

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. 62 of 2023

BETWEEN:

EDZEL JOSPEH

Employee

and

EASTERN CARIBBEAN AMALGAMATED BANK

Employer

Before:

The Hon. Samantha May-Francis

President

The Hon. Judith A. Dublin

Member

The Hon. Charlene Selkridge

Member

2025: October 1

2026: February 6

Employee dismissed on grounds of serious misconduct, Employee claims to be unfairly dismissed; whether procedural defects, as alleged by the Employee resulted in the unfair dismissal of the Employee, whether the Employee is entitled to compensation and the Employer's contribution to the Retirement Savings Plan

JUDGMENT

May-Francis P;

Introduction

1. The Employer needs no introduction, as it is one of the leading commercial banks in Antigua and Barbuda.
2. The Employee was employed as an Attendant II - Facilities with the Employer Bank and had, at the time of his dismissal, been employed for twenty-seven (27) years, earning the monthly sum of \$3,477.86. The Employee commenced his employment with the Bank of Antigua in 1991, before its amalgamation in 2010. After which, he remained in the Employer's employ until his dismissal. It is not in dispute that he was dismissed on September 7, 2018.



3. The Employer says the Employee was dismissed for gross misconduct for breaching the HR Policy and Procedural Manual. The breach related to the unauthorised possession of the property of the Employer, namely a CCTV Camera sign ("the sign") which had gone missing from the Employer's premises. The Employee says he was unfairly dismissed because he came into possession of the sign after the Employer discarded it, during the Employer's dumping of equipment at the Cooks Dump.
4. The Court heard the evidence from the Employee on his own behalf and three witnesses for the Employer. They were Mr. Leslie Hamlet, the Employee's Supervisor, holding the position of Supervisor II – Facilities Support, Mrs. Tracy Benn, the General Counsel/Corporate Secretary and Mr. Peter Quinn, the Internal Auditor. Both parties filed a bundle of documents, and the witness statements of all four witnesses were admitted into evidence as their evidence in chief.
5. There were additional documents filed by the Employer on October 17, 2025, at the direction of the Court to assist in navigating the issues in this case and in determining some legal principles.

Issues

6. The Employer, having admitted to dismissing the Employee, must, in accordance with the statutory requirements of Section 58 of the Antigua and Barbuda Labour Code (the Code), prove that it had good reasons for the dismissal and that it acted reasonably in dismissing the Employee.
7. Being satisfied based on the contents of the dismissal letter that the reason for the Employee's dismissal was misconduct, which is a potentially fair reason for dismissal, we must decide whether the Employer acted reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Employee. In particular, we are required to determine:
 - i) Did the Employer have a good factual basis to form the belief that the Employee had misconducted himself
 - ii) At the time, had the Employer carried out a reasonable investigation into the allegations of misconduct
 - iii) Did the Employer conduct a fair procedure?
 - iv) Was the dismissal within the range of reasonable responses?
 - v) If not, was the Employee unfairly dismissed and therefore entitled to compensation?

Relevant Legal Principles

8. We are required to apply the fundamental statutory requirements for the determination that a dismissal was not unfair, that is, whether the Employer (a) had a good reason with a sound factual basis under Section C58 (1) of the Antigua and Barbuda Labour Code (the Code) and (b) acted reasonably under Section C58 (2). In cases involving the strong measure of summary dismissal, to discharge its burden of

proving that the dismissal was not unfair, the employer must provide weighty and convincing evidence establishing a factual basis for the dismissal and that it acted reasonably.

9. The Court is not allowed to substitute its own decision as to what it may have decided in the same situation. The Court's role is to determine whether the Employer's decision to dismiss the Employee fell within the band of reasonable responses open to an employer. We must be mindful of not taking a 'substitution mindset' as warned in the United Kingdom case of **London Ambulance Service NHS Trust v. Small [2009] EWCA Civ 220**.
10. On a similar theme, the Court can only take account of facts or beliefs that were known to the Employer at the time of the dismissal - **Devis v. Atkins 1977 ICR 622, HL**. Therefore, our assessment of the reasonableness of the Employer's actions must be based solely on the facts available at the time.
11. We are also required to consider the disciplinary process.
12. We must also regard equity and the substantial merits of the case. The consideration of equity is part of the reasonableness assessment, not a standalone consideration. Minor procedural defects may not be material to an assessment of reasonableness, and it is important to consider 'substance and procedure' and look at 'the whole procedure, including the decision to dismiss. We should also consider whether the Employer complied with internal policies and procedures.

Findings of Fact

13. Antigua and Barbuda Workers Union was the bargaining Agent pursuant to the Collective Bargaining Agreement between the Employer and the Union dated November 23, 2017.
14. On or about April 17, 2018, the Employee installed a personal camera in the Facilities Department on the Employer's premises, for which he was issued a written warning on May 1, 2018, following a meeting with the Employer and his Representative, Shop Steward Stosh Browne.
15. In the warning letter, the Employee was placed on notice that if he again engaged in misconduct, he was at risk of disciplinary proceedings, up to and including dismissal.
16. The Warning letter was copied to Mr. David Massiah, the General Secretary of the Antigua and Barbuda Workers' Union.
17. On August 16, 2018, Mr. Jules Farquhar, another Bank employee, accompanied the Employee to the Employee's home to collect an item. Mr. Farquhar subsequently reported to the Employer that he had noticed a CCTV camera sign on the Employee's fence, which looked similar to the missing CCTV camera sign that Mr. Hamlet, the Employee's Supervisor, had reported missing.

18. On or about August 27, 2018, the Employee was suspended with pay pending investigations into allegations that the Employee's whereabouts had been unaccounted for approximately 5 ½ hours during the work day and allegations that the Employer's missing CCTV camera sign, which was specifically designed and made and which had disappeared from the Employer's premises, was in the possession of the Employee.
19. The suspension letter was copied to Mr. David Massiah of the Union.
20. The matter of the CCTV sign was investigated by Mr. Peter Quinn, Internal Auditor of the Bank, who visited the Employee's premises on August 27, 2018, observed the CCTV sign, and took pictures of it pasted on the column of the Employee's fence. Mr. Quinn also interviewed the Employee on the said date regarding the allegations.
21. The Employee denied knowledge that the Employer was missing a CCTV camera sign and, via a letter dated August 28, 2018, and as part of the investigation, set out his explanation, indicating that he had retrieved the sign from the Cooks Dump during an IT equipment dump. The Employee stated that the sign had been damaged when he found it, broken in two, and that he had retained the top piece and placed it on his fence.
22. Upon receiving the Employee's explanation, Mr. Quinn, on September 3, 2018, returned to the area of the Employee's home and noticed that the sign was no longer in the condition it had been in on August 28, 2018, but was now damaged and broken. Mr. Quinn tendered into evidence two sets of photographs showing the sign on the Employee's fence in an unbroken state on August 28, 2018, and in a damaged state on September 3, 2018.
23. The Employer decided to dismiss the Employee for gross misconduct, and this was confirmed in a letter dated September 7, 2018.
24. The termination letter was copied to Mr. David Massiah of the Union.
25. The ECAB Staff Retirement Savings Plan, which the Employee signed on September 5, 2016, indicates that in the event of termination for cause, including misconduct, the Employee would not be entitled to the Employer's contribution to the Fund.
26. From the documentary evidence – the Eastern Caribbean Amalgamated Bank Earnings Report dated 15th September, 2018, shows that the Employee was entitled to \$2,648.00 in accrued vacation pay. On September 14, 2018, the Employer credited the Employee's account for \$2,203.06 after statutory deductions, which we accept as his final salary payment.
27. On September 14, the Employee was issued the balance of the pension contributions in the sum of \$5,122.26, after deductions for payment of the outstanding credit card balance of \$1,222.80 and a deposit of \$4,538.00 to his account.

28. The Employee admitted that a meeting was held with him in August 2018 involving the former Human Resource Manager, Ms. Alicia Bazil Ashton, and either Shop Steward- Stosh Browne or Natasha Joseph-Richards, but could not remember clearly.

Determination of the Issues

29. It is not in dispute that the Employee was summarily dismissed for misconduct as described in our Findings of Fact. Nor is it in dispute that the Employer had a genuine belief that such misconduct had been committed.
30. Summary dismissal is a capital punishment in industrial relations. To satisfy Section C 59(1), the unauthorized possession must constitute a fundamental breach of the contract of employment. In **Boycatt Baltimore v Dickenson Bay Hotel Management Ltd Ref 65 of 2018**, this Court noted that in summary dismissal cases, the employer must provide "weighty and convincing evidence" and act reasonably under Section C58. The misconduct must be so grave and weighty that it undermines the mutual trust and confidence essential to the employment relationship.
31. Therefore, we must consider whether the Employer had a good factual basis for that belief. The factual evidence is uncontroverted, having regard to the documentary evidence. The Employer, during the investigation, was seized with the photographs which clearly show that its custom-made CCTV camera sign was on the Employee's fence; that at no time was permission to given to the Employee to have the sign; when the sign was first noticed it was in good condition and was damaged sometime after the Employer informed the Employee of the allegations. We therefore conclude that, given the cogent evidence of misconduct, the Employer has satisfied us that, at the time of the dismissal, there existed a sound factual basis on which to conclude that the Employee misconducted himself.
32. Additionally, an employer need only prove a "reasonable belief" in the misconduct based on a fair investigation. The fundamentals as laid down **British Home Stores Ltd v Burchell [1978] IRLR 379, EAT** remain unchanged. In this seminal case for conduct-related dismissals it was established that an employer does not need to prove theft 'beyond a reasonable doubt' as in criminal law. Instead, they must show they had a genuine belief in the employee's guilt, based on reasonable grounds, following a fair investigation.
33. As to the question of a reasonable investigation, Mr. Quinn gave evidence that he was in charge of it. His evidence is that he took photographs before his interview with the Employee and some days after the interview. His evidence is that he met with the Employee whom he interviewed and also asked the Employee to respond in writing to the allegations against him. The Employee provided his written explanation. Mr. Quinn subsequently documented his findings and prepared a

report, which he submitted to the Employer. In our view, the investigation did all that was necessary. It fell within the band of a reasonable investigation.

34. We then considered whether the Employer conducted a reasonable and fair procedure. The Employee contended that he was not given a formal disciplinary hearing after the investigation was concluded and before his dismissal. Learned Counsel Mr. Daniel argued on his behalf that he was summarily dismissed. We note in particular the Employer's witnesses' evidence that the allegations concerning the CCTV camera sign were put to the Employee during the investigation. The Employee then explained, in the presence of the Shop Steward, whether Mr. Browne or Mrs. Joseph-Richards, and subsequently followed up with a written response. We opine that the Employee was given sufficient opportunity to exculpate himself.
35. In our view, the dismissal must also be viewed in the context that the Employee was employed in the banking business. It is clear that the Employee knew from the outset that having the Employer's CCTV Camera sign on his premises was a serious matter; hence the attempt to trivialize the situation by claiming that the sign was damaged and had been taken from the Cooks Dump Site. In the Banking context and having regard to the Court's own industrial experience, unauthorized possession of a company's property may be regarded as gross misconduct and constitutes a fundamental breach of the employment contract.
36. We also considered the case of **Wilson v Racher [1974] IRLR 114**, where Edmund Davies LJ stated – "**there is no rule of thumb to determine what misconduct on the part of a servant justifies summary termination of his contract... was insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of master and servant... The application of such a test will, of course, lead to varying results according to the nature of the employment and all the circumstances of the case...each case turning upon its own facts.**"
37. We also reflected on the Employer's Code of Business Conduct in the HR Policies and Procedures Manual, and the Disciplinary Process as outlined in the Collective Bargaining Agreement. Our view is that the procedure was thorough, meticulous, even-handed, and, in our final analysis, fair.
38. Additionally, in our deliberation, we considered that, in many cases but not all, there is a band of reasonable responses to an employee's conduct within which one employer can reasonably take one view. In contrast, a different employer might reasonably take another. Our function is to determine whether, in the circumstances of the case before us, the decision to dismiss the Employee fell within the band of reasonable responses that a reasonable employer might have adopted. In doing so, we considered the strength of the documentary evidence. As previously indicated, we find the witnesses' oral testimony on behalf of the Employer credible. The documentary evidence, on a balance of probabilities, suggests that there was a willful attempt, presumably by the Employee, to tamper with the evidence to suit his narrative in his written explanation, to avoid being held culpable and accountable.

39. The Employer's evidence is that it believed the Employee to have stolen the CCTV camera sign or that the very least his actions were dishonest after it was discovered that the sign was in his possession. In our view theft and or dishonesty strikes at the heart of the employment relationship, making summary dismissal the appropriate response.
40. To this end we are of the view that the Employer has discharged its burden. The summary dismissal of the Employee was justified based on the facts presented in this Reference.
41. We have already determined that the Employer's evidence of misconduct has met the standard of being cogent and weighty to justify a summary dismissal. Nonetheless, in the event we are wrong and having regard to the Employee's contention that there was no disciplinary hearing, which rendered the dismissal unfair we reminded ourselves of the decision in the **Polkey v A.E. Dayton Services Ltd [1987] IRLR 503**, where the Polkey deduction emerged.
42. The Polkey Rule establishes that if a dismissal is unfair solely due to a procedural error, the court may reduce compensation if the employer can prove the employee would have been dismissed anyway even if a fair procedure had been followed. Based on the evidence of this case, the chance of dismissal was 100% even if the Employee was given a disciplinary hearing. Relying on the Polkey approach compensatory award would therefore be reduced to zero a 100% Polkey deduction, exactly as happened in the case **Earl v Slater & Wheeler (Airlyne) Ltd [1973] 1 WLR 51** where the employee was held to have been unfairly dismissed, but nevertheless lost his appeal to the Industrial Relations Court because his misconduct disentitled him to any award of compensation. We conclude that a disciplinary hearing would not have changed the outcome that the Employee in this Reference is not entitled to compensation.
43. For completeness, we note that the allegation regarding the disappearance of the Employee for 5 1/2 hours on August 17, 2018, seemed to have fallen by the wayside during the investigation and the dismissal.

Conclusion

44. We find it tragic that an employee who has accumulated 27 years of tenure and retirement benefits could lose it all due to misconduct such as this. However, we cannot, based on the law and in good conscience, conclude that the dismissal of the Employee was harsh, oppressive, not in accordance with good industrial relations practices, or otherwise unfair. Accordingly, the Employee is not entitled to compensation or the Employer's contribution to the Retirement Savings Plan.

44. This Reference is therefore dismissed.

Dated the 6th day of February, 2026



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Samantha May -Francis
President



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Judith A. Dublin
Member



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Charlene Selkridge
Member