

IN THE INDUSTRIAL COURT

ANTIGUA AND BARBUDA

REFERENCE NO. C/UD/27 of 2021

BETWEEN

CECIL MATTHIAS

Employee

And

A.S. BRYDEN & SONS (ANTIGUA) LTD

Employer

Before

The Hon. Samantha May-Francis

President

The Hon. Collin R. Maynard

Member

The Hon. Joanne Smith

Member

Appearances

Mr. Warren Cassell, Attorney-at-Law of Warren Cassell Law, holding papers on behalf of Anderson E. Carty of Antigua & Barbuda Tradesmen & United Workers Federation for the Employee

Ms. E. Ann Henry KC of E. Ann Henry Business & Legal Solutions EC for the Employer

2026: February 11

April 24

JUDGMENT

Unfair Dismissal; Whether there existed a genuine redundancy during the COVID-19 pandemic; Whether the Employee was unfairly dismissed; Whether Employee was fairly selected for redundancy; Whether Union engagement alone sufficient to discharge individual consultation obligation; Whether the Employee is entitled to additional compensation

INTRODUCTION

1. This matter comes before the Court by way of a Reference filed by the Employee on August 9, 2021. The Employee complains that he was unfairly dismissed by the



Employer purportedly on grounds of redundancy which took effect on September 30, 2020.

2. The trial commenced and concluded on February 11, 2026. Written Closing Submissions were directed to be filed by March 14th, 2026. The Employer's Submissions were filed by Ms. E. Ann Henry KC on March 4th, 2026. The Employee's Submissions were filed by Anderson E. Carty on March 9th, 2026.
3. The Court has carefully considered the following, namely the oral evidence of Cecil Matthias and Mrs. Lucette James, the Employer's Human Resource Manager; their witness statements; the executed Collective Agreement; the Employer's correspondence bundle to the Union; the Employer's Warehouse Weekly Performance Rating document; the Warehouse Porter Appraisal Form for the Employee; the dismissal letter dated September 23, 2020; the Employee's post-dismissal letter of October 21, 2020; the Closing Submissions of both parties; and all applicable law.

BACKGROUND

4. The Employee was employed by the Employer as a Porter on May 22, 2000. At the time of his dismissal he had accumulated over twenty (20) years of continuous service, making him the most senior Porter in the warehouse department and one of the Company's longest-serving employees.
5. The Employer is a commercial enterprise engaged in retail and wholesale trade. At all material times the Employer had a workforce of over 130 employees. The Employer is a unionised establishment. The Antigua and Barbuda Workers' Union ('the Union') is the recognised and lawful Bargaining Agent for the applicable unit of employees.
6. The Collective Agreement between the Employer and the Union 'the CBA'), being a Memorandum of Collective Agreement covering January 1st, 2020 to December 31, 2022, was executed by the parties and certified as a lawful contract by the Labour Commissioner on May 14, 2020 pursuant to Section K25 of the Labour Code. This CBA was in full force and effect at the time of the Employee's dismissal in September 2020.
7. The last Performance Appraisal conducted in respect of the Employee was the Warehouse Porter Appraisal Form dated October 10, 2019, on which the Employee scored 35/50 (70%). The Employee's individual scores across the ten Key Performance Indicators were as follows, namely six scores of '4' (Consistently meets

normal requirements); three scores of '3' (Does not always meet requirements); and one score of '2' (Unacceptable/Below normal requirements), that being in the category of 'Contributes to proper warehouse upkeep and presentation.' The form was signed by the Employee. The HR Manager did not sign the form and the "Date received in Human Resources Department" was left blank. No performance warning was ever issued to the Employee and no disciplinary action was ever taken against him at any point during his over twenty (20) years of employment.

8. On March 23, 2020, the Employer wrote to the Union the first of several letters notifying of anticipated business disruption from the COVID-19 pandemic. The letter anticipated a loss of up to 40% of business in April, noted the closure of hotels, restaurants and cafés by end of March 2020, and confirmed the Employer was *"unwilling to make any final decisions this month, preferring instead to monitor our sales."* A company-wide lay-off was expressly reserved as a 'last resort'. This letter was not communicated to the Employee.
9. The May 19, 2020, letter to the Union described significant financial challenges including food service sales being down approximately \$1 million monthly; the pharmaceutical division being down; outstanding receivables exceeding \$2 million; and the destruction of wine and spirits stock in a fire. However, this same letter also stated in the following terms. *"We have indications that the majority of hotel clients will reopen in Q4."* This is the Employer's own contemporaneous prediction that business would return by the fourth quarter of 2020.
10. The May 28, 2020 letter to the Union proposed the lay-off (not termination) of eight (8) Bargaining Unit employees. This letter contained a chart identifying each proposed employee and the stated reason for lay-off selection. In respect of the Employee, the stated reason was *"Aptitude and suitability (performance when compared with team members)"* with an effective date of July 1, 2020. The letter was expressly framed as being in response to the provisions of Clause 19 C 1(iii) and (iv) of the CBA. This letter was not copied to the Employee.
11. On August 20, 2020, the Employer wrote to the Union captioned 'Severance', advising that it could no longer recall laid-off staff and intended to terminate the employees. This letter enclosed a severance chart listing the Employee's date of hire as May 22, 2000, Base Wage \$613.41, 20.4 years of service, Severance \$52,486.38 approximated, and 3 payment instalments. The letter stated the Employer was *"satisfied that we have followed the selection criteria provided in the collective agreement, based on performance and productivity."* This letter was communicated to the Employee.

12. The Court has before it the ASB Warehouse Weekly Performance Rating document (the “Warehouse Rating Chart”), which lists all thirty-four (34) warehouse employees ranked by performance score out of 50, with remarks. This document is central to the Employer’s selection case. The Court makes the following critical findings from this document.
13. The Employee, Cecil Matthias, appears at Row 30 with a score of 35. The Remarks column against the Employee’s name records – ‘severed – poor performance.’
14. The employee at Row 31, also scoring 35, bears the remark “*Retained due to Wine/Bond experience. Works Team member.*” That employee was therefore retained notwithstanding his equal score of 35 with the Employee. The employee at Row 32, also scoring 35, was similarly retained due to driving and Van Sales experience. Both employees at Rows 31 and 32 share the identical score of 35 with the Employee yet were retained. The Employee alone among the three was dismissed.
15. The employee at Row 34, with a score of 30, was retained and the decision to sever him was suspended. Of the employees who had a similar or lower score to the Employee, the Employee had the greatest seniority.
16. On September 23, 2020, the Employee was summoned to a meeting at which Mrs. Lucette James (HR Manager) and Mr. Esrome Roberts (Union) were present. The Employee signed the dismissal letter dated that day and wrote contemporaneous annotations confirming he was called “*without prior notice*” and was “*not informed*” of the final position of his Employer. Mr. Roberts signed as witness but said nothing to or on behalf of the Employee at the meeting. The Union’s role was limited to negotiating a reduction in severance payment instalments from three (3) to two (2) after the dismissal decision had already been made and communicated.
17. On October 21, 2020, the Employee wrote a formal letter to Mrs. James requesting a copy of the CBA. The Employer responded in two ways. First “*The company does not give employees the CBA*”; and (ii) “*The CBA was too large a document to copy.*” The Employee cited Sections C2(1) and C5(3) of the Labour Code, which place the obligation to provide a copy of the CBA directly on the Employer, not the Bargaining Agent.
18. The Employer paid the Employee the total sum of \$53,062.20 in two (2) instalments representing Notice Pay of \$613.41 and Severance of \$52,448.79, calculated on the wage rate of \$613.41 per week.

ISSUES FOR DETERMINATION

19. The Court identifies the following issues for determination:

- (a) Whether the redundancy declared by the Employer was genuine within the meaning of Section C3 of the Labour Code;
- (b) Whether the CBA (Clauses 18 and 19) was in force at the time of dismissal and, if so, whether the Employer complied with its mandatory procedural obligations;
- (c) Whether notification of the Union alone was sufficient to discharge the Employer's obligations to the Employee individually;
- (d) Whether the Employee was fairly selected for redundancy, including whether the Employer's own internal Warehouse Rating Chart, which designated the Employee for retention, was properly applied;
- (e) Whether the escalation from proposed lay-off to permanent termination without further consultation was lawful and reasonable;
- (f) Whether the Employer considered and offered alternative employment;
- (g) Whether the Employer's refusal to provide the Employee with a copy of the CBA constituted a further breach of the Labour Code;
- (h) Whether the dismissal was in all the circumstances fair and reasonable; and
- (i) What compensation the Employee is entitled to, having regard to the executed CBA now before the Court.

APPLICABLE LAW

Statutory Framework

20. **Section C3 of the Labour Code** defines 'Redundancy' in the following terms. "a situation by virtue of lack of customers' orders, retrenchment, the installation of labour-saving machinery, an employer's going out of business, a force majeure, or any other reasons, work which a person was last employed to perform has ceased or substantially diminished."

21. **Sections C2(1) and C5(3) of the Labour Code** require the Employer to provide each employee covered by a Collective Agreement with a copy of that Agreement. This obligation rests squarely with the Employer and is not discharged by directing the employee to the Bargaining Agent.
22. **Section C42(2)(a)(b) and C42(3)** provide for lay-off as a proportionate response to a temporary reduction in work, preserving employment rights and rights of recall.
23. **Division G of the Labour Code** establishes the Trade Union as a representative statutory agency for collective bargaining. The Union cannot, without the individual employee's consent, waive that employee's individual rights or substitute for his individual right to be consulted.

The Collective Agreement for the period January 1, 2020 to December 31, 2022

24. The executed CBA is before this Court. It was certified by the Labour Commissioner on May 14th, 2020, four months before the Employee's dismissal, and was therefore in full force and legal effect at all material times. Clause 18(a) provides for severance at 21 days' basic pay per year of service for employees with 6 or more years of service. Clause 18(c) and Clause 19(c) each require that whenever the workforce is to be reduced, "*affected employees AND their Union representative will be duly notified,*" and that the Employer shall consult as early as practicable on measures to AVERT OR MINIMIZE adverse employment effects. Clause 18(d) provides that where dismissal is proven unfair, compensation is to be calculated in accordance with the Severance Pay table. Clause 19(b) prescribes ability and suitability, and seniority as the factors for lay-off selection. Clause 23 provides for wage increases of 3.0 percent in Year 1, 2.5 percent in Year 2, and 3.0 percent in Year 3.
25. The Court emphasises that Clause 19(c) of the CBA uses the word "**AND**", that is "*Affected employees AND their Union representative will be duly notified.*" This conjunctive language imposes separate and independent obligations, namely to the employee, and to the Union. Notification of the Union alone does not discharge the obligation to the employee. The Court so holds.

Applicable Legal Principles

26. Both parties rely on *Williams v Compair Maxam Ltd* [1982] ICR 156 (EAT) for general redundancy principles. The Employer additionally relies on *Williams v Curtain Bluff Hotel*, Reference No. C/85 of 2017 (Industrial Court of Antigua and Barbuda). Both parties also reference *Conroy Joseph v Flat Point Development Ltd* (Industrial Court Ref. No. 10 of 2013) and *St. James's Club Ltd v Sundry Workers* (ANULTAP2018/0005) (ECSC Court of Appeal).

27. From these authorities, the Court extracts the following applicable principles:

- (a) Even where a genuine redundancy situation exists, the termination must constitute a reasonable response in all the circumstances;
- (b) The Employer must genuinely and meaningfully consult with each affected employee and with the Union before a decision to dismiss is implemented;
- (c) The Employer must apply a fair, transparent and objective selection process and communicate the criteria to the employee;
- (d) The Employer must genuinely consider and offer alternative employment; and
- (e) Dismissal is a measure of absolute last resort.

DETERMINATION

Was the Redundancy Genuine?

28. The Court accepts that the COVID-19 pandemic created genuine disruption to the Employer's business operations, including restricted trading hours, loss of clients, reduced Food Service Division revenues, and a cash flow challenge from outstanding receivables. The Employee himself accepts the pandemic affected the Employer's business and that group consultations were held in which the financial position of the Employer was discussed.

29. Additionally, the Court is satisfied based on the contemporaneous letters written by the Employer to the Union advising of the challenges the Employer faced and reduction in the Employer's financial forecast. We also note that the Employer in a letter dated May 28, 2020, indicated that it had opened its financial books and record to the Union in support of their contention that the Employer had been plunged into significant financial losses.

30. The Employee contends that a Porter's role can never be truly redundant, as the function is integral to the Employer's operation. The Court does not accept this contention. A redundancy arises where an employer requires fewer employees to carry out work of a particular kind. A reduction in the number of Porters required, as opposed to the elimination of the Porter function entirely, is a recognised form of redundancy. The fact that some Porters were retained does not negate the genuine redundancy of the particular positions that were eliminated. The Court finds, on the evidence of Mrs. James, that a genuine redundancy existed and that the warehouses

continued to operate with reduced staff for a period in excess of twelve months following the redundancies. The Court is accordingly satisfied that the redundancy was genuine.

Issues (ii) and (iii): Procedural Compliance and Individual Consultation

31. The CBA was certified and in full legal effect on the date of the Employee's dismissal. The Court acknowledges that the Employer did not act in complete disregard of its workforce. On or about March 16, 2020, the Managing Director of the Employer, Ms. Frances-Ann Minors, held the first of several all-staff meetings which the Employee personally attended. At that meeting she discussed and explained the business situation arising from the COVID-19 pandemic and the approach the Employer proposed to take. The Union representatives were in attendance.
32. Over the following months the Managing Director held no fewer than four such all-staff meetings, updating both staff and the representatives of the Union on the ways in which the Employer was seeking to mitigate the situation. In addition, the Employer conducted multiple rounds of written consultation with the Union across a period of several months through five letters between March and August 2020, progressively disclosing the financial position, the proposed lay-off, and ultimately the decision to terminate. The Court accepts that these steps were taken in good faith at the collective level.
33. The critical question, however, is whether collective and group-level staff consultation, however extensive, was sufficient to discharge the Employer's obligations under the CBA and the Labour Code to the Employee individually. The Court finds that it was not, for the reasons that follow.
34. None of the Employer's letters submitted to the Union (March 23, April 2, May 19, May 28, and August 20, 2020) were copied to the Employee. No individual meeting was held with him about his employment risk at any time from March to September 22nd, 2020. This is formally conceded in the Employer's own Memorandum in the following terms. *"It is accepted that there was no prior consultation with the Employee nor was he offered alternative employment by the Employer."*
35. Both Clauses 18(c) and 19 (c) expressly impose obligations on the Employer to notify *"employees AND their Union representatives"* whenever the workforce is to be reduced. The conjunctive obligation to the employee was never discharged. It does not matter how thoroughly the Union was engaged if the employee himself was never told his position was at risk.

36. The Court notes that Clause 19(c)(2) mandates prior consultation on measures to AVERT OR MINIMIZE adverse employment effects. No such consultation occurred with the Employee. In light of this obligation, alternatives such as extended lay-off, further hours reduction, redeployment, or voluntary arrangements were never discussed with him personally.
37. The Employer's central procedural defence is that engagement with the Union, as Bargaining Agent, was legally sufficient to discharge its obligations to the Employee. The Court rejects this defence. First, Division G of the Labour Code is explicit in that the Union acts as a "*representative statutory agency*" for collective bargaining. This does not authorise the Union to waive individual contractual rights of employees without their express consent. The employment contract subsists between the Employer and the Employee directly.
38. Second, Clause 19(c) of the CBA expressly provides as follows. "*Affected employees AND their Union representative will be duly notified.*" The Employee in his own right in the was entitled to be notified beforehand, that he had been selected for redundancy. This language cannot be read to permit notification to the Union alone.
39. Third, the Union's negotiation of the severance payment by instalments at the September 23rd meeting was not consultation on the decision to dismiss. Consultation must be genuine, timely, and prior to the decision being made. By September 23rd the decision was made, the letter was printed, and the Employee was dismissed. The Union's attendance does not cure the months of procedural exclusion that preceded it -*Williams v Compair Maxam Ltd* [1982] ICR 156; *St. James's Club Ltd v Sundry Workers* (ANULTAP2018/0005). In any event, this is confirmed by the Employer's evidence whereby it acknowledged the Union official was present solely to administer severance calculations and payment terms, expressly stopping short of asserting that the Union had agreed the selection or the dismissal were fair. The Union's role on September 23rd was not consultative for the benefit of the Employee in true sense of consultation.
40. The Court therefore the Employer in breach of the CBA and of the Labour Code. These breaches, individually and collectively, contribute to the dismissal being unfair.

Fairness of Selection and The Warehouse Rating Chart Finding

41. The Employer adduced in evidence its internal ASB Warehouse Weekly Performance Rating document. This document, being the Employer's own internal selection record, designates the Employee as a candidate for retention. Yet, the Employer

selected him for dismissal while retaining colleagues with identical and lower scores, recording in 'Remarks' column- severed-poor performance.

42. Further deficiencies in the selection process are as follows. The stated selection reason for the Employee in the May 28th lay-off chart was "*Aptitude and suitability (performance when compared with team members)*." However, when the Warehouse Rating Chart is examined, employees with scores of 30, being five points below the Employee, were retained or had their severance suspended. The Employee, with a score of 35, received less favourable treatment than employees with lower scores who were not severed and for which no reasonable explanation was provided.
43. The Clause 19(b) selection criterion of 'Seniority' was not applied in the Employee's favour. He was the most senior Porter with over 20 years of service. The LIFO principle cuts decisively against his selection for redundancy.
44. The selection criteria and the Warehouse Rating Chart were never communicated to or discussed with the Employee personally.
45. The Court finds that the selection of the Employee for permanent termination was arbitrary, internally inconsistent, contrary to the LIFO principle, and based on criteria never disclosed to him. The Employee's selection for redundancy was unfair.

Escalation from Lay-Off to Termination

46. By May 28, 2020, the Employer had proposed a lay-off with specified effective dates. It is common ground, that a lay-off preserves employment rights and the right of recall under Section C42. By August 20, 2020, the Employer escalated to permanent termination without any further consultation with the Employee, without providing any explanation to him, and without revisiting whether the lay-off option remained viable.
47. The Employer's explanation (paragraph 20 of its Closing Submissions) is that by August it could no longer recall laid-off staff. Even if the Court were to accept this, there still remains some unaddressed matters. First, the Employee was never informed of this change. Second, the change from lay-off to termination was a far more severe consequence and demanded heightened, not reduced, consultation. Third, Section C42 of the Labour Code expressly permits lay-offs for extended periods with a precise date of recall, a mechanism never properly explored.

48. The Court finds that the escalation from proposed lay-off to permanent termination, without any notification to or consultation with the Employee, constitutes a further ground of unfairness.

Alternative Employment

49. The Employer's own Memorandum concedes no alternative employment was offered. Clause 14 of the CBA requires management to fill vacancies from existing staff where suitably qualified and to post vacancies on the notice board. There is no evidence that the Employer applied its mind to whether any suitable alternative position was available for a Porter with 20 plus years of service and a 70% performance rating, within an enterprise of more 130 employees. This failure was unreasonable and constituted a breach of the CBA.

Refusal to Provide the CBA

50. After his dismissal took effect on September 30, 2020, the Employee formally requested a copy of the CBA from the Employer by letter dated October 21, 2020. The request was made in circumstances where the Employee had not yet received his full severance entitlement, the Employer's August 20, 2020 letter had proposed payment in three instalments, subsequently negotiated to two, and the final instalment had not yet been paid at the time of the request. The Employee therefore had a live and immediate need to access the instrument governing his entitlements. The Employer responded that it does not provide employees with a copy of the CBA and that the document was too large to copy. The Court finds both justifications to be without merit.

Overall Fairness of the Dismissal

50. The Employer did not act reasonably in all the circumstances. Having regard to the totality of the findings above, the Court finds and declares that the dismissal of the Employee was unfair.

COMPENSATION

Applicable Wage Rate

51. The Court is required to determine the Employee's correct basic pay for the purposes of calculating the Employee's entitlements. The Employee Memorandum and Mrs. James's Witness Statement both give the Employee's last weekly wage as \$613.21. The Employer's August 20, 2020 severance letter and the payment actually made to the Employee records a figure of \$613.41. The difference is EC\$0.20.

52.The Court adopts \$613.21 per week as the correct wage, being the figure consistent with the evidence of both parties. Additionally, the Court notes that the CBA had been executed by the Parties since March 2020 and certified by the Labour Commission in May 2020. The Court is therefore accepting Mrs. James' evidence that the Employee had already received his percentage increase to his wage for 2020 at the time of his dismissal.

Loss of Protection

53.The Employee was employed from May 22, 2000 to September 30, 2020, a period of 20.36 years of continuous service. In accordance with Clause 18(a) of the CBA, the Court awards severance at 21 days' basic pay per year of service in the sum of \$52,435.96 (20.36 years × 21 days × \$122.64 per day).

54.The Employer paid \$52,448.79 on account of severance; an overpayment of under of \$12.83.

Notice Pay

55.The Employee is entitled to one week's notice pay at the corrected wage rate of **\$613.21**. The Employer paid \$613.41 on account of notice; an overpayment of \$0.20.

Immediate Loss

58.Immediate loss is the loss suffered by an employee between the date of dismissal and the date of the Court's assessment. It is a retrospective head of compensation directed at loss that has already crystallised. The duty to mitigate is relevant to this head, and the absence of mitigation evidence does not necessarily extinguish the award, though whether it does so will depend on the particular facts and circumstances of each case.

59.The Employer's complete failure to notify or consult the Employee individually throughout the seventh -month period preceding his dismissal that he was at risk for lay-off and or subsequent redundancy meant that he had no forewarning of his impending dismissal and therefore no meaningful opportunity to begin seeking alternative employment before he was dismissed.

60.Additionally, having regard to the prevailing economic conditions at the date of dismissal in September 2020 and the Employee's over twenty years of continuous service with a single employer, which would potentially have made immediate re-employment in comparable roll less attainable, the Court awards a sum equivalent to 16 weeks wages being **\$9,811.36** (\$613.21 × 16).

Future Loss

61. Future loss is compensation for the continuing loss of earnings from the date of this Judgment going forward. To establish this head, an employee must place before the Court evidence of his current employment status and earnings as at the date of assessment. Without this evidence the Court has no principled basis on which to make a forward-looking assessment.
62. In the present case the Employee was dismissed in September 2020 and this trial was heard in 2026, a period of approximately five and a half years. The Employee placed no evidence before the Court of his current employment status or earnings, his employment prospects going forward, or the state of the labour market for a Porter of his experience. The request to recall the Employee to give evidence was refused for the procedural reasons recorded later in this Judgment. In the total absence of any material from which a forward-looking assessment can be made, the Court makes no award under this head.

Fringe Benefits

63. The Employee claims the negotiated increases for January 2021 at 2.5% and 3% from January 2022. The Court finds that the Employee was not in employment during 2021 or 2022, having been dismissed with effect from September 30, 2020. There is no basis upon which the Employer can be required to apply wage increases to a period of employment that had already ended. No award is made under this head.

Exemplary Damages

64. The Court has jurisdiction to award exemplary damages under the Industrial Court Act. The applicable principles were authoritatively stated by the Judicial Committee of the Privy Council in *Antigua and Barbuda Transport Board v Anderson Carty* [2025] UKPC 38.
65. The Court accepts that there were procedural failures in the dismissal of the Employee but in the Court's view these failures were not the product of deliberate bad faith or a calculated intention to strip the Employee of his rights. The Employer engaged in good faith at the collective and group level over several months, and the unprecedented nature of the pandemic context is acknowledged. Additionally, the Employer's belief that the Union was actively engaging with the Employees selected for redundancy. While not excusing the individual consultation failures, the Court considers that a modest award under this head is appropriate. Therefore, applying the proportionality principle equally affirmed in *Antigua and Barbuda Transport Board v Anderson Carty* [2025] UKPC 38, the Court awards exemplary damages in the sum of **EC\$2,500.00**.

Costs

66. The Court is of the view a cost award is warranted for the same findings upon which the award of exemplary damages has been grounded. The Court therefore awards the sum of \$1,500.00.

ORDER

67. For the reasons set out above, the Court makes the following Orders.

- (i) The Employee is entitled to compensation in the sum of \$66,860.53 broken down as follows:

Loss of Protection	\$52,435.96
Notice Pay	\$ 613.21
Immediate Loss	\$ 9,811.36
Exemplary damages	\$ 2,500.00
Cost	<u>\$ 1,500.00</u>
Total	<u>\$66,860.53</u>

- (i) The sum of \$66,860.53 is subject to the sum of \$53,062.20, comprising severance of \$52,448.79 and notice pay of \$613.41 (inclusive of the overpayments of \$12.83 and \$0.20) leaving a residual sum of \$13,798.33 due to the Employee.
- (ii) The Employer shall pay the additional sum of **\$13,798.33** to the Employee on or before the 25th day of May, 2026.

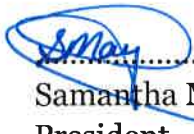
NOTE ON MITIGATION EVIDENCE

68. The Court wishes to record the following procedural ruling made during the course of the trial. Following the amplification of the Employee's witness statement, cross-examination, and re-examination, and upon the Employee having formally closed his case, learned Counsel Mr. Cassell applied at the opening of the Employer's case for leave to recall the Employee to give evidence of mitigation.

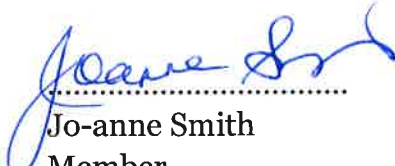
69. Learned Counsel Ms. Henry KC objected on the basis that the Employee had closed his case and that there was no evidential foundation before the Court upon which mitigation evidence could be introduced and tested in cross-examination. The Court upholds that objection. The Employee had ample opportunity to place mitigation evidence before the Court in his Memorandum of Claim, his Witness Statement, and during examination in chief, and did not do so. To have permitted the Employee being recalled at that stage would have been fundamentally unfair to the Employer

and would have undermined the orderly conduct of the proceedings in a manner that could not be cured by cross-examination alone. The application was refused.

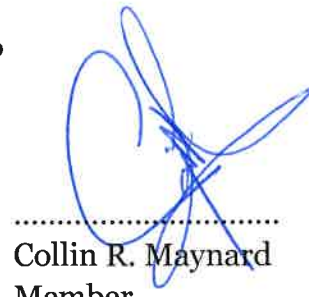
Dated the 25th day of April, 2026



Samantha May-Francis
President



Jo-anne Smith
Member



Collin R. Maynard
Member

Delivered by the Hon. Collin R. Maynard