

IN THE INDUSTRIAL COURT

ANTIGUA AND BARBUDA

REFERENCE NO. 7 of 2024

BETWEEN

ALANA NEDD

Employee

and

CHIEF IMMIGRATION OFFICER
ATTORNEY GENERAL

Employer

Before:

The Hon. Samantha May-Francis
The Hon. John H.R. Benjamin
The Hon. Dalmer A. McCoy

President
Member
Member

Appearances:

Mr. Samuel James and Simon Leonard of Antigua and Barbuda Free Trade Union for the Employee

Mrs. Joy Dublin- Baptiste and Deshawne Browne Crown Counsels of the Attorney General's Chambers, Attorneys for the Employer.

2026: May 21
June 5

DECISION

Application to Strike Out Reference- Jurisdiction- Strike Out- want of jurisdiction- characterization of Reference- Promotion- Differential treatment- Discrimination- Grade reclassification- Retroactive Pay- Acting Allowance- Application of the Industrial Court Act Cap 214 Sections 7(1) (c)- Scope of Jurisdiction- Section 10(3)- Whether remedial or



jurisdictional- Antigua and Barbuda Labour Code Division C4- Whether List is exhaustive- whether the Employee has engaged Division C4- Antigua and Barbuda Labour Code – Division A5- whether creates enforceable right or defines complaints for conciliation machinery only- ILO convention 111- Discrimination in Employment and Occupation – ILO Convention 100-Equal Pay for Equal Work-Domestic enforceability-comparative analysis between Division C4 and ILO Convention 111

Background

1. The Employee is employed by the Government of Antigua and Barbuda, and assigned to the Department of Immigration as a Grade V Immigration Officer from July 2004. By circular dated June 28, 2007 she was appointed to act as Junior Supervisor effective July 1, 2007. She acted continuously in that capacity from June 2007 to May 31, 2013, a period substantially in excess of forty-five working days. By Minute dated May 30, 2013, she was confirmed as Junior Immigration Supervisor, retaining her Grade V rank.
2. The Department of Immigration maintained an established practice of upgrading Grade V and Grade VI Officers to Grade IV upon their appointment to act as or confirmation as Junior Supervisor. This practice is documented in internal departmental memoranda dated September 23, 2021 and May 19, 2022. The Employee was not upgraded. No explanation has been offered by the Employer for this departure from their established practice. The other Junior Supervisors received \$4,524.92 monthly. The Employee received \$3,906.42.
3. The Employee filed her Reference of Complaint on February 20, 2024.

The Application

4. By Notice of Application filed October 23, 2025, the Employer applied to strike out the following heads of the Employee's claim for want of jurisdiction:
 - (a) The claim for entitlement to grade upgrading to Grade IV Junior Supervisor; and
 - (b) The claim for retroactive salary differential attendant upon that grade upgrading.
5. The Application is supported by the Affidavit of Annetta Jackson, Crown Counsel, sworn on October 23, 2025, and written Submissions filed on the same date. The Employee opposes the application by Affidavit in Opposition sworn on November 7, 2025, and written Submissions filed on the same date.

6. During the hearing the Employer indicated a willingness in principle to resolve the following heads without a contested hearing:
 - (a) The Acting Allowance pursuant to Clause 7 of the Collective Bargaining Agreement claimed in the sum of \$1,319.25;
 - (b) Interest at 10% per annum on all salaries payments not received from June 2007; and
 - (c) Short payment of accrued vacation and sick leave from June 28, 2007.
7. The Court records this indication, but further records that no formal consent has been reached on any of these heads. No quantum has been agreed and a corresponding Consent Order has not been filed. These heads remain live before this Court and will be addressed at a further hearing unless a formal consent order is filed. The heads of Exemplary Damages and Cost also remain outstanding.

The Grounds

For the Employers

8. The Employer contends that the claim for grade upgrading and retroactive pay is, in essence, a claim for promotion. They contend that this Court does not have the jurisdiction to hear such a claim under Section 7 of the Industrial Court Act or the Labour Code. They further submit that grading and classification of Civil Service positions are matters of public administration reviewable by the High Court on judicial review, and not by this Court.
9. The Employer rely on **Julie Osborne v The Attorney General of Antigua and Barbuda Reference No. 42 of 2015; Icilma Francis-Piggott v First Caribbean International Bank Reference No. 26 of 2027; Universal Caribbean Establishment v James Harrison Suit No. 21 of 1993; and Krebbs v Universal Caribbean No. 136 of 1993.**

For the Employee

10. The Employee submits that her claim is one of discrimination and differential treatment, not promotion. The cause of the complaint is the discriminatory and differential treatment she received compared to every other comparable officer. The effect is that she is at a lower rank and correspondingly earns a lower salary. She relies on Division C4 of the Labour Code, ILO Convention 111 on Discrimination in Employment and Occupation ratified by Antigua and Barbuda on February 2, 1983, and Section 7(1)(c) read with Section 10(3) of the Industrial Court Act as the basis for jurisdiction.

11. The Employee submits that **Julie Osborne** trial was wrongly decided and should not be followed.

Relevant Statutory Provisions

12. Section 7(1) of the Industrial Court Act Cap. 214:

“7. (1) The Court shall have jurisdiction —
(a) to hear and determine trade disputes referred to it under this Act;
(b) to enjoin a trade union or other organisation of employees or other persons or an employer from taking or continuing industrial action; and
(c) to hear and determine any complaints brought in accordance with this Act as well as such matters as may from time to time be referred to it under this Act.”

13. Section 10(3) of the Industrial Court Act:

“Notwithstanding anything in this Act or in any other rule of law to the contrary, the Court in the exercise of its powers shall —
(a) make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;
(b) act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations and in particular the Antigua and Barbuda Labour Code.”

14. Division C4(1) of the Antigua and Barbuda Labour Code Cap. 27:

“No employer shall discriminate with respect to any person's hire, tenure, wages, hours, or any other condition of work, by reason of race, colour, creed, sex, age or political beliefs:

Provided, however, that this shall not be construed as forbidding the taking of personnel actions genuinely related to that person's ability to discharge the duties of the employment in question.”

Determination

The Nature of the Claim

15. The characterisation of a complaint is determined not by the label attached to it, but by the substance of the complaint and the relief sought. The relief the Employee

requires is an order directing the reclassification of her Civil Service grade to that of Grade IV with the corresponding retroactive salary adjustment. To grant that relief, this Court would need to direct a Government Department to reclassify a Civil Service grade. That is the substance of the relief sought regardless of how the claim is framed.

Division C4

16. Division C4 prohibits discrimination on six specific grounds of race, colour, creed, sex, age and political beliefs. The Employee has not identified which of these grounds forms the basis of the alleged differential treatment. Her Affidavit in Opposition states that she was discriminated against for unknown reasons. A complaint of discrimination that does not identify a protected ground under Division C4 does not engage that provision.
17. The Employee submits that the list of protected grounds in Division C4 is non-exhaustive. The Court is unable to accept this submission. Division C4 is expressed in clear and specific terms. The principle of strict statutory construction applicable to a court of limited jurisdiction does not permit this Court to extend the protected grounds beyond those Parliament has expressly stated.
18. The Court finds that the Employee's complaint does not clearly engage Division C4 of the Labour Code.

ILO Convention 111

19. Antigua and Barbuda operate on the dualist model of international law. Convention 111, though ratified in 1983, has not been incorporated into domestic law by Act of Parliament. It cannot of itself create a justiciable right before this Court. Convention 111 may inform the interpretation of a genuinely ambiguous domestic provision but Division C4 is not ambiguous. The Court concludes that Convention 111 does not, on its own, confer jurisdiction upon this Court.
20. The Employee submits that Section 7(1)(c) read with Section 10(3) gives this Court jurisdiction over any complaint engaging the principles and practices of good industrial relations, and that a complaint of violation of those practices is a complaint brought in accordance with the Act.
21. The Court is of the opinion that Section 10(3) speaks to the exercise of powers already conferred upon it, and not to the conferment of jurisdiction itself. It governs how this Court exercises powers it already has. The provision states in terms that the Court shall act in accordance with good industrial relations practices in the exercise of its powers. Those words presuppose jurisdiction has already been established through Section 7(1). Section 10(3) and does not independently confer jurisdiction.

To hold otherwise would render the specific jurisdictional provisions of Section 7(1) largely redundant.

22. The Court of Appeal in **Universal Caribbean Establishment v James Harrison Suit No. 21 of 1993** held that Section 7(1)(c) extends beyond trade disputes to include unfair dismissal, a right expressly provided for in the Labour Code. That broader reading of Section 7(1)(c) was anchored to an identifiable statutory right. It does not extend to complaints that engage no identifiable right under the Labour Code or the Industrial Court Act.
23. The Court further notes the observations in **Icilma Francis-Piggott v First Caribbean International Bank** that even if a right not to be subjected to unfair treatment could be implied at common law, there is no remedy under the Act for its breach. Where Parliament has not prescribed any remedy, is a strong indication that the matter falls outside this Court's statutory mandate.
24. The Court finds that Section 7(1)(c) read with Section 10(3) does not independently found jurisdiction over a complaint that does not engage an identifiable right or protection within the Labour Code or the Industrial Court Act.

The Julie Osborne Decision

25. The Court has considered **Julie Osborne v The Attorney General of Antigua and Barbuda Reference No. 42 of 2015**. The Court notes that the factual matrix in that case does not appear to have involved documentary evidence of an established departmental practice applied to all comparable officers save for the employee, as exists in the present case. The cases are therefore factually distinguishable to that extent. Notwithstanding this conclusion, the Court is of the opinion that the conclusion in **Julie Osborne**, that, this Court cannot grant relief which in substance requires the reclassification of a Civil Service grade is correct on the facts before this Court, for the reasons stated above in relation to Division C4, Convention 111, and Section 10(3).

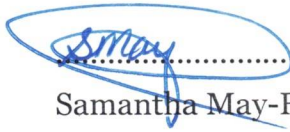
The Position on the Remaining Heads

26. The Employer has conceded liability on the acting allowance and has indicated a willingness in principle, to resolve the interest and vacation and sick leave heads. The Court notes this. However, as recorded at paragraph 7 above, no formal consent has been reached on any of these heads. They accordingly remain before this Court.

ORDERS

27. For the reasons stated above, the Court makes the following Orders.

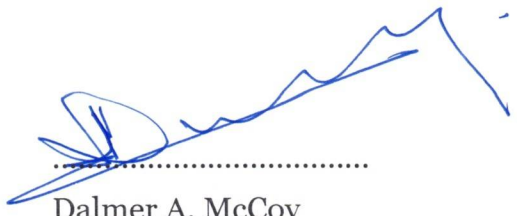
1. The Application to Strike Out is granted in respect of:
 - (a) The claim for entitlement to grade upgrading to Grade IV Junior Supervisor; and
 - (b) The claim for retroactive salary differential insofar as it is founded upon the grade upgrading.
2. The following heads of claim remain before this Court, and shall proceed to a further hearing unless otherwise agreed:
 - (a) Acting allowance
 - (b) Short payment of accrued vacation and sick leave from June 28, 2007;
 - (c) Interest
 - (d) Costs
3. The date of trial to be fixed by the Registrar in relation to the issues in paragraph 2 above.
4. No Order as to costs



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Samantha May-Francis
President



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John H.R. Benjamin
Member



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Dalmer A. McCoy
Member

Delivered by the Hon. Samantha May-Francis