

**EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF ST CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. NEVHCV2022/0129

BETWEEN:

YASMINE TYSON-HANLEY

Claimant

and

ENVOY AIR INC

Defendant

Appearances:

Mr. Brian Barnes and Ms. Leigh-Anne Wellington for the Claimant
Ms. Kurlyn Merchant and Ms. Aymah George for the Defendant

2024: May 29; 30;
June 28.

JUDGMENT

- [1] **THOMPSON JR. J:** Envoy Inc (“Envoy”) is wholly owned subsidiary of the American Airlines Group. Envoy used to be known as American Eagle Airlines. American Airlines is the largest airline in the world and Envoy is the company through which American Airlines provides its services to the Federation of St Christopher and Nevis.
- [2] Yasmin Tyson Hanley (“the Claimant”) was first employed by Envoy’s predecessor as a passenger service agent on July 1st, 1999. By a letter dated May 15th, 2019, and addressed to the Claimant’s attorney at law, Envoy separated (to use their euphemism) the Claimant from their service.
- [3] The Claimant was aggrieved by her separation from Envoy and filed these proceedings on October 10, 2022, claiming damages (both aggravated and punitive) for her alleged wrongful dismissal from Envoy’s service.

- [4] Envoy filed their defence to the Claimant's claim and on February 17, 2023, the Claimant filed an amended statement of claim seeking damages as particularized below. Firstly, the Claimant averred that she, her husband, her mother and her three children would have been entitled to unlimited travel on Envoy. According to her, assuming a life expectancy of 79 years, she and her relatives would have been entitled to a total of 2,352 trips on Envoy's aircraft. It was her case that assuming a value of US\$1,200.00 per trip she and her relatives lost the benefit of a lifetime travel benefit in the amount of approximately EC\$7,587,175.68.
- [5] The Claimant also pleaded that in addition to the sums claimed above for her direct family members, she would have been entitled to 4 tickets per annum for extended family and friends and that this loss of travel benefit amount to a further EC\$462,370.40 thus totaling EC\$8,049,546.08 in lost travel benefits.
- [6] The Claimant also sought EC\$48,273.35 as her loss of earnings from the date of her separation from Envoy's service until the date of filing of her claim. She sought a long service gratuity of EC\$14,175.20 and discounts in the sum of EC\$38,632.71 (presumably for cruises, car rental and FedEx discounts). When these sums were added to her claim for special damages in the sum of EC\$28,301.83 the Claimant was seeking the global sum of EC\$8,178,928.52 together with her attorney's costs.
- [7] In their defence, Envoy disputed that the Claimant was wrongfully dismissed. They say that although the separation letter of May 15th, 2019, referred to numerous documented instances of the Claimant's ill-discipline, poor behaviour and flouting of Envoy's policies and procedures during her tenure they were not relying on her poor record. In their view, they had simply lost confidence in the Claimant's ability to perform her job.
- [8] In support of her claim, the Claimant called herself as her only witness. Envoy called three witnesses in support of their case. They called a Mr. Jorge Ramirez, Envoy's Vice President for International Operations, Mr. Chris Pappaioanou, Envoy's Senior Vice President of Legal and Labour and Ms. Delrah Lestrade, Envoy's General Manager of its operations in St. Christopher and Nevis.
- [9] This court does not propose to recap the evidence of the witnesses but only such parts as are necessary to explain its decision in this matter. Neither side was of the view that this court could benefit from a factual chronology. All the same, at the close of the evidence of Ms. Delrah Lestrade, this court, in the exercise of its fact-finding role, was able to distill the following factual chronology from Ms. Lestrade.

<u>Date</u>	<u>Event</u>
December 8, 2018	Stand by passengers left behind incident
December 18, 2018	The Claimant was withheld from service because of the standby passengers left behind incident
January 9, 2019	The Claimant's final advisory letter with Envoy was prepared. That advisory letter suspended the Claimant's travel privileges for 6 months.

January 11, 2019	The Claimant's final advisory letter was served on her on her return to service.
February 27, 2019	The Claimant was withheld from service pending investigations into allegations of alleged travel fraud.
March 13,2019	The Claimant attended an investigative interview with Ms. Lestrade and Jamie Hulme.
March 29th, 2019	The Claimant's attorney sent their 1 st demand letter to Envoy threatening proceedings in defamation, false suspension ¹ and lost compensation.
April 9th, 2019	Envoy via Ms. Lestrade send a letter to the Claimant seeking her assistance in their investigation into the alleged travel fraud and indicating they were prepared to consider terminating her services.
April 12th, 2019	The Claimant's legal representatives respond with a 7-page letter seeking among other things, reinstatement to her employment with full benefits and seeking compensation and the removal from her file any allegations she deemed inappropriate.
May 15th, 2019	The letter from Kelsick Wilkin Ferdinand separating the Claimant from her service.

[10]The chronology confirms that on January 9th and April 9th, 2019, the Claimant received two separate letters warning her in writing within 6 months of her termination that she had been guilty of misconduct and/or unsatisfactory performance. The letter of April 9, 2019, made it clear to the Claimant that her employment with Envoy would be terminated if her unsatisfactory performance persisted. The requirements of Section 5(1) (c) of the Protection of Employment Act were thus made out. There could therefore be no basis for finding that the Claimant was wrongfully dismissed.

[11]A lot of heavy weather was made of the fact that the separation letter of May 15, 2019, set out 20 instances of the Claimant's poor disciplinary record. That letter is crystal clear. Paragraph 4 of the letter (the first page) states that 'the reason for the termination of your client's employment is that our client no longer has trust and confidence that she (the Claimant) can fulfill her role as a customer service agent'.

[12]The Claimant's argument that Envoy, by listing the Claimant's history of poor behaviour in their termination letter had relied on that history in terminating her employment with them, is wholly misguided. The termination letter makes clear the rationale for the Claimant's termination. That sequencing makes it clear that (a) Envoy had lost confidence in the Claimant and (b) that Envoy was only referencing her poor work history as factual background as opposed to a consideration in the

¹ This court was not told whether this was some legal term of art or some hitherto unknown creature in employment law.

basis for her termination. The Claimant's attempt to frame the argument in this way did not assist the Claimant's case.

- [13] In any event, Envoy's separation letter of May 15, 2019, in the sum of EC\$6,724.93 representing the Claimant's statutory notice period, together with her salary for the period of her suspension from duty and her holiday pay could not be disputed.

Court's Analysis

- [14] The Claimant fared extremely poorly in the witness box. She insisted on addressing counsel for Envoy by her first name. When she was confronted by the truth, she simply denied its existence. The Claimant was required to work from 12 to 4:30 pm but felt aggrieved that during her years of service Envoy did not include in her remuneration a sum for a taxi to catch the boat from St Kitts to Nevis or ferry fare. This comment ignored the fact that the Claimant was not obliged to work with Envoy.

- [15] In any event, the Claimant had wholly undermined the trust and the confidence so essential to the employer/employee relationship by her conduct. So that for example, the demonstrably false allegation to Envoy in 2019 about Ms. Lestrade's hiring of her sister-in-law would have sufficed for serious misconduct to warrant the Claimant's summary termination.

- [16] For example, it was part of her claim that she had been promoted to lead baggage agent with an accompanying increase in her salary. Envoy denied this. According to Envoy the Claimant was designated as a 'baggage champion' which carried no change in salary or responsibilities and was a HR strategy aimed at motivating and thus lifting the Claimant's performance. When asked to show proof of any documents supporting her argument for her changed job description or increase in pay to support her case the Claimant accepted that she had none but maintained that she had in fact been promoted and paid for this extra duty.

- [17] In another example, the Claimant accepted that she had written to the head of Envoy's HR department in March 2019 complaining that Ms. Lestrade had, in breach of Envoy's policies hired Ms. Lestrade's sister-in-law to work at Envoy. The Claimant accepted that she had no proof that the young lady in question was Ms. Lestrade's sister-in-law in fact but that did not deter her from putting forth that allegation in her email to HR. In answer to this court's question, the Claimant accepted that it was possible that the young lady was not Ms. Lestrade's sister-in-law in fact and may have only been in a casual relationship with Ms. Lestrade's brother. This concession was frankly surprising since the Claimant did not appear to realize that she had essentially sent an email based purely on conjecture maligning the head of Envoy's operations in St. Christopher. Quite how the Claimant expected to enjoy the trust and confidence of Envoy in those circumstances was difficult to understand.

- [18] On another occasion, the Claimant insisted that she had made an anonymous complaint to Envoy's ethics hotline in March 2019. According to the Claimant, that complaint was the first time that she had made the allegation to Envoy about Ms. Lestrade having hired her sister-in-law. Envoy's case was that their ethics hotline was manned (with good reason) by an independent third party so that if the Claimant had made a complaint to the hotline there would be a record of it since Envoy had no control over the ethics hotline. Envoy's witnesses said that they had made a thorough check with the

hotline company and there was no record of any complaint. Confronted with this evidence, the Claimant maintained that she had made a complaint and insisted that Envoy was not telling the truth on this issue. Quite why Envoy (not just Ms. Lestrade but her unknown co-conspirators at Envoy's offices in the United States) would go to these lengths to hide the Claimant's complaint was not explained. This court has little difficulty in finding that the Claimant was not a credible witness.

[19] The Claimant's counsel sought to argue that Envoy had somehow conspired to wrongfully dismiss his client and prayed in aid Envoy's letter dated May 31 2018 in support of his argument that Envoy's purported loss of confidence in his client was a sham. In that letter, Envoy stated that 'Yasmin is a dedicated and efficient employee and her employment is assured for the foreseeable future'. Mr. Barnes' reliance on that letter was wholly misguided since Ms. Lestrade confirmed that the letter of May 31, 2018, was a pro forma letter addressed to the American Embassy in Barbados ostensibly for the purpose of ensuring that the Claimant could obtain a visa to visit the United States. That letter was not an internal performance review and in fact, at the time of that letter the Claimant had received on December 7th, 2017, an advisory letter. Advisory letters are warning letters and they expire after two years. The Claimant was thus the subject of an advisory letter while her employers had written to the US Embassy on May 31, 2018.

[20] Neither the Claimant nor her counsel appeared to be aware of Envoy's policy on travel. That policy made it clear that the travel privileges that the Claimant enjoyed were exactly that, privileges. They were not and did not give rise to contractual rights, a fact Envoy had repeated in their dismissal letter, defence and submissions in this matter. At the start of the trial, this court sought to determine whether the Claimant was holding fast to her insistence on her claim for loss of travel benefit for her relatives.

[21] It was drawn to their attention and her counsel that even if she could make an argument for unlimited travel for herself (and it was not accepted that she could), her relatives enjoyed no privity of contract with Envoy. They could not therefore maintain an action for a privilege that she enjoyed. In this court's view, these are matters of hornbook law. Clients can ask for whatever they like but their lawyers have a duty under the Legal Profession Act and its canons to give advice. That advice may not always be what the client would like to hear but there was no basis in this case for the Claimant to have sought EC\$8.0 million as damages for unlimited travel. These comments are not issued as a rebuke of counsel but for the purpose of demonstrating the potential costs consequences of an ill-advised decision.

[22] Envoy's witnesses were compelling, forthright and faintly bemused that they were even being called upon to defend the Claimant's case. Mr. Ramirez made it clear that the Claimant was not promoted as she alleged. It was his evidence that the Claimant was named as 'baggage champion lead' which meant that she was doing the exact same things that she had been doing before the new title. Mr. Ramirez maintained that the Claimant's alleged hotline complaint would have gone to a 3rd party company, independent of Envoy or American Airlines so that it would have been impossible (in his view) for anyone at Envoy to have 'disappeared' the Claimant's alleged ethics complaint.

[23] Critically, Mr. Ramirez explained to the court that travel fraud could include any violation of policy, waiving of baggage fees or putting yourself on the standby list when you do not intend to travel because your priority on the standby list is determined by your check in time. According to Mr. Ramirez, a standby left behind is explained as follows. A person is on the standby left behind list when they have been rolled over to another flight and only when they are physically present at the

gate and have been left behind by that day's flight. Those matters were helpful to the court in understanding the nature of the Claimant's duties and her alleged defaults in the performance of those duties.

[24] Mr. Pappioanou's evidence shed further light on the Claimant's claim to travel benefits. In short, his evidence clearly established that the sums claimed by the Claimant were either privileges or due to the Claimant's mistaken assumptions. For example, it was his evidence that there was a significant difference between the ticket issued to a fee-paying passenger and employee travel as a non-fee-paying passenger. The Claimant's claim for FedEx, vehicle rentals and cruise benefits could change at any time and these matters were all fully addressed in Envoy's extensive travel guide. In his view, the travel guide made it clear that free travel is not part of the employee's compensation and that an employee must satisfy the retiree conditions which are set out in the travel guide.

[25] Finally, Ms. Delrah Lestrade was the Defendant's final witness. Ms. Lestrade was a forthright and compelling witness who did not need to check her witness statements or notes on more than 1 or 2 occasions during her evidence. She made it clear that Envoy did not have a lead baggage supervisor position as alleged by the Claimant. It was her evidence that the position was called 'baggage champion' and is an expansive way of describing the basic customer service role that the Claimant performed. The position did not come with any extra remuneration or supervisory responsibilities and the Claimant's selection for the role was a 'management strategy aimed at building job enrichment and increasing motivation'.

[26] Ms. Lestrade also confirmed that she did not have a sister-in-law and had not breached any of Envoy's hiring rules by hiring Ms. Donaii (her alleged sister-in-law per the Claimant) since she had also fully disclosed her knowledge of Ms. Donaii to her supervisor and the HR department at Envoy. Ms. Lestrade also confirmed that the rationale for the standby left behind list was to ensure that persons must be present at the gate so that some memorandum in writing can be generated to explain why they were left behind. Crucially, Ms. Lestrade made it clear that when she assumed her role as manager, she met many practices which she tried to change to ensure that Envoy's operations in St Kitts fully complied with Envoy's policy.

[27] Mr. Barnes, for the Claimant, scored no points and landed no blows on Ms. Lestrade when he cross-examined her. She refuted the suggestion that items 1-20 in the letter of May 15th, 2019, from Kelsick Wilkin and Ferdinand formed the basis for the Claimant's dismissal. In cross examination she confirmed that the Claimant had received warning letters and that there were two advisories² or warning letters in relation to the Claimant which were active at the time of her termination on May 15, 2019. She rejected the suggestion that Envoy's operations in St Kitts somehow had an internal policy that permitted staff to roll each other over (place their names on the next available flight departing SKB) even if they aren't present at the gate. Finally, Ms. Lestrade accepted the Claimant's lawyers had written to Envoy on March 29, 2019, and April 12, 2019, demanding the Claimant's reinstatement from suspension. Those demand letters were received in response to Envoy's request that the Claimant should provide the necessary documentation to assist them in determining the allegations of travel fraud against the Claimant.

² Advisories are valid for two years from the date of the advisory. The Claimant had received one advisory in December 2017 and another in January 2019. Both were active.

[28] Envoy's letter of April 9, 2019, is telling. In that letter, Envoy repeated their demand for the Claimant to assist in their investigation by providing supporting documentation. The Claimant's response was to have her lawyers issue a 7-page screed setting out her grouses with Envoy and demanding reinstatement and the removal of matters from her file.

[29] The Claimant's evidence was incapable of belief. The Claimant's insistence through her lawyer that she could roll over her family onto the following day's standby list because that was the way things were done in St Kitts spoke volumes and confirmed that the Claimant seemed to believe that Envoy worked her for as opposed to the other way around. She seemed to feel entitled to leave early to get the boat to Nevis while Ms. Lestrade made it clear that no such preferential treatment was provided to the Claimant.

[30] The Claimant has failed to establish that she was wrongfully dismissed by Envoy. The law is clear, an employee can be summarily terminated when their conduct is inconsistent with the continuance of confidence between them. See Sinclair v Neighbour [1967] 2 Q.B. 279. Moreover, the effect of the reasoning of the Court in Sonia Hamilton v Colonial Life Insurance Company confirmed that a reason does not have to be given for dismissal. The Protection of Employment Act in the Federation of St Christopher and Nevis makes it clear that in lieu of notice the employer shall provide the employee with wages in lieu of notice. The Claimant accepts that she was paid the sum of EC\$6,724.93 which covered her pay for the period that she was suspended and covered the sums due as pay in lieu of notice. If therefore the Claimant received all that was due to her the onus was on her to demonstrate that she was entitled to further sums.

[31] The Claimant claimed to be entitled to further sums for loss of earnings and loss of benefits. The law is again clear on this issue. If the Claimant's dismissal was justified, she could have no claim to loss of earnings. For all the reasons traversed in this judgment, the Claimant was justifiably separated from her employment at Envoy. She is therefore not entitled to loss of earnings. In any event, the Claimant had a clear duty to mitigate her losses and any earnings from employment during the time of her claim for damages must be deducted from any such claim. The Claimant indicated that she worked for Petrodel Investment Advisors from September 2019 and then from January 2020 for the Bank of Nevis International. In answer to the court's question, she indicated that she earned \$4,000 per month from Petrodel Investment Advisers and \$10,200 per month from the Bank of Nevis. No documents in support of these sums were tendered in evidence but even on the basis of the Claimant's oral evidence, her financial position had improved appreciably after she had been terminated by Envoy since she did not appear to earn anywhere above \$4,000 per month from her employment at Envoy.

[32] The Claimant's claim for a long service gratuity is difficult to understand. The law is clear that an employee who is dismissed from their employment does not qualify for long service gratuity. The Claimant was clearly dismissed and thus is not entitled to the sums claimed under the head. In the same vein, this court was unable to discern the basis of the Claimant's claim for special damages. The party alleging an entitlement to special damages must prove. The Claimant has singularly failed to do so and as such her claim to special damages is also dismissed.

[33] In the same vein, the bulk of the Claimant's claim for more than EC\$8 million dollars and/or EC\$1 million is frankly absurd. Even without Mr. Pappiaonou's evidence that employee travel was not part of employee compensation, Envoy's travel guide was clear and comprehensive on the legal status of employee travel.

[34] Additionally, this court helpfully provided both sides with the relevant law on these and other matters at the pre-trial review hearing in early 2024. The cases of Lavarack v Woods of Colchester Ltd [1967] 1 QB 278 and Horkulak v Cantor Fitzgerald International [2004] EWCA Civ 1287 clearly confirm the nature and scope of the contractual obligations that attach to employer and employee. The law is clear that the Claimant would not have been entitled to any such travel benefits and discounts. It is not lost on this court that the Claimant was a part-time customer service agent at the largest airline in the world. The relevant authorities were fully cited and applied by the Defendant in their pretrial skeleton arguments. In contrast the Claimant's skeleton arguments were largely bereft of legal authority and only pray in aid the palpably distinguishable decision of Mr. Justice Moise in Kissoon v Select Enterprises.

[35] For all the foregoing reasons, the Claimant's claim fails entirely, and Envoy are to have their costs of defending these proceedings.

Costs

[36] At the close of the trial, this court heard submissions from the parties on the appropriate costs order if either side was to prevail. The Court also ordered the parties to file further submissions on costs. The Claimant sought her prescribed costs on the sum of EC\$1,403,792.25. That sum was advanced for the first time in her witness statement filed on 27th February 2024 and was particularized as follows:

Loss of earnings	-	EC\$48,273.35
Long service gratuity	-	EC\$14,175.20
Unlimited travel	-	EC\$1,274,409.16
Discounts	-	EC\$38,632.71
Subtotal	-	EC\$1,375,490.42
Special Damages	-	<u>EC\$28,301.83</u>
Total	-	<u>EC\$1,403,792.25</u>

[37] The Claimant's prescribed costs on the foregoing sum would be \$108,363.76.

[38] The CPR is clear. CPR 64.6 provides that the general rule is that the unsuccessful party must pay the costs of the successful party and that in deciding who should be liable to pay costs the court must have regard to all the circumstances. CPR 64.6(6) makes it clear that a court must consider the conduct of the parties before and during the proceedings, the manner in which a party has pursued a particular allegation, issue or the case and whether it was reasonable for a party to pursue and/or raise particular issues.

[39] The factual chronology is significant. Firstly, at the pretrial review hearing of February 28, 2024, the Claimant's counsel indicated that the 8-million-dollar sum being sought in the amended claim for unlimited travel 'should come out'. This is the clearest sign that the Claimant's counsel knew or ought to have known that they should have amended their claim to that effect. Even if the amendment was late in the date, the Defendant would not have been prejudiced by any such amendment since it would have confirmed beyond all misunderstanding the costs order likely to be made at the conclusion of the trial

[40] Secondly, before the trial started in earnest, this court inquired of counsel for the parties what costs regime applied to this matter. Both sides indicated prescribed costs. This court then inquired of counsel whether they had any issues raise, neither counsel indicated anything although Ms. Merchant to her credit, obliquely noted that the sum in the witness statement was less than the sum claimed in the amended statement of claim. It was thus incumbent on Mr. Barnes for the Claimant to formally ensure that the claim was amended to ensure that the claim was proceeding to trial on the amended sum of EC\$1 million and not EC\$8 million as stated in his pleaded case.

[41] Thirdly, during the Claimant's evidence, Mr. Barnes indicated that he would come back to the issue of the sums being claimed but he never did. There was thus a further opportunity for Mr. Barnes to clarify the position on costs by ensuring that the claim proceeded to trial on the sum of EC\$1 million.

[42] The Claimant's correspondence from her legal practitioners to Envoy of March 29 and April 12, 2019 (both open letters) are patent examples of self-immolation by the Claimant. The letter of March 29 alleges abuse of power, trickery, maliciousness and persecution by Envoy of the Claimant. This initial letter betrayed a startling lack of awareness, particularly since at the time of the letter the Claimant was already the subject of 2 active advisories/warning letters from Envoy. The Claimant did not appear to appreciate that as at April 2019 she was already on thin ice.

[43] The Claimant's response letter (no doubt drafted by her counsel) of April 12th, 2019, to Envoy's letter of April 9, 2019, is intemperate in its language and combative in its tone. The April 12th, 2019, letter runs to 7 pages and alleges a 'witch hunt' 'discrimination', 'misrepresentation', 'malice' and suggests that Ms. Lestrade has 'like Judas Iscariot ran away to conspire' with other persons against the Claimant. Perhaps the Claimant's counsel felt that he was writing to Ms. Lestrade personally and felt obliged to have her feel the full weight of his furious pen. All the same, those letters go to this court's assessment of how the Claimant raised and pursued matters that were ultimately deemed to be wholly without merit at trial.

[44] The factors under CPR 64.6(6) all tell against the Claimant. It was wholly unreasonable for the Claimant to pursue her claim for unlimited travel. This court signaled at pretrial review that a review of the relevant law suggested that this argument may run into difficulty at trial. It appears that the Claimant's legal practitioners chose not to engage with the relevant law and advise their client of the difficulty of her position on unlimited travel. No reasonable explanation for why the Claimant reduced her claim (in her witness statement) from EC\$8 million to EC\$1 million was advanced to this court. Presumably, the Claimant and her counsel recognized that her claim for EC\$8 million included her family and/or dependents but this does not explain why the Claimant's counsel persisted in arguing a course of action that was clearly at odds with Envoy's travel guide for employees, never mind the relevant law. On any analysis, there was no basis for the Claimant's claim for unlimited travel in any sum and certainly not in the millions as the travel guide made it abundantly clear that travel was not a contractual benefit.

[45] On the other hand, the Defendant claimed to be entitled to their prescribed costs in the sum of EC\$169,644.65 in defending the Claimant's claim as set out in her claim form and amended statement of claim filed on February 17, 2023 in the sum of EC\$8,150,627.34. The only difference between what was in the amended statement of claim and the witness statement was that the sum claimed for unlimited travel was EC\$8,049,546.08.

[46] Ms. Merchant for Envoy argued that if the Claimant believed that she was going to be successful she (the Claimant) would have sought her prescribed costs on the sum of EC\$8,049,546.08 and not EC\$1,403,792.25. In any event, Ms. Merchant contended that since the Claimant had not formally amended her claim to clearly indicate the sum being sought, the Defendant was entitled to their prescribed costs of defending the claim for EC\$8 million and that this court could not now amend the claim as one for \$1.0 million dollars.

[47] Counsel for the Defendant accepts that the CPR provides that a court has a discretion to exceptionally dispense with the usual prescribed costs order and make such order as it thinks is warranted. The factors that go into the exercise of that discretion are as set out at CPR 64.6(6). The law on prescribed costs has recently engaged the attention of at all levels of the judiciary including judges of the Eastern Caribbean Supreme Court³, Court of Appeal⁴ and the Privy Council⁵.

[48] The upshot of the authorities can be distilled as follows:

- (i) That the discretion to dispense with prescribed costs and make other costs orders should only be exercised for good reason and only in exceptional cases
- (ii) One example of when a court can depart from prescribed costs is when an order for prescribed costs may be inadequate or when the actual costs are hugely disproportionate to the likely amount of prescribed costs.

[49] This court wholly adopts and is grateful for the reasoning of Justice Moise in the National Bank of Anguilla case cited above. At paragraph 7 of his reasoned judgment, Mr. Justice Moise stated that the departure from the general rule should be allowed 'where the reasonable estimate of the actual costs is hugely disproportionate to the likely amount of prescribed costs'. If that is an accurate and succinct summary of the law (this court has no reason to doubt that it is) then implicit in that pithy observation is the principle that an award of prescribed costs may also be overly generous to a party. An award of prescribed costs may also be hugely disproportionate to the work actually done and thus unduly (my emphasis) penalize the losing party. Put another way, the law cannot sensibly operate to top up inadequate costs orders but not to reduce possibly excessive ones.

[50] The authorities cited above make it clear that the prescribed costs regime is geared at ensuring certainty on costs. Had the Claimant's claim succeeded she would have sought the sum of EC\$108,363.76. Implicit in seeking that sum was or should have been a recognition that her potential liability to Envoy was in the sum of EC\$108,363.76 if she lost.

[51] The Claimant and/or her counsel's deliberate decision to pursue this spectacularly unmeritorious claim means that Envoy are entitled to their costs in the sum of EC\$108,363.76. For all the reasons traversed above, the Claimant was not wrongfully dismissed and should pay no less than what she thought she would recover if she were successful. The authorities recognize that a court may make

³ See judgment of Moise J in National Bank of Anguilla (Private Banking and Trust Limited in administration and another v National Bank of Anguilla Ltd (in receivership).

⁴ SLUHCVP 2022/0010 - Francis and another v Omega Caribe

⁵ Bertrand v Elias [2023] UKPC 34; Rampersad v Ramlal [2022] UKPC 50

an order for assessed costs, but such an order would be inappropriate in this case for the following reasons. An order for assessed costs may lead to an even smaller award of costs than \$108,363.76 which could mean that Envoy could potentially receive less costs than they would have had to pay if they had won. It would be unjust for Envoy to receive less than the Claimant would have received if she had been successful.

[52] Secondly, the Claimant's behaviour as detailed above must sound in costs. The CPR makes this clear. Pursuing factual and legal allegations without one iota of factual or legal support is unreasonable. Personal attacks on Ms. Lestrade and the decision to persist in the claim for unlimited travel even after its challenges were foreshadowed at case management in January and pretrial review in February 2024 were off ramps which the Claimant and/or her counsel refused to take. The cumulative effect of those matters could only sound in costs thus justifying the order proposed above.

[53] Ultimately, costs are legal practitioners' charges (fees for their services) and disbursements. Even without the benefit of a detailed bill of costs, there is no real dispute that Envoy's legal costs are unlikely to be in the region of \$169,644.65. The trial occupied two days but only spilled into the second day because the Defendant's counsel had difficulty continuing the hearing on the afternoon of the first day. But for this fact, the trial would have been a 1-and-a-half-day trial in which the evidence of only 4 witnesses was taken. The law was clear and settled and but for the way the Claimant conducted her case, this matter may well have occupied only one day of judicial time. Even with the court's concerns about the way that the Claimant and/or her counsel had conducted their case the sum of \$169,644.65 represents a disproportionate sum as costs. This Court's costs order does not require the court to amend the claim as argued by Envoy since the court's discretion on costs is squarely in play.

[54] Exceptionally, this court is satisfied that an order for prescribed costs in the sum of EC\$169,644.65 is hugely disproportionate to the actual costs incurred and thus exercises its discretion to award costs in the sum of EC\$108,363.76.

[55] Simply put, the Claimant was not wrongfully dismissed by Envoy. Her claim fails entirely, and Envoy are entitled to their costs in the sum of EC\$108,363.76.

Postscript

[56] At the delivery of its judgment in this matter, this court also ordered the Claimant's counsel to file further affidavits and/or submissions within 14 days on how the sum of \$EC108,363.76 should be apportioned. In this court's view, it would be essential to know whether the Claimant was fully apprised of her potential costs exposure and proceeded to trial with full awareness of these matters or whether her counsel persisted in a claim for loss of travel benefits when both the law and evidence (Envoy's travel guide was disclosed long before trial) were stacked against the Claimant. Envoy were at liberty to chime in with their submissions (if any) on the point since apportionment orders of the kind contemplated are not ordinarily made.

[57] In this court's view it would be unfair to saddle the Claimant with the exclusive burden of an order for costs if the latter was established. For example, Canon 21(1) and (2) of the Legal Profession Act provide as follows:

An attorney-at-law should, before advising on the cause of a client, obtain a sound knowledge of the matter and give a candid opinion of its merits or demerits and the probable results of pending or contemplated litigation.

An attorney-at-law should be reluctant in proffering bold and confident assurances to his client especially where his employment may depend on these assurances in light of the fact that the law might not always be on the side of his client and that the law allows for the *audi alteram partem* rule to be followed.

[58] CPR 64.6(3) provides that

This rule gives the court power in particular to order a person to pay –

- (a) costs from or up to a certain date only;
- (b) costs relating only to a certain distinct part of the proceedings; or
- (c) only a specified proportion of another person's costs.

[59] CPR 64.6(5) provides that

(5) In deciding who should be liable to pay costs the court must have regard to all the circumstances.

[60] Finally, CPR 64.8 (1) and (2) is set out below and provides that

In any proceedings the court may by order –

- (a) direct the legal practitioner to pay; or
- (b) disallow as against the legal practitioner's client, the whole or part of any wasted costs.

In this rule – “**wasted costs**” means any costs incurred by a party –

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal practitioner or any employee of the legal practitioner; or
- (b) which, in the light of any act or omission occurring after they were incurred,
- (c) the court considers it unreasonable to expect that party to pay.

[61] In this court's view all the foregoing rules are in play for the reasons more fully traversed in this judgment and the ultimate order on who should bear the costs and how they are to be apportioned can only be resolved after hearing from all sides. For the avoidance of doubt, this court does not lightly arrive at its decision to consider the position on costs but the recent learning on costs makes it clear that liability for costs ought to be at the forefront of the minds of all parties and their counsel and that trial judges have an obligation to ensure that the litigants are fully apprised of their potential costs exposure.

Patrick Thompson Jr
Resident High Court Judge

BY THE COURT

REGISTRAR