



IN THE INDUSTRIAL COURT

ANTIGUA AND BARBUDA

REFERENCE NO. 41 of 2018

BETWEEN

CHARLES BACHELOR

Employee

and

ALEX GRIMLEY T/A SHEER ROCKS RESTAURANT AND BAR

Employer

Before:

The Hon. Samantha May-Francis

President

The Hon. Collin R. Maynard

Member

The Hon. Joanne Smith

Member

Appearances:

Mr. Anderson Carty of The Antigua & Barbuda Tradesman & United Workers Federation,
Representatives for the Employee

Ms. Jan Peltier Attorney-at-Law of Christopher and Associates, Representatives of the
Employer

**2026: May 11
May 22**

JUDGEMENT

Fixed term contract- repudiatory breach- investigation of alleged theft of cash tips- Employee placed on investigative suspension- investigation conducted- conclusory language of guilt on investigative report- failure to convene promised hearing- whether employee's resignation was premature- whether Employee was constructively dismissed- whether dismissal was unfair under sections C56 and C58 of the Labour Code- whether Employee entitled to compensation

Introduction

1. This matter comes before the Court by way of Reference filed on July 23, 2018, the Employee having claimed to have been constructively and unfairly dismissed from his position as General Manager of the Employer's Restaurant- Sheer Rocks on April 13, 2018. The Employer denied that any dismissal occurred and maintained that the Employee resigned voluntarily and prematurely.
2. On May 11, 2026, the date fixed for trial, the Employee appeared and was ready to proceed. The Employer and its three witnesses did not appear. No good reason was advanced. No advance application to adjourn had been made. No medical evidence or exceptional circumstance was placed before the Court.
3. The Reference had been outstanding for nearly eight years. The Pre-Trial Questionnaire confirmed the Employee's readiness for trial. The Court refused the Employer's legal representative's application to relist the matter and the trial proceeded on the Employee's evidence.

Background

4. The Employee was employed as General Manager of Sheer Rocks Restaurant which is located on the Coco Bay Resort property located at St. Mary's Parish Antigua from September 29, 2011 under successive fixed term contracts. The last contract was executed on June 1, 2016 and was to expire on May 31, 2019. His monthly emoluments were \$4,333.00 salary plus \$541.67 travel allowance totaling \$4,874.67 per month. He worked a five-day work week.
5. By letter dated March 23, 2018, the Employer suspended the Employee with immediate effect on the grounds that he was a suspect in an alleged theft. The letter promised contact by March 27, 2018, an investigation report, and an independent disciplinary hearing on March 30, 2018.
6. The Employee received the investigation report signed by Mr. Simon Christey-French, Head Chef at Sheer Rocks Restaurant. The report concluded in bold uppercase text that the Employee had been involved in the theft of cash tips. On April 8, 2018, the Employee was directed to collect an envelope containing the report from the security gate of the Hotel. There was not an accompanying explanation pertaining to any meeting and there was no representative of the Employer when the Employee collected the envelope.
7. The disciplinary hearing promised for March 30, 2018 was never convened. No rescheduled date was communicated. No contact was made with the Employee between March 27 and April 13, 2018, a period of sixteen days following his suspension.

8. At trial the Employee gave evidence that after receiving the report he immediately formed the view that he had been constructively dismissed. He consulted his representative who confirmed that view.
9. By letter dated April 13, 2018, five days after receiving the report, the Employee resigned with immediate effect. He identified the Employer's conduct as constituting constructive dismissal and he proceeded to file a complaint of unfair dismissal with the Labour Commissioner.
10. A conciliation hearing was held on June 6, 2018 without settlement. This Reference followed.
11. Following his dismissal, the Employee applied immediately to Curtain Bluff Resort, Jolly Beach Resort and Mill Reef Club. He operated a catering business earning approximately \$2,500.00 per month. He obtained seasonal employment as a Bartender at Mill Reef Club from November 2018 at \$880.00 per week, which continued until March 2020 when the Club closed due to the COVID-19 pandemic. He obtained temporary employment at Hodges Bay Resort from May 2021. Since May 2024 he has operated as a licensed bus driver earning approximately \$700.00 per week gross.

The Applicable Law

12. Constructive dismissal arises where an employer commits a fundamental breach of contract going to the root of the employment relationship and the employee accepts that breach by resigning and treating himself as dismissed. The dismissal is then assessed for fairness. The burden of establishing the repudiatory breach rests upon the Employee.
13. The implied term of mutual trust and confidence requires that neither party shall, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. A serious breach constitutes a repudiatory breach entitling the innocent party to treat the contract as at an end.
14. For resignation to operate as acceptance of a repudiatory breach, the employee must resign within a reasonable time and must not by his conduct affirm the contract after the breach.
15. These principles are supported by **Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27** and **Buckland v Bournemouth University Higher Education Corporation [2010] EWCA Civ. 121** which require no recitals.

Findings

16. A Memorandum of Defence carries no evidential weight. It is a statement of what a party intends to prove, it is not proof of any fact. Notwithstanding the failure of the

Employer and its witnesses to appear, the Employer's legal representative was permitted to cross-examine the Employee. The cross-examination did not undermine the Employee's evidence, perhaps through no fault of Learned Counsel Ms. Peltier, who conducted cross-examination without her client Mr. Grimley being present to provide live instructions as the evidence unfolded. No concession of significance was extracted. No material inconsistency was exposed. The Employee's evidence emerged unshaken and intact.

17. The Court finds the Employer committed a repudiatory breach of the implied term of mutual trust and confidence by the following cumulative conduct:
 - (i) Communicating a finding of involvement in criminal conduct- theft of tips, in absolute and conclusory language, without affording the Employee any prior opportunity to respond;
 - (ii) Requesting that the Employee attend the main gate of the property on which the Employer's business is located to collect the investigation report without meeting and without explanation;
 - (iii) Failing to convene the independent disciplinary hearing expressly promised for March 30, 2018 and providing no explanation for that failure; and
 - (iv) Making no contact with the Employee for sixteen days following his suspension, leaving him without a hearing date, without communication, and with a written finding of criminal involvement against his name.
18. The allegation of theft was never established before this Court on any standard of proof. The Employee's categorical denial is accepted in its entirety.
19. The Employee did not affirm the contract in the five-day period between the delivery of the report and his resignation. He was on paid suspension and not actively performing his contractual duties. Receiving salary during suspension does not constitute affirmation. Five days in which the Employee took legal advice before resigning does not amount to affirmation, particularly where the Employer maintained complete silence throughout.
20. The Employer's case that the resignation was premature is rejected. The hearing promised for March 30 was never held. No explanation was given. No contact was made in the sixteen days following suspension. An employee carrying a written finding of criminal involvement whose promised hearing has not materialised cannot reasonably be expected to wait indefinitely. The resignation was measured and proportionate.
21. On the whole, the Employer's pleaded case, was neither proven by evidence nor established through cross-examination. The Court finds the Employee was constructively dismissed. The Reference succeeds.

Unfair Dismissal

22. Section C56 of the Labour Code prohibits unfair dismissal. Sections C58(1) and C58(2) must be read conjunctively confirmed by the Court of Appeal in **Cable and Wireless (Antigua and Barbuda) Limited v Antigua and Barbuda Workers Union (ANULTAP2016/003)**. The employer must establish a potentially fair reason and demonstrate it acted reasonably. The burden rests on the employer.
23. The Employer on its pleading advanced that the Employee was involved in the theft of cash tips. This type of conduct is a potentially fair reason for dismissal under the Labour Code. However, the Employer called no witnesses. The investigation report was never proven in evidence. The allegation was never substantiated on any standard of proof. The Employer fails the first stage under Section C58(1). The dismissal is unfair at this stage without the need to proceed further.
24. Nonetheless, even if a potentially fair reason were established, the Employer's conduct fails Section C58(2) comprehensively. The investigation finding was expressed in conclusory language of guilt before any hearing. A General Manager of nearly seven years was reduced to collecting an envelope from a security gate, no meeting, no explanation, no representative. The promised hearing was never held and the Employee was never afforded the opportunity to explain that he was involved in a "Box", a savings arrangement with other employees at work as part of his explanation regarding the allegation that he was seen exchanging monies with other employees. The conduct falls entirely outside the range of reasonable responses.
25. The Court accordingly finds, applying Sections C56, C58(1) and C58(2) of the Labour Code conjunctively, that the dismissal was unfair.

Compensation

26. The Court accepts the Employee made genuine and sustained efforts to mitigate his loss of employment. He provided evidence of his post-dismissal employment history. The Court considered compensation under the following heads:

Loss of Protection

27. It is settled that loss of protection is available to an unfairly dismissed employee. It compensates for the equity an employee has built up through continuous service, the right not to be unfairly dismissed and the accrued employment security that unfair dismissal destroys. The question expressly raised in this Reference is whether the Employee is entitled to compensation for equity beyond his purely contractual rights.
28. This Court addressed this question in a fixed term contract context in **Jennifer Geran v Dream Company Ltd (K-Club Barbuda) (Reference No. 4 of**

2004, Henry Chairman, October 28, 2008). The Chairman held at paragraph 26 that an employee has an equity in his job which requires protection under Section 10(3) of the Industrial Court Act, awarding one month's additional pay as that equity and referencing **Universal Caribbean Establishment v James Harrison (Court of Appeal Suit No. 21 of 1993)**. That equity award is in substance the same head as loss of protection, the difference is one of quantification, not principle.

29. The Court is aware there are differing positions in the decisions of this Court on this question. In **Fredrique Bonfils v Dream Company Limited T/A K-Club Barbuda (Reference No. 17 of 2003, Maundy President, November 4, 2004)** this Court awarded only the unexpired contractual balance, citing **Universal Caribbean Establishment v James Harrison** as authority. No award was made beyond the contractual sum. In **Jennifer Geran** a different panel, on similar facts and citing the same authority, awarded one additional month as equity. These two decisions are irreconcilable on the question of whether anything beyond the contractual balance is payable. As this Court is not bound by its own previous decisions, it is not necessary to choose between them.
30. This Court is however bound by the decisions of the Court of Appeal of the Eastern Caribbean Supreme Court. The Court of Appeal in **Antigua and Barbuda Transport Board v Anderson Carty and Anique Francis (ANUHLTAP2020/0005 and 0006, July 27, 2023)** resolved this divergence by deciding that loss of protection must be awarded to a fixed term employee unfairly dismissed before the natural expiry of his contract. That decision is binding. This Court follows it. The divergence between **Bonfils** and **Jennifer Geran** is resolved by that binding appellate authority which supersedes both.
31. Learned Counsel Ms. Peltier advanced the argument that no entitlement ought to arise as the Employee's employment was only guaranteed for a fixed term. For the reasons set out above that argument is rejected. The Employee had 6 years and 7 months of continuous service, a total of 6.58 years. Applying the established formula of one month's basic salary per year of service, the Employee is awarded the sum of **\$28,511.14** (\$4,333.00 x 6.58).

Notice Pay

32. The Employee claims notice pay of \$14,624.01 being three months wages. The contract being one of a fixed term, the Employee is not entitled to both payments in lieu of notice and compensation for the same period as this results in double recovery. Notice pay is entirely subsumed below under the heading Loss of Earnings.

Loss of Earnings

33. An unfairly dismissed employee under a fixed term contract is entitled to payment of the balance of the contracted sum subject to evidence on mitigation. The Court of

Appeal confirmed that the employee is under a duty to take proper and reasonable steps to obtain suitable alternative employment following dismissal. Where the employee obtains alternative employment, the actual earnings received must be brought into account and credited against the gross contractual entitlement. The burden of establishing failure to mitigate rests upon the employer.

34. The unexpired portion of the Employee's contract ran from April 13, 2018 to May 31, 2019 approximately 13.5 months. The gross contractual entitlement for that period \$65,808.05 ($13.5 \times \$4,874.67$). From this gross figure the Court deducts the Employee's earnings from actual income generated post his dismissal and during the unexpired term of his contract in accordance with the established principles of mitigation.
35. Based on the evidence during the period April 13 to November 28, 2019 for approximately seven months the Employee generated income from his catering business in the sum of \$17,500.00 (\$2500.00 monthly x 7 months). Additionally, during the period November 2018 to May 31, 2019, for approximately 6½ months the Employee worked at Mill Reef Club where he earned approximately \$3,813.00 per month in the total sum of \$24,785.00.
36. The Employee's total income post his dismissal was in the sum of \$42,285.00, leaving a loss to the Employee in the sum of \$23,523.05 (\$65,808.05-\$42,285.00).
37. The Employee is therefore entitled to compensation in the sum of **\$23,523.05** under this head.

Future Loss

38. The Employee's contract was for a fixed term. Renewal was neither guaranteed nor promised beyond May 31, 2019. The Court declines to make any award under this head.

Manner of Dismissal

39. This head compensates for the financial loss of employment prospects caused by the manner of dismissal. It is distinct from exemplary damages and compensates not for injured feelings but for the real and measurable economic harm flowing from reputational damage.
40. The award is made on the uncontested evidence of the Employee. The Employer did not appear at trial. The Employee's account was not sufficiently challenged during cross-examination. The Court accepts the Employee's evidence in its entirety as the sole evidential basis for this head.
41. The Employee was a General Manager of nearly seven years standing in the hospitality industry of a small island community. He was accused by the Employer in writing, without any hearing and without any opportunity to respond, of

involvement in criminal conduct-the theft of cash tips. He was dismissed from his employment carrying an unretracted, unvindicated written finding of criminal involvement on his professional record. It is the last written word of his former Employer on his professional character.

42. The uncontested evidence further establishes that prospective employers informed the Employee they had received communications from the Employer indicating he had been dismissed for theft. The Court receives this not as proof of what the Employer said but as evidence of the impact on the Employee's ability to secure comparable employment. His evidence remained intact in that regard.
43. Having regard to the gravity and criminal nature of the accusation, the absence of any vindication or retraction, and the uncontested evidence of damage to employment prospects in a small island hospitality industry where reputational harm is amplified, the Court awards **\$15,000.00**. This reflects the criminal stigma, the absence of vindication, and the sustained damage to the Employee's employment prospects and earning capacity.

Exemplary Damages

44. Section 10(5) of the Industrial Court Act permits an award of exemplary damages where the Court is of the opinion that the employee was dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice.
45. The Employee had managed the Employer's restaurant for nearly seven years. He was directed to collect an envelope from the security gate, the manner of communication, not treating him as senior employee of longstanding but as someone to be excluded from the premises entirely. No meeting, no representative, no explanation. The promised hearing was never held. Having regard to the conduct described, Court is firmly of the opinion that the Employee was dismissed in circumstances that were harsh and oppressive and not in accordance with good industrial relations practice. The Employee was denied any hearing, any opportunity to present the "Box" explanation, and any pathway to vindication. The Employer's conduct was harsh and oppressive and against good industrial relations practices in the direct and meaningful sense.
46. The Court awards **\$10,000.00**. This is fair, appropriate and proportionate having regard to the gravity of the conduct, the need to punish and deter, and the interests of the community as required by Section 10(3) of the Industrial Court Act.

Costs

47. Section 10(2) of the Industrial Court Act provides that costs shall not be ordered unless for exceptional reasons. Having regard to the findings on manner of dismissal and exemplary damages, an award is justified. The Court awards **\$3,000.00**.

ORDER

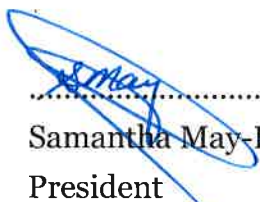
48. The Court hereby orders:

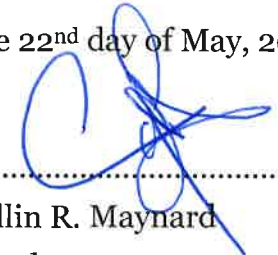
1. The Employee's claim for constructive and unfair dismissal is hereby upheld.
2. The Employee is therefore entitled to compensation as follows:

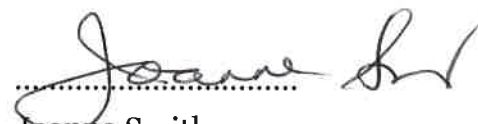
Loss of Protection	\$28,511.14
Loss of Earnings	\$23,523.05
Manner of Dismissal	\$15,000.00
Exemplary Damages	\$10,000.00
Costs	<u>\$ 3,000.00</u>
TOTAL	<u>\$80,034.19</u>

3. The Employer shall pay to the Employee the total sum of **\$80,034.19**.
4. Payment of the sum of **\$80,034.19** shall be made to the Employee on or before the 30th day of June, 2026.

Dated the 22nd day of May, 2026


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Samantha May-Francis
President


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Collin R. Maynard
Member


.....
Joanne Smith
Member

The Hon. Samantha May-Francis delivered this Judgement