COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

COMMERCIAL LAW DIVISION
2018/COM/LAB/00010

BETWEEN

GODFREY BOWE

Plaintiff

AND

I.C.S OF THE BAHAMAS COMPANY LIMITED

Defendant

Before: **The Hon. Madam Justice G. Diane Stewart**

Appearances: **Mr. Obie Ferguson for the Plaintiff**
Mr. Darren O. Bain for the Defendant

Judgment Date: **November 12th, 2021**

JUDGMENT

1. This action is a wrongful and unfair dismissal claim by the Plaintiff, Mr. Godfrey Bowe **(the "Plaintiff")** arising out of his employment and subsequent dismissal by the Defendant, I.C.S. of The Bahamas Company Limited **(the "Defendant/Company")**.

2. The Plaintiff commenced his employment with the Defendant on 30th July 2012 and was terminated on the 6th October 2017, having been employed some five years and two months.

3. The Defendant terminated the Plaintiff summarily and without payment in lieu of notice.

4. At the time of termination the Plaintiff was employed as Chief Supervisor earning an annual salary of $29,380.00. He was initially employed as a shift leader but was promoted to the position of Supervisor, then to Assistant Chief Supervisor and finally to Chief Supervisor within a five year period.

5. The Plaintiff alleged that he was never given any warning that his employment was in jeopardy, nor provided with any of the documents evidencing the complaints made against him and which were relied on by the Defendant. He alleged that the Defendant, in breach of Section 34 of the Employment Act failed to act fairly and that he was entitled to notice, termination pay and other funds owed in the amount of $15,641.91.

6. The Defendant denied that the Plaintiff was unfairly dismissed and maintained that as the Plaintiff failed to plead wrongful dismissal he could not claim it now.

7. The Defendant asserted that the Plaintiff was terminated summarily for abuse of authority, mistreatment of the Defendant's employees, abuse of the Defendant's assets/vehicles and abuse of company time.

ISSUES

8. Whether the Plaintiff was unfairly terminated and if so what compensation would he be entitled to or whether the Defendant had cause to summarily dismiss the Plaintiff?

EVIDENCE

9. The Plaintiff did not call on any other witnesses to give evidence on his behalf and relied solely on his evidence. The Defendant on the other hand relied on several witnesses in support of its position.

PLAINTIFF'S EVIDENCE

10. The Plaintiff testified that he supervised the security staff assigned to the Bahamas Telecommunications Company, JFK location **("BTC JFK")** and Sandals Royal Bahamian hotel. On the 4th October 2017, the Defendant's Chief Executive Officer, Mr. Stephen Greenslade **("Mr. Greenslade")**, informed him and another employee, Mr. Troy Lewis **("Mr. Lewis")** that he had received written complaints about them **(the "4th October Meeting")**.

11. Based on those complaints, Mr. Greenslade suspended him until Friday, 6th October 2017 however, he never saw the complaints made against him and was asked to hand over his duties to another of the Defendant's employees. Thereafter, he left the Company's premises and, went home. He was called back to work and was told to speak with Mr. Greenslade.

12. Upon his return, he met with Mr. Greenslade, Mr. Chance Farrington **("Mr. Farrington")** and Mr. Lewis. He was informed that the decision to suspend him had been reversed to avoid embarrassment and that he would instead be demoted with no loss of pay and reassigned to the Investigation and Internal Audit department which dealt with debt collection to generate revenue for the company. The Plaintiff was also told that he would have the opportunity to regain his previous position.

13. After Mr. Greenslade had informed him that they would not be dealing with any line staff due to the number of security officers who had resigned, the Plaintiff told him that he had no control over the number of officers who had resigned from the security complement stationed at BTC JFK as he could only save some but not all. In turn, Mr. Greenslade responded with profanities and told him that he wanted him to save all and that he had many meetings with Human Resources regarding the complaints lobbied against him. The Plaintiff stated that he had no knowledge of the meetings and requested evidence of the meetings.

14. The Plaintiff further stated that Mr. Greenslade perused his file and acknowledged that there was nothing documented on his file but insisted that he had heard things about him. Mr. Greenslade then told him to go home and sleep on the offer to be transferred and if he agreed to return the following day. The following day he returned and was given a brief detail of his duties and responsibilities.

15. On 6th October 2017, he reported for work and was called into a meeting with Mr. Greenslade who asked him if he was comfortable and at ease as he was considered valuable to the company and wanted him to do his best in the new area. Further, Mr. Greenslade told him that he would think about returning him to his former position nd giving him his title back but would hold off for a while.

16. After working a full day, he received a telephone call around 5:55 p.m., telling him that Mr. Greenslade had made the decision to terminate him effective immediately and without any formal notice being given to him. On 10th October 2017, he was asked to and return his uniforms and keys to the Defendant. On 11th October 2017, he received a call from the Defendant to collect a cheque. Upon his arrival, he was given a termination letter which he signed to acknowledge receipt of the cheque and he wrote on it without prejudice.

17. The termination letter stated that he was summarily terminated because his behavior was repugnant to the fundamental interest of the Defendant and included abuse of authority, mistreatment of employees, abuse of assets and vehicles and abuse of company time. During his tenure with the Defendant, he maintained that he was never reprimanded or warned about his job performance.

18. The Plaintiff averred that he was never given an opportunity to be heard on any of the allegations stated in the termination letter and that he learned of many of the documents used against him when they were forwarded to his attorney.

19. During cross-examination, the Plaintiff confirmed that he was given an employment handbook when he commenced his employment with the Defendant and that he understood the policies contained therein. As a Chief Supervisor he was second in command at the BTC JFK location to Mr. Lewis, who was the Executive Director. They were both responsible for the day-to-day security operations, with a staff complement of approximately ninety-nine individuals.

20. He was also responsible for the staff at Sandals which had a staff complement of approximately forty individuals. Whenever there was a complaint, he would direct that complaint to Mr. Lewis. A part of his responsibilities was to meet with his line staff to update them of new developments, training and policies and basically any communication from the Company's head office. He was able to give direct orders to and reprimand line staff.

21. During the 4th October Meeting, Mr. Greenslade explained to them the exact reasons for the meeting and that based on the reports received he had made the decision to suspend him. He had queried which reports were being referred to as he had never had a conference with Human Resources.

22. The Plaintiff averred that when he had to discipline staff, he would meet with the individual, question him about the situation and try to obtain information on the situation before a report was made. He agreed that that is what Mr. Greenslade did during the 4th October Meeting with the exception of providing him with the reports.

23. The Plaintiff agreed that he could be dismissed for the conduct set out in the Defendant's employee handbook denied having conferences with the Human Resources Department about allegations made against him by staff members. He also denied directing the Company's patrolmen to use the Company vehicle to take food to his pastor but explained that if he did make a stop he would receive permission from Mr. Lewis to do so as he was not able to make such decisions. If he did, it would be when the vehicle did not have any assignments.

24. During re-examination, Mr. Bowe stated that he had lunch delivered in the Company's vehicle twice and that he had received permission for Mr. Lewis to deliver the food.

DEFENDANT'S EVIDENCE

25. Mr. Greenslade, the Chief Executive Officer of the Company testified that on Tuesday, 4th October 2017, he met with Mr. Brenden Glinton, an officer of the Company (**"Mr. Glinton"**) who advised him that he had received complaints against the Plaintiff from staff members. They claimed that they were mistreated and verbally abused by the Plaintiff and another senior officer at the BTC JFK location.

26. As a result he called both the Plaintiff and Mr. Lewis to his office to have a conversation with them about the complaints made and to request and receive reports from Mr. Gary Greenslade **("Gary")** about the mistreatment and/or verbal abuse by the Plaintiff. However, some staff were reluctant to make a formal statement for fear of being victimized by the Plaintiff.

27. He instructed Mr. Glinton to compile a full report of all of the claims against the Plaintiff in addition to making a personal inspection and investigation of the day to day operations at BTC JFK. He met with the Plaintiff and Mr. Lewis the same day and outlined the reason for the meeting. Mr. Greenslade stated that he commended the men for having good skills however they did not have people skills to manage staff members at their level. He recalled specifically telling the men that the meeting was about the consistent flow of verbal reports of alleged mistreatment, verbal abuse and undesired management style and to get their views on these reports.

28. Mr. Greenslade stated that the Plaintiff said that he did nothing wrong. Some of the explanations given by the Plaintiff were contrary to the Company's standards and that he subsequently placed the Plaintiff on suspension pending a full investigation. On Thursday, 12th October 2017, he held a second meeting with the Plaintiff to inform him of his transfer notwithstanding the complaints as he wanted to afford the Plaintiff with an opportunity to improve and develop himself.

29. On Friday 12th October 2017, Mr. Greenslade stated that he received the written reports of Mr. Glinton, Mr. Grant and Ms. Sealy. Based on these reports, his discussion with the Company's senior management team and the staff at the BTC JFK location, he discovered that a number of his good employees had resigned due to being mistreated by the Plaintiff.

30. Mr. Greenslade explained that a number of line staff were intimidated by the Plaintiff and were afraid to express their complaints about him verbally or in writing. He added that

after the Plaintiff's termination, other officers then felt comfortable enough to give reports about the mistreatment that they experienced by the Plaintiff. This included complaints of mistreatment, intimidation and sexual harassment which were all contrary to their policy and was not the type of environment that he wanted for the Company.

31. He was of the view that if the company did not deal with the Plaintiff's actions, they not only stood the risk of losing good employees but also of losing one of its major clients. He instructed Mr. Farrington, the Company's Chief Financial Officer, to terminate the Plaintiff. He added that he and Gary would speak with the Plaintiff about the reports of mistreatment when they were reported.

32. During cross-examination, Mr. Greenslade averred that he could not say whether the document prepared by the Company's Human Resources department was given to the Plaintiff nor whether he received the termination letter on 6th October 2017. He added that the investigation of the Plaintiff continued after his termination in the event that they had to face litigation.

33. While the report he received on the 13th October 2017 **(the 13th October Report")** contained supplemental information, he had initial information on the Plaintiff from either the 5th October 2017 or 6th October 2017. He stated that Mr. Farrington would have been better equipped to answer whether the preliminary finding was put to the Plaintiff. Based on the report, he followed the guidelines set out in the Labour Act.

34. The information with respect to the Company's assets was in the initial report which was his primary reason for his decision and was sufficient information to summarily terminate the Plaintiff. He could not recall whether he had received a report from Mr. Chance Farrington.

35. He was very disappointed to receive the information that he did in the report, adding that leaving the client's premises would not be allowed because the clients required the consistent presence of the security staff. Mr. Lewis did not have authority to give the Plaintiff permission to do anything and that it was a staff member who informed him of the breach of the Company's policy.

36. Mr. Greenslade added that if Mr. Lewis was involved, then the Plaintiff, knowing that it was wrong, should have reported him as there could not be a lawful order from a superior to tell an employee to use a company asset in breach of the company policy. In many of the Company's general staff meetings, he would outline to the supervisors, managers and executives that he wished to create a good working environment for the employees so that they would feel comfortable coming to work.

37. Managers would carry out disciplinary procedures and would help to coach, counsel, train and develop the staff. The Company's policies were both verbal and written. At the time of the Plaintiff's termination he did not read through the handbook specifically even though he knew the policies and disagreed with the notion that he did not follow the policies therein.

38. While the Plaintiff reported to Mr. Lewis at the BTC JFK location, he ultimately reported to Gary, the Vice President of Corporate Operations.

39. Although he could not recall the exact contents of the report, he did recall that the complaints were about the Plaintiff verbally mishandling staff, showing favoritism towards some staff with scheduling and victimizing staff. He also could not recall whether it stated specific dates and times of the incidents complained of.

40. The Plaintiff's behavior was repugnant to the fundamental interest of the Company as he did not uphold the Company's standards of honesty and integrity. He did not however, specifically outline what these standards were in his evidence before the court. Upon being directed to two salary increase letters, one in 2013 and the other in 2015, Mr. Greenslade stated that at that time, the Plaintiff did exhibit qualities that would qualify him for such increases.

41. He did discover later after the Plaintiff's probationary period had ended in June 2016, that there were some verbal concerns which caused him to request that one of the Company's senior managers look into BTC JFK however, this was not in his evidence. Mr. Greenslade also stated that he did not direct anyone to take minutes of the 4th October 2017 Meeting.

42. During re-examination, Mr. Greenslade confirmed that the Plaintiff directing a staff member to do something which was not a part of the Company's activity was repugnant to its interest. He felt that the Plaintiff would not follow Company policies if his employment were continued.

43. Angel Colebrooke **("Ms. Colebrooke")**, by her evidence in chief, averred that she was presently temporarily employed with the Defendant for a six month period however, prior to that she had been employed between February to November 2017 at the BTC JFK location where the Plaintiff was her direct supervisor. She averred that the Plaintiff mistreated her and other staff members.

44. Sometime in April 2017, she was called to work for a Saturday shift and that she was not scheduled to work the following day. She was due to return to work that Monday which was a public holiday. The Security Supervisor advised her that the Plaintiff had stated that if she did not work a double shift she would not be able to work on the holiday at all.

45. On the 18th July 2017, she wrote a letter to the Company's Human Resources Department requesting a transfer because of her mistreatment by the Plaintiff. In either August or September 2017, she gave an account of her experiences with the Plaintiff to Mr. Glinton.

46. During cross-examination, Ms. Colebrooke gave details of her mistreatment. The first complaint was that after she had completed all of her work, she left work a few minutes prior to her shift ending. The next day, the Plaintiff confronted her about it harshly, wrote her up and fined her fifty dollars which came out of her paycheck.

47. On another occasion, the Plaintiff asked her to work a double shift to which she said she could not and he then informed her that she could not work on the upcoming holiday.

48. A third occasion was when she was about to take lunch, she informed her supervisor because she could not get through to control.

Upon returning from lunch, the Plaintiff questioned her about not informing control and he again wrote her up and fined her. Ms. Colebrooke stated that she had prepared the request for transfer letter due to her mistreatment by the Plaintiff. She added that while she did not personally give him the letter, she thought that he saw it or was told about it because Mr. Lewis spoke to her about it.

49. During re-examination, Ms. Colebrooke averred that the three acts of mistreatment that she documented were the only acts. She explained that if she told the Plaintiff that she could not work a double shift then she would not have been able to and that there was no way that he should have been able to take her next scheduled working day from her because it was a holiday. It was important for her to be transferred because she did not like how she was treated by the Plaintiff. She added that she was in fact transferred to the head office although she could not say when she was transferred.

50. Mr. Michael Roach, an employee with the Defendant for the past three years **("Mr. Roach")** averred that he was directly supervised by the Plaintiff from January 2014 to January 2017. On several occasions the Plaintiff had instructed him to take lunch to his pastor on Carmichael Road. On another occasion, the Plaintiff instructed him to use the Defendant's vehicle to carry him to a doctor on Prince Charles Drive where he then had to wait for almost two hours for the visit to be completed.

51. Mr. Roach further averred that while he and the Plaintiff would be in the Defendant's vehicle, the Plaintiff would insist on being returned to his office before attending to the Company's calls to conduct company business. The Plaintiff mistreated him and his other colleagues. The Plaintiff called him into his office and spoke to him in a belittling manner in front of the supervisors while pointing in his face. He informed the Plaintiff that he did not like what he was doing.

52. Mr. Roach felt humiliated and his request to be heard was refused by the Plaintiff. On another occasion, he requested to be collected for his shift but the Plaintiff refused to allow the patrolman to collect him. On or about June 2017, he informed Mr. Glinton about the Plaintiff's misuse of the Defendant's property and wrote a report to Human Resources.

53. During cross-examination, Mr. Roach testified that after Mr. Glinton heard his and another drivers complaints, he thought it was best to document what was discussed in a report. He could not recall when the report was actually done. He stated that a company diary was kept but he did not diarize when he took the Plaintiff to the doctor because it was not a company matter and that it had only occurred on one occasion. He could not confirm whether Mr. Lewis, the Plaintiff's supervisor, ever gave the Plaintiff any instructions.

54. Mr. Roach explained that one Sunday he needed a ride to work because public transportation did not run on a Sunday but was refused a ride by the Plaintiff. When he did arrive to work, the Plaintiff denied that he told the driver not to pick him up and chastised him while pointing his finger at him. He did not understand why he was being chastised and the Plaintiff wrote him up for arriving to work late and did not give him an opportunity to explain.

55. Mr. Roach considered the decision and actions of the Plaintiff abusive as the Company should have been able to pick him up in order for him to get to work to perform his

duties. The driver had already told him that he was not doing anything at the time. Although it was not Company policy to do so, it was his understanding that under certain circumstances it would be allowed, such as when an employee who was not originally scheduled to work was needed to work.

56. He lodged a complaint against the Plaintiff because of his behavior in the meeting and not because he did not allow the driver to pick him up. It was generally never easy to approach the Plaintiff as he always had a stand-off attitude and would not be interested in hearing what a person had to say. He would make decisions about a person without talking to that person.

57. Mr. Roach maintained that if the Plaintiff was carrying out Company instructions that should be communicated to staff. The Plaintiff would not have been guilty of misappropriating the Company vehicle if he sent the driver to collect him because the Company was always interested in getting the employee to work.

58. During re-examination, Mr. Roach testified that Mr. Glinton had overheard him and another driver talking about the runs they had to make and about their having to take lunch to his pastor and to another place to get lunch for the Plaintiff and Mr. Lewis. This caused problems because other supervisors from other locations were calling them to do company work while they were following, the Plaintiff and Mr. Lewis' instructions. He explained that he would be asked to take lunch to the Plaintiff's pastor at least three times a week for a little over a year.

59. On average it would take between forty minutes to an hour and twenty minutes to make those runs and that company work could not be done during that time as the calls to do so would be made through the Plaintiff. He had seen the Plaintiff allow the Company's vehicle to pick up other staff members and that he himself had been picked up by the company vehicle before while he was still under the supervision of the Plaintiff.

60. Mr. Gary Greenslade ("Gary"), an employee of the Defendant for six years, averred that while he was conducting an exit interview with a now former employee, it was suggested that he conduct an investigation into the management of staff at the BTC JFK location. The suggestion stemmed from an allegation that the staff members were being mistreated, spoken to like children and being intimidated by the senior officers.

61. As a result, he was advised by Mr. Greenslade to conduct an investigation into the complaint, which was in turn conducted by Mr. Glinton who spoke to a number of staff at the BTC JFK location about the Plaintiff's conduct. During his security briefing meetings with the Plaintiff he told the Plaintiff that there were complaints that he had mistreated staff members and that he should **"Cease forthwith"**. At the time of the Plaintiff's termination, he was on holiday. He was also involved with the drafting and settling of the standard operating procedures of the Company.

62. During cross-examination, Gary averred in May 2017, he was given a verbal directive to conduct the investigation of staff mistreatment and verbal abuse by the Plaintiff however, he could not recall when the investigation ended as he was on leave when the entire process ended.

63. There was only a general request made by Mr. Greenslade. When he returned from vacation, Mr. Glinton did not reveal his findings to him because the decision to terminate

the Plaintiff had already been made. There were about five written complaints made against the Plaintiff out of the ninety staff members at the BTC JFK location.

64. He did not receive any written reports after the Plaintiff was terminated nor could he confirm if Mr. Glinton received any after terrmination. He could not say whether any of the written reports were given to the Plaintiff or if the Plaintiff was able to respond to them. Any incident which occurred during a shift should be reported.

65. His conversation with the Plaintiff was meant to be a warning as he did not have anything in writing at the time. He agreed that the Company was set up like a paramilitary organization which required you to perform your job in a certain way and come to work in a certain way.

66. During re-examination, Gary testified that the reports he saw confirmed that the Plaintiff unfairly treated some staff by speaking to them in a derogatory manner and that there was misuse of company assets. There were more than five verbal complaints made against the Plaintiff however, these complaints were not made in writing because the officers felt as if they would be victimized. All incidents which occurred would not usually be logged, only abnormal occurrences from the regular duties.

67. Mr. Chance Farrington ("Mr. Farrington") as Chief Financial Officer of the Defendant for the past eight years testified that around 10:15 a.m., he was invited to the 4th October Meeting with Mr. Greenslade, Mr. Lewis and the Plaintiff. In the meeting, Mr. Greenslade commended the Plaintiff and Mr. Lewis for having good skills but commented that they did not have people skills to manage staff members.

68. He averred that the Plaintiff and Mr. Lewis were notified of the reason for the meeting which was the several complaints made against them. They were instructed to report to the investigation department. In response to the Plaintiff claiming that there was a struggle in the field, Mr. Greenslade told them that the Company had the system, resources and expertise in place to address any type of circumstance which may arise and then informed them of their reclassification and that the reclassification would not affect their salary. Also, they were told that a final decision would be made after an investigation and report were completed.

69. On the evening of Friday, 6th October 2017, he received a call from Mr. Greenslade advising him that he had just received and reviewed the investigation report on the Plaintiff; the contents of which required him to be summarily dismissed.

70. During cross-examination, Mr. Farrington agreed that the Plaintiff was suspended from the 4th October 2017 to the 6th October 2017. During that period, he did not have access to the report on the Plaintiff as he only received it on the evening of the 6th October 2017. He could not say when the report was prepared but that a number of staff prepared it including Mr. Glinton, but could not confirm if he was responsible for the final report.

71. Mr. Farrington agreed that neither the written report nor the contents of the letter were made available to the Plaintiff on the 6th October 2017. He was present at the 4th October Meeting and confirmed that the Plaintiff was made aware of the reason for the meeting. He was not present at the termination meeting but he did draft the termination letter on the instruction of Mr. Greenslade and not based on the report.

72. During re-examination, he confirmed that the report was received on the night of the 6th October 2017 but he could not recall what it said. During the 4th October Meeting, after the Plaintiff was told of the reason for the meeting, his response was that there were challenges in the field.

73. Mr. Brenden Glinton ("Mr. Glinton"), a Security Consultant with the Company, testified that around June 2017, he was contacted by Mr. Greenslade who had asked him to conduct an investigation into the Plaintiff as a result of complaints of the Plaintiff's mistreatment of staff at the BTC JFK location. This led to his making visits and checks to the business locations serviced by the Company. One location was the BTC JFK location where he spoke to Mr. Eddison Butler on 9th January 2017, who had informed him that he had considered resigning.

74. He had also spoken with other employees such as Mr. Roach, who had advised him that almost on a daily basis the Plaintiff had instructed him to use the Company's jeep to take lunch to the Plaintiff's pastor. From June to October 2017, he was assigned to the BTC JFK location where he was approached by Ms. Colebrooke who gave him a sealed envelope which he passed directly to Human Resources.

75. He averred that he had witnessed the Plaintiff's misappropriation of the Company's property first hand as the Plaintiff had directed one of the Company's drivers to leave wherever he was to come the BTC JFK location around 10:00 a.m, to take him to an eatery in the Palmdale area. He accompanied them and they dined for an hour and a half while they ate breakfast. After they left the eatery, they headed toShirley Street to enable the Plaintiff to pay his insurance and did not return to the BTC JFK location until 1:08 p.m.

76. Mr. Glinton added that the driver had informed them that he needed to get water and office supplies from the Company's head office, to deliver to one of the Company's other locations. Additionally, other assignments had to be completed but could not because of the Plaintiff's instructions. On another occasion, another officer had requested a meeting in respect of the unfair treatment experienced at the BTC JFK location

77. Some of BTC's staff at that location had indicated to him that it appeared as if the Company was not performing in the manner required. Mr. Glinton stated that he gave all of his reports to Mr. Greenslade sometime on or about 6th October 2017. He recalled receiving an email from Mr. Greenslade on the 21st August 2017.

78. During cross examination, Mr. Glinton testified that Mr. Greenslade had invited him to conduct an investigation of the Plaintiff. After receiving reports, he completed the report on the 23rd January 2017 and explained that it was a basic report to ascertain the concerns of the staff and explain the investigation.

79. He did not bring the report to the Plaintiff's attention. He added that when he received the reports he read them over and took them to Company's Human Resources Department as directed. The investigation showed that staff morale was low and that they felt like they were being mistreated or being commanded to do things outside the scope of their duties.

80. He was not in the meetings when the Plaintiff got suspended, reclassified or terminated but was told by Gary what had transpired. As a consultant for the Company, his specific function was to take a synopsis of all of its operations which included speaking with various officers about their concerns of the Company and to ensure the Company's policies and procedures were being carried out.

81. After visiting certain sites, he would speak to Mr. Lewis and the Plaintiff about officers' conduct however, his directive with respect to the Plaintiff was to hand over any information to Mr. Greenslade and Human Resources.

82. His report was completed on the 15th November 2017 which meant it could not have been presented to the Plaintiff if he was terminated on the 6th October 2017. He also recalled Ms. Colebrooke approaching him about a request for transfer and that she did not say what the exact reason for the request was but that it had something to do with the Plaintiff and Mr. Lewis. He added that he directed her to go to Human Resources and that he did not bring this request to Mr. Lewis or the Plaintiff's attention.

83. He did not actually investigate whether or not the Plaintiff and Mr. Lewis were using the Company vehicle for their private use. `He explained that misappropriation to him was taking something and using it in a way that was not appropriate and that the Plaintiff and Mr. Lewis had used the company vehicle to pick up breakfast when there was company business to do. He admitted that he did not approach them about it.

84. He admitted that he did go with the Plaintiff and Mr. Lewis on their breakfast run because his job was to find out about the misappropriation of the company's assets. He admitted that he ate breakfast with them. He presented a report of his investigation by email which differed from the initial 23rd January 2017 report. He stated that his investigation found that the Plaintiff and Mr. Lewis had performed acts inconsistent with the Company's policy. Neither report was brought to Mr. Lewis or the Plaintiff's attention.

85. He did not ascertain from Human Resources whether there was anything on the Plaintiff's file during the time he was employed that spoke to misappropriation. He referred to a manager's meeting where the Plaintiff and Mr. Lewis were both present and where they were asked to stay behind to be spoken to about ceasing the mistreatment of staff based on the complaints received.

86. During re-examination, Mr. Glinton stated that during his investigation he received reports which revealed that the Plaintiff used the Company's vehicle and mistreated staff. Also that when the staff would complain to the Plaintiff he would either never file the complaints or follow the policies and procedures of the Company.

87. As at the 6th October 2017 he had not completed his investigation because after sending a summary of what he found to Mr. Greenslade, he was asked to continue the investigation. He could not say where the driver of the Company's vehicle was prior to his being asked by the Plaintiff to pick him up. However, he could say that the driver was unable to attend to the Company's duties which included delivering water to several locations from the head office. He added that the morning shift was the most challenging because the water supply needed to be replenished from the night shifts in addition to the picking up and dropping off of officers.

88. He stated that he did not speak to the Plaintiff about the investigations but in a meeting with him, Gary and Mr. Lewis, he informed them that the staff was complaining about morale being low and complained about mistreatment by supervisors and managers. He added that Gary told everyone in the meeting to cease and desist with the mistreatment of the officers. The staff members had told him that due to the leadership at the BTC JFK location, there were was a heavy rotation of officers from that location.

SUBMISSIONS

89. The Plaintiff relied on Section 34 of the Employment Act which provides that every employee shall have the right not to be unfairly dismissed pursuant to sections 35 – 40 of the Act. By these sections, the substantial merits of the case determines whether the dismissal of the employee was fair or unfair.
These sections provide:

> **"34. Every employee shall have the right not to be unfairly dismissed, as provided in sections 35 to 40, by his employer.**
> **35. Subject to sections 36 to 40, for the purposes of this Part, the question whether the dismissal of the employee was fair or unfair shall be determined in accordance with the substantial merits of the case.**
> **36. (1) For the purposes of this Part, the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee —**
> **(a) was, or proposed to become, a member of an independent trade union;**
> **(b) had taken, or proposed to take, part at any appropriate time in the activities of an independent trade union; or**
> **(c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused or proposed to refuse to become or remain a member.**
> **(2) Any reason by virtue of which a dismissal is to be regarded as unfair in consequence of subsection (1) is in this Part referred to as an "inadmissible reason".**
> **(3) In subsection (1) "appropriate time" in relation to an employee taking part in the activities of a trade union, means time which either —**
> **(a) is outside his working hours; or**
> **(b) is a time within his working hours at which, in accordance with prior arrangements agreed with or consent given by his employer, it is permissible for him to take part in those activities, and in this subsection "working hours", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.**
> **(4) In this section, unless the context otherwise requires, references to a trade union include references to a branch or section of a trade union."**

90. The Plaintiff also relied on **B.M.P. Limited D/B/A Crystal Palace Casino v. Ferguson - [2013] 1 BHS J. No. 135** as being instructive on the issue of what constituted unfair dismissal. Conteh JA delivered the judgment of the Court which held:

> **"i). Employment Act does not contain an exhaustive list of instances of what could be unfair dismissal;**
> **ii).) Sections 35 to 40 of the Act contain what may be regarded as "statutory unfair dismissal" and s35 of the Act provides for the determination of question whether dismissal of an employee is fair or unfair;**
> **iii) The Industrial Tribunal was correct to find and hold that in the circumstances of the instant case, the respondent was unfairly dismissed and that**

the investigation by the appellant into alleged statement of the respondent was not reasonable or fair in terms of s.34 of the Act;
iv). The Industrial Tribunal however erred in the quantum of award it made to respondent as it exceeded the statutory limit imposed by s.48 of the Act for compensation for unfair dismissal."

91. The Plaintiff submitted that he was never shown or asked to respond to the alleged reports compiled against him. He contended accordingly, that the Defendant breached a fundamental principle of law, namely, that pursuant to section 34 of the Act, an employer was required to act fairly by adhering to the audi alteram partem rule of natural justice. He relied on **Bahamasair Holdings Limited and Omar Ferguson SCCivApp No. 16 of 2016** where Crane-Scott JA opined:

> **"54. At the very minimum, an employer's duty under section 34 to act fairly would require the employer to adhere to the *audi alteram partem* rule of natural justice: that most cherished principle of procedural fairness which mandates that no man should be condemned, punished (or as in this case, dismissed) without being given a hearing and the opportunity to explain or respond to any charge or adverse decision to be taken against him. We hasten to add that the right to be heard does not require the employer to conduct a full blown hearing, but may be satisfied by giving an employee an opportunity before a decision is made, to make representation (whether in writing or in person) to the employer as to why he should not in the circumstances be terminated.**
> **55. As we see it, the right to be heard, is an implied statutory term which is to be regarded as having been imported into the respondent's contract of employment with the appellant by virtue of section 34 of the Employment Act. The respondent's entitlement to procedural fairness before his dismissal emanates from statute and therefore did not depend on its having been expressed in a binding industrial agreement registered in accordance with section 49 of the Industrial Relations Act. Furthermore, the right did not depend upon the respondent having to prove that it had been incorporated into his individual contract of employment before the lapse of the 2000 industrial agreement in the manner discussed in Hutchinson. Quite simply, the right to be heard before dismissal is an implied statutory term which was incorporated into the respondent's employment contract by operation of law.**
> **56. In the result, we are satisfied that the respondent was denied the right to be heard before his dismissal and that by dismissing him in the summary manner which they did in this case the appellant breached the implied statutory term and the dismissal was procedurally unfair. Ground 3 fails."**

92. The Defendant contended however, that the Plaintiff did in fact have the opportunity to be heard, as evidenced by his oral evidence given during trial. The Plaintiff agreed that on the 4th October 2017, Mr. Greenslade told him what he had heard about the Plaintiff but that he had never been given the opportunity to see the written reports. The Defendant further contended that the demand for a report did not make the termination unfair and relied on **Mooney v. An Post [1998] 4 I.R. 288** where Barrington J found:

> **"Certainly the employee is entitled to the benefit of fair procedures but what these demand will depend upon the terms of his employment and the circumstances surrounding his proposed dismissal. Certainly the minimum he is entitled to is to be informed of the charge against him and to be given an opportunity to answer it and to make submissions.**
>
> **The Plaintiff was a postman which is a position of trust. The Defendants received complaints which caused them to have misgivings about the integrity of the postal service and about the conduct of the Plaintiff. It appears to me that the Defendants**

were entitled to expect a candid response from the Plaintiff when they put these misgivings to him and that it was not sufficient for the Plaintiff simply to deny responsibility and to say that he could not "remember back to yesterday week".

It was of course the Plaintiffs right to remain silent while the criminal proceedings were hanging over him. But the Plaintiff was acquitted on the 18 December, 1985 and from then until the date of his dismissal on the 4 March, 1987, the Plaintiff made no further statement concerning the matters alleged against him. The Plaintiff raised no issue of fact which needed to be referred to a civil tribunal. It is important to emphasise that the dismissal proceedings were not criminal proceedings and it was not sufficient for a person in the position of the Plaintiff simply to fold his arms and say:-

> **"I'm not guilty. You prove it". To attempt to introduce the procedures of a criminal trial into an essentially civil proceeding serves only to create confusion."**

93. The Defendant also relied on **Shortt v Royal Liver Assurance Ltd [2008] IEHC 332** where Laffoy J held:

> **"On the specific arguments advanced by the plaintiff in this case, in my view, the plaintiff has not established that he was not afforded fair procedures by reason of the fact that there was no opportunity for him or his representative to question the personal assistant. The factual dispute which the investigation identified, in my view, did not indicate that it was necessary in the interest of fairness to afford such opportunity. It would undoubtedly have been preferable if Mr. Brennan had confined his assessment to the evidence which had been elicited in the investigation and, as regards the matters extraneous to the complaint at issue, as Mr. Gallagher put it, had "left them outside the door when conducting the hearing". Having said that, as counsel for the defendant submitted, it could not be suggested that the extraneous matters were determinative. In any event, insofar as Mr. Brennan was influenced by them, he had fairly disclosed this in advance to the plaintiff and his representative."**

94. The Defendant highlighted that its employee handbook outlined that an employee would be summarily dismissed for all major offences in accordance with the Act. Therefore, because of the Plaintiff's conduct, his unfair dismissal was sustainable and the alleged refusal of giving him a copy of the investigation should not be allowed to cloud the principle issue. **Trust Houses Forte Leisure Ltd v. Aquilar [1976] IRLR 251** was cited in support where Phillips J stated:

> **"It has to be recognized that when the management is confronted with the decision to dismiss an employee in particular circumstances there may well be cases where reasonable managements might take either of two decisions: to dismiss or not to dismiss. It does not necessarily mean that if they decide to dismiss that the other acted unfairly because there are plenty of situations in which more than one view is possible."**

95. On the issue of unchallenged evidence, the Defendant relied on **Mcdonagh v Sunday Newspapers Ltd [2015] IECA 225** where it was held, *inter alia*, that there was no requirement that evidence be cross-examined, but by not cross-examining evidence the evidence goes to the fact finder as untested and un-contradicted evidence.

96. The Defendant contended that the Plaintiff's case was not one of unfair dismissal as the Plaintiff was terminated for abuse of authority, mistreatment of its employees, abuse of its assets/vehicles and abuse of company time. They added that the issue for

determination was whether a reasonable employer would have done what they did and that in applying the reasonableness test any reasonable employer would have done the same thing as the Plaintiff admitted to many of the allegations of misconduct.

97. The Defendant submitted that because the Plaintiff did not plead summary dismissal, he was bound by his pleadings which would result in his claim for summary dismissal not being considered. In any event, the Defendant contended that the Plaintiff was not unfairly dismissed but summarily dismissed as set out in the termination letter dated 6th October 2017.

98. They relied on **Taylor v. OCS Group Ltd [2006] EWCA Civ 702** which adopted the language from **Neary v. Dean of Westminster [1999] IRLR 288**:

> **"22. What degree of misconduct justifies summary dismissal? I have already referred to the statement by Lord James of Hereford in *Clouston & Co Ltd v Corry*. That case was applied in *Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 1 WLR 698, where Lord Evershed MR, at p.700, said: 'It follows that the question must be – if summary dismissal is claimed to be justified – whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service.' In *Sinclair v Neighbour*, Sellers LJ, at p.287F, said: 'The whole question is whether that conduct was of such a type that it was inconsistent, in a grave way – incompatible – with the employment in which he had been engaged as a manager.' Sachs LJ referred to the 'well established law that a servant can be instantly dismissed when his conduct is such that it not only amounts to a wrongful act inconsistent with his duty towards his master but is also inconsistent with the continuance of confidence between them'. In *Lewis v Motorworld Garages Ltd* [1985] IRLR 465, Glidewell LJ, at 469, 38, stated the question as whether the conduct of the employer 'constituted a breach of the implied obligation of trust and confidence of sufficient gravity to justify the employee in leaving his employment ... and claiming that he had been dismissed.' This test could equally be applied to a breach by an employee. There are no doubt many other cases which could be cited on the matter, but the above four cases demonstrate clearly that conduct amounting to gross misconduct justifying dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the master should no longer be required to retain the servant in his employment."**

99. In **Saunders v. Bimini Sands Marina Limited [2018] 1 BHS J. No. 70** Charles J also relied on Neary and stated;

> **"....All that was required to be established was that the appellant had reasonable grounds, based on the facts known to it at the time of the dismissal, which would create in the minds of the appellant a reasonable belief that the conduct complained of had been committed by the respondent."**

100. The Defendant further relied upon **Smegh (He Maurice) Ltee (Appellant) v. Dharmendra Persad (Respondent) [2012] UK PC 23 where** the point was settled that a dismissal was justified based upon the information available to the employer at the time of the dismissal, other information [of which the employer was not aware] could not render the dismissal unfair. Lord Dyson stated:

> **"23. The Board would endorse the approach adopted in both of these cases. The question whether an employer justifiably dismisses a worker must be judged on the basis of the material of which the employer is or ought reasonably to be aware at the time of the dismissal. If the dismissal is justified on that material, it is not open to the worker to complain on the basis that there was other material of which**

the employer was not, and could not reasonably have been, aware which, if taken into account would have rendered the dismissal unjustified. The Board does not understand the correctness of this principle to have been in issue in the present case."

101. The Plaintiff also contended that he was summarily dismissed based on the provisions of sections 31, 32 and 33 of the Act of the Act which provide as follows:

> **"'31. An employer may summarily dismiss an employee without pay or notice when the employee has committed a fundamental breach of his contract of employment or has acted in a manner repugnant to the fundamental interests of the employer:**
> **Provided that such employee shall be entitled to receive previously earned pay.**
> **32. Subject to provisions in the relevant contract of employment, misconduct which may constitute a fundamental breach of a contract of employment or may be repugnant to the fundamental interests of the employer shall include (but shall not be limited to) the following —**
> **(a) theft;**
> **(b) fraudulent offences;**
> **(c) dishonesty;**
> **(d) gross insubordination or insolence;**
> **(e) gross indecency:**
> **(f) breach of confidentality, provided that this ground shall not include a report made to a law enforcement agency or to a government regulatory department or agency;**
> **(g) gross negligence;**
> **(h) incompetence;**
> **(i) gross misconduct.**
> **33. An employer shall prove for the purposes of any proceedings before the Tribunal that he honestly and reasonably believed on a balance of probability that the employee had committed the misconduct in question at the time of the dismissal and that he had conducted a reasonable investigation of such misconduct except where such an investigation was otherwise unwarranted."**

102. He contended that up to 4th October 2017, there were no complaints from clients or workers on his personnel file and no documentary evidence on the file to show that his performance was in question. There was however, evidence that he had been promoted within the Company on more than one occasion.

103. He further contended that before an employee could be summarily dismissed for failure to carry out his duties, it must have been shown that the employee was given appropriate warning that his employment was in jeopardy. Any failure to do so was a breach of the implied obligation to give warning prior to termination.

104. The Plaintiff cited **Suzanne Fraser v. Betty K Agencies Ltd. 2012/CLE/lab/0003** where the late Isaacs J (as he then was), referred to **Bomford v. Wayden Transportation Systems Inc. 2020 Carswell BC 2873** where M.D. Macaulay stated:

> **"In order to dismiss an employee summarily, where the employer believes that the employee's performance is substandard, the employer must provide the employee with a clear warning which specifically informs the employee that his or her job is in jeopardy."**

105. The Plaintiff relied on **Boulet v. Federated Co-operatives Ltd. (2001) 157 Man. R. (2d) 256 (Man QB) affirmed 2002 170 Man R. (2d) 9**, where McCawley J listed a number of principles when determining just cause for termination:

> **"The employer must establish the level of job performance required, that the standard was communicated to the employee, suitable instruction and/or supervision was given to the employee to meet the standard, the employee was incapable of meeting the standard and that the employee was warned that failure to meet the standard would result in dismissal."**

DECISION

106. The Plaintiff's pleadings were based on unfair dismissal. The Defendant therefore contends that his later claim for summary dismissal should not be entertained. It is common that the identification of issues is a fundamental part of pleadings in an action. This was discussed by the Court of Appeal in **Bahamas Ferries Limited v Charlene Rahming SCCivApp & CAIS No. 122 of 2018 where** Barnett JA stated:-

> **"39. The starting point must always be the pleadings. In Loveridge and Loveridge vs. Healey [2004] EWCA Civ 173, Lord Phillips MR said at paragraph 23: "In Mcphilemy vs. Times Newspapers Ltd. [1999] 3 ALL ER 775 Lord Woolf MR observed:**
>
> > **'Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties.' [Emphasis added]**
>
> **40. It is on the basis of the pleadings that the party's decide what evidence they will need to place before the court and what preparations are necessary before trial. Where one party advances a case that is inconsistent with his pleadings, it often happens that the other party takes no point on this. Where the departure from the pleadings causes no prejudice, or where for some other reason it is obvious that the court, if asked, will give permission to amend the pleading, the other party should be entitled to insist that this is not permitted unless the pleading is appropriately amended. That then introduces, in its proper context, the issue of whether or not the party in question should be permitted to advance a case which has not hitherto been pleaded."**

107. By the Plaintiff's Writ of Summons filed the 7th March 2018 and his Amended Writ of Summons filed the 28th January 2019 the Plaintiff claimed and maintained his claim that he was unfairly terminated. The Defendant, by its Defence filed the 6th April 2018 claimed that it had sufficient reason to summarily dismiss the Plaintiff.

108. While the Plaintiff did not file an actual Reply to the Defence, he did in fact address the issue of summary dismissal in his submissions, assumingly in response to the Defendant's Defence and submissions. It is the duty of the Court to consider both parties' arguments. I will consider whether the Plaintiff was unfairly dismissed and also whether the Defendant followed the correct procedure which would justify their claim to summarily dismiss the Plaintiff.

109. Sections 34 – 35 of the Act set out the law concerning unfair dismissal. By these msections, every employee has the right not to be unfairly dismissed. Whether or not an

employee is unfairly dismissed, would depend on consideration of the substantial merits of the case. The Court of Appeal in **Eden Butler v. Island Hotel Company Limited (Trading as Atlantis Paradise Island) SCCrApp & CAIS No. 210 of 2017** held that there were also three other issues which had to be determined in order to determine if there was unfair dismissal.

110. Evans JA (Actg) (as he then was) stated those issues as follows: (i) whether or not an employer, in accordance with sections 33, 34 and 35 of the Act, reasonably believed that the plaintiff committed the misconduct in question at the time of the dismissal, (ii) Did the employer conduct a fair and reasonable investigation of such misconduct in all the circumstances of this case and (iii) whether the nature of the breach alleged constituted a fundamental breach so as to warrant dismissal.

111. Evans JA cited that these same issues had to be considered in order to determine whether an employee was summarily dismissed, even though summary dismissal is provided for by section 31 of the Act. The Act makes provision for an employer to summarily dismiss a Plaintiff without pay or notice if the employer considers that the employee committed a fundamental breach of his employment contract or continued a breach which went to the root of the contract.

112. In Eden, Evans JA held that it was necessary to consider whether there was sufficient evidence which would cause the employer to have an honest and reasonable belief that the employee had committed the misconduct in question. Whether or not the belief was reasonable would depend on the evidence available and the efforts made by way of investigation to find out the true facts of the case.

113. It follows therefore that when considering whether or not an employee was unfairly or summarily dismissed, the Court must consider whether, based on the facts of the case, the employer reasonably believed that the employee committed the misconduct in question at the time of the dismissal; whether the employee conducted a fair and reasonable investigation of such misconduct in all the circumstances of the case and whether the nature of the alleged breach was so fundamental as to warrant dismissal. These considerations must be determined by examining the procedure established by the employer for investigating misconduct in order to determine if the procedure was fair and whether the procedure was in fact followed.

114. Section 115 in the Company's Employee Handbook, entitled 'Breach of Company's Policies' sets out acts which the Company considers major or minor breaches and the disciplinary action which can be taken against an employee who is found to be guilty of them. Section 115.2 lists conduct considered to be a major breach and includes: failure to follow company's policies and guidelines, willful violation of the Company's policies and utilizing the client's property (i.e. computer, phone, and other amenities) without authorization. The last paragraph of Section 115.3 states that for all major offences an employer shall be summarily dismissed in accordance with the Bahamas Employment Act, Part VIII.

115. Section 102 of the Employee Handbook, entitled 'Employee Relations', encourages an excellent work environment, with clear communication and positive attitudes and believes that it should demonstrate commitment to its employees by responding effectively to employee concerns.

116. The Plaintiff's unauthorized use of the Company's vehicle, for purposes not related to the business of the Company would constitute a failure to follow company's policies and guidelines and a willful violation of the Company's policies, which are considered major breaches under the Employee Handbook. The Plaintiff speaking harshly to the Company's employees would constitute a failure to clearly communicate, with a positive attitude, any issue that arose which the Plaintiff was obligated to address. This too would be a failure and willful violation of Company policy.

117. However, were these exact complaints made known to the Plaintiff at the time of his suspension and subsequent termination? While the Defendant and the Plaintiff agree that there were verbal representations made concerning the Plaintiff's mistreatment of the Company's staff and misuse of Company assets, I accept the evidence of the Plaintiff that he did not learn of the specific allegations made against him until after the commencement of these proceedings. This was confirmed by the evidence provided by the Defendant.

118. The only documents which appeared to to exist prior to the Plaintiff's termination were a general report drafted by Mr. Glinton on the 23rd January 2017, which does not specify any mistreatment by the Plaintiff and a letter dated the 18th September 2017 which generalized a problem with the way the Plaintiff used the Company vehicle. As stated above, these were not shown to the Plaintiff prior to his termination.

119. The documents drafted after the Plaintiff's termination, still did not provide the specific mistreatment alleged against the Plaintiff. The letter from Mr. Farrington dated the 23rd October 2017 did not specify the complaints made against the Plaintiff and the email from Mr. Greenslade to Mr. Farrington dated 23rd October 2017 only gave a synopsis of the claim. The Defendant's reason for not having any written complaints against the Plaintiff prior to his termination was that staff members were not willing to provide written complaints against the Plaintiff is still in my opinion not reasonable or acceptable. The verbal complaints could have been lodged in writing by the appropriate officer of the Defendant.

120. While that may be true, the Defendant's witness, Ms. Colebrooke testified that she did in fact provide, in writing, the reason she requested to be transferred from the BTC JFK location. Although, upon being cross examined it was revealed that, other than the manner in which the Plaintiff spoke to her, his actions towards her were simply as a result of following company policy. Mr. Roach could not confirm exactly when he produced the written allegations against the Plaintiff, and the written report provided was undated.

121. Also undated, was the written report of Mr. Glinton, which outlined the complaints made against the Plaintiff. However, Mr. Greenslade stated that he received the report on the 12th October 2017, six days after the Plaintiff had been terminated. Mr. Glinton also admitted that he did not investigate the claim that the Plaintiff had misappropriated the Company vehicle and claimed that misappropriation was in fact a misuse of the Company vehicle and not misappropriation.

122. It therefore follows that at the time the Plaintiff was terminated there hed been no fair and reasonable investigation conducted into the complaints of the Plaintiff's alleged misconduct. Consequently, the Defendant could not have formed an honest and reasonable belief that the Plaintiff was guilty of the misconduct complained of in order for

there to have been a fundamental breach of his employment contract to warrant the manner in which he was dismissed.

123. Accordingly, I find that the Plaintiff was unfairly dismissed and that the Defendant did not satisfy the necessary requirements needed to summarily dismiss the Plaintiff. The Plaintiff is therefore entitled to compensation for being unfairly dismissed pursuant to section 46 of the Act. Section 46 (1) states that the amount of the basic award shall be the three weeks' pay for each complete year of employment. The Plaintiff was employed from the 30th July 2012 to the 6th October 2017. He was employed for a period of five years and six days. At the time he was terminated he earned a salary of $29,380.00 annually or $565.00 per week and is entitled to basic pay in the amount of $8,959.26.

124. As for a compensatory award pursuant to section 47 of the Act, the Plaintiff did not provide any evidence of the loss sustained in support of the $4,395.39 sought in his letter dated the 19th October 2017, and his Amended Writ of Summons filed 28th January 2019. Therefore, I will not make a compensatory award pursuant to section 47 (2) (a) of the Act.

125. However, with respect to section 47 (2) (b) of the Act the Plaintiff claimed the loss of his accrued vacation at amount of $1,695.00. The pay statement issued by the Defendant with respect to the Plaintiff as at the 1st October 2017, five days prior to his termination, stated that he was entitled to a vacation allowance of $1,130.00 and he is therefore entitled to an award in that amount.

126. A party is bound by its pleadings. The Plaintiff's Writ of Summons, Amended Writ of Summons, Witness Statement or Statement of Facts and Issues did not make any mention or claim for summary dismissal. It was the Defence of the Defendant which pleaded, that it had sufficient grounds to summarily dismiss the Plaintiff. As the Plaintiff did not plead or claim summary dismissal, I make no finding on the same.

127. Costs of this action are awarded to the Plaintiff to be taxed if not agreed.

128. Interest is awarded at the statutory rate of 6.25% from the date of judgment until payment.

Dated this 12th day of November, 2021

Hon. Madam Justice G. Diane Stewart