

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Civil Division

VIRGIN ISLANDS

Claim No. BVIHCV2018/0061

BETWEEN:

[1] KIMBERLY COOKE LEIGH
[2] CHERYL COUTURE
[3] CORA LIBURD
[4] VERONICA BAILEY
[5] RUDOLPH STONE
[6] LUZ ADELL FRANCISCO DE CALLWOOD
[7] SOFIA SMALL
[8] XIOMARA LUISA RHYMER MASON
[9] ALEXANDRA CARINA HERIQUEZ INDUSTRIUS
[10] CARINA INDUSTRIES
[11] DAVINA GORDON
[12] ERNIE CAROL CLAXON

Claimants

-and-

MYETTS ENTERPRISES LIMITED

Defendant

Before Master Alvin S. Pariagsingh

Appearances: Richard G. Rowe and Allydah George for the Claimants; and
Dancia Penn QC and Astra Penn for the Defendant.

2022: May 18
June 21

JUDGMENT

Claimant's Assessment of Damages

[1] **PARIAGSINGH, M.** :- Before the Court is the Claimants' assessment of damages pursuant to an order of the Court of Appeal.¹

¹ Made on May 19, 2021 in Interlocutory Appeal No: BVIHCVAP2020/0005

[2] On July 08, 2019 Moise M (as he then was) granted summary judgment to the Claimants on the basis that the Defendant's defence disclosed no reasonable prospect of success in defending this claim. An interlocutory appeal was filed by the Defendant. In a unanimous decision of the Court of Appeal delivered on May 19, 2021 the appeal of the Master's decision was dismissed with costs and the Claimants assessment of damages was remitted to this Court.

[3] At the assessment of damages, the Defendant cross examined the first, second, sixth and seventh Claimants. The Defendant also called one witness who was cross examined by Counsel for the Claimant. Both parties relied on their written submissions filed before the hearing as well as further submissions filed after the hearing.

[4] For the main the assessment of damages for the Claimants is largely mathematical. The Defendant made specific challenges to portions of the claims of certain Claimants which I will deal with individually.

Claim of the first Claimant – Kimberly Cooke – Leigh

[5] This Claimant was employed by the Defendant during the period 2012 to 2017. She was one of two persons (the Second Claimant being the other) responsible for the day to day running of the Defendant.

[6] The Defendant has made heavy weather of this Claimant's receiving a disability benefit from the United States Government during the time she was employed with it. The Defendant contends that this Claimant's claim ought to be dismissed based on illegality. The Defendant contends that the Claimant was not entitled to work whilst receiving disability benefit from the USA and had this fact been known, this Claimant would not have been hired.

[7] This Claimant in answer contended that at the assessment stage, liability having already been decided it is simply too late to take this point. The Claimant contends that if there was an illegality, that would have formed the basis of a defence to liability and ought to have been put in the Defendant's defence. The Claimant contends that summary judgment having been given and upheld by the Court of Appeal, this Court simply cannot revisit the issue of liability.

[8] I agree with Counsel for the Claimant. Illegality is a defence in private law. In some cases, it is a complete defence to a private law action in tort or contract. The current approach to it was recently stated by Lord Toulson in **Patel v Mirza**². Our Court of Appeal has also recently restated the principle that a decision entered on an application for summary judgment is a decision on the merits.³

[9] I also accept the submission by Counsel for the Claimant that from the cross – examination the fact of this illegality was known to the Defendant or could have been obtained by the Defendant before the defence was filed.

[10] In cross examination, Cheryl Couture who was the keeper of the records of the Defendant Company indicated that she was called about this Claimant working whilst on disability during her employment. This information was also contained in the further witness statement filed on behalf of the Defendant⁴. The Defendant not having raised illegality as a defence to liability, cannot at this stage raise it at the assessment of damages.⁵

[11] In any event, if there is an illegality with a US Citizen working in another jurisdiction whilst receiving a disability benefit from the USA that is not a matter for this Court. If such actions lead to any type of prosecution, that will have to be pursued in the

² [2016] UKSC 42.

³ SLUHCVP2014/0024

⁴ Supplemental witness statement of Valarie Rhymer at Paragraph 14

⁵ Strachan v The Gleaner Company Ltd & Anor (Jamaica) [2005] UKPC 3.

jurisdiction of the USA and not in the BVI. What is certain is that it is not a matter for the Defendant to pursue on its own.

[12] In respect of the Defendant's submission that it was this Claimant who organised or somehow motivated the other Claimants to bring this claim with a malicious intent, I find no impact of this allegation, even it is true, to the issue of damages. It is simply not relevant to the question of damages.

[13] During cross examination, this witness was not evasive when confronted with the fact that she was working in the BVI whilst receiving a disability benefit. The witness was direct and stated that it was she who called the US authorities to report this and make arrangements to repay sums received. I accept her evidence.

[14] This Claimant worked from May 01, 2012 to August 28, 2017. That is 5 years, 3 months and 27 days. Her daily rate of pay was \$120.00 per day. For the purpose of Section 90 of the Labour Code, this Claimant falls within Section 90 (1)(a)⁶ and entitled to notice at least equivalent to the interval of time between her pay days in lieu of notice. This payment is not affected by a payment pursuant to Section 104.⁷

[15] Counsel for the Defendant submitted that the payment in lieu of notice is discretionary and the Court ought to exercise its discretion to decrease such an award if any is being made at all. The Defendant submits that there is inconsistency between Sections 89 and 90 of the Labour Code and in that regard, the Court should exercise its discretion to allow an award of 5 days salary in lieu of notice.

[16] I do not accept the Defendant's submissions. I see no inconsistency between Sections 89 and 90. Section 89 gives the employer the discretion to either serve notice or pay the employee their salary in lieu of notice. Section 90 sets out the

⁶S. 90 (1)(a) Labour Code of the British Virgin Islands No.4 of 2010: 'where the employee's length of service does not exceed seven years, the period of notice shall be at least equivalent to the interval of time between the affected employee's pay days'

⁷ See s. 107 Labour Code of the British Virgin Islands.

relevant notice periods and sets out the exception where payment for the notice period is exempt.

[17] In any event, least there be any doubt, Section 91 and 92 of the Labour Code is pellucid on the fact that payment in lieu of notice must be paid, once applicable, once the employee is terminated. Further Section 92 provides that any non-payment on termination is actionable by civil proceedings in a court.

[18] In respect of interest, the Defendant submitted that the Court should exercise its discretion and not award interest on any awards save for the entitlement to statutory interest. I disagree. Interest is always at the discretion of the Court. The purpose of an award of interest is to preserve the value of the award. There is no reason to not award interest on the sums awarded which do not attract statutory interest.

[19] This Claimant is accordingly entitled to payment in lieu of notice for the amount of days equivalent to the interval of time between this Claimant's pay days. Attached to this Claimant's witness statement is a pay-slip which shows her salary between pay cycle is \$1,200.00. This sum is awarded in lieu of notice with interest at the rate of 5% from the date of the termination to today's date (1,758 days) calculated as; Payment in lieu of notice - \$1,200.00, interest – $[(1200) \times 5 \times (1758/365)/100]$ = \$288.99. Total : \$1,488.98.

[20] Together with severance calculated pursuant to Sections 104 and 105 of the Labour Code. Since this Claimant was not a periodic employee she would be entitled to compensation calculated pursuant to Section 105 (3)(a) of the Labour Code.⁸ That is 9 days salary for each year. That would be equal to $(5 \times 9) + [(3/12) \times 9] =$

⁸ S.105 (3)(a) Labour Code of the British Virgin Islands: 'severance payment shall consist of three quarters of one day's pay or nine days' pay per year for each twenty-nine days worked'

45+2.25. Since all fractions of a day are to be rounded off to a day⁹ this would be rounded off to 45+3 = 48 days salary.

[21] 48 days basic salary together with interest at the rate of 10% from the date of termination till payment is made calculated to the date of this judgment (1,758 days) as follows; $48 \times 120 = \$5,760 + [(5760) \times 10 \times (1758/365)] / 100 = \$2,774.27$, Total: \$8,534.27

[22] Total award:

- a. Payment in lieu of notice in the sum of \$1,200.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$1,505.42. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.
- b. Payment calculated using severance calculations in the sum of \$5,760.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$2,774.27 making a total of \$8,534.27. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

Total award as of today's date - \$ 10,039.69

Claim of the second Claimant, Cheryl Couture

[23] This Claimant was the Office Manager when the Defendant was struck by the hurricane. Her last salary was \$145.00 per day. She earned \$2900 for a basic 5 day week and worked from March 05, 2009 to August 28, 2017. This represents a

⁹ S. 105 (3)(b) of the Labour Code of the British Virgin Islands: 'any fraction of a day which is obtained by dividing the number of days worked by twenty-nine shall be reckoned as one day'

total of 8 years 5 months and 23 days (3,098 days). She was one of the persons responsible for the keeping of the records of the Defendant together with the first Claimant and the Accountant.

[24] Cross examination of this Claimant was uneventful. I found this witness to be a witness of truth whose testimony was not shaken or undermined in any way. She answered questions frontally and never sought to exaggerate her answers or evade direct questions. I accept her evidence.

[25] This Claimant would be entitled to payment in lieu of notice of one month's salary with interest thereon at the rate of 5% from the date of termination of employment to today's date.

[26] This Claimant would also be entitled to compensation calculated pursuant to Section 105 of the Labour Code together with statutory interest at the rate of 10% from the date of termination to the date of payment calculated as follows; Payment in lieu of notice - \$2,900.00 and Pre- judgment interest on payment – $[(2900) \times 5 \times (1758/365)/100] = \698.38

[27] Payment pursuant to Section 105 of the Labour Code – $[1.25 \times 6^{10}] + [(9 \times 6) + [1/12 \times 9] = 62.25 = 63 = 63 \times 145 = \$9,135.00$ and interest = $[(9,135) \times 10 \times (1758/365)/100] = \$4,399.82$

[28] Total award:

- a. Payment in lieu of notice in the sum of \$2,900.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$698.38. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

¹⁰ 6 days per year before the Labour Code came into effect on July 12, 2010

- b. Payment calculated using severance calculations in the sum of \$9,135.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$4,399.82 making a total of \$13,534.82. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

Total award as of today's date - \$17,133.20

Claim of the third Claimant, Cora Liburd.

[29] This Claimant was not cross examined. This Claimant was employed from February 11, 2013,¹¹ to August 28, 2017 a total of 4 years 6 months and 17 days or 1,659 days. At the time of her termination she earned \$56.00 per day.

[30] The applicable notice period would be two weeks or 10 days. This would be equal to $\$56.00 \times 10 = \560.00 (2 working weeks 10 days) together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$134.86. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

[31] Payment pursuant to Section 105 of the Labour Code= $[(9 \times 4) + [(199/365) \times 9] = 40.9 = 41 = 41 \times 56 = \$2,296.00$ and interest = $[(2,296.00) \times 10 \times (1758/365) / 100] = \$1,105.85$

[32] Total award:

- a. Payment in lieu of notice in the sum of \$560.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$134.86. Post judgment interest shall

¹¹ Correct date of employment stated in para 3 of supplemental witness statement filed on March 31, 2022.

accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

- b. Payment calculated using severance calculations in the sum of \$2,296.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$1,105.85 making a total of \$3,401.85. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

Total award as of today's date - \$4,096.71

Claim of the fourth Claimant, Veronica Bailey

[33] This Claimant was not cross examined. This Claimant worked for the period May 01, 2008 to August 28, 2017¹². This is a total of 9 years 3 months and 27 days (3,406) days. Her last salary was \$48 per day.

[34] The applicable notice period would be one month (20 days).

[35] The number of days for the purpose of Section 105 will have to be calculated to the rate before and after the Code came into effect on July 16, 2010. From May 2008 to July 2010 – $(2 \times 6) + [(2/12) \times 6] = 12 + 1 = 13$ days. From August 2010 to August 2017 = 7×9 days = 63 days. Total amount of days = 76 days.

[36] Payment in lieu of notice in the sum of $\$48.00 \times 20 = \960.00 (4 working weeks 20 days) together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$231.19. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

¹² Date of employment taken from the Social Security Board Record

[37] Payment pursuant to Section 105 of the Labour Code – $76 \times 48 = 3,648$ and interest
= $[(3,648) \times 10 \times (1758/365)/100] = \$1,757.04$

[38] Total award:

- a. Payment in lieu of notice in the sum of \$960.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$231.19. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.
- b. Payment calculated using severance calculations in the sum of \$3,648.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$1,757.04 making a total of \$5,405.04. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

Total award as of today's date - \$6,596.23

Claim of the fifth Claimant Rudolph Stone:

[39] This Claimant was not cross examined. This Claimant according to his evidence was employed a total of 12 years 9 months and 16 days or 4,672 days. His last salary was \$96 per day.

[40] The applicable notice period would be one month (20 days).

[41] The number of days for the purpose of Section 105 will have to be calculated to the rate before and after the Code came into effect on July 16, 2010. From November 2004 to July 2010 – $(5 \times 6) + [(8/12) \times 6] = 30 + 4 = 34$ days. From August 2010 to August 2017 = 7×9 days = 63 days. Total amount of days = 97 days.

[42] Payment in lieu of notice in the sum of $\$96.00 \times 20 = \$1,920.00$ (4 working weeks 20 days) together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$462.38. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

[43] Payment pursuant to Section 105 of the Labour Code – $\$96 \times 97 = \$9,312.00$ and interest = $[(9,312.00) \times 10 \times (1758/365)/100] = \$4,485.07$

[44] Total award:

- a. Payment in lieu of notice in the sum of \$1,920.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$462.38. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.
- b. Payment calculated using severance calculations in the sum of \$9,312.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$4,485.07 making a total of \$13,797.07. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

Total award as of today's date - \$16,179.45

Claim of the sixth Claimant – Luz De Callwood

[45] This Claimant was cross examined about whether she recalled or accepted that she earned a different salary as a dishwasher which was her original position. I find any

difference in her starting salary to be irrelevant as the only relevant salary for the purpose of the calculations in the Labour Code is the ending salary.

[46] It was suggested to the witness that she was not working when the restaurant was closed and she denied this. I accept her evidence. In fact, it was the Defendant's witness in her evidence who cleared up that whilst business was seasonal, the restaurant was never closed. In respect of the specific periods this Claimant was asked about, February 9 to March 09, 2016 and December 25 to January 20, 2017 (which is shown as December 17 to January 08 on the documents attached to the Defendant's supplemental witness statement) the Claimant's evidence is that during these periods she was on vacation and not sick leave. I accept her evidence that during this period she took time to care for her youngest daughter.

[47] This claimant was employed from September 22, 2014 to August 28, 2017. That is a total of 2 years 11 months and 6 days or 1,071 days. Her last salary was \$56.00 per day.

[48] The applicable notice period would be one month (10 days).

[49] The number of days for the purpose of Section 105 would be $(2 \times 9) + [(11/12) \times 9] = 18 + 8.25 = 18 + 9 = 27$ days. Total amount of days = 27 days.

[50] Payment in lieu of notice in the sum of $\$56.00 \times 10 = \560.00 (2 working weeks 10 days) together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$134.86. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

[51] Payment pursuant to Section 105 of the Labour Code – $\$56 \times 27 = \$1,512.00$ and interest = $[(\$1,512.00) \times 10 \times (1758/365)/100] = \728.25

[52] Total award:

- a. Payment in lieu of notice in the sum of \$560.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$134.86. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.
- b. Payment calculated using severance calculations in the sum of \$1,512.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$728.25 making a total of \$2,240.25. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

Total award as of today's date - \$2,935.11

Claim of the seventh Claimant – Sofia Small

[53] In cross examination, this Claimant accepted that her employment begun in February 2007 and not 2004 as previously indicated. She denied that she obtained vacation or that she was sick often. She was only out of a job from August to November as she was able to obtain a job with Immigration when she stopped working for the Defendant. I accept her as a witness of truth.

[54] The Claimant worked from February 07, 2007 to August 28, 2017. That is 10 years 6 months and 21 days or 3,855 days. Her last salary was \$90.00 per day.

[55] The applicable notice period would be one month (20 days).

[56] The number of days for the purpose of Section 105 will have to be calculated to the rate before and after the Code came into effect on July 16, 2010. From February 2007 to July 2010 – $(3 \times 6) + [(5/12) \times 6] = 18 + 2.5 = 18 + 3 = 21$ days. From August 2010 to August 2017 = 7×9 days = 63 days. Total amount of days = 84 days.

[57] Payment in lieu of notice in the sum of $\$90.00 \times 20 = \$1,800.00$ (4 working weeks 20 days) together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$433.48. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

[58] Payment pursuant to Section 105 of the Labour Code – $\$90 \times 84 = \$7,560.00$ and interest = $[(7,560.00) \times 10 \times (1758/365)/100] = \$3,641.23$

[59] Total award:

- a. Payment in lieu of notice in the sum of \$1,800.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$433.48. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.
- b. Payment calculated using severance calculations in the sum of \$7,560.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$3,641.23 making a total of \$11,201.23. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

Total award as of today's date - \$13,434.71

Claim of the Eight Claimant- Xiomara Luisa Rhymer Mason

[60] This Claimant was not cross examined. This Claimant worked from January 23, 2013¹³ to August 28, 2017 a total of 4 years 7 months and 5 days or 1,678 days. Her last salary was \$48.00 per day.

[61] The applicable notice period would be two weeks (10 days).

[62] The number of days for the purpose of Section 105 will be $(4 \times 9) + [(218/365) \times 9]$
 $= 36 + 5.4 = 36 + 6 = 42$ days. Total amount of days = 42 days.

[63] Payment in lieu of notice in the sum of $\$48.00 \times 10 = \480.00 (2 working weeks, 10 days) together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$115.59. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

[64] Payment pursuant to Section 105 of the Labour Code – $\$48 \times 42 = \$2,016.00$ and interest = $[(2,016.00) \times 10 \times (1758/365)/100] = \970.99

[65] Total award:

- a. Payment in lieu of notice in the sum of \$480.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$115.59. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.
- b. Payment calculated using severance calculations in the sum of \$2,016.00 together with pre judgment interest at the rate of 10% from the date of

¹³ Date of commencement corrected in the supplemental witness statement filed on March 31, 2022

termination to today's date calculated in the sum of \$970.99 making a total of \$2,986.99. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

Total award as of today's date - \$3,582.59

Claim of the ninth Claimant - Alexandra Carina Heriquez Industrus

[66] This Claimant was not cross examined. This Claimant worked from May 2013 to August 28, 2017. That is 4 years 3 months and 27 days or 1,580 days. Her last salary was \$48.00 per day.

[67] The applicable notice period would be two weeks (10 days).

[68] The number of days for the purpose of Section 105 will be $(4 \times 9) + [(3/12) \times 9] = 36 + 2.25 = 36 + 3 = 39$ days. Total amount of days = 39 days.

[69] Payment in lieu of notice in the sum of $\$48.00 \times 10 = \480.00 (4 working weeks 20 days) together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$115.59. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

[70] Payment pursuant to Section 105 of the Labour Code – $\$48 \times 39 = \$1,872.00$ and interest = $[(1,872.00) \times 10 \times (1758/365)/100] = \901.64

[71] Total award:

- a. Payment in lieu of notice in the sum of \$480.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$115.59. Post judgment interest shall

accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

- b. Payment calculated using severance calculations in the sum of \$1,872.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$901.64 making a total of \$2,773.64. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

Total award as of today's date - \$3,369.23

Claim of the tenth Claimant - Carina Industries

[72] This Claimant was not cross examined. This Claimant worked from June 2002 to August 28, 2017. This is a total of 15 years 2 months and 27 days or 5,567 days. Her last salary was \$48.00.

[73] The applicable notice period would be one month (20 days).

[74] The number of days for the purpose of Section 105 will have to be calculated to the rate before and after the Code came into effect on July 16, 2010. From June 2002 to July 2010 – $(8 \times 6) + [(1/12) \times 6] = 48 + 0.5 = 48.5 = 49$ days. From August 2010 to August 2017 = 7×9 days = 63 days. Total amount of days = 112 days.

[75] Payment in lieu of notice in the sum of $\$48.00 \times 20 = \960.00 (4 working weeks 20 days) together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$231.19. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

[76] Payment pursuant to Section 105 of the Labour Code – $\$48 \times 112 = \$5,376.00$ and interest = $[(\$5,376.00) \times 10 \times (1758/365)/100] = \$2,589.32$

[77] Total award:

- a. Payment in lieu of notice in the sum of \$960.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$231.19. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.
- b. Payment calculated using severance calculations in the sum of \$5,376.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$2,589.32 making a total of \$7,965.32. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

Total award as of today's date - \$9,156.51

Claim of the eleventh Claimant – Davina Gordon

[78] This Claimant was not cross examined. This Claimant worked for the period December 16, 2010 to August 28, 2017. That is 6 years 8 months and 12 days or 2,447 days. Her last salary was \$48.00 per day.

[79] The applicable notice period would be one month (20 days).

[80] The number of days for the purpose of Section 105 will be $(6 \times 9) + [(8/12) \times 9] = 54 + 6 = 60$. Total amount of days = 60 days.

[81] Payment in lieu of notice in the sum of $\$48.00 \times 20 = \960.00 (4 working weeks 20 days) together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$231.19. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

[82] Payment pursuant to Section 105 of the Labour Code – $\$48 \times 60 = \$2,880.00$ and interest = $[(2,880) \times 10 \times (1758/365)/100] = \$1,387.13$

[83] Total award:

- a. Payment in lieu of notice in the sum of \$960.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$231.19. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.
- b. Payment calculated using severance calculations in the sum of \$2,880.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$1,387.13 making a total of \$4,267.13. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

Total award as of today's date - \$5,458.32

Claim of the twelfth Claimant - Ernie Carol Claxon

[84] This Claimant was not cross examined. This Claimant worked from December 2006 to August 28, 2017. That is 10 years 8 months and 27 days or 3,923 days. Her last salary was \$32.00.¹⁴

¹⁴ Last salary rate corrected in supplemental witness statement filed on March 31, 2022.

[85] The applicable notice period would be one month (20 days).

[86] The number of days for the purpose of Section 105 will have to be calculated to the rate before and after the Code came into effect on July 16, 2010. From December 2006 to July 2010 – $(3 \times 6) + [(8/12) \times 6] = 18 + 4 = 22$ days. From August 2010 to August 2017 = 7×9 days = 63 days. Total amount of days = 85 days.

[87] Payment in lieu of notice in the sum of $\$32.00 \times 20 = \640.00 (4 working weeks 20 days) together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$154.13. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

[88] Payment pursuant to Section 105 of the Labour Code – $\$32 \times 85 = \$2,720.00$ and interest = $[(2,720.00) \times 10 \times (1758/365)/100] = \$1,310.07$.

[89] Total award:

- a. Payment in lieu of notice in the sum of \$640.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$154.13. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment.

- b. Payment calculated using severance calculations in the sum of \$2,720.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$1,310.07 making a total of \$4,030.07. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

Total award as of today's date - \$4,824.00

COSTS:

[90] The Master dealing with the summary judgment application ordered prescribed costs in the cause to be quantified at the assessment of damages.¹⁵ The Court of Appeal in its order after hearing of the interlocutory appeal order costs in favour of the Claimants at no more than two thirds of the prescribed costs when quantified at the assessment.

[91] Costs is always at the discretion of the Court and guided by the principle of proportionality bearing in mind that costs in the circumstance which is now arises is not meant to be punitive. The Defendant has stressed on the non-corporation of the Claimants in pursuing attempts to settle this matter. The Claimant has not responded to this. I have also considered the claim and the assessment did not involve any novel or complex issue of law. The issue arising for each of the twelve Claimants in the most were the same. In the circumstances, I am of the view that 75% of the prescribed costs on a claim with a value of the awards made is just, fair and reasonable in the circumstances of this case.

[92] In respect of the interlocutory appeal, bearing in mind that the appeal was on the application for summary judgment only, the Court of Appeal fixed costs at no more than 2/3 of the prescribed costs in the Court below. Given that the costs below (75%

¹⁵ The Master also ordered costs to be assessed in relation to an application to seal but no statement of costs in that regard has been filed for taxation to date

of the prescribed costs on the total sums awarded) includes both the costs of the summary judgment and the costs of the assessment of damages it would be disproportionate to allow the full 2/3 if the sum awarded for the interlocutory appeal which dealt only with the summary judgment application. I am of the view that considering the prescribed costs ordered compensates for both the work done on the summary judgment and the assessment an award of one third (1/3) of the prescribed costs is just fair and reasonable quantum for the costs of the appeal.

[93] By my calculation the costs computes as follows:

- a. Total value of awards made plus interest for the Claimants as of today's date \$96,789.50;
- b. 100 % of prescribed costs on the awards made – \$14,518.43;
- c. 75% of prescribed costs - \$10,888.82; and
- d. Costs for the interlocutory appeal at 1/3 of the costs awarded at the end of the assessment - \$3,629.61

ORDER:

[94] It is hereby ordered that:

- a. The Defendant shall pay the Claimants damages assessed as follows:
 - i. The First Claimant:
 - 1. Damages in lieu of notice in the sum of \$1,200.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$1,488.99. Post judgment interest shall accrue on this

sum at the rate of 5% per annum from today's date to the date of payment; and

2. Damages calculated using severance calculations in the sum of \$5,760.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$2,774.27 making a total of \$8,534.27. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

ii. The Second Claimant:

1. Damages in lieu of notice in the sum of \$2,900.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$698.38. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment; and
2. Damages calculated using severance calculations in the sum of \$9,135.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$4,399.82 making a total of \$13,534.82. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

iii. The Third Claimant:

1. Damages in lieu of notice in the sum of \$560.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$134.86. Post judgment interest shall accrue on this

sum at the rate of 5% per annum from today's date to the date of payment; and

2. Damages calculated using severance calculations in the sum of \$2,296.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$1,105.85 making a total of \$3,401.85. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

iv. The Fourth Claimant:

1. Damages in lieu of notice in the sum of \$960.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$231.19. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment; and
2. Damages calculated using severance calculations in the sum of \$3,648.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$1,757.04 making a total of \$5,405.04. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

v. The Fifth Claimant:

1. Damages in lieu of notice in the sum of \$1,920.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$462.38. Post judgment interest shall accrue on this

sum at the rate of 5% per annum from today's date to the date of payment; and

2. Damages calculated using severance calculations in the sum of \$9,312.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$4,485.07 making a total of \$13,797.07. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

vi. The Sixth Claimant:

1. Damages in lieu of notice in the sum of \$560.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$134.86. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment; and
2. Damages calculated using severance calculations in the sum of \$1,512.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$728.25 making a total of \$2,240.25. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

vii. The Seventh Claimant:

1. Damages in lieu of notice in the sum of \$1,800.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$433.48. Post judgment interest shall accrue on this

sum at the rate of 5% per annum from today's date to the date of payment; and

2. Damages calculated using severance calculations in the sum of \$7,560.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$3,641.23 making a total of \$11,201.23. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

viii. The Eighth Claimant:

1. Damages in lieu of notice in the sum of \$480.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$115.59. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment; and
2. Damages calculated using severance calculations in the sum of \$2,016.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$970.99 making a total of \$2,986.99. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

ix. The Ninth Claimant:

1. Damages in lieu of notice in the sum of \$480.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$115.59. Post judgment interest shall accrue on this

sum at the rate of 5% per annum from today's date to the date of payment; and

2. Damages calculated using severance calculations in the sum of \$1,872.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$901.64 making a total of \$2,773.64. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

x. The Tenth Claimant:

1. Damages in lieu of notice in the sum of \$960.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$231.19. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment; and
2. Damages calculated using severance calculations in the sum of \$5,376.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$2,589.32 making a total of \$7,965.32. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

xi. The Eleventh Claimant:

1. Damages in lieu of notice in the sum of \$960.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$231.19. Post judgment interest shall accrue on this

sum at the rate of 5% per annum from today's date to the date of payment; and

2. Damages calculated using severance calculations in the sum of \$2,880.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$1,387.13 making a total of \$4,267.13. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

xii. The Twelfth Claimant:

1. Damages in lieu of notice in the sum of \$640.00 together with pre-judgment interest thereon at the rate of 5% per annum from the date of termination to today's date calculated in the total sum of \$154.13. Post judgment interest shall accrue on this sum at the rate of 5% per annum from today's date to the date of payment; and
2. Damages calculated using severance calculations in the sum of \$2,720.00 together with pre judgment interest at the rate of 10% from the date of termination to today's date calculated in the sum of \$1,310.07 making a total of \$4,030.07. Post judgment interest shall accrue on this sum at the rate of 10% per annum from today's date to the date of payment.

b. The Defendant shall also pay the Claimants:

- i. the costs of this claim, which includes the application for summary judgment and the assessment of damages, quantified in the sum of \$10,890.67; and

- ii. the costs of the interlocutory appeal of the summary judgment decision of Moise M, quantified in the sum of \$3,630.22.

**Alvin Shiva Pariagsingh
High Court Master**

By the Court,

Registrar

Respective Claimants**First Claimant: Kimberly Cooke - Leigh****Payment in lieu of notice**

Salary Between Pay Cycle	\$	1,200.00
Interest Rate		5%
Number of Days from termination to		1,758

Amount of Interest		\$288.99
Total Payment in lieu of Notice + Int		\$1,488.99

Severance

Number of Days per Year	9
Number of Years	5

Number of Days Basic Salary	47.25
	48 days basic salary

Daily Salary	\$120.00
Severance	\$ 5,760.00
Amount of Interest	\$2,774.27

Total Severance + Interest =	\$8,534.27
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Total Award

Total Award	\$10,023.25
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Second Claimant: Cheryl Couture**Payment in lieu of Notice**

Salary Between Pay Cycle	\$	2,900.00
Interest Rate		5%
Number of Days from termination to		1,758

Amount of Interest		\$698.38
Total Payment in lieu of Notice + Int		\$3,598.38

Severance

Number of Days per Year	9
Number of Years	6

Number of Days Basic Salary	62.25
	63 days basic salary

Daily Salary	\$145.00
Severance	\$9,135.00

	Amount of Interest	\$4,399.82
	Total Severance + Interest	\$13,534.82
Total Award	Total Award	\$17,133.20

Third Claimant: Cora Liburd

Payment in lieu of notice

Salary Between Pay Cycle	\$	560.00
Interest Rate		5%
Number of Days from termination to		1,758

Amount of Interest	\$	134.86
Total Payment in Lieu of Notice	\$	694.86

Severance

Number of Days per Year	9
Number of Years	4

Number of Days Basic Salary	40.90684932
	41 days basic salary

Daily Salary	\$56
Severance	\$2,296
Amount of Interest	\$1,105.85

Total Severance + Interest	\$3,401.85
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Total Amount	Total Amount	\$4,096.71
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Fourth Claimant: Veronica Bailey

Payment in lieu of Notice

Salary Between Pay Cycle	\$	960.00
Interest Rate		5%
Number of Days from termination to		1,758

Amount of Interest	\$231.19
Total Payment in Lieu of Notice	\$1,191.19

Severance

Number of Days per Year before Cod	13
Number of Days per Year	63
Total Number of Days	76

Number of Days Basic Salary	76
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Daily Salary	48
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Severance	\$3,648.00
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Amount of Interest	\$1,757.04
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Total Severance + Interest	\$5,405.04
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Total Amount

Total Amount	\$6,596.23
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Fifth Claimant: Rudolph Stone

Payment in lieu of Notice

Salary Between Pay Cycle	\$ 1,920.00
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Interest Rate	5%
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Number of Days from termination to	1758
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Amount of Interest	\$462.38
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Total Payment in Lieu of Notice	\$2,382.38
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Severance

Number of Days per Year before Cod	34
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Number of Days per Year	63
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Total Number of Days	97
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Number of Days Basic Salary	97
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Daily Salary	96
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Severance	\$9,312.00
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Amount of Interest	\$4,485.07
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Total Severance + Interest	\$13,797.07
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Total Amount

Total Amount	\$16,179.45
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Sixth Claimant: Luz De Callwood

Payment in lieu of Notice

Salary Between Pay Cycle	\$ 560.00
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Interest Rate	5%
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Number of Days from termination to	1758
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Amount of Interest	\$	134.86
Total Payment in Lieu of Notice	\$	694.86

Severance

Number of Days per Year	26.25
Total Number of Days	27

Number of Days Basic Salary	27
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Daily Salary	56
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Severance	\$	1,512.00
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Amount of Interest	\$	728.25
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Total Severance + Interest	\$	2,240.25
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Total Amount

Total Amount	\$	2,935.11
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Seventh Claimant: Sofia Small

Payment in lieu of Notice

Salary Between Pay Cycle	\$	1,800.00
Interest Rate		5%
Number of Days from termination to		1758

Amount of Interest	\$	433.48
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Total Payment in Lieu of Notice	\$	2,233.48
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Severance

Number of Days per Year before Cod	20.5
Number of Days per Year	63
Total Number of Days	84

Number of Days Basic Salary	84
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Daily Salary	90
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Severance	\$	7,560.00
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Amount of Interest	\$	\$3,641.23
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Total Severance + Interest	\$	11,201.23
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Total Amount

Total Amount	\$	13,434.71
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Eighth Claimant: Xiomara Luisa Rhymer Mason**Payment in lieu of Notice**

Salary Between Pay Cycle	\$	480.00
Interest Rate		5%
Number of Days from termination to		1758
Amount of Interest	\$	115.59
Total Payment in Lieu of Notice	\$	595.59

Severance

Number of Days per Year		41.4
Total Number of Days		42
Number of Days Basic Salary		42
Daily Salary		48
Severance	\$	2,016.00
Amount of Interest	\$	970.99
Total Severance + Interest	\$	2,986.99

Total Amount

Total Amount	\$	3,582.59
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Nineth Claimant: Alexandra Carina Heriquez Industrus**Payment in lieu of Notice**

Salary Between Pay Cycle	\$	480.00
Interest Rate		5%
Number of Days from termination to		1758
Amount of Interest	\$	115.59
Total Payment in Lieu of Notice	\$	595.59

Severance

Number of Days per Year		38.25
Total Number of Days		39
Number of Days Basic Salary		39
Daily Salary		48
Severance	\$	1,872.00
Amount of Interest	\$	901.64
Total Severance + Interest	\$	2,773.64

Total Amount

Total Amount	\$	3,369.23
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Tenth Claimant: Carina Industries**Payment in lieu of Notice**

Salary Between Pay Cycle	\$	960.00
Interest Rate		5%
Number of Days from termination to		1758
Amount of Interest	\$	231.19
Total Payment in Lieu of Notice	\$	1,191.19

Severance

Number of Days per Year before Cod		48.5
Number of Days per Year		63
Total Number of Days		111.5
Number of Days Basic Salary		112
Daily Salary	\$	48.00
Severance	\$	5,376.00
Amount of Interest	\$	2,589.32
Total Severance + Interest	\$	7,965.32

Total Amount

Total Amount	\$	9,156.51
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Eleventh Claimant: Davina Gordon**Payment in lieu of Notice**

Salary Between Pay Cycle	\$	960.00
Interest Rate		5%
Number of Days from termination to		1758
Amount of Interest	\$	231.19
Total Payment in Lieu of Notice	\$	1,191.19

Severance

Number of Days per Year		60
Total Number of Days		60
Number of Days Basic Salary		60

Daily Salary	\$	48.00
Severance	\$	2,880.00
Amount of Interest	\$	1,387.13

Total Severance + Interest	\$	4,267.13
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Total Amount

Total Amount	\$	5,458.32
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Twelfth Claimant: Ernie Carol Claxon

Payment in lieu of Notice

Salary Between Pay Cycle	\$	640.00
Interest Rate		5%
Number of Days from termination to		1758

Amount of Interest	\$	154.13
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Total Payment in Lieu of Notice	\$	794.13
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Severance

Number of Days per Year before Cod	22
Number of Days per Year	63
Total Number of Days	85

Number of Days Basic Salary	85
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Daily Salary	\$	32.00
Severance	\$	2,720.00
Amount of Interest	\$	1,310.07

Total Severance + Interest	\$	4,030.07
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Total Amount

Total Amount	\$	4,824.20
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Total Award with Interest

Total Award with Interest	\$	96,789.50
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