

IN THE INDUSTRIAL COURT

ANTIGUA AND BARBUDA

Reference No.: C/1 of 2019

BETWEEN:

PRINCE BLACKMAN

Employee

and

CARIBBEAN STORM SHUTTER CO. LTD OR WESSON CHARLES

Employer

Before

The Hon. Samantha May-Francis

President

The Hon. Joanne Smith

Member

The Hon. Alando Michael

Member

Appearances

Ms. Samantha Marshall of Stapleton Chambers, Attorneys-at-Law for the Employee

Mr. Wesson Charles appearing in person

2026: January 20

April 24

JUDGMENT

Whether there existed an employment relation between the parties; whether the Employee had continuous employment from ten years and four months the date of his initial employment until dismissal; written statement of termination not provided- whether the provisions of Section C10 was invoked; Company struck off pursuant to Section 511 of the Companies Act 1995- whether Section 512 create personal liability of Directors continue; Whether Employee unfairly dismissed; compensation if any that is due to the Employee



INTRODUCTION

1. The Employee referred this matter for determination on January 7, 2019, claiming unfair dismissal against Caribbean Storm Shutter Co. Ltd or Wesson Charles ('the Employer'). The Employee contends that he was continuously employed as a labourer from July 1, 2001 to October 2011 a period of approximately ten years and four months when his employment was terminated without cause, notice, or terminal benefits.
2. The Employer, self-represented by Wesson Charles, denies continuous employment and contends that the Employee's employment ended on March 4, 2011 and the Employee's presence at the Gunthropes construction site from June to October 2011 was as an independent contractor engaged by his friend, Mr. Mark Henriques personally.
3. The Court heard oral evidence from Prince Blackman and Wesson Charles. A Witness Statement of Mark Henriques was filed on September 17, 2025 but he did not attend to give oral evidence. The statement was accordingly excluded and received no weight. The Court determines that issue on the oral evidence of Blackman and Charles and the documentary record.

THE EVIDENCE

Prince Blackman

4. The Employee adopted his Witness Statement as evidence-in-chief. He testified that he was employed by the Employer as a labourer from July 1, 2001, reporting directly to Wesson Charles at all times. He received no employment letter and no disciplinary letters throughout his service. When work was slack, the Employer transported him to work at clients' and friends' premises; he was paid by Employer throughout. He was laid off once only sometime in 204/2005 and was recalled by the Employer when business recovered.
5. In June 2011, the Employer personally instructed the Employee and one Julius Serrant to Gunthropes to build a house for Mark Henriques. The Employer continued to pay his wages throughout. In October 2011, on the Employee's evidence, Henriques told both men not to return to the site following a dispute. The Employee immediately called the Employer who promised to investigate and call back. He never did. Multiple follow-up calls went unanswered. Mr. Charles made no further contact with the Employee at any time thereafter. No letter was written. No call was made. No statement of reasons was provided as required under Section C10

of the Labour Code. No offer of alternative work was extended. The employment simply fell into silence on the Employer's side.

6. The Employee represented by the late Attorney-at-Law Mr. John Fuller sought conciliation at the Labour Department. Subsequently, the Employer agreed to pay to him his terminal benefits but to date has failed to do so. The matter therefore remained unresolved and has come to this Court for determination. Despite that acceptance, no terminal benefits were paid.
7. In cross-examination Blackman denied working as an independent contractor at Gunthropes. He maintained that the Employer paid his wages throughout that period.

Wesson Charles

8. Charles confirmed he was sole owner and General Manager of Caribbean Storm Shutters. In cross-examination by Learned Counsel Ms. Samantha Marshall he made the following admissions, which the Court treats as binding concessions:
 - (a) When asked directly whether an employment relationship existed between himself and the Employee from 2001 to 2011, Charles replied- ***“Yes, like all the other workers.”***
 - (b) He personally signed the Employee’s work permit applications as employer on multiple occasions.
 - (c) When asked whether he was responsible for paying Blackman, he replied- ***“He worked for me.”***
 - (d) Confirmed the Employee’s wage as \$650.00 per week at \$16.25 per hour.
 - (e) Confirmed that no employment letter was ever issued.
 - (f) Henriques was his “very good friend”; Charles attended the Gunthropes site regularly at Henriques’ request to oversee the works.
 - (g) His own severance calculation computes the Employee’s vacation from December 7 2007, implicitly conceding the employment relationship existed from at least that date.
9. The Employer produced a severance calculation signed by Mr. Charles computing 8 months’ severance from December 24, 2009 to March 4, 2011 and vacation from December 7, 2007, totaling \$2,610.07.

IV. DOCUMENTARY EVIDENCE

10. On November 12, 2008, the Employer on Caribbean Storm Shutters letterhead, signed by Wesson Charles as General Manager, addressed to Community First Co-operative Credit Unit Ltd. It states that Prince Blackman *“has been employed by*

Caribbean Storm Shutters for the past eight years” and earns \$650.00 per week. This is the Employer’s representation to a third-party financial institution. It is conclusive on continuity of employment and wage rate. Charles cannot in these proceedings contradict it.

11. Additionally, Caribbean Storm Shutters weekly payroll sheets from October 2009 to early 2010, show Blackman as a named, regular employee at \$16.25 per hour, \$650.00 per week.
12. Social Security deduction schedules for October 2009 to March 2011 show monthly returns submitted by Caribbean Storm Shutters to the Social Security Board recording the Employee’s contributions deducted and remitted each month across October 2009, November 2009, December 2009, January 2010, February 2010, and March 2011. Submission to a statutory authority gives these documents particular weight as contemporaneous official records confirming formal, continuous employment.
13. The Registrar of Companies notified that Caribbean Storm Shutters Limited was in default of Section. 194 of the Companies Act 1995 and liable to be struck off under s. 511(2). The Employee’s Memorandum confirms the Caribbean Storm Shutters was struck off in or around February 2008. Mr. Wesson Charles however, continued to operate the business, employed staff, remitted Social Security, and signed employment documents in the company’s name after that date.

ANALYSIS

14. The Court finds that the Employee was employed by Caribbean Storm Shutters/Wesson Charles under a contract of service from July 1, 2001. **The test in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497*** is satisfied on all three limbs: the Employee provided personal service; he was subject to the Employer’s control as to where, when, and for whom he worked; fixed weekly wage, the Employer applied for work permits on his behalf, Social Security contributions remitted by the Employer to a statutory authority and positioned exclusively at Mr. Charles direction are consistent only with employment. Mr. Charles admission- **“Yes, like all the other workers”** leaves no room for any other characterisation.
15. The Court is of the view that the employment relationship was continuous from July 1, 2001 to October 2011. Mr. Charles’ letter of November 2008 to the Credit Union states that the Employee had been employed for eight years of continuous employment, placing the commencement date as on or about 2000 and was

consistent with the Employee's claimed date of July 1, 2001. Additionally, during cross-examination, when asked directly whether an employment relationship existed from 2001 to 2011, Charles replied: **"Yes, like all the other workers."**

16. That concession, made by the Employer himself in evidence, is binding. Additionally, the payroll sheets and monthly Social Security returns show unbroken employment across the entire documented period. Further, Mr. Charles computed the Employee's vacation from December 2007 implicitly conceding the relationship from at least that date. Lastly, the one lay-off in 2004/2005 ended when Mr. Charles recalled the Employee.
17. The contention that employment ended on March 4, 2011, with a fresh period commencing only from December 2009 is rejected. It is contradicted by Mr. Charles's own vacation calculation, unsupported by any admissible evidence, and inconsistent with the unbroken employment as evidenced in the Social Security returns.
18. In respect of the Employee being positioned at the home of Mr. Henriques, Mr. Charles admitted he attended the site regularly to oversee the works at his "very good friend's" request entirely consistent with the uncontradicted evidence of the Employee and well-documented pattern of the positioning Mr. Blackman to clients' and friends' premises and paying his wages throughout. Mr. Charles' own admission that **"He worked for me"** made in the context of his overall responsibility for the Employee's wages and positioning is fatal to the independent contractor argument.
19. The Employee was dismissed in October 2011. On the Employee's uncontradicted evidence, Mr. Henriques told him not to return to the Gunthropes site. Mr. Charles promised to investigate and call back. He never did. The Employee says that Mr. Charles ignored multiple follow-up calls. He made no offer of alternative work. The Employer has adduced no evidence of any legitimate reason for ceasing to engage the Employee after October 2011, nor of any communication that could amount to a lawful termination. The date of dismissal is fixed as October 2011.
20. The Court is of the view that the dismissal was unfair within the meaning of sections C56 and C58 of the Labour Code of Antigua and Barbuda. Those provisions require that an employer shall not dismiss an employee without just cause and without following a fair procedure. The Employer has established no reason for the termination whatsoever. No disciplinary process was conducted; no notice was given; no warning was issued.

21. Additionally, the Employer 's failure to provide any written statement of the reasons for the termination of the employment constitutes a separate and distinct breach of Section C10 of the Labour Code, which imposes on an employer the obligation upon termination to furnish the employee with a written statement of reasons. That obligation was never honoured. Indeed, it was never engaged, because the Employer never acknowledged that any termination had taken place. That breach of section C10 is a further and independent ground on which the Employer's conduct falls below the requirements of the Labour Code and reinforces the finding that the deemed dismissal was both unfair and contrary to good industrial relations practice.
22. Additionally, Caribbean Storm Shutters Limited was struck off the Companies Register in or around February 2008 pursuant to section 511 of the Companies Act 1995, following its default in filing annual returns required by section 194 of the Act. Upon being struck-off, the company ceased to have any registered existence, ceased to have legal personality, and ceased to have the capacity to employ, to contract, or to be sued in its own name. Its outstanding assets became vested in the Registrar pursuant to section 484 of the Act.
23. Critical to this Reference, is Section 512 of the Companies Act 1995, headed 'Liability, " continues expressly provides that notwithstanding the striking off, the liability of every director and officer of the company continues and may be enforced as if the company had not been struck off. Wesson Charles was at all material times the sole owner, director, and General Manager of Caribbean Storm Shutters. He continued after February 2008 to carry on the business in the company's name, employing staff, paying wages, remitting Social Security contributions, issuing employment reference letters as General Manager, sponsoring work permits as employer, and appearing as respondent in these proceedings. By operation of Section 512 of the Act, each of those liabilities including the liability to pay the Employee his terminal benefits are attached to Wesson Charles personally. He is accordingly personally liable for the total award made in this judgment.

COMPENSATION

24. Having determined that the Employee was unfairly dismissed, he is entitled to compensation as follows:

(a) **Loss of Protection**

Loss of protection is calculated in a similar manner as severance pay and consist of at least one day's pay at the employee's latest basic wage for each month or major fraction thereof of his term of employment. The Employee was a weekly-paid labourer whose latest basic wage was **\$650.00 per week**. His daily rate

was therefore **\$130.00**. His continuous service of ten years and four months amounts to 124 months. Loss of protection is accordingly calculated as **\$16,120.00** (124 × \$130.00).

(b) Notice Pay

The Employee was paid weekly and therefore he is entitled to one week's wages under in the sum of **\$650.00**.

(c) Accrued Vacation

An employee who has passed his probationary period is entitled to vacation leave in an amount of at least one day per month of employment. The Employee's continuous service of ten years and four months amounts to 124 months, generating a total accrual of 124 days. The only evidence of any vacation payment to the Employee is that of August 7, 2009, in the sum of \$1,777.63, which at the daily rate of \$130.00 represents 13.67 days rounded to 14 days. Deducting those 14 days from the total accrual of 124 days leaves 110 outstanding vacation days. The Employer produced no record of any other vacation taken or paid across ten years of service. The claim is accordingly accepted on the basis of the statutory formula and the Employee is awarded the sum of **\$14,300.00** (110 days × \$130.00)

(d) Immediate Loss

The Employee gave evidence that after he was dismissed in October 2011, he did not sit idle. He went out and tried to find work. He told the Court in his witness statement that he approached several persons and organisations looking for employment. However, despite those efforts, he was unable to find steady work until February 2012 meaning he was without proper employment for approximately four months.

The Court awards him compensation for those four months that he was out of work in the sum of **\$11,266.68** (\$2,816.67 monthly wage x 4).

(e) Exemplary Damages

The Court has considered whether, having found the dismissal to be unfair, the circumstances warrant the exercise of its discretion under section 10(5) of the Industrial Court Act to award exemplary damages. The threshold that the employee was dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice is satisfied. The question is whether there exists conduct beyond the unfairness of the dismissal itself that justifies a punitive award. The Court finds that there does.

The Employer after the Henriques incident deliberately abandoned the Employee by choosing to leave the employee without income, failed to communicate with the Employee, and provide no recourse on the way forward. The latter is not mere procedural failure. It is a conscious and sustained disregard for the dignity and livelihood of an employee with ten plus years of continuous employment. The conduct falls squarely within the meaning of harsh and oppressive treatment in connection with the dismissal as contemplated by section 10(5) and is not in accordance with the principles of good industrial relations practice. The Court awards exemplary damages in the sum of **EC\$3,000.00**.

Costs

25. The Court has determined that an award of costs is warranted in the circumstances of this case and accordingly awards the Employee the sum of \$1,500.00.

ORDER:

26. It is hereby ordered:

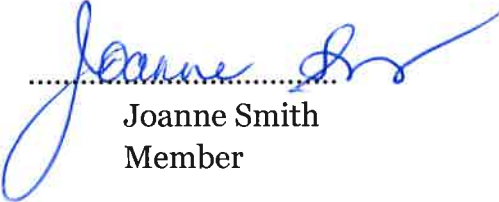
- (i) The Employee is entitled to compensation as follows in the sum of \$46,336.68 as follows:

Loss of Protection	\$16,120.00
Notice Pay	\$ 650.00
Accrued vacation	\$14,300.00
Immediate Loss	\$11,266.68
Exemplary Damages	\$ 3,000.00
Costs	<u>\$ 1,500.00</u>
Total	<u>\$46,836.68</u>

- (ii) Mr. Wesson Charles is personally liable for the payment of \$46,836.68
- (iii) Mr. Wesson Charles shall pay to the Employee the sum of **\$46,836.68** in three installments of \$15,612.22 on May 24, 2026, \$15,612.22 on June 24, 2026 and \$15,612.22 July 24, 2026.

Dated the 24th day of April, 2026


Samantha May-Francis
President


Joanne Smith
Member


Alando Michael
Member

Delivered by the Honourable Joanne Smith