

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 27 of 2024

BETWEEN

JANICE HODGE

Employee

and

STATE INSURANCE COMPANY LIMITED

Employer

Before:

The Hon. Samantha May-Francis
The Hon. Judith A. Dublin
The Hon. Charlene Selkridge

President
Member
Member

Appearances:

Mr. Justin L. Simon KC of Simon Rogers Murdoch, Attorneys-at-Law for the Employee
Ms. Samantha N. Marshall with Ms. Talia N. DaCosta of Stapleton Chambers and Ms.
Adonna Greenaway-Mussington of State Insurance Company Limited, Attorneys-at-Law
for the Employer

2025: October 27
2026: March 20

The Employee an Executive Manager of the Employer an insurance company in which the Government of Antigua and Barbuda is the majority shareholder- Employee was summarily dismissed- Employer alleges that errors and misreporting had caused a \$9.8 million restatement of its financial statements-Employer alleges Employee breached section 173 of the Companies Act No. 18 of 1995 by failing to notify the Audit Committee or Auditor of the error – Employer alleges this amounted to misconduct under Section C59(1) of the Labour Code . The Employee denied misconduct and relied on Section C10 of the Antigua and Barbuda Labour Code- Whether the employer is estopped from advancing any reason for dismissal- Was the Employee unfairly dismissed and entitled to compensation

JUDGMENT

May-Francis, P



Introduction

1. By a Reference dated July 3, 2024, the Employee commenced a claim against the Employer. In her Memorandum filed on the said date, the Employee alleged that on November 13, 2023, she was dismissed by the Employer, that her dismissal was unfair and that she is entitled to compensation for Unfair Dismissal. In their Memorandum filed on July 26, 2024, the Employer contends that there was no unfair dismissal and that the Board of Directors were justified in dismissing the Employee for misconduct.

Background

2. The Employer, State Insurance Company Limited (SICL), was the first indigenous insurance company established in Antigua and Barbuda in 1977 by the Government as a Government Department. Pursuant to the State Insurance Corporation Act, Cap 413, the Department was transformed into a Statutory Corporation. At the time of writing this judgment, the Employer had 48 years of service providing insurance products to the people of Antigua and Barbuda, including Life and Medical, Property, Motor, Contractors All-Risk, and more.
3. On June 15, 2018, the Employer transitioned yet again from a Statutory Corporation to a limited Liability Company, transferring all its assets and liabilities pursuant to the State Insurance Corporation (Transfer of Assets and Liabilities) Act No. 3 of 2011.
4. The Employee commenced her employment with the Employer before that transition on August 15, 2012. The employment relationship lasted approximately 11 years and 3 months, ending with her dismissal on November 13, 2023. On October 8, 2020, the Employee was advised that, effective immediately, her Job Title will be Executive Manager, Life and Medical, reporting to the Chief Executive Officer, who at the time was Mrs. Lyndell Francis-Butler.
5. The Employee at the date of her dismissal earned a monthly salary of \$12,985.42 and allowances totaling \$2,100.00.
6. According to the Employee's Job Description, she was responsible among other things for managing the processes of insurance data collation and the development of new products; managing the process of statistical data within the department, communicate with other department managers pertaining to issues related to claims and processing and vice versa; preparing Underwriting and Claims statistics and analyses required by management including claims, cost, average claim ratio.
7. The Employee was also, by virtue of the position she held, an ex officio member of the Employer's Underwriting Sub-Committee.
8. In the course of her employment, the Employee was responsible for submitting to the Employer's Actuary, Mr. Paul Ngai, data from the Life and Medical Department every quarter for him to prepare quarterly and annual valuations of the Employer's policy liabilities. It is this annual evaluation upon obtaining the Actuary's certificate that the Chief Financial Officer (CFO) uses in preparing the Employer's financial statements.

9. When the Employee commenced her employment, the Actuary engaged by the Employer was Mr. Paul Ngai of Prescience Insurance Consultants based in Canada. Later, by the time the Employee was dismissed, the Employer's Actuary was Mr. Sylvain Goulet of Eckler, also based in Canada.
10. On February 21, 2020, Mr. Paul Ngai sent an email to the Employee, copied to Mrs. Francis-Butler, along with officers within the Life and Medical Department, asking the Employee to verify the active policies, as his list of "in force" policies contained inactive policies. 'In force' means active policies. He further requested that, if these policies had in fact been terminated before being removed from his 'in force' list, he required a signed letter from management confirming their termination.
11. Thereafter, there was an internal review of the active policies of the Employer. The review showed that, based on the Employer's record, there were 782 inactive policies, compared to the Actuary's record of 404 inactive policies. The Employer's review confirmed that there had been no payment activity since the policies were issued, which explains their inactive status. The Employee having conducted that review, advised Mr. Ngai and provided him with the termination dates of the policies.
12. However, before Mr. Ngai could represent these policies as inactive from his 'in force' list, the policyholders needed to be notified. As such, on Mr. Ngai's instruction, the Department under the supervision of the Employee undertook an exercise to inform policyholders of the termination of their policies. By August 20, 2020, the Employee verified that their list of lapsed policies previously submitted to Mr. Ngai on March 23, 2020, was correct.
13. On March 19, 2021, the Employee, in meeting the Department's continuous obligation to submit the data to Mr. Ngai, confirmed the lapsed policy status as of December 10, 2020, which was submitted to Mr. Ngai on the same date.
14. Thereafter, there appeared to be no further issues until the termination of Mr. Ngai's services as Actuary and his replacement Mr. Goulet of Eckler was engaged. Mr. Ngai's services were terminated at the end of his contractual period in December 2021. The Employer seemingly had concerns about the accuracy and quality of his services rendered between 2019 and 2020 in relation to the winding-up of the Employer's Pension Plan product. The Board of Directors were of the view that the actuarial evaluation provided by Mr. Ngai regarding the winding up of the Pension Plan was unreliable. The Board of Directors recommended that the Management end the relationship with Mr. Ngai.
15. This was not, however, immediately done as it appears that Mrs. Francis-Butler, the then CEO and the Employee, members of the Underwriting Committee in October 2020, had the view that Mr. Ngai had performed efficiently as it related to the Life and Medical portfolios of the Employer. Any inaccuracies drawn to his attention were rectified. He was engaging and provided timely feedback. Also, it was noted that Mr. Ngai had then been providing his services to the Company in excess of 20 years.
16. The Chairman of the Board and witness in this matter, Ms. Leslie-Ann Yearwood, during a Board meeting in October 2020, expressed her concerns about continuing

a relationship with Mr. Ngai. The Employer has discovered that the Canadian Institute of Actuaries had sanctioned him for alleged unprofessional conduct in relation to the CLICO policyholders following a complaint made against him in July 2016. In any event, the Board unanimously agreed that Mr. Ngai would be allowed to close out the matters he had been working on; thereafter, his contract would not be renewed.

17. In May 2021, during a meeting of the Board, it was reported that Mr. Ngai was still required to conduct the valuations for 2021 despite his contract coming to an end in December 2021. The Board gave its consent for the new actuary, Mr. Goulet, to contact Mr. Ngai for a handover.
18. By January 2022, Mr. Goulet commenced his review of the Employer's Medical and Life Policy portfolio. On January 19, 2023, Mr. Goulet contacted the new CEO, Ms. Arian Nicholas, regarding his concerns about the ongoing Actuarial Review. By that time, Ms. Nicholas had held the position for six (6) months, having been appointed CEO in July 2022. According to an email from Ms. Nicholas to the Employee and Chief Financial Officer (CFO), Mr. Andre Knight, Mr. Goulet believed the Department was in a 'disarray' regarding policy data.
19. On February 23, 2023, Mr. Goulet produced a report titled Structural Review of State Insurance Limited and Recommendation (the Report). We will revert to the Report later in the judgment.
20. Having received the Report, Ms. Nicholas shared the same with the Employee. The Report was also brought to the Board's attention. Thereafter, on April 3, 2023, the Employee, along with the Risk Manager, Cassandra Vidal-Powell, presented to the Board on the issues raised in the Report. The Employee continued to work with Mr. Goulet to address the problems, and the Life and Medical Department prepared the 2022 year-end file, enabling Mr. Goulet to complete the 2022 year-end evaluation. The 2021 year-end evaluation conducted by Mr. Ngai was also reconstructed, and Mr. Goulet re-stated it.
21. Things, however, took a turn on November 7, 2023, when the Employee was invited to a meeting of the Board held virtually. During the meeting, the Employee was advised that disciplinary action would be taken against her for allegedly making errors and providing misinformation to the former Actuary, which led to the restatement of the Employer's financials.
22. On November 13, 2023, the Employee was called into a meeting, and the Employer dismissed her.

The Employee's Contentions

23. The Employee contended that since the appointment of Ms. Leslie Ann Yearwood as Chairman of the Board, she was harassed. This harassment culminated in her being placed on a performance improvement plan on two occasions, May 14, 2019, and February 1, 2021. According to the Employee any error in reporting was a result of inadequacies of the software, which were known to the Employer for many years. She testified to providing the then Actuary Paul Ngai all the information which he requested in relation to lapsed, surrendered, new

business, cancellation and reinstated policies. There was never a request for a policy count.

24. The Employee contended that the error noticed in the list of 'in force' policies maintained by Mr. Ngai was discovered by her following a request from the Financial Services Regulatory Commission (FSRC) for verification of the Company's policy count. It was then she noticed that the 'in force' list maintained by Mr. Ngai and the record of the Company differed. Upon realising the error, she referred the matter to the CEO and CFO and immediately took steps to rectify the mistakes.
25. Her evidence is that although she was responsible for providing Mr. Ngai with the information requested, she did not receive a copy of the Valuation Reports that he generated; it was sent to the CEO and CFO.
26. On April 3, 2023, having received Eckler's report with the assistance of the Chief Risk Officer, she made a presentation to the Board of Directors addressing the issues identified in the report. It was her belief then that it was accepted that the error was that of Mr. Ngai and not because of the information which she provided.
27. However, on November 7, 2023, she was invited to a meeting. During that meeting, Ms. Yearwood, the Chairman, informed her that disciplinary action would be taken against her for failing to notify the Board of the error. Her employment was summarily terminated on November 13, 2023, but she still does not know the reasons for her dismissal.

The Employer's Contentions

28. The Employer alleged and contended under the Employee's supervision, errors and misreporting emanated from the Life Department, resulting in the misstatement of the Employer's financials. Further, the Employee failed to disclose financial information which had a significant and adverse impact on the Company and its financial reports. Accordingly, the restatement of its financial reports damaged the Company's reputation and denied the Company the opportunity to make informed decisions, thereby placing the Employer at risk.
29. Additionally, the Employee's actions in not reporting the error to the Auditor of the Company were a breach of Section 173 of the Companies Act. No. 18 of 1995, which required the Employee as an officer of the Company to report any error or misstatement she was aware of to the Audit Committee or Auditors. The Employee having knowledge of the error since 2020 failed to correct the errors in subsequent years.
30. In or about November 2021, the Employer engaged the services of Mr. Goulet of Eckler to perform actuarial services. His report was submitted in December 2022. Subsequently, on April 3, 2023, the Employee and the Chief Financial Officer were invited to a meeting of the Board to discuss the contents of the report.
31. The Employer engaged the services of its external Auditors who in turn had to engage an independent actuary to verify the data and information. A decision was made in September 2023 to restate the financials of the Company.

32. Thereafter, the Employer met with the Employee on November 7, 2023; to allow her an opportunity to explain why she did not inform the Board of the error back in 2020 which ended up in the restatement of the Employer's financial statement for the year 2021.
33. Furthermore, the Employer had been previously lenient in its treatment of the Employee in past performance challenges. In the end, the Employee's failure to escalate critical financial information eroded the Employer's trust and confidence in her as an Employee in a leading role.
34. Finally, the Employee's actions amounted to serious misconduct, and the Employee was justly summarily dismissed pursuant to Section C59 (1) of the Antigua and Barbuda Labour Code.

The Issues:

35. The main issues which require determination have been identified as follows:

- (i) Did the Employer provide the Employee with a precise reason for her dismissal in its letter dated November 13, 2023, as required by Section C 10 of the Antigua and Barbuda Labour Code?
- (ii) Did the Employee misconduct herself in the execution of her duties, giving rise to sufficient cause for summary dismissal?
- (iii) Was the decision to terminate the Employee reasonable in the circumstances?
- (iv) Is the Employee entitled to compensation?

Applicable Law

36. An Employee who completes her probationary period has the right not to be unfairly dismissed without cause. An employer who thereafter wishes to dismiss an employee must demonstrate that there is a factual basis for the dismissal for the assigned reason and that it acted reasonably in dismissing the employee.

37. Section C56 of the Labour Code states:

"Every Employee whose probationary period with an employer has ended shall have the right not to be unfairly dismissed by his employer without just cause".

38. Section C58 (1) sets out what constitutes good cause for dismissal, including misconduct on the part of an employee. The section provides:

"(1) A dismissal shall not be unfair if the reason assigned by the employer therefor,

- a. ***Relates to misconduct of the employee on the job, within the limitations of section C59(1) and (2);***
- b.
- c.

- d.
- e.

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

(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."

39. Section C59 (1) reads:

"An employer may terminate the employment of an employee where the employee has been guilty of misconduct in or 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 clearly demonstrate that the employment relationship cannot be reasonably expected to continue***
- b.
- c.

Resolving the Issues

Section C10 of the Antigua and Barbuda Labour Code

40. The Employee contended and Learned King's Counsel, Mr. Justin Simon, argued that the termination letter does not precisely state the reasons for the dismissal. In her evidence, the Employee testified that, to date, she is unsure of the reasons for her termination.

41. Section C10(4) of the Antigua and Barbuda Labour Code establishes an estoppel that prevents an employer from introducing evidence to justify a dismissal if they fail to provide a precise written statement of the reasons for termination. It has been determined that an Employer is conclusively bound by the reasons it has provided in the dismissal letter or statutory statement setting out the reasons for dismissing an employee. They cannot later add new reasons or alter their justification when the matter is being presented in court.

42. The Court has examined the dismissal letter, which was signed by Ms. Yearwood, to determine whether the Employer has satisfied the statutory requirements under Section C10 of the Labour Code. The salient parts of the dismissal letter have been reproduced below:

Paragraph 2- “Our decision was not taken lightly and resulted from a comprehensive review and investigation into the error emanating from the Life Department, resulting in the material misstatement of our financials”

Paragraph 3“...it has come to our attention that you have failed to disclose crucial information that has had a significant adverse impact on the company. Specifically, your failure to disclose important financial information led to the restatement of our financials by a substantial \$9.8 million...”

Paragraph 4- In accordance with section 173, it is the duty of an officer of the company to immediately notify the audit committee and the auditor of any error or misstatement he/she becomes aware of in the financial statements, a duty which you breached. It should be noted that the data contributed to the misstatement originated from a department led by you, and consequent reports directly relate to that department’s performance. Furthermore, you were aware of the error and did not correct it in the respective or subsequent years. While the Board of Directors has extended leniency in the face of numerous performance challenges in the past, the gravity of the restatement, compounded by your failure to disclose this critical information to the Audit Committee and the Auditors, leaves us with no alternative but to part ways.”

Paragraph 5- “Your failure to escalate critical information and known areas of misstatement/misrepresentation clearly violates your responsibilities.... It has eroded the trust and confidence that the shareholders and the Board of Directors placed in you....”

Paragraph 6 “As such, we must terminate your employment with State Insurance Company Limited, effective immediately, for serious misconduct per section C59 (1) (a) of the Antigua and Barbuda Labour Code.”

43. It is not for this Court to engage in a surgical exercise to extract from the dismissal letter the possible reasons for the dismissal. The reason for the dismissal must be clear and precise to an employee in the first place and subsequently to the Court should a Reference be brought before us for the determination of the fairness of a dismissal.
44. The dismissal letter however does not state the alleged error the Employer claims the Employee committed, or the misreporting the Employer alleges the Employee committed. While the letter mentions a "\$9.8 million restatement", it fails to identify the actual error, the specific incorrect data, or the precise misstatements, or dates where the Employee allegedly committed the errors. Citing a \$9.8 million restatement is the outcome of an error, not the precise act of misconduct itself. Even if the Employee knew what the \$9.8 million referred to, the law requires the dismissal letter itself to be the definitive record.

45. In her written submissions, Learned Counsel Ms. Marshall refers to the material errors in the policy count, numerous data errors and discrepancies such as age and gender etc. This was never stated in the disciplinary letter.
46. Additionally, the Employer alleges a failure to disclose “important financial information and “critical information and known areas of misstatement and misrepresentation” but leaves that information unidentified. It does not state what specific information, misstatements, or misrepresentations were withheld. The same pertains to the allegation of failure to escalate critical information. The Employer did not identify or provide any particulars of the critical information withheld.
47. The Court reminded itself of the landmark decision of **Margaret Berridge and Dave Edwards v Benjies Business Centre – Privy Council Civil Appeal No. 51 of 1995**) in which their Lordships agreed with the dictum of Justice Byron (as he then was) stated: “... **the purpose of section C10 is not merely to ensure that the employee is given reasons for termination of the employment. It requires those reasons to be given in a form which can be readily identified for the purpose of subsequent proceedings testing the fairness of the dismissal.**”
48. In the Court’s view, the dismissal letter fails to satisfy section C10 in respect of every reason it advances, including, and we address this expressly, the section 173 allegation which the Employer treated as a centerpiece of its case. We acknowledge that the citation of a specific statutory provision in a dismissal letter is capable, in principle, of providing a sufficiently precise reason for dismissal if the factual basis for the alleged breach is identified with particularity.
49. A bare reference to a statutory duty, however, is not itself a statement of the specific act or omission said to constitute the breach. Paragraph 4 of the dismissal letter invokes section 173 and asserts that the Employee failed to notify the Audit Committee and Auditors of an error she was aware of. It goes further by recording that the Employee had asserted she only had a duty to inform the CEO and the CFO.
50. The requirement as confirmed in **Berridge**, is that the reason for the dismissal be stated in a form that can be readily identified for the purpose of proceedings testing its fairness. Recording the Employee’s explanation or defence and contradicting it is not the same as identifying the reason for the dismissal with the required particularity.
51. The Court is of the view that the dismissal letter does not say what specific error or misstatement the Employee became aware of; the date on which that awareness arose; what information she specifically failed to disclose; to whom she should have made that disclosure and when; or how the alleged breach of section 173 is connected to any identifiable act or omission on her part.
52. The \$9.8 million figure cited in the letter is the financial outcome of the restatement is not a description of the misconduct itself. An employee reading that letter could not know, with the precision required by section C10, what specific

failure she was being dismissed for. Equally, this Court cannot test the fairness of a section 173 allegation that names a duty but provides no factual account of how it was breached. The broad and unparticularised assertions of poor performance, breach of trust, and misconduct suffer from the same deficiency. The dismissal letter cannot be readily used by this Court to test the fairness of the dismissal.

53. In the end the Court determined that the Employer's letter is a collection of conclusions — "breach of trust," "misconduct," and "unsatisfactory performance" — without the supporting factual architecture required by the Code. The section 173 ground, while more specific in its statutory citation, is equally deficient in its factual particulars: it states a legal duty and a financial result but not the specific act of non-disclosure, the date of awareness, or the precise information withheld. It therefore falls at the same hurdle. Additionally, by broadly alleging performance issues, breach of trust, and misconduct all at once without particularization, created another layer to the reasons for the dismissal being unclear.
54. Based on our finding that the dismissal letter does not meet the requirements of Section C10, the Employer is estopped from giving any further evidence, and this Court finds and declares that the Employee was unfairly dismissed.
55. In the event the Court is wrong and considering that there was a full trial of this Reference, we proceeded to examine the other issues identified for resolution.

Did the Employee misconduct herself and or failed to perform her duties?

56. The Employee was dismissed summarily. There is no doubt that under section C 58 (1) of the Labour Code, serious misconduct is a potentially good cause for dismissal, subject always to the proviso that there is a good factual basis for that assigned reason. Clearly, this is a question of fact to be determined on the balance of probabilities, based on the witnesses' oral testimony and documentary evidence.
57. The Employer, in justifying the dismissal, relied on evidence of Ms. Yearwood and Ms. Nicholas. The Employer also relied on letters submitted by the Employee verifying the Lapsed Whole Life Policies, a bundle of emails, the extracts of the Minutes of the Board Meetings and the Audit Committee meetings held between 2019 and 2021 and the report from Mr. Sylvain Goulet of Eckler. It is this Report that the Employer's witnesses relied on during their oral testimony as the investigative report and on which the Employee was dismissed, and which they contend the Employee was allowed to respond to.
58. Having perused the Eckler Report, the Court is of the view that it does not assist the Employer's contention. In the Court's view, the Report supports the Employee's case in that it highlights:
- The purpose of the report was to address the structure of the Employer, and was not for an investigation against the Employee.
 - The administrative system operated for the Life business was antiquated and completely unsuitable, and a new Life Policy Administrative System needed to be sourced immediately.

- Mr. Ngai constructed the Employer's 'in force' policy list with information in relation to new business and terminations and would adjust the same.
- In adopting that methodology, the 'in force' policy list was prone to error as the construction of the list based on industry standards ought not to have been undertaken by the Actuary but rather by the Department of Life and Medical.
- The Department of Life and Medical engaged in the exercise of creating the 'in force' policy list under the guidance of Mr. Goulet, the error was cured, and the evaluations for 2021 were restated, and valuations for 2022 were prepared.
- The lack of a proper Life Administrative System led to other issues associated with the treatment of unpaid premiums on policies and matured endowment policies, and several other matters affecting the profitability of the Company.
- The need for the Company to be brought to industry standards and the implementation of best practices.
- The need for training to be provided to staff should the Company decide to implement new, improved Life Policy Administrative Systems.
- The need for the Employer to suspend dividend payments until the Company was brought to industry standards.

59. Clearly, Eckler's Report was not an investigation into any wrongdoing on the part of the Employee; its purpose was to provide an assessment of the structure and systems of the Medical and Life Department. In the Court's view, the Report illustrates fundamental and systemic organizational failures that we believe cannot be attributed to the Employee. The issues identified, for the most part, fall squarely on the Employer's shoulders. It is equally noteworthy that the challenges of the systems utilized were known to the Employer for some time, which corroborates the Employee's case that the systems were unreliable and prone to error.

60. Mr. Goulet stated in the report: **"With any basic modern life administration system, policy records should be updated with new business and terminations, and the system should be able to automatically dump an in force file at any point in time."** Also in the said report, Mr. Goulet indicated that when he requested the in-force file, he was provided with the policy movement information. The Employer's system could not generate an 'in force' policy file. Eckler's report, in our view, supports the Employee's testimony that she provided Mr. Ngai with the information he requested and the information which she could generate from the system. The Court cannot, therefore, attribute the error or misinformation to the Employee on a balance of probabilities as the evidence suggests it was due to the Employer's technology and processes.

61. The Court also accept the Employee's testimony that she was diligent in attempting to resolve the issue. The emails of July 27 and August 5, 2020, support the steps the Employee took under the guidance of Mr. Ngai in rectifying the problem when it was then revealed that the number of Whole Life and Term Life Policies, which Mr. Ngai recorded as being in force, were no longer active in the Employer's records. According to the Employee, an extensive exercise in collaboration with Mr. Ngai was subsequently undertaken to attempt to rectify the situation.

62. Later on, Mr. Goulet confirmed that after much effort by the Life and Medical Department staff, the matter was rectified and the requirement for the Company to submit to him an 'in force' policy list was finally met. In the Court's view, the Employer's assertion that the Employee did not take any steps to address the issue in subsequent years is unsubstantiated, even though we acknowledge that the problem was not resolved until Eckler, under the diligent direction of Mr. Goulet, who appeared to have guided the Employee and her staff to a correct position based on industry standards.
63. The Court therefore concludes that it sees no basis on which to ground a finding of misconduct or non-performance.

Did the Employer act reasonably?

64. The Court considered the evidence in relation to the Employee's alleged unsatisfactory performance. The Employee was twice placed on Performance Improvement Plans in 2019 and 2021. The Employer provided no proof of any evaluations conducted or an account of the Employee's performance during the review period. There is therefore insufficient evidence for us to conclude that the Employee's performance was unsatisfactory. In any event, the Court is reminded of the provisions contained in Section C59 (5) of the Labour Code.
65. In relation to the assertion of loss of trust and confidence, having regard to the absence of a factual basis for the allegations of misconduct and unsatisfactory performance, there is no reasonable evidence on which the Court can form the basis that the Employer's loss of trust and confidence in the Employee was reasonable.
66. The Court accepts that section 173 of the Companies Act, No. 18 of 1995, and the parallel provision in section 50 of the Insurance Act, Cap. 218, place on officers of a company the duty to immediately notify the audit committee and the auditor of any error or misstatement in the financial statements of which they become aware. The Court also accepts that both provisions apply to the Employer as a licensed insurance company. The Court's analysis of the Employee's obligation and the sufficiency of her upward reporting to the CEO, set out below in respect of section 173 of the Companies Act, applies equally to section 50 of the Insurance Act, as both provisions impose materially identical duties.
67. The Court must, however, examine whether it was fair and proper to apply that duty strictly to the Employee in the circumstances of this case, having regard to her position in the Employer's organisational structure. The Employee's Job Description, which was placed in evidence and which the Employer did not dispute, expressly states that she reports to the Chief Executive Officer. She was not a director of the company, was not the Chief Financial Officer, and was not a member of the Audit Committee. She held the position of Executive Manager, Life and Medical — a senior but subordinate executive role, certainly below the CEO in the reporting hierarchy. Her function was to manage the Life and Medical Department and to supply data to the Actuary. It was the Actuary's certificate, processed through the CFO that ultimately fed into the financial statements. The Valuation Reports produced by the Actuary were sent to the CEO and CFO, not to the Employee.

68. As the Court understands, the operation of section 173 is conditioned on the officer becoming aware of an error or misstatement in the financial statements. There is an important distinction between becoming aware of a discrepancy in actuarial data inputs — which is what the Employee encountered in 2020 and becoming aware that those discrepancies had materialized into a misstatement in the financial statements themselves. The Employee’s evidence, which the Court accepts, was that when she identified the policy count discrepancy, she understood herself to be dealing with a data quality issue within the Life and Medical Department, and she immediately reported the matter to the CEO and CFO and took active steps to rectify it.
69. The Employee did not have sight of the Actuary’s Valuation Reports, and no evidence was adduced to show that she had a direct means of knowing, at the time, that the actuarial inputs had produced a misstatement in the financial statements. That knowledge if anything ought to have resided with the CEO, the CFO and, ultimately, the Actuary himself.
70. Even if it is accepted that the Employee was technically an “officer” within the meaning of section 173 and had sufficient awareness of the issue, the Court is satisfied that her upward reporting to the CEO discharged any obligation the section imposed on her. Section 173 is designed to ensure that errors reach the auditors. Where an officer reports the matter to a more senior officer who is herself subject to the same statutory duty — namely the CEO, who stands at the apex of the management structure and who bears primary responsibility for the financial affairs of the company — the obligation imposed by section 173 is sufficiently discharged by that upward reporting.
71. Additionally, to require a subordinate executive to bypass her own superior and independently notify the external auditors would be to impose a duplicative and unworkable obligation that conflicts with the ordinary governance structure of a corporate entity. The Employee acted in accordance with her own Job Description, which required her to report to the CEO, and in accordance with the Employer’s own organisational chart.
72. The Court finds the Employee having reported the matter to the CEO through the proper reporting channel was a sufficient fulfilment of any section 173 obligation that was attached to her.
73. The Court is further reinforced in this view by the Employer’s own conduct. The new CEO, Ms. Nicholas, became aware of the issue in July 2022 and also failed to report it immediately to the Board or the Auditors. The Board’s response to Ms. Nicholas was a reprimand. The Employer therefore applied section 173 selectively — treating the same obligation as warranting summary dismissal of the Employee but mere reprimand of the CEO. If the Employer genuinely regarded section 173 as imposing an inescapable and equally weighted duty on all officers regardless of seniority, it was required to apply that standard consistently. The Employer’s failure to do so demonstrates that even the Employer did not treat the provision as operating strictly and uniformly across all levels of the officer hierarchy. The Employer cannot invoke section 173 to justify the dismissal of the Employee while applying a lesser standard to a more senior officer who may be construed as equally in breach of the same provision.

74. For completeness, the Court notes that the Employer's reliance on the whistle-blowing policy does not assist its case. The whistle-blowing is discretionary and not mandatory, and the Employee's explanation that she had been told by the former CEO that the matter was being addressed was reasonable and logical. Having reported to her superior as required by her Job Description, the Employee had no basis to conclude that the matter was not being properly escalated. In the Court's view, it was incumbent on Ms. Francis-Butler and later Ms. Nicholas to promptly bring these matters of grave importance to the attention of the Board and Auditors. The failure to do so cannot be laid at the Employee's feet.
75. For completeness, the Court wishes to address the issue of the Employee's summary dismissal. **In the matter of Universal Caribbean Establishment and James Harrison [Appeal suit No. 21 of 1993] Byron, C.J. [AG]** (as he was then) stated, inter alia **"The Labour code was an innovative and important enactment, which made substantial changes to the industrial law of Antigua. In particular it created a new right not to be unfairly dismissed. This right has not been known to common law."**
76. This right not to be unfairly dismissed is protected by the statute as previously mentioned. In **Brenda Albert & Laurie Marsh vs. Woods Development Ltd (Ref. #5 of 1998)**, a decision of this Court. The then President reminded, **"Repeatedly this court has stated that Summary Dismissal should be the ultimate punishment by an employer and except for an extreme case should be applied only where all else failed"**.
77. In **Jupiter General Insurance Co. Ltd. V Schroff [1937] 3 All E.R. 67**, the Privy Council made two observations which are to be borne in mind in our determination. The first is that summary dismissal is a strong measure which may be justified only in exceptional circumstances. The second is that the test to be applied in determining whether a summary dismissal was warranted must vary with the nature of the business... see Industrial Law (second edition) Butterworths page-174.
78. The Employee herein was presented with Eckler's report sometime in March 2023. On April 3, 2023, the Employee made a presentation to the Board addressing the findings of Mr. Goulet. During the presentation, the Employee provided her proposed strategy to address the various inadequacies identified by Mr. Goulet. Ms. Nicholas testified that the Employee's presentation was a good start in resolving the issue. Ms. Nicholas also gave evidence that, before receiving the Eckler report, she had been working with the Employee and the CFO to resolve the issue regarding the policy count.
79. The Court notes the time that elapsed after the Employer received the Eckler Report, the Employee making her presentation, and the Employer notifying the Employee that she was the subject of disciplinary proceedings that threatened her employment. From the receipt of the Eckler Report in March 2023 and the presentation made by the Employee on April 3, 2023, to November 7, 2023, when the issue of disciplinary proceedings was first raised, approximately 7 months elapsed before the Employee was advised that she was the subject of disciplinary proceedings.

80. By that time, based on the Employers' witnesses' evidence, the Board had been aware of the situation and the Eckler Report had already been received since February 2023. The Employer advanced an explanation for the delay stating that the period between April and September 2023 was occupied by the financial statements being under active review and audit by the external auditors, and that it was appropriate to defer disciplinary proceedings until the audit process had established the nature and extent of the errors with greater certainty.
81. The Court accepts that an employer faced a complex situation where the precise facts were still being determined through an external audit process may have legitimate reason to await the conclusion of that process before moving to discipline. However, the explanation for the delay and the fairness of the disciplinary process when action was eventually taken are entirely separate questions, and the Employer's explanation for the former does not address the latter. Once the Employer determined that the audit had reached a stage at which disciplinary action could proceed, all of the ordinary requirements of natural justice and good industrial relations practice came into full effect.
82. Whatever justified the waiting period did not justify giving the Employee no advance written notice of the alleged disciplinary hearing, no prior disclosure of the specific allegations and the evidence to be considered, no reasonable time to prepare her response. At the end of the meeting, the Employer advised that it would communicate its decision to the Employee. All those issues clearly speak to the issues of fairness and reasonableness in the context of the case.
83. In the Court's analysis, the Employer did not provide any evidence that it had warned the Employee at any point before November 7, 2023, that she was the subject of disciplinary proceedings that could result in her dismissal. These failures are not explained or excused by the audit timeline. It is the manner in which proceedings were conducted once they were initiated that this Court finds to have been contrary to the principles of natural justice and good industrial relations practice.
84. It is noted that during the meeting of November 7, 2023, despite the Chair of the meeting accepting that firstly, the Employee reports to the CEO and secondly, that the Employee did in fact report the matter to the CEO and CFO; the Chairman pressed the Employee for an explanation of her reasons for not having reported the matter to the Board. No allegation had been put to her concerning any breach of Section 173 of the Companies Act. The allegation was not one of failure to report to the Audit Committee or Auditors, it was that the Employee failed to escalate the issue to the Board. Therefore, the specific allegation of a breach of section 173 of the Companies Act was never put to the Employee for explanation in her defence.
85. In the final analysis, even if the Court is wrong concerning the breach of Section C10 (4) of the Labour Code, on the totality of the evidence and submissions made by the parties, the Court is of the view that the Employer fell short of establishing that the Employee misconducted herself in the execution of her duties, giving rise to sufficient cause for summary dismissal. Additionally, the breach of natural justice and good industrial relations practices by the Employer supports a finding of unreasonableness on the part of the Employer. The Court therefore determines that the Employer acted unreasonably.

86. The Employee is therefore entitled to compensation.

Compensation

87. The Court awards compensation as follows:

Notice Pay

88. The Employee was dismissed without any notice. In accordance with Section C9 (3) and (4) of the Labour Code, she is entitled to one month's pay in lieu of notice in the sum of **\$15,085.42**.

Loss of Protection

89. This award is similar to severance, and for a monthly-paid employee, it is one month's pay. The Employee worked for the Employer from August 15, 2012, to November 13, 2023, for a total of approximately 11.25 years (11 years, 2 months and 28 days, rounded up to 11 years and 3 months in the Employee's favour). Thus, her entitlement is **\$146,085.97** (\$12,985.42 x 11.25). Loss of Protection is calculated on the Employee's basic monthly salary in accordance with the Labour Code, which bases this award on basic wages rather than the total remuneration package.

Immediate Loss

90. Immediate Loss is the loss suffered by an unfairly dismissed employee between the date of dismissal and the date of assessment of the loss, subject always to the employee's duty to mitigate. In this case, the relevant period is between November 13, 2023 and October 27, 2025, approximately 23.46 months. It is the duty and responsibility of the dismissed **employee "to take proper and reasonable steps to obtain other suitable employment and thereby to mitigate the loss of earnings during that period"**. See Sir Vincent Floissac in the Jennifer Watt case at page 5.

91. On **Elliot Streete vs Caribbean Star Airlines. No. 19 of 2005**, a matter decided in this Court. Pilgrim, P., the then President of the Court, in his dicta at Para. 136 said- **"No such guidelines for the establishment of a judicial cap in an area where there is no statutory cap have been articulated by this Court for awards to be limited to 'a cut-off point... at 24 weeks.'** Since no guidelines have ever been established it stands to reason a fortiori that this Court is not bound by any prior decisions of this Court which seek to establish such a 'cut-off point' during which time all or any employees irrespective of their standing, skill, training, professionalism and or experience and personal history are all expected to obtain suitable alternative employment within a period of 24 weeks."

92. The Employee gave evidence that she sought employment at various institutions, include Community First Credit Union, Antigua Commercial Bank, Antigua and Barbuda Development Bank, Anjo Insurance, Grace Kennedy Insurance and National Caribbean Insurance in St. Kitts. The Employee at the time of trial was employed, having been successful on her application to National Caribbean

Insurance in St. Kitts. She commenced her employment in May 2025. She was issued an Insurance Brokerage License in March 2025 in Antigua, but gave it up when she took up work in St. Kitts.

93. The Court is of the view that the Employee was diligent in her efforts to find employment. Having regard to the Employee's background, skills and qualifications, the period of eighteen (18) months to find alternative employment was reasonable. The Court has awarded one month's Notice Pay. The total reasonable period of unemployment of 18 months is accordingly reduced by one month, yielding 17 months of compensable immediate loss at her full monthly package, covering the period of total unemployment from November 13, 2023 to approximately April 2025. The sum due under this component is **\$256,452.14** (\$15,085.42 x 17 months).
94. From May 2025, when the Employee commenced employment in St. Kitts at a monthly salary of \$11,500.00, she suffered a continuing wage differential for the remainder of that period. The monthly shortfall is \$3,585.42 (\$15,085.42 – \$11,500.00), and this differential continued up to the date of trial approximately six (6) months within the assessment period (May 2025 to October 27, 2025). This second component of immediate loss amounts to \$21,512.52 (\$3,585.42 x 6 months). The total immediate loss is therefore **\$277,964.66**.

Future Loss of Earnings

95. In considering the opposing submissions, the Court considered the two guiding principles as laid down in the **Jennifer Watt v Antigua Village Condo Corporation, Reference 19 of 1991** (a) compensation must be predicated on the probability that earnings from future employment or self-employment will be less than those from the Employee's employment with the Employer; and (b) the onus is on the Employee to prove the probability of future loss and the probable duration of the same.
96. Future loss runs from the date of assessment, October 27, 2025, forward. As we have noted above, the wage differential of \$3,585.42 per month (representing the shortfall between the Employee's previous total monthly package of \$15,085.42 and her current salary of \$11,500.00). The Employee was still employed in St. Kitts at the same salary at the date of trial. The differential is therefore not speculative for the period from October 27, 2025, to the date of this award; it is a crystallised and known loss. The period from October 27, 2025, to March 20, 2026, is approximately five (5) months. We accordingly award the Employee the sum of **\$17,927.10** (\$3,585.42 x 5 months) as future loss to the date of this judgment.

Manner of dismissal

97. An award under this heading is made only when the manner and circumstances of the dismissal give rise to a real risk of financial loss, in instances where the Employee is rendered less attractive to potential new employers and/or more liable to selection for dismissal.

98. The evidence before this Court establishes that, in the day immediately preceding the Employee's dismissal on November 13, 2023, the Honourable Prime of Antigua and Barbuda, Mr. Gaston Browne made a public announcement that his administration would be **"sending home four public servants accused of not performing."**
99. The Employee relies on an Article dated November 14, 2023, which stated: **"In recent developments, State Insurance has parted ways with two high-ranking managers, Accountant Andre Knight and Life Manager Janice Hodge, following concerns from regulators regarding the accuracy of their accounting statements. Allegations of providing misleading financial reports were also cited as grounds for termination..."**
100. Real News an online news medium, also published an Article dated November 15, 2023: **"There has been widespread public reaction to the news that two senior managers at the State Insurance Corporation have been terminated. The firings came just days after Prime Minister Gaston Browne made a public announcement that his administration would be sending home four public servants accused of not performing. Shortly after the news broke on Monday night, November 13, insiders confirmed the termination of accountant Andre Knight and Life Manager Janice Hodge. Media reports are suggesting that the two were dismissed because of the Administration's lack of confidence in the accuracy of their accounting statements."**
101. Since the actual statement of the Honourable Prime Minister was not placed into evidence, the Court makes no finding upon it and grounds no award upon it.
102. Although no award is made under this head, the Court considers it necessary to make certain observations of public importance. The two media articles in evidence identified the Employee by name and attributed her dismissal to regulatory concerns about misleading financial reporting. The publication of those articles, in the days immediately following her dismissal, illustrates a broader phenomenon that this Court considers it necessary to address.
103. Public pronouncements by persons in authority particularly those connected to majority shareholders in government-controlled entities which identify named employees in connection with allegations of misconduct or poor performance, before those employees have had any opportunity to answer, cause reputational harm that is immediate, severe, and in a small jurisdiction, potentially irreversible.
104. The right not to be unfairly dismissed, which the Labour Code recognises as a fundamental protection, is rendered hollow if its reputational consequences are broadcast publicly before an employee has had any opportunity to vindicate herself. Such conduct if properly proved in evidence in future proceedings before this Court will be treated as a significant aggravating feature for an award of manner of dismissal.
105. This Court draws a firm distinction between legitimate accountability for institutional failures which it does not condemn and the public naming of individual employees in terms implying personal culpability before those

employees have been afforded any opportunity to respond to allegations. It is the latter that this Court condemns. The principles of natural justice and the right to a fair hearing attach to every worker in this jurisdiction.

Exemplary Damages

106. In the case of **Lesley Hoffman v Stanford Financial Group Limited, Ref. No. 4 of 1999**, at paragraph 38 of its judgment, Maundy P held as follows: **“... the dismissal was harsh, crude and without just cause and had a grave and disturbing effect on the Employee and, in the circumstances, I believe this is an instance where Exemplary damages are justified and would so award in the sum of US\$30,000.00 – indeed she testified of the stress, shock and humiliation she had to suffer and all through no fault of her own.”**
107. The award of exemplary damages was unanimously upheld by the Court of Appeal in Civil Appeal No. 4 of 1999, in which Redhead JA held: **“... It cannot be said in my judgment that the award was out of all proportion and unjustifiable to cause this court to interfere with the discretion of the Industrial Court when it awarded US\$30,000.00 as exemplary damages.”**
108. The Employee contends that the dismissal was harsh and oppressive. The Court reflected on Sections 10(3) and 10 (5) of the Industrial Court Act. Fairness and good industrial relations are the overarching principles that should guide policies and practices in the workplace. The Court agrees that the Employer was harsh in terminating the Employee for the following reasons:
- (i) Employee had no idea for eight (8) months after the Eckler Report and her presentation which based on the evidence of Ms. Nicholas was satisfactory and a step in the right direction to resolving the issues; that her employment was at risk of termination.
 - (ii) The Employer’s deliberate or reckless disregard of the principles of natural justice and due process. The Employer’s conduct went beyond mere procedural error; it represented a conscious decision to proceed without affording the Employee the basic protections to which she was entitled, and it is this quality of deliberateness that elevates the conduct to harshness warranting exemplary damages.
 - (iii) Failure to accept its own administrative and systemic failures and placing the fault solely at the feet of the Employee, which ultimately caused her dismissal.
 - (iv) The Employer’s breach of its obligations under Section C10 of the Labour Code, which required a precise written statement of the reasons for dismissal, and its failure to comply with the procedural standards required under the Code for the conduct of disciplinary proceedings. These breaches caused specific additional harm to the Employee beyond the unfairness of the dismissal itself. The imprecision of the dismissal letter left the Employee unable to understand the case against her at the time of her dismissal which the Labour Code requires the Employer to state clearly from the outset.
109. The Employee is therefore awarded **\$35,000.00** under this head.

Cost

110. For the same reasons that this Court has found it appropriate to award exemplary damages, this is a case that warrants an order as to costs. In the exercise of the Court's discretion under Sections 10(3) and 10(5) of the Industrial Court Act, the Employee is awarded costs in the sum of **\$10,000.00**.

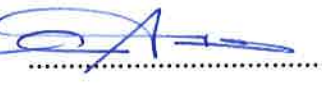
ORDER:

111. The Court therefore orders that the Employer pays compensation to the Employee as follows:

Notice Pay	\$ 15,085.42
Loss of Protection	\$ 146,085.97
Immediate Loss	\$ 277,964.66
Future Loss	\$ 17,927.10
Exemplary Damages	\$ 35,000.00
Costs	<u>\$ 10,000.00</u>
Total	<u>\$502,063.15</u>

112. The Employer shall pay the Employee the said sum of **\$502,063.15** in three equal monthly instalments of **\$167,354.38** on April 30, 2026, May 31, 2026 and June 30, 2026 respectively until liquidation of the entire judgement debt.

Dated the 20th day of March, 2026

		
Samantha May-Francis President	Judith A. Dublin Member	Charlene Selkridge Member