



THE ANTIGUA AND BARBUDA

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NOTICES

ANTIGUA & BARBUDA

**THE INDUSTRIAL COURT
REFERENCE NO. 14 OF 2012**

BETWEEN:

IRA LOOBY

Employee

And

WEST INDIES OIL COMPANY LTD

Employer

Before:

The Hon. St. Lawrence De Freitas

Chairman

The Hon. Hayden Thomas

Member

The Hon. Samuel R. Aymer

Member

Appearances:

**Stacy Richards-Anjo, Sandy Khoury and
Kivinee Knight of Richards & Co.**

– *Attorneys-at-Law for the Employer.*

**Dane Hamilton Jr. and Judith Dublin
of James Dublin & Co.**

– *Attorneys-at-Law for the Employer.*

**2014: April 7
September 12**

JUDGMENT

De Freitas, St. L.

Background

1. By reference dated the 30th day of April 2012 the Employee Mr. Ira Looby (hereafter referred to as **Mr. Looby or the Employee**) who lives at Potters Village, St. John's Antigua has filed a complaint to the court that he was unfairly dismissed by the West Indies Oil Company, his Employer, and that he is entitled to compensation.

2. The West Indies Oil Company (hereafter referred to as **the Company or the Employer**) operates an oil distribution facility at their premises on Friar's Hill Road, St. John's Antigua.

Proceedings

3. The Employee filed his Employee's Memorandum on the 4th day May 2012. In his Memorandum, he contends

that his dismissal was unfair, harsh and contrary to good industrial relations practices and seeks compensation for payment in lieu of Notice Pay, Loss of Protection from Unfair Dismissal, for Immediate Loss, for Future Loss and Loss of Fringe Benefits.

4. The Company filed their Employer's Memorandum on the 24th day of October 2012. The Company maintains that the Employee was aware of the "Employee Hand Book", that he was also aware that, where an employee used another employee's time card to clock such other employee into or out of work, then either or both employees involved would be subject to dismissal. They further stated that employees involved, if dismissed, would then be considered discharged for cause. They further maintain that the decision to terminate was a reasonable one and that they acted reasonably in all the circumstances of the case.

The Evidence

5. Mr. Looby worked with the Company on two separate occasions, firstly from the 15th October 1981. This first employment came to an end on the 17th August 1983 when the Employer discontinued its refining operation and he was paid severance benefits.

6. The Employee commenced a new employment with the Company on the 9th February 1987 and continued in that employment until his dismissal on July 26th 2010. He had worked for almost 24 Years and had attained the position of "Group Leader".

7. His evidence was that at the time of his dismissal his salary was \$2896.00 per fortnight. That he also obtained a shift allowance of \$62.20 per fortnight and that in addition he received \$100.00 per fortnight as transportation allowance. He further contributed 5% of his earnings and the company contributed an equal amount of 5% to a thrift fund organized by the Company.

8. The Company had a system in place where each employee was required to "punch in" a time card at the beginning of their shift and again was required to "punch out" at the end of the said shift.

9. The time clock and cards were located in a small area at the entrance /exit of the Employer's premises.

10. The Company had a policy in place that prohibited employees from "punching" each other's time card and this policy was clearly set out in an Employees Hand Book.

11. The Employee denies ever having been given the "handbook", during his second employment with the Company. However, on cross-examination he admitted that "when I was employed first in 1981 I was given a copy of

the Hand Book”. He also admitted that as shift leader he knew that punching in/out for someone else was wrong. The evidence is clear that he was aware of the handbook and was familiar with the relevant section prohibiting such conduct.

The Employees Hand Book reads:

“16. Time Recording

Employees not exempted are required to record their attendance by clocking a time card which is used to determine their normal weekly earnings.

They are required to punch their time cards as noted below:

- a.
- b.
- c.
- d. Upon completion of work assignment.

For your information and guidance, the clocking in and out of another employee’s time card is specifically prohibited. Any employee participating in such action will be discharged for cause”.

12. On the 19th July 2010 at approximately 8.00 AM and at the end of his shift the Employee was asked by a fellow employee, Mr. Richard Samuel, to punch out his (Samuel’s) time card as they were both leaving the premises having completed their 12.00 Midnight to 8.00 AM shift.

13. The Employee acceded to the request and in fact did “punch out” his colleague’s card.

14. Present in the vicinity of the small area where the time clock and cards were located was a Security Officer and the Payroll Clerk/timekeeper. The evidence is that Mr. Samuel was in conversation with the timekeeper who was standing approximately 6 feet away, when the request to punch out his time card was made.

15. The Employee’s evidence is that after he had punched out Mr. Samuel’s card the Security Officer had reminded him that it was against the rules to do so. The Employee also gave evidence that he had then apologized for having done so and explained that he had no intention to, and could not steal time because Mr. Samuel had just completed his shift.

16. The Employee admitted that after the Security Officer warned him that she would report the matter, he then told her that she could write whatever she wanted.

17. The Security Officer was not available to give evidence before the Court.

18. However, the evidence is that the Security Officer subsequently reported the incident to the management of the Company and the Employee was placed on suspension when he reported to work (after one week vacation) on July 26th 2010, until further notice.

19. The Employee maintains by his witness statement *inter alia* that the express prohibition against punching in and out for another employee was designed to cure and prevent the actual or potential mischief of “stealing time’ whereby two or more employees would collude with each other to falsify their time card and thereby deliberately and dishonestly mislead the Employer’s Time Keeper so that a particular employee would be paid for a period of time for which he had not actually worked.

20. While the Employee was on suspension and before he was dismissed several of his fellow workers wrote a letter to the Company protesting the suspension, claiming that in their opinion the punishment (prior to the dismissal) was excessive relative to the situation and contrary to good labour practices.

21. On the 13th August 2010 the Employee was asked to report to the Company’s Personnel Manager and was thereupon dismissed by letter dated 26th July 2010.

Reason for Dismissal

22. The letter of dismissal, after having recited the facts that the employee was caught punching another employee’s time card, went on to declare that, “management had lost the trust and confidence we placed in you and subsequently must terminate your employment effective immediately”.

23. The Employee was given a cheque in the amount of EC\$25,491.18.

The Law

24. The Antigua and Barbuda Labour Code at Section C56, C58 and C59 State:

C56. “Every employee whose probationary period with an employer has ended shall have the right not to be unfairly dismissed by his employer; and no employer shall dismiss any such employee without just cause”.

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 C 59 (1) and (2);

(b)

(c)

(d)

(e)

Provided, however, that there is a factual basis for the assigned reason.”

25. C58 (2) states as follows:

“ (2) The test, generally, for deciding whether or not a dismissal was unfair is whether or not, under the circumstances, the employer acted unreasonably or reasonably but, even though

he acted reasonably, if he is mistaken as to the factual basis for the dismissal, the reasonableness of the dismissal shall be no defence, and the test shall be whether the actual circumstances which existed, if known to the employer, would have reasonably led to the employee’s dismissal.”

26. C58 (1) (a) must be read in conjunction with sections C59 (1), C59 (2) and C59 (4). C59 (1) (a) states as follows:

C59.” (1) An employer may terminate the employment of an employee 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. 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
- (b)
- (c)

(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 written warning was given.....

(3) The action to be taken under subsection (2) may include suspension without pay for such period as may be specified in the written warning.

(4) Where within six months of the receipt of the written warning under subsection (2) the employee is guilty of the same misconduct or is guilty of another misconduct in relation to his work which is as serious as the one in respect of which the written warning was given, the employer may terminate the employment of the employee or take such other action as may have been specified in the written warning”.

27. In addition the Industrial Court Act (Cap 214), Sec. 10 (3) b states:

“(3) Notwithstanding anything in this Act or in any other rule of law to the contrary, the Court in the exercise of its powers shall-

- (a).....
- (b) 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. Matters to be determined are as follows:

- (a) Was the Employee guilty of misconduct so serious that the Company could not Reasonably be expected to take any action other than termination?
- (b) Did the Company act reasonably in summarily dismissing the employee?
- (c) If the Employee was unfairly dismissed, what compensation should be paid to him, if any?

Employer’s Submissions

29. Learned Counsel for the Company in their written submissions has made reference to several warning letters “which were all written to the Employee in regard to “multiple infractions”. Copies of these letters were also exhibited as a part of Mr. Leo Webson’s witness statement. These letters were dated since 30th January 1992 with the latest one dated 27th March 2009. The court finds that these letters do not fall within the timeframe provided in section C59 (4) of the Labour Code and that it is further unreasonable for the Employer to rely on any such alleged previous misconduct on the part of the Employee to support his present dismissal.

30. Learned Counsel for the Company referred this court to the case of **London Borough of Harrow V Cunningham [1996] IRLR 256**. This is a matter where two employees had committed the same or similar infractions on the job but were given different penalties, one was dismissed and the other received a warning letter. In our view, the question of different penalties must be considered in the context of the facts of this matter before the court.

31. Counsel for the Company further made reference in their written submissions to the case of **ASDA Stores Limited V Mrs. Sandra Malyn [2001] ALL ER D419/Appeal No. EAT/0066/00**. This case concerned the abuse of a ‘Discount Card’ by the employee. In that case the employer’s published policy regulated who was authorized to use the said card to obtain discount privileges. Unauthorized use of the discount card amounted to a financial disadvantage to the company. The employee was found to have misused the discount card. This matter also considers that where the disciplinary code (**Company’s policy**) of the employer (Employee Hand Book as it relates to this matter) stipulates that a particular act---is to be regarded as an offence of gross misconduct attracting the possible sanction of summary dismissal, that the employer could readily ascertain the provisions of the code (Employee Hand Book).

32. It should, however, be noted, that the court in the above matter never appeared to have had reason to

consider any statutory provision comparable to the Antigua Labour Code [Sec. C59] and the Industrial Court Act. [Sec. 10 (b)]

Employee's Submissions

33. The Court has not received any written submissions on behalf of the Employee, notwithstanding having made several requests for the same.

Summary Dismissal

34. In the matter before this court, the Employee was dismissed summarily and the employer is relying on Article 15 of their Handbook which reads "For your information and guidance, the clocking in and out of another employee's time card is specifically prohibited. **Any employee participating in such action will be discharged for cause**". (The Court's emphasis)

35. However note has been taken of the fact that, notwithstanding the policy stated in [34] above, in the Witness Statement of Mr. Leo Webson, the Employer's Personnel and Administrative Officer, stated: "*The Employee's Handbook gives authority to the Employer to terminate both employees involved in an incident where one has punched the other's time card. Having taken all the circumstances into consideration including the records of both the Employee and Mr. Richard Samuel (the other employee involved) we made what we considered to be a reasonable decision in exercising our discretion in terminating the Employee*". Mr. Samuel received a five-day suspension. In evidence it was conceded by Mr. Webson that Mr. Looby's letter of termination did not include his record as a reason for termination.

36. It is clear from the circumstance of the case that there was no intention on the part of the Employee and/or Mr. Richard Samuel to steal time or in any other way to mislead the Employer to pay either of them for time that they did not actually work, taking into consideration that the alleged misconduct took place at the end of their shift (a) which both the Employee and Mr. Samuel had just completed, (b) in a very small area, described in the evidence as a security booth of approximately 10 feet by 12 feet, in which the Time Keeper is reported to have witnessed the entire incident, the Employee was no more than 5 or 6 feet from Mr. Samuel and (c) that they were leaving the premises.

37. This however does not mean that the Employee is without fault in this matter. He clearly punched out a card of another employee knowing that it was wrong to do so (See Para 13 above) and he must take responsibility for his action.

38. In the matter of *Universal Caribbean Establishment and James Harrison* [Appeal suit No. 21 of 1993] Byron, C.J. [AG] (as he was then) stated, *inter alia* "*The Labour code was an innovative and important enactment, which made substantial changes to the industrial law of Antigua.-----In particular it created a*

new right not to be unfairly dismissed. This right has not been known to common law."

39. This right not to be unfairly dismissed is protected by the statute and is referred to in Paragraph 24, 25, 26 and 27 above.

40. The matter of summary dismissal was also considered in *Brenda Albert & Laurie Marsh vs. Woods Development Ltd (Ref. #5 of 1998)* a decision handed down in this court. The President stated *inter alia* "*Repeatedly this court has stated that Summary Dismissal should be the ultimate punishment by an employer and except for an extreme case should be applied only where all else failed*".

41. In *Jupiter General Insurance Co. Ltd. V Schroff [1937] 3 All E.R. 67* the Privy Council *inter alia* made two observations which are to be borne in mind. The first is that summary dismissal is a strong measure which may be justified only in exceptional circumstances. The second is that the test to be applied in determining whether a summary dismissal was justified must vary with the nature of the business.....See Industrial Law (second edition) Butterworths page. 174.

42. In *Cable & Wireless Ltd. V Hill & Others* (the court of appeal). At page 129 of the judgment, *Berridge J.* stated *inter alia* that the "*burden of proof was on the company to show "just cause" for dismissing the employees and that summary dismissal constituted a "strong measure", that "the standard of proof should be strict, persuasive and convincing. Further, notwithstanding the fact that this is a matter of a civil nature requiring proof on the balance of probabilities, since the matters to be proved were of a grave and weighty nature, it would expect the evidence to be correspondingly cogent and weighty in nature and content*".

Decision

43. In arriving at a decision in this matter careful consideration was given to the evidence of all parties concerned. Special consideration was given to the relevant sections of the Antigua and Barbuda Labour Code, Cap 27 and the Industrial Court Act, Cap 214 and other authorities.

44. Some of the questions this Court must determine are ;

a. Whether or not the action of the Employee was *so serious that the Employer cannot reasonably be expected to take any course other than termination.*

b. Did the Employee by his actions and under the circumstances *conduct himself in such a manner as to clearly demonstrate that the employment relationship cannot reasonably be expected to continue?*

c. What are the *exceptional circumstances, if any, that would justify summary dismissal*

VACANCY NOTICE**Vacant Position of Chief Protocol Officer**
Ministry of Foreign Affairs, International Trade and Immigration**Post:** Chief Protocol Officer**Grade:** B (Miscellaneous)**Salary:** \$59,712.00 per annum**Allowance(s):**

Duty Allowance at the rate of \$12,000.00 per annum

Entertainment Allowance at the rate of \$3,000.00 per annum

Travelling Allowance at the rate of \$7,752.00 per annum

Specifications:
other

- Good knowledge of the structure of Government, its operations and members good knowledge of development partners and the civil society;
- Integrity and strong interpersonal skills
- Ability to communicate and write effectively in English;
- Ability to communicate fluently in one or more other languages is an advantage;
- Fluency in oral presentation and communication in English;

Qualifications and Skills:

- a Master Degree or its equivalent in International Relations, Political Science, or equivalent qualification. In addition to these qualifications, studies and training in diplomacy would be an advantage;

Experience:

- Preferably a minimum of seven (7) years of relevant professional experience with expert knowledge in diplomatic rules and conventions.
- Proven experience in protocol and international relation practices, to include but not limited to Governments, Public Administrations, Ministries of Foreign Affairs, Embassies.

Duties:

- Plan, organize and supervise the protocol activities of the Government;
- Ensure the existence of harmonious relationships with administrative services of the Ministry of Foreign Affairs in line with all International laws, policies and or treaties;
- Coordinate all protocol related activities within the government of Antigua and Barbuda; including the distribution and delegation of duties, second and assist the Senior and other Protocol Officers activities;
- Write and check notes and official correspondences of the Government of Antigua and Barbuda Bank for and behalf of the Government of Antigua and Barbuda, in particular, the Ministry of Foreign Affairs, such as letters to Heads of State, Prime Ministers, and other international dignitaries, etc;
- Design the Protocol Unit's work programs; develop and supervise budgetary expenditures for protocol activities;
- Coordinate the work done in various sections of the unit;

- Coordinate protocol services during all official events hosted by or attended by the Head of State, the Prime Minister, members of Parliament and Cabinet of the Government of Antigua and Barbuda, and any other visiting delegation, all attending dignitaries, to any important meetings, or events organized by the Government of Antigua and Barbuda or those being held under its auspices;
- Maintain relations with the host country and their protocol offices and manage the privileges and immunities granted to the Head of State, the Prime Minister, members of Parliament and Cabinet of the Government of Antigua and Barbuda, and any other dignitary;
- To advise and assist employees within the various Ministries, government agencies and such other offices as may be identified with the diplomatic and legal practices;
- Work actively in the preparation of the official media and negotiating conferences and meetings organized by the Government of Antigua and Barbuda and any other dignitaries;
- Coordinate training programs on diplomatic practices with the office of the Head of the State, the Prime Minister and offices of all Ministries and Government agencies and such the offices within the Government of Antigua and Barbuda.

The deadline for receipt of applications is 11th July, 2016.

Further details and appropriate application forms may also be obtained from the Establishment Department.



BEFORE THE FINANCIAL SERVICES REGULATORY COMMISSION

THIS IS A NOTICE OF INTENTION OF FIRST DOMESTIC INDUSTRY AND COMMERCE INSURANCE CO. LTD. (FDICIC) TO TRANSFER ITS INSURANCE BUSINESS TO SUN GENERAL INC, (SGI) PURSUANT TO SECTION 168 - 171 OF THE INSURANCE ACT No. 13 of 2007 OF THE LAWS OF ANTIGUA AND BARBUDA.

NOTICE is hereby given that an application was made to the Superintendent of Insurance in accordance with Section 168 - 171 of the Insurance Act No. 13 of 2007 of the Laws of Antigua and Barbuda as amended, with the intention for the Confirmation of the Scheme for the Transfer of insurance business (the "Scheme") between First Domestic Industry & Commerce Insurance Co. Ltd. ("FDICIC") and Sun General Insurance Inc. ("SGI"). The Superintendent of Insurance is an officer of the Financial Services Regulatory Commission.

NOTICE is further hereby given that the said application shall be heard on 8th July, 2016 at 5:00 p.m. at the Financial Services Regulatory Commission, Royal Palm Place, Friars Hill Road, St. John's, Antigua for any person who is likely to be affected by the Scheme.

TAKE NOTICE that under the Scheme, FDICIC intends to transfer its general insurance business issued in Antigua and Barbuda to SGI under the terms of a Sale and Purchase Agreement entered into with SGI on the 9th day of March, 2016 (the "Sale and Purchase Agreement"). Therefore with respect to the Sale and Purchase Agreement, all general insurance policies issued by FDICIC in Antigua and Barbuda which are presently in force or to which FDICIC otherwise has continuing liability (collectively, the "Policies"), will be wholly transferred to SGI, and SGI will forthwith assume the liabilities connected with the Policies (the "Transfer") upon approval of the Scheme.

TAKE FURTHER NOTICE that the types of Policies that the FDICIC will Transfer to SGI are listed below. In addition, any person wishing to verify the type of policy they have with FDICIC, and whether that policy is intended to be included in this Transfer, should review the Schedule of Benefits section in their policy agreement, and/or contact the FDICIC by telephone or visit the office for assistance.

The types of Policies that the FDICIC will Transfer to SGI are as follows:

- Liability Insurance
- Marine, Aviation and transport
- Motor vehicle insurance
- Pecuniary loss

- Personal accident loss
- Property insurance

The terms of the proposed Scheme are described in more detail in the Scheme of Transfer application made to the Financial Services Regulatory Commission (the “Scheme Document”). It is proposed that the Transfer be completed on a date to be agreed to by the parties (the “Effective Date”), subject to the satisfaction by the parties of certain closing conditions and the receipt by the parties of the approval of the Financial Services Regulatory Commission. Until the Effective Date, FDICIC continues to remain fully responsible for all of its insurance liabilities in Antigua and Barbuda.

Provided the Scheme is implemented on the Effective Date, SGI will thereafter be responsible for all liabilities under the Policies. SGI has advised that there will be no impact on the terms of existing Policies or the guarantees contained therein, that is to say all existing terms and conditions will continue as they were prior to the Transfer. More specifically, SGI has confirmed that the transaction will not impact the following:

- Policy rates, terms and conditions;
- Coverage and benefits; and
- Services and administration of the Policies.

By way of background information, SGI is incorporated as a foreign company under the Companies Act 1995 of the Laws of Antigua and Barbuda as amended; and registered to carry out insurance business in Antigua and Barbuda in accordance with the Insurance Act No. 13 of 2007. Sandridge Ltd., a member of the Sun Group of companies (the “Group”), purchased a company which originally traded under the name CLICO International General Insurance Limited and changed the name to SGI. SGI is, therefore, part of the Sun Group of companies. The Group is headquartered in Barbados with the parent company Bernmar Investments Inc. and has been in operation since January 1970. The principal shareholder of the Group is Mr. Bernard A Weatherhead, Justice of the Peace (J.P.). The Group is engaged in the hospitality industry, retail and general insurance across the Eastern Caribbean and Florida with annual revenues of approximately US\$75 million. Presently, SGI operates in nine countries within the Caribbean to include, Antigua and Barbuda, Anguilla, Barbados, Dominica, Grenada, St. Lucia, St. Vincent.

TAKE NOTICE as a policyholder to please contact a professional for advice on this transaction, if necessary. Any person who believes that he would be adversely affected by the carrying out of the Scheme shall be entitled to be heard at the hearing of the application for the Scheme to be convened by the Financial Services Regulatory Commission on the date and time as aforementioned.

FINALLY, TAKE NOTICE that this said Scheme will be subject to the approval of the Financial Services Regulatory Commission.

If you have any queries regarding the Transfer, please contact:

- FDICIC at 1-268 462-9081 or send inquiries to its offices in Antigua and Barbuda at PO. Box W 1837, #2 Gambles Medical Centre, Friars Hill Road, St. John’s, Antigua.
- SGI at 1-246-434-8480 or send inquiries to its offices at CWTS Complex, Lower Estate, St. George, Barbados

Copies of the Scheme Document, the related actuarial report and other related documents will be made available for inspection by any affected policyholder at the above offices for a period of Fifteen (15) days after publication of this Notice.

DATED this 1st day of June, 2016.

ANTIGUA AND BARBUDA

MARRIAGE ACT, CAP 261

Registration of Church Building

Pursuant to the Laws of Antigua and Barbuda, Marriage Act Cap 261, the building housing **The Redeemed Christian Church of God, Chapel of Praise, Antigua and Barbuda**, Lower St. John’s Street, St. John’s, Antigua and Barbuda was registered as a place of Christian Worship and a place where Banns of Marriage may be published, on the 9th June 2016.

Given at the High Court of Justice Parliament Drive,
St. John’s Antigua and Barbuda, this 9th June 2016.

Registrar General.