

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANUHLTAP2020/0005

BETWEEN:

ANTIGUA AND BARBUDA TRANSPORT BOARD

Appellant

and

ANDERSON CARTY

Respondent

Consolidated with

ANTIGUA AND BARBUDA

ANUHLTAP2020/0006

BETWEEN:

ANTIGUA AND BARBUDA TRANSPORT BOARD

Appellant

and

ANIQUE FRANCIS

Respondent

Before:

The Hon. Mde. Gertel Thom
The Hon. Mr. Trevor Ward
The Hon. Mr. Gerard St. C Farara

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Hugh Marshall Jr. for the Appellant
Mr. Anderson Carty in person and self-represented
Ms. Anique Francis in person and self-represented

2023: March 10;
July 27.

Civil appeal – Labour Tribunal – Employment law – Unfair dismissal – Appeal against compensatory award – Whether the Industrial Court erred in its calculation of the respondents’ compensatory award – Immediate loss of wages – Whether the Industrial Court’s award of immediate loss of wages was arbitrary – Compensation for loss of wages to be based on net salary – Mitigation of loss – Employee’s duty to mitigate loss – Employer’s burden to prove failure to mitigate – Whether respondents failed to mitigate their losses – Payment in lieu of wages – Double recovery – Loss of future earnings – Exemplary damages – Whether the conduct of the employer was oppressive, arbitrary or unconstitutional – Manner of dismissal - Whether the manner and circumstances of his dismissal could give rise to any risk of financial loss at a later stage – Loss of Protection – Whether the first respondent is entitled to an award for loss of protection – Thrift Fund entitlement – Whether the Industrial Court erred in its award of thrift fund entitlement to the first respondent – Costs – Section 10(2) of the Industrial Court Act Cap 214 Laws of Antigua and Barbuda – Award of costs by employment tribunal exceptional – Whether the Industrial Court erred in its award of costs to the respondents

The first respondent, Mr. Carty, commenced employment with the Transport Board in April 2006. During his tenure with the Transport Board, he held several positions including Human Resources and Training Officer and Operations Manager. In October 2014, a newspaper article had been published in Antigua and Barbuda informing the general public that the Transport Board had taken the decision to dismiss several of its managers including Mr. Carty. There was no evidence before the Industrial Court that the publication was at the behest of the Transport Board. At the time of the newspaper article’s publishing, Mr. Carty had been on approved vacation leave. Upon resuming work, Mr. Carty received a letter dismissing him with immediate effect as a result of retrenchment. At the time of his dismissal, Mr. Carty was engaged as Operations Manager and was earning a monthly base salary of \$7300.00 together with duty, traveling, and telephone allowances totalling \$2500.00. The second respondent Ms. Francis, commenced her employment with the Transport Board in September 2013 as a Personal Assistant to the Operations Manager with a monthly salary of \$2850.00 and traveling and telephone allowances totalling \$400.00. Like Mr. Carty, Ms. Francis received a letter in November 2014, dismissing her from the Transport Board’s employ with immediate effect, citing retrenchment as the basis for doing so.

Both Mr. Carty and Ms. Francis filed individual references to the Industrial Court, which were later consolidated. Mr. Carty and Ms. Francis both claimed that they were unfairly dismissed on the purported ground of redundancy arising from retrenchment by the Transport Board. Both respondents claimed that the dismissals were politically motivated and raised issues as to whether a genuine redundancy situation existed at the material time and whether the Transport Board acted reasonably in terms of its selection process, consultation, notice, and manner of termination. The Industrial Court in its judgment concluded that there was an absence of a genuine redundancy situation and that the Transport Board failed the test of reasonableness by acting unreasonably when it dismissed Mr. Carty and Ms. Francis. The Industrial Court, therefore, declared that the respondents were unfairly dismissed and entitled to compensation under several heads of loss. In the case of Mr. Carty, Additional Pay in Lieu of Notice - \$7300; Loss of Contractual Emoluments - \$52,525.00; Thrift Fund Entitlements- \$2370.39; Exemplary Damages - \$25,000.00 and Costs - \$2500.00. In the case of Ms. Francis, Loss of Protection - \$1534.50; Immediate Loss - \$15,250.00; Exemplary Damages - \$2500.00 and Costs - \$2500.00.

The Transport Board does not dispute the Industrial Court's conclusion on redundancy and the respondents' entitlement to awards of compensation, however, the Transport Board disputes the Industrial Court's calculation of those awards. As a result, the Transport Board has filed 5 grounds of appeal. Mr. Carty has also filed a counter-appeal against the Industrial Court's failure to make an award under the head 'Loss of Protection' to him. The broad issue, for this Court to determine is whether the Industrial Court erred in its calculation of the respondents' award of compensation under the heads Immediate Loss of Wages, Exemplary Damages, Loss of Protection, Thrift Fund entitlement and Costs.

Held: allowing the appeal in part; allowing the counter-appeal; and making the orders at paragraph [87], that:

1. An unfairly dismissed employee may be entitled to an award of immediate loss of wages. This head of compensation represents the loss of wages or pay between the date of the employee's dismissal and the date of trial or judgment. The figure to be used in the calculation of immediate loss of wages or pay is the net salary or wage of the employee. The employee's entire pay packet is considered as the court's assessment under this head is not limited to the employee's basic wage but includes allowances and those items that form part of the employee's pay packet. Service charges and cash tips do not usually form part of the employees pay packet as they are not wages. Service charges and cash tips only form part of the pay packet where there is a contractual term, whether expressed or implied requiring the employer to distribute the service charge to staff or where there is a statutory mandate.

In this case, Mr. Carty's and Ms. Francis' allowances are not or should not be likened to service charges. Further, these allowances formed part of their employment contracts. The terms of employment required the Transport Board to pay both respondents monthly salaries which included these allowances. These allowances, therefore, formed part of their pay packets. The Industrial Court was correct in including Mr. Carty's and Ms. Francis' basic salary and allowances in assessing an award under this head.

Stair Memorial Encyclopaedia, Employment (3rd Reissue) Edinburgh: Butterworths, 1999 applied; **Antigua Village Condo Corp v Jennifer Watt** Civil Appeal No. 6 of 1992 (delivered 7th February 1994, unreported followed; **Halsbury's Laws of England** Employment (Volume 39 (2021), paras 1-346 applied; **Brownson v Hire Service Shops Limited** [1978] IRLR 73; **Hilti (Great Britain) Ltd. v Windbridge**, [1974] ICR 352 applied; **Norton Tool Co Ltd v Tewson** [1973] 1 All ER 183 applied; **Carlisle Bay Resort v Berlinda Dowe** ANULTAP2015/0002 (delivered 29th November 2022, unreported) explained.

2. An award of immediate loss of wages is only available to an employee who has mitigated his loss between the date of his dismissal and the date of trial or judgment. The employee is under a duty to take proper and reasonable steps to obtain suitable employment during this period. The question

whether there has been a failure to mitigate is one of fact to be determined by the tribunal. Further, when an employer seeks to allege that an employee has failed to mitigate a loss, the burden of proof is upon the employer making the allegations. In this case, it is for the Transport Board to show that Mr. Carty did not take reasonable steps to reduce the loss that he suffered as a result of his unfair dismissal. In this case, Mr. Carty sought alternative employment as evidenced by his 10 applications to various companies, and he formalised and expanded his consultancy practice. While it would have been useful if Mr. Carty had supplied the Industrial Court with proof of his earnings, the burden ultimately rests with the Transport Board that Mr. Carty did not take reasonable steps to mitigate his loss. In relation to Ms. Francis, she made reasonable efforts to mitigate her loss and was successful in finding alternative employment. There was, therefore, evidence before the Industrial Court on which it could base its finding that both respondents took reasonable steps to mitigate their losses during the period.

Antigua Village Condo Corp v Jennifer Watt Civil Appeal No. 6 of 1992 (delivered 7th February 1994, unreported followed; **Bessenden Properties Ltd v Corness** [1974] IRLR 338 applied; **AG Bracey Ltd v Iles** [1973] IRLR 210 applied; **Cooper Contracting Ltd v Lindsay** UKEAT/0184/15 (22 October 2015, unreported); **Gardiner-Hill v Roland Berger Technics Ltd** [1982] IRLR 498) applied.

3. The employer is to be given credit for all payments it has made to the employee on account of claims for wages and other benefits. This is in compliance with good industrial relations practices. Therefore, sums paid by the employer in lieu of notice should be taken into account in the assessment of an unfair dismissal compensatory award. An employee is not entitled to both payment in lieu of notice and the compensation award during the notice period as this would result in double recovery. In this case, the employer, the Transport Board, was in compliance with good industrial relation practices as it paid Mr. Carty \$7300.00 as payment in lieu of notice upon his dismissal. The Industrial Court in awarding immediate loss of wages should have taken this into account. However, it did not, and the Industrial Court went a step further and awarded an additional sum of payment in lieu of notice. There was no basis for doing so and the Industrial Court erred in so doing. The sum of \$7300.00 representing the payment made in lieu of notice to Mr. Carty by the Transport Board is to be deducted from the award of immediate loss. The award of \$52,525.00 shall, therefore, be reduced to \$45,225.00.

Antigua Village Condo Corp v Jennifer Watt Civil Appeal No. 6 of 1992 (delivered 7th February 1994, unreported followed; **Hilti (Great Britain) Ltd. v Windbridge**, [1974] ICR 352 applied.

4. A court or tribunal in calculating the award of loss of future earnings must consider a series of imponderables, in light of the facts of the case as this is not an area for precise calculations. In this case, Ms. Francis gave evidence that shortly after being unfairly dismissed by the Transport Board

she obtained temporary employment for three months, from March 2015 to June 2015. She was then able to obtain temporary employment at Tropical Shipping in October 2015 where she was eventually made permanent in April 2016. At the time of the trial in the Industrial Court, Ms. Francis had been permanently employed. In the Transcript of Proceedings, there is evidence that Ms. Francis made \$3200.00 per month while temporarily employed at Tropical Shipping and \$3600.00 per month when permanently employed. There is no evidence to suggest that Ms. Francis' present employment is any less secure than her former employment and as such there should be no award under this head. The award of \$2250.00 being the shortfall, is therefore set aside.

Halsbury's Laws of England Employment (Volume 39 (2021), paras 1-346 applied; **Norton Tool Co Ltd v Tewson** [1973] 1 All ER 183 applied; **Adda International Ltd. v Curcio** (1976) 3 A.E.R 620 applied.

5. Exemplary damages are awarded or imposed to punish a defendant for their wrongdoing and to deter similar behaviour in the future. Given their nature, exemplary damages may, only be awarded in a limited number of circumstances. These circumstances include: (1) where there has been oppressive, arbitrary or unconstitutional action by a defendant exercising governmental functions, but—pertinently—not where there has been oppressive behaviour by private corporations or individuals or trade unions; (2) where the defendant's conduct was calculated by him to make a profit for himself; and (3) where exemplary damages are expressly authorised by statute. While the conduct of the Transport Board was harsh and deserving of criticism, and that there was no reasonable basis for dismissing Mr. Carty as a genuine redundancy did not exist, it was not sufficient to enable this Court to declare that it was 'oppressive and arbitrary or unconstitutional.' The matters outlined in the decision of the President of the Industrial Court taken individually or collectively cannot be categorised as oppressive and arbitrary or unconstitutional. There was no basis for the Industrial Court to award \$25000.00 as exemplary damages. In the case of Ms. Francis, there was similarly no basis for the Industrial Court to award the sum of \$2500.00 as exemplary damages. The awards of exemplary damages awarded to both respondents are therefore set aside.

Rookes v Barnard [1964] AC 1129 applied; **Cassell & Co Ltd v Broome** [1972] 1 All ER 801 HL applied.

6. The court in making an award under the head manner of dismissal considers whether the manner and circumstances of the employee's dismissal could give rise to any risk of financial loss at a later stage by, for example, making him less acceptable to potential employers or exceptionally liable to selection for dismissal. In this case, the circumstances surrounding his dismissal are likely to make him less acceptable to potential employers or more likely to selection for dismissal. Mr. Carty is therefore awarded \$2500.00 under this head. In the case of Ms. Francis, she has not provided any evidence to the Industrial Court this Court of any actions by the Transport Board warranted an award under the head

manner of dismissal. There is, therefore, no basis to make an award under the head of loss.

Norton Tool Co Ltd v Tewson [1973] 1 All ER 183 applied.

7. In Antigua and Barbuda, the practice has become accepted that the loss of protection (basic award) is the full equivalent of the employee's entitlement to a statutory redundancy payment as set out in Section C44. In these circumstances, an award for loss of protection should be made to Mr. Carty. Mr. Carty had been employed with the Transport Board for 8 years at the date of his dismissal. Mr. Carty's award for loss of protection would be \$58,400.00. In relation to Ms. Francis, at the time of the trial, she was already in receipt of her severance pay. Further, she provided no evidence as to how much she received nor any evidence to show that she was entitled to any additional sum under this head. There was therefore no basis for the Industrial Court to award her the sum of \$1534.50 under this head. Therefore, the award is set aside.

C44 of the **Antigua and Barbuda Labour Code** Cap 27 of the Laws of Antigua and Barbuda applied; **Liat (1974) v Novella Sheppard Civil Appeal No. 6 of 1991** (delivered on 22nd November 1991, unreported) followed.

8. The clauses of the Thrift Fund Agreement make clear that the fund is time sensitive and that the drafters only contemplated that an employee's access both to membership and contributions, be based on or circumscribed by the length of period of employment. Clause 12 is no different. While an employee is 100% vested in his contribution, clause 12 is clear that an employee may only be 100% vested in the Transport Board's contribution after five years. Mr. Carty, who had been a member just short of five (5) years at the time of his dismissal, was not entitled to 100% of the Transport Board's contribution but rather he was only entitled to 75 % of its contribution plus interest according to clause 12. Further, clause 13 of the Thrift Fund Agreement gives the management of the Transport Board the discretion to 'give fair and reasonable consideration to the payment of any part/percentage of its contribution'. However, as Mr. Carty did not satisfy the length of time in the fund as required under clause 12, the management of the Transport Board was entitled to exercise its discretion as it saw fit and so it did. There is no evidence on the record showing that the Transport Board erred in the exercise of its discretion. There was, therefore, no basis for the Industrial Court to usurp this discretion and award a further sum to Mr. Carty, representing the remainder of the contribution that was supposedly withheld. The Industrial Court's award of \$2370.39 is, therefore, set aside.

Wood v Capita Insurance Services Limited [2017] UKSC 24 followed.

9. Section 10(2) of the Industrial Court Act states that the Industrial Court shall make no order as to costs, unless for exceptional reasons. The award of costs by an employment tribunal is an exceptional course of action and in

this case, both Mr. Carty and Ms. Francis have been unable to satisfy that exceptional reasons exist for the court to depart from the general rule. The respondents were unable to satisfy the high threshold to justify the award of costs. The Industrial Court erred in awarding costs to the respondents and as such their awards should be set aside.

Section 10(2) of the **Industrial Court Act** Cap 214 Laws of Antigua and Barbuda applied; **Salinas v Bear Stearns International Holdings Inc and another** [2005] ICR 1117 applied.

JUDGMENT

Introduction

- [1] **THOM JA:** This is an appeal by the appellant Antigua and Barbuda Transport Board (“Transport Board”) against an assessment of a compensation order made in the Industrial Court in favour of the respondents, Anderson Carty (“Mr. Carty”) and Anique Carty (“Ms. Francis”).

Background

- [2] In April 2006, Mr. Carty commenced his employment with the Transport Board. During his tenure with the Transport Board, he held several positions including Human Resources and Training Officer and Operations Manager.
- [3] On 3rd October 2014, a newspaper article had been published in Antigua and Barbuda informing the general public that the Transport Board had taken the decision to dismiss several of its managers including Mr. Carty. There was no evidence before the Industrial Court that the publication was at the behest of the Transport Board. At the time of the newspaper article’s publishing, Mr. Carty had been on approved vacation leave. He resumed work on 15th October 2014 however, he received a letter of even date dismissing him with immediate effect as a result of retrenchment.
- [4] At the date of his dismissal, Mr. Carty was engaged as Operations Manager. He was earning a monthly base salary of \$7300.00 and duty, traveling and telephone allowances totalling \$2500.00. He was entitled to a gratuity equivalent

to 12.5% of his aggregate salary for his term of employment. He also contributed to a thrift fund that required 2.5% of his salary to be deducted.

- [5] In relation to Ms. Francis, she commenced her employment with the Transport Board in September 2013 as a Personal Assistant to the Operations Manager with a monthly salary of \$2850.00 and traveling and telephone allowances totalling \$400.00. Her employment was subject to the collective bargaining agreement then in force between the Transport Board and the Antigua and Barbuda Workers' Union. Like Mr. Carty, Ms. Francis received a letter on 14th November 2014 bearing even date, dismissing her from the Transport Board's employ with immediate effect, citing 'retrenchment' as the basis for doing so.
- [6] Both Mr. Carty and Ms. Francis filed individual references to the Industrial Court, which were later consolidated. Mr. Carty and Ms. Francis both claimed that they were unfairly dismissed on the purported ground of redundancy arising from retrenchment by the Transport Board. Both respondents claimed that the dismissals were politically motivated and raised issues as to whether a genuine redundancy situation existed at the material time and whether the Transport Board acted reasonably in terms of its selection process, consultation, notice, and manner of termination.
- [7] The Industrial Court concluded that there was 'an absence of a genuine redundancy situation' and that the Transport Board 'failed the test of reasonableness by acting unreasonably when it dismissed [Mr. Carty and Ms. Francis].' The Industrial Court, therefore, declared that the respondents were unfairly dismissed and entitled to compensation. The Industrial Court made compensation awards under several heads, including:

Mr. Carty

- (a) Additional Pay in Lieu of Notice - \$7300.00
- (b) Loss of Contractual Emoluments - \$52,525.00
- (c) Thrift Fund Entitlements - \$2370.39
- (d) Exemplary Damages - \$25,000.00
- (e) Costs - \$2500.00

Total: \$89,695.39

Ms. Francis

(a) Loss of Protection - \$1534.50

(b) Immediate Loss - \$15,250.00

(c) Exemplary Damages - \$2500.00

(d) Costs - \$2500.00

Total: \$21,784.50

Appeal

- [8] While the Transport Board does not dispute the Industrial Court's conclusion on redundancy and the respondents' entitlement to awards of compensation, the Transport Board disputes the Industrial Court's calculation of those awards. As a result, the Transport Board has filed 5 grounds of appeal in support of its argument. Mr. Carty has also filed a counter-appeal against the Industrial Court's failure to make an award under the head 'Loss of Protection' to him. I am of the view that both the Transport Board's appeal and Mr. Carty's counter-appeal can be summed up into one (1) broad issue, namely, whether the Industrial Court erred in its calculation of the respondents' award of compensation. To determine this issue, I intend to sub-divide it into the following sub-headings: (i) Immediate Loss of Wages; (ii) Exemplary Damages; (iii) Loss of Protection; (iv) Thrift Fund; and (v) Costs.

Immediate Loss of Wages Appellant's Submissions

- [9] Counsel for the Transport Board, Mr. Marshall submitted that in relation to both Mr. Carty and Ms. Francis, the Industrial Court erred in its calculation of their entitlements to immediate loss of wages. Mr. Marshall argued that the Industrial Court incorrectly included the respondents' allowances in its calculation, as such award is limited solely to the last basic wage of the employee.
- [10] In relation to Mr. Carty, Mr. Marshall highlighted that Mr. Carty earned a basic salary of \$7300.00 and allowances of \$2250.00 and that he was awarded by the Industrial Court \$52,525.00 being the sum of \$9550.00 (his basic wage and

allowances) for a period of 5.5 months. These 5.5 months represented the unexpired term of his 'implied fixed-term contract of employment' with the Transport Board. He argued that the Industrial Court erred in its inclusion of \$2250.00 (his allowances) into its calculation of immediate loss, as the calculation is only done upon an employee's basic wage and does not include any allowances or any like items. Mr. Marshall relied on the authority of **Carlisle Bay Resort v Berlinda Dowe**,¹ an oral judgment of this Court, in which this Court reduced an award of immediate loss of wages, on the basis that the Industrial Court incorrectly included service charge in its calculation. As such Mr. Marshall argued that the award for immediate loss to Mr. Carty should be reduced to \$40,150.00, calculated solely on his basic wage. He also argued that the period, 5.5 months, on which the Industrial Court based its calculation of immediate loss was arbitrary and that the Industrial Court's basis for doing so was not supported by law.

- [11] Mr. Marshall also argued that Mr. Carty in seeking to recover his immediate loss of wages, had a duty to mitigate his loss during the period between his dismissal and the date of the trial. However, he had failed to do so, providing no evidence before the Industrial Court that he suffered loss as a result of his termination and as it was not open to the Industrial Court to conclude that Mr. Carty was entitled to compensation in the sum of \$52,525.00. Mr. Marshall stated that an unfairly dismissed employee is entitled to compensation for immediate loss subject to mitigation, which involves taking steps to secure other suitable employment immediately after termination. Mr. Marshall argued that the onus is on the employee to provide evidence of his efforts to mitigate any loss, however in the case of Mr. Carty, he admitted under cross-examination that he had suffered no loss from his termination as he immediately engaged in full-time self-employment as a consultant, which he had already been engaged while employed by the Transport Board. It is on this basis Mr. Marshall argued that Mr. Carty's award should be reduced. Mr. Marshall also invited this Court to reduce Mr. Marshall's award under this head by reason of Mr. Carty's 'double recovery' - being granted both immediate loss for wages and payment in lieu of

¹ ANULTAP2015/0002 (delivered 29th November 2022, unreported).

notice by the Industrial Court. He argued that this was not permissible by law and that where an employer had made payment in lieu of notice to an unfairly dismissed employee, as it had done in this case, credit should be given to the employer and that such payment should be deducted or taken into account when making an award for immediate loss.

[12] In relation to Ms. Francis, Mr. Marshall argued that the Industrial Court erred in its calculation of Ms. Francis' award for immediate loss of wages. He stated that Ms. Francis' last basic wage was \$660.00 per week as evidenced in her termination letter dated 14th November 2014² and it did not include any allowances. He argued that as the calculation of immediate loss of wages is to be done on an employee's last basic wage only, the Industrial Court ought to have calculated Ms. Francis' immediate loss on \$2,850.00, it being her basic wage. He submitted that had the Industrial Court calculated her immediate loss on her basic wage, an award of \$11,400.00 would have been made in her favour.

[13] Mr. Marshall also argued that the Industrial Court erred when it awarded Ms. Francis \$2550.00 being the shortfall in her earnings during temporary employment for 3 months. He argued that while immediate loss of wages is intended to compensate an unfairly dismissed employee for loss of wages from termination to trial, shortfall of earnings is not calculated under immediate loss but future loss, which is predicated on the expectation that future earnings would be less than earnings from the terminated employment. It is therefore calculated on the difference between the two incomes. He argued that even if the Industrial Court intended to award Ms. Francis future loss of wages, the calculation was incorrect, as the difference between her former salary and temporary salary was \$350.00 per month. As such the award under that head would have been \$1400.00.

Respondents' Submissions

² See: Appeal Bundle at page 1099.

- [14] Mr. Carty in response submitted that the Industrial Court did not err in law in computing his award under the head of immediate loss of wages when it included allowances in its computation. Mr. Carty argued that the Industrial Court in making an award to an unfairly dismissed employee, has a wide degree of discretion under the **Industrial Court Act**,³ to grant compensation that would be equitable and fair, having regard to the **Labour Code**, the principles of good industrial relations practices and the substantial merit of the case before it. Further, he argued that the calculation of the award under immediate loss of wages was not arbitrary but rather consistent with all previous awards granted by the Industrial Court. He stated that it was reasonable that the Industrial Court would consider and take into account, the total loss (salary and allowances) incurred by any employee who was dismissed under circumstances that were contrary to law.
- [15] Mr. Carty also submitted that Mr. Marshall was incorrect in his assertions that he had failed to mitigate his loss as required under this head. Mr. Carty rejected Mr. Marshall's submissions that he had suffered no loss as a result of his termination, highlighting that he had partially become engaged in limited work as an independent industrial relations consultant during the latter period of his tenure of employment with the Transport Board and had encountered some difficulty meeting his expenses for a period of approximately one (1) year after he had lost the employment. Mr. Carty submitted that he had made reasonable efforts to mitigate loss by sending job applications to 10 companies seeking employment to no avail.
- [16] Further, Mr. Carty rejected Mr. Marshall's submissions that he had benefitted from 'double recovery' as it related to receiving both payments in lieu of notice and immediate loss of wages by virtue of the Industrial Court's compensation order. Mr. Carty argued that the Transport Board was required by C9 of the **Labour Code** to give adequate notice having regard to his position and his pay period. He argued that in lieu of such notice by his employer, he was entitled to notice pay which was just and fair in the circumstances. He argued further that

³ Cap 214 Laws of Antigua and Barbuda.

the payment made in lieu of notice does not impinge on immediate loss of wages as argued by Mr. Marshall, as it is a customary industrial practice that these are separate and distinct awards that are not connected in any way to each other. While Mr. Carty maintained that the Industrial Court was correct in its award to him under the head of immediate loss at 5.5 months and as such the award should not be reduced, Mr. Carty also submitted that the Industrial Court erred in finding that he had been employed under a fixed term contract of employment. He stated that he was employed under a full-time open-ended contract and that the Industrial Court incorrectly inferred a fixed-term contract. In any event, Mr. Carty maintained that was just and fair in the circumstances that immediate loss of wages be awarded to him for a period of 5.5 months and that as such award should not be reduced.

- [17] Ms. Francis appearing before the Court indicated that she would be relying on Mr. Carty's submissions in relation to all grounds of appeal.

Discussion

Compensation for Unfair Dismissal

- [18] The concept of unfair dismissal was first introduced in the United Kingdom by the Industrial Relations Act 1971. It was later introduced in Antigua and Barbuda by **The Antigua and Barbuda Labour Code**⁴ ("Labour Code") in 1976. The concept is solely a creature of statute, permitting tribunals or industrial courts to review the decisions of employers and award compensation for dismissals that it deems unfair.
- [19] Compensation for unfair dismissal is assessed under two heads. First, the basic award – designed to compensate the employee for the loss of job security caused by the unfair dismissal. Second, the compensatory award, which is designed to compensate for losses suffered by the employee arising out of unfair dismissal by awarding such amount as the tribunal considers 'just and equitable.'⁵

⁴ Cap 27 of the Laws of Antigua and Barbuda.

⁵ *Antigua Village Condo Corp v Jennifer Watt* Civil Appeal No. 6 of 1992 (delivered 7th February 1994, unreported); *Norton Tool Co Ltd v Tewson* [1973] 1 All ER 183; Halsbury's Laws of England > Employment (Volume 39 (2021), paras 1-346.

[20] In terms of the compensatory award, an employee's loss is to be considered under four heads: (i) his immediate loss of wages; (ii) the manner of his dismissal; (iii) his future loss of wages; and (iv) his loss of protection in respect of unfair dismissal or dismissal by reason of redundancy. This was established in **Norton Tool Co Ltd v Tewson**, the United Kingdom's first appellate decision on the award of compensation for unfair dismissal. This decision was later followed and adopted by this Court in **Antigua Village Condo Corp v Jennifer Watt**, where Sir Vincent Floissac recognised the four heads of compensatory awards, as well as the legislative intention of such awards. In his judgment, Sir Vincent Floissac acknowledged that a compensatory award for unfair dismissal must be fair and just. He stated at pages 3 and 4 of his judgment that:

“Section 10(3) of the Act (the Industrial Court Act No.4 of 1976) provides as follows:

“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.”

The legislative intention clearly expressed in section 10(3) of the Act is that an award (including an award of compensation for unfair dismissal) should be fair and just and that fairness and justice of the award should be determined by reference to the interests of the employer, the employee and the community as a whole, the principles enshrined in the Code and the principles and practice of good industrial relations. Accordingly, an award of compensation for unfair dismissal should be held to be unfair and unjust if the award is a mere aggregation of the amounts of the heads of loss are calculated without due regard to the interests of the employer and the community as a whole and without making those reductions, deductions, discounts, allowances and mitigations which the principles of compensation in general and the principles and practices of good industrial relations in particular require to be made in protection of those interests and in behalf of the general fairness and justice of the award.”

- [21] With this legislative requirement in mind, that a compensatory award for unfair dismissal must be 'just and fair', I will now examine each item under appeal.

Immediate Loss of Wages

- [22] An unfairly dismissed employee may be entitled to his immediate loss of wages. This head of compensation represents the loss of wages or pay between the date of the employee's dismissal and the date of trial or judgment. However, this award's availability to the employee is contingent upon the employee's mitigation of loss during that period. The employee is under a duty to take proper and reasonable steps to obtain suitable employment during this period, thereby mitigating his loss of wages or pay.⁶

- [23] Counsel for the Transport Board, Mr. Marshall, has argued that the Industrial Court's award of \$52,525.00 to Mr. Carty and \$15,250.00 to Ms. Francis under this head should be reduced on the basis that (i) the Industrial Court's wrongly included Mr. Carty's and Ms. Francis' allowances in its calculation of immediate loss of wages and; (ii) that both Mr. Carty and Ms. Francis failed to mitigate their losses during the pre-trial period.

Compensation for loss of wages to be based on net salary

- [24] In **Halsbury's Laws of England**⁷ 'pay' for the purposes of immediate loss of wages is said to mean "realistic, net pay". In **Hilti (Great Britain) Ltd. v Windbridge**,⁸ the National Industrial Relations Court of the United Kingdom held that compensation for loss of wages following a dismissal is to be based on net salary. The court in following **Norton Tool** held that the employment tribunal erred in assessing compensation on the employee's gross salary under this head. The court stated:

"In the present case the tribunal awarded three weeks. They awarded it as a gross figure. It is conceded that this was an error; it should have been awarded as a net figure. It appears to us that three weeks would probably be somewhat on the high side as an assessment under this

⁶ Stair Memorial Encyclopaedia, '222. Assessment of immediate loss of wages' Employment (3rd Reissue) Edinburgh: Butterworths, 1999; *Antigua Village Condo Corp v Jennifer Watt Civil Appeal No. 6 of 1992* (delivered 7th February 1994, unreported at page 5.

⁷ '826. Calculation of the compensatory award for unfair dismissal; heads of compensation' Employment (Volume 39 (2021), paras 1-346.

⁸ [1974] ICR 352.

head. However, we do not feel that we are justified in substituting some smaller figure than three weeks. Accordingly, this head will be allowed, but it will be reduced in order to reflect the net loss of wage rather than the gross. This means reducing that figure of £179.64 to £113.16...” (Emphasis added).

[25] In **Brownson v Hire Service Shops Limited**⁹ an employee had been contracted to work for 44.5 hours per week. He had also been required to work overtime which varied according to the amount of work available. The employee had been unfairly dismissed and the industrial tribunal calculated his immediate loss award, less tax and insurance, and also excluded his overtime pay. The employee appealed the decision and the appeal tribunal allowing the appeal held that the tribunal should have included ‘net overtime pay’ in their calculations in respect of immediate loss. The court in supporting its ruling stated as follows:

“Other things being equal the first thing you lose (sic) in consequence of being dismissed is what you would have got in your pay packet. So the employee lost his £63.46 per week plus the appropriate figure for overtime less deductions for tax and insurance. To arrive at the appropriate figure for overtime and deductions involves an assessment of what overtime he would have earned over the period to the hearing before the industrial tribunal and over whatever further period, which the tribunal put at three month, after which they expected him to have found another suitable job. There is no provision in the Act to justify any differentiation between the basis on which you compute the loss from dismissal to date of hearing, and future loss. For both the initial approach in our judgment must be what the employee would have got in his pay packet. To the extent to which the tribunal excluded overtime and deductions in arriving at their figures of £571.15 for loss of earnings between his dismissal and the hearing and approximately £637 for future loss of earnings they went wrong in law in our judgment. To exclude those elements could not be just and equitable as section 76 requires.” (Emphasis added)

[26] From the cases cited above, it is clear that the figure to be used in the calculation of immediate loss of wages or pay is the net salary or wage of the employee. The net salary is an employee’s gross salary less taxes and insurance. This net salary is not the same as or interchangeable with the ‘basic wage’ as proposed by Mr. Marshall. As laid down in **Brownson**, the entire ‘pay packet’ is what is considered by the court in assessing immediate loss of wages. Such an

⁹ [1978] IRLR 73 at 520.

assessment is not only assessed on the employee's 'basic wage' but includes allowances and those items that form part of the employee's pay packet.

[27] Mr. Marshall has in his submissions raised the case of **Berlinda Dowe**, an oral judgment of this Court, as justification as to why only the basic wage of an employee should be used to calculate the award for immediate loss of wages. In **Berlinda Dowe**, this Court was of the view that the award for immediate loss of wages should be reduced on the basis that, the Industrial Court erred by including 'service charge' in its computation under that head. While I agree that this Court was correct in reducing that award, I do not agree that it was for the reasons posited by Mr. Marshall.

[28] Service charges and cash tips which are given by customers directly to a worker¹⁰ or collected and distributed to staff by a head waiter, acting independently of the employer, do not constitute wages.¹¹ Further, where a customer's bill refers to a service charge which the customer pays and is then distributed to workers by or on behalf of the employer, the service charge is the property of the employer and does not constitute a wage. It may only be considered a wage if there is a contractual term, whether expressed or implied requiring the employer to distribute the service charge to staff.¹² It may also be considered a wage or pay if so mandated by statute.¹³ In the case of **Berlinda Dowe**, there was no such evidence lead that the service charge in question, was to be considered a wage or pay by virtue of her contract or a statutory mandate.

[29] In addition to the reasoning in **Brownson**, it is clear that Mr. Carty's and Ms. Francis' allowances are not or should not be likened to service charges, as these allowances formed part of their employment contracts. The terms of employment required the Transport Board to pay both respondents monthly salaries which included these allowances. These allowances formed part of their

¹⁰ *Wrottesley v Regent Street Florida Restaurant* [1951] 2 KB 277.

¹¹ *Revenue and Customs Comrs v Annabel's (Berkeley Square) Ltd* [2009] EWCA Civ 361.

¹² *Nerva v RL & G Ltd* [1996] IRLR 461, CA).

¹³ *Saavedra v Aceground Ltd (t/a Terrazza Est)* [1995] IRLR 198, EAT.

pay packets. The Industrial Court was therefore correct in including Mr. Carty's and Ms. Francis' basic salary as well as their allowances, in assessing an award under this head. The Industrial Court cannot be faulted for assessing Mr. Carty's immediate loss of wages award on \$9550.00 (\$7300.00 + \$2550.00) or Ms. Francis' immediate loss of wages award on \$3250.00 (\$2850.00 + \$400.00).

- [30] As stated earlier, net salary is an employee's gross wages less tax and other statutory deductions. There is no information before this Court as to whether the sum of \$9550.00 representing the monthly salary of Mr. Carty and \$2850.00, representing the monthly salary of Ms. Francis is their gross salary or the net salary. In **Norton Tool**, similar circumstances arose where the court noted the following:

"We have no information as to whether the £25 4360 per week is a gross or a 'take-home' figure. The relevant figure is the 'take home' pay since this and not the gross pay is what he should have received from his employer. However, neither party took this point and we have based our assessment of this head of loss on six weeks at £25 4360 per week or £153 4360."¹⁴

- [31] Like in **Norton Tool**, neither party has taken the point on whether taxes and other statutory deductions have been deducted. In any event, I would adopt a similar approach as in **Norton Tool** and base this Court's assessment of this head of loss on \$9550.00, in the case of Mr. Carty, and \$2850.00, in the case of Ms. Francis.

Mitigation of Loss

- [32] As discussed previously, an award under this head of loss is subject to the employee's mitigation of loss during the pre-trial period. In **Antigua Village Condo Corp v Jennifer Watt** Sir Vincent Floissac restated this principle as follows:

"But during the pre-trial period, the employee is under a duty to take proper and reasonable steps to obtain other suitable employment and thereby to mitigate the loss of earnings during that period. That duty is clearly expressed in paragraph 1195 of Vol. 12 of Halsbury's Laws of England (Fourth Edition) as follows:

"In actions for breach of a contract of employment a plaintiff who has been wrongfully dismissed must take reasonable

¹⁴ 1973] 1 All ER 183 at 188.

steps to obtain other suitable employment. He is not entitled to remain idle at the defendant's expense simply because no precisely similar employment can be found, but must accept employment which, having regard to his standing, experience and personal history he can reasonably be expected to accept. He must be prepared if necessary to lower his sights and accept employment at a lower remuneration."

In *LIAT v Sheppard* (Civ. App. No. 6 of 1991), Byron J.A. (delivering the judgment of the Court) said:

"The court cannot be debarred from exercising an objective approach merely by proof of actual loss because its duty must include considering the issue of mitigation as well."

- [33] The question of whether there has been a failure to mitigate is one of fact to be determined by the tribunal. In **Bessenden Properties Ltd v Corness**¹⁵ Roskill LJ observed that 'Questions of mitigations are questions of fact. When one party seeks to allege that another party has failed to mitigate a loss, the burden of proof is upon the party making the allegations.' In **AG Bracey Ltd v Iles**,¹⁶ Sir John Donaldson expressed the principle as follows:

"The law is that it is the duty of a dismissed employee to act reasonably in order to mitigate his loss. It may not be reasonable to take the first job that comes along. It may be much more reasonable, in the interests of the employee and of the employer who has to pay compensation, that he should wait a little time. He must, of course, use the time well and seek a better paid job which will reduce his overall loss and the amount of compensation which the previous employer ultimately has to pay ... [A] man who is dismissed from a £40 a week job may act unreasonably if he does not accept a job bringing in, say, £35 a week. If he does not do so, a tribunal is fully entitled to say, "We are going to take no account of any loss which he could have avoided by taking the £35 a week job". But that still leaves him with a loss of £5 a week, the difference between £40 and £35. A tribunal is fully entitled to take account of that loss, which could not have been avoided by taking the job which they think he should have taken."

- [34] In **Cooper Contracting Ltd v Lindsay**,¹⁷ Langstaff P stated that:

"11. The burden of proof of a failure to mitigate is on the wrongdoer. A Claimant does not have to prove that he mitigated the loss. Authority for this is at the highest level and binding. It begins with *Banco De Portugal v Waterlow & Sons Ltd* [1932] AC 452, a decision of the House of Lords."

¹⁵ [1974] IRLR 338.

¹⁶ [1973] IRLR 210.

¹⁷ UKEAT/0184/15 (22 October 2015, unreported)

[35] This principle was also illustrated in **Gardiner-Hill v Roland Berger Technics Ltd.**¹⁸ In **Gardiner-Hill**, Mr. Gardiner-Hill, a managing director, was unfairly dismissed from his position at the age of 55 and thereafter started his own business. While the industrial tribunal acknowledged the unfairness of his dismissal, it reduced his compensation by 80% due to his alleged failure to mitigate his loss. The tribunal stated that it reduced his award because he dedicated 80% of his time to establishing his own business instead of seeking alternative employment. He appealed against this deduction and the exclusion of the money spent on his business setup.

“In our view, the Industrial Tribunal has misdirected itself in this case as to what is the rule on mitigation of damage. **A plaintiff or claimant who has suffered by the wrongful act of another party is entitled to recover the loss that flows from that wrongful act.** In the case of a breach of contract of employment, the loss will be the loss of earnings during such period as he loses the wages which he would have had from his employment and receives no alternative income earned during ordinary working hours.

In the present case, it seems to us that the Industrial Tribunal have taken the view that because Mr Gardiner- Hill did not apply for another job (ie paid employment) he has therefore as a matter of law automatically failed to mitigate his loss. **In our view, that is not correct. The duty on a claimant is to take such steps as in all the circumstances are reasonable to reduce the loss he suffers from the respondent's wrongful act. In the circumstances of this case, Mr Gardiner-Hill was some 55 years old at the time of his unfair dismissal. For upwards of 16 years he had been sole managing director of a specialist business. It is not, in our view, at all self-evident – indeed the contrary – that in those circumstances the right and reasonable course for him to adopt was to seek alternative employment. Indeed in our view it was at least as prudent of him to seek to exploit his own expertise by conducting his own business and gaining an income from his own business to replace the income which he had previously received from his employment.**

...

In order to show a failure to mitigate, it has to be shown that if a particular step had been taken, Mr Gardiner-Hill would, after a particular time, on balance of probabilities have gained employment; from then onwards the loss flowing from the unfair dismissal would have been extinguished or reduced by his income from that other source. In fixing

¹⁸ [1982] IRLR 498).

the amount to be deducted for failure to mitigate, it is necessary for the Tribunal to identify what steps should have been taken; the date on which that step would have produced an alternative income and, thereafter, to reduce the amount of compensation by the amount of the alternative income which would have been earned. Since that is the principle of mitigation, a reduction of a percentage of the total sum representing compensation for the whole period is inappropriate. Therefore, in our view, the Industrial Tribunal erred in the basis on which they have approached the compensation in this case.” (Emphasis added)

I am of the view that **Gardiner-Hill** can be applied in this case.

[36] As seen throughout the authorities, the burden of proof rests with the employers. In this case, it is the Transport Board. It is for the Transport Board to show that Mr. Carty did not take reasonable steps to reduce the loss that he suffered as a result of his unfair dismissal. The Transport Board has attempted to prove that Mr. Carty suffered no loss as he had been engaged in a consultancy while he had been employed with the Transport Board and continued to earn money. Mr. Marshall has also taken issue with Mr. Carty’s failure to prove his earnings in relation to this consultancy, in order to prove that he mitigated his losses. While I agree with Mr. Marshall that it would have been useful if Mr. Carty had supplied the Industrial Court with proof of his earnings, the burden ultimately rests with the Transport Board that Mr. Carty did not take reasonable steps to mitigate his loss.

[37] This case in many ways mirrors **Gardiner-Hill**. Mr. Carty has been a senior human resources and industrial relations professional for many years, and it would not have been unreasonable that he had formalized or expanded his consultancy practice after having been unfairly dismissed. It would have been imprudent of him given his expertise, to not do so. Furthermore, Mr. Carty did in fact seek alternative employment as evidenced by his 10 applications to various companies. Mr. Carty therefore in the circumstances did not fail to mitigate his loss. As such the issue that arises is not whether Mr. Carty failed to mitigate his loss, but whether the Industrial Court was correct to award immediate loss of wages for a period of 5.5 months. The Industrial Court in this judgment stated that its justification for awarding immediate loss for a period of 5.5 months was

that 5.5 months represented the unexpired term of his fixed-term contract of employment with the Transport Board. Mr. Carty has in this appeal resisted the assertion that he at any time during his employment with the Transport Board was contracted under a fixed term contract. He has not however counter-appealed this point. In any event, an award of immediate loss is calculated to represent that loss incurred between the date of dismissal and trial. It is undergirded by principles of justice and fairness. In these circumstances where the period from dismissal to trial was 3 years, there's no doubt that the award of immediate loss of wages for a period of 5.5 months is just and fair.

[38] In relation to Ms. Francis, I agree with the Industrial Court based on the evidence that was before it that she made reasonable efforts to mitigate her loss and that her award under this head should not be reduced on this basis. At pages 174-175 of the Transcript of Proceedings, Ms. Francis gave her evidence of mitigation as follows:

“Q. Now, Ms. Francis, following your termination from the Transport Board in November 2015, did you make any efforts to find alternative employment?

A. Yes, I did.

Q. Could you say to the Court what those efforts were.

A. I sent applications to three hotels. I went to the One Stop Employment Center and filled out an application.

...

A. I found temporarily employment in March of 2015.

Q. March of 2015 or 2016? The termination is what year -- was in what year, forgive me, 2014?

A. 2014.

Q. All right. So in March of 2015, you found temporary employment where?

A. Carib Trans.

...

Q. A shipping company. And how long did that last? A. Three months.

Q. So March, April June. June 2015.

A. Yes.

Q. And how much you were paid?

A. 2500 a month.

...

Q. All right. And that ended in June. Did you subsequently find other employment?

A. Temporarily, again, in October the same year.

Q. Where was that

A. Tropical Shipping.
 Q. Tropical Shipping. For how long?
 A. I was temporary for six months and then I was made permanent April of 2016.
 Q. You made permanent in April 2016.
 A. Correct.”

[39] Ms. Francis indeed acted reasonably in order to mitigate her loss and was successful in finding alternative employment. There was therefore evidence before the Industrial Court on which it could base its finding that she took reasonable steps during the period.

Payment in Lieu of Notice

[40] C9 of the **Labour Code** mandates that an employer give an employee notice of their dismissal in accordance with their interval of pay. Where such notice is not given, the employer makes a payment to the employee in lieu of notice. In **Antigua Village Condo Corp v Jennifer Watt**, Sir Vincent Floissac pronounced that the head immediate loss of wages ‘includes the amount to which the employee is entitled by way of salary or wages in lieu of notice’. Normally, the employer is to be given credit for all payments he has made to the employee on account of claims for wages and other benefits.¹⁹ Therefore, sums paid by the employer in lieu of notice should be taken into account in the assessment of an unfair dismissal compensatory award. In **Babacock Fata Ltd v Addison**,²⁰ the employer had complied with ‘good industrial practice’ and had paid the employee £704 in lieu of notice. The employee was therefore not entitled to both the payment in lieu of notice and the compensatory award for immediate loss of wages during the notice period. As such the court ordered that the £704 be deducted as double recovery was not permissible. In **Babacock**,²¹ Ralph Gibson LJ discussed the conflicting lines of authority on whether a payment in lieu of notice was to be treated as a thing apart and left completely out of the calculation for compensation. He cited **Hilti (Great Britain) Ltd. v Windbridge** as authority for there being no double recovery. He also at p.178 stated that the principle in **Norton Tool**:

¹⁹ Hilti (Great Britain) Ltd. v Windbridge.

²⁰ [1987] IRLR 173.

²¹ [1987] IRLR 173.

“If the employee does not get employment during the notice period, no principle of good industrial practice can secure to the employee any further payment by way of lost wages in respect of the period of notice; he has received the wages for that period and, if he is to recover the same amount again, it must be by reference to some rule of law outside the provisions of the Act of 1978 and in my view no such rule exists.”

[41] It is clear from the authorities that there is to be no double recovery. An employee is not entitled to both payment in lieu of notice and the compensation award during the notice period as this would result in double recovery. Further, an employer is to be given credit for all payments that it has made to an employee on account of claims for wages and other benefits. This is in compliance with good industrial relations practices. In this case, the employer the Transport Board, was in compliance with good industrial relation practices as it paid Mr. Carty \$7300.00 as payment in lieu of notice upon his dismissal. The Industrial Court in awarding immediate loss of wages should have taken this into account. However, it did not, and the Industrial Court went a step further and awarded an additional sum of payment in lieu of notice. There was no basis for doing so and the Industrial Court erred in so doing. As such in line with the authorities, the sum of \$7300.00 representing the payment made in lieu of notice to Mr. Carty by the Transport Board is to be deducted from the award of immediate loss of wages. The award of \$52,525.00 shall therefore be reduced to \$45,225.00. The additional payment in lieu of notice, being \$7300.00²² made by the Industrial Court is also set aside.

[42] In relation to Ms. Francis, I agree with counsel for the Transport Board Mr. Marshall that what the Industrial Court attempted to do was award Ms. Francis loss of future earnings. In **Antigua Village Condo Corp v Jennifer Watt** Sir Vincent Floissac stated that ‘the loss of future earnings is a difference between two earnings.’ **Halsbury’s Laws of England** provides that a tribunal in calculating this award must ‘consider a series of imponderables, in light of the facts of the case; although a multiplier may be used, this is not an area for

²² See para 7 above.

precise calculations.²³ In **Adda International Ltd. v Curcio**,²⁴ Bristow J in delivering the judgment of the UK Employment Appeal Tribunal stated at page 624:

"This appeal has underlined for us two things of general importance. The first is that there must be some evidence of future loss and the scale of future loss to enable the tribunal to make any award under that head. The tribunal must have something to bite on, and if an applicant produces nothing for it to bite on he will have only himself to thank if he gets no compensation for the loss of future earnings. The second is that unless the tribunal sets out in more depth than was done in this case what it awards under each of the heads set out in *Norton Tool Co Ltd v. Tewson* and shows what it took into consideration in arriving at the award under each head, there is a real risk that this appeal tribunal will find itself unable to reach a conclusion, if the award is challenged, without remitting the case to the tribunal with all the unsatisfactory consequences to everyone which that must involve."

[43] In **Norton Tool**, the court in arriving at its decision on whether to award loss of future earnings, looked at the respondent's job security. The court stated that:

"There is no evidence to suggest that the respondent's present employment is any less secure than his former employment, and we have therefore taken no account of possible future losses due to short time working, lay-off or unemployment, apart from loss of rights in respect of redundancy and unfair dismissal which are considered separately at (d) below."

[44] Ms. Francis at the time of her dismissal made the sum of \$2850.00 per month. The Transport Board has contested this proposing that Ms. Francis earned a lesser figure, citing the termination letter dated 14th November 2014 as evidence of such. I do not accept that figure as the figure that should be used to calculate Ms. Francis's salary. In the Industrial Court, Ms. Francis submitted evidence that her salary was \$2,850.00 per month and this remained uncontroverted evidence. I have reviewed the transcript of proceedings and there is no evidence, particularly in Mr. Marshall's cross-examination of Ms. Francis that the use of \$2850.00 as her salary was in issue.

²³826. Calculation of the compensatory award for unfair dismissal; heads of compensation' Employment (Volume 39 (2021), paras 1-346.

²⁴ (1976) 3 A.E.R 620.

[45] As seen in paragraph 38 above, Ms. Francis gave evidence that shortly after being unfairly dismissed by the Transport Board she obtained temporary employment for three months, from March 2015 to June 2015. She was then able to obtain temporary employment at Tropical Shipping in October 2015 where she was eventually made permanent in April 2016. At the time of the trial in the Industrial Court, Ms. Francis had been permanently employed. In the Transcript of Proceedings, there is evidence that Ms. Francis made \$3200.00 per month while temporarily employed at Tropical Shipping and \$3600.00 per month when permanently employed.²⁵ In line with **Norton Tool**, there is no evidence to suggest that Ms. Francis' present employment is any less secure than her former employment and as such based on the principles of loss of future earnings there should be no award under this head and the award of \$2250.00 being the shortfall, is set aside.

[46] As it relates to compensation under the head immediate loss of wages Ms. Francis is awarded \$13,000.00.

Exemplary Damages Appellant's Submissions

[47] Mr. Marshall submitted that exemplary damages are usually awarded in cases where the defendant's conduct is sufficiently outrageous to merit punishment. Relying on **Rookes v Barnard**, Mr. Marshall submitted three categories where exemplary damages are awarded: (i) (a) where government officials act in an oppressive manner; (ii) where a defendant's conduct is calculated to make a profit from his wrong and (iii) where a statute expressly provides. He also referenced section 10 (4) and (5) of the **Industrial Court Act** which expressly provided for an award of exemplary damages to an employee where that employee has been dismissed in circumstances that are harsh and oppressive or not in accordance with good industrial relation practices. Mr. Marshall maintained that Mr. Carty and Ms. Francis were terminated on the completion of an efficiency study and after consultation. He submitted that the respondents' termination was part of a cost-cutting exercise and that the evidence provided before the Industrial Court did not support an award of exemplary damages.

²⁵ See page 175, line 24 of Transcript of Proceedings.

Furthermore, there was no evidence that the manner of dismissal affected his ability to secure new employment so as to warrant such an award.

Respondents' Submissions

- [48] Mr. Carty initially rejected Mr. Marshall's argument that the Industrial Court erred in law in awarding him exemplary damages. However, in his oral submissions, he partially agreed that the Industrial Court ought to have awarded him compensation under the head manner of dismissal, given the public and prejudicial manner in which his dismissal was effected, causing him to be less attractive to prospective employers in Antigua and Barbuda. Mr. Carty drew this Court's attention to a letter dated 16th December 2014 from the Mount St. John Medical Center, a prospective employer, in which his application was rejected on the basis that "[he was] not shortlisted for the next step in the selection/recruiting process." Mr. Carty submitted that he had applied to 10 different companies which all had rejected his applications. Mr. Carty argued that his inability to be recruited as a highly qualified human resources and industrial relations professional with decades of experience in Antigua and Barbuda, was proof that he was less attractive to prospective employers as a result of the manner of his dismissal. He also submitted that the Court should take into consideration the fact that there was no prior discussion or consultation with him by the Transport Board regarding employment, a practice in line with good industrial relations where there is a genuine redundancy, and that the Transport Board after his dismissal hired another person and as 'Commercial Manager' who subsumed his tasks as Operations Manager at a higher salary, as justification for the award. He, therefore, asked that this Court grant such an award if it was appropriate to do so.

Discussion

- [49] Exemplary damages are awarded or imposed to punish a defendant for their wrongdoing and to deter similar behaviour in the future. These damages are penal and not compensatory. Given their nature, exemplary damages may, only be awarded in a limited number of circumstances. These circumstances have

been detailed in the House of Lords decision, **Rookes v Barnard**.²⁶ In **Rookes**, Lord Devlin stated that exemplary damages may be awarded: (1) where there has been oppressive, arbitrary or unconstitutional action by a defendant exercising governmental functions, but—pertinently—not where there has been oppressive behaviour by private corporations or individuals or trade unions; (2) where the defendant's conduct was calculated by him to make a profit for himself; and (3) where exemplary damages are expressly authorised by statute.

- [50] In this instant case the first category, 'where there has been oppressive, arbitrary or unconstitutional action by a defendant exercising governmental functions,' is the most apt. In **Cassell & Co Ltd v Broome**,²⁷ the House of Lords considered this category and what actions, or conduct would attract exemplary damages under this category. Lord Hailsham at p. 829H stated:

“...What it will not include is the simple bully, not because the bully ought not to be punished in damages, for he manifestly ought, but because an adequate award of compensatory damages by way of solatium will necessarily have punished him. I am not prepared to say without further consideration that a private individual misusing legal powers of private prosecution or arrest as in *Leith v Pope*, where the defendant had the plaintiff arrested and tried on a capital charge, might not at some future date be assimilated into the first category. I am not prepared to make an exhaustive list of the emanations of government which might or might not be included. **But I see no reason to extend it beyond this field, to simple outrage, malice or contumelious behaviour...**” (Emphasis added)

- [51] At paragraph 48(f) of the judgment, President Charlesworth Brown sets out the conduct on the part of the Transport Board which the Industrial Court took into consideration in making its award of exemplary damages. President Brown stated as follows:

- “ (i) He was virtually dismissed while he was on approved vacation leave.
- (ii) Notice of his imminent dismissal was repeatedly published in the media before he received any official notice of the same.
- (iii) Generally, there was a blatant disregard for the principles and practices of good industrial relations.

²⁶ [1964] AC 1129.

²⁷ [1972] 1 All ER 801 HL.

- (iv) Mr. Carty was prevented from collecting his personal items from the Employer's premises and had to resort to a complaint to the Police Commissioner.
- (v) Although he had a contractual arrangement to repay the government advance loan) by monthly instalments of \$343.33 per month, the Employer unreasonably deducted the full outstanding balance of \$16,823.37 from his final payments without consulting with him.
- (vi) Overall, we are of the opinion that the treatment meted out to Mr. Carty was harsh and oppressive."

[52] While I do agree that the conduct of the Transport Board was harsh and deserving of criticism and that there was no reasonable basis for dismissing Mr. Carty as a genuine redundancy did not exist, it was not in my view sufficient to enable this Court to declare that it was 'oppressive and arbitrary or unconstitutional.' The matters outlined in the decision of the President of the Industrial Court taken individually or collectively cannot be categorised as oppressive and arbitrary or unconstitutional. In **Cassell & Co Ltd**, Lord Hailsham was emphatic that bullying, malice, outrageous or contumelious behaviour should not attract an award of exemplary damages. It is not because these actions are not deserving of being punished, but it is because these actions can be adequately satisfied with compensatory awards like that of 'manner of dismissal'. There was no basis for the Industrial Court to award the sum of \$25,000.00 as exemplary damages. The award is therefore set aside.

[53] In the case of Ms. Francis, she has not provided any evidence to this Court of any actions by the Transport Board that were oppressive, arbitrary, or unconstitutional, that warrant an award of exemplary damages. There is no such evidence in her witness statements, or in any written or oral submissions made before the Industrial Court or this Court. There was no basis for the Industrial Court to award the sum of \$2500.00 as exemplary damages and as such, it is set aside.

Manner of dismissal

- [54] In **Norton Tool Co v Tewson**, Sir John Donaldson P at paragraph 188 discussed the considerations that the court must take in determining an award under the head 'manner of dismissal. He said:

"As the respondent secured employment within four weeks of his dismissal and we have taken full account of his loss during this period, we need only consider whether the manner and circumstances of his dismissal could give rise to any risk of financial loss at a later stage by, for example, making him less acceptable to potential employers or exceptionally liable to selection for dismissal. There is no evidence of any such disability and accordingly, our assessment of the compensation takes no account of t h e manner of his dismissal. This took place during a heated exchange of words between him and one of the directors."

- [55] In the present case, I would say that the circumstances surrounding Mr. Carty's dismissal were likely to make him less acceptable to potential employers or more likely to selection for dismissal. While I do accept that companies set their own metrics and criteria by which they measure applicants and as such there was no guarantee that Mr. Carty would have been the successful candidate, I do agree that it is surprising that a professional with Mr. Carty's expertise could not obtain an interview from the 10 applications that he submitted to various companies. Mr. Carty is therefore awarded \$2500.00 under this head.

- [56] In the case of Ms. Francis, she has not provided any evidence to this Court of any actions by the Transport Board warranted an award under the head manner of dismissal. There is no such evidence in her witness statements, or in any written or oral submissions made before the Industrial Court or this Court. There is therefore no basis to make an award under this head of loss.

Loss of Protection Appellant's Submissions

- [57] Mr. Marshall submitted that upon reviewing the judgment of the Industrial Court, it is clear that Ms. Francis' daily pay, and no more, was used to calculate her entitlement under this head of damages. Notwithstanding the foregoing, it was not open to the Industrial Court to award the sum of \$1,534.50 to Ms. Francis as her own evidence was that she had received her severance payment.

- [58] Mr. Marshall in responding to Mr. Carty's counter-appeal (discussed below) under this head of loss, conceded that it is customary that the Industrial Court make an award to the unfairly dismissed employee at one month's salary at the last basic wage for each year worked.

Respondent's submissions

- [59] Mr. Carty in his counter-appeal submitted that the Industrial Court erred in failing to grant him an award under the head of loss of protection. Mr. Carty argued that given that the Transport Board's action amounted to unfair dismissal, he was entitled to have such award. Mr. Carty also highlighted that the Transport Board in their submissions conceded that it is the norm that such an award be given to an unfairly dismissed employee and as such he should receive such an award.

Discussion

- [60] In Antigua and Barbuda, the practice has become accepted that the loss of protection (basic award) is the full equivalent of the employee's entitlement to a statutory redundancy payment as set out in Section C44 of the **Labour Code** which reads:

"C44 Severance pay shall consist of at least one day's pay at the employee's latest basic wage, for each month or major fraction thereof of his term of employment with his employer and any predecessor-employer."

- [61] In **Liat (1974) v Novella Sheppard**,²⁸ Byron JA (as he then was) illustrated how loss of protection was to be calculated in Antigua and Barbuda. He stated at page 6 of his judgment:

"In this court the principle has been adopted in many cases and I will refer to *Antigua Commercial Bank v Mary White* Antigua and Barbuda Civil Appeal No.1 of 1988, where Bishop J.A. stated at p.43:

"Under loss of protection in respect of unfair dismissal or dismissal by reason of redundancy, learned counsel for the respondent did not advance a specific argument: and I can find no justification for differing from the view of learned counsel for

²⁸ Civil Appeal No. 6 of 1991 (delivered on 22nd November 1991, unreported).

the appellant, to the effect that in Antigua. it is the accepted practice to award persons in management, the equivalent of one month's salary for every year of employment. Under this head therefore I would award \$3,500.00."

It is clear that this practice applies to all employees whether management or not or whether monthly paid or weekly paid I will refer only to the Industrial Court itself in the case of Shirley Dailey v West Indian Oil Antigua & Barbuda Industrial Court reference 32 of 1991 where the award of the court included:

"(d) Loss of Protection in respect of Unfair Dismissal or dismissal by reason of redundancy:

It is our understanding that in Antigua it is the accepted practice to award a weekly employee one (1) day's pay for every month of employment.""

[62] For my part, I am in agreement with both Mr. Marshall and Mr. Carty that an award for loss of protection should be made to Mr. Carty. Mr. Carty had been employed with the Transport Board for 8 years at the date of his dismissal. Bearing the above principles in mind, Mr. Carty's award for loss of protection would be \$58,400.00 (\$7300 x 8).

[63] In relation to Ms. Francis, the Industrial Court in making this award stated the following:

"Under this head, Ms. Francis is entitled to compensation at the rate of one month's salary for each year of work. Although she did not disclose the amount she received as severance pay, based on her daily rate of \$132 as stated in her dismissal letter, we conclude that she was paid this sum of \$1914.00 (\$132 x 14.5). Since she worked for 14.5 months, we award the sum of \$1534.50 (\$2850 x 1.21) less (\$132 x 14.5)."

[64] I agree with Mr. Marshall that Ms. Francis at the time of the trial was already in receipt of her severance pay. Further, she provided no evidence as to how much she received nor any evidence to show that she was entitled to any additional sum under this head. Therefore, the award of \$1534.50 is set aside.

Thrift Fund Appellant's Submissions

- [65] Mr. Marshall submitted that the Industrial Court erred in law in making an award for the thrift fund contribution to Mr. Carty, when such a claim had not been put forward by Mr. Carty. This he argued, resulted in the Transport Board not knowing it had to defend such a claim until the commencement of the trial. Mr. Marshall argued that Mr. Carty filed a reference in February 2015, which stated that the dispute between the parties was unfair dismissal. However, there had been no issue raised in relation to any outstanding thrift fund contributions between the parties.
- [66] Mr. Marshall also argued that there had been no evidence before the Industrial Court to support their order for the payment of the outstanding thrift fund contribution. To support this argument, Mr. Marshall drew reference to letter dated 21st October 2014 from the Transport Board to Mr. Carty stating that Mr. Carty did not meet the five (5) year milestone of the Thrift Fund to qualify for 100% of his matching fund.²⁹ Mr. Marshall submitted that clause 12 of the Thrift Fund Agreement was clear that Mr. Carty, who had been vested in the fund just shy of five (5) years at the time of his dismissal, was not entitled to 100% of his contribution.

Respondent's Submissions

- [67] Mr. Carty rejected Mr. Marshall's submissions on this issue and posited that it was disingenuous for the Transport Board to suggest that the lower court considered evidence that was not before them. Mr. Carty drew reference to paragraph 29 of his memorandum filed on May 26th, 2015, which stated "I was also denied the correct salary and benefits upon termination, based on contractual terms. My entitlements were also garnished in a manner that speaks to extreme prejudice and malice on the part of my employer", as support for his rebuttal. He also referenced paragraph 62 of his memorandum sets out a summary of claim that included "Fringe benefits (vacation, thrift fund, travel/duty/cell phone allowances)." Additionally, he referenced his trial exhibits

²⁹ Appeal Bundle at page 545.

specifically a letter dated 24th October 2014, to the Transport Board's General Manager, addressing his Thrift Fund entitlement claim. He argued that that this evidence shows that the Transport Board was aware of what claim to argue and that there was a basis for the Industrial Court to make such an award.

- [68] Mr. Carty also rejected Mr. Marshall's interpretation of clause 12 of the Thrift Fund agreement, stating that he was one of the drafters of the agreement and that it was always the intention that every employee be fully vested in the thrift fund and thus entitled to 100 % of their contribution.

Discussion

- [69] Having gone through the evidence I agree with Mr. Carty that it would have been apparent to the Transport Board before the start of the trial that the issue of Mr. Carty's thrift fund entitlement would have been a live one which the Transport Board would have had to defend. I now turn to the issue of Mr. Carty's thrift fund entitlement under the Thrift Fund Agreement.

- [70] The Industrial Court in making its award representing Mr. Carty's thrift fund entitlement stated the following at paragraph 48(d) of its judgment:

"Since [Mr. Carty] was paid the sum of \$5,978.29 representing 75% of the Employer's contribution, we award the sum of \$1,992.76, being the 25% portion that was withheld."

- [71] Clause 12 of the Thrift Fund Agreement states:

"12. VESTING IN THE FUND

An employee **shall always be fully vested** in the total amount of his/her own contribution to the Fund, in addition to the interest accrued thereon, which shall be paid out to the employee upon leaving the Corporation, or sooner, in the event of early withdrawal.

Save and except where termination is effected on proven grounds of theft/pilfering or for wilful (sic) destruction of Company's property, **an employee shall become vested in the Company's contribution (plus interest accrued) made on his or her behalf, as follows:-**

- 50% after one (1) year in the Fund;
- 75% after three (3) years in the Fund and;
- 100% after five (5) years in the Fund.

In cases where an employee is terminated for misconduct, he/she has forfeit any right to the Corporation's contribution and interest there from that was made on his/her behalf, whether or not the employee was fully vested at the time of termination." (Emphasis added)

- [72] In order to determine whether Mr. Carty is entitled to the remainder of his employer's thrift fund contribution, this Court must engage in an exercise of contractual interpretation. In **Wood v Capita Insurance Services Limited**,³⁰ Lord Hodge described the court's task in contractual interpretation, stating that:

"The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause **but that the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning.**" (Emphasis added)

- [73] Several clauses stand out when reading the Thrift Fund Agreement as a whole.

- [74] Clause 1 of the Thrift Fund Agreement states:

" 1. NAME OF FUND

There shall be established, a Fund for the benefit of **qualifying employees** of the Corporation, to be titled "Antigua & Barbuda Transport Board Employees' Thrift Fund (hereinafter referred to as "the Fund")." (Emphasis added)

- [75] Clause 3 of the Thrift Fund Agreement states:

"3. MEMBERSHIP

Membership in the Fund is opened to all employees, **who have completed at least one (1) year of continuous employment with the Corporation.**

Membership shall be by application on a form provided by the Corporation, which the employee is required to complete, giving authorization for the deductions to be made from their wage or salary on a weekly or monthly basis; thereafter, the relevant documents will be signed and submitted to the Bank." (Emphasis added)

- [76] Clause 13 of the Thrift Fund Agreement states:

³⁰ [2017] UKSC 24

“13. SPECIAL CONSIDERATION ON TERMINATION

In cases where an employee is not yet fully vested in the Corporation’s total contribution Management of the Corporation shall give fair and reasonable consideration to the payment of any part/percentage of its contribution, in any circumstance where the employee resigns; is terminated on grounds of ill health; is proven to be unfairly terminated under any other circumstances provided for in Section C 61 of the Antigua & Barbuda Labour Code; is to be made redundant or; where the Corporation ceases to exist.”
(Emphasis added)

[77] When one looks at the Thrift Fund Agreement as a whole it is apparent that time qualifies access to the fund. The surrounding clauses make clear that the Thrift Fund Agreement is time sensitive and that the drafters only contemplated that an employee’s access both to membership and contributions, be based on or circumscribed by the length of period of employment. Clause 12 is no different. While an employee is 100% vested in his contribution, clause 12 is clear that an employee may only be 100% vested in the Transport Board’s contribution after five years. Mr. Carty himself has acknowledged this in his letter dated 23rd October 2014 to the Transport Board where he stated:

“In regard, please refer to clause 12 of the thrift fund, which sets out the vesting requirements of the fund and which makes it very pellucid that I would be automatically entitled to 100% of my contribution plus interest and 75% of the board's contribution plus interest. Therefore it stands to reason that what the board would need to deliberate on if at all is the question of whether or not they pay the remaining 25% of the contribution plus applicable interest paid into the fund on my behalf.³¹

[78] Mr. Carty, who had been a member just short of five (5) years at the time of his dismissal, was not entitled to 100% of the Transport Board’s contribution. The Transport Board did honour Clause 12 of the Thrift Fund Agreement by making payment of 100% of his thrift fund contribution to him in the sum of \$9390.24 and 75% of their thrift fund contribution plus interest to him in the sum of \$5,978.29.

[79] Clause 13 of the Thrift Fund Agreement gives the management of the Transport Board the discretion to ‘give fair and reasonable consideration to the payment of any part/percentage of its contribution’. Mr. Carty is aggrieved that the

³¹ See page 34 of the Appeal Bundle.

Transport Board did not exercise its discretion in his favour, making further payment of their thrift fund contribution to him. However, as he did not satisfy the length of time in the fund as required under clause 12, the management of the Transport Board was entitled to exercise its discretion as it saw fit and so it did. There is no evidence on the record showing that the Transport Board erred in the exercise of its discretion. There was therefore no basis for the Industrial Court to usurp this discretion and it is clear there was no basis for the Industrial Court to award a further sum to Mr. Carty, representing the remainder of the contribution that was supposedly withheld. The Industrial Court's award of \$2370.39 is therefore set aside.

Costs Appellant's Submissions

- [80] Mr. Marshall submitted that costs in the Industrial Court are not awarded to the winning party as of right. He cited Section 10 (2) of the **Industrial Court Act** which provides that costs should only be awarded for 'exceptional reasons'. He submitted that there were no exceptional reasons in this case to justify the Industrial Court's making of the award of costs to Mr. Carty and Ms. Francis, both in the sum of \$2,500.00. Mr. Marshall posited that the Industrial Court breached this well-established general rule without cause and that the Court of Appeal should set aside the costs order and substitute it with a "no order as to costs" order.

Respondent's submissions

- [81] Mr. Carty in his submissions argued that there were exceptional circumstances or reasons in his case so as to justify an award of costs. He referred to the assessment of President Charlesworth Browne, who at paragraph 25 of the judgment highlighted the grounds that the court took into consideration in making the award. These grounds Mr. Carty argued perfectly illustrated the harsh and oppressive treatment that he faced upon his unfair dismissal by the Transport Board, which justified the award of costs.

Discussion

- [82] Section 10(2) of **Industrial Court Act** states that:
“(2) The Court shall make no order as to costs in any dispute before it, **unless for exceptional reasons the Court considers it proper to order otherwise**, and the Court of Appeal shall in disposing of any appeal brought to it from the Court make no order as to costs, **unless for exceptional reasons the Court of Appeal considers it proper to order otherwise.**” (Emphasis added)
- [83] To order costs in the employment tribunal is an exceptional course of action. In **Salinas v Bear Stearns International Holdings Inc and another**³² the UK Employment Appeal Tribunal stated that:
“Costs orders are indeed not made in the majority-indeed the substantial majority-of cases in the employment tribunals and in practice tribunals do not normally make them. However that is and remains simply a statement of fact. It is exceptional for a costs order to be made because it is the exception to the rule, because there is a high hurdle to be surmounted before such a cost order can be considered...”³³
- [84] In the Industrial Court’s judgment, President Brown stated at paragraph 49 that:
“In our opinion, the exceptional reasons disclosed above will justify an award of costs in the sum of \$2,500.00 to each of the three Employees.”
- [85] However, in this case, I am of the view that both Mr. Carty and Ms. Francis have been unable to satisfy that exceptional reasons exist for the court to depart from the general rule.
- [86] The award of costs and exemplary damages are not contingent upon each other or linked. However, the respondents were unable to satisfy the high threshold to justify the award of costs. The Industrial Court erred in awarding costs to the respondents and as such their awards is set aside.

Disposition

- [87] The appellant, the Transport Board having been successful in part and Mr. Carty having been successful in his counter-appeal, I would make the following orders:

³² [2005] ICR 1117.

³³ Ibid at 1129.

Mr. Anderson Carty

- (i) The Industrial Court's award of Additional Pay in Lieu of Notice, being \$7300.00, is set aside and accordingly, the Industrial Court's award of Loss of Emoluments (also known as Immediate Loss of Wages) is reduced to \$42,225.00.
- (ii) The Industrial Court's award of Exemplary Damages to Mr. Carty being \$25,000.00, is set aside.
- (iii) Mr. Carty shall be awarded \$2500.00 for Loss of Manner of Dismissal.
- (iv) Mr. Carty shall be awarded \$58,400.00 for Loss of Protection.
- (v) The Industrial Court's award of Thrift Fund entitlement to Mr. Carty, being \$2370.39, is set aside.
- (vi) The Industrial Court's award of costs to Mr. Carty, being \$2500.00, is set aside.
- (vii) No order as to costs in both the appeal and counter-appeal.

Ms. Anique Francis

- (i) The Industrial Court's award of 'shortfall' to Ms. Francis being \$2550.00 is set aside and accordingly, the Industrial Court's award Immediate Loss of Wages is reduced to \$13,0000.00.
- (ii) The Industrial Court's award of Exemplary Damages to Ms. Francis being \$2500.00 is set aside.
- (iii) The Industrial Court's award of Loss of Protection to Ms. Francis, being \$1534.50, is set aside.
- (iv) The Industrial Court's award of costs to Ms. Francis, being \$2500.00, is set aside.

(v) No order as to costs in both the appeal and counter-appeal.

[88] Based on the orders above, the Transport Board shall pay compensation to Mr. Anderson Carty and Ms. Anique Francis as follows:

Mr. Carty

(a) Immediate Loss of Wages	\$45,225.00
(b) Manner of Dismissal	\$2,500.00
(c) Loss of Protection	\$58,400.00

Ms. Francis

(a) Immediate Loss	\$13,000.00
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I concur.
Trevor Ward
Justice of Appeal

I concur.
Gerard St. C. Farara
Justice of Appeal [Ag.]

By the Court

Deputy Chief Registrar