

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

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

CLAIM NO. AXAHCV 2019/0019

BETWEEN

AUNIKA WEBSTER-LAKE

Claimant

AND

THE ATTORNEY GENERAL OF ANGUILLA

Defendant

Before: His Lordship, The Honourable Justice Ermin Moise

Appearances:

Ms. Tara Carter with her Mrs. Keesha Carty of counsel for the Claimant

Dr. Francis Alexis KC with him Mr. Sasha Courtney and Mr. Anthony Bullock of counsel for the Defendant

2023: March 1; 3; 6; 13; 28;
November 1.

Judgment

- [1] **Moise, J.:** This is a claim for damages for constructive and/or unfair dismissal. The claimant has claimed a breach of her employment contract pursuant to an appointment form dated 16th October 2013 and the General Orders of the Anguilla Public Service. It is alleged that the Government of Anguilla had failed to provide a safe place of work; a safe system of work; adequate plant and equipment and competent staff. On account of these failures, the claimant resigned from her post on 11th January, 2018 and claimed that she was constructively dismissed. Having examined the facts and submissions presented to the Court, I have decided that the case should be dismissed with costs to the defendant. These are the reasons for my decision.

The Facts

- [2] On 16th October, 2013, Mrs. Aunika Webster-Lake (Mrs. Lake) was appointed to the office of Labour Commissioner. At the time of her appointment she had been a public servant for approximately 12 years. Mrs. Lake has pleaded that part of her duties as Labour Commissioner entailed the supervision of a complement of 9 staff members. One of those persons was an employee by the name of Mrs. Angelique Richardson-Polanco (Mrs. Polanco), who served as a Labour Officer within the Department. It is apparent from the evidence that Mrs. Polanco had been facing a number of personal struggles which may have affected her mental health. In turn, those challenges are alleged to have affected her behaviour at work.
- [3] Mrs. Lake's main complaint in this claim is that Mrs. Polanco's behaviour was such that it created an unsafe and stressful work environment. She claims that despite her pleadings with the relevant authorities to address the situation, this was allowed to continue. Even after Mrs. Polanco was removed from the Department, Mrs. Lake alleges that the authorities failed to put in place adequate security measures to guarantee her safety. She claims therefore that she was forced to resign from her post.
- [4] Mrs. Lake pleads that Mrs. Polanco's behaviour began sometime in early 2014. She states that many of the incidents were not initially documented. This was because Mrs. Lake made efforts to verbally address the matters. However, she states that when the situation became more particularly egregious, a note was placed on Mrs. Polanco's file. Some of the complaints were summarized as follows:
- (a) 10th February, 2014 – Mrs. Polanco contacted the Ministry and directed that a particular work permit application, belonging to her then boyfriend, be approved immediately and in priority to the other work permits. It is asserted that Mrs. Polanco wrongfully stated that this directive came from the claimant as Labour Commissioner. Mrs. Lake stated in her witness statement that after confronting Mrs. Polanco about the incident, she indicated that she depended on her boyfriend to help pay her bills and therefore she needed his work permit to be granted. It is Mrs. Lake's evidence that although no note

was placed on Mrs. Polanco's file, the incident was reported to her supervisor. There is however no documented record of this report.

- (b) 14th May, 2014 - inappropriate conduct of and indecent language by Mrs. Polanco in the presence of customers.
- (c) 20th May, 2014 – Mrs. Polanco was talking on her mobile phone while customers waited. She refused to end the mobile call and attend to customers even after a request was made by Mrs. Lake.
- (d) 23rd May, 2014 – Mrs. Polanco was again warned about the use of her cell phone in the front office; especially in the presence of customers.
- (e) 11th March, 2015 – Mrs. Polanco refused to do the work assigned to her and was disrespectful to Mrs. Lake. It is alleged here that the Permanent Secretary intervened and was able to assist with this situation.
- (f) 17th June, 2016 – Mrs. Polanco's unauthorized and early exit from the office without informing any staff member of her leaving. Her station was unmanned at the time and no other officer was in the front office.
- (g) September 2016 – A customer complained that Mrs. Polanco broke down a gate and door. Mrs. Polanco admitted to breaking down the customer's gate and sought to justify her actions.
- (h) 15th March, 2017 – Mrs. Polanco's breach of confidentiality to an employer whose employee had made a complaint against the said employer.

[5] I note that these complaints relate primarily to Mrs. Polanco's performance on the job. Mrs. Lake however goes on to state that Mrs. Polanco also engaged in threats of violence towards her and members of staff. According to the pleadings, Mrs. Polanco is said to have threatened to shoot members of staff, as well as Mrs. Lake. She threatened to light a match in the gas station nearby as well as bombing the Department. Mrs. Polanco is said to have threatened to kill the father of her children, as well as the children themselves. She

threatened self-harm and also made violent remarks towards the Social Services Department. Mrs. Lake states in her evidence that Mrs. Polanco would roam the office whilst speaking to herself. She would rant about her personal issues and even cut herself at times. All of these incidents were not noted in writing. Mrs. Lake's assertion was that she did not view these as grounds for discipline. However, it is alleged that each incident was reported via telephone to the Permanent Secretary and to the Department of Public Administration.

[6] Mrs. Lake recalled an incident which occurred on 5th November, 2014. She alleges that on that day Mrs. Polanco reported for work some time after 8:00a.m. She however threatened to blow up the office. Mrs. Lake did not personally hear the threat but stated that it was reported to her by another Labour Officer, Ms. Collyanna Ritchie-Brookes. It was alleged that Ms. Ritchie-Brookes reported that Mrs. Polanco stated in the presence of herself, Danette Webster and Carmencita Davis, Deputy Labour Commissioner, that she would blow up the Labour Department by putting a bomb in the office with a timer and walking out before it explodes or placing a bomb by the nearby gas station.

[7] Mrs. Lake states that upon receiving the report of those threats she immediately summoned Mrs. Polanco to a private meeting in her office. At that meeting, Mrs. Lake enquired of Mrs. Polanco's state of mind. She asked her about how she was feeling that day and how her children were. Mrs. Polanco responded by stating that her children were okay. Mrs. Polanco also informed Mrs. Lake that she was sick of everything. She stated that if she had a bomb, she would blow the office up. She said that in her head she planned to build a bomb, plant it in the office, walk away and just let it blow up. She also stated that if she had a gun, she would kill her children, her husband and herself. She started crying and began to shake.

[8] Upon Mrs. Lake's request, the Permanent Secretary attended the office at that time and assisted in calming Mrs. Polanco down. After the conversation Mrs. Lake asked for assistance but was informed that this was a matter which had to be dealt with by the Public Administration Department. Attempts were made to contact that department and Mrs. Polanco was allowed to return to her home for the remainder of the day. Attempts at encouraging Mrs. Polanco to participate in counselling did not bear consistent fruit. I note

however that in cross-examination before this court Ms. Richie-Brookes did not recall ever making such a report to Mrs. Lake. She denies the assertions that Mrs. Polanco's behaviour was as egregious as is painted by Mrs. Lake. It is important to also note that no contemporaneous note or statement of this incident was recorded by Mrs. Lake. There is also no evidence of a formal report having been made to the Department of Public Administration regarding this incident.

[9] Despite the lack of any formal report being made, Mrs. Lake states that she made constant reports of those incidents to the Public Administration Department. It is alleged that this department has charge over the Public Service, under the direction of the Deputy Governor and deals with all human resource management issues. In her witness statement she claims that she made a report of each incident to her supervisor, the Permanent Secretary in the Ministry of Home Affairs, who was Ms. Aurjul Wilson at the time. Ms. Wilson gave evidence before the court. She acknowledged that there was a concern with Mrs. Polanco and spoke of an incident which she witnessed and in which she was able to help calm Mrs. Polanco down. She did indicate that the issue was bigger than Mrs. Lake and needed to be dealt with by Public Administration. However, it is unclear to me as to precisely what "issue" she was referring to. She witnessed Mrs. Polanco shaking and it appears to me that both Mrs. Lake and Ms. Wilson sought to address this problem from the perspective of providing some professional help to Mrs. Polanco.

[10] Mrs. Lake goes on in her evidence to present further examples of the need for her intervention as a result of Mrs. Polanco's behaviour. She speaks of an incident on 16th March, 2016 in which she accompanied Mrs. Polanco to the hospital due to the manner in which she was behaving. She was again threatening violence on account of the domestic issues she was confronting at the time. Mrs. Lake states that she informed the Permanent Secretary, as well as Mrs. Polanco's case worker at the Social Services Department. Again, I must state that there was no evidence that a formal report of this incident was documented on Mrs. Polanco's file or forwarded to the Department of Public Administration.

[11] Mrs. Lake stated that she continued to seek assistance in the form of counselling for Mrs. Polanco for the issues she was allegedly facing in her marriage. One of the issues which

she confronted was Mrs. Polanco's penchant for cutting herself. Mrs. Lake states that she would offer assistance with Mrs. Polanco's children. She would take them into her office when they were present after school and keep them occupied with colouring, work sheets and speaking to them about their day at school. Witnesses presented for the defence also indicated that Mrs. Lake had represented to them that she would assist Mrs. Polanco with groceries and also help her out with her children even outside of work.

[12] Mrs. Polanco's behavior came to ahead in March of 2017. Mrs. Lake states in her witness statement that on 15th March, 2017 she had to settle a dispute between Mrs. Polanco and certain members of staff. She met with each person separately to understand their side of the story. When she met with Mrs. Polanco she made certain threats of violence. Mrs. Lake states that she contacted the Deputy Director of Human Resource Management at the Department of Public Administration to inform her of what occurred. She also contacted the Permanent Secretary in her own ministry. The following day she again had to intervene because of Mrs. Polanco's mood. Mrs. Lake then made an appointment for Mrs. Polanco to see a doctor.

[13] Mrs. Lake then goes on to state that, due to Mrs. Polanco's behavior, a meeting was held on 23rd March of that year. Present at this meeting was the Permanent Secretary in Public Administration Mrs. Kathleen Rogers (Mrs. Rogers), the Director Human Resource Management, the Deputy Director of Public Administration and the Deputy Director of Human Resources. It was Mrs. Lake's evidence that at that meeting, the Permanent Secretary in the Ministry of Labour, Mrs. Chanelle Petty-Barrett, who was her immediate supervisor, requested that Mrs. Polanco be referred to the Medical Board. A letter to that effect was sent to the Chief Executive Officer of the Health Authority of Anguilla.

[14] It must be noted however that Mrs. Petty-Barrett became the Permanent Secretary and Mrs. Lake's immediate superior in January 2017. It was her evidence that Mrs. Lake informed her of problems she was experiencing with Mrs. Polanco in March 2017. That was the first time she became aware of any of those complaints. Mrs. Petty-Barrett indicated that she called for Mrs. Polanco's file and from that moment advised Mrs. Lake that she should meet with Mrs. Polanco so as to initiate the disciplinary process against her as she was

empowered to do. On 17th March, 2017, whilst attending a meeting, Mrs. Petty-Barrett received a phone call from Mrs. Lake informing her that Mrs. Polanco was being threatening towards her. She then advised that Mrs. Polanco be sent home and the matter would be dealt with on the following Monday. A meeting was scheduled for 23rd March, 2017 to discuss the issue.

[15] Mrs. Kathleen Rogers was then the Permanent Secretary in the Department of Public Administration. She had been the Permanent Secretary since 2012. She too gave evidence and stated that she was not aware of the problems being experienced with Mrs. Polanco prior to March 2017. She only became aware after receiving a phone call from Mrs. Petty-Barrett. She states that a meeting was held on 22nd March, 2017¹ to discuss the issue. However, she did not get the impression from Mrs. Lake that she was in anyway afraid of Mrs. Polanco at the meeting. In fact she stated that Mrs. Lake had advised the meeting that she had sought help for Mrs. Polanco from Pastor Phillip and that she had assisted in paying Mrs. Polanco's medical bills and assisting with her children. From the accounts given, Mrs. Rogers formed the view that Mrs. Lake had made herself fully available to Mrs. Polanco. It was stated that Mrs. Petty-Barrett raised the issue of disciplinary proceedings. However Mrs. Rogers recommended a psychiatric evaluation prior to that in order to determine whether Mrs. Polanco should be considered fit to work on account of mental health issues. That was Mrs. Rogers' evidence.

[16] The Medical Board met on 30th March, 2017. Mrs. Lake states that she personally took Mrs. Polanco to the meeting with the Board as there was a fear that she would not attend on her own volition. Mrs. Lake states that this meeting lasted some hours and the doctors asked questions of her about Mrs. Polanco. The members of the Medical Board at the time were Dr. Sachin Gandotra (clinical psychiatrist), Dr. Sherlan Richardson and Dr. Clyde Bryan (who was also Mrs. Lake's personal physician). The Board submitted a report on 13th April, 2017. This was signed by all 3 medical practitioners constituting the Board. Without repeating the content of the report in full, I have repeated some salient observations below:

¹ There is a discrepancy in the evidence as to whether the meeting was held on 22nd or 23rd March, 2017.

- (a) The Medical Board observed that there indeed is a difficult situation being dealt with by Mrs. Polanco in terms of a relationship constraint with her husband.
- (b) Mrs. Polanco also feels that the social welfare department is not assisting her enough in terms of the help she needs to mandate her husband to be responsive to her and her children's needs. She explains that these are the prime triggers for her frustration and she ends up dealing with it in an impulsive and explosive manner. She admitted many incidents where she has acted impulsively, risking the safety of others and her children and not caring for her own safety as well.
- (c) Mrs. Polanco seems to have some traits which are confronting with limited coping strategies and ability to reason out alternate ways of handling situations.
- (d) Mrs. Polanco seems to rely too much on threatening behaviours to put her point and frustrations across to other parties. This is also true in cases of disagreement of opinions at her work place with her colleagues.

[17] Based on the recommendations made, it was determined that Mrs. Polanco should be placed on one month's sick leave with scheduled evaluations by a psychiatrist. An evaluation was to have taken place by 12th April, 2017 in order to determine Mrs. Polanco's readiness to return to work. During that time she undertook to be watchful about how she expressed her frustrations. In addition to this, the Board also noted that Mrs. Polanco would be assisted in this process by scheduled sessions with the psychiatrist and at her work place through mediation with her boss who graciously has been accommodating and indicates that she is willing to be helpful. Mrs. Polanco in turn agreed to this intervention and indicated that she would be able to get support from her step father, current boyfriend, sister, mother and her boss, who I assumed to refer to Mrs. Lake.

[18] Mrs. Lake states that upon reading the report she wrote to the Director of Human Resources at the Department of Public Administration on 18th April, 2017 to express her concerns. Firstly, she articulated her own version of the extent of the help she was willing to provide Mrs. Polanco. As far as she was concerned, she stated that she informed the Medical Board

that she was willing to ensure that Mrs. Polanco was present at the evaluation with Dr. Gandotra and that she would communicate with the Social Services Department regarding getting assistance for Mrs. Polanco in proceeding with a divorce from her husband. That, she stated, was the extent of the assistance she was willing to provide. She states that in fact she had done all she could have to help Mrs. Polanco before and that Mrs. Polanco was beyond her help at this point.

[19] Mrs. Lake also stated in that email that she was “*unwilling to work with anyone who has threatened [her] life and ... unwilling to subject those who work with [her] to same.*” She stated further that “*[t]o return her (Mrs. Richardson-Polanco) to the Department of Labour would mean that the decision was made that has chosen to devalue the lives of the public officers in the Department of Labour.*” She also stated in that email that whilst the doctors were of the view that Mrs. Polanco can return to work, it was unrealistic to expect persons to feel comfortable working in an environment where their lives were threatened. Mrs. Lake stated in her witness statement that she expressed these concerns because she could no longer cope with the issue and that it was causing a strain on her mentally and was physically draining.

[20] By way of email dated 17th May, 2017, Mrs. Petty-Barrett herself indicated that “*unless there is a psychiatric evaluation and report that indicates that Mrs. Polanco is not a danger to officers at the Labour Department, I am not prepared to take the risk of having her return there. Every day she is on the job she is a potential liability for GOA as we cannot pretend that we do not know of the risk she poses to others.*” The Deputy Director of Human Resources expressed her agreement with this posture and noted that if Mrs. Polanco was a threat to the Labour Department then she was equally a threat to any other office within the Public Service. However, in my view it is important to make a few observations at this stage in light of this evidence.

[21] Firstly, I have to state that, in a perusal of the evidence presented in this case, this email of Mrs. Lake in response to the report, is the first documented statement from her in which she expressed concern regarding working with Mrs. Polanco. It appears from the evidence that even Mrs. Rogers who was the Permanent Secretary in the Department of Public

Administration did not get the impression that Mrs. Lake was contemplating disciplinary proceedings at the meeting held in March 2017. She seemed to have been more concerned with getting help for Mrs. Polanco. The Medical Board apparently got the same impression. Even throughout these proceedings Mrs. Lake expressed the view that Mrs. Polanco's actions were not disciplinary in nature but were caused by mental health issues. At this stage however, she objected to the idea of Mrs. Polanco being returned to the Department even after psychiatric evaluation recommended a period of sick leave and further evaluation.

[22] It is to be noted that the doctors at that point in time did not necessarily recommend that Mrs. Polanco simply be returned to the Department. What was recommended was a period of sick leave, during which time Mrs. Polanco would have not only been evaluated further to determine her fitness to work, but also receive the very psychiatric care which Mrs. Lake had accused the Government of failing to provide for Mrs. Polanco. Yet Mrs. Lake was objecting to the recommendations even before the process of evaluation was complete. The evidence does not suggest that the Medical Board was placing Mrs. Polanco in Mrs. Lake's care. However, if she was to return to work it would have been important for some measure of patience and support to be observed while she continued to receive some form of treatment.

[23] I make just one further observation here; which is that the evidence does not suggest to me that the concerns expressed by Mrs. Lake and others would not be taken into account at the point at which Mrs. Polanco was to be re-evaluated. If there was a clear and dogmatic position that Mrs. Polanco was not to be returned to the Department, then she would certainly have been entitled to due process for which Mrs. Lake as department head would have had a significant role to play in documenting and presenting the relevant evidence to justify her dismissal. This is an issue I will return to later on in this judgment.

[24] In any event, Mrs. Polanco did not return to work after the one month initial period. Her leave was further extended. Even prior to her return in August 2017, Mrs. Petty-Barrett continued to express concern and, as a result of this, meetings were held with and advice taken from the Attorney General on the issue. The Commissioner of Police was also invited to the meeting. It was the Commissioner's preliminary view that Mrs. Polanco was not a serious threat and didn't have the capacity to carry out the threats she had made. She appears to

have just been “impulsively mouthing off.” It was agreed however that Mrs. Polanco’s leave would be further extended and further advice sought from the psychiatrist. On the advice of the Attorney General, specific questions were put to the doctors regarding Mrs. Polanco’s treatment and fitness to return to work.

- [25] By way of report dated 18th July, 2017, Dr. Gandotra provided a further update on Mrs. Polanco’s treatment and diagnosis. That was 4 months after Mrs. Polanco was placed on leave. Dr. Gandotra indicated that the Medical Board had follow up interactions with Mrs. Polanco on 12th April, 19th May, 15th June and 13th July, 2017 at the Psychiatric Unit, Health Authority of Anguilla. Dr. Gandotra observed that Mrs. Polanco had an enduring pattern of behaviours characterized by: -Dramatic and overly emotional behaviours - Marked impulsivity and reactions to environment without much forethought - Assuming a victim role with a resistance to approach towards problem solving - Coping skills deficits- Interpersonal skills deficits - Resorting to anger and frustration to seek attention.
- [26] In Dr. Gandotra’s opinion, these patterns of behaviour are indicative of maladaptive personality traits; whereby Mrs. Polanco fails to cope with the conflicting situations and tends to enmesh the situation rather than problem solve it. She was therefore specifically diagnosed with maladaptive personality traits and it was noted that she had been offered consistent sessions in collaboration with support from the social worker. The sessions had been focused on making her aware of her cognitive distortions and also negotiating a more desirable way of approaching conflicting situations. At that point Mrs. Polanco was still assessed to have deficits in her interpersonal skills that needed attention.
- [27] Insofar as the report is concerned it offers the court insight into one allegation made by Mrs. Lake; which was that the Government of Anguilla failed to provide any help to Mrs. Polanco. The report indicates however that while Mrs. Polanco was placed on sick leave she was provided with consistent sessions with a psychiatrist in collaboration with her social worker. I will return to this later on, but the evidence suggests to me that when the authorities were properly apprised of the situation, Mrs. Polanco was indeed provided with access to professional treatment during her period of sick leave and was evaluated in order to

determine whether she was able to cope and was fit for work. The report also suggests that this avenue of care was available to Mrs. Polanco after the compilation of the report.

- [28] Insofar as it relates to Mrs. Polanco's fitness to return to work, Dr. Gandotra noted that the primary area of conflicts for Mrs. Polanco seems to be her domestic front. The aggressive and intimidating behaviours at the work place likely reflected the spillover of her conflicts at home, since she seems to react to some comments regarding her personal situation made to her by her colleagues. Also, there seems to be defense mechanisms of denial and projection at play, whereby she tends to assume a victim role and having an outburst of anger and emotional drama as a means of seeking attention to her woes. Dr. Gandotra then went on to provide the following advice:

"It would be advisable to give a trial period to the client phased from 3-6months under strict conditions of what is desirable for her and also on what is expected regarding her interpersonal interactions at her work place under guidance from the social worker and psychiatrist alike and evaluated by the department head. Her over all conduct may be evaluated at 3 months and 6 months based on which further decision regarding her suitability to work be decided. It would also be advisable that her colleagues are made aware of their contribution to her provocation by tactfully suggesting that personal issues may not be brought to the work place and neither discussed there. The client may continue guidance from the social worker regarding any potential conflicting situations with an opportunity to discuss and benefit from advice."

- [29] Essentially, prior to making a full diagnosis of Mrs. Polanco's fitness to work, it was advised that she be returned to the office on a trial basis. The recommendation was that she would continue to be provided with access to the professional support she was receiving and that she would temporarily return to work with strict conditions and evaluations be conducted at the 3rd and 6th month mark. As it relates to the safety of the staff if Mrs. Polanco was to return to work, Dr. Gandotra noted that:

“It would be prudent to consider that most threatening situations that the client is involved at work place also seems to have mutual contributions from the environment to which the client reacts. Therefore, safety considerations are viewed from the vantage point of awareness and education to the entire staff that all provocative non-work relate issues are best left out of work setting thereby not giving an opportunity to the client to be sensitive about that. Besides that, there also seems to be a greater responsibility on the part of the client to skillfully redirect and not take on issues or provocations that can be avoided and would have a consequence regarding her job. Therefore, it merits a trial period under strict recommendations and simultaneous support to the staff and client alike to come to a conclusion regarding the safety of the staff in case the client returns back to work.”

[30] It is unclear to me as to what evidence the Medical Board was relying on. However, the Board, after carrying out its own enquiry, was of the view that there was some provocation which was taking place in the work place which exacerbated Mrs. Polanco's reaction to her personal struggles. The report does not give the impression that this provocation was deliberate. However, it was recommended that some education be provided to the staff on how to deal with such issues. It was also observed that Mrs. Polanco needed to take responsibility for addressing her issues as well and understand the fact that there may be consequences for her behaviour. For my part, this does not give the impression that Mrs. Polanco was incapable of addressing her behavior. A trial run was therefore recommended before a determination as to whether Mrs. Polanco would be fit to return to the work place indefinitely.

[31] Dr. Gandotra also went on to opine on the sufficiency of the support services available to Mrs. Polanco in Anguilla. He noted that she *“currently has access to the mental health services from the Health Authority of Anguilla coupled with support from the department of social services. Besides that she is also observed to have a considerate department head, who is willing to offer her support. Therefore, it would be prudent to exhaust the locally available services and attempt to use this to the clients' advantage in securing a good balance between her domestic and occupational fronts.”*

- [32] I make the observation here that in the earlier report of 17th March, 2017, it was again noted that Mrs. Lake, as the department head, had appeared to the Board as being sympathetic to Mrs. Polanco's plight. Given that Mrs. Lake was interviewed by the Board, it appears that they were given the impression that Mrs. Lake was willing to offer support to Mrs. Polanco. That appears to have been a factor taken into account in coming to this recommendation. This is also consistent with Mrs. Petty-Barrett, Mrs. Lana Horsford-Harrigan and Mrs. Rogers' own assessment of Mrs. Lake's approach to this situation thus far. However in her own witness statement Mrs. Lake gives a completely different impression than that which was outlined in the medical reports and witness statements of Mrs. Petty-Barrett, Mrs. Rogers and Mrs. Horsford-Harrigan. I also note that one of the doctors on the Medical Board was Mrs. Lake's private doctor to whom she states she had complained about the stress of dealing with Mrs. Polanco during private visits with him.
- [33] Mrs. Lake states that on 13th July, 2017 she met with the psychiatrist along with the Social Worker at the request of the psychiatrist, to discuss Mrs. Polanco. Mrs. Lake does not go on to state what was the nature of the conversation she had with those persons but indicates in her witness statement that by the date the psychiatric report was issued on 28th July, 2017 she had done all that she could humanly do for the support of Mrs. Polanco. She complained that Mrs. Polanco was simply returned to work with no further dialogue on the recommendations which had been made in the report. She nonetheless wrote to the Permanent Secretary in the Department of Public Administration to request an internal transfer to another department as she was no longer willing to work in an environment with Mrs. Polanco. She complains that this request was never honoured.
- [34] Mrs. Polanco returned to work on 1st August, 2017. From the evidence presented, no complaints were made, or none recorded, about her for in excess of one month. On 5th September, 2017, Anguilla was devastated by the passage of Hurricane Irma. Many of the government departments, included the Labour Department, had suffered significant damage. According to Mrs. Lake, on 6th September, 2017, she went to the office in order to clean up and determine what could be salvaged from the effects of the storm. Mrs. Polanco turned up at the office on that day. Mrs. Lake's account of what transpired is as follows:

“While cleaning up, Mrs. Richardson-Polanco came to work with her arms all scratched and bleeding. I took her downstairs and asked what happened. Mrs. Richardson-Polanco said, if she did not cut herself, she would have killed somebody. I called my PS, Mrs. Petty Barrett, to let her know of the situation. The PS said to send Mrs. Richardson-Polanco home. I sent her home, but Mrs. Richardson-Polanco said she was safer at work. She insisted and remained to salvage whatever she could from her office space as persons were on site to move whatever items we could salvage to the Ministry of Home Affairs, as the space could no longer function for an office.”

- [35] Although this incident speaks to the fact that Mrs. Polanco still appeared to be having emotional struggles at home and displayed a propensity to self-harm, there was nothing to suggest that her behaviour on that day was disruptive or threatening in any way. She stayed on to help with the cleaning up. The Labour Department was thereafter temporarily located elsewhere. Mrs. Lake goes on to refer to occasions in the office in the month of October 2017 when Mrs. Polanco was seen shaking and also on one occasion when Mrs. Polanco approached her in her car to complain about chest pains. Although Mrs. Polanco had initially declined a recommendation that she visit the doctor, she later collapsed in the office and had to be taken to the hospital. Again, when one assesses those incidents, they do not appear to me to be particularly egregious or deliberately disruptive. Mrs. Polanco appeared to be having a health episode for which medical attention was necessary. It must also be observed that at that time the Medical Board had recommended that Mrs. Polanco remain under the care of a psychiatrist in conjunction with her social worker. That support service had remained available to her and could have been utilised.
- [36] However, according to the evidence, things took a turn in November 2017. That was 3 months after Mrs. Polanco returned to work and around the point where a first evaluation had already been recommended by the Medical Board. The period 13th to 22nd November, 2017 appears to have been a particular challenge. Mrs. Lake states that on 13th November, 2017 Mrs. Polanco informed her that she was still harming herself on account of the emotional challenges she was having. On 14th November, 2017 Mrs. Polanco informed Mrs. Lake that she had cut her stomach and other parts of her body. Mrs. Lake confiscated

a number of sharp objects from Mrs. Polanco and took her to the doctor. She states that she had to assist in undressing Mrs. Polanco so that she can be examined. An appointment was scheduled for Mrs. Polanco to visit the psychiatrist the following day.

[37] According to the evidence presented, Mrs. Lake had a conversation with the Permanent Secretary to her department, Mrs. Petty-Barrett, who in turn sent an email to Mr. Merwyn Rogers, who was then the Permanent Secretary of the Ministry of Health. The email was also sent to personnel from Department of Public Administration and states that Mrs. Petty-Barrett was, “... beginning to worry that if not dealt with this situation will have an adverse effect on the Labour Commissioner as well. It is quite stressful, not to mention unproductive to have to take time out to deal with this officer...No supervisor should have to deal with this on an ongoing basis. It is grossly unfair. Can we please get some help for this officer?”

[38] In addition to that, Mrs. Lake states that she personally visited the Department of Public Administration on 14th November, 2017 after the incident. She described part of the conversation she had with an official of that department in the following manner:

“In that conversation I reemphasized my ongoing frustration with the matter and that I could not keep doing this. I begged for assistance in moving Mrs. Richardson Polanco, relieving her, whatever could be done to remove the threat of her harming myself and staff and to remove the stress on me for having the burden to try to keep her calm so that she not explode with violence.”

[39] I must state that in assessing the evidence it must be observed that Mrs. Lake seems to be desirous at this point of removing Mrs. Polanco from the Department, yet she had not been willing to invoke the disciplinary process which Mrs. Petty-Barrett had advised her to do in March of that year; even after seizing sharp objects from Mrs. Polanco. Mrs. Petty-Barrett in her own evidence did indicate that even after Mrs. Polanco returned to work she had advised Mrs. Lake to initiate the disciplinary process if anything of a serious nature had occurred. Yet Mrs. Lake continued to embark on a process of phone calls and visits to the Department of Public Administration Department without following any of the procedures available to her as

Head of Department under the General Orders and the Public Service Commission Regulations.

- [40] Mrs. Lake states that whilst on her way back to the office after leaving the Department of Public Administration, she received a message from the Labour Department informing her that Mrs. Polanco had lit fire in the office. She then contacted the Deputy Labour Commissioner to understand the situation. Mrs. Lake states that the Deputy then advised her that Mrs. Polanco lit a ruler and paper on her desk and then used the paper to burn herself. Mrs. Lake called Mrs. Petty Barrett, to inform her about the situation. Again, it is to be observed that the court has not been presented with evidence to suggest that anyone who claimed to have witnessed this incident was interviewed or a statement of any kind taken from them.
- [41] Mrs. Lake then met with Mrs. Polanco that afternoon to speak about the matter. She states that Mrs. Polanco informed her that she will *“deal with the people up here, meaning the Department, especially those who thought that she was a nobody and a nothing.”* Mrs. Lake states that she then reminded Mrs. Polanco of her appointment the next day and sent her home. Although Mrs. Polanco attended the appointment with the psychiatrist, she refused to attend a follow up which had been scheduled for the day after. She stated that she was advised by her boyfriend that she should not attend. This would have been a breach of her own commitment to the Medical Board. Mrs. Lake had a conversation with Mrs. Polanco about her failure to attend and expressed concern about her demeanour and approach so she took the decision to send Mrs. Polanco home for the remainder of that day.
- [42] Mrs. Lake states that on 17th November, 2017 Mrs. Polanco relayed certain sentiments to her. On account of those she thought it best to send her home. On Monday 20th November, 2017, Mrs. Lake and the Deputy Labour Commissioner had a meeting with personnel at the Department of Public Administration. At that meeting it was determined that Mrs. Polanco should be placed on leave. However Mrs. Lake stated that she insisted that Mrs. Polanco should not just be placed on leave to roam around but to be committed to some form of help for her. Paragraph 51 of Mrs. Lake’s witness statement is of some importance insofar as it relates to the issues arising from Mrs. Polanco’s behaviour. The paragraph states as follows:

The Deputy Governor was advised in the meeting held on Monday November 20, 2017, by the DHRM and Deputy HRM (Employment) that according to General Orders he had the authority to place Mrs. Richardson-Polanco on special leave. I asked the Deputy Governor what was it that this time he was intended to do and how was it going to help Mrs. Richardson Polanco. I recall that the Deputy Governor said that it was not his concern at this time. The Deputy Governor was very concerned about her lighting fire in the Government Office. The decision was taken that Mrs. RichardsonPolanco would be written to forthwith about her leave. I asked the Deputy Governor if he would have liked to have a conversation with Mrs. Richardson-Polanco first but his response to me was that there was no longer need for conversation given what had transpired.”

[43] I pause here to make one observation as it relates to the content of this paragraph. One of the concerns raised by witnesses for the defence, who were themselves senior personnel in the Government of Anguilla, was that Mrs. Lake had herself refused to invoke the procedures available to her under the General Orders to address Mrs. Polanco’s behaviour at work. Mrs. Petty-Barrett in particular expressed this concern. Ms. Lana Horsford-Harrigan also stated that it was her view that Mrs. Lake was showing a level of sympathy towards Mrs. Polanco rather than simply invoking the disciplinary procedures she was entitled to invoke as the Head of Department. Here, even though matters had come to serious level of escalation, Mrs. Lake seemed to have been more concerned about Mrs. Polanco’s wellbeing and enquired of the Deputy Governor as to what help would have been provided to Mrs. Polanco. She stated that Mrs. Polanco was simply written to and not committed to some form of help for her. However, I am unaware of any power in the General Orders to commit an employee for help. Mrs. Polanco had already received and was even then under psychiatric care. She had herself undertaken to cooperate with the process.

[44] No doubt this level of concern and Mrs. Lake’s sense of humanity is commendable. However, I simply state at this stage that it is difficult to see the circumstances under which the authorities could have acted without formally invoking a process that empowered them to take the necessary steps to divorce Mrs. Polanco from the office environment for any

extended period of time. This is an issue which will be subject to more consideration later on in this judgment. I simply state that while it is true the situation escalated in November, 2017, Mrs. Lake seems not to have appreciated that she had certain powers and obligations to deal with the issue as the Head of Department, which she too failed consistently to invoke.

[45] On Tuesday 21st November, 2017, Mrs. Polanco received a letter from the Department of Public Administration advising her that she would be placed on leave. The letter was delivered to her at her desk at the Labour Department. Mrs. Lake states that she observed a series of behaviours on the part of Mrs. Polanco once she had received that letter. Mrs. Lake then followed Mrs. Polanco into the canteen where she had run into. She observed Mrs. Polanco crying and threatening to end her life. Mrs. Lake asked whether anyone had spoken to her prior to issuing the letter and Mrs. Polanco said no. Mrs. Lake read the letter and observed that Mrs. Polanco was advised not to return to the Labour Department during the period of her leave.

[46] Mrs. Lake then goes on to state that she told Mrs. Polanco that she would call Pastor Berg in order for her to have someone to talk to. Pastor Berg was apparently not available until 1:00pm that afternoon. Mrs. Lake then recalled that it was the birthday of Mrs. Polanco's best friend so she advised that she visits her friend until 1:00pm when Pastor Berg was available. Mrs. Polanco agreed and she was advised not to return to the Labour Department as was stipulated in the letter. Mrs. Lake states that during this episode she was fearful that if she left Mrs. Polanco alone she could have potentially attacked the staff. She states that at that point, she was overly weary but cautiously walked Mrs. Polanco out of the building.

[47] Mrs. Lake then goes on to say that on 22nd November, 2017, Mrs. Polanco contacted her via telephone to say that she knew where everyone who was involved in this matter lived. She specifically mentioned the name of Mrs. Lana Horsford-Harrigan. Mrs. Lake states that she told Mrs. Polanco that she needed to stop thinking that way. Mrs. Lake then hurriedly completed a meeting she was in and telephoned the Director of Public Administration, Mrs. Lana Horsford-Harrigan to inform her of the threats from Mrs. Polanco. Whilst she was on the phone, Mrs. Polanco barged into the office with her arms "dripping in blood".

Mrs. Polanco demanded the razor blades and other sharp objects which Mrs. Lake had taken from her. Mrs. Lake states that she was terrified. Mrs. Lake then states as follows:

"I got Mrs. Richardson-Polanco out of the office and Mrs. Richardson-Polanco told me that she was ending it all; that she was going to the school to collect her children and that they would leave this world together. She said that her children will not live to suffer as she had. She said she will give them medicine and that they just would not wake up. In crippling fear, I suggested different doctors for Mrs. Richardson-Polanco to see. Mrs. Richardson-Polanco chose Family Health Centre. She further said that she went to her cousin for a gun with six bullets and that all of them have a name."

[48] Mrs. Lake then offered to and did take Mrs. Polanco to the doctor. Mrs. Polanco drove her own car and Mrs. Lake followed her. She spoke with Mrs. Petty-Barrett on the way to the doctor's office. She also observed that Mrs. Polanco had cut herself further on the way to the doctor's office. However, the doctor was unavailable and the nurse at the office advised that Mrs. Polanco be taken to the hospital. Mrs. Lake retrieved a razor blade and other sharp objects from Mrs. Polanco's car. She observed that Mrs. Polanco's children needed lunch as she was aware that Mrs. Polanco would normally take lunch for her children. She then asked the nurse if Mrs. Polanco could remain at the doctor's office while she, Mrs. Lake, takes lunch to the school for her children. Mrs. Polanco gave her the name of the school principal to contact in order to inform her that she was coming to bring lunch for the children. However, upon contacting the school principal, Mrs. Lake was informed that lunch was being prepared at the school and Mrs. Polanco's children would be fed. She then returned to the doctor's office sometime later on to look after Mrs. Polanco.

[49] Mrs. Lake goes on to say that she contacted Mrs. Polanco's case worker from the Social Services Department who agreed to meet her at the hospital. From the evidence it appears to me that the social worker did avail herself. However, Mrs. Lake's evidence also suggests that she personally remained at the hospital with Mrs. Polanco until 5:26pm that day and that was only after Mrs. Polanco's parents arrived. Mrs. Polanco was initially uncooperative at the hospital, but Mrs. Lake had calmed her down. She was treated and the social worker thanked Mrs. Lake for her assistance.

[50] Mrs. Lake also goes on to state that after leaving the hospital on 22nd November, 2017, she checked her emails and noted an email sent by Mrs. Horsford-Harrigan to the Deputy Governor, the Commissioner of Police and Public Administration personnel. The email was copied to Mrs. Lake. In that email Mrs. Horsford-Harrigan wrote about her life being threatened by Mrs. Polanco, as had been relayed by Mrs. Lake. Mrs. Horsford-Harrigan demanded a report from Mrs. Lake about the incident. She noted *"Mrs. Polanco's behaviour is totally unacceptable and she should not be allowed to go around callously threatening persons and specifically officers in their line of work. This has to stop!"*

[51] The Deputy Governor also responded to the email by stating his view that Mrs. Polanco's behavior was *"beyond the pale."* Mrs. Petty-Barrett responded with an email of her own stating the following:

"...I am equally disappointed that it took a personal threat to evoke this level of response when for several months we have advised Public Admin of the threats made by the officer towards other officers in the Labour Department, only to receive a lack luster response. The safety of everyone in the APS is of equal importance and it is important as APS leaders that we demonstrate this by our actions."

[52] Mrs. Lake then goes on to state that despite the seriousness of the matter, nothing more was done outside of putting Mrs. Polanco on leave for an uncertain period. She complains that no provision was made to get counselling or any form of treatment for Mrs. Polanco by the Department of Public Administration. She also complains that no mention was made of moving Mrs. Polanco out of the Labour Department. Mrs. Lake stated that even after she and the other staff members had endured so much as a result of having to deal with the instability and threats of Mrs. Polanco, and even though Public Administration was aware of the effect the stress of this situation was having on her, still nothing was done to get Mrs. Polanco out of the Department. Nothing was done about her request to be transferred out of the Department and out of the stressful environment.

[53] I wish to make just a few observations regarding this aspect of the evidence. Firstly, although it is alleged that no efforts were made to get counseling for Mrs. Polanco, the evidence suggests a number of things:

- (a) whatever mental health challenge Mrs. Polanco faced was not caused by the work environment but rather by her domestic issues. It is doubtful therefore that an employer has a duty to provide such services for an employee in such circumstances;
- (b) despite this, the legislature and the Government of Anguilla had in fact made provision for persons suffering from such issues to be engaged by the Department of Social Services. It is clear from the evidence that Mrs. Polanco's domestic situation, which apparently triggered her challenges, was already within the purview of the Social Services Department and a case worker had in fact already been assigned to her case.
- (c) Mrs. Polanco had been assessed by the Medical Board and the evidence suggests that she received specific psychiatric care at the public hospital for almost 4 months prior to returning to work on 1st August, 2017. It was also recommended that she was to continue to receive such treatment in conjunction with the social worker during that period of time. The psychiatric department at the Health Authority of Anguilla was fully available to Mrs. Polanco and the Medical Board did also indicate that Mrs. Polanco needed to take some responsibility for her behavior and understand the consequences of her actions in relation to her job.
- (d) Contrary to what was asserted, when Mrs. Polanco's behavior escalated in November, 2017 she was again immediately sent on leave and a report was demanded of Mrs. Lake. This is the very report she was capable of provided back in March, 2017 when Mrs. Petty-Barrett advised her to commence the disciplinary process and the very reports she should have been formally documenting and made from 2014, if her accounts of Mrs. Polanco's behavior at that point are in fact true.

[54] In light of this, I do not accept as a matter of fact that Mrs. Polanco did not have the support mechanisms necessary to address her issues. The facts even show that the social worker came to the hospital, as well as Mrs. Polanco's parents. I therefore express doubts as to

whether Mrs. Lake was not herself conflating her own role insofar as it relates to the duties towards Mrs. Polanco as an employee and the duties towards the Department as its head. In fact, it is somewhat striking to me that such threats could have been made from 2014 and Mrs. Lake did not see it fit to contact the police herself at any point in time. Instead, on that particular day in question, she spent the bulk of the day at the hospital, despite the presence of Mrs. Polanco's social worker and later her parents. She claims that Mrs. Polanco was dripping with blood, but did not initially take her to the accident and emergency department of the Hospital but rather to a private medical office. Even after she was advised that the doctor was unavailable and that Mrs. Polanco should go to the hospital, she attempted to leave Mrs. Polanco at the clinic to assist in providing lunch for Mrs. Polanco's children.

[55] Nothing in the evidence suggests to me that Mrs. Lake had even given thought to providing a formal report on the situation until Mrs. Horsford-Harrigan raised the issue. In fact, in all of the documentary evidence presented to the court in this case, I can find not a single formal report being made by Mrs. Lake regarding the threats and behaviour of Mrs. Polanco which she claims to have started as far back as 2014. At most, it was not until March 2017 did she embark on a process of documenting Mrs. Polanco's behavior as the Department Head with direct responsibility over her performance and behaviour at work. Even then that documentation was not necessarily in keeping with the General Orders. This is a fact which Mrs. Petty-Barrett specifically mentioned in her own cross-examination during the trial. It seems to me that Mrs. Lake embarked on a process of verbal communication with the Permanent Secretary and appeared to stress more so on providing assistance and counselling to Mrs. Polanco. For reasons which I will explain later on this judgment, I am not satisfied that this was the correct approach for Mrs. Lake to take as the Head of Department.

[56] One other observation which is worth making at this stage is that Mrs. Lake also seemed to have not given consideration to one key finding of the psychiatric evaluation of Mrs. Polanco; that is her tendency to play the victim and to use dramatic outbursts as a means of calling attention to her situation. I must say that for my part I admire Mrs. Lake's concern for Mrs. Polanco, but it does appear to me that Mrs. Petty-Barrett was correct when she said to Mrs. Lake that she should stop allowing Mrs. Polanco to get to her and take advantage of her. I understand that Mrs. Polanco's behaviour was difficult, but if Mrs. Lake's evidence is

to be believed, it suggests that as far back as 2014 she realized that she was ill-equipped to deal with Mrs. Polanco's emotional and mental health issues (which she appears to have diagnosed on her own at that point). However, I agree where it is stated that she had certain powers which she could have and ought to have invoked. Instead she appears to insist on a process of advising or recommending certain support services to Mrs. Polanco. I am not of the view that the Department of Public Administration necessarily had a duty to become complicit in that approach.

[57] Mrs. Lake goes on to give evidence about the health implications of the stress she states she endured in dealing with Mrs. Polanco's issues. Firstly, she speaks of taking ill in July 2014 because of the months of stress in dealing with Mrs. Polanco. She collapsed at her home in April, 2015 and again relates this health episode to her having to deal with Mrs. Polanco. At that point she was placed on sick leave by Dr. Bryan from 15th April to 4th May, 2015. She goes on to state that on 1st April, 2016 she visited Dr. Bryan because she was experiencing tightness in her chest, shortness of breath and light headedness. She states that Dr. Bryan told her that she was suffering from anxiety and prescribed medication to be taken once per day for two weeks. She was placed on certified sick leave until 12th April, 2016. She was again placed on sick leave from 24th November, to 12th December, 2016. She also claims that as a result of her illness she had to seek medical treatment overseas for which she took a loan and requested her back pay from deferred salary with the Government in order to meet the cost.

[58] Despite stating that the doctor informed her that her symptoms were stress related, the documentary medical evidence presented to the court does not make such a reference. In fact the referral letter dated 21st March, 2016 states as follows:

Dear Sir/Madam,

Aunika Lake is a 37 y.o. F who presents with a serious medical condition for which she is being referred to see a gastroenterologist at the Pavia Hospital, San Juan, Puerto Rico. I therefore recommend that Mrs. Lake be accorded the required standard

procedures for a serious overseas medical referral. Your kind understanding is appreciated.

Yours truly.

Dr. Clyde L. Bryan MD, FACP

Diplomat in Internal Medicine

[59] I have to say that, for my part, I do not find the medical evidence presented for the period up until 2016 can be relied on as providing any opinion on the question of whether Mrs. Lake's medical condition was caused by work related stress. Although she said this in her oral evidence, the reports and documents do not substantiate this. In fact on 21st March, 2016 Mrs. Lake wrote to the Permanent Secretary in the Department of Public Administration requesting payment of her deferred salary in order to seek medical attention overseas. The letter does not indicate that this medical attention was on account of an ill-ness brought on by work related stress. The Executive Council met and approved the payment and no mention was made of this being a work related medical issue.

[60] As I have said earlier, the issues with Mrs. Polanco came to a head in November 2017. Mrs. Lake states that she continued to suffer health challenges up to that time. She states that on 23rd November, 2017 whilst at work she was feeling weak and unwell. As a result she went to see Dr. Bryan. She states that Dr. Bryan was very concerned about her elevated blood pressure. She stated that he expressed concern with her constant shaking and non-stop vomiting. Mrs. Lake states that she had been having chest pains, numbness in her hands and legs, severe headaches, and pain in her neck.

[61] Mrs. Lake said that Dr. Bryan called Hughes Medical Centre to make an appointment for her to meet with the Gastroenterologist specialist, who was to visit Anguilla on 1st December, 2017. She said that she informed the doctor of the situation (I assume she was referring to the situation with Mrs. Polanco) and the doctor advised her to divorce herself from this matter or it could kill or cause irreparable harm to her well-being. It was her evidence that Dr. Bryan was of the view that she was experiencing Adjustment Disorder with anxiety. She apparently understood this to mean that this Adjustment Disorder is brought on by traumatic events. Her doctor advised her to have absolutely no contact with Mrs. Polanco and the situation

while on leave. The doctor then placed her on certified medical leave from 23rd November, 2017 to 11th December, 2017. On 11th December, 2017, Mrs. Lake returned to the doctor complaining of excessive vomiting and severe panic attacks. She was assessed by the doctor and he diagnosed her with Panic Disorder. He prescribed medication and extended her sick leave for a further 30 days.

[62] In his medical report dated December 2017 Dr. Bryan stated that in his assessment of Mrs. Lake between 2015 and 2017 he concluded that the medical complaints experienced by her were brought about by workplace stress and the hostile environment she described to him during her visits. As it relates to her hyperthyroidism, with which she was diagnosed in 2015, he opined that stress can suppress the hormone and can bring on the disease and/or aggravate it. In his opinion, this is what likely happened to Mrs. Lake. However, in questions put to Dr. Bryan by counsel for the defendants he noted that stress is not a cause of hyperthyroidism. The disease can remain dormant for years but can be triggered or worsened by stress. He also noted that the symptoms experienced by the claimant can be symptoms of hyperthyroidism. He noted that he had diagnosed Mrs. Lake with celiac disease in 2005. Dr. Bryan stated that this disease can cause nausea, excessive vomiting, headaches, fatigue, numbness, joint and muscle pain but not breathlessness.

[63] Whilst on sick leave, Mrs. Lake states that she made certain requests of the Department of Public Administration regarding security measures to be placed in the office. I note that by that time Mrs. Polanco was no longer in the office. She had been placed on leave pending disciplinary proceedings and there is no evidence to suggest that she had returned there at any time since November. It is also important to note that the police had been contacted at one point in time and it appears that a warning had been issued to Mrs. Polanco.

[64] Mrs. Lake sent in a list of demands regarding security for the office prior to her return. The evidence suggests that the letter was received towards the end of the financial year and she was informed that there were no budgetary allocations to meet those requests at that point in time but that the budget for the following year was then being negotiated. In addition to that, it was noted that the Labour Department was at a temporary location and would be moving to new accommodation in February, 2018. As such, it was not recommended that

significant funds be spent on security for the temporary location. Mrs. Lake was offered a further period of leave in order to further address those issues.

- [65] Mrs. Lake returned to work on 11th January, 2018 and observed that the security measures she asked for were not put in place. She then sent in a letter of resignation on that date. She describes her decision to resign in the following manner:

“I returned to work on January 11, 2018 and noted that no effort was made to put any security measures whatsoever in place. As a result, on that date I wrote and submitted my letter of resignation with immediate effect. I wish to further put my decision in context. For four years I have been begging for assistance, holding on for Public Administration, PS Labour or Deputy Governor to take action to eliminate the threat from my department. I held on through all my stress, panic, anxiety, fear and sickness because I hoped that my superiors would take action and do all that they could to protect me and the staff and keep us safe. I had had four years of believing the emails that “this should not happen to any member of the public service” and “no one should have to endure what the Labour Commissioner has had to” and “something needs to be done”, and I knew all too well that in the midst of all the emails, absolutely nothing had been done. I knew that when someone is put on leave, it cannot be indefinite so that they have to return and they would return to the department from which they last work, unless transferred. I knew that in all my discussions and pleas for Mrs. Richardson-Polanco to be moved, such a decision was not made, which meant that Mrs. Richardson-Polanco would one day return to the Labour Department and the stress would continue.

All I begged for was the installation of security, the quotation for which was so low, yet two months after I was on sick leave, no security was installed. On January 11, 2018, I was overwhelmed to think that my life meant so little to my superiors that not even security costing EC\$3,273.81 could be implemented. At that point, I had to consider the advice of my doctor, whether I could continue to work in a system that did not value my life, safety, health or sanity; whether I was willing to continue attending an office that was unsecure; whether I could easily lose my life and my son would be left

motherless. I was already so sick, vomiting, panic attacks, sleep deprived and felt that I was not the mother that I wanted to be or could be. My home life was consumed by fear and the stress of having to manage dealing with Mrs. Richardson Polanco so that others would feel as safe as they could feel in the circumstances.”

- [66] The evidence suggests that the move to the new location was delayed and that in light of that in February 2018 security measures were in fact put in place at the Labour Department where it was temporarily located. It is also important to note at this stage that on 28th November, 2017 Mrs. Lake finally submitted a report on Mrs. Polanco with a recommendation for her dismissal from the Public Service. I understand that the disciplinary process began but was delayed until Mrs. Polanco herself voluntarily resigned from the Public Service.

The Law

- [67] With the exception of the interpretation to be placed on the provisions of the General Orders, there is generally no dispute between the parties regarding the broad applicable legal principles relied on in this case. The issues relate to the law of constructive dismissal and the question of whether Mrs. Lake’s resignation falls within those general principles. The court must also consider the legal principles surrounding the employer’s duty to provide a safe place of work and whether the Government of Anguilla had been in breach of that duty in relation to Mrs. Lake.
- [68] In the case of ***Western Excavating (ECC) Ltd. v. Sharp***² Lord Denning set out the general principles of constructive dismissal in the following manner:

“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further

² [1978] I.R.L.R. 27

performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say that he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once."

[69] Counsel for Mrs. Lake refers to **Halsbury's Laws of England**³ where the principles were also set out as follows:

32. In General. A contract of employment contains an implied term that the employer will take reasonable care for the employee's health and safety. The level of this duty is the same as that of the employer's common law duty of care in negligence; and so an employee injured at work may theoretically have a cause of action in both contract and tort... The scope of the implied duty of care has been extended to cases where a third party becomes responsible for the employee's safety, to rescuers of employment endangered by their employers...

33. Nature and extent of duty of care at common law. At common law an employer is under a duty to take reasonable care for the health and safety of his employees in all the circumstances of the case so as not to expose them to an unnecessary risk. For convenience, in applying the principle in particular cases, the employer's obligation has long been recognized as threefold in character, that is to say, to provide: (1) a competent staff of employees; (2) adequate material; and (3) a proper system of work and effective supervision.

³ (5th Ed.) Volume 39 at paragraph 32 and 33

[70] Reference was also made to the case of ***Bay Trust Corporate Services Limited v. Karen Acosta Longsworth***⁴. In that case the Caribbean Court of Justice examined the principles of constructive dismissal. It was there noted that Lord Denning in ***Western Excavation*** had rejected what was referred to as the **reasonableness test** in determining whether the employer's conduct had been such that the employee was entitled to leave the job. The applicable test is determined to be the contract test in that the employer's conduct must be such that it goes to the root of the contract.

[71] The issue raised by Mrs. Lake is that she was entitled to a safe place of work. In her pleadings she makes the following assertions regarding her entitlement:

- (a) *The Government of Anguilla failed to provide a safe place of work in that it failed to take any meaningful steps to eliminate the threat of the Employee;*
- (b) *The Government of Anguilla failed to provide adequate plant and equipment in that it failed to prioritize or provide security for the Labour Department as and when requested or at all;*
- (c) *The Government of Anguilla failed to provide a safe system of work in that not one supervisor took adequate action to assist the Employee and/or eliminate the threats, violence and discomfort caused by the Employee;*
- (d) *The Government of Anguilla failed to provide competent staff in that it allowed the Employee to continue in its employ as a public servant and Labour Officer even in the face of the threats, violence and destruction caused by the Employee;*
- (e) *The Government of Anguilla failed to transfer the Claimant to a safer work environment;*
- (f) *The Government of Anguilla failed to treat the Claimant as it did the Employee by at all material times prioritizing the Employee's personal circumstances over the safety and life of the Claimant;*

⁴ [2020] CCJ 8

(g) The Government of Anguilla failed to take any reasonable or other steps to give credence to the Claimant's fundamental right to life by continuously putting the Claimant in a position where she had to risk her safety and life to try to preserve those of her staff and that of the Employee.

[72] In light of this, it is important to consider the law as it relates to the employer's duty to provide a safe place of work. In the case of ***Wilsons and Clyde Coal Co Ltd v English***⁵ it was determined that this duty on the employer is three-fold. The employer must take care to:

- (a) select proper staff;
- (b) provide adequate materials and
- (c) provide a safe system of working.

[73] It is also accepted that this duty is not merely tortious but it is contractual. It has been determined that the failure to provide a safe system of work, for example, can entitle the employee to leave the job and claim constructive dismissal. That much was established in the case of ***British Aircraft Corp v Austin***⁶. However, as it relates to the duty of the employer and the general principles of constructive dismissal, the case of ***Graham Oxley Tool Steels Ltd v Firth***⁷ is instructive. In that case the court considered two issues which are relevant to the matters this Court is called upon to consider. Firstly, the court considered whether there was such a significant breach so as to go to the root of the contract. The court then went on to consider whether the lack of a complaint made by the claimant was sufficient to provide a defence against her claim.

[74] Insofar as it relates to the nature of the breach, it was stated in ***Graham Oxley*** that not every breach of that duty would go towards the root of the contract. There it was noted that ***"[i]n every case, what has to be done, is to look at the circumstances of the contract, the***

⁵ [1938] AC 57

⁶ [1978] IRLR 332

⁷ [1980] IRLR 135, EAT

obligation under the contract and whether the breach is of such a quality that it indicates that the employer no longer intends to be bound by his obligation under the contract.” The issues are therefore fact sensitive and it is important for the court to consider the peculiar facts of each case, taking into account the nature of the contract and the circumstances under which it is said to have been in breach. The court must then go on to consider whether that breach, if it is found to be the case, goes to the root of the contract.

[75] The second issue in ***Graham Oxley*** was the question of whether or not Mrs. Firth had actually made any complaint to her superiors regarding the conditions she eventually complained about. Attorneys for the defence in that case relied on certain statements made by the court in the case of ***Western Excavating (ECC) Ltd. v. Sharp***. There the court noted that after a complaint is made by the employee ***“it is only after investigating promptly and sensibly individual complaints that [employers] can discharge their general obligation to take reasonable care for the safety of their employees.”*** The argument was that there needed to be a complaint in order for the employer to act. The court in ***Graham Oxley*** rejected that argument on the peculiar facts of that case. It was however noted that in a proper case, the complaint, or lack thereof, may play a considerable role in determining the breach.

[76] In my view this is important for two reasons. Firstly, a situation may arise where the employer is simply unaware that a health and safety issue exists or the extent to which it does; and secondly, the complaint may need to be adequately investigated to ensure that the allegation is even true and that it is not frivolous and also to determine what precisely can and ought to be done to rectify the situation. In some circumstances the complaint may provide a conflict between other obligations of the employer and these facts should be taken into account whilst giving due consideration to the nature of the risk of harm.

[77] In the circumstances of the case before me, two issues stand out. One is that Mrs. Lake was the Head of Department and as such had certain powers and obligations of her own to perform in order to ensure that the Labour Office was a safe environment to work. Her duty to document, investigate and report issues emanating from the Department regarding an employee’s performance and behavior must be considered here. She also had the power to

make recommendations of her own in relation to what should be done with the employee. Secondly, the complaints were in relation to Mrs. Polanco, who was an employee with certain rights of her own. There is a question for consideration in the peculiar facts of this case as to whether Mrs. Lake had properly and adequately exercised her own powers and fulfilled her own obligations in ensuring that the issues with Mrs. Polanco were dealt with expeditiously and properly within the General Orders which govern her own employment. In light of this it is important to take a close look at those provisions as well as the **Public Service Commission Regulations**.

[78] In accordance with Section 4.1 of the **General Orders** of the Public Service, a disciplinary matter is described as a circumstance where “***an officer's conduct or performance falls short of expected standards.***” The section goes on to state that “***[a]n officer may not avoid disciplinary action merely because the standard of conduct or performance is not written down, or referred to in the General Order.***” Insofar as that is the case, the General Orders provide a non-exhaustive list of conduct which may be the subject of the disciplinary provisions. The list is as follows:

- (a) ***Negligence: Failure of an employee to exercise the skill and care expected of an officer performing the function in question.***
- (b) ***Unreliability: Failure to comply with job attendance requirements, for example, lateness, absenteeism or leaving the job early without reasonable justification.***
- (c) ***Insubordination: Refusal to obey a reasonable instruction given by or on behalf of a superior officer or deliberate disrespect shown to a superior officer. Non-compliance with a reasonable request from a superior officer would constitute a refusal.***
- (d) ***Substance Abuse: Being under the influence of or using any alcohol, illegal drugs or any other prohibited substance while on duty.***
- (e) ***Interfering with the Rights of other Employees: Behaviour likely to adversely affect the maintenance of discipline and good order within a department including***

but not limited to fighting, intimidation, verbal abuse, pernicious gossip, sexual harassment, lewd behaviour and practical jokes.

(f) Ignoring Safety Procedures: Failure to observe any recommended safety procedures (written or oral) whether or not resulting in the creation of a hazard to others.

(g) Criminal Offences: Including offences involving dishonesty, theft, assault, immoral acts and other offences for which an officer may be liable to a term of imprisonment.

(h) Inappropriate Conduct: Engaging in abusive behaviour, physical or verbal violence or any similar behaviour; publication of nude or sexually explicit photos or other information on the internet in such a way that the officer may be identified.

(i) Misuse or abuse of ICT: Disclosure to another and/or sharing of username and/or password with another; any attempt to access files or directories that the officer is not authorized to access.

[79] As already indicated, this is not an exhaustive list of actions on the part of an employee which may justify the invocation of the disciplinary process within the Public Service in Anguilla. Section 4 goes on to highlight the procedure for oral and written warnings to be issued to an employee. For the purpose of this judgment it is important to highlight the provisions in full. They are as follows:

4.3 When a disciplinary matter arises, the Supervisor of the officer concerned should first establish the facts before recollections fade, taking into account and recording the statements of any available witnesses and noting and collecting any documentary evidence.

4.4 The Supervisor should then notify the Head of Department who will investigate as soon as reasonably practicable. Normally this would be within 7 days of

the occurrence of the disciplinary matter but not before all the relevant evidence is available for discussion and consideration.

4.5 The Head of Department will make sure that the officers are present, are told of the case against them and are given the opportunity to state their own case.

4.6 The Head of Department will advise officers of their right to be accompanied by a fellow employee of their choice or be represented by the Anguilla Civil Service Association or some other Staff Association.

4.7 If the case against the officer is substantiated, the Head of Department is authorised under this procedure to give the officer an oral warning (see Appendix Form PI12).

4.8 If the case against the officer is substantiated and warrants more than an oral warning, or if the officer concerned already has a record of any oral warning less than twelve months old on file, the Head of Department is authorised under this procedure to give the officer a written warning (see Appendix Form PI13).

4.9 If the case against the officer is substantiated and warrants more than a written warning, the Head of Department shall immediately notify and forward to the Permanent Secretary all the relevant evidence.

4.10 If the Permanent Secretary agrees with the Head of Department's assessment of the case, then the Permanent Secretary shall give the officer a final written warning (see Appendix Form PI14). This is automatic if the officer concerned already has a record of a written warning less than twelve months old on file.

4.11 If on receiving the statements and documentary evidence the Permanent Secretary is of the opinion that the case warrants more than a final written

warning, then the Permanent Secretary shall immediately notify the Governor of the case against the officer and forward to the Governor all the relevant evidence.

4.12 If the Governor agrees with the Permanent Secretary's assessment of the case, then the Governor shall refer the matter to the Public Service Commission. This is automatic if the officer concerned already has a record of a final written warning less than twelve months old on file.

4.13 Subject to the Public Service Commission Regulations, the Public Service Commission will make sure that officers are present, are told of the case against them and are given the opportunity to state their own case. All relevant evidence will be presented at the hearing, including statements from any witness whether given in writing or in person. Officers will have the opportunity to question witnesses, to make representations concerning any written statements considered and to call witnesses or present written evidence in support of their case.

4.14 Subject to the Public Service Commission Regulations, the Public Service Commission will advise officers of their right to be accompanied by a fellow employee of their choice or a member of the Anguilla Civil Service Association or Staff Association.

4.15 It is the duty of all officers to notify Supervisors of all cases where they are aware that misconduct or performance below expected standards by another officer may have taken place.

4.16 Heads of Department, Permanent Secretaries and the Governor may initiate disciplinary actions under any of the procedures outlined in this section irrespective of whether or not a disciplinary issue has been notified to him by the Unit Manager.

...

4.22 A record of all oral warnings and details of all disciplinary action taken in the form of written warnings should be given to the officer on the recommended form, a copy of which should be forwarded to Public Administration to be placed on the file of the officer. The recommended forms for recording and issuing warnings are available from Public Administration.

4.23 A warning will cease to count against an officer and will be deemed to have expired if there is no further misconduct or performance below expected standards during the twelve month period immediately following such warning, however, such written warnings will remain on the officer's file and will be taken into account in any further disciplinary action considered by the PSC.

4.24 Public Administration shall keep records of all disciplinary procedures, action taken and warnings given. Subject to the Public Service Commission Regulations, officers who have been or who are still subject to disciplinary hearings or disciplinary action under the procedures of this Chapter shall be entitled to free copies of or to be allowed access to any documentary evidence relied upon.

- [80] There are a number of observations which need to be made in relation to those procedures. Firstly, it will be observed that the provisions are founded on the principles of due process and natural justice as it relates to the employee against whom an allegation is made. An accusation of potential disciplinary conduct is just that; an accusation. There needs to be a proper and adequate investigation into the conduct in such a manner so as to give the employee a right to be heard. Secondly, it is to be observed that this procedure is to be carried out with a certain measure of expedition. Thirdly, there must be proper documentation of the allegations and the findings of whatever investigation is carried out so

that the employee can be given adequate information regarding the allegations if it is to be escalated further. That would include taking statements from persons who witnessed the behaviour of the employee which may be subject to the disciplinary procedures.

[81] Lastly, and very importantly, the Head of Department plays a critical role in this process. This is to ensure that the investigation is carried out and that it is adequately documented. The Head of Department is also empowered to issue oral and written warnings and even go as far as initiating disciplinary proceedings against the employee. These warnings are to follow prescribed forms as specifically contained in the General Orders themselves. Although the Permanent Secretary and the Governor may also initiate disciplinary proceedings, it is important for the Head of Department to ensure that these procedures are followed so as to properly document and investigate matters arising within the department. The General Orders makes it very clear, that the Permanent Secretary is to form an opinion as to whether he or she agrees with the assessment of the Head of Department in order to exercise her own powers. That assessment is independent and impartial and must be based on the statements and documentary evidence presented by the Head of the Department. Where the General Orders refer to the Head of Department notifying the Permanent Secretary of such an issue, it goes on to state that this notification must include all the relevant evidence.

[82] To my mind, the role of the Head of Department is one which may call upon the holder of such an office to manage difficult situations in relation to staff behaviour. This appears to me to be a critical part of that function as he or she forms part of the chain of management with the power and duty to ensure that staff under his or her supervision complies with their obligations under the General Orders. Mrs. Lake's own contractual duties therefore encompassed a role which she can and should play in ensuring safety in the work environment insofar as this may be affected by the behaviour of members of staff.

[83] In order to address certain submissions made in this case, it is important to consider the provisions of section 7.12 of the General Orders. The section states as follows:

The Governor may at any time call upon an officer to submit to an examination by such Medical Officer, or such Medical Board, or such registered medical

practitioner as the Governor may designate for the purpose. Where an officer has been on sick leave for a continuous period of three months, except during pregnancy, the officer will be required to submit to an examination by a Medical Board. Where the officer has taken 120 days sick leave in any two-year period, the officer may be required to submit to examination by a Medical Board. Subsequent examination may be required after consideration of the first report of the Medical Board. Any officer who fails to submit to an examination at the place and time instructed may face disciplinary action, including possible dismissal on the grounds of gross misconduct.

[84] In my view, the General Orders seeks to address issues relating to the impact which an employee's health may be having on his or her performance on the job. As will be noted later, the Public Service Commission has the power to retire a public officer on health grounds. There is also a provision to retire a public officer in the public interest. However, in my view, it is important for the Governor or the Public Service Commission to give due regard to due process in the exercise of those powers. To my mind, if the Head of Department has grounds for believing that an employee's health is affecting his or her performance, he or she is duty bound to bring this to the attention of the Governor, whether through the Permanent Secretary or not. In doing so, it will also be important to properly and adequately document the reasons for such concern so as to ensure that the employee's rights are taken into account if those powers are to be invoked.

[85] I am of the view that the General Orders must be read in conjunction with the **Public Service Commission Regulations**. Section 31(1) of the Regulations state that “[t]he Commission shall deal with disciplinary proceedings against officers in light of reports from Heads of Departments or otherwise.” It is important to note that the Head of Department is singled out here as one whose report is necessary for the Public Service Commission to deal with disciplinary proceedings against an officer. It underscores the importance of the proper documentation and reporting of issues arising within the department which may or may not lead to disciplinary proceedings against the officer. It also underscores the fact that the Head of Department is crucial in initiating the proceedings against an officer. That is

especially the case if the Head of Department has first-hand knowledge of the issues arising within the department.

[86] Section 31 goes on to state that ***[w]here an offence against any law appears to have been committed by an officer, the Commission, before making a recommendation under subsection (2), shall obtain the advice of the Attorney General as to whether criminal proceedings ought to be instituted. The Commission shall not recommend the initiation of disciplinary proceedings before the determination of the criminal proceedings so instituted and the time allowed for an appeal from such determination has expired.*** In fact section 33 of the Regulations states that ***“[w]here upon a preliminary investigation or a disciplinary enquiry an offence against any law appears to have been committed by an officer, the Commission shall, unless action by the police has been or is about to be taken, consult the Attorney General as to whether criminal proceedings should be instituted.”***

[87] I reference this section of the regulations because it appears to me that some of the allegations made against Mrs. Polanco were potentially criminal in nature. Not only were there alleged threats to bomb the department and to shoot people, but she allegedly threatened her children and, on one occasion, a third party came to the Department to make allegations of criminal activity against Mrs. Polanco. I will assess this in more detail later on but it appears to me that Mrs. Lake in particular took the position of providing mental health as an excuse for Mrs. Polanco's behaviour without even having a proper diagnosis of this. To my mind these allegations, if true, ought not to have been taken lightly, but ought to have been documented within the Department and properly reported to the relevant authorities; including possibly to the police. As will be noted however, there was not a single note placed on Mrs. Polanco's file, or a single report formally presented to the Permanent Secretary, the Governor, nor the Public Service Commission prior to 2017 regarding the most egregious allegations which Mrs. Lake now makes regarding Mrs. Polanco's behavior.

[88] Section 32 of the Public Service Commission Regulations makes provision for reporting misconduct to the Commission. The section states as follows:

32. (1) Any misconduct by an officer shall be dealt with under this Part as soon as possible after the time of its occurrence.

(2) Any case not covered by these Regulations shall be reported to the Director of Human Resource Management and the Commission may issue instructions as to how the case is to be dealt with, and the case shall be dealt with accordingly.

[89] I pause here to note the importance of ensuring that misconduct on the part of an employee is addressed with a certain measure of expedition and that it is properly reported to the relevant authorities in order to ensure that they can act accordingly. Section 35 of the Regulations makes provision for the interdiction and suspension of an officer pending disciplinary proceedings. This means that if there is a general concern about the behaviour of the officer in the department, he or she may be suspended whilst the disciplinary proceeding is carried out. Insofar as it relates to the rights of the employee, section 36 of the regulations states as follows:

“An officer in respect of whom a disciplinary enquiry is to be held shall be entitled without charge to him to receive copies of, or to be allowed access to, any documentary evidence to be relied on for the purpose of the enquiry. He shall also be given upon request a copy of the evidence (including copies of documents tendered in evidence) after the enquiry is closed.”

[90] This provision again underscores the need for due process. It is therefore vital for allegations against an employee to be properly and contemporaneously documented. This will ensure that if the Commission determines that discipline is required, there is an observance of the basic rules of natural justice and that the employee is given an adequate opportunity to defend himself or herself against the allegations. This will also help the sanctity of the process in general. Personnel from the Department of Public Administration, as well as the Governor, who do not have first-hand knowledge of the employee's conduct, would be better capable of exercising their own powers if proper and adequate reports are presented to

them. The Head of Department plays a critical role in that process. In light of this Section 43 of the Regulations is important and states that:

(1) Whenever a Head of Department considers it necessary to institute proceedings on the grounds of misconduct against an officer serving in his department, he shall cause such preliminary investigation as he considers necessary to be made and report the facts to the Governor through the Director of Human Resource Management together with his recommendations. The Governor shall, after considering the results of the preliminary investigation or of the report, as the case may be—

(a) if he considers that disciplinary charges should be framed against the officer, forward to the officer a statement of the charge or charges framed against him together with a brief statement of the allegations, insofar as they are not clear from the charges themselves, on which each charge is based; and shall call on the accused officer to state in writing before a day to be specified (which shall allow a reasonable interval for the purpose) any grounds on which he relies to exculpate himself; and

(b) if the officer does not furnish a reply within the period specified or does not in the opinion of the Governor exculpate himself, forward to the Secretary copies of reports on the case, the charges, the officer's reply, if any, together with his own comments.

[91] In my view therefore, the Head of Department is empowered to consider the initiation of disciplinary proceedings against an employee on the grounds of misconduct. I would go as far as to say that where the conduct of the employee is particularly egregious, the Head of Department is duty bound to ensure that there is a thorough investigation and the proper reporting of the behaviour to the authorities. Mere telephone calls to the Permanent Secretary will not be sufficient in fulfilling that purpose, as the Permanent Secretary is duty

bound to form her own independent view on the matter based on the evidence presented to her.

[92] In fact, the General Orders in conjunction with the Regulations indicates that the investigation of misconduct commences at a level even lower than that of the Head of Department. The employee's immediate supervisor is to conduct an investigation and the Head of Department should ensure that this is done. The section underscores how critical it is for the Head of Department to document, investigate and report the behaviour of an employee which may be subject to disciplinary action and to do so with a certain measure of expedition. The regulations also demand that the Head of Department provides his or her own recommendations insofar as what is to be done with the employee.

[93] It is also important to give consideration to section 26 of the Regulations. This outlines the general powers of the Commission to terminate the employment of an officer. The section states that:

The services of an officer may be terminated only for the reasons stated hereafter—

(a) where the officer holds a permanent appointment—

(i) on dismissal or removal in consequence of disciplinary proceedings,

(ii) on normal retirement,

(iii) on retirement for medical reasons,

(iv) on compulsory retirement in the public interest, or to facilitate improvements in the organisation of a Department, or on the grounds of financial stringency, or

(v) on abolition of office;

[94] I reference those sections to further highlight the broad powers contained in the General Orders and the Public Service Regulations to address the circumstances regarding Mrs. Polanco's behaviour. Quite apart from an actual disciplinary hearing, the Commission is empowered to recommend retirement on medical grounds and even the retirement of the officer in the public interest. I would add though, that even the invocation of this process would necessitate the proper documentation and reporting of the reasons to even suspect that an employee should be subject to the Medical Board in this way. The employee is at all times entitled to due process and oral communication or phone calls to superiors in the Public Service would not necessarily suffice in order to invoke those powers.

Analysis

[95] I wish to state from the onset that there are two broad submissions made on behalf of Mrs. Lake with which I do not agree. The first is that Mrs. Polanco's issues were not disciplinary in nature but were rather mental health issues and needed to be primarily addressed as such. I do not find that to be the case. It must be noted that Mrs. Lake states that this behaviour became apparent in Mrs. Polanco in the early part of 2014. At that point there was no diagnosis from any mental health practitioner upon which this view could have been confirmed. The allegations allegedly involved Mrs. Polanco threatening violence against the staff in the office and against her own children. This is behaviour which falls squarely within the provisions of the General Orders. It states clearly that behaviour likely to adversely affect the maintenance of discipline and good order within a department including but not limited to fighting, intimidation and verbal abuse are all conduct which can give rise to disciplinary action. In addition to that, the General Orders also state that behaviour including offences involving dishonesty, theft, assault, immoral acts and other offences for which an officer may be liable to a term of imprisonment as well as engaging in abusive behaviour, physical or verbal violence or any similar behaviour all fall within the definition of misconduct. All of these are matters of discipline. Even then, the General Orders go as far as to say that the list presented is not exhaustive.

[96] The Public Service Commission Regulations itself states that any case of misconduct must be dealt with as soon as possible and must be reported to the Director of the Human Resource Management by the Head of Department. In my view, where the conduct of an employee falls within that definition it is incumbent on the Head of Department to treat such conduct as being at least potentially disciplinary in nature. It would have been inappropriate to simply determine without a proper investigation or expert opinion that Mrs. Polanco was suffering from mental health issues so as to provide a justification for her behaviour and therefore simply not follow the provisions of the General Orders and Regulations. The disciplinary process in itself, as well as the general powers of the Commission and perhaps even Mrs. Lake as the Head of Department, could have resulted in the further investigation of Mrs. Polanco's emotional and mental health issues; but that would not and ought not to have resulted in Mrs. Polanco's behaviour being viewed as anything other than disciplinary in nature from the outset. In fact, if Mrs. Lake's evidence is to be believed, I am of the view that this conduct was particularly egregious and even the police ought to have also been involved from the very beginning.

[97] Mrs. Lake was persistent in her evidence in saying that she made constant reports to her superiors and the Department of Public Administration regarding Mrs. Polanco's behavior from 2014 onwards. However, insofar as what is required under the General Orders, there is not a single document or report presented to the court to substantiate this assertion. In total, the court was presented with 8 file notes of recorded behaviour on the part of Mrs. Polanco between 2014 and 2017 and with the exception of one note in March 2017, none of them are in line with the serious allegations Mrs. Lake has leveled against her regarding this threatening and potentially violent behaviour. In 2014 there were a total of 4 file notes which covered behavior which, to my mind, was enough to be taken more seriously than they were. But at most Mrs. Polanco was rebuked by Mrs. Lake and a note made on her file. On one occasion an oral warning was given.

[98] In 2015 there was one file note which touched and concerned behavior for which Mrs. Polanco was given "a chance" at the instance of the Deputy Labour Commissioner who was subordinate to Mrs. Lake. In 2016 there were two file notes. In June 2016, Mrs. Polanco simply left the front office unattended and left early without any notification to her superiors.

Upon complaint by a customer, Mrs. Lake investigated and questioned Mrs. Polanco in the presence of other officers. Mrs. Polanco stated that she was upset with her husband and the Welfare Department and simply left to go to that department before 4:00pm. Mrs. Lake's response was to remind Mrs. Polanco that this was a business place with a duty to serve customers both internal and external and that Mrs. Polanco does the Department a disservice especially when it comes to behaving in ways that are not in keeping with the work ethics of the Department. After what Mrs. Lake describes as more than 2 years of persistent challenges with Mrs. Polanco that was the full extent of her decision making regarding such types of behaviour. Although she states that Mrs. Polanco was written up, the court was not provided with any copy of a written notice being issued to Mrs. Polanco in the form prescribed under the General Orders.

- [99] In September 2016, Mrs. Polanco was reported by a work permit holder (as such a customer of the Department) for coming to her home and breaking down her gate and door. Mrs. Lake was furnished with photographs of the broken gate and door. Mrs. Polanco was charged for the offence by the police after a report was made to the police by the customer. Mrs. Lake, having confronted Mrs. Polanco about the allegation, received the following response from her:

"My boyfriend and I planned on going SXM for the weekend. I was calling him, calling him and he wouldn't answer so I drive up to the house and I pass this woman house and see he car there so I jumped out the vehicle and went in after he. I ain touch the woman. I only mash up her gate not her door."

- [100] This is a note placed on Mrs. Polanco's file. If this is to be believed then it means that Mrs. Polanco admitted to a relatively serious act of criminal damage at the home and property of a customer of the Department. Yet Mrs. Lake's response to this was to inform Mrs. Polanco that she would get her some help as her behaviour was not in keeping with the Government of Anguilla's standards. Mrs. Lake then made contact with Pastor Berg to see if he could offer assistance. Pastor Berg informed Mrs. Lake that the Seventh Day Adventist Church offers a free service to the community for counselling. Mrs. Lake personally took

Mrs. Polanco for the first session of counselling. She went back a total of five times and then discontinued the counselling.

[101] Mrs. Polanco was also allegedly guilty of breaching the cardinal rule of not informing an employer of a confidential complaint made by an employee against the employer. She also allegedly engaged in the nepotistic and dishonest act of attempting to fast track her own boyfriend's work permit application by deceitfully informing the minister's office that this was requested by Mrs. Lake herself. None of those actions were escalated to an extent beyond personal reprimands of Mrs. Polanco.

[102] In cross-examination, Mrs. Petty-Barrett was at pains to point out that the notes she saw on Mrs. Polanco's file in March 2017 were primarily spent and that only one oral warning had ever been issued to Mrs. Polanco. She pointed out that an oral warning if given must be put in writing. When it came to the most egregious claims made by Mrs. Lake against Mrs. Polanco none of this was noted on the file. No statements from any of the members of staff who allegedly made reports of threats by Mrs. Polanco were noted. The police were never contacted about threats of criminal conduct.

[103] I must state that for my part I am of the view that Mrs. Lake's actions in dealing with some of those issues were not in keeping with her own obligations under the General Orders and the Public Service Commission Regulations. Some of these are even alleged criminal acts in circumstances where Mrs. Lake states that there had been threats of violence against employees. Whilst it is not for the court to dictate to Mrs. Lake the manner in which to exercise the discretion afforded to her in the General Orders, it appears to me that even for some of the infractions which she bothered to actually place on Mrs. Polanco's file, her responses were somewhat disproportionately mild in comparison to Mrs. Polanco's own actions. This underscores an observation made by Mrs. Horsford-Harrigan and Mrs. Rogers in that there appears to have been a greater measure of sympathy shown to Mrs. Polanco by Mrs. Lake from the onset rather than viewing her issues as being disciplinary; which in my view they were.

- [104] The Regulations empowers the Public Service Commission to act in such circumstances but those incidents had to have been contemporaneously and adequately reported. What Mrs. Lake proceeded to do was assist in providing free counselling services to Mrs. Polanco for her behaviour. That was not an obligation under her contract of employment and no one directed her to do so. In addition, I do have a difficulty in accepting that Mrs. Lake was as fearful of Mrs. Polanco as she said she was from as far back as 2014 when she proceeded to personally take Mrs. Polanco to counselling sessions rather than formally report what was by then alleged significant misconduct under the General Orders.
- [105] The second submission made on behalf of Mrs. Lake, with which I disagree, is that the General Orders and the Government of Anguilla had no policy in place for dealing with mental health issues in the workplace. It was argued that everyone in the process attempted to deal with Mrs. Polanco's issues from the perspective of her mental health but there was no guidance on what to do. Indeed, even some of the witnesses for the defence indicated that this was the first time they were dealing with such an issue and that it was frustrating. Mrs. Petty-Barrett at one point in an email indicated that *"in [her] view a situation such as this requires an innovative solution as our normal public service rules would never have contemplated this"*. However, to my mind, not only do I not agree with Mrs. Petty-Barrett's own assessment here but I am of the view that the issues with Mrs. Polanco appeared to have been conflated from the very inception and Mrs. Lake's own approach as the Head of Department had unnecessarily complicated the issue.
- [106] Firstly, whilst it may be commendable for an employer to provide general support services for employees, there is no obligation under the law to do so if the employee's health issues do not emanate from his or her work. Mrs. Polanco's issues were personal and, given the gravity of what was alleged to have been her behaviour at work from as far back as 2014, what ultimately had to be considered was the appropriateness of her remaining in the work environment. For that, the General Orders and Public Service Commission Regulations do in fact make provision for addressing health issues from that perspective. As far as the Court is aware, psychiatry is a form of medicine and mental health is a part of the general health and wellness of an individual. Therefore, as Mrs. Rogers was able to point out in March 2017, the Medical Board could have been convened to investigate the issues of

Mrs. Polanco's mental health in much the same way any other health issue can be investigated if it is affecting the performance and/or discipline of the employee. The option of retiring the employee on health grounds is equally applicable to mental health issues as it is to any other health issue. The only thing preventing the Medical Board from being convened on this issue from the inception was the lack of proper and adequate reporting of what was going on within this Department.

[107] Contrary to what has been asserted, Mrs. Polanco was capable of getting psychiatric evaluations done as there are in fact psychiatric care facilities attached to the medical hospital here in Anguilla. In addition to that, the Social Services Department is equipped with trained counselors and social workers; some of whom had been engaged with Mrs. Polanco's personal issues. The Medical Board was perfectly capable of assessing this situation from the outset with a view to determining whether Mrs. Polanco was capable of addressing her issues to the extent of her being able to cope at work or whether she should be retired on medical grounds. It would also have given insight on whether mental health even provided an excuse for Mrs. Polanco's behaviour so as to determine whether the formal disciplinary process should take its full course. Mrs. Lake did have the power to make such recommendations herself rather than attempting to take Mrs. Polanco to counselling sessions with persons who may or may not have been properly trained in psychiatry or clinical psychology to provide the kind of investigation and diagnosis which was needed at the time.

[108] However, Mrs. Rogers stated in her evidence that up until March 2017 she was unaware of the problems being experienced with Mrs. Polanco. I believe what she had to say. There was not a single note on Mrs. Polanco's file regarding threatening and violent behaviour towards the staff before that date. Bearing in mind that Mrs. Lake as the Head of Department had the power to invoke a process and make recommendations of her own on how to deal with Mrs. Polanco, I am of the view that this issue was simply not handled properly from the time Mrs. Polanco began to display this type of behaviour in 2014 and as the Head of Department Mrs. Lake did not do what she was empowered and obligated to do.

- [109] The evidence suggests to me that from the time senior personnel in the Public Service were properly aware of the extent of Mrs. Polanco's problems, they began to take the necessary action to address it. In March 2017, Mrs. Petty-Barrett advised Mrs. Lake to invoke the disciplinary process. In meeting with Mrs. Polanco, Mrs. Lake states that she began to act up and threaten violence. Mrs. Lake does not make a single note of this on the file but placed another phone call to Mrs. Petty-Barrett instead. A meeting of senior personnel within the Department of Public Administration was immediately convened. As Mrs. Rogers points out, even at that meeting Mrs. Lake does not make a request for the disciplinary process to be invoked. Although Mrs. Petty-Barrett raised the issue, Mrs. Rogers points out that Mrs. Lake appeared to have been sympathetic to Mrs. Polanco and it was therefore recommended that the Medical Board be convened to investigate the issue of Mrs. Polanco's mental health before a formal disciplinary process may begin. Mrs. Lake did not object this. However, there is something to be said about Mrs. Lake's approach to what happens thereafter.
- [110] Mrs. Polanco was placed on medical leave and under the care of a psychiatrist as well as her social worker. However, from the first report with recommendations from the Medical Board, Mrs. Lake objects to those recommendations. As far as I can glean from the evidence, this was the first time on any record did Mrs. Lake indicate that she was not recommending that Mrs. Polanco be returned to the Labour Department regardless of the outcome of the Medical Board's investigation. In my view, if Mrs. Polanco's behaviour could not be justified on medical grounds to the extent of the Medical Board certifying her to be unfit for work, then the proper option would be to invoke the disciplinary process. This underscores the importance of properly dealing with Mrs. Polanco's issues from the beginning. The Medical Board was of the view that it could not come to a final conclusion unless Mrs. Polanco's behaviour in the work place was observed on a trial basis after she had received treatment and care for the period of her sick leave.
- [111] Again it is important to note that Mrs. Petty-Barrett indicated in cross-examination that one of the problems which existed was the lack of proper documentation of the issues experienced in the Department with Mrs. Polanco. She states that after the hurricane she shared an office with the Labour Department and although she was at times called upon to assist with Mrs. Polanco she was never fearful of her. No one else in the Department had

made any prior allegation of threats of violence directly to anyone in the Public Administration Department. The allegations made by Mrs. Lake regarding Mrs. Polanco's threats of violence were however not documented anywhere and no statements from others who had made such allegations were placed in writing. While Mrs. Petty-Barrett conceded that the allegations made by Mrs. Lake were serious enough to warrant investigation to the point where she too expressed serious concern regarding Mrs. Polanco's fitness to return to work, what was shared with her by Mrs. Lake in the file did not have any recommendations in it.

[112] Further to that, Mrs. Petty-Barrett stated that the disciplinary process starts with oral and written warnings. However, what was shown to her were not oral or written warnings. What she saw in the file was back in 2014 and could not have been used against Mrs. Polanco. She was at pains to point out that oral warnings are verbal warnings reduced to writing in the proper format. She accepted that once the substance of what is required in the General Orders is presented then that is sufficient to initiate the process. However, there was nothing shown to her that met the requirements. I agree with the sentiments expressed by Mrs. Petty-Barrett here. In my view, when Mrs. Petty-Barrett advised Mrs. Lake to initiate the disciplinary process in March 2017, that would have necessitated compliance with the General Orders and a formal investigation and adequate reporting of what had transpired.

[113] The law in relation to constructive dismissal, as well as the duty to provide a safe place of work requires the Court to look at the contractual relationship between the employer and the employee. It is inescapable that Mrs. Lake as the Head of Department was part of the management chain empowered to ensure that the work environment was safe; especially as it relates to the behaviour of employees within the Department. Ultimately she had certain powers to ensure that an investigation was done. She was also empowered to report what was taking place within the Department and make recommendations for how to deal with it. It is difficult to accept that Mrs. Lake had fulfilled that duty between 2014 and 2017. It is important therefore to give further consideration to certain specific submissions made by counsel for Mrs. Lake.

[114] It is submitted firstly that Mrs. Lake had been confronted with behavioural challenges with Mrs. Richardson Polanco since 2014 and made repeated complaints first to her former

Permanent Secretary Ms. Aurjul Wilson, who confirmed same in her witness statement. It was also asserted that under cross-examination, Mrs. Petty-Barrett also received the same complaints. It is argued that Mrs. Lake issued file notes, written and oral warnings for disciplinary matters, which is alleged to be the extent of any power she had under the General Orders. However the consensus amongst her immediate supervisors, Public Administration, the Honourable Attorney General at the time, and the Deputy Governor, was that the matter was not merely disciplinary. I do not agree with those submissions.

[115] As I have indicated before, the evidence does not substantiate the assertion that Mrs. Lake complied with the General Orders and Regulations in adequately documenting and reporting the issues faced with Mrs. Polanco. Between 2014 and 2017 there is not a single note on the file of threats of violence towards the staff. In addition to that, with the exception of one occasion, what was placed on Mrs. Polanco's file does not constitute an oral and written warning. As Mrs. Petty-Barrett pointed out, there is a proper form and procedure to be followed in doing so. In addition, the requirement to adequately investigate and take statements from persons who made direct complaints against Mrs. Polanco is a duty which arises from within the Department. What was on the file was grossly inadequate insofar as it relates to the fulfillment of the requirements under the General Orders.

[116] I also do not accept that the extent of Mrs. Lake's powers and obligations were limited to issuing oral and written notices. Counsel's submission does not adequately articulate the obligations of reporting and initiating the disciplinary process which has been placed on the Head of Department. The General Orders specifically state that ***"[i]f the case against the officer is substantiated and warrants more than a written warning, the Head of Department shall immediately notify and forward to the Permanent Secretary all the relevant evidence."*** In my view, in light of those provisions, it is not enough to simply place a phone call to the Permanent Secretary to complain about a problem every time it occurs. The Permanent Secretary has to bring her own independent judgment to bear and it is important for her to be adequately apprised of what is transpiring by being provided with all the relevant evidence. According to the General Orders, it is only if she agrees with the Head of Department's assessment should the Permanent Secretary issue a final written warning. If she is of the view that the actions are so egregious that it warrants more than a written

warning then she is entitled to forward the evidence to the Governor. Again, the need for proper recording and reporting of the evidence is essential here as the Permanent Secretary cannot forward a telephone conversation to the Governor.

[117] In addition to that, the Public Service Commission Regulations make it abundantly clear that disciplinary proceedings can be initiated upon reports by the department head. In such a significant allegation being made against Mrs. Polanco, I am of the view that oral communication with the Permanent Secretary does not constitute a report upon which the Public Service Commission would be able to act. Very importantly however is the content of section 43 of the Regulations which highlights certain powers specifically and independently afforded to the Head of Department. The section states that ***“whenever a Head of Department considers it necessary to institute proceedings on the grounds of misconduct against an officer serving in his department, he shall cause such preliminary investigation as he considers necessary to be made and report the facts to the Governor through the Director of Human Resource Management together with his recommendations.”*** This empowered Mrs. Lake to form her own independent judgment on whether Mrs. Polanco’s conduct was such that proceedings should have been initiated to remove Mrs. Polanco from the Department and from the Public Service altogether and to forward such a report to the Governor with recommendations on what should be done.

[118] It is also argued that the emails and communications between Public Administration, Permanent Secretary, Mrs. Petty-Barrett and other members of the team who were brainstorming what to do with Mrs. Polanco, is clear evidence that they were not treating this matter as merely disciplinary. I do not agree with that submission to some extent. Clearly there was reason to seek advice from the Medical Board, but that did not take away from the fact that Mrs. Polanco’s issues were manifesting themselves as clear evidence of misconduct. Even Mrs. Lake, prior to the full recommendations of the Medical Board, made it clear in one email, and for the first time, that she didn’t want Mrs. Polanco to return to the office. Other members of the team raised issues in relation to the threats of violence from Mrs. Polanco. I accept the evidence of Mrs. Petty-Barrett and Mrs. Horsford-Harrigan where they both state that they had advised Mrs. Lake to initiate the disciplinary process. In fact, even after Mrs. Polanco returned to the office Mrs. Petty-Barrett advised Mrs. Lake to initiate

the process if anything of a serious nature were to occur. In any event, section 43 of the Regulations specifically empowered Mrs. Lake to forward a report and make recommendations of her own. That was an independent power afforded to her, the exercise of which required no advice from anyone. She ultimately had authority upon which she could have and ought to have acted and she did not do so.

- [119] Counsel for Mrs. Lake also went on to argue that she could not have initiated the disciplinary process because she was awaiting direction from the team on how to proceed in this matter and therefore cannot be faulted for not initiating disciplinary proceedings in a matter where a team of at least 6 plus 2 others who were asked for help (being the AG and Merwyn 'Foster' Rogers) were uncertain as to how to proceed and were certainly undecided as to proceeding disciplinarily. In support of that submission counsel referred to two emails from Mrs. Petty-Barrett. In the first email dated 30th July, 2017 she stated that she *"attempted to reach out to Public Admin to see if we can collectively come up with a plan as to how we are going to deal with the officer. I made a suggestion in one of my emails below but there has been no substantive response"* Mrs. Petty-Barrett also indicated the following one month prior in May 2017:

"Given my reading of the GOs and PSC Regs, the only other option available to deal with officer is to work towards her dismissal and have her suspended (on full pay) while the disciplinary process is being undertaken (section 35 of the PSC Regulations). I believe that the PSC is already aware of this matter and would humbly suggest that unless there is a conclusive indication that she is not a danger, we seek to have them exercise their power to suspend pending the outcome of the disciplinary process."

- [120] I must say that I am not of the view that these emails from Mrs. Petty-Barrett substantiate the argument being made here. Mrs. Lake seems to wish to completely absolve herself from the duties and obligations she herself had under the General Orders; some of which were completely independent of any need for advice from anyone. The evidence from Mrs. Petty-Barrett taken in its totality is that she had advised Mrs. Lake from March 2017 to invoke this process she was referring to in her emails. She also gave the same advice after Mrs. Polanco returned to the office in August 2017. Mrs. Horsford Harrigan stated in an email

that she too had given that advice. However, the evidence also suggests that Mrs. Lake never appeared to be willing to exercise those powers and did not do so until 28th November, 2017 and upon direction from her superiors. In addition to that, Mrs. Petty-Barrett did highlight some of the limitations with regard to what Mrs. Lake had actually documented on Mrs. Polanco's file.

[121] Mrs. Rogers' evidence is that even at the meeting Mrs. Lake didn't seem to wish that Mrs. Polanco be subject to the disciplinary process. Mrs. Horsford-Harrigan also expressed the view that Mrs. Lake tended to lean towards assisting Mrs. Polanco and showing sympathy towards her rather than exercising her powers. I am of the view that the evidence substantiates the notion that this was the approach emanating from the Department of Labour itself. As such, I find as a matter of fact that Mrs. Lake from the very inception initiated this approach of seeking to provide care for Mrs. Polanco as opposed to viewing this matter for what it really was; a matter of discipline. It was not until the recommendations of the Medical Board that Mrs. Polanco return to work on a trial basis did Mrs. Lake make it clear that she was not willing to work with her. Even then she didn't present a report with any recommendations about the issue as she was empowered and duty bound to do under the regulations until it was requested of her after the situation had gotten somewhat "beyond the pale".

[122] In light of this, I must say that I do not agree with the criticism leveled at Mrs. Horsford-Harrigan in relation to her reaction to the direct threats made against her by Mrs. Polanco in November 2017. Mrs. Horsford-Harrigan was criticized for only now escalating issues in relation to Mrs. Polanco after she was personally threatened. However, Mrs. Horsford-Harrigan went on in an email dated 22nd November, 2017 to explain that she had previously made it clear as to her concerns with Mrs. Lake's involvement in the matter. She states that she maintained that while empathy was being shown to Mrs. Polanco, the disciplinary process should have been followed for the various offences committed. Mrs. Horsford-Harrigan states in that email that she had also previously made it clear that the police should be called when incidents like this occurs.

[123] I must say that the court is of the view that Mrs. Horsford-Harrigan's reaction was what ought to have been Mrs. Lake's own reaction as the Head of Department from the very inception; if her allegations of what was transpiring in 2014 were true. Threats were being made to kill children and the staff were allegedly threatened to be bombed and shot. Not only was there no documentation or even a statement taken from those who heard those threats, but the police were never contacted about this issue until much later; and even then it doesn't appear to me that this was done by Mrs. Lake. Mrs. Lake allegedly seized sharp objects from Mrs. Polanco and there is no evidence presented in this case to suggest that an attempt was made to even record that and hand those items over to the police. There was nothing preventing Mrs. Lake from calling the police herself after hearing such statements being made by Mrs. Polanco. Her approach appears to have been to call pastors to provide counseling to Mrs. Polanco instead.

[124] In light of the submissions made by counsel for Mrs. Lake, I make just one other point here. Given that the obligation of the Court is to give consideration to the fact sensitive nature of the allegations being made, it appears to me that the authorities were actively attempting to address the issues raised by Mrs. Lake. If counsel's submissions are correct that no one knew what to do with Mrs. Polanco and a team was set up to brain storm on it, then it shows that the authorities were dealing with a delicate situation and actively attempting to come up with a solution. To my mind, this would not show that the Department of Public Administration had no intention of fulfilling their contractual duty towards Mrs. Lake, but were actively attempting to come up with the best solution; short of the very disciplinary process which Mrs. Lake was entitled to invoke herself and which she had been previously advised to initiate by Mrs. Petty-Barrett and Mrs. Horsford-Harrigan.

[125] One other issue which was raised was the failure on the part of the authorities to provide sensitivity training for the staff after Mrs. Polanco had returned to work in August 2017. Mrs. Rogers noted that someone was assigned to monitor Mrs. Polanco but due to the hurricane which took place in September 2017 attention was placed elsewhere. No sensitivity training was conducted. I give consideration to the fact that the hurricane made its way to Anguilla over a month after Mrs. Polanco returned to work and there is no reason given as to why this sensitivity training could not have been done prior to that date.

- [126] However, whilst I accept that the training was not conducted, I am of the view that this issue ought to be placed in its context. The issue was that Mrs. Polanco had intimated to the psychiatrist that some of her reactions were as a result of the approach taken by members of staff towards her. She was allegedly being provoked. The Medical Board's report indicated that there was merit in training the staff on how to react to Mrs. Polanco and not provoke her. However, there is no evidence to suggest that any of the incidents which occurred after August 2017 were on account of any staff member's approach to Mrs. Polanco.
- [127] Mrs. Ritchie-Brooks who witnessed the issue with the fire in the office simply reported the incident and stated she smelled smoke. Her evidence did not give the impression that what was done was serious; at least on in her own mind. In her evidence she stated that she had no difficulties with Mrs. Polanco and never feared her. Although she had noticed scrapes on Mrs. Polanco's arms, these did not appear to her to have been serious cuts. Whilst no training was provided, the issues subsequent to Mrs. Polanco's return to work appeared to have little to do with that aspect of the recommendations made by the Medical Board. I do not find this to amount to a breach of duty which would go to the root of the contract; neither is there an element of causation here at this stage.
- [128] Finally, there is a question of Mrs. Lake's request for a transfer and/or that security measures be placed in the office. Mrs. Rogers explained that the request for a transfer was passed on to the relevant personnel to deal with. However, she noted that a transfer is not a simple process. There has to be a vacancy in a position which is commensurate with the employee's level of seniority and pay grade within the public service. I do not find this to be evidence of an intention on the Public Administration Department to not fulfill their obligations to Mrs. Lake.
- [129] As it relates to the issues of security, I have come to the same conclusion. Mrs. Lake was informed that there was no budget in place for those measures and that the financial year was about to end. No one denied the request for security but needed to make the necessary allocations for it. Mrs. Lake herself was on sick leave and I have doubts as to whether Mrs. Polanco had never returned to the office since then. Mrs. Lake was even offered an extension of her sick leave to address the issue. It was also determined that since the

Department was due to relocate within a short space of time, it wouldn't be prudent to invest in the security measures at the temporary location. I do not find this to be unreasonable; especially since I do not find that the evidence suggests that Mrs. Polanco was likely to have been directly violent towards Mrs. Lake. I understand the arguments that the issues had stressed her out by then. But Mrs. Polanco was out of the office and there is no evidence that her presence was any more an issue. In the end the security measures were put in place, given the fact that the move did not take place as planned.

[130] The final point which I wish to address briefly is the question of whether the issues with Mrs. Polanco had caused Mrs. Lake's illness. Having examined the evidence I am not persuaded that the medical challenges Mrs. Lake experienced in 2014, 2015 and 2016 were caused by Mrs. Polanco's behaviour. The evidence suggests that Mrs. Lake did have previous medical conditions; some of which shared symptoms of what Mrs. Lake explains she was experiencing. Dr. Bryan pointed out that hyperthyroidism is not caused by stress. He indicated that it can remain dormant and be exacerbated by stress. However, when one examines the evidence of what transpired prior to 2017, I express serious doubt here that Mrs. Lake was as stressed out over Mrs. Polanco as she would wish for the court to accept. She took this employee to the doctor. Took her grocery shopping and help out with her children. She never bothered to even document or adequately report much of what was taking place. One does not get the impression that Mrs. Lake only experienced those symptoms on account of her stress levels.

[131] In addition to that, Dr. Bryan was making this diagnosis in December 2017 and on the basis of information relayed to him at that time. As indicated before, there were a series of letters, recommendations and referrals from doctors for medical treatment and in none of them was it even mentioned that these symptoms were even likely to have been brought about by work related stress. Letters were written to the Department of Public Administration in relation to the financing of the medical treatment. Nowhere was it mentioned that this was the cause for medical intervention. Sick leave was requested by Mrs. Lake and it was never mentioned that the illnesses were on account of work related stress. I therefore do not accept that Dr. Bryan was indicating in his medical report in December 2017, that Mrs. Lake's illnesses

in general were caused by incidents involving Mrs. Polanco as far back as 2014 and leading up to 2017. If that is the case, then I do not accept it as being a proven fact in this case.

- [132] I accept that 2017 was a difficult year with Mrs. Polanco. I accept that the issues of November 2017 were challenging. This was enough to be stressful and given the medical conditions which Mrs. Lake suffered from, one can imagine that the stress was enough to seek medical intervention. However, when one examines the evidence overall, it appears to me that Mrs. Lake's illnesses were not brought on by Mrs. Polanco's behaviour. There may have been an exacerbation of the stress levels to cause the symptoms she was experiencing but not to cause the illness itself.

Conclusions

- [133] As I indicated before, Mrs. Lake had taken on a job which required her to manage staff and people in general. Under the General Orders this required that she be a part of the process for maintaining the discipline in the office environment and exercising the powers granted to her under the General Orders and the Public Service Commission Regulations. This requires one to sometimes deal with the vicissitudes of human life, which can often play out in the workplace. That may foreseeably include mental health and disciplinary issues. It is not that challenging or even dangerous situations may not arise. Those situations however, need to be dealt with and Mrs. Lake had certain powers and obligations afforded her which she did not exercise.
- [134] In my view, Mrs. Lake failed in her own duties to adequately address the issues relating to Mrs. Polanco from the onset. I am not satisfied that she adequately reported the issues she claimed to have been facing since 2014 to her superiors, within the provisions prescribed by the General Orders. She did not ensure that proper investigations in relation to Mrs. Polanco's behaviour were conducted within the Department and that adequate notes were placed on Mrs. Polanco's file. Even when she chose to make a note of Mrs. Polanco's behaviour, her approach appeared to this Court to be disproportionately mild with Mrs. Polanco for what were significant infractions on her part. Mrs. Lake was also empowered to initiate a process which could have removed Mrs. Polanco from the

workplace, but she did not do so, even after having received such advice from her superior. There was a dereliction of her own duty here and I do not find that a case has been made out that the Government of Anguilla was on the one in breach.

[135] I also note in conclusion that the matter had not been properly brought to the attention of the Department of Public Administration until March 2017 and from that point onward that Department was actively engaged in finding a solution to the problem with Mrs. Polanco. Although there were some shortcomings, I do not find this to rise to the level of going to the root of the contract with Mrs. Lake; especially since she herself seemed up until that point more concerned with providing help for Mrs. Polanco than initiating the disciplinary process which she was empowered to do.

[136] In the circumstances I make the following orders:

- (a) the case is dismissed;
- (b) the claimant will pay prescribed costs on the claim as amended.

Ermin Moise
High Court Judge

By the Court

Registrar