

BETWEEN

GLENDORA JOSEPH-BURNS

Employee

and

PDV CARIBE ANTIGUA AND BARBUDA LIMITED

Employer

Before

The Hon. Judith A. Dublin
The Hon. John H.R. Benjamin

Member
Member

Appearances

Mr. Justin L. Simon (KC), of Simon Rogers Murdoch, Attorneys-at-Law for the Employee
Mr. Hugh Marshall Jr. and Mr. Jonathan Marshall, of Marshall and Company, Attorneys-at-Law for the Employer

2024: July 10
2026: July 10

JUDGMENT

Unfair Dismissal- Ascertaining which letter constitutes the Court-recognised employment termination letter, considering and measuring the validity of the factual basis of a decision to terminate employment.

Background

- 1. The Employee commenced working for the Employer on October 21st, 2019, and the Employer terminated her services in May 2020, seven months into her 2-year contract of employment. Throughout her employment, the Employee held the position of General Manager earning a basic monthly salary of \$7,800.00 and telephone allowance of \$200.00 along with a 12.5% gratuity based on her basic salary upon successful completion of her contract.

- 2. By letter dated May 15th, 2020, captioned “Employment Relationship”, the Employer stated its intention to terminate the employment with a list of the reasons for so doing. The letter gave the Employee an option to negotiate a voluntary departure package, but no settlement was consummated. Accordingly, the Employer issued a follow-up letter captioned “Termination of Employment” dated May 25th, 2020, which the Employer claims is the letter confirming the Employee’s termination of service, as opposed to it being her termination of employment letter, notwithstanding the contents of the letter and its caption. The Employee however insists that the letter captioned “Termination of Services” dated May 25th, 2020, is in fact the termination letter.

The Employer’s Case

- 3. The Employer claims that on December 12th, 2019, the Employee misled the Board of Directors regarding representations made by the entire administrative staff, one employee excepting, in that the Employee had claimed that the staff had indicated to her that they were no longer interested in pursuing a request for the Board to review the uniform allowance.
- 4. On January 9th, 2020, the Employee changed course and told the Board that the staff asked for the Board’s reconsideration of the uniform allowance matter. The Board claims that during interviews with the affected staff (one staff member excepting), staff members advised that the Employee had not told the truth on the matter. Based on those interviews the Board concluded that the Employee, despite her vigorous protests of innocence, lied to the Board.
- 5. Based on the Board-alleged acrimonious relationship between the Employee and some staff members, the Board considered it unwise to summon a meeting of staff members with the Employee and Board of Directors which would have facilitated accusers meeting face-to-face with the accused. The Board took the position that such a meeting would only serve to further exacerbate the unfavourable interpersonal relationships and discord which existed at the time.
- 6. At a Board meeting, when questioned about the performance of Mrs. Willock, a member of staff who had been on probation for a new position, the Employee characterised Mrs. Willock’s performance as good and satisfactory, contrary to disclosures made through a performance appraisal of Mrs. Willock prior to completion of her probationary period in a newly promoted position.
- 7. By email dated March 6th, 2020, the Employer asserted that Mrs. Willock had done a performance self-appraisal and that the Employee found her performance to be satisfactory with competence in computer navigation, typing and general clerical management sufficient to justify her confirmation in the position. Based on the Employer’s case, the Employee was aware of Mrs. Willock’s shortcomings in computer operations and unsuitability for confirmation in the position and allowed

her to continue working in the position past her 90-day probationary period, thereby confirming her in the new position by default.

8. In a letter dated April 27th, 2020, under the caption “Employment Relationship”, the Board adjudged the Employee’s management of the staff as poor and her relationship with other employees as strained. The Board invited her to respond to its findings and allegations.
9. By the same letter dated April 27th, 2020, and titled “Employment Relationship”, the Board suspended the Employee on full pay, pending receipt of a response from her regarding its accusations.
10. The Board found the Employee’s responses to its concerns inadequate and in some instances insulting and irrelevant, factors which contributed to its conclusion that it had lost confidence in her ability to properly address the Board’s concerns.
11. The Board therefore wrote the Employee on May 15th, 2020, notifying her of its intention to terminate her employment on two grounds:
 - i. The Employee’s deceit in discharging her duties undermined the trust and confidence it must have in her, for her to function effectively.
 - ii. The Employee demonstrated a total inability to manage the administrative staff, a deficiency that neither time nor opportunity could repair.
12. The Board declared that it had sufficient grounds to effect a fair dismissal of the Employee and that it intended to dismiss her, however, it left the door open for the Employee to “negotiate a voluntary compensation and departure package” by the following business day, that is, Monday, May 18th, 2020. The letter ended with the words: “If we do not hear from you within the aforesaid time, we shall proceed to issue you your letter of termination.”
13. Ten days had elapsed after the Board’s offer for the Employee to negotiate a separation package without any response from the Employee on the subject. Accordingly, on May 25th, 2020 under cover of a letter titled “Termination of Employment” the Board terminated the Employee’s employment.

The Employee’s Case

14. For her part, the Employee contends that resistance to her management of the other members of staff commenced when she began making changes in office routine. She claimed that:
 - i. False reports were put to the Board about her,
 - ii. She was frustrated by the Accountant in the performance of her administrative duties because even though the Board had issued her a password to access the

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financial software, the Accountant had locked her out of the system as well as the filing cabinets.

- iii. She had repeatedly informed both the Board Secretary and the Accountant that Mrs. Willock was unable to effectively perform the functions of an office Administrative Assistant, an opinion validated by Mrs. Willock’s performance self-appraisal dated March 2nd, 2020.
- iv. She had informed the Chairman of all these matters.
15. In her response to the Board’s suspension letter dated April 27th, 2020, the Employee on May 8th, 2020, vehemently denied all the accusations the Board leveled at her. She affirmed that she never indicated that Mrs. Willock was competent in computer navigation and typing.
16. In her oral testimony, the Employee made the following affirmations:
 - i. She never confirmed Mrs. Willock in the position;
 - ii. She never made any recommendation to the Board at the end of Mrs. Willock’s probationary period;
 - iii. She submitted the performance appraisal to the Board well in time before the expiry of the probationary period;
 - iv. She never suggested to the Board that Mrs. Willock could be retained in the promoted position nor stated that with training, Mrs. Willock would be sufficiently competent to perform in the position.

The Issues

17. The following issues require determination:
 - i. Whether the letter dated May 15th, 2020, constitutes notice of dismissal pursuant to C10’s requiring the Employer to give precise reasons for the dismissal within seven days of notice to terminate.
 - ii. Whether the Employer is correct in asserting in paragraph 7 of the Employer’s Memorandum that its letter dated May 15th, 2020, is the termination letter pursuant to Section C10 of the Antigua and Barbuda Labour Code.
 - iii. What is the precise reason for the dismissal raised in the recognised dismissal letter?
 - iv. Whether the Employer had established a sound factual basis for the dismissal, and if so, whether the dismissal was fair.

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Issue-1 Notice of Dismissal

18. Section C10 of the Antigua and Barbuda Labour Code states that “upon termination by the employer of an employee’s employment subsequent to the expiration of the latter’s probationary period, the employer shall, within seven days of the termination or notice furnish to such employee a written statement of the precise reason for the termination.”
19. We therefore examine the letter dated May 15th, 2020, to ascertain whether it constitutes a valid notice of dismissal in law. This matter because C10’s obligation to furnish precise reasons within seven days runs from the date of the notice of termination itself; if the May 15th letter is not, in law, a notice of dismissal, then that obligation and the task of identifying the precise reasons for dismissal addressed under Issue-3 below must instead be assessed against whichever letter does qualify. The narrow question addressed in the paragraphs that follow is therefore whether a letter announcing an intention to terminate employment, without specifying an ascertainable date of termination, can in law constitute a notice of dismissal at all.
20. Harvey in his authoritative work, Harvey on Industrial Relations and Employment Law, declares that **“It is now well established that in order to constitute a notice of dismissal the notice must specify a particular ascertainable date. Where the employer gives an advanced warning of dismissal to occur at some future date, this does not constitute a notice of dismissal.”**
21. Re-enforcing this position, the UK’s Employment Appeal Tribunal’s case, **International Computers Ltd v Kennedy [1981] IRLR 28** (Industrial Relations Law Reports), decided that “even where the employer makes it clear that the employee will not be retained beyond a future specified date, this will still be insufficient to constitute a notice of dismissal.”
22. The same combination of authorities was applied on materially similar facts in **Gunn v Thacker, EAT/879/00 (13 November 2001)**, where His Honour Judge D M Levy QC, held that a builder’s warning to a bricklayer that work “would run out” at an unspecified future point was a mere warning of redundancy and not a dismissal, following **Morton Sundour Fabrics Ltd v Shaw [1966] 2 ITR 84** and the very passage from Harvey and the Kennedy authority set out above.
23. The letter dated May 15th, 2020, did not disclose a specific date for the termination of employment, the very deficiency that, on the authority of Harvey, Kennedy and Gunn v Thacker set out above and therefore in law cannot qualify as the official notice of termination. We therefore classify it as a warning letter of imminent termination of employment. It follows that C10’s seven-day obligation to furnish precise reasons, and the identification of the precise reasons for dismissal, must be assessed by reference to whichever letter does qualify as the notice of dismissal; a question taken up under Issue-2 immediately below.

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24. Even if this Court is wrong in its conclusion that the letter dated May 15, 2020 does not constitute a notice of dismissal, the Employer would still be in breach of Section C10. Treating May 15th, 2020 as the date of the notice, the seven-day period within which C10 required the Employer to furnish a written statement of the precise reason for the termination would have expired on May 22, 2020. The letter dated May 25, 2020 found under Issue-3 below to contain the precise reason for the dismissal was sent ten days after the notice and three days after that deadline, and therefore falls outside the seven-day window required by C10. Nor could the Employer avoid this conclusion by contending that the letter of May 15th, 2020 itself furnished the precise reason within the meaning of C10. As found under Issue-3 below, the reasons which adorned that letter were provisional grounds for a threatened and conditional termination, at least one of which the Employee’s asserted inability to manage staff does not appear at all in the Board’s final decision recorded on May 25, 2020, and accordingly, is ineligible for consideration as part of the legally accepted body of precise reasons for the termination. The precise reason for the dismissal actually crystallised in the letter of May 25th, 2020.

Issue-2 The Court-recognised Termination Letter

25. The letter dated May 15th, 2020, titled “Employment Relationship”, mentioned that several cogent and precise reasons for the Employer’s stated intention to terminate the Employee’s service. The Court sees this letter as the Employer’s warning to the Employee of its intent to imminently dispense with her employment, without disclosing the termination date. The letter ended with the following words: “If we do not hear from you within the aforesaid time, we shall proceed to issue you your letter of termination”.
26. The letter dated May 25th, 2020, and titled: “Termination of Employment”, is quite clear that it is the termination letter. It starts with the words: “Having had no response to our attorney’s letter of 19th May 2020, we now inform you of the Board’s decision to terminate you from your position as General Manager effective immediately”. This letter is unmistakably the termination letter, notwithstanding the Employer’s declaration through its Counsel that it considers the letter of the 15th its termination letter. The classification is indisputable, especially having regard to the words used.

Issue-3 Precise Reason for Dismissal

27. The precise reason for dismissal is stated in the second paragraph of the dismissal letter as follows: “The Board is concerned that you allowed Mrs. Willock, who by your own admission as expressed in performance appraisal dated March 2nd, 2020 needs improvement in the area of computers, to be confirmed in a position that she is clearly not competent to perform.” The remainder of the dismissal letter supports this general thesis. While other reasons adorn the warning letter of imminent

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termination dated May 15th, 2020, they are prominently absent from the termination letter and are therefore ineligible for consideration as part of the legally accepted body of precise reasons for termination under C10. At best, they are merely tangential to any determination of unfair dismissal. This conclusion holds whether the letters of May 15th and May 25th, 2020 are read separately or together. Read separately, the May 15th letter is not, for the reasons given under Issue-1 above, a notice of termination at all, and the reasons it lists are accordingly provisional grounds for a threatened dismissal, rather than the precise reason for the termination actually effected. Read together, as one continuous narrative, the same result follows of the several grounds raised on May 15th, 2020, only the Willock matter was carried forward into the Board's final decision of May 25th, 2020, while the Employee's asserted inability to manage staff was not repeated, referenced, or relied upon in that letter and was, in substance, abandoned. Either approach yields the same precise reason for the dismissal.

Issue-4 Factual Basis

28. A review of the oral and written evidence suggests that the key issue surrounding the termination of employment was the Employer's declaration that the Employee allowed Mrs. Willock to continue working in the promoted position past her 90-day probationary period even though, on the Employer's account, the Employee knew that Mrs. Willock was incapable of performing her duties to the level required of the position she held. Consequently, Mrs. Willock became eligible to become confirmed in the promoted position.
29. The facts are:
- i. Mrs. Willock's probationary period started on December 20th, 2019, and ended on March 20, 2020.
 - ii. The Board of Directors received a performance appraisal report dated March 2nd, 2020, on Mrs. Willock before the end of Mrs. Willock's probationary period and could either confirm her or decide that she had not successfully completed her probationary period and therefore could not be confirmed in the position.
 - iii. The Employee neither had the power to appoint nor dis-appoint regarding the recruitment and promotion of staff.
 - iv. At all material times, the Board of Directors was aware that the probationary period would have ended on March 20th, 2020.
 - v. The Board claims that the Employee sent them an email on March 6th, 2020, asserting that Mrs. Willock's performance was at an acceptable level. The Employee in her examination in chief stated that she never recommended to the Board that with additional training Mrs. Willock would have achieved the required level of competency, refuting the Board's claim. It is noteworthy that the

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Employer never provided the Court with a copy of the alleged email, which would have facilitated examination and cross-examination of the actual text. In any event, it is inexplicable that the Employee sent an email on March 6th, 2020, stating that Mrs. Willock's performance was at an acceptable level, when on March 2nd of the same month she stated through comments made in a performance appraisal dated March 2nd, 2020, that her performance was sub-par.

30. The Board received the performance appraisal report on March 2nd, 2020, eighteen days before the probationary period ended on March 20th, 2020. Nothing in the evidence explains why the matter was not placed on the Board's March 2020 meeting agenda and discussed with the Employee in her capacity as Manager, and decided upon, within that period.
31. In the final analysis, the responsibility for confirming Mrs. Willock's in the promoted position rested squarely with the Board, not the Employee. In March 2020, before the end of the probationary period the Board received an unfavourable performance appraisal report on Mrs. Willock from the Employee and it allowed Mrs. Willock to remain in the promoted position beyond her probationary period.
32. In view of the above, there is foundation to call into question the validity of the factual basis for the termination of the Employee's employment.

The Statutory Framework

33. The following sections of the Labour Code constitute the framework within which the Court assesses the validity of unfair dismissal claims.
34. Section C56 of the Antigua and Barbuda Labour Code, Cap. 27 ('the Labour Code') provides that every employee who has served beyond the probationary period shall not be dismissed without just cause.
35. Section C58(1)(a) provides that a dismissal shall not be unfair if the reason assigned by the employer relates to misconduct of the employee on the job, within the limitations of Section C59, provided there is a factual basis for the assigned reason.
36. Section C58(2) provides that in measuring whether a dismissal for that reason is fair, the Court shall determine whether the employer acted reasonably in the circumstances.
37. Under Section C59(1), an employer may terminate employment without notice where the employee has been guilty of misconduct in or in relation to employment so serious that the employer cannot reasonably be expected to take any other course.
38. Section C59(2) provides that where an employee is guilty of misconduct that is not sufficiently serious to justify termination under Section C59(1) but is such that the

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employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning describing the misconduct and stating the action the employer intends to take in the event of repetition, and if the employee is guilty of the same or substantially the same misconduct within six months of receipt of the written warning, the employer may then terminate the employment or take the other action specified in the warning.

39. Section C59(3) provides that where an employee is no longer performing his duties in a satisfactory manner, the employer may give the employee a written warning describing the unsatisfactory performance and stating the action the employer intends to take in the event of repetition, and if the employee does not, within three months of receipt of the written warning, demonstrate that he is able to perform, and has performed, his duties in a satisfactory manner, the employer may terminate the employment.
40. Sections C58(1) and C58(2) are to be read conjointly and they state that it is not enough that misconduct exists; the employer must also have acted reasonably in all the circumstances as has been applied in the Court of Appeal decision of **Cable and Wireless (Antigua and Barbuda) Limited v Antigua and Barbuda Workers' Union, ANULTAP2016/003**.
41. The Court therefore considered, firstly, whether the reason assigned by the Employer was one that related to misconduct on the job within the meaning of Section C58(1)(a). Secondly, whether the Employee's misconduct was of sufficient gravity to satisfy the threshold in Section C59(1) in that it was so serious that the Employer could not reasonably be expected to take any other course. Thirdly, having regard to all the circumstances, whether the Employer acted reasonably within the meaning of Section C58(2).
42. The burden lies on the Employer to establish, on a balance of probabilities, that the dismissal was not unfair. This Court has adopted the approach in **British Home Stores Ltd v Burchell [1980] ICR 303; [1978] IRLR 379** as a guide to the assessment of misconduct under the first and third limbs of the test: the employer must have genuinely believed the employee to be guilty of the misconduct, on reasonable grounds, having carried out as much investigation as was reasonable in the circumstances. It is not the function of this Court to substitute its own view of the employee's guilt or innocence for that of the employer; the question is whether the employer's belief and the process by which it was formed were reasonable.

Analysis

43. The termination letter from the Board Chairman clearly states the following in Paragraph-2: "In particular, the Board is concerned that you allowed Ms. Willock, who by your own admission as expressed in performance appraisal dated 2nd March

2020 needs improvement in the area of computers, to be confirmed in a position that she is clearly not competent to perform."

44. The last sentence in Paragraph-3 says: "You having not notified the Board of any deficiencies during the probation period, Mrs. Willock was confirmed to her substantive position on the completion of what the Board believed was a successful probation."
45. These two statements taken together are contradictory and illogical because the first one says that the performance appraisal clearly stated that Mrs. Willock had exhibited deficiencies in the important area of computer operations, and this report was in the Board's possession before expiration of the probationary period. The Board was therefore aware of Mrs. Willock's deficiency prior to completion of her probationary period, thereby providing its members with time sufficient to instruct the Employee to remove Mrs. Willock from the position in time. Additionally, stating that the Employee failed to notify the Board of any deficiency in Mrs. Willock's performance prior to completion of the probationary period is manifestly false, because the Employee's notification of Mrs. Willock's deficiency came via the performance appraisal report the Employee had submitted to the Board. No evidence was led by the Board Chairman, the Employer's only witness, indicating whether the Board had examined or considered the performance appraisal prior to expiration of the probationary period. What is important, however, is that the Board received the report before expiration of the probationary period.
46. Paragraph-4 states in part: "The Board is unaware of what guided your decision to confirm Ms. Willock in the position on the completion of her probation. The Board believes that you wittingly or unwittingly misled it as to Ms. Willock's competency and suitability for her current position." This statement is factually incorrect. The Employee, while she had the ability to make recommendations to the Board, was not empowered to make decisions regarding confirming other employees to permanent employment positions. Only the Board could have made such a decision, with the Employee communicating the decision to the affected employee.
47. Prior to the end of the probation period, the Board never sent any communication to the Employee advising whether Mrs. Willock should be confirmed in the position or denied admission to permanent employment status stemming from the adverse performance appraisal report. The Board's claim that the Employee misled it is unsubstantiated. Had it properly perused the performance appraisal and discussed same with the Employee; its members would have been in a much better position to make an informed decision. Instead of pursuing this course, its members allowed the probationary period to expire without taking the appropriate action it claimed the Employee herself should have taken.

48. Having failed to take action to discuss the performance appraisal with the Employee prior to the probationary period's expiration, and subsequently, having come to believe that Mrs. Willock was unsuitable for the position, the Board sought to deflect responsibility for its own blunder by projecting onto the Employee and laying the blame at her doorstep. Relying on this single incident, the Board, in the penultimate paragraph, concluded that the Employee was deceitful in the discharge of her duties, thereby undermining its confidence in her.
49. We now turn to the sections of the performance appraisal which address what it identifies as Mrs. Willock's main performance deficiencies. Clearly stated at the end of the report under the caption "Supervisor's overall comments and recommendations" are the following observations: "Unfortunately, her knowledge in computer literacy has not yet met the required standard. She is presently enrolled in a computer course to update her knowledge. With more assistance and training she will become better equipped to perform her daily duties with comfort and accuracy".
50. Under the section "Computer Literacy", the Supervisor's comments are "Employee has not yet grasped the full knowledge of the computer and its functions. She is presently enrolled in a computer course that will provide her with knowledge to perform." Nowhere in the performance appraisal, there is any suggestion by the Employee that she was of the view that the Employer should confirm Mrs. Willock in the position. The Employee did not say that with continuing training during the probationary period Mrs. Willock would have qualified for the position before the end of her probation. In fact, it was very unlikely that the point would have been reached before probation expiry, given that the assessment happened close to the end of the probation's deadline. Whatever conclusion the Directors might have reached, there is no evidence that they examined the performance report at all before the probation period expired.

Findings and Conclusions

51. Given the central role played by the termination letter in the determination of unfair dismissal cases, the Employee's handling of the Willock matter is the sole basis upon which the Employer terminated the Employee from her position as Manager. Emanating from that analysis, the Court makes the following findings and conclusions:
- i. The Board received the performance report displaying what it identified as Mrs. Willock's main performance deficiency well in time to make an informed decision.
 - ii. The Employer did not lead any evidence to suggest that the Employee was required or obligated to submit a separate report incorporating her recommendation on the probation matter.
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- iii. The performance report was crystal clear in stating that Mrs. Willock was unable to perform computer operations at the required level, and would need additional training time to achieve the required level of proficiency.
 - iv. Given that the performance report was dated March 2nd, 2020, and the probation's end date was March 20th, 2020, the Board had sufficient time to discuss the report with the Employee in a face-to-face meeting to make a proper decision with time to spare before expiration of the probation period. This communicative approach would have eliminated any misunderstanding or doubts regarding Mrs. Willock's capabilities.
 - v. The Board had sole authority to either remove Mrs. Willock from the position or retain her in the position. If the Board wanted to retain Mrs. Willock, it could have done so by instructing the Employee to write her informing that she had attained a successful probation and would therefore be retained. If the Directors did not wish Mrs. Willock to continue in the position, they could have done the converse.
 - vi. By not calling the Employee to a meeting, whether physically or virtually, to discuss Mrs. Willock's capabilities and suitability to perform in the position, in light of the contents of the performance appraisal report, the Board denied itself the opportunity to make an informed and timely decision; and must accept responsibility for its own inaction and lack of proactivity. The matter was obviously important to the Board if the consequence of what happened was the basis for terminating the services of the Employer's senior manager. There was therefore a compelling reason the Board ought to have had a meeting with the Employee to decide on the success or failure of the probation. The Board chose not to exercise that option at its own peril.
 - vii. Accordingly, the expiration date of the probation passed with Mrs. Willock still in the position and, according to the performance appraisal, remaining unqualified to perform at the level required by the Employer.
 - viii. In the third paragraph of the termination letter, the Board Chairman stated: "You having not notified the Board of any deficiencies during the probation period (our underscoring), Mrs. Willock was confirmed to her substantive position on the completion of what the Board believed was a successful probation." The statement claiming that the Employee never advised the Board of Mrs. Willock's deficiencies is false because the performance appraisal which the Board received before expiration of the probation contained words relating to her negative performance with use of the computer, an essential element of her job requirements.
 - ix. The last sentence in the fourth paragraph states: "The Board believes that you wittingly or unwittingly misled it as to Ms. Willock's competency and suitability

for her current position.” Here again, the performance appraisal was very clear regarding Mrs. Willock’s competency in computer operations.

52. The Board did not advance a shred of evidence to substantiate its claim. To succeed in a defense against unfair dismissal, the Employer must demonstrate that there is a factual basis for the assigned reason for the dismissal. It cannot stand if based only on the unsubstantiated belief of the Employer.

53. Based on the above findings, we conclude that:

- i. The basis for the termination was flawed and unfounded, a breach of Section C58(1)(a). The misconduct the Employer accused the Employee of perpetrating lacked a factual basis. The Employer cannot prove that misconduct occurred, and the evidentiary basis for proving the misconduct is seriously deficient.
- ii. Even if we are wrong in our conclusion regarding the factual basis for the termination, the Employer would still be in breach of C59(2) of the Labour Code, because we do not believe that the alleged breach was sufficiently serious to warrant immediate dismissal. The Employer in the circumstances would have had to serve the Employee with an appropriate warning letter, with termination of employment flowing from any repetition of the misconduct within six months of the letter. It is also noteworthy that if the Employer had been forced to confirm Mrs. Willock in the new position, that it could have issued her with a warning letter regarding her performance, requiring her to meet the Employer’s minimum standard of performance within three months of the warning, failing which her employment could be terminated under Section C59(3).
- iii. The Employer breached Section C58(2) which provides that “in measuring whether a dismissal for that reason is fair, the Court shall determine whether the employer acted reasonably in the circumstances”. Before proceeding to terminate the Employee’s employment, the Employer did not examine the performance appraisal prior to the end of the probation or act on the information it contained. Further, the Board, as sole decision-maker regarding the outcome of the probation, should have discussed the matter with the Employee, then decide. The Board ignored these prudential steps and rushed to judgement, declaring that the Employee deliberately misled it. Nowhere in the Employer’s submissions or declarations is there even a suggestion as to why the Employee would have deliberately misled it. It did not even proffer a motive as to why the Employee would deliberately mislead it. The Employer did not act reasonably in the circumstances and therefore is in breach of Section C58(2).

54. The Court therefore concludes that the Employee was unfairly dismissed.

Compensation

55. The Court makes awards under the following heads:

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Notice Pay

56. Section 2.2 of the employment contract requires each party to give two months’ notice of an intention to terminate the contract. Accordingly, we award **\$15,600.00**, equivalent to two months’ basic pay of \$7,800.00 under this head.

Gratuity

57. Clause 2 of the contract of employment binds the Employer to pay a gratuity equivalent to 12.5% of gross basic salary paid for the period of employment upon successful completion of the contract. Having found that the Employee did not complete her contract only because the Employer unfairly dismissed her, the Court holds that the Employer cannot rely on its own unfair conduct to defeat the Employee’s entitlement to this benefit, and the gratuity is accordingly awarded on a pro-rated basis for the period actually worked. The Employee worked for seven months earning a cumulative gross salary of \$54,600.00. By applying a 12.5% rate on the \$54,600.00 earned, the Court awards the Employee **\$6,825.00**.

Loss of Protection

58. The Court calculates this head on the same basis as severance pay. The Employee is entitled to one month’s pay for each year of service. Since she worked for seven months, she is entitled to 7/12ths of **\$7,800.00**. Accordingly, we award the Employee \$4,550.00 under this head.

Immediate Loss

59. Within two weeks of her termination of employment, the Employee secured employment at the rate of \$18.00 per hour for a 40-hour week, which equates to a monthly salary of \$3,120.00 [$\$18 \times 40 \times 52 / 12 = \$3,120.00$]. From January 2021 her salary increased to \$2,000.00 weekly, which monthly, equates to \$8,667.00, or \$667.00 per month more than the income she received from her previous employment. During the seven-month period ending December 31, 2020, she earned \$4,880.00 less per month from her current employment. The Employee is therefore awarded **\$34,160.00**. ($\$4,880.00 \times 7$) under this head.

Summary of Award

60. The Court summarises the awards as follows:

- i. \$15,600.00 Notice Pay
 - ii. \$ 6,825.00 Gratuity
 - iii. \$ 4,550.00 Loss of Protection
 - iv. \$34,160.00 Immediate Loss
- \$61,135.00 Total Award**

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Order

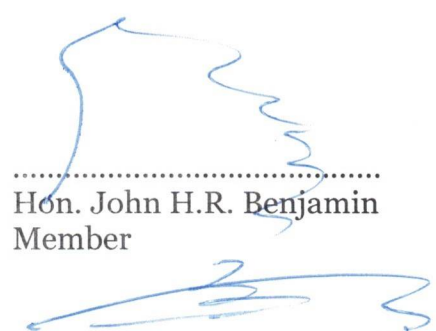
61. The Employer shall pay to the Employee the sum of **\$61,135.00** no later than August 10, 2026.

Note

This Reference was heard by a panel of three, comprising the Hon. Charlesworth A. Browne (then President), the Hon. Judith A. Dublin and the Hon. John H.R. Benjamin. The Hon. Charlesworth A. Browne is unavailable. The Judgment is accordingly delivered and signed by the two undersigned Members. Pursuant to section 4(8)(a) of the Industrial Court Act, Cap. 214, the Court is duly constituted, for the hearing of a trade dispute, by two or more Members; and by section 4(6), the Court may act notwithstanding the absence of any Member from the hearing or any part thereof, including its completion and delivery, and no act, proceeding or award of the Court is to be called in question or invalidated by reason of such absence.

Dated the 10th day of July, 2026


.....
Hon. Judith Dublin
Member


.....
Hon. John H.R. Benjamin
Member

The Honourable John H.R. Benjamin delivered this Judgment