

IN THE INDUSTRIAL COURT

ANTIGUA AND BARBUDA

REFERENCE NO. 52 of 2023

BETWEEN

PAUL STEELE

Employee

and

**NATIONAL HOUSING AND URBAN AND
RENEWAL COMPANY LIMITED**

Employer

Before:

The Hon. Samantha May-Francis
The Hon. John H.R. Benjamin
The Hon. Charlene Selkridge

President
Member
Member

Appearances:

Mr. Kendrickson Kentish KC, of Lake Kentish & Bennett Inc., Attorneys-at-Law, Counsel
for the Employee

Mrs. Joy Dublin Baptiste and Wattisa Rose of the Attorney General's Chambers, Attorneys
for the Employer.

DECISION ON EXEMPLARY DAMAGES

Introduction

1. The Employee worked as a carpenter for the National Housing Urban and Renewal Company Limited; a government-owned company that builds residential homes in Antigua and Barbuda. The Employee commenced employment April 7, 2016, and was paid \$2,800.00 per month.
2. The Employer has accepted that it dismissed the Employee unfairly. That question is therefore settled and the parties have agreed to other heads of compensation. The only question that remains for this Court to decide is whether the way in which the Employer dismissed the Employee was so harsh, oppressive or contrary to good industrial relations practice that he should receive an additional award of exemplary damages under section 10(5) of the Industrial Court Act.



3. The parties were directed to file a Consent Order covering all other heads of compensation immediate loss of earnings, future loss of earnings and vacation pay. That Consent Order was filed on May 12, 2026; and entered by this Court. By that Consent Order, the Employer agreed to pay the Employee the additional sum of EC\$18,480.00 in full and final settlement of all other heads of compensation, save and except for the issue of exemplary damages, which the parties expressly agreed was to be determined and assessed by this Court. This Decision deals with that issue.

Background

4. On November 28, 2018, the Employee was working on a scaffold at the Employer's job site at Paynters when the scaffold collapsed. In his own words: *"Scaffolding collapsed and I and everything fell to the ground."* He was injured and never went back to work. He was still on certified sick leave when the Employer dismissed him by letter dated February 28, 2020, approximately 15 months after the accident.
5. The Employer sent the Employee to see Dr. Deepraj Gaekwad, a Consultant Orthopaedic Surgeon. Dr. Gaekwad examined him and produced a medical report dated August 20, 2019 some nine months after the accident. That report confirmed that Mr. Steele had suffered multiple serious injuries resulting in a permanent disability of 12% of his whole body. The Employer received that report and used it as the medical basis for the dismissal.
6. Importantly, Dr. Gaekwad's report did not simply say that the Employee could not work. It went further and expressly recommended that he be given alternative lighter duties that did not require heavy lifting or physical construction work. That recommendation was part of the same report the Employer relied upon to dismiss him.
7. The Employer's records show that the Employee submitted consecutive medical certificates throughout the period of his absence. The Employer's own witness, Ms. Mary Edwards, confirmed in her witness statement that those certificates placed the Employee on sick leave for a period in excess of 52 weeks. The Employee himself confirmed in cross-examination that he never returned to work after the accident and that he was still on sick leave when he was dismissed.
8. There is another important piece of evidence. The Employee had qualifications beyond his work as a carpenter. He holds a Certificate in Project Management, qualifications as a Draftsman and Junior Architect, and has studied Humanities and Sociology. He submitted those qualifications to the Employer in April 2018, before the accident. They were on the Employer's own file. When this was explored in cross-examination, Ms. Edwards who was responsible for Human Resources at the Employer admitted that she was not aware of the Employee's qualifications and would have had to check the file. She did not deny that they were there.
9. The Employee also gave evidence that he applied for positions in administration and management with the Employer. He testified that other persons were offered those positions. He was never offered any of them. He was never called in to

discuss his future with the company. He was simply sent a termination letter. These facts were not challenged or contradicted by the Employer's witness.

10. Upon dismissal, the Employee received payments totaling approximately \$11,442.00 covering severance, outstanding wages, vacation pay and overtime.

The Law

11. Exemplary damages are not compensatory in nature but rather punitive. The law requires that they be used carefully and only when the situation truly warrants it. Section 10(5) of the Industrial Court Act sets the test. Exemplary damages may only be awarded where the dismissal was "*harsh and oppressive*" or "*not in accordance with the principles of good industrial relations practice*."
12. When deciding whether to award exemplary damages, this Court must focus on what the Employer did at the time it dismissed the Employee how it made that decision and how it carried it out. What happened to the Employee afterwards, his financial difficulties, his inability to find work, his failed business may be deeply unfortunate but those are matters for the compensatory heads, not for exemplary damages.
13. Not every unfair dismissal justifies exemplary damages. In a recent case before this Court **Norkesa Thomas v A.S. Bryden & Sons (Antigua) Ltd, Reference No. C/48 of 2019**, the Employer had behaved unreasonably and in a manner that was distasteful. It had engaged in negotiations with the Employee, revised its offer and then abruptly abandoned the process and imposed its own terms. Despite that, this Court declined to award exemplary damages. The conduct, while wrong, did not reach the level required. That case is important because it shows the bar is not low. Importantly, that case also confirmed a legal obligation that applies directly here that is before dismissing an employee on grounds of medical incapacity, an employer is required to genuinely consider whether there are any other duties that could be assigned to that employee.
14. That obligation was confirmed in **Donna May Payne v Dickenson Bay Hotel Management Ltd**, Reference No. C/34 of 2021, where in circumstances directly comparable to this case the Court found that additional steps were required before dismissal, including giving consideration to any other duties that could have been assigned to the Employee. At paragraph 34 of that judgment, the Court specifically noted that the Employer failed to offer the Employee *alternative sedentary work* before dismissing her and that this was one of the grounds upon which exemplary damages were awarded.
15. In **Payne**, the Court awarded exemplary damages of \$20,000.00. The grounds for that award included the established facts that the Employer dismissed the Employee while she still held a valid sick certificate with only 23 days remaining; the Employer had no medical report at the time of the dismissal to justify its decision; the Employer failed to offer the Employee alternative sedentary work before dismissing her; no severance was paid for seven years after the dismissal; there was very little communication with the Employee about her progress and return to work; and the Court concluded that the dismissal was motivated by the

desire to discontinue payment of the Employee's wages. Taken together, those grounds made **Payne** a more serious case than the present one.

16. Unlike the Employer in **Payne**, the Employer in the present case did have Dr. Gaekwad's medical report at the time of the dismissal, giving it a genuine documented medical basis for the decision; and severance and associated payments of approximately \$11,442.00 were made at the time of dismissal, not seven years later. However, the Employer in this Reference like **Payne** failed to offer the Employee any alternative work before the action of dismissal.

Findings

17. Having considered all of the evidence and the legal principles that apply, this Court finds that the Employer's conduct at the time of and in the manner of dismissing Mr. Steele was harsh and oppressive and not in accordance with the principles of good industrial relations practice. The reasons for this finding are set out below:
 - (i) The Employer ignored its own medical evidence and failed to explore alternative duties. Dr. Gaekwad's report, the same report the Employer used to justify the dismissal recommended that Mr. Steele be given lighter alternative duties. The Employer cannot say there were no alternatives when vacancies existed and the Employee's own qualifications to fill them were in its records. These failures are serious and are substantive departure from good industrial relations practices.
 - (ii) The Employer dismissed the Employee without any prior engagement, discussion or warning. The Employer had a legal basis to consider dismissing the Employee after 52 weeks of certified sick leave under section C16(2) of the Labour Code. But having that legal basis does not mean an employer can simply send a dismissal letter without any engagement with the employee whose job is about to end. The Employee was asked directly under oath during cross-examination: "*Did they call you to make decisions on your future?*" He answered: "*No.*" No one from the Employer called him. No one discussed his situation, his prospects or his qualifications with him. No one told him there were vacancies he might be considered for. No one offered him any form of alternative work. He simply received a letter one day telling him he was dismissed. The complete absence of any human engagement before ending an employee's employment of four years is not consistent with good industrial relations practice.
 - (iii) The Employer failed to follow the proper legal procedure for dismissal on medical grounds. Section C16(2) of the Labour Code sets out the specific procedure that must be followed when dismissing an employee on grounds of medical incapacity after more than 52 weeks of sick leave. To properly invoke that provision, an employer must: issue a written notice that states the precise medical reason for the dismissal; be in possession of medical evidence that establishes the employee's incapacity at the time the dismissal letter is issued; pay the employee's full severance entitlement at the point of termination, and give proper notice or payment

in lieu of notice. The Employer in this case did not properly comply with all of those requirements at the time of the dismissal. We note however the Employer did attempt to remedy its failures to pay the Employee his statutory entitlements.

18. The Employee also gave evidence that management was hostile toward him because of his efforts to organise workers into a union, and that Ms. Edwards told him directly that he should quit on account of those activities. This Court has carefully considered that evidence. However, there is no documentary support for the claim that union activity played any role in the decision to dismiss the Employee. The termination letter cited only his medical condition. The Employer denied any improper motive.
19. The evidence of union-related hostility comes from the Employee alone and was not corroborated by any document, letter or independent witness. While it was not specifically challenged because Ms. Edwards was not cross-examined on that particular point, the absence of a challenge does not make uncorroborated evidence sufficient to establish an improper motive on a balance of probabilities. This Court finds that the evidence does not support a finding that the dismissal was motivated by anti-union sentiment.
20. Therefore, the exemplary damages finding rests on the bases as set out above, not on union-related conduct.
21. The threshold for exemplary damages having been crossed, the cumulative effect of the employer's conduct, confirmed by the Employer's own witness, constitutes exceptional circumstances that justify an award for costs. For the same reasons above the Court is satisfied that an order for cost is justified in the circumstances.

Compensation

22. Every case is different and the amount awarded must reflect the specific conduct in this case. The award must also be the minimum necessary to achieve its purpose of punishment and deterrence. It must be proportionate to what the Employer did and to the context of this employment.
23. Taking everything into account particularly, the seriousness of what the Employer did, the fact that alternative employment was available and ignored, the complete absence of engagement with the Employee before the dismissal, the proportionality and the guidance provided by the decided cases this Court awards exemplary damages in the sum of \$15,000.00. It is in the Court's view reasonable to mark the seriousness of what happened and to send a clear message that employers cannot dismiss employees in this manner without consequence.

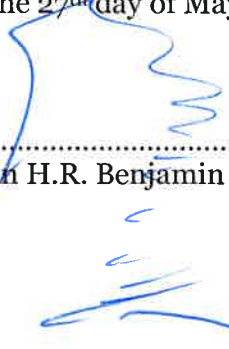
ORDER

24. The Court hereby orders:

1. The dismissal of the Employee, Paul Steele, by the Employer, National Housing Urban and Renewal Company Limited, was harsh and oppressive and not in accordance with the principles of good industrial relations practice within the meaning of section 10(5) of the Industrial Court Act, Cap. 214.
2. The Employer shall pay to the Employee the sum of \$15,000.00 as Exemplary Damages on or before June 27, 2026.
3. The Employer shall pay costs to the Employee in the sum of \$1,500.00 on or before the June 27, 2026.
4. The Employer shall pay the Employee the total sum of \$16,500.00 on or before June 27, 2026.

Dated the 27th day of May, 2026


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Samantha May-Francis


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John H.R. Benjamin


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Charlene Selkridge