Accountant and Mr. Adams on February 25 and 26, 2016.
21. The Employee testified that Mr. Adams was hostile towards him and disrespected him. He stated that Mr. Adams reported to the Minister of Health that the relationship between the Board and him was so untenable that it could not continue. This prompted him to request a mutual separation package, which was refused, as Mr. Adams intended to have him dismissed. He felt frustrated and provoked by Mr. Adams' December 3, 2015 letter, which accused the Management Team of being incapable of "**providing the required management needs of the organisation**". He responded to Mr. Adam's Letter with the same disrespect that was meted out to him.
22. He did not receive a response to his December 5, 2015, letter until January 29, 2016, when Mr. Adams wrote to him accusing him of being insubordinate and disrespectful. He was subsequently invited to a meeting on February 3, 2016. Immediately after the meeting, he was dismissed.
23. According to the Employee, by way of a Policy Directive, the Cabinet directed the Board to reinstate him as CEO of the MBS to be seconded to the Ministry of Health. The Ministry would then engage him to transform the country's Medical Benefits Scheme into a National Health Insurance Scheme. The Board, however, failed to carry out the directive. After holding on for some time at the behest of the Honourable Molwyn Joseph, he decided to leave the island and take up employment elsewhere.
24. Under cross-examination, the Employee testified, accepting that the Medical Benefits Scheme is vested in the Board and that he was hired to administer as CEO.
25. He was vigorously questioned about disrespecting the Board and previous Boards and challenged on his evidence that he enjoyed an excellent relationship with the former Board Chairman Ms. Jo-Anne Lovell. In answer to Learned Counsel's questions, he admitted that there was an instance where he disrespected the previous Board but stated that he felt that the disrespect was mutual.
26. He also admitted to having submitted a request to the Adams' Board for a mutual separation from the MBS, and the Board responded advising that it did not agree to the requests for mutual separation. He confirmed that he replied, "Checkmate".

27. The Employee maintained that he did not act outside the scope of his powers when he when he made the positions of Director of Healthcare and Wellness Services and the Coordinator redundant, dismissing the employees and paying them severance.
28. In answering to allegations that he refused to carry out directives from the Board, he testified that he only refused to carry out a Board directive when they were unlawful. He could not recollect any instance when the Board, headed by Mr. Adams or any previous Board Chairman, had instructed or required him to engage in an illegal act.
29. The Employee testified that before his dismissal, he was not afforded due process in that there was no disciplinary hearing in direct contravention of the rules of natural justice, and he was deprived of his entitlement to fair procedure and the opportunity to be heard.

The Employer's evidence

Witness Valsena Karen Tannis

30. Ms. Tannis gave evidence that she has been Board Secretary since June 8, 2015. She testified that a Special Meeting of the Board was convened on December 10, 2015, five days after receiving the Employee's correspondence of December 5, 2015. Her evidence is that all the Board members articulated that the Employee's response was disrespectful, unprofessional, insubordinate and insulting.
31. In her witness statements, she relied on Board Minutes submitted into evidence, setting out the statements of the various Board Members. Overall, they all agreed that the Employee had grossly misconducted himself.
32. Ms. Tannis gave evidence that also in attendance was the Board retained Counsel, Learned Counsel Ms. Gail Christian, who advised the Board that according to Section 19 of the Act, the Board had the authority to dismiss the Employee.
33. The Board unanimously issued a letter to the Cabinet advising of the situation and the Board's intention to dismiss the Employee. This was done on December 15, 2015, and according to Ms. Tannis, The Cabinet failed to respond.
34. The Board also sought a legal opinion from the Solicitor General within the Ministry of Legal Affairs. After receiving the Solicitor General's legal opinion, a second Special Meeting was convened on January 27, 2016. The Board was concerned about the time which had elapsed since the Letter of December 5, the opinion being received, and the lack of response from The Cabinet. Based on the Solicitor General's advice, the Board wrote to the Employee on January 29, 2016, advising that the

Board wished to meet with him and his representatives so that he may be allowed the opportunity to be heard. The meeting was held on February 1, 2016, and following the meeting, the Board decided to terminate the Employee.

35. Ms. Tannis gave evidence that after the termination, the Board convened another Special Meeting on March 14, 2016, to consider whether to retract the termination and reinstate the Employee as a result of a letter that was addressed to the Honourable Sir Molwyn Joseph from the Employee's Representative which had been forwarded to the Board for consideration. According to Ms. Tannis, the Board decided against reinstatement.
36. Subsequently, at a scheduled Board Meeting on April 6, 2016, Mr. Adams advised the Board that the Employee had referred the matter of his dismissal to the Labour Commissioner for conciliation.
37. On July 12, 2016, the Board received a Cabinet Decision dated June 29, 2016, addressed to the Honourable Minister Sir Molwyn Joseph, recommending that the Board considers reinstating the Employee.
38. The Board, therefore, met on July 27, 2016, to consider the recommendation. Mr. Adams reported that the Prime Minister, the Honourable Gaston Browne, requested that the Board and the Minister of Health attempt to resolve the issue amicably. The Board met, but the Board maintained its position.
39. Ms. Tannis further gave evidence contradicting the Employee's testimony that he had enjoyed an excellent working relationship with the previous Board. In her testimony, she stated that based on the Board Minutes, the previous Chairman, Mrs. Jo-anne Lovell, expressed concerns about the Employee's conduct. According to Ms. Tannis, the Minutes that the Board was concerned that the Employee had very little regard for the decisions of the Board and had concerns with the Employee's performance.

Witness Ms. Candine Roberts

40. Ms. Roberts gave evidence that she was a Director of the Board at the time when the Employee was dismissed. Her evidence of the working relationship between the Employee and the Board was similar to that of Ms. Tannis. She gave evidence of a strained employment relationship.
41. Ms. Roberts testified that the Employee demonstrated his displeasure with the Board any time the Board exercised its authority over him. He was quick to challenge, criticise, ridicule, be defensive, and be disrespectful. According to her

assessment, the Employee had grown accustomed to running the MBS without interference from the past Board of Directors.

42. She gave evidence to contradict the Employee's contention that the Chairman acted without the other Directors' approval and testified that she knew of no written correspondence which was not an act of the Board collectively, either unanimously or by majority. She knew of no defamatory statements from the Board about the Management Team, including the Employee. Her evidence is that the Board held the Management Team accountable for their performance and management of MBS.
43. Ms. Roberts stated that it was the unanimous consensus of the Board that the Employee's letter of December 5, 2015, amounted to gross misconduct and that the employment relationship was irreparable.
44. The Board was diligent with the treatment of the matter and afforded the Employee due process and a fair opportunity to be heard. Her evidence is that the Employee was resolute in his stance and during the disciplinary hearing in response to the statement that the Board considered his behaviour disrespectful; his response was, "*the bible says a child should not be provoked to wrath.*" He was unapologetic and stood firm in his position. He provided no reasonable explanation.

Issues:

45. The defining legal issue arising from the disputed and undisputed facts of this case, which have a bearing on the outcome of the Reference, can be framed in the following questions:
 1. Did the Employer have good cause for dismissing the Employee?
 2. Did the Employer act reasonably or unreasonably in dismissing the Employee for the assigned reasons?
 3. The effect if any of the Cabinet Decisions
 4. Is the Employee entitled to compensation?

Resolving the Issues:

46. In our consideration of the issues identified herein, we considered our statutory powers, implied terms of employment contract, and the statutory powers of the Board of Directors as defined in the Medical Benefits Act No. 10 2004 and the burden of proof.
47. This Court exercises its statutory powers in accordance with the provisions of Section 10 (3) of the Industrial Court Act, which are:

"(3) Notwithstanding anything in this Act or any other rule of Law to the contrary, the Court in the exercise of its power 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".

48. Section C56 of the Code establishes an Employee's right not to be unfairly dismissed. Section C58 (1) sets out what constitutes good cause for dismissal, including misconduct on the part of an employee. The section provides:

"(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 C59(1) and (2);
- (b)
- (c)
- (d)
- (e) is prolonged illness or some other substantial reason of a kind which would entitled 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.

(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."

49. It is well settled that there are implied terms in every contract of employment. One such term imposes an obligation of mutual trust and confidence between an employer and an employee- **Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 and Lewis v Motorworld [1986] ICR 157**. It requires both the Employer and the Employee not to engage in conduct that would or are likely to destroy or seriously damage the relationship of trust and confidence between them. Each must conduct itself with reasonable skill and care to avoid harming the other.

50. At Common Law the principles of natural justice dictate, an employee has the right to know all the allegations against him. When an employer makes an adverse allegation against an employee, it must give the employee an opportunity to exculpate himself and be heard in his defence.

51. Having regard to the preceding paragraphs together with the dismissal letter dated February 3, 2016, the burden is on the Employer to satisfy the Court that it acted

reasonably. We are mindful of dicta of President Moe, as he then was, in **Reference No.9 of 1988 Wesley Wade v St. James Club Ltd**:

"Since the Employer has admitted dismissing the Employee on these grounds they will have to justify this action and accordingly the burden of proving the employee was fairly dismissed rests with the Employer. This is the central issue in the 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 discharged with the responsibility of determining whether that dismissal was fair or unfair in accordance with Section C60(2) Of the Antigua and Barbuda Labour Code..."

Did the Employer have a good cause for dismissing the Employee?

52. It is well-accepted that an employer may dismiss an employee for cause. Just cause for misconduct is well understood to encompass an employee's conduct that is incompatible with the duties that go to the "root" of the employment contract and consequently fracture the employment relationship in such a way that the employer cannot be expected to provide the employee with a second chance. In other words, we must determine whether the Employee's conduct is worthy of being labelled gross. This is a question of fact. The burden rests on the employer to prove that there was cause for the employee's dismissal.
53. We asked ourselves under what conditions an employee's alleged critical, insolent, abusive or unprofessional comments or negative behaviour against their employer will justify termination for cause. While, as a general proposition, the Courts have held that an employee should be entitled to criticise his or her superiors without fear of immediate dismissal, the Courts are clear that in some circumstances, criticism can undermine the employment relationship and render it impossible for an employee and his or her superior to continue working together. When this occurs, it may be determined that the employee's conduct constitutes just cause for dismissal.
54. In **Wilson v M Racher [1974] IRLR114**, the employee had been trimming a hedge with an electric cutter. It was a damp afternoon, but the employee carried on, taking shelter when the rain became heavy and then resuming his work when conditions improved. Eventually the rain was so heavy that the employee could not continue because there was danger of his being electrocuted by the cutter. He then proceeded to oil and clean his tools until his day's work was over. But he did make one mistake. The employer asked where he was going, and the plaintiff replied that he was going to the garden shed to get his boots. Thereafter the employer showered the employee with questions. He shouted at him, and he was very aggressive. He accused the employee of leaving his work prematurely on the Friday afternoon. The

employee explained that he had stopped cutting the hedge only because it would have been dangerous to continue, whereupon the defendant said, "I am not bothered about you, Wilson, that's your lookout." Though there was some reference to the ladder, the employer did not make clear what his complaint was. But when the employer accused the employee of shirking his work on the Friday afternoon, there is no doubt that the employee used most regrettable language, and it is part of our unpleasant duty to repeat it so as to make clear what happened. The plaintiff said: "If you remember it was pissing with rain on Friday. Do you expect me to get fucking wet?"

55. This aforementioned is an example of where one incident of disrespect exhibited by an employee who contended that the employer provoked him was not sufficient to dismiss the employee as determined by the Court. On the other hand, a single act of disrespectful behaviour may justify dismissal. This is why each case must be considered based on its facts.
56. In this Reference, we considered, based on the evidence, whether the letter written by the Employee to the Board's Chairman effectively destroyed the employment relationship and justified the Employee's dismissal for cause? Adopting the approach of the Court in **Wilson v Racher**, the test was whether the employee's conduct was insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of master and servant. In that case, the Court assessed the long-term conduct of the employee, the circumstances under which the misconduct occurred, the employment relationship, and the fact that there was no history of uncooperative behavior by the Employee.
57. The Employee wishes us to conclude that his difficulties resulted from his acrimonious relationship with Mr. Adams and that Mr. Adams wanted him removed as CEO of the Employer. He also stated that Mr. Adams and two other Directors provoked, defamed and disrespected him during a meeting on October 15, 2014. Clearly the Board and the Employee were not on the same page on several issues particularly the redundancy of the positions of Director of Healthcare and Wellness Services and the Coordinator. Additionally, we note that the Board had previously rejected the Employee's requests for mutual separation in September 2014. We read the correspondence from Mr. Adams dated October 16, 2014 and the Employee's response of even date. However we note in his letter of October 14, 2014 the Employee confirms that the Board was desirous of seeking the intervention of the Minister. The letter from Mr. Adams to the Employee makes it clear that in the Board's view the employment relationship could not continue based on the soured relationship between the Employee and the Board.
58. In any event more than a year had passed since the meeting of October 15, 2014 and the requests for intervention by the Minister. Matters resurfaced when the Employee

responded to the December 3, 2015 letter from Mr. Adams. The Employee expressed that he felt disrespected by statements made by Mr. Adams in the December 3, 2015 letter. Having reviewed the December 3, 2015 letter, we deduce that the Chairman's concern was in relation to the reconciliation of fees due to the previous Legal Counsel of the Board, Ms. Sherrie -Ann Bradshaw who had been engaged to collect monies due from a number of business entities.

59. The evidence in this matter is not complex. In the letter of December 3, 2015, the Chairman speaks of the Board's dissatisfaction with the accounting submitted to it by the Employee concerning the reconciliation of financial matters between Ms. Bradshaw and the Board. The Board expressed that it felt that the management team *"failed to demonstrate a willingness to investigate the sincerity of Ms. Bradshaw's claim. Instead, on several occasions, management submitted erroneous information to the Board as verifiable reason to pay Ms. Bradshaw"*.
60. The letter goes on to state: *"However, the events of the past weeks, that is to say, the repayment of the amounts by Ms. Bradshaw totaling near XCD\$150 000.00 clearly demonstrate that the current management of the MBS is incapable of providing the required management needs of the organisation. This is evident in the fact that Ms. Bradshaw has returned approximately 80% of the amount she is presently claiming from the MBS."*
61. As aside we must state that there was no evidence or suggestion made during this trial by either party that there was any wrongdoing on the part of Ms. Bradshaw.
62. It is the contents of the referenced letter which extract has been reproduced in the above paragraph that sparked the response of the Employee on December 5, 2015.
63. Good relations between a CEO and the Board of Directors are fundamental to the proper management of an organisation. The Board of Directors must be able to rely on the CEO to implement policies and therefore confidence, respect and trust are a must.
64. Having carefully considered the contents of the two correspondence, the one written by the Chairman and the other by the Employee, we find:
 - The contents of the Employee's letter were sufficient to cause embarrassment to the Chairman by stating that he was daft and incompetent.
 - The letter undoubtedly contained statements capable of undermining Mr. Adams' position as Chairman.
 - The language of the letter was "disrespectful and inflammatory"
 - Overall, the Employee's response was disproportionate to statements the Employee submitted that were offensive in the December 3, 2015, letter from Mr. Adams.

- The letters dated October 3, 2014, and September 25, 2015, to the Chairman from Mr. Hue Brown, the Deputy CEO and the Email exchange between Arianne James and Mr. Adams on February 25 and 26, 2016, cannot avail the Employee in his claim that he was provoked and targeted for dismissal.

65. Additionally, we also note that despite the Employee's asserting that the Board and more so Mr. Adams being desirous of ending his employment and the many accusations he levied against Mr. Adams, he made it clear in his Witness Statement that he did not accept the employment relationship was ever beyond repair. There is nothing contained in the Employer's letter that we construe as provocative and defamatory and warranting that type of response. We are satisfied that the Employer had good cause to dismiss the Employee.

Did the Employer act reasonably or unreasonably in dismissing the Employee for the assigned reasons?

66. The Labour Code empowers an employer to dismiss an employee if two conditions are met. Firstly, the employee must be guilty of serious misconduct. Secondly, the employer must reasonably form the view that he has no choice but to terminate the employment relationship. "Serious misconduct" is not defined in the Labour Code.

67. We must consider whether or not the decision to dismiss the Employee for insubordination gross misconduct allegedly falls within the band of reasonable responses available to a reasonable employer, taking into account all the circumstances of the case without substituting our views for that of the Employer.

68. We note that things may be said and done in the heat of the moment that, on reflection, are regretted by all. In our view, the contents of the December 5, 2015 letter would cause any reasonable Board to be concerned about the future employment relationship.

69. Additionally, the evidence of Ms. Roberts, which remained unchallenged, is that the Employee showed no remorse and doubled down on his position to justify his stance. He did not offer an apology, nor did he offer to retract the same, even after the Board communicated to the Employee that it considered his response disrespectful and his conduct severe. Having observed the witness during the trial and having regard to his evidence, it was apparent to the Court that the Employee's stance remained the same almost a decade later.

70. Having heard from Ms. Roberts, we opine that the Employee ultimately compromised the Board's confidence in him as an employee when he wrote the letter of December 5, 2015. Having considered all the evidence, whether or not the Employee determined that Mr. Adams disrespected him and had been trying to get

rid of him, facts which the evidence has not substantiated on a balance of probabilities, his decision to send the December 5, 2015 letter effectively destroyed the working relationship between him and the Employer. We note Ms. Robert's evidence that the Board unanimously agreed that the relationship had irreparably broken after receiving the Employee's letter.

71. It was reasonable for the Employer to no longer wish to work with the Employee who demonstrated that he had no respect for the Chairman of the Board, his abilities to run the Board, and his professional and ethical standards. The remaining Directors of the Board had to choose between the Employee and Mr. Adams the Chairman of the Board of Directors. In the end they construed the Employee's misconduct as gross coupled with his evident expressions of lack of confidence and trust in Mr. Adams and agreed to his dismissal.
72. It was also noticed that the Employee copied his response to the remaining management team members, all of whom were his subordinates. In our minds, this further undermined Mr. Adams as the Chairman of the Board of Directors. The Employee's response was disproportionate, disrespectful and inflammatory. Further, we believe the statement "**perhaps in your daft's mind's eye**" is unpardonable. Ultimately, the highly derisive letter of December 5, 2015, destroyed the employment relationship, which the Employee asserts was already strained.
73. We are cognizant that procedural fairness is a factor in determining the fairness of the dismissal. The Employee raised this issue of the delay. He asserted that the Employer had delayed acting for approximately two (2) months after he issued the offensive letter and, as such, acted unreasonably.
74. Ms. Tannis' evidence is that there was a disciplinary hearing. In the written statement of evidence and arguments, the Employee contends there was no disciplinary hearing. We note that the January 29, 2016, letter does not indicate that the hearing was disciplinary in nature.
75. Nonetheless, the evidence shows that the Employee attended the meeting with his Representatives. The Employee did not deny that the Board's position was put to him and that he was allowed to be heard during the meeting. There is no evidence that he objected to participating in the meeting. There were no complaints that he was not given time to prepare his case and needed additional time. He participated in the meeting represented by his Representative.
76. During cross examination he stated that he felt he could not speak freely during the meeting and the emphasis was on what he stated about the Chairman and not the other issues raised and the correctness of the information in the Chairman's letter.

Nonetheless he accepted he was given the opportunity to be heard. His Representative was also permitted to speak on his behalf. We are therefore satisfied that Employee was given a fair and ample opportunity to defend himself against the charge against him, which led to his dismissal. His claim of denial of natural justice is spurious.

77. Additionally, in our deliberations of the Employee's contention that he was denied procedural fairness, we considered the position the Employee held, the evidence of the Employer concerning the reasons for the delay - the Board was awaiting a response from the Cabinet; the Board had to consult with their retained Legal Counsel and sought to obtain third opinion from the Solicitor General and fourth legal opinions on the issue; we conclude that the perceived delay in the Board commencing disciplinary process against the Employee was justified in the circumstances. We see no evidence of prejudice to the Employee. We are therefore satisfied that the decision to treat the Employee's dismissal in that manner was within the band of reasonableness responses for the reasons already stated.
78. Accordingly, when we apply the test of reasonableness, having carefully considered the statutory provisions, the evidence of all the witnesses, and the Employer having discharged its evidential burden, the Court concludes that the Employer acted reasonably in dismissing the Employee.
79. Moreover, learned Counsel Ms. Gail Christian posited that Section 19 of the Medical Benefits Act No. 4 of 2010 gives the Board the 'unfettered authority' to terminate Officers appointed by the Board if, in the opinion of the Board, the officer has misconducted himself in office. We agree that this was the legal position at the time as the Medical Benefit (Amendment) Act No. 14 of 2016 and the Statutory Corporations (General Provision) Act No 16. of 2016 had not been made law until September 29, 2016 and October 12, 2016 respectively. The amendments now state that an Officer and/or Manager of a statutory body cannot be terminated without the consent of the Cabinet.
80. We opine that the Employee's misconduct went to the heart of the employment relationship to the extent it could not reasonably be expected to continue. That is the core of what Section C59 (1) of the Labour Code requires. We also find that the nature of the misconduct resulted in a breach of the fundamental implied terms of mutual obligation, trust and confidence.
81. We consider whether there existed any evidence of mitigation or provocation and whether the statement made by the Employer, "*the current management of the MBS is incapable of providing the required management needs of the organization*", amounted to disrespectful behaviour or provocation. In our view, it does not. We have already concluded that the Employee failed to substantiate that he was provoked.

82. In the final analysis, the Employer has passed the test of reasonableness as, in our view, the Employee's conduct constituted serious misconduct under Section 58 and C59 (1) of the Antigua and Barbuda Labour Code. The evidence did not adduce any reasonable excuse for the Employee justifying his misconduct.

The Cabinet Decisions

83. We reminded ourselves that the Employer is governed by the Medical Benefits Act No. 4 of 2010 of the Laws of Antigua and Barbuda and the amendments thereto. It is a corporate body; therefore, it can sue and can be sued. The Board comprises eleven (11) members appointed as Section 3 of the Act requires. There is a Chairman, a Deputy Chairman, and nine (9) other individuals representing the business, labour, and health sectors, including representation from the Nurses and Pharmaceutical Association. The individuals engaged in carrying out the day-to-day work within the Scheme are its employees.

84. We note that under Section 14 of the Medical Benefit Act No. 4 2010, the Board appoints the CEO after receiving the Cabinet's approval and after the Board has considered the person's fitness to be appointed. The language of the section clearly shows that it is the Board who appoints a CEO. The Act also requires the Board to determine the terms and conditions of the appointment. Section 14 reads:

"The Board shall, with the approval of the Cabinet, appoint on the terms and conditions as it considers appropriate, a fit and proper person to be Chief Executive Officer of the Scheme, who shall be the chief administrative officer and who shall, subject to the provisions of this Act and the general directions of the Board, be responsible to the Board for the administration of the Scheme and the management of the staff of the Board and for carrying out the policy and decisions of the Board.

85. In the case of **Board of Education v Giselle Isaac Civil Appeal ANULTAP2018/0009**, one of the issues before the Court was whether or not the Cabinet was the Employer and appointed the employee Giselle Isaac. Learned Justice of Appeal Mario Michel, stated in paragraph 39:

"This review of the provisions in legislation establishing statutory corporations in Antigua and Barbuda for the appointment of the Chief Executive Officers of the corporations shows that there are no other statutory corporations in Antigua and Barbuda (at least none that I have come across) whose Chief Executive Officers are appointed by Cabinet. There are, however, two that I have encountered in my research whose Chief Executive Officers are appointed by the relevant Minister of Government – the State Insurance Corporation and the Investment Authority."

86. According to Learned Representative Mr. James, a key consideration on which all turns is the policy directive from the Cabinet of Antigua and Barbuda. The Employee tendered into evidence a letter dated November 4, 2019, addressed to Mr. Samuel James in support of its contention that a policy directive existed to reinstate the Employee. The then Permanent Secretary, Ms. Joan Carrott signed the letter. We note that the letter of November 4, 2019, was written to Mr. James and did not have any supporting documents attached, particularly Cabinet Decision No. 206 of March 2, 2016, any Cabinet Decision following the meeting of March 23, 2016, and Cabinet Decision following the meeting on October 15, 2016, and any Cabinet Notes.

87. The pertinent parts of the letter provided read:

"Cabinet agreed as to recommend to the Board of the Medical Benefits Scheme as follows":

- *To advise the Board of the policy of the government to pursue a national health insurance scheme and pharmaceutical procurement system;*
 - *to retract the letter of termination issued to Mr. Pierre Richardson.*
 - *Mr. Pierre Richardson be transferred/seconded to the post (once created) of the Technical Advisor to the Ministry of Health and the Environment under the same terms and conditions as the Chief Executive Officer of the Medical Benefits Scheme.*
2. *Then on Wednesday March 23, 2016, Cabinet agreed to convey its decision No. 206 of March 2, 2016, to the Chairman of the Board of Directors of the Medical Benefits Scheme to reinstate Mr. Pierre Richardson as Chief Executive Officer and his secondment to the Ministry of Health to the assigned responsibilities for health procurement and national health insurance policy.*
 3. *Further on Wednesday June 29, 2016, Cabinet revisited the matter pertaining to the Board of Directors of the Medical Benefits Scheme's refusal to implement the Decision of the Cabinet expressing the desire to reinstate Mr. Pierre Richardson as the Chief Executive Officer of the Medical Benefits Scheme. Consequently, Cabinet reaffirmed its decision and reiterated its desire that the Board of Directors reconsider its decision to terminate Mr. Richardson as Chief Executive Office and reinstate him with immediate effect.*
 4. *Also on Wednesday July 13, 2016 Cabinet further reiterated its decision that Mr. Pierre Richardson be reinstated as Chief Executive Officer of the Medical Benefit Scheme with immediate effect.*
 5. *Therefore on Saturday October 15, 2016, Cabinet agreed to the employment of Mr. Pierre Richardson as a consultant in the Ministry of Health and the*

Environment with specific responsibility for developing the national health insurance policy.

6. *Moreover on Wednesday January 18, 2017 Cabinet instructed the Attorney General to formally write to the Board of the Medical Benefits Scheme advising of the moral and legal obligations of the Board to comply with and enforce the policy of the Cabinet of Antigua and Barbuda with respect to the reemployment of Mr. Pierre Richardson, former Chief Executive Officer of the Medical Benefit Scheme.*

The Attorney General should report on the matter within two (2) weeks.

7. *Lastly on Wednesday March 15, 2017, Cabinet accepted the following proposal by the President of the Antigua and Barbuda Free Trade Zone Union as follows: -*
 1. *The reinstatement and secondment to the Ministry of Health of Mr. Pierre Richardson without loss of benefits established by the Law or contract to which Mr. Pierre Richardson was entitled had he remained in the service of the Board.*
 2. *The payment of two third (2/3) of all salaries, allowances and cash benefits normally payable to Mr. Richardson over the period of absence from office.*
 3. *Mr. Richardson return to work with immediate effect as soon as practicable.*

Thanks for your cooperation.

Yours sincerely

Permanent Secretary

Ministry of Health, Wellness and the Environment

...."

88. The Board administers the Scheme as provided by Section 8 of the Act. Learned Representative Mr. Samuel James argued that Section 9 of the Medical Benefits Act No. 4 of 2010 provides that the MBS Board is obligated to carry out the policy directives of the Cabinet of Antigua and Barbuda and that MBS is not subject to the control or direction of any other person or authority. Mr. James suggests this may be dispositive of the Employer's defence and its justification for the dismissal.

89. Pursuant to Section 9 (1) of the Industrial Court Act Cap 214, the Court requested that the Parties file into Court the Cabinet Decision No. 206, dated March 2, 2016, referenced in the correspondences of November 4, 2016, June 29, 2016, which Ms. Tannis says was received on July 3, 2016, referenced in the Board Minutes dated July 13, 2016 and any documents showing that the decisions were communicated to the Board by the Minister in accordance with the Act. According to the Board Minutes,

the Cabinet had requested that the Employee be reinstated. The Employee entered into evidence Cabinet decision dated March 15, 2017.

90. The Employer submitted a copy of the Cabinet Decision dated June 29, 2016, in response to the Court's request. Based on Ms. Tannis' evidence, it is noteworthy that the Cabinet Decision of June 29, 2016, was received approximately 6 months after the Board had dismissed the Employee and approximately 8 months after the Board had advised the Cabinet that it had been inclined to dismiss the Employee for misconduct.

91. The Cabinet Decision of June 29, 2016 reads:

"IN THE CABINET OF ANTIGUA AND BARBUDA

Wednesday June 29, 2016

Reinstatement of Mr. Pierre Richardson as Chief Executive Officer of the Medical Benefits Scheme

19. Cabinet revisited the matter pertaining to the Board of Directors of the Medical Benefits Scheme's refusal to implement the Decision of the Cabinet expressing the desire to reinstate Mr. Pierre Richardson as the Chief Executive Officer of the Medical Benefit Scheme. Consequently, Cabinet reaffirmed its decision and its desire that the Board of Directors of the Medical Benefits Scheme reconsider its decision to terminate Mr. Pierre Richardson as Chief Executive Officer to reinstate him with immediate effect."

92. We disagree that the June 29, 2016 Cabinet Decision, presented in evidence, was a directive to reinstate the Employee. The language of this Cabinet decision suggests that the Cabinet expressed its desire to have the Employee reinstated and requested the Employer to reconsider its position. According to Ms. Roberts' evidence, having considered the Cabinet's requests, the Members of the Board unanimously agreed not to reinstate the Employee.

93. In the November 4, 2019 letter, the then Permanent Secretary stated that on January 17, 2017, the Cabinet instructed the Honourable Attorney General to write to the Board, advising the Board of its obligation to carry out its policy directive based on November 4, 2019. There was no evidence that the Cabinet, Minister of Health, or the Honourable Attorney General did so.

94. Subsequently, the Cabinet Decision of March 15, 2017, emerged more than a year later. It reads:

"IN THE CABINET OF ANTIGUA AND BARBUDA

Wednesday June 29, 2016

Reinstatement and Secondment of Mr. Pierre Richardson

119. Cabinet accepted the following proposal by the President of the Antigua and Barbuda Free Trade Union as follows:

- 1. The reinstatement and secondment to the Ministry of Health of Mr. Pierre Richardson without any loss of benefit established by Law or contract to which Mr. Pierre Richardson was entitled and had he remained in the service of the Board.**
- 2. The payment of two third (2/3) of all salaries, allowances and cash benefits normally payable to Mr. Richardson over the period of absence from office.**
- 3. That Mr. Richardson should return to work with immediate effect as soon as practicable.**

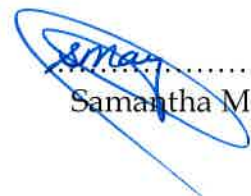
95. Based on the evidence, the March 15, 2017 Decision reflects that Cabinet accepted the Employee's proposal. We did not have the benefit of correspondence from the Minister or Permanent Secretary advising the Board of the "Policy Directive". Nonetheless, if we were to accept Mr. James' argument that this was, in fact, a directive to the Board, then it leaves to reason, based on the language of the Cabinet Decision that it was not until March 15, 2017, that it may be construed that the Cabinet issued a directive.
96. If it is perceived as such, this would have certainly created a quagmire for the Board as reinstatement and secondment would mean that the Employee, who had by then been dismissed for over a year and whom the Board considered unsuitable for the position, would be reinstated as CEO. Additionally, we note that had the Board reinstated the Employee, it would be precluded from appointing another CEO, other than on an acting basis, as the Employee would essentially hold the position of CEO. Without offering our view or opinion on what should have been done, based on the documentary evidence before us, we believe that sufficient regard was not given by the Cabinet to the effect that reinstatement and secondment would have had. By October 2017, the current CEO, Mr. Kevin Silston, had been appointed, which appointment may not have taken place overnight.
97. Additionally, Learned Mr. James passionately argued there was an agreement between the Acting Chairman of the Board, Mr. Wigley George, the Honourable Sir Molwyn Joseph, Minister of Health responsible for MBS and the Employee and his

Representative that the Employee would be engaged as a Consultant in the Ministry of Health and the Environment with specific responsibility for developing the national health insurance policy and to pay the Employee 2/3 of all salaries. He contends that the Employer was bound by that agreement. We have no evidence of such agreement entered into by the Board.

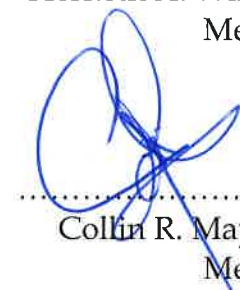
98. Furthermore, in our view, the fact that the Board requires the approval of the Cabinet to appoint someone to the position of CEO does not give rise to an employment contract between the Employee and the Cabinet or with the Board. We know of no legislation in Antigua and Barbuda in which Cabinet is stated or can be inferred to be an employer.
99. Therefore, we disagree with Learned Representative Mr. James that the fairness of the dismissal is inconsequential based on Section 9 of the Act. We have determined that the Cabinet is not the Employer. It is the Board that appoints a CEO, and we concluded that the Employee has been fairly dismissed.
100. Therefore, any order from this Court regarding the 'right' of the Employee to reinstatement and any legitimate expectation he may have had based on the Cabinet Decisions and the application of Section 9 of the Act would require us to consider the lawfulness of the decision and or actions of the Board of the Employer not in relation to the dismissal of the Employee but rather in its decision not to reinstate and second the Employee. Considering that the Employer is a public body, we think it is not for this Court to do so. We believe this ought to have been a matter for proceedings of another type before another Court.
101. Accordingly, we have determined this matter based on the facts, circumstances, evidence and our powers under Section 10 of the Industrial Court Act by which we are governed. Though the circumstances are most regrettable that the Employee should have lost his employment in this way after twenty-nine (29) years of service; his dismissal resulted from his misconduct.
102. Appreciating the Employee's claim and long service and the fact that the letter dated May 1, 2013 which sets out the terms and conditions of his employment provides that the Employee was entitled to participate in the Employer's Pension Scheme, the Court requested information from the Parties regarding the Pension Scheme. The Employee through his Representative advised that the provisions of the Collective Bargaining Agreement for Management Employees by practice is used to determine the retirement benefits of the Executive Management despite these positions not falling within the Bargaining Unit.
103. We note that Article 26 of Collective Bargaining Agreement provides that retirement age shall be sixty (60) years and that an employee who has served at

least twenty-five (25) years and who is aged fifty-five (55) can apply to the Employer's Board for early retirement. It also provides that an employee's pension entitlement shall be calculated in accordance with the Pension (Non-Established) Government Employees Act Cap 310 and its amendments. Unfortunately, the Employee did not at the date of his dismissal, meet the conditions set out in the Collective Bargaining Agreement for pension benefits. We are therefore constrained in making any declaration or order that the Employee is entitled to pension.

104. Having so determined, particularly, our finding that the Employee was fairly dismissed, the heads of compensation requested by the Employee for unfair dismissal in respect of notice pay, salaries from February 2016 to June 2017, fringe benefit from February 2016 to June 2017, ex-officio Board stipend for the period February 2016 to June 2017, loss of protection exemplary damages, reinstatement and costs cannot be awarded. His claim for unfair dismissal is not sustainable, and regrettably, this Reference has been dismissed.


Samantha May-Francis
President


Hesketh A. Williams
Member


Collin R. Maynard
Member