



ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 20 of 2021

BETWEEN:

EVANS JONES JR.

Employee

and

ANTIGUA AND BARBUDA AIRPORT AUTHORITY

Employer

Before:

The Hon. Samantha May-Francis
The Hon. Judith Dublin
The Hon. Alando Michael

President
Member
Member

Appearances:

Mr. Kofi Massiah of the Antigua and Barbuda Workers' Union Representative for the
Mr. Jonathan Marshall of Marshall & Co., Attorney-at-Law for the Employer

2025: September 23
2026: February 13

The Employee was a Security Officer working at the V.C. Bird International Airport during the Covid 19 Pandemic; The Employer alleges that he refused to sign for an collect a reuseable mask issued by the Employer; Employer considered his actions a violation of the Employers rules and regulations and insubordination; Employer asked the Employee to leave the workplace; Employee refused; Employer called the police to escort the employee off premises; Employee that the Employer's Chief Executive Officer's actions were threatening; He therefore needed to take advice from the Shop Steward before collecting and signing for the mask; He was subsequently unfairly dismissed and entitled to compensation

JUDGMENT

May-Francis, VP

Introduction

1. The Employee worked for the Employer as a Class 4 Security Officer from October 20, 2014, until he was dismissed without notice by a letter which he received on June 1, 2020. On June 8, 2021, he presented a Reference claiming unfair dismissal.
2. The Employer says that it dismissed the Employee because of his conduct, in that the Employee had violated multiple rules of the Employer as provided in the Collective Bargaining Agreement between the Employer and the Bargaining Agent, the Antigua and Barbuda Workers' Union. Additionally, by Sections 58 and 59 of the Antigua and Barbuda Labour Code, the Employer was entitled to dismiss the Employee for gross misconduct- namely, insubordination and rude and disrespectful behaviour to management. As such, the Employee's dismissal was justified and fair.

The Hearing

3. The hearing was conducted on September 23, 2025. The Employee was represented by Learned Counsel Mr. Kofi Massiah. The Employer was represented by Learned Counsel Mr. Jonathan Marshall.
4. The Employee gave evidence on his own behalf.
5. Mr. Marshall made a preliminary application to excuse witnesses Mr. Avery Henry, the Acting Chief Executive Officer/Director of Security, who had instructed the Employee to collect and sign for the Employer-issued reusable face mask and Ms. Clyantha Shawthe, the Security Officer, who overheard and later witnessed the interaction between Mr. Henry and the Employee. The Employer's case proceeded on the witness testimony of Ms. Charmain J. Ephraim, Labour Relations Coordinator, who conducted the investigation.
6. Both parties filed written closing submissions.

The Employer's business

7. The Employee commenced employment with the Employer on October 20, 2014, as a Class 4 Security Officer. He last earned a monthly salary of \$2,518.29 and was based at the V.C. Bird International Airport.
8. The Employer is a Statutory Body governed by the Antigua and Barbuda Airport Authority Act No. 17 of 2006. It manages the operations of the V.C. Bird International Airport in Antigua and the Codrington Airport on our sister island of Barbuda. Section 4 (2) of the Act provides for the main functions of the Employer as follows:
**"Without prejudice to the generality of subsection (1), the Authority shall:
Construct, develop, upgrade and improve airports and such other aviation facilities in Antigua and Barbuda**

Operate airports services in accordance with this Act or regulations made there under
Prescribe and collect the rates, fees and charges authorized by this Act or by any regulation made there under.”

9. The State of Antigua and Barbuda had been on a lockdown from March 27, 2020, until June 1, 2020, when the Government opened up the country’s border and began accepting international and regional air traffic. The COVID-19 pandemic was at its peak in June 2020. The Government of Antigua and Barbuda had imposed a mandatory mask requirement under the Public Health Act (Dangerous Infectious Disease) Amendment Regulations. This Regulation made it an offence to be in a public place without a face mask.
10. The Collective Bargaining Agreement – Article 34- Disciplinary Procedure Section C- Disciplinary Code No. 10 provided-

“Violation of a known rule or regular subordination – 1st occasion- Warning; 2nd Occasion – Suspension; 3rd Occasion- Dismissal.”

Incident on May 16, 2020

11. The Employee had been at work, having been scheduled for the 2:00 p.m. to 10:00 p.m. shift. At some point in his shift, Mr. Henry telephoned the Employee to advise that he needed to collect and sign for a face mask, which was being issued by the Employer to its employees.
12. The Employee responded to say that he was wearing a KN95 mask and, therefore, he did not need to sign for the Employer-issued face mask.
13. Mr. Henry, however, instructed the Employee to collect the Employer-issued mask and insisted that the Employee sign for it and that his refusal to do so would amount to insubordination. The Employee maintained his position.
14. Minutes later, Mr. Henry and the Assistant Aanager, Mr. Cecil Vigo, approached the Employee and once again instructed the Employee to collect and sign for the mask. Mr. Henry gave the Employee the option to accept the face mask or tender his employee identification card and go home.
15. The Employee gave evidence that he felt threatened when Mr. Henry approached him and that he subsequently had a conversation with the Shop Steward. Based on that conversation, the Employee decided to collect and sign for the face mask. The Employee went in search for Mr. Henry to advise that he was now willing to accept the mask. However, by that time, Mr. Henry, having formed the view that the Employee had misconducted himself, demanded his work identification card. The Employee refused to hand over the identification card or to leave. Mr. Henry requested the assistance of the Police to escort him off premises. The Police Officer also took his employee identification card.

16. An incident report was obtained from Ms. Shaw.
17. The Employee submitted an unsigned report dated May 16, 2020, on May 19, 2020.
18. On May 21, 2020, the Employer issued the Employee with a suspension letter advising that he was on investigative suspension effective May 16, 2020, pending investigation. Ms. Ephraim conducted the investigation.
19. On May 27, 2020, there was a meeting held with the Employee. The Employee was subsequently dismissed by letter dated June 1, 2020.

Meeting on May 27, 2020

20. The Employer met with the Employee on May 27, 2020. According to the Employee, during that meeting, the reports were read to him, and he gave an account of what transpired. He also gave evidence that during the meeting, he apologised to Mr. Henry, who was present. The Employer advised him at the end of the meeting that it would consider its decision and advise him.

Dismissal

21. The Employer thereafter considered its position and determined that the Employee's conduct amounted to misconduct. In the end, the Employer concluded that it had lost trust and confidence in the Employee's ability to behave appropriately when dealing with superior staff. Therefore, it was unreasonable to continue the employment relationship, meriting the severe consequence of dismissal.

The Law

22. **Section C58 (1) A dismissal shall not be unfair if the reason assigned by the employer therefor (a) relates to the misconduct of the employee on the job, within the limitations of section C 59 (1) and (2);**

(b) ...

(c) ...

(d) ...

Provided, however, that there is a factual basis for the assigned reason.

C 58 (2) The test, generally, for deciding whether or not a dismissal was unfair is whether or not, under the circumstances, the employer acted unreasonably or reasonably but, even though he acted reasonably, if he is mistaken as to the factual basis for the dismissal, the reasonableness of the dismissal shall be no defence, and the test shall be whether the actual circumstances which existed, if known to the employer, would have reasonably led to the employee's dismissal.

C59 (1) An employer may terminate the employment of an employee where the employee has been guilty of misconduct in relation to his employment so serious that the employer cannot reasonably be expected

to take any course other than termination. Such misconduct includes, but is not limited to, situations in which the employee has (a) conducted himself in such a manner as to demonstrate that the employment relationship cannot reasonably be expected to continue;

(b)

(c)

(d)....

C59 (2) Where an employee is guilty of misconduct in or in relation to his employment that is not sufficiently serious to permit his employer to terminate his employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and state the action the employer intends to take in the event of (a) a repetition of the misconduct; or (b) the commission of another misconduct which is as serious as the one in respect of which the written warning was given.

Arguments

23. Mr. Massiah argued that the Employee's termination was both procedurally and substantively unfair and amounted to a violation of Article 34 of the Collective Bargaining Agreement, the Employer having failed to advise the Employee of shortcomings in his performance and conduct at the time of the occurrence. Additionally, the Employee contends that the Employer, having formed the view that he misconducted himself on three occasions, had a duty under Article 34 to first issue a warning to him and that he should have been allowed to state his case.
24. Mr. Massiah further contended that the Employer relied on Disciplinary Code-Violations 10 and 16 – insubordination and rude and disrespectful behaviour. According to Mr. Massiah, it was crucial for the Employer to have issued these warnings as a finding of insubordination would only become a dismissible offence after the third occasion and Rude and Disrespectful behaviour after the second occasion. He contended that neither of them warranted a summary dismissal in accordance with the Collective Bargaining Agreement.
25. Additionally, Mr. Massiah argued that the Employee was found to have committed multiple infractions following a single incident on a single day.
26. He contended that the Employer's conduct was procedurally unfair. Moreover, he argued the offence of refusing to collect and sign for a mask was not proportionate to the consequence. He asked the Court to note that the Employee was already wearing a KN95 mask in compliance with Government Regulations and had not posed a danger in the workplace. Additionally, once the Employee had obtained advice from the Shop Steward, he immediately expressed his willingness to comply.
27. Mr. Massiah urged the Court to consider the Employee's evidence that he was not aware of the Employer's policy to sign for a mask before that date, and Ms.

Ephriam's testimony that she was unsure whether the Employee had received that policy. Additionally, the Employee had apologised for his behaviour. Mr. Massiah argued that a warning or suspension would have been justified and warranted in the circumstances.

28. For the Employer, Mr. Marshall, submitted that there was little or no factual dispute. The Employee apologised for his behaviour, accepting that he had misconducted himself, and, having admitted to refusing to sign for the mask, gave the Employer reasonable grounds to determine that he committed misconduct. The decision to dismiss fell within the range of reasonable responses because:

- The circumstances at the time, that is the COVID-19 Pandemic, created a heightened sense of awareness and strict adherence to policies regarding the wearing of masks, mainly since the Employee interacted with hundreds, perhaps thousands, of persons in the execution of duties.
- The Employee repeatedly failed to adhere to the lawful instructions of the Employer for collecting and signing for the Employer-issued mask.
- The Employee's conduct should not be viewed as a single incident. His misconduct – refusing instructions by telephone, refusing instructions in person and rejecting a clear ultimatum were three distinct acts of violation.
- In terms of procedural fairness, it would have been impossible for the Employer to adhere to the requirements of Article 34 in issuing the warning, suspension and dismissal in 20 minutes.

29. Alternatively, Mr. Marshall submitted that the Employer had an additional substantial reason for dismissing the Employee- the erosion of trust and confidence, which rendered it impossible for the employment relationship to continue.

Issues

30. The Employer, having accepted that it dismissed the Employee, the sole issue for consideration by the Court is the fairness of the dismissal. The burden is on the Employer to prove that it did not unfairly dismiss the Employee.

Analysis

31. The first question to address is whether the Employer had a potential good reason for dismissing the Employee. The Employer relies on the misconduct and or "some other substantial reason"- loss of trust and confidence.

32. Having examined the dismissal letter, we considered the reasons advanced by the Employer for the Employee's dismissal. Ms. Ephraim gave evidence that the Employer had lost trust and confidence in the Employee. She considered the Employee's actions to be gross misconduct. Equally, we accept Ms. Ephraim's evidence that the decision to dismiss the Employee was based on the Employee's refusal to comply with instructions to collect and sign for the reusable mask which

the Employer was issuing, and his defiance of the Employer's request to hand over his security pass and to remove himself from the premises.

33. In a dismissal for misconduct, we have to consider whether there was a good factual basis to ground a finding of misconduct and whether the Employer acted reasonably.
34. According to the guidance from **Harvey on Industrial Relations and Employment Law [1355]**, factors that are relevant in deciding if there has been misconduct as a result of failure to comply with an employer's instruction include:
- (i) whether the instruction was made in accordance with the contract —if it was, then the employee is generally committing an act of misconduct in refusing to comply with it, if it was not, then the employer is acting in breach of contract in seeking to compel the employee to do something which the employer is not lawfully entitled to require the employee to do
 - (ii) whether there are circumstances justifying the refusal of the instruction, even if it ostensibly falls within the scope of the employer's powers (eg., where compliance with the instruction would endanger the employee's safety)
 - (iii) the fairness or reasonableness of the instruction, even if it is lawful
 - (iv) whether the employee was acting reasonably in refusing to comply with a lawful instruction
35. We considered Ms. Ephraim's evidence that a memo was distributed to staff, indicating the requirement to wear the mask and the Employer's mandate to issue reusable masks to employees. She did not provide a copy of the Memo into evidence, nor could she remember whether the Memo indicated that employees must sign to receive the mask and to wear masks issued by the Employer.
36. Having heard the evidence, considering the national requirement to wear a face mask in public, the Employee's workplace being a public place and the obligation of an Employer to provide proper safety equipment and to take safety measures to protect its employee in discharge of its obligations to others and to protect itself from potential liabilities, it was reasonable for the Employer to insist on the Employee collecting and signing for a mask issued by the Employer for utilization in the execution of duties.
37. Additionally, despite the Employee's evidence of the manner in which Mr. Henry addressed the situation, on his own account, he had repeatedly refused to comply with instructions. Under cross-examination, he accepted that the request to sign and collect a mask for use while at work was legitimate, having regard to the prevailing circumstances. We are of the view that the Employee acted unreasonably by repeatedly refusing to collect and sign for the mask and by refusing to return the security pass when requested. We found the Employer's requirement that each employee be issued a face mask and that employees sign to document receipt

reasonable. The Employee's refusal to do so was willful and deliberate. We find that there was a factual basis for the Employer's view that the Employee engaged in misconduct.

38. In answering the question whether the Employer acted reasonably in dismissing the Employee, we considered the Employer's investigation. We note that the Employer obtained a written report from Ms. Shaw, who witnessed the incident. Additionally, the Employer engaged the Employee, who in turn provided a written report. We also note that the Employee's evidence regarding the report, notably that the facts appeared "mixed up." However, for the most part, there was no challenge to the report's accuracy. In the end, we saw no material factual dispute as to what occurred.
39. The Employee was invited to a meeting where he had the opportunity to advance his version of events further. The next question, therefore, is whether the Employer followed fair procedure and afforded the Employee natural justice? The Employee presented his side of the story at the investigation meeting on May 27, 2020, and in his written statement. He was informed of the allegations and evidence against him. He had a Representative with him. Overall, we find the Employer's investigation reasonable.
40. Our final consideration was whether the Employer acted reasonably in all the circumstances in treating the alleged misconduct as a sufficient reason for dismissal. There are significant bodies of law which have developed around the principles to be applied in misconduct dismissals. We considered it is neither necessary nor desirable to rehearse those principles in detail. They remain the backdrop against which we have exercised our Judgment and, in particular, we are alive to the dangers of substituting our own view for that of the Employer and the necessity of applying a "range of reasonable responses" test when assessing the reasonableness of any decision taken by the employer in relation to dismissal.
41. The Collective Bargaining Agreement negotiated with the Employer, Article 34, sets out the agreed disciplinary process. Article 34 requires that any complaint may result in a warning, suspension, or termination of an employee. Particularly in relation to the offences alleged to have been committed by the Employee, the disciplinary code shall serve as the guide. The Employee, by the Collective Bargaining Agreement, accepted that, for a violation of Article 10, a warning on the first occasion, a suspension on the second, and dismissal on the third.
42. Mr. Marshall's submitted that the Employee by his conduct eroded the trust and confidence. According to the case of **Neary v Dean of Westminster** [1999] IRLR 288 conduct amounting to gross misconduct has the potential to undermine the trust and confidence inherent in a relationship of employment. Such conduct could rise out of a single act or it may be conduct over a period of time.
43. We accept that the Employee misconducted himself when he refused to sign for the mask and also refused to hand over his security pass. However, in our view, the entire state of affairs stems from a single event lasting based on the oral testimony of

the witnesses 20 minutes. We therefore agree with the Employee's submissions that the incident ought to have been treated as a single occasion perhaps where multiple offences attracting the penalty as prescribed in the Collective Bargaining Agreement. We also note that the Employee apologised the following day after speaking with the Shop Steward and having had the opportunity to reflect. The Employee indicated his willingness to then sign for the mask. We also note that the Employee was, in fact, wearing a mask and was therefore not in any imminent danger, nor was anyone else, by his refusal to sign and collect the mask.

44. Our conclusion does not in any way contradict the established case law that a single act of misconduct sufficiently gross can justify a dismissal. Still, the test remains whether it was reasonable in the circumstances for the Employer to dismiss – ***British Leyland (U.K.) Limited v. Swift [1981] I.R.L.R. 91.***
45. Additionally, while it may be potentially fair for an employer to dismiss an employee based on loss of trust and confidence. We remain mindful that there is no statutory definition of what reasons fall within the scope of a loss of trust and confidence. In our view, the facts and subsequent reasons must be substantial and justify the dismissal of an employee. The facts require in-depth scrutiny, especially where a junior employee is dismissed following a breakdown of relations with a more senior employee, as in this case.
46. On the facts of this case, in our view the Employer's response in dismissing the Employee was unreasonable as the offences taken together in our estimation did not give rise to ".... conduct in relation to his employment so serious that the employer cannot reasonably be expected to take any course other than termination". The Employee at the first given opportunity apologized for his conduct. The conduct not reaching the standard of gross misconduct, a reasonable response would have been to afford the Employee the opportunity to demonstrate sufficient change to any indifference he may have had towards receiving and acting on the instructions of Management there being no prior issues of misconduct against the Employee based on the evidence before the Court.
47. We find that the circumstances of this case do not meet the standard of scrutiny reasonably expected to justify dismissing the Employee in this Reference.
48. We therefore assess compensation to the Employee.

Compensation

49. We have assessed compensation on the heads of compensation as claimed:
 - (i) **Loss of Protection:** According to the Collective Bargaining Agreement, the Employee was entitled to 15 days of severance per year. Loss of Protection is calculated similarly to severance. The Employee worked for approximately 5 years and 8 months. We assess compensation of **\$9,884.51** (15 days x 5.67 years x \$116.22 daily rate) .

- (ii) **Notice Pay:** The Employee was paid monthly, as is entitled to receive one month's notice. Compensation for notice pay is therefore assessed at **\$2,815.29.**
- (iii) **Immediate Loss:** An employee who has been unfairly dismissed has a duty to mitigate his loss. It is incumbent on the Employee to submit evidence of the length of time he remained out of work and the efforts made to mitigate his loss. The Employee provided no evidence in that regard. However, we considering the prevailing circumstances, the height of the Covid -19 Pandemic, the country being on lockdown and the scarcity of work, we award the sum of two (2) months wages in the sum of **\$5,630.58** having regard to our award of notice pay.
- (iv) **Manner of Dismissal:** Manner of dismissal refers to the conduct of the Employee which renders the Employee less attractive to secure alternative employment. The evidence does not support a finding being made in this regard. We offer no award under this head.
- (v) **Costs:** Having considered the evidence, no exceptional circumstances exist that would warrant an order for costs being made.

50. We have therefore assessed compensation to the Employee in the aggregate sum of **\$18,330.30.**

Contribution

- 51. In the recent Court of Appeal Decision of **Jacob James v Rubis (formerly Texaco West Indies Limited) ANUHLTAP2022/0001**, the Learned Justices of Appeal held “ **in determining whether to reduce an award of damages by an appropriate percentage, it would be helpful for the court or tribunal to consider: (i) whether there is a finding by the Tribunal that there was conduct of the employee in connection with the unfair dismissal which was capable of being blameworthy; (ii) whether there is a finding that the unfair dismissal was caused or contributed to some extent by the conduct of the employee concerned and (iii) whether there is a finding that it was just and equitable to reduce the assessment of the employee's loss by the relevant percentage. There must be a finding by the Tribunal or court that the unfair dismissal was caused or contributed to some extent by the conduct which informed the employee's dismissal. A lack of this finding is necessarily fatal to any attempt to reduce the compensation or award to any employee for the unfair dismissal.**”
- 52. In the final analysis, we found that the Employee misconducted himself. Therefore, although we find that the Employer acted unreasonably in dismissing the Employee, having considered Section 10 (3) of the Industrial Court Act, we are of the view that

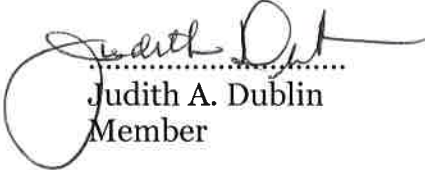
the Employee, by his conduct, contributed to his dismissal. In the circumstances, we reduce the Employee's compensation by 20%.

Order

53. The Employer shall therefore pay to the Employee compensation for unfair dismissal in the sum of **\$14,664.22** on or before the 16th day of March, 2026.



.....
Samantha May Francis
President



.....
Judith A. Dublin
Member



.....
Alando Michael
Member