

IN THE INDUSTRIAL COURT

ANTIGUA AND BARBUDA

REFERENCE NO. 10 of 2026

BETWEEN

DAVID CHARLES

Employee

and

DREAM YACHT CHARTER (ANTIGUA) LIMITED

Employer

Before:

The Hon. Samantha May-Francis

President

The Hon. Joanne Smith

Member

The Hon. Charlene Selkridge

Member

Appearances:

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

Ms. Kamilah Roberts Attorney-at-Law of Roberts & Company, Representatives of the Employer

2026: May 15

May 29

JUDGMENT

Unfair dismissal- Employee sustaining workplace injury while boarding a vessel- allegation that means of access was unsafe- Employee placed on certified sick leave- Employer dismissed Employee- Whether grounds for dismissal made out on the evidence- Whether Employer is bound by grounds stated in the termination letter- Whether Natural Justice was afforded to the Employee- Section C16 (i) and C 16 (ii) of the Antigua and Barbuda Labour Code- Jurisdiction of the Industrial Court distinguished from Workman's Compensation Act Cap 475- whether the Employee is entitled to compensation



Introduction

1. The Employee worked as an Operations Assistant for the Employer who at all material times engaged in business as a yacht charter company based at Jolly Harbour Marina.
2. The Employee started work on or about December 5, 2022, under a written contract of employment dated December 5, 2022, renewed on February 27, 2023. His monthly salary at the time of dismissal was **\$5,719.37**.
3. On January 11, 2024, the Employee was injured at work. He went on certified sick leave and remained on sick leave until the Employer dismissed him by letter dated November 2, 2024. He says the dismissal was unfair. The Employer says it was justified.
4. This Reference was filed on February 19, 2026, after conciliation proceedings at the Labour Department were completed.

The Evidence

5. The Employee's duties included supporting the operations team on the docks and boats, keeping boats and customer areas clean, helping with customer handover briefings, updating inventory records, and maintaining the dock, workshop and warehouse. He worked a five-day work week. His contract allowed for 12 working days of sick leave per year.
6. On January 11, 2024, the Employee slipped and fell while trying to walk across a 2 x 6 plank that was the only way to get onto a yacht he was working on. He hit his back, left side and shoulder on the steps of the yacht and fell into the water. His left knee and right wrist were cut and bleeding. His co-workers who saw what happened helped him and lowered the swim ladder so he could climb back onto the yacht. He then had to cross the same plank again to get back onto the dock.
7. Having fallen, the Employee went to the office and told Ms. Virginie Bachelet, the Employer's Base Manager and Mr. Mark Branham, the Employer's Chief Operations Officer what had happened. Nobody offered to take him to the hospital or arrange any medical help. He went home at the end of the day and saw a doctor the next morning.
8. He was placed on certified sick leave. On account of him being in pain and on certified sick leave, he was unable to participate in the Customer Care Training which the Employer had previously organised with a view that he would take up a position in Customer Care.
9. The Employer does not dispute that the accident happened. However, Ms. Bachelet wrote to the Employee after the accident saying that it was his own fault as he was wearing slippers instead of proper deck shoes as required by company policy, and he was trying to carry too many things at once. The Employer relies on this to say the accident was not caused by an unsafe working environment.
10. The Employee does not accept this. He says the plank was the only way onto the yacht, it was an unsafe means of access, and the Employer was responsible for

that unsafe condition. He also points out that no one offered him any medical help after the accident.

11. The Employee saw Consultant Orthopaedic Surgeon, Dr. K.K. Singh at Orthro Medical Associates, Woods Centre, on January 15, 2024. The medical report dated January 16, 2024, recorded the Employee sustained a lacerated wound on the right forearm; soft tissue injuries to the right arm, left forearm and left knee; a suspected rotator cuff tear in the right shoulder; and a possible disc bulge in the lower back. MRI scans of the right shoulder, lower back and left knee were recommended.
12. MRI scans were done at Belmont Clinic Limited on March 1, 2024. The results showed serious injuries to his right shoulder particularly, a SLAP II tear, rotator cuff tear, partial tear of the AC ligament and other damage; in the left knee the Employee sustained tears of the lateral and medial meniscus, partial tear of the lateral collateral ligament and bony contusion; and in the lower back he had disc dessication and Schmorl's node. These scans were done in January and March 2024.
13. Dr. Singh issued a second medical report on March 5, 2024. This confirmed all the above findings and said the Employee was temporarily disabled in the use of both his upper and lower limbs. A final disability evaluation would be needed at the end of treatment to assess the full extent of any permanent impairment. The report recommended physiotherapy three times a week and injections to reduce joint inflammation. The Employer paid for some of the MRI scans around March 2024.
14. The Employer also arranged for the Employee to see a second orthopaedic specialist, Dr. Gaekwad, Consultant Orthopedic Surgeon on April 9, 2024. The Employee attended that appointment. The Employee said he was never told Dr. Gaekwad's findings.
15. The Employee remained on certified sick leave continuously from January 2024 until he was dismissed on November 2, 2024. The Employee's last medical evaluation based on evidence before this Court is contained in the medical report dated March 5, 2024, eight months before the dismissal. No medical evidence of any kind covering the period after the dismissal was produced by either party. The final disability evaluation recommended by the Consultant had still not been done by the time of the hearing because the Employer had not paid the fee for it.
16. After the accident the Employer continued to pay the Employee his full salary for a time and then reduced the payments to 75% of his monthly salary. These payments stopped completely after August 27, 2024. The Employee received no salary at all for September and October 2024. The Employer said the 75% payments were a goodwill gesture made above and beyond any legal obligation, noting that the Employee had long since exceeded his contractual entitlement of 12 days sick leave per year.
17. On September 22, 2024, following a Board meeting held on September 19, 2024, the Employer wrote to the Employee. The letter raised complaints about the Employee's attitude, performance and his continuous sick leave since January

2024 with no indication of when he would recover. It said salary payments would stop as of August 27, 2024, and that his continued employment would be reviewed. The letter also said the Employer had been reliably informed that the Employee was working elsewhere during his sick leave.

18. Mr. Samuel James, the Employee's Representative, replied on behalf of the Employee to the Employer's letter of September 22, 2024. The Union said the letter was false and misleading. It said both medical reports had been given to the Employer, that the Employee had authorised the Consultant to share his medical information, and that the Employee had been on certified sick leave the whole time because of a workplace injury.
19. On November 2, 2024, the Employer dismissed the Employee. The termination letter said the Board had met on October 25, 2024, and decided to end the employment. The letter gave four reasons for the dismissal:
 - (a) The Employee failed to keep the Company informed about his recovery.
 - (b) He submitted his expenses claim in August 2024, months after the Labour Department meeting.
 - (c) He failed to give consent for his medical records to be released to the Company.
 - (d) The Company had been reliably informed that he was working elsewhere while on sick leave.
20. The Employer offered the Employee one month's pay in lieu of notice and a lump sum of \$28,596.85. The Employee refused this offer. The Court notes that the termination letter says nothing about the Employee being unfit to continue in employment because of the length of his sick leave.
21. The most serious ground in the termination letter was the allegation that the Employee was working as a disc jockey while on sick leave. During cross-examination, the Employer put to the Employee social media posts, promotional flyers and video footage it said showed him performing at a nightclub and at events in New York during his sick leave.
22. The Employee denied this. He said his name appeared on flyers for publicity only and that he did not actually perform. He said he went to New York for personal reasons to deal with a divorce and not to work. He also said his injuries, especially to his shoulder and knee, made it physically impossible for him to perform as a disc jockey, which requires extended periods of standing.
23. The Employer produced no contracts, no payment records, no wage slips and no statement from any event organiser or anyone else who saw the Employee performing during his sick leave. The allegation rested entirely on the social media material and flyers.

The Legal Framework

24. Division C16 of the Antigua and Barbuda Labour Code gives every employee the right to take time off work when they are ill or physically unable to work. The

proviso at C16 (ii) is important. It says that if an employer forms the view that the amount of sick leave taken has made an employee unfit to continue in the job, the employer may end the employment on that ground. Where that happens, the employee's right to severance pay and the fairness of the dismissal are to be decided by this Court under Part 4 or 5 of Division C.

25. Division C16 (ii) therefore gives an employer a clear and lawful route to end the employment of someone who has been on prolonged sick leave. But the employer must use that ground honestly and say so in the termination letter. The employee must be told that is the reason so that he has the chance to respond and so that his rights under the Labour Code are properly engaged.
26. Before invoking that ground, however, there is a further obligation. In **Norkesa Thomas v A.S. Bryden & Sons (Antigua) Ltd, Reference No. C/48 of 2019**, decided March 1, 2024, this Court confirmed that before dismissing an employee on grounds of medical incapacity, an employer is required to genuinely consider whether there are other duties that could be assigned to that employee. That obligation was independently confirmed in **Donna May Payne v Dickenson Bay Hotel Management Ltd, Reference No. C/34 of 2021**, where the Court found that before terminating under Section C16(ii), the employer was required to ascertain the nature and extent of the employee's disability and to consider any other duties that could have been assigned to her before dismissing her. The failure to do so was one of the grounds on which the dismissal was found to be harsh and oppressive and on which exemplary damages were awarded.
27. The obligation to consider alternative duties before dismissing an employee who is injured or medically incapacitated is therefore firmly established by two recent and independent decisions of this Court. It is a real obligation, not a formality.
28. The Court remains mindful that the termination letter in this case does not invoke Division C16 (ii) and does not say that the Employee was unfit to continue in employment because of the length of his sick leave. The Employer advanced four specific grounds instead. The Employer is bound by those grounds. It is not open to this Court to substitute a different or better reason for the dismissal than the one the Employer itself chose to rely on. The fairness of the dismissal must be assessed on the four grounds actually stated in the termination letter. What the Court does note, however, is that the Employer also did not at any stage consider or offer any alternative duties to the Employee before dismissing him.
29. The Employer raised an important point about jurisdiction. Learned Counsel Ms. Roberts argued that any claim arising from the workplace injury itself including wages lost during sick leave, medical expenses and compensation for the injury falls under the Workmen's Compensation Act Cap. 475, not the Labour Code.
30. The Workmen's Compensation Act imposes a comprehensive statutory scheme for compensation arising from workplace injuries. The Employer is liable to pay compensation for personal injuries sustained by the employee, for the employee's reasonable costs of medical treatment and payment of wages at a rate prescribed by the Act for temporary, partial or total incapacity provides that where a worker is injured at work. Section 36(1) of the Act states clearly that all claims for

compensation under the Act must be decided by the Magistrate's Court for the district where the accident happened. This Court therefore has no jurisdiction over those claims.

31. The following claims made by the Employee in these proceedings therefore fall outside this Court's jurisdiction and must be brought before the Magistrate's Court under the Workmen's Compensation Act namely the unpaid salary for September and October 2024, which represents wages during a period of incapacity from a workplace injury; the refund of medical treatment expenses paid by the Employee; the cost of the final disability evaluation; and any future compensation for permanent incapacity. These claims are dismissed without prejudice and the Employee remains free to pursue them before the Magistrate's Court.
32. What remains before this Court is the question of whether the dismissal itself was unfair under the Labour Code. The workplace injury and its circumstances are relevant as they are an important part of the story and go directly to whether the manner of the dismissal was harsh and oppressive. But the financial consequences of the injury are matters for the Magistrate's Court.

Analysis

The Dismissal

33. The Court finds on the evidence that the Employee was genuinely injured at work on January 11, 2024. The medical evidence included two detailed reports from Dr. Singh and the MRI reports from Belmont Clinic leaves no doubt about that. The Employee's injuries were serious and entirely consistent with the fall he described.
34. The Court does not accept that the accident was entirely the Employee's own fault. The plank was the only way to get onto the yacht. Providing a safe means of access to a vessel is a basic responsibility of an employer in this business. Whatever footwear the Employee was wearing, the Employer had not provided a safe gangway or access point. This finding is relevant to the context in which the subsequent dismissal took place, though compensation for the injury itself is a matter for the Magistrate's Court under the Workmen's Compensation Act.
35. The Employer is bound by the reasons it put in that letter. It is not the role of this Court to find a better or more legally sound reason for the dismissal than the one the Employer chose to advance. It is for the Employer to show that it had a good reason to dismiss the Employee and that the reason was serious enough to justify dismissal. The Court considers each of the four grounds stated in the dismissal letter.

Ground 1 Failure to update the Company on recovery

36. The Employee's evidence is that he gave the Employer the medical report dated January 16, 2024, and the second report dated March 5, 2024. The Court accepts that evidence. Additionally, the Employer confirmed it received the MRI reports.

The second medical report clearly told the Employer what the Employee's condition was and what treatment was needed. The Employer never wrote to Dr. Singh asking for more information, though it could easily have done so at any time.

37. Beyond that, the Employer had arranged to get a second specialist opinion from Dr. Deepraj Gaekwad, who saw the Employee on April 9, 2024, reviewed the same MRI scan, and reached findings consistent with Dr. Singh's. Dr. Gaekwad confirmed the requirement for physiotherapy was conveyed to the Employer. The Employer therefore had independent medical confirmation of the Employee's injuries from its own arranged specialist presumably by April 2024, seven months before the dismissal. Additionally, the Court notes the Employer's failure to produce a report from Dr. Gaekwad and that it is the Employee who submitted Dr. Gaekwad's report on the day of trial. This ground has not been made out.

Ground 2 Late submission of expenses

38. An employee who has been on serious sick leave arising from a workplace injury and who submits an expense claim some months late has not committed a breach of any kind that is capable of justifying dismissal. No reasonable employer would dismiss an employee on this basis alone or in combination with the other grounds stated. This ground carries no weight.

Ground 3 Failure to consent to release of medical records

39. This ground does not hold up on the evidence. The Employee gave evidence that he authorised the Consultant to share his medical information with the Employer and that evidence was not meaningfully challenged in cross-examination. The Court accepts the Employee's evidence that medical reports were given to the Employer. The Employer's own evidence confirmed it had the MRI results which all means suggests that the Employee had sustained a serious injury. Additionally, the Employer had the access and benefit of its own Specialist advice. The Employer therefore fails to make out this ground.

Ground 4 Working elsewhere during sick leave

40. This is the most serious ground. The Court notes that the Employer bases its belief on the social media material, flyers and videos, that the Employee was working as a disc jockey during his sick leave. Even if the Employer held a genuine belief, that belief must rest on sufficient evidence to be considered reasonable. Here it does not. There are no contracts, no payments, no wage records and no one came to court to say they saw or hired the Employee to perform during his sick leave. A name on a flyer is not proof of actual performance. A trip to New York is not proof of actual working. The Employee gave a credible explanation for both. This ground has not been proven on balance of probabilities.
41. The Court finds that the Employer has not shown a valid reason for the dismissal. All four grounds in the dismissal letter either fail on the evidence or are too trivial to justify dismissal.

Procedural Fairness

42. Even if there had been a good reason to dismiss, the Court finds the process adopted by the Employer was unfair. The Employee was never called to a disciplinary hearing. The allegations were never formally put to him so that he could respond before a decision was made. No proper investigation was conducted into the central allegation of working elsewhere. The Employer went straight from the letter cutting off salary in September 2024, to the termination letter in November 2024, with nothing in between. That falls well short of what fairness requires.
43. In the final analysis, the Court finds that the dismissal of the Employee on November 2, 2024 was unfair.

Compensation

44. The Court now decides what the Employee should receive for his unfair dismissal as follow:

Loss of Protection

45. The Employee worked for approximately two years from December 2022 to November 2024. The Court awards two months' basic pay in the sum of **\$11,438.74** ($\$5,719.37 \times 2$)

Notice Pay

46. The Employee is entitled to one month's pay in lieu of notice. The Employer's own dismissal letter offered this. The Court awards **\$5,719.37**.

Immediate Loss

47. The Employee claims 24 months of lost earnings. The Court has looked carefully at this. Several things weigh against making an award in the amount claimed by the Employee.
48. The sick leave certificates were issued during the employment to cover absence from work. They say nothing about whether the Employee could or could not work after dismissal. The last medical report before the Court is from March 5, 2024, eight months before the dismissal and well over a year before this hearing. No medical evidence at all was produced to show the Employee's condition after November 2, 2024. The final disability evaluation has not been done, so the extent of any lasting injury is unknown. The Employee also made very poor efforts to find other work, having made only three job applications in the first year after dismissal. The Court further notes that any compensation for inability to work due to the injury itself employee loss wages occasioned due to his inability to work is a matter for the Magistrate's Court under the Workmen's Compensation Act. Considering the award of notice pay and based on the evidence before it, the Court awards four (4) months' salary for immediate loss in the sum **\$22,877.48**.

Exemplary Damages

49. Not every unfair dismissal justifies exemplary damages and the threshold is a meaningful one. The power to award exemplary damages derives from Section 10(5) of the Industrial Court Act, which provides that this Court may award exemplary damages where an employee has been dismissed in circumstances that are harsh and oppressive or not in accordance with good industrial relations practice. The applicable principles were set out by this Court in **Elliot Arnim Street v Caribbean Star Airlines, Reference No. 19 of 2005**, where this Court held that: exemplary damages are to be awarded where the compensatory award is inadequate; the employee must have suffered punishable behaviour; the standard of proof is civil; the power should be exercised with restraint; and awards should be moderate. Those principles were affirmed and applied in **Donna May Payne v Dickenson Bay Hotel Management Ltd, Reference No. C/34 of 2021, decided December 13, 2024**, where EC\$20,000.00 was awarded. By contrast, in **Norkesa Thomas v A.S. Bryden & Sons (Antigua) Ltd, Reference No. C/48 of 2019, decided March 1, 2024**, this Court declined to award exemplary damages even where the employer had behaved unreasonably and in a distasteful manner. That case is a reminder that the bar is not low.
50. The present case crosses that threshold. The Employer chose to dismiss the Employee on grounds related to his conduct. Having made that choice, it was bound to follow a fair disciplinary process. The Employee was on certified sick leave from a workplace injury when the termination letter arrived. He had never been called to a hearing, the allegations of misconduct particularly the allegation that he was working as a disc jockey while on sick leave had never been formally put to him, and he had no opportunity to respond before the decision was made.
51. **In the Payne case**, the Employer's conduct was more serious in that the injury sustained was caused by an unsafe system of work in breach of Division D of the Labour Code, severance was withheld for four years after dismissal, and the employer defaulted entirely at trial. In the present case, while the dismissal was unfair and the process was seriously deficient, the Employer paid some of the Employee's medical costs, and offered severance in the dismissal letter itself. These are distinguishing factors that justify a lesser award. Applying the **Elliot Street** principles and having regard to the need for proportionality, the Court awards the Employee **EC\$15,000.00**.

Costs

52. Having found that the threshold for exemplary damages is crossed, the Court is further satisfied that an award of costs is appropriate. The Employer dismissed an injured employee without a hearing, without investigating the central allegation, and without considering alternative duties. That conduct justifies a costs order. The Court awards the sum of **\$1,500.00**.

ORDER

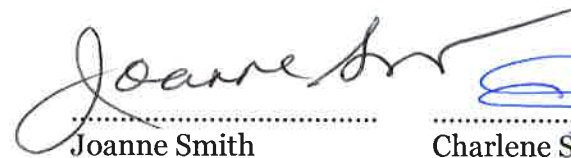
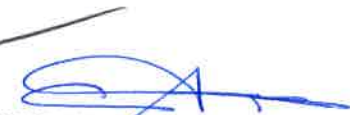
53. The Court hereby orders:

1. The Employee is entitled to compensation in the sum of **\$56,535.59** broken down as follows:

Loss of Protection	\$ 11,438.74
Notice Pay	\$ 5,719.37
Immediate Loss	\$22,877.48
Exemplary Damages	\$15,000.00
Ccsts	<u>\$ 1,500.00</u>
	<u>\$ 56,535.59</u>

2. The Employer shall pay to the Employee the total sum of **\$56,535.59** on or before the 30th day of June, 2026.

Date the 29th day of May, 2026

 Samantha May-Francis President	 Joanne Smith Member	 Charlene Selkridge Member
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The Hon. Samantha May-Francis delivered this Judgment