

**ANTIGUA AND BARBUDA
IN THE INDUSTRIAL COURT**



REFERENCE NO. 9 of 2024

BETWEEN:

TEREZ CRUMP

Employee

and

APUA CO-OPERATIVE CREDIT UNION

Employer

Before:

The Hon. Samantha May- Francis

President

Appearances:

Mr. Alrick Daniel of Antigua and Barbuda Trades and Labour Union

Mr. Justin L. Simon KC of Simon Rogers Murdoch, Chancellor Chambers for the Employer

2024: September 27

2025: February 17

July 16

2026: February 13

JUDGMENT

May-Francis, P

The Honourable Samantha May-Francis and Honourable Hesketh A. Williams heard this Reference. It has become necessary to invoke Section 3 (6) of the Industrial Court Act, Cap 214 on account of the passing of the Honourable Hesketh Williams. 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 the Court's decision.

INTRODUCTION

1. The Employer dismissed the Employee, a Loans Officer, on December 21, 2020. The Employee, in her Reference dated March 1, 2024, claims that she was unfairly dismissed and has asked the Court to award her compensation for unfair dismissal.
2. The Employee had first been employed with the Employer on the 15th September 2015. The Co-operative was established on March 29, 1995. Its primary purpose is to assist its members, particularly the staff of Antigua Public Utilities Authority (APUA), in managing their finances.
3. The Employee served in several capacities during her tenure, including Cashier, Office Administrator, and Manager. At the time of her dismissal, the Employee had been employed by the Employer for approximately three (3) years and two (2) months and earned a salary of \$ 4,000.00 per month.

THE FACTS

4. By a letter dated November 26, 2020, the Employee was placed on investigative suspension into a matter involving a loan of \$28,000.00 to Troy Mellanson, who was at the time employed at APUA for the purpose of home renovations. In support of the loan, Mr. Mellanson produced to the Employee a builder's Estimate setting out the costs of the upgrades, which was issued by A J. Brown, a local contractor and dated October 7, 2020. Upon the loan being approved by the Employer's Credit Committee on October 9, 2020, the Employee disbursed three cheques to three individuals. A cheque for \$ 1,000.00 was made payable to Mr. Mellanson. A \$20,000.00 cheque and another for \$7,000.00 were made payable to two other individuals. No cheque was issued to Mr. Brown, the contractor who provided the Estimate for the renovations.
5. On November 25, 2020, the Employer wrote to the Employee advising that her initial suspension of one (1) week with pay was being extended from November 27, 2020, to December 18, 2020. In total, the Employee was placed on investigative suspension for three (3) weeks and two (2) days. In correspondence extending the suspension, the Employer informed the Employee that other issues and irregularities in the Credit Union's processes and procedures had been discovered and were now under investigation.
6. On November 25, 2020, the Employer, who had already begun its own internal investigation, engaged the services of Mr. Kem Warner of Kaw Management Services Limited to investigate allegations of fraud/ misconduct in the actions of the Employee. Mr. Warner conducted his investigation between December 1, 2020 and

December 18, 2020 and thereafter submitted his report to the Board of the Credit Union.

7. The Employee was advised that at the end of the extended suspension period, she was required to report for duty on December 21, 2020.
8. In the meantime, the Employee sought Representation from the Antigua and Barbuda Trade and Labour Union (the "Union"). The Union wrote to the Employer on November 30, 2020, requesting an opportunity to review the Employee's personnel file. They asked for a list of the investigators' names and a chance to meet with the Investigation Committee before the Employee returned to work. They proposed December 10, 2020, as a convenient date for the meeting.
9. On December 7, 2020, the date set by the Employee's Representative by which the Employer should respond to their correspondence of November 30, 2020, the Employer, through the Board Secretary, Ms. Anya Joseph, responded. The Employer responded by stating that it did not understand the basis of the Union's requests, as they were ambiguous. Ms. Joseph stated that it was not necessary at that time to provide the information requested due to the ongoing investigation. The Employer then undertook to provide the Employee with the findings of the investigation upon completion. Finally, Ms. Joseph advised that the Employer did not have to meet with the Employee's Representative.
10. On December 21, 2020, the Employee returned to work. The Employer met with the Employee then. Following that meeting, the Employee was dismissed.

CONTENTIONS

11. The Employee contended:

- (i) That she carried out her duties as a Loan Officer without issue until she was invited to a Board meeting on November 17, 2020.
- (ii) In the letter dated November 18, 2020, the Employer advised that suspending her with pay was a disciplinary action that the Employer had applied, having found her to have contravened the internal loan processing practices.
- (iii) Additionally, having been questioned by the Employer at no point was she advised that she would be subject to further disciplinary action, nor was there any warning that she could be dismissed.
- (iv) The Employer, in its response to the Union, did not advise that the Employee would be subject to disciplinary action or a hearing in relation to the investigation.

- (v) Mr. Kem Warner informed her that the conversation they had concerning the Mellanson loan and other matters raised in the investigative report had been off the record.
 - (vi) Prior to the meeting held on December 21, 2020, the Employee was not allowed to have representation despite having repeatedly stated that she wished to have representation.
 - (vii) Her suspension was unlawful as it exceeded the statutory maximum of four weeks contrary to Section B3 of the Antigua and Barbuda Labour Code.
 - (viii) The Employer failed to provide reasons for termination until December 29, 2020, some eight days after her dismissal, contrary to Section C10 (1) of the Labour Code.
12. Additionally, there were allegations that the Employee was not provided adequate training for the positions which she held.
13. In his written submissions, Learned Representative Mr. Daniel argued that four (4) of the allegations set out in the dismissal letter were never put to Employee, and she was never given the chance to exculpate herself. In written submissions, Learned Representative Mr. Daniels sets out these allegations as:
- Facilitating the consolidation of loans in April 2019
 - Signing her own job description in September 2019
 - Signing her name on the First Caribbean International Bank's salary deduction authorisation form
 - Taking vacation leave without the approval of the Board.
14. According to Mr. Daniel, these incidents had apparently taken place some fourteen (14) months before the Employee's termination, under the knowledge and governance of another differently constituted Board who had not instituted any disciplinary process against the Employee.
15. In relation to the allegation of the transfer of \$150,000.00 on May 5, 2020 from one account of the Employer to another account of the Employer; the Employee contended that she had been authorized by the previous Board to make similar transfers when necessary, and the new Board never discontinued that authority. According to the Employee this was required to meet the Employer's business needs from time to time.
16. Regarding the allegation that the Employee had authorised the payments of cheques to unrelated third parties in respect of the Mellanson Loan, the Employee contended the cheques were prepared by her, checked by Mr. Richard Joseph, the President and approved by Wamani Grayman, the Treasurer. Additionally, she claimed that the loan application, although prepared and submitted by her for approval, went

through the Employer's established processes. This included being referred to the Credit Committee and Board for final approval, and approval was received.

17. Mr. Daniel submitted that it is the responsibility of the Credit Committee to supervise the granting of loans and to make recommendations to the Board for approval. It was not the responsibility of the Employee to so do. He submitted that Mr. Kem Warner, in his investigative report, did not place the blame squarely at the Employee's feet, but instead indicated that the approval of the loan and preparation of the cheques by the Employee did not absolve the Credit Committee, Compliance Personnel and Management from their responsibility of oversight and ensuring compliance before approval.
18. Similarly, in response to the allegation that the Employee had obtained unauthorised access to the OPN login, the Employee contended that she was given access by the previous Board. Learned Representative Mr. Daniel argued that the Employer provided no evidence to contradict the Employee's claim in that regard.
19. Regarding the allegation that the Employee failed to implement automatic salary deductions for her loan, the Employee did not provide a detailed explanation for this, except to say she was up to date with her loan payments at the time.
20. Mr. Daniel posited that there was a lack of written policies and procedures to guide the Employee. The Employee, he says, was skyrocketed to the position of Office Manager without any clearly defined procedure or training. He submitted that the Employee should be afforded the benefit where there is doubt about the procedures and policies, as the Employer's Board did not have adequate Board Minutes to assist with some of the issues before the Court. He also contended that this posed a difficulty for Mr. Warner during the investigation. In his view, the Employer, when it suited, condoned irregularities and non-adherence to the guidelines, policies, and procedures expected for the type of business in which the Employer was engaged. Mr. Daniel submitted that despite the systemic failures, the Employee was singled out for disciplinary action, which is wholly unfair.
21. The Employer contended:
 - (i) The Employee was most suitably qualified to hold the position of Loans Officer and not that of Office Manager. The Employee agreed to hold the position of Loans Officer without loss of pay
 - (ii) The Employee was suspended but with pay for one week while the Employer investigated the issue of the issuance of the cheque to two unrelated persons in respect of the Troy Mellanson Loan.

- (iii) The Employee's suspension with pay was extended to November 18, 2020, as the investigation revealed several other irregularities and unsatisfactory conduct.
- (iv) The suspension of the Employee was not punitive in nature.
- (v) On December 21, 2020, the Employer presented the findings of the Employee and questioned her. She was given an opportunity to be heard. The Employee was advised to obtain Union representation, but she did not.
- (vi) The Employee was given a copy of the Report following the investigation on December 21, 2020, but refused to take it with her.
- (vii) The Employee was served with the termination letter on December 29, 2020.

ISSUES

22. Having regard to the Memoranda, the main issues for consideration are:
- 1. Whether the Employer had a good cause for dismissing the Employee?
 - 2. Whether the Employer acted reasonably or unreasonably in dismissing the Employee?
 - 3. Is the Employee entitled to compensation?

EVIDENCE

Terez Crump

23. The Employee gave evidence on her own behalf. Her witness statement filed on March 1, 2024, was admitted as her evidence in chief. The Employee, during examination-in-chief, testified that she was appointed Manager of the Credit Union in 2016, but had acted for three (3) months before being confirmed. Her evidence is that she applied for the Office Manager position and was approved by the Board. According to her, all appeared to be well until November 17, 2020, when she was summoned to a Board meeting where the allegations concerning the Troy Mellanson Loan were put to her.
24. She was subsequently suspended pending investigation. Her evidence is that once she received a loan application from a member, she presents the documentation to the Credit Committee, comprising three (3) individuals who review the application and either approve or deny it. If approved, she was then responsible for processing the loan by entering the information.
25. According to the Employee, when the loan is entered, the cheques are generated. The Loan application, approval, and cheques are then presented to the Board for the Board Members' signature, to be endorsed on the cheque before disbursing the loan

to the Member. According to her, the process is double-layered, with the Credit Committee and the Board overseeing the approval.

26. The Employee's evidence is that in this case, she requested the cheques from the General Manager and then presented all three (3) cheques with the names of the payees to the Board in respect of the Mellanson Loan. It was approved without queries.

Atherton Tuitt

27. Mr. Tuitt gave evidence having been summoned by the Court on the application of the Employee. He testified that, at the relevant time, he was a Member of the Committee. His background is in Human Resources. He confirmed that the Employee held the position of Office Manager and then offered the position of Loan Officer without loss of pay. His evidence is that the Employee did not receive any severance payment when the change was made from the higher position of Loans Manager to Office Manager.
28. In relation to the suspension pending investigation, Mr. Tuit confirmed that the Employee's suspension exceeded the statutory maximum of four (4) weeks, but says that the Employee was paid during the period of suspension.
29. Mr. Tuitt confirmed that a meeting was held with the Employee on December 21, 2020, when her suspension ended. Present at the meeting was Anya Joseph, Secretary, Richard Joseph the President, Dawn Lewis Member, Mr. Orvin Anderson and himself. His evidence is that the meeting was not a disciplinary hearing, the decision to dismiss the Employee had already been taken by the Committee, as by December 18, 2020, the Board had already received the investigative report from Mr. Warner.

Kem Warner

30. Mr. Kem Waner, Certified Fraud Examiner and Owner-Manager of Kaw Management Services, the Employer's external compliance service provider, gave evidence that, following the Employee's suspension, the Employer commissioned his services in his personal capacity to investigate the Employee's work and conduct. His scope of investigation included:
- The processing of a loan that resulted in a payout to third parties, which is against the Employer's policy
 - The use of multiple User Codes and Logins by the Employee without the approval of the Board

- The Employee's action in paying her loan in a manner contrary to the Employer's Loan policy
 - The Employee's actions in transferring funds from the Employer's Bank Account to another without approval of the Board at the time when she held the position of Office Manager
31. Mr. Warner testified that the Employee's work and conduct over a long period had been unsatisfactory.
32. In his report, he also intimated that there was inadequate, systematic implementation and adherence to established policies and procedures. Under cross-examination, he gave evidence that it was irrelevant that the Employee prepared the cheques; the Board had a duty to verify and ensure compliance with the Credit Union's loan policies and requirements. In his view, the entire situation found the Management of the Employer and Board equally culpable for the cheques being disbursed. In his report, Mr. Warner stated,"
- "...the Board Member approve all the decisions at the Credit Union. As such employee including the Manager cannot approve any transaction or business decision without the approval of the Board. The Board of Directors is responsible for the overall governance of the Credit Union".**
33. Mr. Warner reiterated in his oral testimony that his function was not to determine guilt but to provide an unbiased assessment based on the terms of reference of his investigation.
34. His oral testimony mirrored his investigative report. In summary, Mr. Warner's investigation revealed:
- The Employee confirmed that she was aware that payments are not to be made to third parties, but did so to assist in speeding up the loan to the member, as there were previous delays in the loan application.
 - The Employee accepted that she had two (2) user codes, one of which was the OPN she had received in her capacity as Manager. She utilises the OPN to post her own loan payments
 - The Employee accepted that she processed her own loan application from the Employer on September 26, 2019 and signed her own job letter on September 25, 2019, which was needed in support of her application, without referring these matters to the Board
 - The Employee admitted that on May 5, 2020, she transferred monies from the Employer's operating account to a savings account without the permission of the Board to accommodate operating shortfalls when she was the Manager. No Board Minutes were found to support the Employee's contention that this was

normal and authorised by the previous Board. The Employee admitted that she did not seek the new Board's permission to continue doing so.

Melissa Southwell

35. Ms. Melissa Southwell gave evidence on behalf of the Employer. During her oral testimony, she confirmed that she was part of the Investigative Committee. She corroborated Ms. Tuitt's evidence for the most part. In relation to Mr. Warner being selected as the investigator, she gave evidence that the Board considered a potential conflict, but in the end decided to engage Mr. Warner. Her evidence differed slightly from Mr. Tuitt's in that she testified that the meeting of December 21, 2020, was not to terminate the Employee but rather to get her response in relation to the findings of the report. The Employee having refused to respond and participate in the meeting, the decision was made that day to dismiss her.

FINDINGS

36. The investigation report submitted into evidence indicated that the Employee's conduct between 2019 and 2020 highlighted systemic procedural failures and breaches of the AML/CFT Policies and Procedure Manuals. These policies, as far as I understand, are a set of rules and procedures designed to prevent and combat money laundering, amongst other things. These include rules requiring customer due diligence, transaction monitoring, suspicious transaction reporting, record-keeping, and more.
37. The decision to dismiss the Employee was founded on the incidents of procedural irregularity and breaches of procedure highlighted in Mr. Warner's report. I note that the dismissal letter states that the Employee grossly misbehaved. I reviewed the investigative report prepared by Mr. Warner. On the whole, the Court finds that the report pointed out systemic failures and procedures that the Employee was required to follow, as well as documented the failures of the Board.
38. The Court is persuaded by Mr. Warner's conclusion that the Board of Directors is responsible for the overall governance of the Credit Union. No evidence was submitted to suggest that the Employee attempted to conceal any of these matters, which Mr. Warner highlighted in his report. On the whole, the Court found that the Employee was inexperienced and that the Management of the Board lacked diligence. As such, the Employee alone ought not to bear the blame for the procedural irregularities that existed.
39. The Court weighed the Employee's failures and breaches against the Employer's circumstances and the systemic failures highlighted in the investigative report. The

Antigua and Barbuda Labour Code Section C59 provides the manner in which an employer is to treat an employee whose performance is unsatisfactory. I note the Employer took no step to address the Employee's unsatisfactory performance.

40. The most serious allegation relates to the Mellanson Loan. Clearly, the Estimate submitted for repairs was submitted by Mr. Mellanson to assist in establishing a good reason for the loan. I cannot ignore the Employee's response during the investigation that she had desired to assist Mr. Mellanson in getting the loan. While inadequacies in supervision and systemic failures can be used as mitigating factors, they often do not justify an employee deliberately and consciously breaching established processes and procedures to assist a Member above the Employer's interests. This, I deem, constituted a potentially good cause for dismissal.
41. Notwithstanding the Court's position, I note in particular the testimony of Mr. Tuitt, where he testified that there was no disciplinary hearing conducted. Upon receipt of the investigative report from Mr. Warner, the decision was taken to dismiss the Employee. His evidence is that the meeting was to inform her of the impending dismissal. I accept Mr. Warner's evidence as being truthful, considering the fact the Employee had not been informed of the meeting ahead of time and lack of prior invitation to have her Representative with her.
42. If, after the investigation, the Employer found that there were disciplinary charges to answer, the Employee should have been provided with all the information about the alleged misconduct.
43. We also note that the Employee was not given adequate time to secure representation in response to grave allegations of potential fraud and incidents of alleged gross misconduct, despite the Employer having been placed on notice on November 30, 2020, by Ms. Andie Stephen, of the Antigua and Barbuda Trades and Labour Union, that they represented the Employee. The Employee was entitled to a sufficient opportunity to have her representative with her. Giving her a mere few hours to do so was wholly inadequate. In any event, I construed the Employer's action as a denial of the Employee's right to representation, which is a fundamental principle of natural justice and speaks to fairness and justice in industrial relations and employment law.
44. The Employee was not given an adequate opportunity to read the fairly lengthy report produced by Mr. Warner. The investigative report was only shown to the Employee on December 21, 2020. As such, the Employee could not defend her position, especially given that some matters referred to in the report had not been brought to her attention in the suspension letter and letter extending same. The Employee had the right to know the nature of every charge proffered against her

and ought to have been given time to respond to the charges, having regard to the grave nature of the allegations against her.

45. In my view, the Employee, in refusing to take part in the meeting on December 21, 2020, based on how matters unfolded, did not lose her right to an opportunity to defend herself. We accept the Employee's evidence that her refusal to answer the questions put to her after she returned to the meeting stemmed from her lack of confidence in the unfolding process. In the final analysis, the Employer's actions in failing to give the Employee sufficient notice of the meeting, affording her the right to have a representative with her, failure to adequately share the investigative report and failure to inform the Employee of the exact charges against her can only be described as unreasonable considering the grave nature of the allegations for which she was subsequently dismissed.
46. Additionally, the Employer lacked a proper basis for denying the Employee's Representative's request on November 30, 2020, to access the Employee's file and to provide the Employee and her Representatives with an opportunity to meet with the investigative committee.
47. In the final analysis, the Employer's actions were unreasonable. We therefore find that the Employee was unfairly dismissed. Having so found, the Employee is entitled to compensation for unfair dismissal.

COMPENSATION

48. The Employee, having been unfairly dismissed, we considered the following heads of compensation:

- (a) **Loss of Protection from Unfair Dismissal**

The Employee worked for 5 years and 3 months from September 15, 2015, until his dismissal on December 21, 2020. Accordingly, we award loss of protection equivalent to severance pay at 1 month per year of service, in the sum of **\$21,000.00** (\$4,000.00 x 5.25).

- (b) **Notice Pay**

We award to the Employee the sum of **\$4,000.00**, which is one month's basic salary.

- (c) **Immediate Loss**

This head applies when an Employee who has been unfairly dismissed suffers a loss between the date of dismissal and the date of assessment of the loss, subject always to the employee's duty to mitigate. During her evidence-in-chief, the

Employee stated that she made several applications but was unable to find work until December 2023. We believe the Employee that she diligently attempted to get work. However, given the COVID-19 Pandemic, we believe it contributed to her lack of prospects for securing employment. Therefore, taking into account the award of Notice Pay, we award the sum of \$12,000.00 (\$4,000 x 3).

(d) Unlawful Suspension

The Employee is not entitled to any sum as she was duly compensated during the period of suspension. We are guided by the past decisions of this Court to **Otis Teague v Antigua Public Utilities Authority Reference 56 of 2016** that a suspension beyond the 4 weeks provision in the Labour Code does not automatically give rise to a claim for constructive dismissal. In any event, the Employee has not so claimed.

Order

49. In the premises, it is ordered that:

- i. The Employer shall pay compensation to the Employee for unfair dismissal in the aggregate sum of **\$37,000.00**, comprised as follows:

(a) Loss of Protection from Unfair Dismissal	\$ 21,000.00
(b) Notice Pay	\$ 4,000.00
(c) Immediate Loss	\$ 12,000.00
TOTAL	\$ 37,000.00

- ii. The Employer shall pay the aggregate sum of **\$37,000.00** on or before March 16, 2026.
- iii. The Employer shall pay to the Employee any sum due and accrued as and for outstanding vacation based on the records of the Employer on or before March 16, 2026.


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Samantha May-Francis
President