



# THE ANTIGUA AND BARBUDA

541

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**NOTICES****ANTIGUA AND BARBUDA****IN THE INDUSTRIAL COURT****REFERENCE NO. 20 OF 2012****BETWEEN:****ROY HECTOR****Employer****Em-  
ployee****and****COLIN ABBOTT t/a ABBOTT'S CONSTRUCTION****Employer****Before:****The Hon. Charlesworth O.D. Brown****President****The Hon. St. Lawrence de Freitas****Member****The Hon. Samuel R. Aymer****Member****Appearances:****Mr. Cosbert Cumberbatch of Cumberbatch & Associates, for the Employee.****Mr. Septimus Rhudd and Jermaine Rhudd of Rhudd & Associates, for the Employer.****2014: October 27****2016: February 10****JUDGMENT****Brown, P:****Background**

1. The Employer is a building contractor conducting business as Abbott's Construction. The Employee's employment with him as a Carpenter/Foreman commenced on October 01, 1999. As at November 01, 2009 he was earning \$1,500.00 per week.
2. On November 01, 2009 the Employee was suspended on the grounds that: on October 31, 2009 he had the smell of alcohol on his breath after being verbally warned for the "same smell" on October 28, 2009; that his timekeeping was deplorable; and that he had been late for work fifteen (15) times during the previous month. The period of suspension was indefinite and would last until further notice so that the Employer could decide what action to take.
3. Despite his inquiry by letter dated February 10, 2010 as to whether he had been dismissed or would be recalled, the Employee received no further notice from the Employer and was never recalled.

**The Employee's Memorandum**

4. In his Memorandum filed on November 8, 2013, the Employee stated that: he had given satisfactory service for the 10 years of his employment; that he never received any letter of warning about any aspect of his work; and that there was no record of any misconduct on his part. He claimed that he had been unfairly dismissed and was entitled to compensation under the following heads:

- a) Damages for unfair dismissal
- b) Payment in lieu of Notice
- c) Compensation for loss of Protection
- d) Loss of earnings
- e) Any other relief the Court may deem fit.

**The Employer's Memorandum**

5. In his Memorandum, the Employer denied that the Employee was unfairly dismissed. In that regard, he stated that the Employee reported for work on the 28th October, 2009 with the smell of alcohol on his breath for which he was warned. The Employee was also warned about his poor time keeping. On October 31, 2009 the Employer found that the Employee had the "same smell of alcohol" on his breath.

6. At paragraphs 6 and 7 of his Memorandum the Employer stated:

"6. As a result of the Employee's poor time-keeping, which had amounted to being late on fifteen (15) occasions, during the month of October 2009, the Employer suspended the Employee.  
7. During the course of the said suspension, the particular job on which the Employee was employed ended and the Employer opted not to recall the Employee to work."

**The Issues**

7. The main issues for determination in this Reference are:
  - (1) Whether the Employee was unfairly suspended.
  - (2) Whether there was a temporary termination of the Employee's employment.
  - (3) Whether the Employee was unfairly dismissed.

**The Evidence**

8. In his Witness Statement the Employee referred to the warning/suspension letter dated November 1, 2009 exhibited with his Memorandum. The instructive text of that letter is as follows:

**"Re: Warning Letter****Dear Roy,**

**I am handing you this letter as a written warning, concerning your behavior and time keeping on the job site at Jumby Bay. On the 28th October 2009 You were found to have the smell of alcohol on your breath and when questioned about it replied it was just a small drink you had taken for one of the guys birthdays you as a supervisor should be aware that Abbott's Construction has zero tolerance for alcohol within working hours and this is a dismissible offence after warning you verbally about this and your time-keeping you was found to have the same smell of alcohol on your breath approximately 3 days later 31st Oct 2009 when questioned your reply was you had been out the night before and the smell was caused by that. This is unacceptable and detrimental to my business. Your timekeeping is deplorable and you have been late for work 15 times for the month of October alone you leave me with no option than to suspend you until further notice so I can decide what action to take. You have a responsibility to set an example for the other workers and to be attentive at all times, which in your supervisory position, is expected."**

9. Further, the Employee referred to his letter to the Employer dated February 10, 2010. The text of that letter is as follows:

**"Dear Sir,**

**For many years I have worked with you at Abbott Construction. I have worked with you since 1999 and have been your general foreman and most senior employee. I have given good and faithful service over the years.**

**On 1st November 2009, you gave me a letter of warning and suspended me for allegedly using alcohol on the job and for loitering. Four months have passed since that letter of warning was issued to me and I have not been recalled. I have not been given an opportunity to respond to the accusations you have made against me.**

**I need to know at this time what my position is with Abbott Construction. Is it your intention to recall me or have I been dismissed? If I have been dismissed you have not said so. I would therefore like you to clarify my position."**

10. The Employee testified that he had been Foreman for 7 of the 10 years of his employment. He said that he agreed that the Foreman had to set a good example for the other workers. He denied that he was intoxicated or drunk on the job. Specifically, he denied drinking rum from a teacup on the job. Further, he denied being customarily late or being late 35 times during the month of October 2009.
11. As to his efforts to mitigate his loss, the Employee testified that after his suspension he did not find a job as a Foreman but occasionally found work as a carpenter on a day to day basis, for which he was paid \$150.00 or \$200.00 per day. In addition, he occasionally worked on a job by job basis for which he would be paid larger lump sums. He continued that at the date of trial he was constructing a roof at Golden Grove from which he would earn \$3,000.00. He also testified that after his suspension he sometimes remained unemployed for periods of up to two or three months at a time.
12. For his part, the Employer testified that several "verbal warnings" were issued to the Employee but that there was no prior warning letter. He also said that after the suspension he did not recall the Employee to work and never intended to do so. He admitted telling the Employee that he was fired but never issued a dismissal letter. The Employer also admitted receiving the Employee's letter of inquiry dated February 10, 2010, approximately three and a half months after the suspension. He said that he did not respond to the letter because the Employee had failed to treat him with respect.
13. When pressed under cross examination, the Employer admitted that it would have been better to issue a warning letter before the suspension but he did not do so because he had pressures on him including domestic pressure so he did not have the time to follow all the usual processes. The Employer also stated that, apart from lateness, the Employee gave good service.
14. Daniel Owen testified on behalf of the Employer. He stated that he saw the Employee drinking rum from a tea cup on the job and came to the conclusion that he was intoxicated. He also said that he saw the Employee driving the Employer's backhoe while he was drunk.

#### The Law

15. **Section C58 of the Antigua and Barbuda Labour Code**, Cap. 27, (the Code) deals with reasons that justify dismissal. **Section C 58 (1) (a)** provides:

**C58 (1) A dismissal shall not be unfair if the reason assigned by the employer therefor**

**(a) relates to misconduct of the employee on the job within the limitations of section C59 (1) and (2) "**

**(b) ...**

16. **Section C58 (2)** provides the statutory test as to whether or not an employee was unfairly dismissed in the following terms:
- 2). The test generally, for deciding whether or not a dismissal was fair is whether or not, under the circumstances, the Employer acted unreasonably or reasonably.....”**
17. **Section C59 (2) of the Code** provides:
- (2) **Where an employee is guilty of misconduct in or in relation to his employment that is not sufficiently serious to permit his employer to terminate his employment under subsection (1) but is such that the Employer cannot reasonably be expected to tolerate a repetition, the Employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and state the action the employer intends to take in the event of**
- (a) **A repetition of the misconduct; or**  
 (b) **The commission of another misconduct which is as serious as the one in respect of which the warning was given.**
18. **Section B 3 of the Code** provides:
- “Suspension” means a temporary lay off from work for no more than four weeks with or without pay as a penalty or pending investigation of the employee’s alleged misconduct’**
19. **Section C 9 of the Code** provides that in cases where section C 59 (2) applies: **“C 9 3) .... The employer must give advance notice to the affected employee of an intention to terminate that person’s employment as follows:**
- (a) ...  
 (b) **...The period of said advance notice shall be at least equivalent to the interval of time between the affected employee’s paydays”**
20. **Division C, Part 4 of the Code** deals with the payment of severance pay when an employee’s employment is terminated for reasons of redundancy. Under this Part, **Section C 42** deals with temporary termination of employment. It provides:
- “(2) If the termination be stated as temporary, no severance pay need be -remitted to the terminated employee at the time of termination; Provided however that**  
 (b) **If no date of recall is given at the time of termination severance pay shall be payable when and if, after three months from the termination, the employee shall not have been recalled”**
21. The smell of alcohol on the Employee’s breath is, by itself, not sufficient to establish that the Employee was drinking alcohol on the job. In that regard, it is interesting to note that the warning/suspension letter did not allege that the Employee was actually drinking on the job as testified by Mr. Owen. Moreover, no allegation was made in the letter that the Employee reported for work in an intoxicated state or became intoxicated while on the job. For those reasons, we placed little weight on Mr. Owen’s evidence on those points.
22. We find as a matter of fact that the Employee reported late for work on several occasions. However, in light of the provisions of Sections C 58 and C 59 of the Code, the lateness as disclosed on the Employer’s records, does not justify the suspension without prior written warning.
23. Based on the evidence, we find it noteworthy that the Employer omitted to carry out any proper investigation or disciplinary proceedings to allow the Employee to state his explanation or defence in respect of the smell of alcohol or his documented lateness. In effect, there was a denial of the Employee’s right to natural justice.
24. In any event, it is clear that the Employer himself did not consider the Employee’s conduct to be sufficiently serious to warrant dismissal. Moreover, the Employer stated under oath that during his tenure of 10 years “Mr. Hector was a satisfactory employee on the whole – apart from the lateness”. In the circumstances, the Employer failed to discharge his statutory obligation to issue a warning letter under Section C 59 (2) of the Code. Needless to say, the “verbal” warning given on October 28, 2009 could not suffice.
25. The suspension was stated to be for an indefinite period “until further notice” so that the Employer could decide what action to take against the Employee. Having effected the suspension, the Employer had a duty to ensure that it did not go beyond the statutory limit of four weeks under section B 3 of the Code.
26. For the foregoing reasons, we feel compelled to find that the Employee was unfairly suspended.

**Whether there was a temporary termination of employment.**

27. Having effected an unfair suspension and having failed to keep it within the statutory limit, it follows that on the 29<sup>th</sup> day after the suspension took effect, the Employee’s employment was effectively terminated by the operation of law. The question arises: could this termination be characterized or be treated substantively as a temporary termination under section C 42 of the Code.
28. Based on the evidence before us, we believe that a consideration of this question is relevant in light of the Employee’s letter dated February 12, 2010. It is clear that the Employee offered to treat with the Employer as though he had been simply laid off. In fact

Resolving the Issues

**Whether the Employee was unfairly suspended:**

the Employee requested that the Employer clarify his position by telling him if he had been dismissed or if he would be recalled.

29. In relation to this issue, we accept the Employer's evidence that at the date of suspension the particular job was scheduled to come to an end in the following month of December. The evidence is that other work became available subsequently for which the Employee could possibly have been recalled.
30. Again, the Employer acted in breach of his statutory obligations. Firstly, he failed to give the Employee advance notice of his intention to terminate his services as is required under Section C 9 of the Code. Further, the Employer had an obligation to issue a statement notifying the Employee of his temporary termination under section C 42 of the Code. Moreover, since no date of recall was given, the Employer had the statutory obligation to pay severance pay to the Employee upon the expiration of three months after the date of temporary termination. He failed to discharge those obligations.
31. It is instructive to note that when the Employee wrote to the Employer by letter dated February 10, 2010, the Employer took the deliberate decision not to respond to it. His decision was made clear when he testified that at the time of suspension he had no intention of recalling the Employee. In fact, he said that in an earlier telephone conversation he told the Employee that he had been fired.
32. In the premises, this issue must also be resolved in favour of the Employee. There was no temporary termination of employment. Further, in our view, it is significant that the Employer rejected the Employee's invitation to treat the suspension as a temporary termination of his employment.

#### **Whether the Employee was unfairly dismissed**

33. The slightest application of the test of reasonableness under Section C 58 (2) of the Code leads to the inevitable conclusion that the dismissal of the Employee was unfair. That conclusion was belatedly conceded by Mr. Rhudd, Counsel for the Employer, towards the end of the trial. Accordingly, it is not necessary to detail the unreasonableness of the Employer's conduct. Upon Mr. Rhudd's concession, we moved on to assess the compensation to which the Employee is entitled.

#### The Awards of Compensation

##### Payment in lieu of Notice (Notice pay)

34. Under **Section C 9 (3) of the Code**, an employee is entitled to advance notice of his termination at least equivalent to the interval of his paydays. Accordingly, the Employee is entitled to no less than his weekly wages of \$1,500.00 under this head. Having regard to the Employee's tenure of 10 years, I accept his Counsel's submission that his notice pay should

be more than the minimum. In our view, he was deserving of no less than two weeks' notice. As a result, **we award the sum of \$3,000.00**, being the equivalent of two weeks wages.

##### Loss of Protection from Unfair Dismissal

35. Based on judicial precedents, an employee who is unfairly dismissed is entitled to compensation, equivalent to severance pay, under this head. Under section C 9 of the Code, a weekly paid employee is entitled to no less than one day's pay for each month worked. Again, given the facts and circumstances of this case, we agree with Mr. Cumberbatch's submission that the Employee should be paid at a higher rate. In our view, he should be paid compensation under this head calculated at the rate of one and a quarter days pay for each month worked. Accordingly, **we award the sum of \$45,000.00** [ $(\$300 \times 1.25) \times 10 \times 12$ ]

##### Immediate Loss

36. One of the fundamental principles in the law of contracts requires that a victim who suffers loss as a result of the breach of a contract by the other party is entitled to compensation for his loss. The law of unfair dismissal based on statutory provisions is no different. Accordingly, where an Employee suffers loss as a result of being unfairly dismissed he is entitled to compensation for his loss, subject always to his duty to mitigate.
37. In this case, details of the Employee's efforts to mitigate are sketchy at best. That is not surprising, given the nature of the construction industry. The Court must do the best it can using the limited evidence and its own knowledge of the industry in this jurisdiction. It is common knowledge that the earnings of a freelance carpenter may vary considerably from one month to the next. In the circumstances, we fix a time period of six weeks after which the Employee should have found reasonable alternative employment. Accordingly, **we award him the sum of \$9,000.00**, the equivalent of six weeks' full pay in his former employment.
38. The evidence discloses that the Employee sometimes earned between \$150.00 to \$200.00 per day after his dismissal. We fix his average daily pay at \$175.00 leaving a shortfall of \$125.00 in his daily wages earned from working for other contractors. In addition, we are also mindful that he earned lump sum payments for whole jobs which he performed as a carpenter/ contractor from time to time. Moreover, we must take into account the exigencies of life and several related imponderables.
39. During the trial the Employee's testified that he worked for three years before being appointed foreman. His evidence in that regard was not challenged. All things being equal, it is likely that it would have taken him approximately the same time before he could have been appointed as Foreman on another construction site. Having said that, we hasten to add that, even in the absence of the position as Foreman,

the Employee should have been in a position to earn as much as \$300.00 per day on average no later than 6 months after his dismissal. In the circumstances, we award the weekly sum of (125 x 5) for a period of twenty six weeks making a total award of \$16,250.00 [(125 x 5) x26] under this subhead.

Future Loss

- 40. Consideration is usually given in respect of compensation for future loss when it is anticipated that an employee will not attain his previous level of earnings until sometime in the future.
- 41. In the present case, an award has been made for the period of time when, in our estimation, the Employee should have been in a position to earn wages at the level he earned before his dismissal . The dismissal was effected towards the end of November 2009 at the latest, over 6 years ago. In the circumstances, there is no basis for an award under this head.

Fringe Benefits

- 42. The evidence discloses no basis for an award under this head.

Costs

- 43. We believe that it is important to note what we find to be the Employer’s deliberate deception when he issued the warning/ suspension letter knowing that he had no intention of ending the suspension and recalling the Employee. It strikes us that the Employer’s real motive was to dismiss the Employee knowing that he had no or no sufficient grounds for lawfully doing so. We conclude that he wanted to get rid of the Employee without providing him with a severance payment package.
- 44. **Section 10(2) of the Industrial Court Act** provides for the payment of costs only where exceptional reasons exist. In that regard, we are obliged to have regard for the principles and practices of good industrial relations. We embrace our duty to uphold and promote good industrial relations.
- 45. In the present case, we have identified four exceptional reasons in respect of the Employer’s failure or refusal to practice good industrial relations:
  - (1) Firstly, the Employer’s motive at the onset was improper. He clearly intended to terminate the services of the Employee under the guise of a suspension for an indefinite period.
  - (2) Secondly, during a conversation with the Employee after the suspension was effected, the Employer told him that he had been fired, yet he issued no dismissal letter.
  - (3) Thirdly, the Employer refused to respond to the Employee when he enquired about his position and signified his willingness to be recalled.
  - (4) Fourthly, once these proceedings commenced, the Employer could have saved the Court considerable time by making an early admission of liability.

In light of the foregoing exceptional reasons, we award costs in the sum of \$5,000.00.

46. We summarize the awards under the respective heads as follows:

(1.) Notice Pay	\$ 3,000.00
(2.) Loss of Protection	45,000.00
(3.) Immediate Loss	25,250.00
(4.) Costs	5,000.00
<u>Total</u>	<u>\$ 78,250.00</u>

47. **In the premises, we order that the Employer shall pay to the Employee the total sum of \$78,250.00, inclusive of costs, on or before March 30, 2016.**

Dated the 10th day of February 2016

.....  
**Charlesworth O. D. Brown**  
President

I agree.

.....  
**St. Lawrence De Freitas**

I also agree.

.....  
**Samuel R. Aymer**  
Member

**IN THE INDUSTRIAL COURT**

**ANTIGUA AND BARBUDA**

**AD 2014**

**REFERENCE NO: 34 of 2013**

**BETWEEN:**

**JENNIFER JOHNSON**                      **Employee**

**-AND-**

**ANTIGUA AND BARBUDA WORKERS’ UNION**  
**Employer**

**Before:**

<b>The Hon. Charlesworth O.D. Brown</b>	<b>President</b>
<b>The Hon. Samuel Aymer</b>	<b>Member</b>
<b>The Hon. Dr. Hayden Thomas</b>	<b>Member</b>
<b>The Hon. St. Lawrence De Freitas</b>	<b>Member</b>

**Appearances:**

**Mr. Anderson E. Carty of Antigua & Barbuda Tradesmen & United Workers Federation for the Employee**

**His Excellency, Sir Keithlyn Smith of Antigua & Barbuda Workers Union for the Employer**

2014:    June 16  
             July 16

**RULING ON APPLICATION IN LIMINE**  
**FOR DISMISSAL OF REFERENCE**

1. As I understand them, the background facts are as follows:
  - The dispute between the parties herein was referred to the Labour Commissioner for conciliation;
  - The Labour Commissioner referred the matter to the Minister of Labour;
  - At the conciliation hearing before the Minister on 11th June 2012, “the dispute was reduced to an issue of quantum” and “the Employee indicated a willingness to compromise” and accept a reduced sum on condition that it be paid in full within 7 days.
  - Upon the Employer’s failure to respond within the stipulated time, the Minister extended the time to 10th August 2012 and took the position that “in the absence of mutual agreement ...in respect of the proposed settlement, the Minister...adopts the recommendations of the Labour Department...”
  - As at the 10th August 2012 there was no agreement between the parties.
2. The Employee’s statement of case as contained in the Employee’s Memorandum includes the following assertions at paragraphs 20 and 21:
 

**“20. The matter was submitted to the Labour Commissioner and a hearing took place on June 10<sup>th</sup> 2009 but did not result in a voluntary adjustment or settlement.”**

**“21. The matter was subsequently referred to the Minister of Labour for mediation but did not result in settlement.”**
3. By its Employer’s Memorandum filed on the 27th May 2014, the Employer gave notice of its intention to make a preliminary application (submission in limine) for an order dismissing the Employee’s case on the ground that it’s commencement contravened the provisions of Section 19 (1) of the Industrial Court Act Cap 214 (the Act).
4. Section 19 (1) of the Act provides:
 

**“19 (1) Where the existence of a trade dispute has come to the attention of the Minister or the Labour Commissioner under and by virtue of the provisions of section K 14 (1) of the Antigua and Barbuda Labour Code, the Minister may at any stage refer the dispute to the Court; and notwithstanding the provisions of sections K 14 and B 5 (2) of the Antigua and Barbuda Labour Code, upon such referral the Labour Commissioner shall cease to perform the duty conferred on him by the said sections of seeking to achieve a voluntary adjustment or settlement of the trade dispute.”**
5. In its submissions filed on 6th June 2014, the Employer contended that:
  - “While the matter was still before the Minister of Labour, the Employee withdrew the matter and submitted same to the Industrial Court...”
  - once a matter is referred to the Minister **“only the Minister has the right to send any matter that is before him/ her to the Industrial Court, and in this instant case No 34 of 2013 Jennifer Johnson vs. Antigua and Barbuda Workers’ Union is not properly before the Court ”**
6. The Employer relied on the Ruling of this Court in **David Joseph v. the Antigua Distillery Limited**, Reference No. 5 of 1992, in which on an application by the Employer, the Employee’s case was dismissed because the commencement of the action had contravened the said Section 19 (1) of the Act. In the words of Moe P. :
 

**“On the true and proper construction of these subsections it is quite clear that the employee cannot avail himself of subsection 19 (2) since he would have had the opportunity to refer the matter to the Court after the Labour Commissioner had failed to achieve an adjustment or settlement voluntarily. Under subsection 19 (1) it is quite evident that the duties of the Labour Commissioner cease and it is for the Minister at any stage to refer the matter to the Court”**
7. In approaching the application before the Court in this case, I find the judgment of the Court of Appeal in **Universal Caribbean Establishment v. James Harrison**, Suit No 21 of 1993 (the Universal Case) to be the most instructive. In considering the matter before the Court, Byron C.J. (as he then was) wholly indorsed the submission of Joyce Kentish (now Kentish J. A) that the Act **“is an amorphous piece of legislation, poorly drafted, creating jurisdiction not in a precise and methodological and linear fashion, but obliquely and by disorganized composition.”**
8. As I understand it, the main issue before the Court of Appeal in the Universal Case was whether the Industrial Court had jurisdiction **“to hear matters of unfair dismissal that did not involve a trade dispute “.**
9. Under the Act, a trade dispute means a trade dispute as defined in section A 5 of the Labour Code. As condensed by Byron C.J. at page 8 of his judgment, the definition is as follows:
 

**“‘trade dispute’ (or ‘industrial dispute’) means any disagreement between employer and workers...over conditions of employment...which disagreement has led, or may lead, to an interruption of employment by lock out or strike”**

10. At page 2 of the Judgment, the Court of Appeal identified the jurisdiction of the Industrial Court as set out in Section 7 (1) of the Act which provides:
- “the Court shall have Jurisdiction ...  
 (a) to hear and determine trade disputes referred to it under this Act..  
 (b).....  
 (c) to hear and determine any complaints brought in accordance with this Act as well as such matters as may from time to time be referred to it under this Act”**
11. In interpreting the Act, Byron C.J. determined that although there was a clear procedure set out at Section 19 for dealing with **trade disputes** there was no similar procedure set out in respect of complaints of unfair dismissals by individual Employees. In fact, at page 16 of the judgment, the learned Chief Justice concluded that **“it is clear that an individual employee was not intended to be a party to a trade dispute.”**
12. Further, at page 12 of his judgment, the Chief Justice concluded as follows;
- “Part II of the Act, section 19, deals with Trade Dispute procedure. This is clearly regulatory of the jurisdiction conferred by section 7 (1) (a)”**
13. Notwithstanding the Court of Appeal’s pronouncements limiting the operation of section 19 to trade disputes only, the Court nevertheless concluded that the Industrial Court had jurisdiction to hear complaints of unfair dismissal made by individual employees. The words of Byron C. J. at page 18 of the judgment read:
- The necessary result of that view is the jurisdiction conferred by section 7(1) (c) empowers the court to hear any disputes concerning the dismissal of an employee.”**
14. Accordingly, in my view, the prerequisite for the application of Section 19 of the Act is that there existed a “trade dispute” as defined in Section A 5 of the Labour Code
15. There is no evidence before the Court that a trade dispute was in existence at any material time. As a result, I find that Section 19 does not apply to the matter before the Court. It follows that the Employer’s application should be dismissed.
16. Notwithstanding that conclusion, which should suffice to dispose of this matter, I move on to the consider that the terms of Section 19 (1) in respect of the powers of the Minister.
17. The use of the word **“may”** in that subsection means that power of the Minister to refer a matter to the Court is discretionary. In other words, even if the Minister’s conciliatory efforts do not result in a settlement of the matter before him, he is not obliged to refer it to the Court.
18. I feel strongly that the discretion of the Minister must necessarily be superseded by the right of an individual employee to refer his complaint of unfair dismissal, or any other matter in dispute, to this Court for hearing and determination. I should add at this point that it would approach absurdity if the contrary were true. For this additional reason, I would be further inclined to dismiss the Employer’s application.
19. I now go on to consider the circumstances under which this Court may allow the exercise of the Minister’s discretion to pre-empt the Employee’s right to commence and advance proceedings in this Court.
20. I believe that it is important to distinguish David Joseph’s case, on which the Employer relies, from the case now before this Court. In the former case, the Court had the benefit of the Minutes of the meeting convened by Minister. Moe P. quoted from the Minutes that the Minister “promised to consider where next to send the dispute”. Clearly, based on the evidence before it, the Court concluded that the matter was still before the Minister pending his further attention. In this case, there are no similar minutes confirming that the matter was still before the Minister.
21. On behalf of the Employer, His Excellency, Sir Keithlyn Smith strongly urged the Court to follow the Ruling in David Joseph’s case. He contended that to do otherwise would be contrary to Section 19(1) and thereby erode the power of the Minister. Further, he contended if this Court declined to apply that Ruling, it would effectively undermine the principles and practices of good industrial relations which this Court is obliged to uphold.
22. On the other hand, Mr. Anderson Carty submitted that in this case, the Minister had completed his intervention towards a voluntary settlement. In that regard, he relied on the Minister’s Conciliation Report dated 27<sup>th</sup> July 2012 in which the Minister stated that he would adopt the recommendations of the Labour Department in the absence of agreement to the contrary by 10<sup>th</sup> August 2012.
23. Mr. Carty buttressed his argument by referring to Section B 6 (1) and (2) of the Labour Code which provides that in the event that the Minister fails to achieve a voluntary settlement or adjustment it was open to him to exercise his discretion by referring the matter back to the parties for the pursuit of legal action.
24. It was Mr. Carty’s contention that, on its true construction, the effect of the Minister’s Conciliation Report was to leave the matter to the Employee for her to take legal action if she so desired. He submitted that the terms of the Report made it clear that the Minister had terminated his intervention. Thereafter, the Employee was entitled to proceed to institute these proceedings.
25. I do not favor Sir Keithlyn’s assertion that, notwithstanding the terms of his Conciliation Report,

the matter remained before the Minister. I find that the Minister had completed his intervention. At the material time, there was nothing to suggest that the Minister had any lingering interest in the matter or intended to renew his intervention. Moreover, there is no evidence of any further communication between the parties.

- 26. For the reasons stated above, I am even more inclined to dismiss the Employer’s application. However, I feel obliged to go even further to consider the Employer’s application on its merits outside of the provisions of Section 19 of the Act. In this regard, I am mindful that the Employee is entitled to file her individual complaint of unfair dismissal although there are no express procedural guidelines for the same vis-a-vis complaints in relation to trade disputes.
- 27. In the circumstances and in any event, I am constrained to consider the Application before the Court in the wider context of Section 10 (3) (a) of the Act. This Court is obliged to make such orders as it considers to be **“fair and just, having regard to the interests of the persons immediately concerned and the community as a whole”**. Moreover, this Court must **“act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations and, in particular, the Antigua and Barbuda Labour Code.”**
- 28. The Employee is entitled to an expeditious determination of her complaint. In that regard, I note that this Reference was filed since April 2013. It would be reasonable for her to expect to have her matter determined before the end of the current year 2014.
- 29. In the course of making his oral submissions in response to the observations and enquiries of the Court, Sir Keithlyn conceded that in lieu of an order striking out the Reference, this Court may ex-

ercise its jurisdiction by ordering that the proceedings be stayed pending further intervention by the Minister or a final express statement from him that he has no further interest in this matter. It is not surprising that Mr. Carty resisted this alternative judicial course of action.

- 30. In considering this matter in the wider context and considering the option of granting a stay, the Court takes judicial notice of the results of recent general elections and the consequential appointment of a new Minister of Labour.
- 31. In the final analysis, having regard for the provisions of Sections 10 (3) of the Act and the current transitional state of national affairs, I am constrained not only to dismiss the Employer’s Application but also to shy away from the grant of a stay pending the further attention of the Minister.
- 32. In the premises, the Employer’s application is hereby dismissed with no order as to costs.

**Dated the 16th day of July, 2014**

.....  
**HON. CHARLESWORTH O.D. BROWN**  
**PRESIDENT**

**I agree**

.....  
**HON. SAMUEL AYMER**  
**MEMBER**

**I agree**

.....  
**HON. DR. HAYDEN THOMAS**  
**MEMBER**

**I also agree**

.....  
**HON. ST. LAWRENCE DE FREITAS**  
**MEMBER**

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**EASTERN CARIBBEAN SUPREME COURT**

**VACANCY NOTICE**

Suitably qualified applicants are invited to fill the position of:

**HIGH COURT JUDGE**

To serve in any of the Member States and Territories of the Eastern Caribbean Supreme Court. Applicants may be posted in a Member State or Territory despite being a citizen or resident of that country if the circumstances permit.

Applicants for the position of High Court Judge must (a) be or have been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or (b) be qualified to practise as an advocate in such a court, and has so practised for a period or periods amounting in the aggregate to not less than 10 years.

**TOTAL BASIC SALARY:** EC\$16,465.00 monthly inclusive of transportation and entertainment allowances.

Interested persons may download an application package from the Eastern Caribbean Supreme Court’s Website – [www.ec-courts.org](http://www.ec-courts.org) or request in writing from:

The Secretary  
 Judicial and Legal Services Commission  
 P. O. Box 1093  
 The Waterfront  
 Castries  
 St. Lucia, W. I.  
 Telephone: [758] 457-3600  
 Fax No.: [758] 451-6838  
 Email: [jlsc@eccourts.org](mailto:jlsc@eccourts.org)

Deadline for receipt of applications: **Monday, 15th August 2016.**  
**Note: Only suitably qualified applicants will be acknowledged.**

**Eastern Caribbean Central Bank**  
 Unaudited Statement of Financial Position  
 as at 31 May 2016

(Expressed in Eastern Caribbean dollars)

**LIABILITIES AND EQUITY**

**LIABILITIES**

Demand liabilities - domestic	4,816,644,467	
Demand liabilities - foreign	1,899,332	
IMF government general resource accounts	<u>1,130,950</u>	
		4,819,674,749

**EQUITY**

General reserve	104,867,767	
Other Reserves	<u>130,351,572</u>	
		<u>235,219,339</u>

**TOTAL LIABILITIES AND EQUITY**

5,054,894,088

**ASSETS**

**FOREIGN ASSETS**

Regional and foreign currencies	38,847,144	
Balances with other central banks	15,563,805	
Balances with foreign banks	86,726	
Money market instruments and money at call	1,538,638,844	
Financial assets held for trading	2,422,127	
Foreign investment securities	<u>3,120,590,987</u>	
		4,716,149,633

**DOMESTIC ASSETS**

Cash and Balances with local banks	2,666,738	
Term deposits	9,874,738	
Domestic investment securities	421,686	
Participating government securities	84,454,830	
Due from participating governments	47,524,191	
Accounts receivable and prepaid expenses	32,494,064	
Investments in associated undertakings	16,048,046	
Intangible Assets	2,221,636	
Property, plant and equipment	128,571,526	
Pension asset	<u>14,467,000</u>	
		<u>338,744,455</u>

**TOTAL ASSETS**

5,054,894,088

Proportion of Foreign Reserve Assets held under Article 24 (2) of the ECCB Agreement  
 as a Percentage of Demand Liabilities is:

97.88%

  
 DEPUTY GOVERNOR

**Vehicle Auction Sale**

BY VIRTUE OF THE POWERS VESTED IN ME UNDER SECTION 66 (1) SUBSECTION 4 OF THE VEHICLES AND ROAD TRAFFIC ACT, CHAPTER 460 AS AMENDED BY NO. 15 OF 1995.

THE TRAFFIC COMMISSIONER MAY, THREE MONTHS AFTER—

(a) Impounding; any vehicle under this Act. or

(b) The final determination of any criminal matter in relation to any motor vehicle so impound,

Dispose Of the vehicle by public auction or in any other manner as the Traffic Commission thinks fit if the vehicle is not removed by the owner from the custody of the Traffic Commissioner within the period prescribed in this subsection.

THE TRAFFIC COMMISSIONER WISHES TO INFORM THE GENERAL PUBLIC THAT A VEHICLE AUCTION SALE WILL TAKE PLACE AT THE GOVERNMENT MOTOR POOL ON WEDNESDAY 31ST AUGUST, 2016, AT 10:00 A.M CONTINUING UNTIL ALL THE VEHICLES ARE SOLD.

THE COMMISSIONER OF POLICE WOULD ALSO BE SELLING BY AUCTION ONE BLUE AND WHITE SINGLE HULL VESSEL WITH TWO (2) YAMAHA ENGINES WITH A DRAFT OF 2FT, BEAM OF 8FT 6INCHES AND 37FT IN LENGTH THAT WAS SIZED BY THE POLICE.



**Wendel Robinson Esq.**  
Commissioner of Police  
& Traffic Commissioner.  
Dated: 30th June, 2016

**List of Motor Vehicles to be sold at Public Auction Sale at the Government Motor Pool from the 31st August, 2016.**

SR NO	Registration Number	Names of Owner/Driver	Make	Model	Colour	Detention Date
<b>MOTOR VEHICLES</b>						
1	A 30264	Bernard Tonge	Suzuki	Escudo	Maroon	30th March, 2013
2	A 30251	Andy G. Jacobs	Honda	Accord	Beige	26th September, 2015
3	A 7370	Mario R. Gelpil	Toyota	Corolla	White	2nd March, 2014
4	A 6047	Mark A. Medrano	Nissan	Sentra	Gray	9th September, 2015
5	A 24023	Curtis Browne	Toyota	Wagon	Silver	18th February, 2013
6	32166	Carlos Bridge				Under Investigation
7	A 35214	Michael J. Warde	Mitsubishi	Lancer	Green	9th September, 2015
8	A 25774	Steffi R. Branker	Nissan	Almera	Gray	Released on 23/6/16
9	A 31544	Investigate	Nissan	Sentra	White	4th March, 2015
10	A 16302	Junie Harrigan	Toyota	Corolla	Green	14th December, 2014
11	C 8498	Everrette Christopher	Mitsubishi	Pickup	Gray	14th August, 2013
12	A 14850	Jason Williams	Kia	Rio	Red	16th June, 2015
13	A 36217	Richard Bougouneau	Nissan	Sentra	Gray	20th February, 2015
14	A 2492	Alex Cadeau	Toyota	Camry	Gray	30th October, 2015
15	A 13966	Peter Kelsick	Toyota	Corolla	Gray	22nd June, 2015
16	A 36619	Joaquin L. Jimenez	Suzuki	Baleno	Maroon	27th October, 2015
17	A 17418	Kevin Josiah	Suzuki	Baleno	Silver	2nd June, 2015
18	A 21025	Angus Carbon	Suzuki	Escudo	White	7th June, 2015
19	A 30370	Pearllen Allen	Kia	Rio	Black	7th June, 2015
20	A 30060	Marvis A R. Brade	Toyota	Curren	White	17th February, 2015
21	A 22196	Rondly H. Anthony	Toyota	Corona	Car	14th September, 2015
22	A 23987	No Name	Honda	Accord	Car	3rd January, 2015
23	No # Plate		Nissan	Sentra	Purple/Black	3rd January, 2014
24	A 43068	Kareem Williams	Nissan	Sentra	White	6th January, 2014
25	A34148	Mark Fialely	Hyundi	Lanos	Silver	23rd May, 2015
26	A 33124	Franciso A. Vesquez	Kia	Pride	Blue	2nd December, 2014
27	A 23872	David R. Anthony	Honda	Wagon	Silver	28th March, 2014
28	A 36626	Tamam Ibrahim	Nissan	Tiida	White	12th June, 2015
29	A 26908	Gladstone M E. Williams	Mazda		Brown	15th May, 2015

30	C 3845	Oriel Campbell	Nissan	Pickup	Green	6th November, 2015
31	A 41306	Jermaine Emmanuel	Mitsubishi	Galant	Silver	24th August, 2015
32	A 12141	Terrence Jackson	Suzuki	Swift	White	21st October, 2014
33	A 21740	Oslin Gordon	Nissan	Sunny	Gray	7th March, 2014
34	A 4668	Kortwright V. Barry	Isuzu	Jeep	Green	17th May, 2015
35	A 4589	Lorna Mae Lewis	Dodge	Metro	Red	12th March, 2013
36	A 7975	Ronel Beaton	Mitsubishi	Lancer	White	10th December, 2015
37	C 1302	Donald Grant	Nissan	Pickup	Silver	7th March, 2014
38	No # Plate		Toyota	Corolla	Blue	3rd April, 2015
39	No # Plate		Ford	Explorer	Green	5th July, 2015
40	A 17076	Emanuel McLeish	Nissan	Almera	White	26th November, 2014
41	C 7680	Everton Waldron	Toyota	Townace	White	11th November, 2014
42	A 29241	Rodney Simon	Toyota	Corolla	Gray	3rd November, 2014
43	A 10650	Leroy Joseph	Mitsubishi	Lancer	Green	13th August, 2015
44	A 28546	Glint Omarde	Honda	Accord	Green	14th November, 2013
45	A 18757		Suzuki	Vitara	Green	3rd May, 2014
46	A 20189	Eustace Simon	Kia Kia	Cerato	Black	18th May, 2012
47	C 9638	George Henry	Toyota	Towance	White	20th October, 2015
48	A 24327	Canute Henry	Nissan	Sentra	White	5th April, 2012
49	A 1597		Toyota	Daytona	White	14th December, 2012
50	A 11075		Mitsubishi	Lancer	Black/ Maroon	March, 2013
51	A 18382	Melfean Nelson	Toyota	Corolla	Gray	February, 2013
52	A 27453	Boris A L. Teague	Kia	Pride	Gray	16th December, 2013
53	A 12141	Tashena Adams	Kia	Avella		May, 2013
54			Nissan	Urvan	White	January, 2012
55	A 1907		Honda	Accord	White	18th November, 2013
56	A 11172		Mazda	323	Red	30th November, 2014
57	A 7609	Bernard Henry	Nissan	Sentra	White	11th April, 2012
58	A 21376		Volkswagon	Volvo	Green	July, 2013
59			Isuzu	Van	Blue/ Gold	December, 2008
60	A 12011		Hyundai	Elantra	Gray	July, 2009
61	A 40376	Robert Vital	Mitsubishi	Lancer	Black	10th July, 2015
62	A 35516	Dwayne Drew	Kia	Pride	Dark Blue	28th October, 2013
63			Nissan	March	Gray	January, 2009
64			Nissan	March	Gray	August, 2008
65	A 23640	Ian Brayley	Suzuki	Jimmy	Black/ White	17th December, 2015
66	A 13104		Kia	Pride	White	March, 2009
67	A 33764	Justice Samuel	Nissan	Sentra	White	27th October, 2014
68	A 12360		Mazda	323	Gray	31st December, 2014
69	A 21788	Martinez Motilla	Mitsubishi	Towny	Blue	28th November, 2014
70	A 7031	Charlesworth Peters	Nissan	Almera	Green	23rd October, 2014
71	A 31761	Wilfred Gordon	Nissan	Maxima	Silver	29th August, 2015
72	A 21760		Toyota	Corolla	Gray	September, 2014
73	A 23674	Flat Point Development	Toyota	Rav-4		6th January, 2015
<b>MOTOR BIKES</b>						
74	A 367	Joseph Samuel Zila Samuel	Honda	Scooter	Red	24th June, 2014
75		Jevorn Boland	Yamaha	Motorbike	Red	15th July, 2014
76			Pit Dirt	Demon	Red	10th November, 2014
77		Shamory David	Pit Dirt	Demon	Blue	10th December, 2014
78	A 19493	Steve Miller	Yamaha	Motorcycle	Green/ Yellow	20th January, 2015
79			Zongshen	Motorbike	Red	5th May, 2015
80			Honda	Econo Power	Red	5th May, 2015
81	A 15225	Donald McPherson	Honda	Motorbike	Red	8th May, 2015
82		Abdell Greene		Motorbike	Red/ Black	15th May, 2015

83		Roymario Frederick	Honda	Motorbike	Red/White	12th November, 2015
84			Jialing	Motorbike	Black	2nd July, 2010
85		Yokeema Barton		Motorcycle	Red	14th October, 2013
86		Jenson Joyce		Motorbike	Red	9th January, 2012

**List of Motor Vehicles to be sold at Public Action Sale at Police Headquarters on Friday 2nd September, 2016 at 10:00am.**

<b>MOTOR VEHICLES</b>						
87	C 13198	James A. Dreckett	Nissan	Urvan	White	
88	A 41404	Marsha Berry	Toyota	Starlet	Black	23rd December, 2015
<b>MOTOR BOATS</b>						
89		Government of Antigua/Barbuda	2 Yamaha 200 HP 4 Stroke	V6-2014 Engine	Blue/White	