

**ANTIGUA AND BARBUDA
IN THE INDUSTRIAL COURT**

REFERENCE NO. C/45 of 2024

BETWEEN:

WENTWORTH BARNES

Employee

and

ADMIRAL'S INN

Employer

Before:

The Hon. Samantha May- Francis

President

The Hon. Collin R. Maynard

Member

Appearances:

Mr. Lawrence Daniels of Daniels Phillips & Associates, Attorneys-at-Law for the Employee

Ms. Stacy Richards of Richards & Company, Attorneys-at-Law for the Employer

2025: July 11

2025: October 17

EULING ON APPLICATION TO STRIKE OUT

Background

1. On May 8, 2019, the Employee filed Reference No. 24 of 2019 against the Employer seeking compensation for unfair dismissal. The Employer subsequently filed an application asking the Court to strike out the Reference on the basis that the conciliatory process had not been completed before the Labour Commissioner. On March 18, 2024 the Court, having heard the parties' submissions and agreed with the Employer, dismissed the Reference and ordered costs to be paid.
2. On December 3, 2024, the Employee filed another Reference No. 45 of 2024 once again seeking compensation for unfair dismissal. The Employee, on December 24, 2024, applied again for the striking out of the Employee's Reference. The Employer, in its application, set out the grounds, which we summarise as:
 - (i) That the Employee's Reference is an abuse of the process of the Court



- (ii) The costs in a previous matter, Reference No. 24 of 2019, had not been paid
- (iii) The Reference be struck out on the basis that the same had not been filed with all convenient speed
- (iv) Further and alternatively, an extension of time to the Employer to file its Memorandum and Witness Statements of Paul Deeth and Astrid Deeth.

Summary of Arguments

3. In submissions for the Employer, Learned Counsel Ms. Stacy Richards relied on Section 44 (7) of the Interpretation Act Cap 224 and submitted that the Employee failed to file his Reference with convenient speed, having filed his Reference six and a half years post -termination and approximately nine (9) months after the decision to strike out the Reference No. 24 of 2019 on March 18, 2024.
4. Learned Counsel Ms. Stacy Richards accurately argued that there is no time prescribed by the Industrial Court Act 1976 by which an employee is required to commence a claim for unfair dismissal. As such, regard must be given to the convenient speed at which the Employee filed its reference. Learned Counsel relied on the decision of the Court of Appeal in **Monserrat Utilities Limited v Mildred Kirwan MNILTAP2013/0002**.
5. Learned Counsel Mr. Daniels responded that the issue of delay is a matter for trial upon hearing of the evidence and should not be considered at this stage.
6. Ms. Richards also argued that the failure to pay costs as ordered on March 18, 2024, and the action of the Employee in commencing a new Reference are an abuse of process and, as such, the Reference ought to be struck out.
7. Mr. Lawrence Daniels argued that in circumstances such as these, the Court ought not to exercise the draconian action of striking out, but ought to issue an Unless Order and, thereafter, if the Employee fails to comply, then the action of striking out should be considered. He submitted that in any event, by the time the matter came up for hearing, the Employee had made good on the Order for costs.
8. Both parties submitted authorities, which the Court found to be helpful.

Resolving the Issues

9. There is no doubt that this Court has the express discretion under Part 36 of the Industrial Court (Procedure Rules) 2015 to strike out the Reference. However, in exercising that discretion, we remain mindful of the Privy Council decision of **Real Time Systems Limited v Renraw Investments Limited et al [2014] UKPC**

6. The requirement to find an alternative to striking out is a well-established principle. The power should only be used sparingly. In exercising our discretion, we must consider what the appropriate response should be, taking into account all the circumstances, including whether other available alternatives would be just in these circumstances.
10. We considered a decision by the United Kingdom Court of Appeal - **Wahab v Khan [2011] EWHC 908 (Ch)**, which bore striking similarity in the issues of contention before us. The Court was asked to consider whether the failure to pay costs ordered in the first claim justified the striking out of the second claim or whether a stay should be considered. In that case, the plaintiff had commenced a claim seeking a revocation of a probate, which claim was dismissed for failure to comply with procedural rules, costs orders and lack of prosecution. The plaintiff then commenced a second claim, making the same claim against the same parties.
11. The Appellant argued that the unpaid costs of the first claim should not, per se, render the second claim an abuse of process. A stay of the proceedings pending payment and assessment of costs would be more appropriate than striking out the matter. On the other hand, the Respondent argued that failing to pay the costs was tantamount to not complying with the procedural rules and that nonpayment caused unfairness, justifying the striking out of the second claim. In balancing the factors, the Court determined that striking out the second claim was too severe a sanction. Instead, it imposed a conditional order (Unless Order) requiring payment of the outstanding costs within a defined time frame, with the second claim to remain stayed.
12. To this end, the Court, being swayed by the decision of **Wahab**, is more accepting of the Employee's submission for the imposition of an Unless Order and to consider thereafter striking out of the Reference in the event of non-compliance. However, the Order having been complied with, there is no need for the issuance of an Unless Order.
13. We also considered the Employer's assertion that the claim should be struck out because the Employee did not act promptly to re-file a Reference after Reference No. 24 of 2019 was struck out in 2024. We note specifically that during the six-year delay, which Learned Counsel speaks of, several important events took place. We also note that the Employee in Reference No. 24 of 2019 attempted to have the issue of his alleged unfair dismissal determined, which was dismissed on March 18, 2024, for good reason. We know from the record before us that the complaint before the Labour Commissioner for conciliation was not concluded until sometime between March 18, 2024, and August 30, 2024.

14. In the absence of any further evidence, the Court must enquire into the circumstances of any allegation of delay, which evidence is adduced at trial, consider all the evidence that contributed to or caused any delay, and resolve this issue accordingly. And naturally, the resolution of these issues in favour of the Employer will supersede any consideration of unfair dismissal and compensation issues.
15. Notably, in the **Montserrat Utilities Case**, the issue of delay was considered as part of the Employer's defence at the trial.
16. For these reasons, we dismiss the Employer's application for a strike out of the Reference. The Employer has the option to proffer, as part of its defence, the issue of unreasonable delay or lack of convenient speed.

Order

17. It is hereby ordered:

- (1) The Employer's Application filed on December 24, 2025, for striking out of the Reference is refused.
- (2) The Employer is hereby granted leave to file its Memorandum of Defence before November 10, 2025.
- (3) The Employer is hereby granted leave to file its Witness Statements on or before November 24, 2025
- (4) The matter shall proceed in accordance with the Industrial Court (Procedure) Rules of 2015
- (5) No order as to costs.


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Samantha May-Francis
President


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Collin R. Maynard
Member