



IN THE INDUSTRIAL COURT

ANTIGUA AND BARBUDA

REFERENCE NO. 16 of 2024

BETWEEN

JOSHUANETTE FRANCIS

Employee

and

ALEX GRIMLEY T/A SHEER ROCKS RESTAURANT AND BAR

Employer

Before:

The Hon. Samantha May-Francis
The Hon. Joanne Smith
The Hon. Charlene Selkridge
The Hon. Alando Michael

President
Member
Member
Member

Appearances:

Mr. Samuel A. James and Mr. Simon Leonard, Representatives for the Employee
Ms. Jan Peltier, Attorney-at-Law, Christopher and Associates, Representative for the Employer

2025: October 27

2026: May 22

JUDGEMENT

Unfair Dismissal – Compensation Assessment – Liability conceded by Employer’s Counsel during trial – Consent Judgment on liability entered – Compensation reserved – Effective Date of Termination – Rate of Pay at dismissal – Position at Dismissal – Compensation

Introduction

1. Joshuanette Francis (“the Employee”) filed a Reference against Sheer Rocks Restaurant and Bar (“the Employer”) claiming outstanding wages, unfair dismissal and compensation. The matter proceeded to trial before this Court.
2. Both the Employee and the Employer’s witness, Ms. Ariel Martin (Human Resource Manager), gave evidence and were cross-examined. The Employee was represented by Mr. Samuel A. James and Mr. Simon Leonard of the Antigua and Barbuda Free Trade Union. The Employer was represented by Ms. Jan Peltier, Attorney at Law.
3. Towards the end of the Employer’s case, Learned Counsel, Ms. Peltier, conceded liability on behalf of the Employer. By consent, this Court entered judgment finding that the Employee was unfairly dismissed. Compensation was reserved. Written submissions were filed by both parties on 16 February 2026. This judgment deals with compensation only.

Background Facts

4. The Employee commenced employment on 19 November 2016 as a Trainee Hostess at \$11.00 per hour, progressing to full-time Hostess from 19 November 2017. On 30 September 2019 she entered a one-year contract as Junior Supervisor at \$1,550.00 bi-weekly during the high season (November to April) and \$1,250.00 bi-weekly during the low season (May to October).
5. By September 2020, the demands of the supervisory role held by the Employee were adversely affecting her health. The Managing Partner, Mr. Alex Grimley, due to other prevailing circumstances, in relation to their employment had offered the supervisory staff three options termination, continuing as Supervisor, or reverting to line staff. The Employee chose to revert to line staff. By letter dated 9 September 2020 she formally resigned from her “junior supervisor role” and expressed her wish to return to her previous position. The Employer accepted her resignation from the supervisory role and undertook to address the Employee’s return to line staff separately.
6. On 1 October 2020 the Employer issued to the Employee a fixed term contract as Hostess/Cashier at \$13.75 per hour. She was removed from the work schedule in mid-October 2020 for reasons associated with her health. At the Employer’s request, the Employee attended Dr. Deepraj Gaekwad, who issued a Medical Report dated 22 December 2020 recommending she pursue more sedentary work. The Employer took no decisive action, issued no termination letter, and provided no communication to the Employee regarding her employment status. It

subsequently wrote to her representatives on 3 March 2021 and 13 August 2021 respectively. No termination letter was ever issued.

7. The Employee's name was removed from the work schedule by 14 December 2020, as evidenced by the work schedule. In January 2022, Mr. Raimon Hamilton, then acting for the Employee, wrote to the Employer indicating the Employee would accept 3 March 2021, as a termination date to facilitate amicable resolution. The Employer responded on 21 June 2022, accepting that date. No further communication was received from the Employee or her representative. Mr. Hamilton subsequently ceased to represent the Employee upon appointment to the Magistracy. No communication passed between the parties for approximately eighteen months thereafter. In January 2024 the Employee's current representatives wrote to the Employer without prejudice. The Reference was filed on 11 April 2024.

Issues for Determination on Compensation

8. The following issues fall for determination:
 - (a) The effective date of termination;
 - (b) The applicable rate of pay and position at dismissal;
 - (c) The quantum of compensation under each applicable head.

Employer's Argument

9. The Employee's case, as advanced by Mr. James, is that she was a permanent full-time employee with continuous service from November 2016. There were no breaks between contracts and no severance was paid at any transition point, which is inconsistent with fixed term employment. The Employer's intention to have her start afresh as a new line staff employee in October 2020, was contrary to the agreed arrangement. She contends that by virtue of the Labour Code (Amendment) Act 2019 she was a full-time permanent employee and the October 2020 fixed-term contract did not alter that status. She relies on Sections C10 and C58 of the Labour Code.
10. Mr. James contended that at all material times the Employee remained an Employee and that the failure to issue a termination letter in keeping with Division C10 constitutes an unfair and constructive dismissal. The termination date advanced by Mr. James is 11 January 2024, on the basis that the Employee remained employed until her current representative accepted the Employer's repudiation of the employment contract.

The Employer's Argument

11. The Employer asserts that the Employee had two separate periods of employment. The Employer contends that the September 2020 resignation letter was voluntary and effective, that the Employee was re-engaged in a new position in October 2020, and that her length of service should accordingly run from October 2020 only. The Employer further submits that a termination date of March 2021 was agreed through the Employee's authorised representatives.
12. The Employer concedes that the termination was not effected in keeping with the provisions of the Labour Code.

Factual Findings

13. Having considered the evidence and submissions of both parties, the Court makes the following factual findings.

Continuous Employment and Nature of Contract

14. The Court finds that the Employee was in continuous employment from 19 November 2016. The Interpretation section of the Labour Code (Cap. 27) defines "employee" as including an apprentice whose services are designed primarily to train such apprentice. The Employee's initial engagement as a Trainee Hostess falls squarely within this definition as she was performing services under a contract designed primarily to train her in the role of Hostess. She was therefore an employee within the meaning of the statute from the very first day of her engagement on 19 November 2016.
15. This statutory position is further reinforced by the following by Section C8 of the Labour Code which limits probation to a maximum of three months. Additionally, when the Employee was elevated to Junior Supervisor in September 2019, no severance was paid and she was not required to resign from her existing employment. This is consistent with the Employee's elevation being a variation of the continuing permanent employment, not a new engagement. The Employee's permanent Hostess contract therefore subsisted throughout the supervisory period. Moreover, the Employer itself calculated the Employee's entitlements from 19 November 2016 in its letter of 3 March 2021, thereby acknowledging the trainee period as part of the employment relationship. The Employer cannot now resile from that position. The Court notes that no Hostess contract was produced in evidence for the period commencing 19 November 2017, which is consistent with the Employee's employment continuing under the existing permanent arrangement without the need for a new contract.

16. The Court further finds that the Employee by her letter of 9 September 2020, resigned from the supervisory role only and not from her employment. She was entitled to revert to her substantive position of Hostess with full continuity of service.

The October 2020 Contract and Applicable Rate of Pay

17. The Court finds that the October 2020 Host/Cashier contract does not affect the continuity of employment or the applicable rate of pay. That contract was void ab initio on two independent grounds; the Employee already held a subsisting permanent Hostess contract which could not lawfully be replaced by a fixed term one; and Section C7A (2) of the Labour Code (Amendment) Act 2019, which was in force at the time of issue, expressly prohibits a fixed term contract for a position permanent in nature, and the Hostess position is permanent in nature.
18. The Court accepts \$13.75 per hour as the applicable rate at the date of the Employee's dismissal not because the October 2020 contract was valid, but because that contract is the best available evidence of what the Employer considered the appropriate rate for a line staff Hostess position at the time of dismissal, confirmed also in the Employer's correspondence of 3 March 2021. The \$17.50 figure which appeared in the Employer's letter of 13 August 2021 was advanced in the context of settlement negotiations which the Court accepts does not represent the rate of pay for Host/Cashier at the time. The Employee's weekly basic wage was \$550.00 (\$13.75 x 40 hours) or monthly wage of \$2,383.33.

Analysis

Effective Date of Termination

19. Liability having been determined by consent of the Employer, the following analysis addresses the preliminary issues necessary for the assessment of compensation, namely the effective date of termination and the position of the Employee at the date of dismissal.
20. The Employer submits that the parties agreed a termination date of 3 March 2021. The Employee submits that the termination date should be 11 January 2024, being the date, her current representatives accepted the Employer's repudiation of the employment contract.
21. The Court finds that no binding agreement was reached on a termination date of March 2021 for five reasons. First, Mr. Hamilton's letter of 18 January 2022 was without prejudice offered March 3, 2021 expressly to facilitate amicable resolution. Second, Ms. Martin conceded under cross-examination that no agreement on the

termination date was reached. Third, the Employer's own submissions acknowledge the date was "discussed but not agreed." Fourth, no settlement was ever executed. Fifth, and conclusively, Mr. Hamilton's letter of January 2022 was expressly conditional on the Employer responding within 14 days. The Employer did not respond within that period. The offer therefore lapsed by its own terms. The Employer's purported acceptance by letter of 21 June 2022 sent approximately five months after the offer had lapsed was accordingly ineffective in law. There was no subsisting offer capable of acceptance at that time and consequently no binding agreement was ever reached on the termination date.

22. The Court equally rejects January 2024 as the termination date. The Employee's own conduct is inconsistent with the employment having continued to January 2024. She obtained employment at Mr. Fish and Shrimp Supermarket in June 2022 and founded a not-for-profit organisation in August 2022. Moreover, an employee cannot hold a contract of employment open indefinitely while pursuing alternative work and then claim the full period as loss of wages; to do so would wholly defeat the duty to mitigate.
23. The Court finds the effective date of termination to be 30 November 2021. Under Division C19 of the Labour Code the Employee had an absolute statutory right to return to work following the expiry of her maternity leave on 29 November 2021. The Employer had a corresponding absolute obligation to reinstate her. The Employer failed to roster the Employee on 30 November 2021, the first day she was entitled to return to work. That failure to reinstate constitutes the dismissal. The Court therefore deems the effective termination date to be 30 November 2021.

Position at Dismissal

24. The Court finds that the Employee's position at dismissal was Hostess (line staff) under her subsisting permanent contract of employment, at the applicable rate of \$13.75 per hour as set out above.

COMPENSATION FOR UNFAIR DISMISSAL

Loss of Protection

25. This head is similar to severance under Section C41 of the Labour Code one day's pay at the basic rate for each month of employment from 19 November 2016 to 30 November 2021; a total of 60 months and 11 days. The Employee's last daily rate was \$110.00 (\$13.75 x 8 hours). The Court awards the Employee the sum of **\$6,600.00** (\$110.00 x 60 months).

Loss of Wages

26. The Employee was kept off the schedule without pay from 19 October 2020. The Court calculates outstanding wages across the following sub-periods:

(a) 19 October 2020 to 1 February 2021 (14 weeks): The Court accepts, on the evidence of Ms. Martin that the restaurant operated on a significantly reduced schedule during this period, that the average employee worked 30 hours weekly. The Employee is entitled for that period to a sum of **\$5,775.00** ($\$13.75 \times 30 \text{ hours} \times 14 \text{ weeks}$)

(b) 1 February 2021 to 14 March 2021-The restaurant was closed pursuant to government-mandated restrictions. No wages are payable for this period.

(c) 15 March 2021 to 27 August 2021 (24 weeks)-the Employee is entitled to an additional **\$13,200.00** ($\$1,100.00 \text{ per fortnight} \times 12 \text{ fortnights}$)

(d) 27 August 2021 to 29 November 2021 - Maternity confinement (13 weeks) the Employer agreed to pay 40% of the Employee's basic wage for eight weeks as maternity benefit. The Employee is entitled to **\$1,760.00** ($40\% \times \$550.00 \times 8 \text{ weeks}$).

27. The total award under this head is therefore **\$20,735.00** ($\$5,775.00 + \$13,200.00 + \$1,760.00$) covering the period 19 October 2020 to November 30, 2021.

Accrued Vacation

28. The parties did not clearly outline the Employee's vacation entitlement. Having regard to the vacation schedule under the contract of employment, which provides for 15 vacation days per year for employees with 3 to 5 years of service, and the Employee's period of continuous service of 5 years and 11 days, the Court awards **\$1,650.00** ($\$110.00 \times 15 \text{ days}$).

Notice Pay

29. No notice of termination was ever given. As a line staff employee paid fortnightly, the Employee's notice entitlement under Division C12 of the Labour Code is one pay interval. The Employee is awarded the **\$1,100.00** in lieu of notice.

Immediate Loss

30. The Employee was dismissed on 30 November 2021. Her maternity leave had expired on 29 November 2021. No medical evidence was placed before the Court to suggest she was unable to work after that date. Dr. Gaekwad's report of December 2020 recommended a more sedentary occupation but did not certify the Employee as unfit for work. The Employee did not find alternative employment until June 2022, a period of approximately seven months. No documentary evidence of job

applications or active steps to seek employment was produced for this period. The Court is not satisfied the Employee demonstrated sufficient diligence in mitigating her loss. The Court awards 4 months' immediate loss from December 2021 to March 2022, being the period within which a person of her skills, experience and qualifications should reasonably have secured alternative employment in the sum of \$9,533.32 (4 months x \$2,383.33).

Future Loss

31. After leaving Mr. Fish and Shrimp in December 2022, the Employee chose to engage in her not-for-profit organisation rather than seek further paid employment. Future loss arising from a voluntary decision not to seek work is not recoverable. No award is made under this head.

Fringe Benefits- Tips and Service Charge

32. The Employee claimed loss of fringe benefits by way of tips and service charge for the period of her unlawful removal from the schedule. The figure of \$22,564.57 per annum first appeared in the Employee's closing submissions. Pay slips purporting to support this figure were attached to those submissions. The Court has considered whether to admit this material pursuant to Section 9 of the Industrial Court Act, which confers a broad discretion to receive evidence in such manner as the Court thinks fit.
33. The pay slips were produced without prior notice, without any indication during the trial that they would be relied upon and without permission for late filing. Equally important, there was no opportunity for the Employer to cross-examine the Employee on their contents or to call or give evidence in response.
34. Additionally, the figure of \$22,564.57 per annum was described as an estimate based on alleged pay slips belonging to the Employee for pay periods in 2019 and 2020 and pay slips of another Employee. Those allegedly belonging to the Employee relate to period of Hostess and others to the Supervisory period. The Hostess pay slips relate to a pre-pandemic period and the Court has already determined that the last position held by the Employee was that of Supervisor.
35. Further and more fundamental is that the other pay slips belong to a different employee entirely who held the position of Jr. Supervisor who was not a party or witness in these proceedings and was not subject to any cross-examination. Documents belonging to a third party not before the Court cannot be admitted in this manner as the Employee has sought to do. Finally, tips and service charge by their nature fluctuate and depend on variables including hours worked, seasonality, staffing levels and customer volume.

36. The statutory discretion to receive evidence must be exercised judicially and consistently with constitutional principles of fairness. It cannot be exercised in a manner that causes material prejudice to one party by admitting evidence that the other party has had no prior knowledge of it being relied upon or opportunity to challenge. The admission of documents in those circumstances as submitted by the Employee would go against basic fundamental rules of evidence admissibility. Therefore, the Court refuses to exercise its discretion in that manner and accordingly excludes the pay slips from the evidence.

Exemplary Damages

37. Under Sections 10(3) and 10(5) of the Industrial Court Act, the Court may award exemplary damages where a dismissal was harsh and oppressive or contrary to good industrial relations practice. The Court finds the dismissal to have been harsh, oppressive and wholly contrary to good industrial relations practice. The dismissal in substance occurred when the Employer failed to roster the Employee upon the expiry of her maternity leave on 29 November 2021. Under Division C19 of the Labour Code the Employee had an absolute statutory right to return to work following maternity leave. The Employer had a corresponding absolute obligation to reinstate her. The Employer was at all material times fully aware of this obligation it had itself completed the Social Security Maternity Benefit Form formally acknowledging the Employee as its employee on maternity leave. Notwithstanding that formal acknowledgement, when the Employee's confinement ended on 29 November 2021, the Employer simply did not roster her. No communication was sent to the Employee. No explanation was given. No notice of termination was issued. No payment of any kind was made. The Employee who had just given birth and who had been without wages throughout her pregnancy was left in complete silence.
38. The Court finds the Employer's conduct in this regard to be particularly egregious. The failure to reinstate was not an oversight. The Employer was a going concern, actively trading and rostering other members of staff. It knew the Employee existed. It had been corresponding through representatives about a termination date. It had formally acknowledged her employment status to a government body. Yet it chose to effect what was in substance a dismissal by the simple and callous act of not putting her name back on the roster. An employee is entitled to know when and why her employment has ended. This Employee was denied that basic dignity. The Court accordingly awards exemplary damages in the sum of **\$20,000.00.**

Costs

39. Having regard to the circumstances of this case and the Employer's conduct, the Court makes an order for costs in the sum of **\$1,500.00**.

ORDER

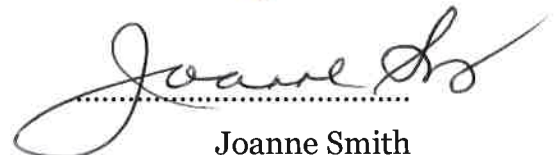
40. The Court orders that the Employer pay compensation to the Employee as follows:

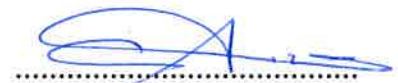
Loss Wages	\$20,735.00
Accrued Vacation	\$ 1,650.00
Loss of Protection	\$ 6,600.00
Notice Pay	\$ 1,100.00
Immediate Loss	\$ 9,533.32
Exemplary Damages	\$20,000.00
Costs	<u>\$ 1,500.00</u>
Total	<u>\$61,118.32</u>

41. The Employer shall pay the Employee the said sum of **\$61,118.32** on or before 30 June 2026.

Dated the 22nd day of May, 2026


Samantha-May-Francis
President


Joanne Smith
Member


Charlene Selkridge
Member


Alando Michael
Member

Judgment delivered by the Hon. Joanne Smith