

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. C/52 OF 2018

BETWEEN:

LINDA LARIMER-MURPHY

Employee

and

BLUPEARL LIMITED

Employer

Before:

The Hon. Samantha May-Francis

The Hon. Collin R. Maynard

President

Member

Appearances:

Mr. Anderson E. Carty of the Antigua and Barbuda Tradesmen and United Workers Federation, Representative for the Employee

**2023 September 14
2026 April 10**

JUDGMENT

Ex parte trial, whether the dismissal of the Employee was discriminatory on grounds of sex within the meaning of section C4(1) of the Antigua & Barbuda Labour Code; whether the dismissal was unfair within the meaning of section C56 of the Labour Code; what compensation the Employee is entitled to receive.

1. The Court notes that the Honourable Charlesworth O.D. Browne, Former President who presided over the hearing of this matter on September 14, 2023, has since ceased to be a member of the Industrial Court. Section 4 of the Industrial Court Act empowers the remaining members of the Court to continue with and complete proceedings where a member ceases to hold office during the course of those proceedings. The remaining members of the Court, namely the Honourable Samantha May-Francis, the then Vice President now President, and the Honourable Mr. Collin R. Maynard, Member, have considered the matter and are satisfied that it is appropriate to proceed to judgment. This judgment is accordingly delivered by the



remaining members of the Court in the exercise of the power conferred by section 9 of the Industrial Court Act.

Background

2. The Employee filed Reference No. C/52 of 2018 on August 30, 2018, claiming that she was unfairly dismissed by the Employer, BluPearl Limited. She sets out the particulars of her claim in her Memorandum and Witness Statement filed on August 30, 2018, corrected Memorandum filed on November 12, 2018, and a Supplemental Witness Statement filed on October 27, 2022, supplemented by her oral testimony at trial on September 14, 2023.
3. The Employer filed its Memorandum of Defence on October 23, 2018, prepared by the Employer's then Attorneys-at-Law, Cort & Cort, together with supporting exhibits. The Employer did not file Witness Statements and made no application for an extension of time to do so.
4. On November 7, 2022, Cort & Cort applied to be removed as legal representatives for the Employer; that Order was granted on November 10, 2022. Mr. Andrew Okola of OMO Law subsequently advised the Court of their engagement. No formal Notice of Acting was filed. On August 2, 2023, a Notice of Trial Date for September 14, 2023 was issued to both representatives.
5. On the day of trial, the Employee and her Representative were present. The Employer and its legal representatives were absent without explanation. The Court was satisfied, on the basis of the Notice of Trial Date issued on August 2, 2023 to both representatives of record, that proper notice of the hearing had been given to the Employer. The Court accordingly proceeded to hear the matter in the Employer's absence in accordance with the Industrial Court Act and the Rules of the Industrial Court.

Evidence and Pleadings

6. The Court had before it the Employee's Memorandum, Witness Statement, Supplemental Witness Statement, and supporting exhibits, together with the Employer's Memorandum of Defence and its exhibits, and the Employee's oral testimony at trial. The Court has considered all of this material in its entirety.
7. From the outset it must be noted that the Employer, though absent at trial, is not to be treated as not having advanced a case. In **Shocked v Goldschmidt [1998] 1 All ER 372**, the Court of Appeal confirmed that non-attendance is not to be treated as a concession and that the court must consider all materials filed by the absent party. This Court has done so. The findings below rest on the totality of the material before the Court, to include the Employee's sworn testimony weighed against the Employer's pleaded case and documentary exhibits. Accordingly, no adverse inference has been drawn from the Employer's non-attendance.

Findings of Fact

Salary

8. The Employee commenced employment with the Employer on May 15, 2017 as an Assistant Project Manager at its construction site at Hodges Bay, Antigua. Her contract of employment specified a gross monthly salary of EC\$6,000.00. There were other Assistant Project Managers in post, namely Ms. Kerry Liburd, who had been hired on May 1, 2017. All Assistant Project Managers reported to Mr. John Goard as Director and to Mr. Phil Worsfold as Project Manager. Mr. Goard was subsequently replaced as Director by Mr. Steve Fine.
9. The Employer introduced a Discretionary Bonus Plan (Bonus Plan) providing for an EC\$5,000.00 bonus payable at the end of each 30-day pay period subject to specified performance milestones. The Bonus Plan was signed by the Employee and Mr. Fine. The documentary evidence before the Court confirms that the first bonus payment of EC\$5,000.00 was made to the Employee on July 14, 2017.
10. A factual dispute exists as to whether the Employee's salary increase to EC\$10,000.00 arose from merit recognition or commercial pressure. The Court finds it unnecessary to resolve this, as both parties accept that the increase was agreed. This is corroborated by the termination letter which records notice pay consistent with one month's net pay after statutory deductions at that gross salary. The Court proceeds on the basis that the Employee's gross monthly salary at the date of dismissal was EC\$10,000.00.

The Text Message of September 11, 2017

11. The full text exchange between Mr. Worsfold and the Employee spanning April to September 2017 was before the Court. It establishes that the communications between the parties throughout that period were almost exclusively professional in nature, coordinating site work, equipment, storm preparations, and building inspections. On September 11, 2017, having herself initiated contact to check on Mr. Worsfold's welfare, Mr. Worsfold having sustained an injury to hip during a fall. In response, the Employee received the following message from him at 7:18 a.m.:
"This might give you a laugh!!!! I didn't say anything yesterday but every time I tried to move my leg yesterday Arthur kept getting sharp migraines. I've just had a shower, sorry would have invited you but I know you are up to your neck in Alligators and you know the only answer for that is to drain the swamp!!!! Anyhow back..."
12. The Employer's Memorandum of Defence pleads that Mr. Worsfold subsequently sent a further message asking the Employee to ignore the previous one, explaining it was sent to her in error and was intended for his girlfriend. The Employer further pleads that the Employee replied saying the situation was amusing and that she held a secret over him. The Employer contends that this exchange demonstrates the Employee accepted the innocent explanation.

13. The Court finds this message genuinely ambiguous. On the Employer's reading it is a misdirected text. On the Employee's reading, the shower reference and the invitation carry a sexual implication from a supervisor to a female subordinate. Both readings are open on the face of the text. The follow-up exchange is similarly capable of more than one interpretation.
14. The Court is not satisfied that this message alone establishes sexual harassment on the balance of probabilities.

Outburst on October 4, 2017

15. On or around October 4, 2017, as Mr. Worsfold returned to the site following his recovery, the Employee alleges that he made statements of a sexual nature and highly offensive about her in the presence of a third-party service provider, his brother, the head supervisor, and other employees.
16. The Employer's Memorandum of Defence states that it has no direct knowledge of the alleged outburst, a non-admission that neither confirms nor denies that the incident occurred.
17. Although the outburst rests on the Employee's testimony, untested by cross-examination, the Court is satisfied on the balance of probabilities that it occurred. The finding does not rest on the Employer's absence alone but on the corroboration provided by the Employer's own admissions. The Employer's evidence is that the Employee complained to Mr. Fine, that subsequently Ms. Celia Morgan investigated by speaking with Mr. Worsfold, and that an arrangement was reached restricting his site access. In the Court's view, an employer does not conduct a formal investigation and negotiate access restrictions unless the complaint was regarded as having sufficient substance. It is on the totality of that evidence that the Court makes this finding.
18. Mr. Worsfold was the Employee's direct supervisor and Project Manager. His conduct on the worksite in the course of his supervisory duties is attributable to the Employer. The words used in that outburst were seriously offensive in sexual character, imputed sexual impropriety to the Employee in relation to her superiors, and demeaned her dignity in language this Court considers too graphic and injurious to reproduce in full in a published judgment. It suffices to record that the statements were made publicly in the presence of subordinates and colleagues, were sexual in nature, and had the effect of seriously undermining the Employee's authority and dignity in the workplace.

Employer's Response following the outburst on October 4, 2017

19. The Employer admits that it investigated the complaint, that Ms. Morgan spoke with Mr. Worsfold, and that an arrangement was reached regarding his presence at the site. The Employer characterises the arrangement as a commitment to keep Mr.

Worsfold's time outside the main office to a minimum, rather than a complete exclusion, and denies having promised outright removal.

20. The Court accepts that some form of remedial arrangement was agreed and formally documented, including a written direction from Mr. Fine to all contractors specifying that Mr. Worsfold was not to give direct instructions to employees or their supervisors. However, the Court finds that this response was inadequate. The arrangement permitted Mr. Worsfold to remain present on the site and to continue in his supervisory role, subject only to a restriction on giving direct instructions. Given the seriousness of the conduct for which the Employer was responsible, this fell short of what good industrial relations practice required. The Employee was left in a workplace where the conduct of her supervisor had been met with only a limited and partial response.
21. The Employer states that the Employee made no further formal complaints about Mr. Worsfold after October 2017, and states it was unaware of the matters alleged by the Employee regarding Mr. Worsfold's continued attendance at the site during prohibited hours. The Court accepts that no further formal complaints were made.

The Dismissal

22. On February 2, 2018, the Employee met briefly with Mr. Wellemeyer, a Director of the Employer, who without any prior warning, notification, or discussion, handed her a termination letter. The letter stated:
- "As you would be aware, the construction project of Hodges Bay Resort & Spa is now coming to an end. For this reason various staff positions are becoming redundant, and we have started cutting back on staff, beginning with the Casual Labourers. We have now come to the stage whereby we are starting to cut back on Supervisors, given the overall diminishing staff count. In the circumstances, effective immediately, your services at Hodges Bay Resort & Spa will no longer be required."*
23. The Employer admits that it paid notice pay and all other entitlements upon termination. The Employer denies that Mr. Worsfold made any sexual advances to the Employee and asserts that he had absolutely no influence on the decision to dismiss the Employee. The Employer contends that project managers were generally aware of the project's imminent completion and the consequent need for workforce reduction, and that a genuine redundancy existed. The Employee's unchallenged evidence is that she was never individually informed of or consulted about any impending redundancy.
24. The payments made upon dismissal were as follows:
- | | |
|------------------------|--------------------|
| 2 days worked | \$ 835.08 |
| 1 month's Notice Pay | \$ 8,963.54 |
| 8 days' vacation pay | \$ 3,299.70 |
| Severance Pay (8 days) | \$ 3,692.31 |
| Total | \$16,790.63 |

The Employee's Claim

25. The Employee's case is that she was unfairly dismissed and discriminated against on grounds of sex contrary to sections C4(1), C56, and C58(2) of the Antigua and Barbuda Labour Code. Her case on sex discrimination is that she was dismissed in retaliation for making a complaint about Mr. Worsfold's conduct, the investigation that followed, and the consequent arrangement imposed on him. She contends that she was dismissed because of her sex. She seeks compensation in respect of all applicable heads of loss.

Issues

26. The issues for determination are:

- (i) whether the dismissal of the Employee was discriminatory on grounds of sex within the meaning of section C4(1) of the Labour Code, specifically whether it was in retaliation for the Employee's complaint about Mr. Worsfold's conduct and the investigation that followed;
- (ii) whether the dismissal was unfair within the meaning of section C56 of the Labour Code; and
- (iii) what compensation the Employee is entitled to receive.

Analysis

Sex Discrimination, Section C4(1)

27. Section C4(1) of the Antigua and Barbuda Labour Code prohibits discrimination in employment on grounds of sex. The Employee's case is a retaliatory dismissal claim in that she was dismissed because she complained about Mr. Worsfold's conduct and caused the Employer to investigate and impose restrictions on him, and that those acts were rooted in her sex.

28. To succeed she must establish that her sex was an effective cause of the decision to dismiss her, as stated in the English case of **Nagarajan v London Regional Transport [1999] IRLR 572**. The correct approach is to ask why the complainant was treated as she was and whether the reason was connected to a protected characteristic, as stated in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285**. Once facts from which discrimination could be inferred are established, the evidential burden shifts to the employer to provide a credible non-discriminatory explanation, as stated in **Glasgow City Council v Marshall [2000] IRLR 272**. These principles are applied by this Court as persuasive authority.

29. The Court accepts that the Employee was subjected to a hostile working environment constituted principally by the outburst of October 4, 2017, and that the Employer's response to that environment was inadequate. However, the question under section C4(1) is whether the decision to dismiss the Employee was made because of her sex.

30. In its initial consideration of this matter, the Court proceeded on the basis that Kerry Liburd was female. On Friday, April 10, 2026, following the reading of the judgment, the Court was informed by Mr. Carty, Representative for the Employee, that Kerry Liburd is in fact male. The Court accordingly corrects the record. The comparator analysis premised on Mr. Liburd being female cannot stand. The Court acknowledges that the retention of a male colleague in an identical role, in circumstances where the female Employee was dismissed, is in principle capable of supporting an inference of less favourable treatment on grounds of sex.
31. However, despite the correction, the Court is still not satisfied that the Employee has established sex discrimination on the balance of probabilities. First, the Employer had promoted the Employee and increased her salary following the September 2017 text message, conduct inconsistent with a discriminatory disposition toward her; second, the Employee adduced no direct evidence establishing that the hostile working environment, or her complaint about it, was an operative cause of Mr. Wellemeyer's decision to dismiss; third, the Employer's pleaded assertion that Mr. Worsfold had no influence on the dismissal was not addressed by the Employee in her witness statement or evidence in chief; and fourth, approximately four months elapsed between the complaint and the dismissal without any adverse action against the Employee. Taken together, these matters are insufficient to establish the necessary causal connection between the Employee's sex and the decision to dismiss. The claim under section C4(1) accordingly fails.
32. In the Court's view, based on the evidence, the Employee has not established the necessary causal link. First, the Employer had promoted the Employee and increased her salary after the September 2017 text message. Second, the Employee's closest comparator was Ms. Liburd, who was also female and also held the position of Assistant Project Manager. Ms. Liburd was hired two weeks before the Employee and, on the uncontradicted evidence before the Court, retained her employment. Third, the Employee adduced no direct evidence establishing that the hostile working environment, or her complaint about it, was an operative cause of Mr. Wellemeyer's decision to dismiss. The Employer's pleaded assertion that Mr. Worsfold had no influence on the dismissal was not addressed by the Employee in her witness statement or evidence in chief. Fourth, and of lesser significance, is the fact that approximately four months elapsed between the complaint and the dismissal without any adverse action against the Employee.
33. The claim advanced under section C4(1) is that the dismissal was discriminatory. It is on that question - whether the decision to dismiss the Employee was made because of her sex that the claim fails for the reasons set out at paragraph 30 above. The Court has taken the conduct of the Employer in creating and inadequately remedying a hostile working environment into account in its overall assessment of compensation for unfair dismissal, as set out below.

Unfair Dismissal, Sections C56 and C58(2)

34. It is not in dispute that the project was approaching completion and that some degree of workforce reduction was necessary. The Employee's case was not that the redundancy was fabricated but that she was unfairly selected for it. The Court therefore accepts that a genuine redundancy situation existed.
35. This Court has stated repeatedly that the existence of a genuine redundancy situation does not of itself render a dismissal fair. The Court is satisfied that the dismissal was unfair within the meaning of section C56 of the Labour Code. The determining question under section C58(2) is whether the Employer acted reasonably. The Court of Appeal of the Eastern Caribbean has confirmed in **Cable and Wireless (Antigua and Barbuda) Limited v Antigua and Barbuda Workers' Union** ANULTAP2016/003 and in **St. James's Club Ltd v Sundry Workers** ANULTAP2018/0005 that where a redundancy situation exists, the employer bears the burden of proving on the balance of probabilities that it acted reasonably under section C58(2). This Court has consistently applied the principles articulated in **Williams v Compair Maxam Ltd [1982] ICR 156 (EAT)**. In the **Cable and Wireless** case, the then President H.S.R. Moe stated:

"Nonetheless the mere fact that a genuine redundancy does exist does not per se lead to the conclusion that the dismissal was fair; for the determining factor is whether the employer acted reasonably in handling the situation. When, therefore, redundancies are being considered it might be regarded as good industrial relations practice to follow the guidelines laid down in Williams v Compair Maxam Ltd. 1982 I.C.R. 156. In particular, the employer should seek to establish selection criteria which can be objectively checked against such things, inter alia, as attendance records, job performance, length of service, needs of the business..."

36. The **Williams** criteria requires advance warning, genuine consultation, fair and objective selection criteria, and consideration of alternative employment. The Employer failed on each. The Employee received no individual warning. No consultation took place. The termination letter purports to describe cutting back on 'Supervisors', yet the Employee was employed as an Assistant Project Manager, a factual inconsistency that itself reflects the absence of any principled selection process. The Employer's contention that managers were generally aware of the project's completion timeline does not satisfy these requirements. Awareness of a timeline is not notice of individual redundancy. The dismissal was procedurally unfair. The Court so finds.

Compensation

37. Having found the dismissal to be unfair, the Court assesses compensation under each applicable head. The applicable gross monthly salary is EC\$10,000.00. In assessing the appropriate level of compensation, the Court takes into account the Employee's total period of service of less than nine months; the payment of

EC\$16,790.63 already made by the Employer upon dismissal; and the Employee's attempts to mitigate her losses in the period following her dismissal.

Loss of Protection

38. Loss of protection is calculated in a manner analogous to severance entitlement under section C40 of the Labour Code. The qualifying period for severance under section C40 is 52 weeks (one year) of continuous employment. The Employee's period of service of approximately eight months and seventeen days falls below the one-year qualifying threshold. Despite this, the Employer paid EC\$3,692.31 upon dismissal under this head. No further award is made.

Notice Pay

39. Notice pay is settled in this Court at one month's pay per year of service for monthly-paid employees. The Employee received one month's net pay upon dismissal. No further award is made under this head.

Immediate Loss

40. The Employee applied to three employers in the thirteen months following her dismissal without success, before opening her own business in May 2019. While three applications over thirteen months does not constitute diligent mitigation, the Court accepts that the construction project management sector is specialised and that the Employee sustained genuine immediate financial loss. Having regard to the notice pay already received, the short period of service, and the partial failure to mitigate, the Court awards three (3) months' gross salary for immediate loss in the sum of **EC\$30,000.00** (3x \$10,000.00).

Manner of Dismissal

41. In **Antigua Village Condo Corporation v Jennifer Watt (Civil Appeal No. 6 of 1992)**, Sir Vincent Floissac CJ confirmed that an award under this head requires evidence that the manner of dismissal gave rise to a real risk of financial loss by rendering the employee less attractive to prospective employers or more liable to selection for dismissal. The Employee adduced no such evidence. The onus has not been discharged. No award is made under this head.

Future Loss

42. In **Antigua Village Condo Corporation v Jennifer Watt (Civil Appeal No. 6 of 1992)**, the Court of Appeal established that compensation for future loss must be predicated on the probability that the employee's earnings from future employment or self-employment will be less than those from the former employment, and that the onus is on the employee to prove both the probability of future loss and its probable duration. The Employee did not adduce evidence as to what she would expect to earn in future employment, likewise she did not establish the probable

duration of any shortfall between future earnings and her former salary of EC\$10,000.00 per month. The onus imposed by **Jennifer Watt** has not been discharged on the evidence before the Court. No award is made under this head.

Exemplary Damages

43. Section 10(5) of the Industrial Court Act empowers this Court to award exemplary damages where the conduct of the Employer at the time of dismissal was harsh, oppressive, or contrary to good industrial relations practices. The Court found at paragraph 34 that the Employer failed every one of the criteria required by good industrial relations practice in a redundancy situation in that the Employer gave no individual warning, conducted no consultation, applied no objective selection criteria, and produced a termination letter that mis-described the Employee's role.
44. The Privy Council has confirmed, in **Antigua and Barbuda Transport Board v Anderson Carty [2025] UKPC 38**, that the statutory test in section 10(5) is whether the dismissal was harsh and oppressive or not in accordance with the principles of good industrial relations practice; is to be applied according to its plain words and without the imposition of any additional gloss or requirements. The Courts understanding of paragraph 22 of Anderson Carty's judgment is that the Board of the Privy Council was of the view that it was not open to any court to impose requirements beyond the provision of the Statute. A finding that the Employer acted contrary to good industrial relations practices is therefore sufficient, of itself, to engage the power under section 10(5). The Court's finding satisfies that condition. The power to award exemplary damages is engaged. The Employee is therefore awarded **\$10,000.00** as and for exemplary damages.

Costs

45. Section 10(2) of the Industrial Court Act provides that costs may be awarded only where exceptional reasons exist. The Court's power to award costs under section 10(2) is engaged by the same findings that grounded the exemplary damages award under section 10(5). Those findings represent a wholesale and demonstrated disregard for the standards this Court is charged with upholding. The Court is satisfied that the conduct of the Employer in this matter meets that threshold. Accordingly, the Court awards \$3,000.00.

ORDER

46. The Employer is ordered to pay the Employee the sum of \$43,000.00 as compensation for unfair dismissal broken down as follows:

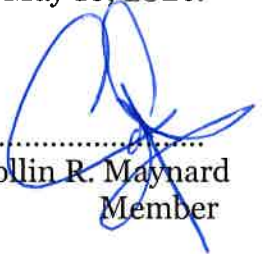
(i)	Immediate loss	\$30,000.00
(ii)	Exemplary Damages	\$ 10,000.00
(iii)	Cost	<u>\$ 3,000.00</u>
	Total	\$43,000.00

47. The Employer shall pay the said sum of **\$43,000.00** on or before May 10, 2026.

Dated the 10th day of April 2026



.....
Samantha May-Francis
President



.....
Collin R. Maynard
Member

Judgment delivered by the Honourable Collin A. Maynard