



BETWEEN

PATRICE ABBOTT

Employee

and

ANTIGUA AND BARBUDA LABOUR PARTY

Employer

Before

The Hon. Samantha May-Francis
The Hon. Collin R. Maynard
The Hon. Joanne Smith

President
Member
Member

Appearances

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

No appearance by the Employer

2026: June 16
2026: June 26

JUDGMENT

Ex parte trial- Employee employed a Scrutineer; Whether the political party is the Employer; Whether Statutory payment obligation of Electoral Commission created an employment relationship- Labour Code Division A5- Failure to provide written statement of terms- Constructive Dismissal -Termination of Scrutineer role distinguished from termination of employment- Express promise of continued salary - Remaining at home not acceptance of termination - Effective date of dismissal-Unfair Dismissal – Application of Collective Bargaining Agreement- Compensation if any- Pension -Scrutineer's Pension Act 2022

Background

1. The Employee brings this Reference against the Antigua and Barbuda Labour Party (hereinafter 'the ABLP') arising from her service to the ABLP as a Scrutineer from April 2012. She claims that she was unfairly dismissed and seeks outstanding salary, compensation and such pension entitlement as the law provides.
2. The ABLP is a political party founded in 1946. Its original name was that of Antigua Labour Party, and it subsequently changed its name to that of Antigua and Barbuda Labour Party. It is an unincorporated voluntary association entirely separate from and independent of the Government of Antigua and Barbuda. It is not a Government department, statutory body or public authority. It does not form part of the public service and is not subject to the Civil Service Act. It operates under its own constitution and rules.
3. The Court was satisfied that the ABLP was duly served with all documents in these proceedings. However, the ABLP did not defend the Reference. A Memorandum, Witness Statements or Exhibits were not filed on its behalf. As a consequence, the matter therefore proceeded as an Ex Parte Trial by Order of this Court dated August 13, 2025.

The Facts

4. In April 2012, the ABLP appointed the Employee as their Scrutineer and assigned her to the St. Peter Constituency Office, an electoral facility operated by the Antigua and Barbuda Electoral Commission (hereinafter 'the Commission'). Her function was to represent and protect the interests of the ABLP in the electoral process. She served continuously and earned a monthly salary of \$1,854.33 paid from the Government's Consolidated Fund through the Commission pursuant to the mandatory provisions of Section 9(6) of the Representation of People Act No. 11 of 2002 (hereinafter 'the RPA').
5. In April 2015, the Employee took emergency vacation leave. The ABLP appointed Ms. Joslie Knight to act in her position. The Employee returned from vacation and resumed her duties.
6. In June 2022, the Employee was summoned by Miss. Mary-Clare Hurst, the then General Secretary of the ABLP, who informed her, that on instructions alleged to have originated from the Right Honourable Prime Minister Gaston Browne, the Political Leader of the ABLP, she was to take all of her accrued vacation leave immediately. No reason was given and no consultation took place.
7. Upon expiration of her vacation the Employee was informed by the General Secretary Miss Mary-Clare Hurst that she would be placed in a Government

position and that her salary would continue in the interim. The Honourable Paul Chet Greene, the Minister of Foreign Affairs and Chairman of the ABLP, is alleged to have directed her to report to the Consumer Affairs Division on September 3, 2022. She reported as instructed. According to the Employee she was informed by one Mr. Steele that no duties or desk had been prepared for her. She was told by Mr. Greene to go home and await contact from the Cabinet Secretary who would arrange her placement. According to the Employee that call never came.

8. The Employee gave evidence that unknown to her, Miss. Hurst, as General Secretary of the ABLP, wrote to the Commission representing that she the Employee had resigned from her position as Scrutineer. The Employee contends that she had not resigned. She had not received notice of this letter. She was not consulted. She did not sign any letter of resignation. The Commission, acting on The General Secretary's representation, ceased payment of the Employee's salary from August 2022.
9. On February 13, 2023, the Employee wrote to Miss. Hurst, seeking clarity about the position to which she was to be appointed and describing her personal challenges. She did not receive a reply. On November 17, 2023, the Antigua and Barbuda Free Trade Union (hereinafter 'the ABFTU'), acting on the Employee's behalf, wrote formally to the ABLP claiming unfair dismissal. The ABLP did not respond.
10. Thereafter, the Employee filed a complaint before the Labour Commissioner. A Conciliation meeting was held on March 12, 2024; however, it did not produce a resolution. The Employee thereafter filed a Reference before this Court.

Was Ms. Patrice Abbott Employed by the ABLP?

11. The Court is satisfied that the Employee was not at any time employed by the Electoral Commission. The statutory framework under the RPA makes this clear. Section 5(1) of the RPA provides that a political party is entitled to nominate persons for appointment as Scrutineers and that the Commission shall appoint each person so nominated. The mandatory language of that provision leaves the Commission with no general discretion to refuse a nomination made by a political party. No specific disqualification under the Act applied to Employee. The Commission was accordingly obliged to appoint her when the ABLP nominated her in April 2012. It was equally obliged to act on the representation made by the ABLP's General Secretary that the Employee had resigned. It had no independent authority to question that representation. The power over the Employee's Scrutineer status from appointment to termination resided at all times with the ABLP. The Commission was the administrative mechanism through which the ABLP's decisions were given effect.

12. Furthermore Section 6(4) of the RPA requires the Commission in the exercise of its functions to act impartially and independently of any political or governmental influence. A Scrutineer by definition represents the political interests of the party which appointed that individual. The Commission cannot employ Scrutineers without compromising the very independence and impartiality which the statute requires of it. The Commission's payment of the Employee's salary pursuant to Section 9(6) of the RPA was a mandatory statutory obligation imposed by Parliament and was not a voluntary act of employment.
13. The ABLP appointed the Employee, assigned her to the St. Peter Constituency Office and defined her function as their electoral representative. They held and exercised the power of appointment and replacement; appointing Ms. Knight during the Employee's absence in 2015, and removing the Employee from her Scrutineer position in 2022 without consultation. That power is exercisable only by an employer. The most compelling evidence of the employment relationship is the act of the ABLP's own General Secretary who wrote to the Commission purporting to notify the Commission of the Employee's resignation.
14. The Court further notes that the ABLP as the Employer was required under the Labour Code to provide the Employee with a written statement of the terms of her employment. No such statement was ever provided. The Employee worked for over eleven years without any written documentation of her terms of engagement. The ABLP's failure to comply with this basic statutory obligation from the outset is indicative of the manner in which they treated the Employee and created the very ambiguity about the scope of her employment.
15. Applying the Control Test established in **Ready Mixed Concrete v Minister of Pensions [1968] 2 QB 497**, the Economic Reality Test established in **Market Investigations v Minister of Social Security [1969] 2 QB 173**, the Integration Test established in **Stevenson Jordan v MacDonald [1952]** and the Mutuality of Obligation Test established in **Carmichael v National Power [1999] ICR 1226** the Court is satisfied that the Employee was employed by the ABLP. The Labour Code definition of Employee in Division A5 expressly recognises contracts of employment whether oral or written, expressed or implied. The Employee's contract of employment with the ABLP was implied from the conduct of the parties over a period exceeding eleven years by her continuous performance of Scrutineer duties, the ABLP's continuous exercise of the powers of appointment, assignment and replacement over her, and the regular payment of her salary throughout that period. A contract of employment implied from such a sustained and consistent course of conduct over more than a decade is as binding and enforceable as any written or expressed contract. The ABLP created and maintained that employment relationship by conduct. They are bound by it. It is noteworthy, that the Court record does not evidence any denial by the ABLP that the Employee was their employee.

16. Accordingly, the Court determined that the ABLP is the Employer.

The Collective Bargaining Agreement- Non-Established Workers

17. The Employee submits that the Collective Bargaining Agreement (CBA) applicable to Non-established Government workers applies to her employment by reason of her having used a Non-established workers' vacation form. The Court rejects this submission. The CBA for Non-established Government workers is an agreement between the Government of Antigua and Barbuda and the Antigua and Barbuda Trades & Labour Union governing individuals employed by the Government in the Public Service. The Employer is not the Government. The Employer was not a party to that agreement. The fact that the Employee used a Government administrative form is explained by the statutory arrangement under which the Commission administered her salary payments from the Consolidated Fund pursuant to Section 9(6) of the RPA. Administrative convenience does not alter the legal character of the employment relationship. The Employee was employed by a private political party. The CBA has no application to her claim.

Dismissal

18. The Employee's Memorandum pleaded the dismissal as a direct termination and/or alternatively a constructive dismissal. The Court addresses both in turn.

The Employer through its then General Secretary Miss. Mary-Clare Hurst wrote to the Commission in August 2022 representing that the Employee had resigned from her position as Scrutineer. That deliberate positive act by the Employer caused the Commission to cease payment of the Employee's salary. The Employee did not resign. She was not consulted. She did not know that it was represented that she had resigned. The Employer terminated her employment through their own positive act without her knowledge consent or involvement.

19. The Employee remained at home with the reasonable belief induced by her Employer's expressed promises that a position within the government sector would be given to her.

20. However, and applying the principles of **Western Excavating (ECC) Ltd v Sharp [1978] QB 761**, there must exist a repudiatory breach of contract by the employer, acceptance of that breach by the employee by treating the contract as at an end, and communication of that acceptance to the employer. Lord Denning MR was explicit that the employee must make up her mind and act soon after the repudiatory conduct and that continuing for any length of time without leaving will deprive the employee of the right to claim constructive dismissal. The ABFTU

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letter of November 17, 2023, formally asserted constructive dismissal on the Employee's behalf. However, a delay of fifteen months before formally asserting that claim sits very uncomfortable with Lord Denning's requirement to act soon. The Court honestly acknowledges this difficulty and find that the Employee was not constructively dismissed.

Unfair Dismissal

21. The Court finds based on the evidence before it, that the dismissal was unfair. Substantively no valid reason for dismissal has been advanced at any stage. No misconduct was alleged. A case of poor performance was not identified. A redundancy situation did not exist. No warning was given. No hearing was held. The Employee was not given the opportunity to respond. The Employer did not issue a notice of termination. The Employer did not provide any written reasons for its actions. The Employee's unchallenged evidence was that she did not even know she had been dismissed. No reason of any kind was communicated to either the Employee or this Court.

Responsibility for Payment

22. The Commission ceased payment of the Employee's salary in good faith upon receiving the letter from the ABLP's General Secretary Miss Hurst, representing that the Employee had resigned. The Commission bears no responsibility for the cessation of payment. It acted on information provided by the Employer. The Employer caused the cessation of salary based on the representation of its General Secretary. The Employer is accordingly responsible for all outstanding salary and all compensation flowing from the dismissal. The fact that salary was administratively processed through the Commission under the RPA does not transfer liability for the consequences of the Employer's own wrongful act to the Commission.

Compensation

23. Having found that the Employee was unfairly dismissed, the Court turns to the measure of compensation to which she is entitled.

Loss of Protection

(a) An award under this heading is computed in the same manner as severance pay under section C41 of the Labour Code. The Employee was monthly paid and was employed for 10.35 years (125 months) from April 16, 2012 to August 22, 2022. The Employee's monthly salary was \$1,854.33. The Employee is therefore entitled to an award of \$19,192.31 (\$1,854.33 x 10.35).

Notice Pay

- (b) The Employee was paid monthly as is therefore entitled to notice pay in the sum of **\$1,854.33**.

Immediate Loss

- (c) The Employee gave evidence that following her dismissal she made genuine efforts to secure alternative employment. She applied to Happy Kids, Cool and Smooth and a number of other establishments in search of work. Following her dismissal, she engaged in Church Ministry earning approximately \$500.00 per month and established a hairdressing business earning approximately \$1,000.00 per month giving combined alternative earnings of approximately \$1,500.00 per month. Her ability to pursue full time employment was constrained by her responsibility to care for her bedridden mother from whose home she received rental income of \$600.00 per month. Her mother passed away on March 9, 2025. Following her mother's death, the Employee expanded her involvement in Church Ministry which requires her to travel overseas, and from which she now earns approximately USD \$1,000.00 per month equivalent to approximately \$2,700.00 per month, an amount which exceeds her former salary.

The Court assesses immediate loss of earnings in two periods. For the first period from August 2022 to February 2023 being six months the Employee had no alternative income and the Court awards the full monthly salary of EC \$1,854.33 per month giving **\$11,125.98** (\$1,854.33 x 6 months).

The Court finds that by February 2023, the Employee ought reasonably to have appreciated that the employment relationship was over. She had not received a salary for six months. The promised placement in the Government service never materialised. She herself described the situation as one of apparent dismissal in her letter of February 13, 2023.

For the second period of six months from February 2023 to August 2023 the Court takes into account the Employee's alternative earnings of approximately EC\$1,500.00 per month from Church Ministry and hairdressing and awards the net monthly loss of EC \$354.33 per month giving EC \$2,125.98 (\$354.33 x 6 months). The total award under this head is EC**\$13,251.96**.

The Court therefore awards Immediate Loss in the sum of **\$13,251.63**.

Exemplary Damages

- (d) The Court has considered whether an award of Exemplary Damages is appropriate in this case. Such an award goes beyond compensation for loss. It is punitive in nature and is reserved for cases where the conduct of the defendant was deliberate, calculated and showed a cynical disregard for the rights of the claimant. The Court is satisfied that the conduct of the Employer in this case

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crossed the threshold for such an award. The Employer through its then General Secretary expressly promised the Employee continued salary and a Government posting. Simultaneously and without the Employee's knowledge the Employer wrote to the Commission representing that she had resigned. This was not an oversight or an error of judgment. It was a conscious and perhaps even a calculated act which deprived the Employee of her income without warning, and without any process. The Employer then maintained complete silence thereafter. The Court awards Exemplary Damages in the sum of \$7,500.00.

Costs

- (e) Section C10(2) of the Labour Code provides that costs in proceedings of this nature are awarded only in exceptional circumstances. The Court finds that exceptional circumstances of this case in the sum of \$1,500.00.

Pension

24. The Representation of the People (Scrutineer's Pension) Act, 2022, No. 28 of 2022 applies by virtue of Section 11 to persons who served as Scrutineers under the RPA from 2002. The Employee served as a Scrutineer for eleven years and five months. Her service was discontinued by the Employer before she reached the retirement age of sixty-five. She completed well in excess of the minimum ten years of qualifying service. By Section 6(2) of the Act a Scrutineer whose service was discontinued before retirement age having completed ten years is entitled to receive a reduced pension. Section 3 mandatorily charges pension payable under the Act to the Government Consolidated Fund. Section 5 however provides expressly that no Scrutineer has an absolute right to pension or gratuity under the Act. The pension is accordingly discretionary. The decision whether to grant it rests with the Minister responsible for the administration of the Act. Consequently, the Employee is at liberty to make representation to the Minister in question for a pension. The Court makes no order in respect of pension.

ORDER

25. The Court hereby order:

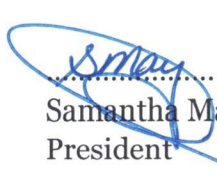
1. The ABLP has been determined to be the Employer and the Court having determined that the Employee has been unfairly dismissed is entitled to compensation.
2. The Employer shall pay the Employee compensation as follows:

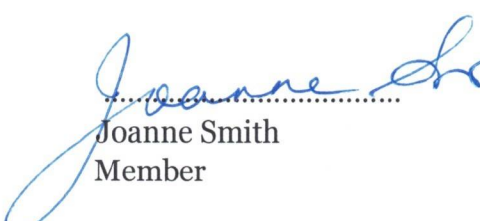
Loss of Protection	\$19,192.31
Notice Pay	\$ 1,854.33
Immediate Loss	\$ 13,251.63
Exemplary Damage	\$ 7,500.00

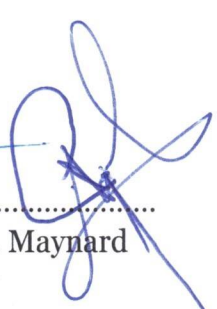
Cost	\$ 1,500.00
Total	\$43,298.27

3. The Employer shall pay to the Employee the sum of **\$43,298.27** on or before July 26, 2026.

Dated the 26th day of June, 2026


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Samantha May-Francis
President


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Joanne Smith
Member


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Collin R. Maynard
Member

Delivered by the Honourable Samantha May-Francis