

ANTIGUA & BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 44 of 2018

BETWEEN

SHUSHANNA LINDSAY

Employee

and

KENNEDY'S CLUB LIMITED

Employer

Before:

The Hon. Samantha May-Francis

President

The Hon. Judith A. Dublin

Member

Appearances:

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

Ms. Monique Francis -Gordon, Justice Chambers, Attorney-at-Law for the Employer

2021: November 29

2025: October 17

AMENDED JUDGMENT

Amended Judgment dated October 17, 2025 pursuant to the Slip Rule; Rule 7 of the Industrial Court Rules and CPR Rule 42.10 of the Civil Procedure Rules - dated March 20, 2026

Employee employed as a housekeeper/ cleaner; the Employer asked the Employee to leave the workplace after an incident at work; was the Employee terminated when she was asked to leave the workplace; by ordering the Employee out of the workplace, did the Employer constructively dismiss the Employee; alternatively, did the Employee abandon her job; is the Employee entitled to compensation?

May-Francis, P

The Honourable Charlesworth Brown, Former President and the Honourable Samantha May-Francis, then Vice- President, and Ms. Judith Dublin Member heard this Reference on November 29, 2021. It has become necessary to invoke Section 3 (6) of the Industrial Court Act on account that the Honourable Charlesworth Brown's tenure has ended. Section 3 (6) provides:

“The Court may act notwithstanding any vacancies in its number or in the absence of any member from hearing or part thereof; and no act, proceeding or award of the Court shall be called in question or invalidated by reason of such vacancy or absence.”

Accordingly, I deliver this judgment.

Factual Background

1. The Employee commenced employment with the Employer on August 26, 2017. She was a housekeeper/cleaner on a one-year fixed-term contract. Her responsibilities are set out in the Agreement dated April 25, 2017, and include cleaning, washing, ironing, and assisting with the care of the children, amongst other duties. She was contracted to work a forty-eight (48) hour workweek, Monday through Saturday, from 8:00 a.m. to 4:00 p.m. The Employee earned \$9.38 per hour and was paid fortnightly. She mainly performed her duties on alternate days at the homes of two of the Employer’s Executives- Ms. Donna Francis and Ms. Keri Francis.
2. The Employer is a duly incorporated company and an established family-run enterprise in Antigua and Barbuda.
3. On April 14, 2018, the Employee was on duty at the home of Ms. Donna Francis, the Employer’s Chief Financial Officer. She was instructed to wash some tablecloths- white and black. The Employee washed all the tablecloths together. This was unfortunate because the dye from the black tablecloths ran onto the white and discoloured them.
4. In her Witness Statement, the Employee says that when Ms. Donna Francis realised the tablecloths were washed together, she angrily and aggressively shouted at her. According to her, Ms. Francis said to her, “Even the littlest child would know not to wash whites with blacks.” She said she was embarrassed as Ms. Francis belittled her. Ms. Francis repeatedly asked her why she had washed the tablecloths together. According to her, she largely remained silent because she felt that no explanation given would meet Ms. Donna Francis’ satisfaction.
5. The Employee says that failing to respond made matters worse, as Ms. Francis accused her of disrespecting her. At one point, assuming the conversation was over, she returned to her responsibilities. Ms. Francis then invaded her personal space, coming “directly up” in her face angrily and asking her why she had turned her back on her. Eventually, she responded that, based on the fabric type, she had not anticipated the black dye running onto the white. That explanation, she says, although the truth made no difference. She was ordered to re-wash the white tablecloths. Despite having done so, Ms. Francis ordered her to take her bag and leave her home.
6. The Employee claims that Ms. Donna Francis abruptly dismissed her.

7. The Employer denies that Ms. Donna Francis dismissed the Employee. Its defence is that the Employee was disrespectful to Ms. Donna Francis and exhibited willful insolence in withholding her speech and refusing to answer Ms. Donna Francis, her supervisor at the time. In her witness statement, Ms. Donna Francis contends that the Employee's insolence resulted in her asking the Employee to leave her home.
8. The Employer also contends that Ms. Donna Francis could not dismiss the Employee as she had no authority to do so. Additionally, in the following days, the Human Resource Manager, Ms. Denise Francis-Sheppard, advised the Employee through her Representative, Mr. Anderson Carty, that the Employee had not been dismissed and she needed to report back to work so the matter could be appropriately addressed. Nonetheless, the Employee failed to attend two (2) meetings scheduled on the 16th and 18th April, 2018 and did not report for work.
9. On April 22, 2018, eight (8) days after the incident, the Employee's Representative wrote to the Employer claiming that she was unfairly dismissed. The next day, on April 23, 2018, the Employee's Representative sent another correspondence to the Employer putting them on notice that a complaint had been referred to the Labour Commissioner for Conciliation.
10. On April 27, 2018, Learned Counsel for the Employee, Ms. Monquie Francis-Gordon, wrote to Mr. Carty advising that the Employee had not been dismissed and informed him that the Employee's job had remained available to her. The Employee did not report back to work.
11. The matter was not resolved before the Labour Commissioner, hence the filing of this Reference.

Issues

12. The main issues for determination are:
 1. Was the Employee terminated when she was asked to leave the workplace?
 2. By ordering the Employee out of the workplace, did the Employer constructively dismiss the Employee?
 3. Alternatively, did the Employee abandon her job?
 4. Is the Employee entitled to compensation?

Burden of Proof

13. The Employee contends that she was unfairly dismissed. The Employer contends there was no dismissal. The burden is always on the employer who dismissed an employee to prove that the dismissal was fair. However, where there is a dispute over whether a dismissal occurred, the onus is on the employee to prove it. The standard of proof is on the balance of probabilities. The burden is, therefore, on the Employee in this Reference to prove that the Employer dismissed her.

Resolving the Issues

14. The Employee, in her written and oral evidence, stated that Ms. Francis asked her “to leave her place”. She attempted to use the bathroom to change her work clothes, but Ms. Francis denied her access. Her evidence is that these factors, particularly the instruction to leave the workplace, caused her to believe that she was dismissed.
15. Ms. Donna Francis admitted to being upset because she felt that the Employee was disrespectful in failing to respond to her questions. The Employer’s witness, Ms. Kevina Francis, stated she was present during the incident. Her evidence is that Ms. Donna Francis repeatedly asked her (the Employee) about the tablecloths before she responded. She assumed the Employee was wearing headphones and had perhaps not heard the question. However, she observed that this was not the case. According to Ms. Kevina Francis, the employee walked to the sink area, turned her back, and ignored Donna.
16. She states that Ms. Donna Francis approached the Employee and repeated the question. Ms. Donna Francis was visibly annoyed but was not aggressive. Her evidence is that the conversation was ‘one-sided’ as the Employee did not respond to Donna. At that point, Ms. Donna Francis asked the Employee to leave and stated, “If you are not going to answer me in my house, please leave as I will not be disrespected in my home”. Kevina Francis gave evidence that the Employee slammed the door on the way out.
17. It is unclear whether Ms. Donna Francis intended to dismiss the employee or was sincerely trying to defuse the situation. Therefore, I have to examine the facts surrounding the situation.
18. There is no doubt Ms. Francis was annoyed by the tablecloths and the Employee’s lack of response. The Court accepts the Employee’s evidence that she felt embarrassed. The Employee attempted to re-wash the tablecloths with bleach. It is not of any significance whether Ms. Francis had directed her to do so or if she felt compelled to try to remedy the situation.
19. Having regard to the circumstances and despite the Employee’s feeling of embarrassment, the Court examined whether it was reasonable for the Employee to have construed the words as a dismissal, or whether it should have been apparent to the Employee that the words as proffered by Ms. Donna Francis ‘leave my place’ were said under great annoyance and so, perhaps did not represent Ms. Donna Francis’ actual thinking.
20. The Employee’s evidence is that Kennedy’s Club Limited employed her, but she understood Ms. Donna Francis to be one of the Executive Directors and her boss while she was working at home. The Court also appreciates that Ms. Donna Francis’ home was not the only post assigned to the Employee. Additionally, the Court considered the evidence of Mrs. Francis-Sheppard that the Employee was advised at the time of hire that she, as the HR Manager, is responsible for hiring and firing and any disciplinary and personnel complaints.

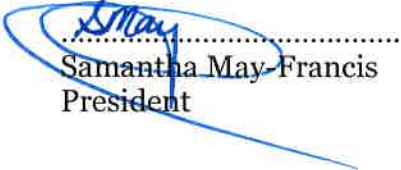
21. We therefore considered the nature of the workplace. It is clear from the unchallenged evidence of the Employer that the Employee based on previous actions, understood the Employer's structure in respect of disciplinary and other personnel complaints. He accepted the evidence of the Employer, that as recent as April 15, 2018, the Employee made contact with the Human Resource Managers about an incident which had occurred on April 14, 2018.
22. In the United Kingdom case of **S Futtly D v D Brekkes (D & D) Ltd [1974] IRLR 130**. Futtly was a fish-filler on Hull Docks, who, the judgment says, was having a bad day and complaining constantly to all who would listen about his job. Eventually, the Manager told him, "*If you don't like the job, f... off*". Futtly took this as his dismissal and claimed unfair dismissal. The Court disagreed. It was determined that the phrase was used here more as a "*general exhortation*". In the Court's determination these words should have been heard by Futtly not as a dismissal but instead as "***If you are complaining about the fish you are working on or the quality of it or if you do not like what in fact you are doing then you can leave your work, clock off, and you will be paid up to the time when you do so. Then you can come back when you are disposed to start work again***".
23. In the aforementioned case earlier and also in this Reference, the word was conditioned on something by the use of the word "if." In my view, the Employer's words suggested to the Employee that if you are not going to answer me, then leave my home. None of the witnesses provided any further evidence suggesting that Donna Francis used any other words to indicate to the Employee that she was dismissed.
24. The Court also considered the actions of the Employer to salvage the relationship in the aftermath of what transpired between Ms. Francis and the Employee. The evidence from the Employee and the Human Resource Manager differs. The Human Resource Manager, Ms. Denise Francis Sheppard, stated that Ms. Donna Francis contacted her and informed her of the incident. She noted that Ms. Francis said: "*Donna Francis informed me that she told the Employee that if she refused to answer her, she would have no choice but to ask her to leave as she would not be disrespected in her own home. The Employee refused to answer, and instead opted to leave the home, slamming the door behind her as she did so*".
25. Mrs. Francis-Sheppard said that after speaking to Ms. Donna Francis, she attempted to reach the Employee that evening. There was no response. The following day, April 15, 2018, the Employee contacted her via telephone. She informed the Employee that she knew Ms. Donna Francis had asked her to leave her home. The Employee agreed to meet with her the next day. Her evidence is that the Employee never informed her that she had been dismissed, or that she considered herself dismissed. Nor did the Employee consider the Employee dismissed. The issue of dismissal did not arise according to the Employer's witness.

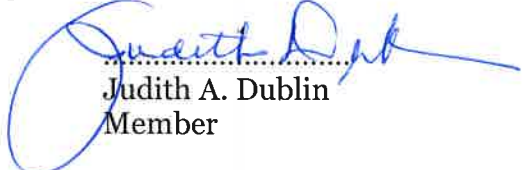
26. Her evidence is that the Employee failed to attend the two meetings that she was invited to, despite the times of the meeting being scheduled around the Employee's availability. Therefore, after receiving the April 23, 2018, letter from the Employee's Representative to the Labour Commissioner, the Employer's Attorneys wrote to Mr. Carty advising that the Employee had not been dismissed. Thereafter, on May 1, 2018, the Employer deemed that the Employee, who had not reported to work since April 15, had abandoned her job.
27. Having determined that the Employer did not dismiss the Employee, the Court considered whether the Employee subsequently abandoned her job. On the other hand, and as an alternative, can ordering the employee off the 'job' be construed as constructive dismissal?
28. In order to claim constructive dismissal, the employee must establish (a) there was a fundamental breach of contract on the part of the employer; (b) the employer's breach caused the employee to resign and (c) the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Any breach of the implied term of trust and confidence will amount to a repudiation.
29. The Employee took the position that she was 'fired'. Immediately after the seven days had passed, the Employee's Representative issued correspondence dated April 22, 2018, which came to the attention of Mrs. Francis-Sheppard the following day. In the said correspondence, Mr. Carty, having set out the Employee's version of the incident on April 14, 2018, stated:
- "...She goes on to say that on Sunday, April 15th, 2018 (the next day), she called you and asked if you had heard that Ms. Francis had dismissed her, you told her you did hear of the incident at the house but did not say much more. She told you that she was going to come and see you on the Monday, April 16, 2018; however, upon subsequently taking appropriate advice, she was instructed to wait to hear from the Company, officially as she had already been verbally informed of her dismissal by Ms. Donna Francis, a senior principal of the Company.**
- Finally, she explains that on Friday, April 20th, 2018, you called her to ask (sic) what she did not come to her if she could come to the office on Saturday, April 21st, 2018, at 9:00 am, but did not state for what purpose. She told you she had something planned for that day and was not sure if she would be able to come".**
30. It is noted that nowhere in the correspondence was it stated that the Employee had advised Ms. Francis Sheppard that she would be coming to see the HR Manager on April 16, 2018, to receive whatever they had for her, as the Employee averred in her

Witness Statement. We are therefore inclined to accept the evidence of the Employer that it was not until April 22, 2018, that the Employee, through her correspondence, conveyed to Mrs. Francis-Sheppard that she had concluded that the Employer had dismissed her.

31. The following day, she immediately issued a letter dated April 23, 2018, referring the matter to the Labour Commission. Mrs. Francis – Sheppard also gave evidence of speaking to the Employee's Representative on April 23, 2018, to advise that the Employee had not been dismissed and suggested that the Employee's job remained open to her. The Employer also reassured the Employee that upon her return to work, she would be assigned other duties not under the supervision of Ms. Donna Francis.
32. The Employee, through her Representative, responded and referred to the Employer's correspondence as a '4-page epistle' and rejected the Employer's position that the Employee had not been dismissed. In the end, the evidence at trial demonstrated that the Employer clarified on more than one occasion to the Employee that she was not dismissed. Though the evidence of Mrs. Francis-Sheppard and the Employee differ, what is clear is that the Employee, by her actions and supported by the several correspondences issued by her Representative on her behalf, was not willing to discuss what had happened or return to work.
33. The Court notes that the Employee, having not shown up for the meeting on April 16th, the Employer did not reach out to the Employee until several days later. The Court considered whether that is indicative of the fact that the Employer had accepted that Ms. Donna Francis had indeed dismissed the Employee.
34. Having examined the evidence, a finding that the Employee was dismissed must be based on an objective test: whether the Employer's acts, viewed objectively, amount to a dismissal. In light of the documentary evidence, the absence of evidence that the incident unfolded as the Employee contended, the Employer's explicit denial, and the Court's preference for the Employer's witnesses' evidence, the Employee failed to convince us that the Employer dismissed her.
35. Having concluded that the Employer did not dismiss the Employee and constructive dismissal having not been claimed, this answers all the remaining issues. Unfortunately, the Employee abandoned her employment despite the Employer's willingness to continue working with her.
36. Regrettably, this Reference is dismissed.

Dated the 17th day of October, 2025


Samantha May-Francis
President


Judith A. Dublin
Member