

BRITISH VIRGIN ISLANDS

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim No. BVIHCV2007/0122

BETWEEN

ELPHINA ABRAHAM

Claimants

And

SUNNY CARIBBEE HERBAL AND SPICE COMPANY LIMITED

Defendant

Appearances:

Ms. Cheryl Rosan and Mr. Michael Maduro of C.E. Dawson & Co. for the Claimant
Mr. John E. Carrington of W McTodman & Co. for the Defendant

2010: February 12

2010: April 29

CATCHWORDS

Employment Law- wrongful dismissal- summary dismissal – no contract of employment – whether conduct was so grave and weighty to warrant summary dismissal – series of warning letters prior to dismissal letter – were there valid reasons to justify summary dismissal –reasonable opportunity to be heard – measure of damages

HEADNOTE

The Claimant was employed by the Defendant for 23 years. At the date of her dismissal, she had risen to the rank of Factory Supervisor. On 22 November 2006, she was summoned to a meeting to discuss some complaints contained in a warning letter which was given to her in the Managers' office. As the Managers proceeded to discuss the contents in the letter, she became upset and began shouting. The Managers tried to calm her down. Thereafter, she refused to participate in the meeting informing them that she had preferred to peruse the warning letter at her own convenience. She was summarily dismissed. The following day, she was given a dismissal letter to that effect.

The Claimant sues the Defendant for damages for wrongful dismissal alleging that she was dismissed without just cause or excuse as no valid reason was given for her dismissal. She also alleged that she was not given a reasonable opportunity to be heard and as such, was denied a right to natural justice. The Defendant asserts that the Claimant's behaviour was such that it

amounted to misconduct in relation to her employment, so serious that no employer could reasonably be expected to take any course of action other than termination of the employment.

HELD:

- [1] An employer has a common law right to dismiss his employee summarily on the grounds of the employee's serious misconduct, disobedience to lawful orders and negligence.
- [2] The question whether misconduct is such to justify summary dismissal is a question of fact and degree: see **Henry v Mount Gay Distillerie Limited (Barbados)** [1999] UKPC 39. It is a matter for decision by the trial judge and not by the appellate courts: **Clouston & Co. Limited v Corry** [1906] A.C. 122.
- [3] The Claimant's conduct was 'insulting' and 'insubordinate' to such a degree that it was incompatible with the continuance of the relationship of employer and employee. This gross form of insubordination amounted to misconduct in relation to the Claimant's employment that no reasonable employer could be expected to tolerate or respond otherwise than by dismissal. The circumstances justified dismissal without advance notice.
- [4] There were valid reasons for the Claimant's dismissal and the summary dismissal was justified in the circumstances.
- [5] The Claimant was given a reasonable opportunity to be heard. Instead of making use of that opportunity, she began shouting and was defiant to the Managers. She cannot now say that there was a breach of natural justice.
- [6] Summary dismissal is dismissal without giving the employee such notice, or wages in place of notice, as the contract requires. Thus, the issue of damages does not arise for consideration as the Defendant was justified in summarily dismissing the Claimant.

The following cases were referred to in the judgment.

1. **Henry v Mount Gay Distilleries Limited (Barbados)** [1999] UKPC 39 (21 July 1999); Privy Council Appeal No. 43 of 1998.
2. **Clouston & Co. Limited v. Corry** [1906] A.C. 122.
3. **Dietmann v London Borough of Brent** [1988] I.C.R. 801.
4. **Wilson v Racher** (1974) ICR 428.
5. **Phillip James v Road Town Wholesale (Trading) Ltd** Magisterial Civil Appeal No. 1 of 2004 [unreported] –Written Judgment delivered on 27 June 2005.
6. **Pepper v Webb** [1969] 2 All E.R. 216.
7. **B. Surinder Singh Kanda v The Government of the Federation of Malaya** Privy Council Appeal No. 9 of 1961.

JUDGMENT

Introduction

[1] **HARIPRASHAD-CHARLES J:** Ms. Elphina Abraham was employed by Sunny Caribbee Herbal [sic] and Spice Company Ltd (“Sunny Caribbee”)¹ for 23 years. Over the years and more specifically since the year 2000, she had received several warning letters concerning her behaviour. On 22 November 2006, management summoned Ms. Abraham to a meeting to discuss some complaints contained in a warning letter which was given to her in the Managers’ office. As the General Manager, Mr. Gregory Gunter and the Assistant General Manager, Mr. Dame Peters (collectively “the Managers”) proceeded to discuss the contents in the letter, Ms. Abraham became upset and started speaking loudly. Then, she began shouting at the Managers who tried to calm her down. Thereafter, she refused to participate in the meeting informing them that she had preferred to peruse the letter at her own convenience. She was summarily dismissed. The following day, she was given a dismissal letter.

[2] Ms. Abraham now contends that her dismissal was wrongful and sues for damages. Sunny Caribbee says that Ms. Abraham’s behaviour was such that it amounted to misconduct in relation to her employment, so serious that Sunny Caribbee could not reasonably be expected to take any course of action other than termination of the employment.

The facts

[3] The facts are largely undisputed except as it relates to what took place at the meeting on 22 November 2006. Ms. Abraham says one thing. Mr. Peters says another. However, on a balance of probabilities, I prefer the evidence of Mr. Peters (although he appeared uneasy at times) to that of Ms. Abraham. In my opinion, Ms. Abraham was not candid and as such, I could not believe her. She even contradicted some of her own evidence as contained in her witness statement.

[4] The facts as I found them are as follows: Ms. Abraham was an employee of Sunny Caribbee and, in fact, was the first employee to work there. At the time of her dismissal,

¹ The proper name for the Defendant is Sunny Caribbee Herb and Spice Company Limited.

she had worked with Sunny Caribbee for over 23 years, since 15 November 1983. She had worked her way up to the rank of a Factory Supervisor. Her duties included making the lunch rosters, ensuring that the workers concluded the work set by the Managers and packaging teas and spices into containers.

[5] On 22 November 2006, Sunny Caribbee, through its Managers prepared a written warning letter² for Ms. Abraham. Later that day, at about 4.50 p.m., the Managers summoned her to a meeting. When Ms. Abraham arrived, she was handed the warning letter which contained a number of complaints against her. The Managers invited her to discuss the complaints. This was the purpose of the meeting.

[6] Mr. Peters then informed Ms. Abraham that for some time they had wanted to meet with her concerning previous complaints made against her by other employees. It is undisputed that Ms. Abraham had previously received other warning letters from Sunny Caribbee including the following:

- 26 October 2000 - from Mr. Gunter to Ms Abraham, concerning her defiant and uncooperative attitude to her fellow managers and company owners.
- 29 November 2000 - from Mr. Gunter to Ms. Abraham concerning her unprofessional behavior, apparently arising out of an incident where she attacked the personal integrity of a fellow employee.
- 7 December 2000 – third warning letter from Mr. Gunter to Ms Abraham concerning her unacceptable behavior and attitude where he stated “*You are not performing in a cooperative manner and continue to insubordinate mine and other people’s actions and decisions*”.
- 8 April 2004 - from Mr. Gunter to Ms. Abraham, concerning her refusal to wear the company uniform.

² See Tab. 4 of the Claimant’s List of Documents.

[7] Mr. Peters then proceeded to inform Ms. Abraham of the company's dissatisfaction with her handling of her duties and her disrespect for management and co-workers. The reasons contained in the warning letter are as follows:

- "Disregard for Management's Authority;
- Lack of respect for the Company Owner and company policies;
- Refusal of particular supervisory duties;
- Verbal abuse and alienation of employees;
- Inefficient use of company time;
- Lack of cooperation in furthering company policies;
- Lack of cooperation in promoting the company

We also note your refusal to participate and support company functions and initiatives, for example, the Employee of the Quarter Program".

[8] Ms. Abraham expressed shock at the accusations. She opened the warning letter and Mr. Peters proceeded to discuss the contents with her. Upon doing so, Ms. Abraham inquired about details of the complaints and the name of the employees who made the reports of complaints. These questions were not answered. She became angry, stood up and began to speak loudly to Mr. Peters. Thereafter, he began shouting at him. Without completing the discussion of the contents in the warning letter, Ms. Abraham informed the Managers that she was not prepared to deal with the complaints that afternoon but will prefer to take the warning letter away in order to peruse it at her own convenience. After that, she would request another meeting to discuss it.

[9] The Managers outright disagreed and tried to convince her to stay in the meeting. In fact, Mr. Peters informed Ms. Abraham that if she did not stay to discuss and resolve the issues, that Sunny Caribbee could not continue with her employment. They tried to convince her to sit down but Ms. Abraham was adamant. At that stage, Mr. Peters asked her to turn over her keys. He informed her that in light of her behaviour, her employment with Sunny Caribbee is terminated. With her hands and eyes lifted to heaven, Ms. Abraham said "Halleluiah, thank you Jesus" and then left.

- [10] The next day, Ms. Abraham was given a letter, signed by Mr. Peters (carbon copied to the Labour Department) informing her that her employment with Sunny Caribbee is terminated and that Sunny Caribbee will no longer require her services, effective immediately (“the dismissal letter”). The dismissal letter referred to the meeting on the previous day stating *“we were sure that during our meeting yesterday, we would have been able to discuss the problems at hand and make the necessary changes, but it is certainly unfortunate that you refused to do so.”* Sunny Caribbee gave several reasons for her dismissal. Essentially, they mirror those reasons contained in the warning letter. In the dismissal letter, Sunny Caribbee stated:

“We were very disappointed and surprised yesterday at your behavior and rage and the way you were shouting and cussing [sic] at both the Company’s Owner and Manager was simply unacceptable.”

- [11] In addition to the dismissal letter, Mr. Peters prepared a cheque for Ms. Abraham representing her salary for the balance of the month of November, 2010 overtime and vacation pay.
- [12] Subsequently, Ms. Abraham reported her dismissal to the Labour Department which contacted Sunny Caribbee for a conciliation hearing. A few weeks later, the Managers and Ms. Abraham met with a Ms. Maduro from the Labour Department. It is not clear as to the outcome of the meeting. Sunny Caribbee claims that on or about 20 December 2006, the Labour Department verbally informed them that Ms. Abraham’s dismissal was reasonable in the circumstances (I do not find this to be a fact). On 22 June 2007, Mr. Peters wrote to Decoy Mactavious, Acting Labour Commissioner of the Labour Department, requesting a written copy of the ruling regarding the dismissal of Ms. Abraham. There was no response.
- [13] It seems to me that Ms. Abraham did not have a contract or written terms of employment because none was pleaded in the Statement of Claim. However, it is undisputed that Ms. Abraham was paid on a monthly basis at the rate of \$9.50 per hour and worked 8 hours per day. She worked 5 days per week.

- [14] Ms. Abraham instituted these proceedings claiming that she was wrongfully dismissed in that: (a) she was not allowed a hearing which is a breach of natural justice; (b) the contents of the warning letter were untrue and had she been allowed an opportunity to have a hearing, she would have proven that; and (c) Sunny Caribbee had no valid reason to dismiss her.
- [15] Since the dismissal, Ms. Abraham alleged that she has been unable to obtain consistent employment. In addition, she has been unable to pay her Social Security payments. Had she worked for two further years, she would have qualified for Social Security benefits.
- [16] Sunny Caribbee denied that Ms Abraham had been wrongfully dismissed. Learned Counsel Mr. Carrington who appeared for Sunny Caribbee, submitted that (a) Ms. Abraham, by her behaviour, failed to take advantage of the opportunity which the Managers had afforded to her to respond to the allegations in the warning letter; (b) Ms. Abraham's behaviour was such that it amounted to misconduct in relation to her employment, so serious that Sunny Caribbee could not reasonably be expected to take any course other than termination of the employment; and (c) the complaints in the warning letter were true.

Wrongful dismissal

- [17] Wrongful dismissal is based on contract law. So, any claim for wrongful dismissal will therefore mean looking at the employee's employment contract to see if the employer has broken the contract. The most common breach is where an employee is dismissed without notice or the notice given is too short.
- [18] However, an employer has a common law right to dismiss his employee summarily on the grounds of the employee's serious misconduct,³ disobedience to lawful orders⁴ and negligence.⁵ Although every case turns upon its own facts, a single act is less likely to

³ Halsbury's Laws of England, Vol. 16, para. 640.

⁴ *Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 1 W.L.R. 698 and *Pepper v Webb* [1969] 1 W.L.R. 514.

⁵ *Jupiter General Insurance Co. Ltd. v Shroff* [1937] 3 All E.R. 67.

justify summary dismissal than a series of actions; the quality of the breach is what counts, not the consequences flowing from it.

- [19] The normal remedy for wrongful dismissal is for the innocent party to bring an action for damages⁶. According to the learned authors of **Halsbury Laws of England**⁷, an employee is entitled to sue for damages upon fulfilling two conditions, namely “(1) unless the contract of service is to be construed as a contract of life employment, or as excluding any general power of dismissal on notice, the employee must have been engaged for a period fixed or determinable upon notice, and dismissed before the expiration of the period, if fixed, or without the requisite notice, as the case may be and (2) his dismissal must have been wrongful, that is to say, without just cause or excuse on the part of the employer.”

Issues arising

- [20] The following issues arise for determination namely:
1. Whether Ms. Abraham was wrongfully dismissed from her employment by Sunny Caribbee?
 2. Whether Ms. Abraham was dismissed without just cause or excuse. In other words, were there valid reasons for her dismissal?
 3. Whether there was a breach of Ms. Abraham’s right to natural justice?
 4. If Ms. Abraham was wrongfully dismissed, what amount of damages would she be entitled to?

Was Ms. Abraham wrongfully dismissed?

- [21] Ms. Rosan appearing as Counsel for Ms. Abraham submitted that this is a two-pronged issue. First, Ms. Abraham was dismissed without just cause and secondly, she was denied an opportunity to be heard and to defend herself against the allegations made in the warning letter.

⁶ Selwyn’s Law of Employment, 10th Edn., para.16.15.

⁷ (4th Edn. Vol. 16, para. 649.

Without just cause or excuse

[22] Ms. Rosan argued that Sunny Caribbee had no valid reason to dismiss Ms. Abraham and that the reasons given in the dismissal letter do not amount to a serious breach. She further argued that Sunny Caribbee must be able to prove that her behaviour amounted to a breach of a serious term of the contract, which gave them the authority to terminate the contract without notice, which she submitted, they have not proved.

[23] Learned Counsel cited the Privy Council case of **Henry v Mount Gay Distilleries Limited (Barbados)**⁸ where summary dismissal was justified as the employee refused or failed to comply with his duty and was bold in his actions, showing a deliberate flouting of his instructions in failing to notify either the police or his employers of a possible break-in. The Court stated: (at para. 8):

“It is well established that summary dismissal is only justifiable where there has been a breach of one or more duties of the employee and such breach constitutes a repudiation of the contract of employment as being inconsistent with the continued employment of the employee. Thus a single act of carelessness or negligence can provide grounds for summary dismissal if the negligence itself or the circumstances surrounding it show that there has been a “deliberate flouting of the essential contractual conditions.” *Laws v. London Chronicle Limited* [1959] 2 All E.R. 285 at p. 287.”

[24] Another judicial authority cited by Counsel is the case of **Dietmann v London Borough of Brent**.⁹ It was held that in order to justify summary dismissal the misconduct must have been gross misconduct. The facts are that Dietmann was summarily dismissed as a result of a report which criticized her performance. The summary dismissal was held to be wrongful.

[25] Counsel contended that nothing in the evidence or the dismissal letter suggests that Ms. Abraham had acted negligently in the carrying out of her duties or that her behaviour amounted to gross misconduct.

⁸ [1999] UKPC 39 (21 July 1999); Privy Council Appeal No. 43 of 1998.

⁹ [1988] I.C.R. 801 recorded in the *Law of termination of Employment* by Robert Upex, 4th Edn.

- [26] The question of an employee's behaviour which warrants a dismissal, especially one which is summary, is a question of fact and degree to be determined by this Court: see **Henry v Mount Gay Distilleries**. In that case, in delivering the opinion of the Board, Lord Browne-Wilkinson said: "*The question whether misconduct is such as to justify summary dismissal is a question of fact and degree. As such, it is a matter for decision by the trial judge and not by the appellate courts: Clouston & Co. Limited v. Corry [1906] A.C. 122*"¹⁰. Further, the courts are of the view that such a decision should be based on current attitudes: see Edmund-Davies LJ in **Wilson v Racher**¹¹ (1974) ICR 428.
- [27] In **Chitty on Contracts**¹² the learned authors explained the nature of "misconduct" stating that '*the general rule is that if the employee does anything which is incompatible with the due or faithful discharge of his duty to the employer, he may be dismissed without notice; the employee's conduct need not be dishonest, since it is sufficient if it is "conduct of such a grave and weighty character as to amount to a **breach of the confidential relationship between employer and employee.**"*' (Emphasis added).
- [28] The learned authors of Halsbury's Laws of England¹³ opined that "*Misconduct inconsistent with an employee's proper discharge of the duties for which he was engaged is good cause for his dismissal, but there is no fixed rule of law defining the degree of misconduct which will justify dismissal...An employee may also be summarily dismissed...if his **conduct is insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of employer and employee.***"¹⁴ (Emphasis added).
- [29] In the present case, the evidence revealed that Ms. Abraham had ongoing problems with the staff and management since 2000. By 2004, she had already received at least four warning letters. In cross-examination, Mr. Peters highlighted the numerous occasions, known to him, where he described Ms. Abraham as "misconducting herself". He enumerated them as follows: (a) when he spoke with Ms. Abraham on the telephone, she

¹⁰ See paragraph 8 of the judgment [supra].

¹¹ (1974) ICR 428.

¹² Vol. 2, 29th Edn. (2004), para. 39-176.

¹³ See para. 642, page 436, Vol. 16, 4th Edn.

¹⁴ *Edwards v Levy* (1860) 2 F & F 94, 95, per Hill J.

will just hang up; (b) when he tried to correct her, she was very negative; (c) Ms. Abraham refused to take part in the Employee of the Quarter, Christmas and other functions, which he says, are designed to improve staff morals. (Mr. Peters could not show the Court any written policies which required Ms. Abraham to attend such functions but he asserts that with respect to the Employee of the Quarter function, Sunny Caribbee expects that Ms. Abraham, as a Supervisor, will take part in such events.); (d) Ms. Abraham failed to wear the uniform of Sunny Caribbee, which was ongoing since 2004 (Mr. Peters stated that wearing uniform was a policy of Sunny Caribbee, however, he was unable to say how the employees came about to wearing uniform. He also could not confirm whether the wearing of uniform was an initiation of the staff).

[30] On the afternoon in question, Ms. Abraham even queried the timing of the meeting and sought overtime if the meeting went beyond 5.00 p.m. The Managers agreed to this and Mr. Gunter even promised to take her home. During the meeting, Ms. Abraham got upset when the Managers did not give details of the names of the employees who made the complaints. This is when she started speaking loudly and thereafter, shouted at the Managers. It appears from the evidence that the Managers particularly, the youthful Mr. Peters was somewhat nervous dealing with a middle-aged employee like Ms. Abraham on issues pertaining to her behaviour. This was borne out in the evidence where he stated that *"I scheduled a meeting with the claimant to discuss the contents of the letter which had not been sent to her before the meeting. This was deliberately done on my part because I was very aware from previous occasions of the attitude that she would adopt if she was aware that we were to meet to discuss her conduct."*¹⁵

[31] Both Counsel alluded to the Labour Code.¹⁶ Whether or not it is applicable to the present case where there was no contract of employment (since none was pleaded by the Claimant) is another issue which happily, I do not have to determine. But, C 58(1) of the Labour Code merely accentuates the principle enunciated in **Henry v Mount Gay Distilleries** and the plethora of cases referred to in this judgment that an employer may terminate the employment of an employee where the employee has been guilty of

¹⁵ See paragraph 4 of the Witness Statement of Mr. Peters –Tab. 6 of the Trial Bundle.

¹⁶ Cap. 293 of the Revised Laws of the Virgin Islands.

misconduct in or in relation to his employment so serious that the employer cannot reasonably be expected to take any course other than termination. Such misconduct includes, but is not limited to situations in which the employee has- (a) conducted himself in such a manner as to clearly demonstrate that the employment relationship cannot reasonably be expected to continue....”

[32] Here, the BVI case of **Phillip James v Road Town Wholesale (Trading) Ltd**¹⁷ is helpful. In that case, Mr. James physically attacked his supervisor in the course of his employment. The learned Magistrate held that (i) summary dismissal was justified where an employee physically attacks his supervisor in the course of his employment and (ii) the circumstances of this case fall within section C58(1) of the Labour Code which permits the termination of employment where the employee has been guilty of misconduct in or in relation to his employment so serious that the employer cannot reasonably be expected to take any course other than termination. The Court of Appeal affirmed her decision and accordingly, dismissed the appeal.

[33] Also, in the case of **Pepper v Webb**,¹⁸ a gardener was asked to do certain work but he refused and used somewhat vulgar language. The Court held that his summary dismissal was justified for refusing to obey a lawful and reasonable order. More importantly, his conduct at that time was one arising out of a history of complaints of insolence and the incident which gave rise to his dismissal was merely the last straw.

[34] The case at bar bears close affinity to the case of **Pepper v Webb**. Over the years, Management had numerous problems with Ms. Abraham. This can be borne out from the litany of correspondence.¹⁹ They simply “turned a dull eye” at Ms. Abraham because they valued her seniority, longevity and responsibility within the company. But as Mr. Peters wrote *“As the company ages and advances, we need to be able to change with the time and long gone are the days when we could simply “give a simple slap on the wrist or turn a dull eye” to situations quite this serious.”*²⁰

¹⁷ Magisterial Civil Appeal No. 1 of 2004 [unreported] –Written Judgment delivered on 27 June 2005.

¹⁸ [1969] 2 All E.R. 216.

¹⁹ See Claimant’s List of Documents filed on 14 October 2009.

²⁰ See Dismissal Letter dated 23 November 2006 –Tab. 3 of the Claimant’s List of Documents.

[35] At the meeting, Ms. Abraham was simply insulting and insubordinate to such a degree that it was incompatible with the continuance of the relationship of employer and employee. Her shouting and defiant behaviour were simply the 'last straw' for the Managers, taking into consideration her long history of misconduct. In fact, when she was told at the meeting that her employment was terminated, she appeared relieved and exultant, almost as if the dismissal was long overdue.

[36] As I see it, there were valid reasons for her dismissal as the complaints contained in the warning letter were true. These complaints and especially her conduct at the meeting was such that it amounted to misconduct in relation to her employment, so serious that Sunny Caribbee could not reasonably be expected to take any course other than termination of the employment. The summary dismissal was justified in the circumstances.

Reasonable opportunity to be heard

[37] On 22 November 2006, Ms Abraham refused to answer the contents of the warning letter. She requested that she takes the letter away and peruse it at her convenience. The question now, is whether Ms. Abraham should have been given the opportunity to peruse the warning letter at her convenience and to be heard later. Was her right to natural justice breached?

[38] Ms. Rosan contended that where a complaint is made against a party, whatever the complaint is, it should be dealt with in front of the accused, and that a hearing should have been held with the parties, including the accused person and his or her accusers, to address the complaints, and a failure to do so, is a breach of natural justice. She referred to the Privy Council case of **B. Surinder Singh Kanda v The Government of the Federation of Malaya**²¹. Lord Denning, in delivering the opinion of the Board, had this to say: *"the rule against bias is one thing. The right to be heard is another. Those two rules are essential characteristics of what is often called natural justice..."* Further, the Board opined (at page 5):

"If the right to be heard is to be a real right which is worth anything it must carry with it a right in the accused man to know the case which is made against him. He

²¹ Privy Council Appeal No. 9 of 1961.

must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them.... It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The Court will not enquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The Court will not go into the likelihood of prejudice. The risk of it is enough. No one who has lost a case will believe he has been fairly treated if the other side has had access to the Judge without his knowing....”

[39] Mr. Peters was cross-examined on this issue. He admitted that upon receiving complaints from co-employees, he conducted investigations “behind her [Ms. Abraham] back”. Therefore, Ms. Abraham would have been unaware of the purpose of the meeting and the contents of the warning letter. However, he gives a reason for this: he deliberately did not forward the warning letter to Ms. Abraham prior to the meeting because of the attitude he anticipated she would have. He insisted that the issuance of the warning letter to Ms. Abraham was not premature.

[40] In my opinion, Ms. Abraham's opportunity to be heard arose when the Managers invited her to the meeting to address the complaints made against her. In the office, she was handed the warning letter. The Managers were prepared to go through each and every complaint in that letter. In fact, that was the purpose of the meeting. But she was upset and uncooperative from the inception. In fact, her first request was that she be paid overtime should the meeting go beyond her normal working hours. Not only were the Managers compliant to this request, Mr. Gunter even offered to take her home. As Mr. Peters was going through the letter, Ms. Abraham became defiant and unhelpful in resolving the issues. She began speaking loudly, stood up and then started shouting at Mr. Peters.

[41] As is evident from the warning letter, Sunny Caribbee was still prepared to give her yet another opportunity to rectify her deficiencies. The case of **Dietmann**, which was relied upon by Learned Counsel, Ms. Rosan can be distinguished from the case at bar. In **Dietmann**, it was held that the summary dismissal was not justified because she was not given an opportunity to attend any relevant meeting to address the report. In this case, Ms. Abraham was given an opportunity to be heard: that was the purpose of the meeting. She

failed to take advantage of the opportunity which the Managers had afforded to her to respond to the allegations in the warning letter. Instead, she insisted that there should have been a discussion before the letter was issued. In short, she threw away the golden opportunity which was afforded to her.

[42] I therefore hold that Ms. Abraham failed to take advantage of the opportunity which was afforded to her to be heard. There was no breach of natural justice.

Damages

[43] Summary dismissal is dismissal without giving the employee such notice, or wages in lieu of notice, as the contract requires. Having found that Sunny Caribbee was justified in summarily dismissing Ms. Abraham, the issue of damages does not arise for consideration.

Costs

[44] Although the issue of costs was not canvassed at the trial, I am able to determine what costs should be awarded in this case. It is my firm view that Ms. Abraham should never have brought this claim and having done so, she will bear the costs.

[45] Costs must be reasonable and fair. As this is a “run of the mill” case with no novelty and complexity, I will make an award of \$4,000 as representing reasonable costs.

Conclusion

[46] The claim for damages for wrongful dismissal is hereby dismissed. The Claimant shall pay costs of \$4,000 to the Defendant.

Indra Hariprashad-Charles
High Court Judge