

IN THE INDUSTRIAL COURT
ANTIGUA AND BARBUDA
REFERENCE NO. 67 OF 2023
BETWEEN



ANTIGUA AND BARBUDA WORKERS' UNION

Union

AND

ANTIGUA PORT AUTHORITY

Employer

Before

The Hon. Samantha May-Francis

President

The Hon. Collin R. Maynard

Member

Appearances

Mr. Justin L. Simon KC of Chancellor Chambers and Mr. Kofi A. Massiah, Attorneys-at-Law, for the Antigua and Barbuda Workers Union

Ms. Talia N. DaCosta of Stapleton Chambers, Attorneys-at-Law, for the Employer

2026: February 9
April 24

JUDGMENT

Interpretation of collective bargaining agreement - Clause 45(a) - meaning of "unloaded for Antigua" - whether royalty payable on transshipment containers - whether preposition "for" describes purpose and recipient of unloading act, not physical location - whether transshipment container unloaded in Antigua as intermediate step in transit to another destination satisfies condition for royalty payment

1. The Antigua and Barbuda Workers' Union ('the Union') has applied under section 15(2) of the Industrial Court Act, Cap. 214 for a determination of a question as to the interpretation of Clause 45 of the Collective Bargaining Agreement ("the CBA") between the Union and the Antigua Port Authority ("the Port Authority"), made effective from July 1, 2016. Section 15(2) confers jurisdiction on this Court to

determine any question of interpretation arising under a collective agreement and to make a declaration accordingly.

2. The single question is whether the royalty under Clause 45(a) is payable on all containers physically unloaded at the Port of Antigua, including transshipment containers, or only on containers whose final destination is Antigua. A transshipment container is one offloaded from a large vessel in Antigua and reloaded onto a smaller vessel for onward carriage to another destination.
3. The CBA covers the period July 1, 2016 to June 30, 2019, signed by the parties in 2022. Clause 45 was a pre-existing provision carried forward without amendment. Both witnesses who gave evidence confirmed that royalties were introduced into successive CBAs to compensate longshoremen for work lost through containerisation. The Court accepts that evidence as the backdrop against which Clause 45 falls to be interpreted.
4. Clause 45 of the CBA, under the heading CONTAINERS, provides as follows:

“When Roll-on-off container ships are being unloaded, six (6) Longshoremen and two forklift operators will be employed and will be guaranteed 12 hours pay at the prevailing rate (premium rates on a Public Holiday) provided work is actually done on the ship. Should the workers be called and the ship does not arrive, Clause 5(b) will apply (8 hours at the prevailing rate).

(a) A royalty of 5 hours pay (at the Longshoremen rate) will be paid for each container unloaded for Antigua. The Total amount is paid by the agent to the Authority and collected by the Port Authority to be divided among the Longshoremen gang.

(b) A premium of \$25 will be paid for each container not consigned to Antigua for which it is necessary to shift so as to be able to unload the containers consigned to Antigua.”
5. It is not in dispute that subsections (a) and (b) constitute Clause 45 as it relates to royalties and premiums. The Port Authority accepts that subsection (a) at minimum covers containers whose final destination is Antigua. The dispute is whether it extends to transshipment containers.
6. The Court notes the mechanics of payment under Clause 45(a). The clause identifies the agent as the party who funds the total royalty amount paid to the Port Authority. However, the Port Authority is the party to the CBA. By agreeing to Clause 45(a), the Port Authority undertook to the Union that the royalty will be paid. It discharges that undertaking by operating the collection and payment mechanism whereby it charges the royalty to the agent through its Tariff Book,

collecting the amount, and disbursing it to the Longshoremen. If the Port Authority fails to put that mechanism in place, it is in breach of the CBA, even though it is the agent who facilitates the payment. The question whether the Port Authority bears personal liability to the longshoremen if the agent defaults on payment does not arise on the facts of this Reference and the Court makes no finding on it. The collection obligation under Clause 45(a) extends only to containers that attract the royalty on the correct interpretation of the clause. This Reference is therefore about the scope of that obligation, which containers attract the royalty and not about the consequences of non-payment by the agent.

7. Mr. Chester Hughes, Deputy General Secretary of the Union, confirmed that Clause 45 was carried forward without specific negotiation. He accepted during cross-examination that royalties have never been paid on transshipment containers, characterising this as a continuing breach. He gave no evidence of any demand or claim in respect of transshipment royalties before this Reference was filed in October 2023.
8. Mr. Darwin Telemaque, Port Manager, gave evidence as a witness of fact. His uncontroverted evidence establishes the following: royalties were introduced to compensate for work lost through containerisation; the Longshoremen perform the same physical work on transshipment containers as on containers destined for Antigua; transshipment represents approximately 60 to 70 percent of the Port Authority's revenue; royalties have never been paid on transshipment containers; at the time the royalty provisions were negotiated, transshipment was a relatively new service, not widely utilised at the Port. Mr. Telemaque also gave uncontroverted oral evidence that the Port Authority's Tariff Book makes no provision for collecting royalties on transshipment services; the Tariff Book was not produced as an exhibit. Mr. Telemaque acknowledged that he continued to sign successive CBAs without seeking to amend Clause 45 to address transshipment and could give no satisfactory explanation for this.
9. The Court's task is to determine the objective meaning of the words used, by reference to what a reasonable person with the background knowledge available to both parties at the time of contracting would have understood them to mean, having regard to the natural and ordinary meaning of the words, the context and structure of the instrument, the purpose of the provision, and the factual matrix. In *Arnold v Britton* [2015] UKSC 36, Lord Neuberger PSC held that the court must focus on the meaning of the relevant words in their documentary, factual and commercial context, and that the clearer the language the less room there is for commercially

oriented reinterpretation. In *Wood v Capita Insurance Services Ltd* [2017] UKSC 24, Lord Hodge JSC confirmed that textualism and contextualism are complementary tools serving the same end by identifying the objective meaning of the language the parties have chosen. In *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, Lord Clarke JSC held that where a contractual term is susceptible to two possible constructions, the court will prefer the construction more consistent with business common sense. In *Attorney General of Belize v Belize Telecom Ltd* [2009] UKPC 10, Lord Hoffmann observed that a court has no power to improve upon the instrument by introducing terms to make it fairer or more reasonable. The Court of Appeal of the Eastern Caribbean Supreme Court, whose decisions are highly persuasive authority before this Court, applied these principles in the context of a collective agreement in *Grenada Technical and Allied Workers' Union v St. George's University Limited* GDAHCVAP2014/0008 (Eastern Caribbean Supreme Court, Court of Appeal, February 13, 2017), holding that where the instrument is informal, the factual matrix and purpose deserve particular weight in identifying what the parties objectively intended.

10. The Court starts with the words of Clause 45(a): a royalty is payable for each "container unloaded for Antigua." The Union's case is that "for Antigua" means any container physically unloaded at this Port, regardless of its final destination. The Port Authority's case, as stated by Mr. Telemaque, is that the clause applies when Antigua is the container's port of final destination.
11. The Court agrees with the Port Authority's reading. The preposition "for" in its ordinary meaning indicates the place or person that is the object, destination, or intended beneficiary of an action: Oxford English Dictionary (OED Online, Oxford University Press). A container "unloaded for Antigua" is therefore one unloaded for the benefit of and for delivery to Antigua as its intended recipient, that is, a container whose final destination is Antigua. A transshipment container is not unloaded for Antigua. It is unloaded in Antigua as an intermediate step in its transit to another destination. Antigua is not the beneficiary of the unloading act. The container proceeds directly onto another vessel for onward carriage. This conclusion does not rest on equating "for Antigua" with "consigned to Antigua." Those phrases are conceptually distinct: "consigned to Antigua" is a formal shipping term identifying documentary destination on a bill of lading, whereas "for Antigua" is purposive language describing the recipient and purpose of the unloading act. The clause does not say "at Antigua" or "consigned to Antigua." The Court gives effect

to the words as written on their natural meaning, a transshipment container does not satisfy the condition for the royalty.

12. The principle of *expressio unius est exclusio alterius* which means that the expressed mention of one thing implies the exclusion of another was invoked by the Union to argue that the use of different language in subsection (a) and subsection (b) implies a different and broader scope for subsection (a). The Court does not accept that argument. The structure of the clause provides the answer. Subsection (b) uses “consigned to Antigua” twice in the same sentence: on the first occasion negatively, for containers “not consigned to Antigua” that must be shifted, and the other positively, for “the containers consigned to Antigua” to be accessed for unloading.
13. Based on evidence of the witnesses Subsection (b) performs a binary classification on a mixed vessel, sorting containers into two groups by their documentary status so the Longshoremen know which to shift and which to unload. “Consigned to” is classification language required for that sorting function. Subsection (a) performs no such classification. It describes the purpose of an unloading act, for which “for Antigua” is the natural and sufficient expression. The difference in language between the two subsections is therefore better explained by the different nature of the operations each addresses than by any implied extension of scope. The *expressio unius* principle must therefore be applied with care and does not apply here.
14. The Court also addresses directly the argument that, because transshipment was not widely utilised when Clause 45 was negotiated, the clause is simply silent on the point and that silence should be resolved in favour of the workers. The Court rejects that argument. Contractual silence on a subject does not create ambiguity where the language of the clause, on its natural meaning, already provides a complete answer. The words “unloaded for Antigua” are not silent on transshipment; they affirmatively describe a purposive condition that transshipment containers cannot satisfy. The fact that the parties may not have specifically contemplated transshipment does not enlarge the language beyond its natural meaning: where words are clear, the court does not supplement them by reference to what the parties might have agreed had they addressed a situation they did not foresee. That is precisely the principle confirmed in *Attorney General of Belize v Belize Telecom Ltd* [2009] UKPC 10: a court has no power to improve upon the instrument by introducing terms to make it fairer or more reasonable. The purpose evidence is therefore consistent with, and does not displace, the conclusion already reached on the language and structure of Clause 45(a).

15. The Court draws the following inference from Mr. Telemaque's uncontroverted evidence about the historical employment arrangements of the Longshoremen: before containerisation, the Longshoremen then known as cotchers were engaged on a rotation basis and were paid only when vessels arrived with cargo to be unloaded; no vessel, no work, no pay. Their earnings were event-driven, generated by the physical arrival of cargo at the Port; containerisation eliminated much of that work; and in response, the Port Authority employed them on a full-time salaried basis so they are now paid whether or not vessels arrive. The Court does not rest its conclusion on this purpose analysis. It is offered as a further observation consistent with the reading already established on the language and structure of the clause. On that reading, the royalty attaches to containers unloaded for Antigua as their destination. A transshipment container does not arrive for Antigua as its destination and therefore falls outside the scope of Clause 45(a).
16. The consistent practice of the parties confirms a conclusion already reached on the language. Royalties have never been paid on transshipment containers throughout the entire history of the Port. Neither party demanded a royalty payment before this Reference was filed. This requires no explanation as the clause has always excluded transshipment containers on its natural meaning. The Court relies on this practice as confirmatory of an objective meaning independently established, not as a primary tool of interpretation. Post-contractual conduct cannot be used as a direct aid to construction to vary or interpret the meaning of a contract: *Whitworth Street Estates (Manchester) Ltd v James Miller & Partners Ltd* [1970] AC 583 (HL).
17. The Port Authority's failure to seek an express exclusion of transshipment in successive CBAs, and Mr. Telemaque's inability to explain it, does not undermine the Court's conclusion. The explanation is straightforward. On the correct interpretation of Clause 45(a) now found by the Court, no amendment was ever necessary. The clause on its natural meaning has always excluded transshipment containers. The Port Authority did not need to amend what the clause already said. The fact that the Union took a different view and ultimately filed this Reference does not affect the meaning of the clause. It is the function of this Court to determine what the clause means, and the Court has done so.
18. Mr. Telemaque gave evidence that the Port Authority's Tariff Book, which governs and regulates fees for services provided by the Port, currently makes provision for charging royalties on containers unloaded for Antigua but makes no provision for charging royalties on transshipment services. The Tariff Book was not produced in evidence as an exhibit; the Court relies on Mr. Telemaque's uncontroverted oral

evidence on this point. The Union did not address or challenge this evidence. A reading of Clause 45(a) that extended the royalty to transshipment containers would therefore impose obligations on the Port's principal revenue stream, which accounts for approximately 60 to 70 percent of total revenue, for which allegedly, no collection mechanism currently exists in the Tariff Book. Following *Arnold v Britton*, commercial common sense does not override clear language. It is offered here only as further confirmation of a conclusion already reached on the language, structure, and purpose of the clause.

19. The phrase "unloaded for Antigua" means containers unloaded for the benefit of and for delivery to Antigua as their intended recipient, such that Antigua is the object and purpose of the unloading act. A transshipment container does not meet that description. The language, structure, purpose, and consistent practice of the parties all point to the same conclusion.
20. This finding leaves transshipment work outside the existing royalty provisions. Whether a royalty for transshipment work should be established is a matter for collective bargaining. Any such negotiation will require the Port Authority to put in place separate arrangements with shipping agents, which may include amendment to its Tariff Book, since the payment obligation under Clause 45(a) rests on the agent and a negotiated transshipment royalty can only bind parties to the CBA. As the Privy Council confirmed in *Attorney General of Belize v Belize Telecom Ltd* [2009] UKPC 10, a court has no power to improve upon an instrument by introducing terms to make it fairer or more commercially equitable. The industrial consequences of this interpretation are a matter for the bargaining table.

Declaration

21. For the reasons set out above, the Court makes the following declarations:
 - (i) The proper interpretation of Clause 45(a) of the CBA, made effective from July 1, 2016, is that the royalty of 5 hours' pay per container is payable for each container unloaded for the benefit of and for delivery to Antigua as its intended recipient, such that Antigua is the object and purpose of the unloading act. A container is "unloaded for Antigua" when the purpose and recipient of the unloading act is delivery to Antigua.
 - (ii) Transshipment containers, being containers offloaded in Antigua and reloaded onto another vessel for onward carriage to a final destination other than

Antigua, are not containers “unloaded for Antigua” within the meaning of Clause 45(a). The royalty is not payable in respect of transshipment containers.

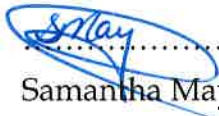
(iii) Clause 45(b) addresses the shifting of containers not consigned to Antigua where necessary to allow the unloading of containers destined for Antigua. The use of “consigned to Antigua” in subsection (b) reflects the documentary classification function of that provision. It does not qualify or limit the meaning of “for Antigua” in subsection (a).

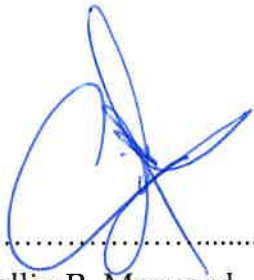
(iv) At the time Clause 45’s royalty provisions were negotiated, transshipment was not widely utilised at the Port. The CBA does not address transshipment royalties. Whether Longshoremen should receive a royalty for transshipment work is a matter for collective bargaining and is not determined by this declaration.

22. This Reference raised a genuine question of contractual interpretation in a collective agreement governing an ongoing industrial relationship. The Port Authority has succeeded on the single issue before the Court. Nevertheless, having regard to the industrial relations context and the legitimate interest of the Union in seeking an authoritative determination of the scope of Clause 45(a), the Court makes no order as to costs. Each party shall bear its own costs of and incidental to this Reference.

23. The Reference is hereby determined in accordance with the declarations set out above.

Dated the 24th day of April, 2026


Samantha May-Francis
President


Collin R. Maynard
Member

Delivered by the Honourable Samantha May-Francis