

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law & Equity Division**

**2016/COM/lab/00076**

**WARREN TAYLOR**

**Plaintiff**

**AND**

**BAHAMAS ELECTRICITY COMPANY  
dba Bahamas Power and Light Company Ltd.**

**Defendant**

**Before Hon. Mr. Justice Ian R. Winder**

**Appearances: Donovan Gibson with Sharanna Bodie for the Plaintiff**

**Dywan Rodgers for the Defendant**

**28 October 2021; Submissions 15 November 2021 and 1 February 2022**

**JUDGMENT**

## WINDER, J

This is the claim of the Plaintiff (Taylor) for wrongful and unfair dismissal.

[1.] The action was commenced by Writ of Summons dated 4 November 2016. The Statement of Claim indorsed thereon is settled in the following terms:

3. That the Plaintiff was employed on or about the 3<sup>rd</sup> June 1991 by the Defendant and at the material time occupied the position of a Station Diesel Mechanic Mate at the Bullock's Harbour, Great Harbour Cay Operations of the Defendant Company.
4. That the Plaintiff was accused by the Defendant of being absent from work for five (5) days (i.e. from the 26<sup>th</sup> February, 2014 – 2<sup>nd</sup> March, 2014). However, on those dates the Plaintiff was obtaining medical therapy for an injury he sustained and provided the Defendant with medical documentation.
5. That on or around the 1<sup>st</sup> June, 2015, the Plaintiff was also accused of leaving his station unattended despite obtaining permission from his advisor to relieve himself earlier in the afternoon as he had worked through his lunch. Before leaving, the Plaintiff took a fuel tank reading and did a summary before closing out his shift and was thereafter relieved by another employee.
6. That on the 18<sup>th</sup> November, 2015 the Plaintiff received a letter from the Defendant advising him that an investigation was being conducted into breaches committed and that he was being suspended with half pay for a period of five (5) working days, pending a further investigation.
7. That on the 25<sup>th</sup> November, 2015 the Defendant received another letter advising him that the investigation was completed and he was being terminated immediately as a result of alleged breaches committed.
8. That the Plaintiff has requested of the Defendant that he be given definitive reasons for his dismissal however the Defendants have failed and or refused to provide such information, only citing a refusal of the Plaintiff carrying out "legitimate and reasonable job-related instructions".
9. The Plaintiff at all times during his employment with the Defendant performed the tasks that he was contracted to complete and was not delinquent in his duties.
- ...
12. As a result of the aforesaid breach the Defendant has wrongfully and or unfairly terminated the Plaintiff and the Plaintiff has suffered loss and damage.

[2.] The Defendant has defended the claim in a Defence filed on 4 December 2018.

5. The Defendant says that the Plaintiff was guilty of multiple infractions/breaches cumulative over a period of time. Consequently, the Plaintiff was suspended so that a reasonable investigation/review of his overall employment history and job performance (or lack thereof) could be conducted as is required by Section 33 of the Employment Act, 2001, and common law. At the conclusion of same a determination was made to terminate for sufficient cause.

6. The Defendant denies paragraph 8 of the Statement of Claim and puts the Plaintiff to strict proof thereof. The Defendant says that the Plaintiff is well aware of the various breaches and misconduct asserted against him by the Defendant. In each instance of breach for, *inter alia*, failure to comply with lawful instructions issued on behalf of the Defendant, failure to properly perform his job function, being absent from work without reason and without consent, the Plaintiff was consulted, questioned and warned by management on behalf of the Defendant.

[3.] At trial Taylor gave evidence in his case. The Defendant called Chequita Johnson (Johnson) as witnesses in its case.

[4.] Taylor's evidence was contained in his witness statement which was subject to cross examination. In the witness statement Taylor stated:

1. That this entire thing started happening after I reported Mr. Norman Bastian for stealing fuel (the fuel that went missing during the time the fuel tanks were being cleaned).

2. That the reason I reported Mr. Bastian because he was in charge of the fuel tanks that were being cleaned and the fuel tank cleaning crew in 2012, about 3500 gallons of diesel fuel went missing and only 500 gallons were retrieved and returned to the station yard in a 2,250 gallon square containers and of the 500 gallons of fuel 250 gallons of the fuel was inspected by Mr. Mario Smith and Mr. Milan Turnquest.

3. That Mr. Mario Smith said that 250 gallons of that fuel was good and that he would deal with the matter but a few month (sic) later nothing came out of it; a while after that I found out that Mr. Norman Bastian and Mr. Mario Smith were close friends.

4. That I thought I was helping the Bahamas Electrical Corporations but found out that I was working for a very ungrateful corporation.

5. That a witch hunt ensued as they spread lies about me. (They said I was not performing some of my duties – cutting grass, for example.

6. That Mr. Norman Bastian who were shop steward and supervisor and Mr. Mario Smith was local manager at that time started to make a paper trail to this discredit (sic) my name and character, so that management in Nassau would believe that I was a tell tail and a problem person at work and not performing my duties.

7. That Mr. Bastian was writing letters to management, stating that I threatened to kill him which I did not; it got so bad that he went to the police station and reported that I threatened to kill him but when asked by the officers if he hear me say it he said no but he heard from the staff. (Miss Winder and one of the other staff members)

8. That after leaving the police station I had my attorney Mr. Rashard Martin write him a letter to stop him from spreading malicious lies, saying that I threatened to kill him. The letter was then passed to me by my attorney to serve on Mr. Bastian.

9. That I served Mr. Bastian and the threats stopped. The letter I served him is herein marked #2.

10. That Mr. Bastian and Mr. Mario Smith continued to lie and spread rumors until management believed their lies, leading to my dismissal.

11. That I worked for The Bahamas Electricity Corporation from June 3, 1991 to November 25, 2015 (totaling a little over twenty-four [24] years of service).

12. That there were a few minor breached that I was charged with regarding cleaning or lowning (sic) the station yard, cleaning the station, painting the fuel line, or not completing a full report due to damaged engine that caught fire. ...

13. That the duties above are minor duties that I was accused of breaching. The station logbooks should have the same records as listed above.

14. That the major breaches I was accused of by my union shop steward and supervisor, MR. Norman Bastian, and my local manager Mr. Mario Smith. They said I was absent from work on February 26, 2014 to March 2, 2014 which were the days that Mr. Bastian and Mr. Smith, said that I leave the station for five (5) days without reason, in which these were the days I was on sick leave at Dr. Philip C. Huyler's chiropractic clinic in Nassau being treated for a slipped disc. Mr. Smith, (sic)

15. That Mr. Bastian and Mr. Smith accused me of leaving the station unattended on June 1, 2015.

16. That on June 1, 2015 I reported in to work at 0800 hours and relieved Mr. Dennis Saunders of his duties. Mr. Norman Bastian was also present at work. I performed my duty which was to monitor the control room panel gauges and the engines meter gauges, check the engines oil wells, check the battery water, and fill the radiators with water then check stock for the oil and other chemicals stored outside the station. I then checked my section of the station yard and check the fuel farm for leaks. After doing my check I return to the station control room, later that day I ask Mr. Bastian are (sic) shop steward and supervisor If (sic) I could take late lunch break at 3:30 pm he said yes but before I leave, I must take the fuel tanks dips, do the summary, closed out the log books and clock out, then let him know when I am leaving the station.

At 3:30 I took the dips do the summary, closed out the log books and clock out, seeing that I have already work my 7.5 hours for the day. I then ask Mr. Bastian if he could cover the rest of my sift (sic) until Mr. Godfrey Francis come to relieved (sic) him of my shift he said yes because he wanted to talk to Mr. Godfrey Francis about something at work; after which he told me that I can leave the station.

While leaving the station yard going out the gate, I pass Mr. Francis coming in the yard, later that day Mr. Francis call me by phone and told me that Mr. Bastian ask him if he had seen me on his way to work, because Mr. Bastian told him that I was mumbling about leaving the station after which Mr. Francis relieved him of my 0800hr to 1600 hrs shift.

[5.] Johnson's evidence was contained in her witness statement which was subject to cross examination. In the witness statement Johnson stated:

1. At all times material to this Action, I served as the Manager of Compensation and Benefits of the above-named Defendant, and I am duly authorized by it to make this Witness Statement on its behalf.
2. The information contained within this Statement is derived from my review of the Plaintiff's personnel file, the Defendant's general employee records and procedures, and from my personal knowledge of the Plaintiff and his work history with the Defendant.
3. While serving as Manager of Compensation and Benefits, I had general administrative supervision of the Defendant's employees. My duties with the Defendant included, among other things, oversight of disciplinary action against employees. I was employed with the Defendant in this capacity since 2009 until 2019 when I left the Defendant Corporation.
4. As a consequence of my duties with the Defendant, I am familiar with the Plaintiff and the Plaintiff's records in relation to his employment with the Defendant.
5. The Plaintiff commenced employment with the Defendant on or about June 3, 1991, as a Utility Man Mate and thereafter in the year 1993 he was transferred to the position of Station Diesel Mechanic Mate, which is a nonmanagerial nonsupervisory position, in Great Harbour Cay, The Bahamas.
6. The scope of duties and job requirements of a Station Diesel Mechanic Mate were set out in a document. ...
7. The Plaintiff would have received a copy of the document outlining his scope of duties and job requirements and he was required to familiarize himself with same. Additionally, the Plaintiff would have received verbal counseling over the years of his employment with respect to the document and generally with respect to his scope of duties and job requirements.
8. The Plaintiff's scope of duties and job requirements included but were not limited to mopping, cleaning engines, mowing/cutting grass, the general maintenance and upkeep of the power station where he worked.
9. Specifically stated in the aforesaid document ... the duties of the Plaintiff included:
  - Cleans working areas and assists with station landscaping;
  - Prepare station reports (weekly/monthly) by recording fuel received and used and all engine maintenance carried out;

- Performs other related duties such as: cleans vehicles, checks station inventory and assists with carpentry, masonry, painting and auto mechanic related tasks...
10. The Applicant's employment was at all material times also governed by the Industrial Agreement between the Bahamas Electricity Corporation and the Bahamas Electrical Workers Union ...
  11. The Industrial Agreement provides at Clause 16.0 under the rubric "Discipline" the following terms and conditions of employment:-
    - 16.1. Without discipline the Corporation cannot effectively perform the public service for which it has been established.
    - 16.2. Breaches of discipline are classified as either major or minor.
    - 16.3. The Corporation may summarily dismiss from its service or suspend without pay any employee who commits a major breach of discipline...
    - 16.4. Any employee summarily dismissed under the provisions of this Clause 16 shall not be entitled to notice or pay in lieu of notice ...
    - 16.5. Major breaches of discipline will normally call for suspension or dismissal. Major breaches of discipline included but are not limited to (6) Negligence or carelessness in the performance of duty resulting in ... major damage to the Corporation's or employee's property; (11) Gross Misconduct; (14) Dishonesty (17) Gross Insubordination.
    - 16.6. Minor breaches of discipline include but are not limited to (1) Absence without authorization or reasonable cause; (2) repeated lateness; (4) Insubordination; (5) Violation of the Corporation's policies or procedures; (10) Minor damage to the Corporation's property through carelessness; (15) Refusal to carry out legitimate and reasonable job-related instructions. (Emphasis added).
    - 16.7. Where in the judgment of the Corporation, an employee has committed a minor breach of discipline; the following procedure shall be followed: (1) On the first occurrence of any minor breach, a verbal warning, confirmed in writing ... (2) On the second occurrence of any minor breach, a written warning shall be given to the employee with a copy to the Secretary. (3) On the third occurrence of any minor breach, a written warning shall be given to the employee with copy to the Secretary. (4) On the fourth occasion of any minor breach, the employee shall be suspended immediately which shall be confirmed in writing with a copy to the Secretary.
    - 16.8. Four (4) minor breaches shall be treated as a major breach and shall be addressed in accordance with the provisions of this Clause, and this will be confirmed to the Secretary in writing.
    - 16.10. In the case of minor breaches of discipline, the Corporation shall not take into consideration any written adverse reports eighteen (18) months after the dates of such reports provided there are no other minor breaches recorded against the employee during the same eighteen (18) month period.
    - 16.11. Where, in the judgment of the Corporation a major breach or four (4) minor breaches of discipline warranting dismissal have been committed by an employee, the Corporation may first suspend the employee from duty

with half pay pending further investigation for a period of up to five (5) working days and shall confirm this suspension in writing to the employee and the Union, provided always that the breach does not warrant immediate dismissal.

16.12. If at the end of five (5) working days the investigation is not completed, the suspension may be extended for a further period not to exceed twenty (20) working days to complete the investigation. (1) Thereafter, the Corporation may (a) Dismiss the employee immediately if in the Corporation's view the circumstances justify such action ... (Emphasis mine).

12. By letter dated November 18, 2015, *"in accordance with Clause 16.11 of the Industrial Agreement"*, the Plaintiff was *"suspended with half pay for a period of five working days, pending further investigation"* into alleged breaches committed by the Plaintiff. ...
13. While I did not author the November 18, 2015, letter, given my position with the Defendant Corporation I was intimately involved in the process/investigation that ultimately led to the termination of the Plaintiff.
14. After a full investigation into the misconduct of the Plaintiff, a letter dated November 25, 2015, was issued stating *"... the corporation has completed its investigation into breaches committed and find you to be culpable of the same. As a result of this, in accordance with clause 16.12(1)(a) the Corporation has decided to separate you from the organization effective immediately ..."*. ....

#### THE BREACHES:

15. On the Plaintiff's personnel file there are numerous disciplinary letters dated as far back as October 6, 1993, for breaches such as being absent from duty without reasonable cause and negligence in the performance of duty.
16. I am cognizant of the Plaintiff's contention that a witch hunt was commenced against him by Mario Smith and Norman Bastian.
17. However, I refer this Honourable Court to the disciplinary letters contained at TABS 1, 2, 3, 4, 5, 6, 7, 9, 10 of the Agreed Bundle of Documents; neither Mario Smith or Norman Bastian was responsible for generating same and they clearly demonstrate a history of poor performance and breaches on the part of the Plaintiff.
18. I along with other Management when considering whether to terminate the Plaintiff in accordance with the Industrial Agreement were cognizant of the fact that we could not consider infractions that were older than eighteen (18) months. However, the Plaintiff's history was considered in respect of his allegation that Mario Smith and Norman Bastian were out to get him.
19. Upon looking at the past conduct of the Plaintiff, upon considering his pertinent general present conduct and breaches within the eighteen (18) month period prior to his suspension and termination, and after speaking with Mario Smith, Norman Bastian and the Plaintiff, I along with Management honestly and reasonably believed that there was no conspiracy on the part of Mario Smith, Norman Bastian or any other to get rid of the Plaintiff.

20. At the conclusion of our investigation, it was honestly and reasonably believed that the Plaintiff was guilty of the various infractions that ultimately led to his summary dismissal in accordance with the Industrial Agreement.
21. The factors/infractions/breaches that were considered and that led to the Plaintiff's summary dismissal:
  - 21.1. March 2, 2014, the Plaintiff was absent from work without reason. I refer this Honourable Court to TAB 27 of the Agreed Bundle of Documents.
  - 21.2. August 11, 2014, I was personally informed by Norman Bastian that the Plaintiff was not performing his duties in line with his scope of duties, in particular, cleaning working areas and assisting with station landscaping. He failed to complete cutting his portion of grass while all other staff had completed their portion.
  - 21.3. August 14, 2014, the August 11, 2014, matter was further investigated by Management. Mario Smith spoke with the Plaintiff to ascertain his position regarding his non-compliance to cut the grass and not perform his job obligations. The Plaintiff informed that he did not cut the grass but the reason why he did not cut the grass was because he had a letter on file from his personal doctor that he is not supposed to use a lawnmower or weedwhacker. Upon a review of the Plaintiff's personnel file, it was learned that this was NOT TRUE as no such letter was on file, and to the contrary there was a medical letter from Dr. Philip Huyler on file dated May 14, 2014, stating "*Mr. Taylor should be able to return to regular duties beginning July 13, 2014*". There is now produced and shown to me and marked Exhibit "CJ 3" a true copy of the May 14, 2014, medical letter.
  - 21.4. October 13, 2014, the Plaintiff was absent from work without reason. I refer this Honourable Court to TAB 30 of the Agreed Bundle of Documents.
  - 21.5. November 14, 2014, Norman Bastian informed Management that the Plaintiff willfully and intentionally refused to follow his lawful instructions and request and failed to perform his duties in line with his scope of duties. The Plaintiff refused to mop the floor and left the cleaning of the floor to be completed by staff on the next shift and he left the Defendant compound without permission. I refer this Honourable Court to TAB 31 of the Agreed Bundle of Documents.
  - 21.6. February 23, 2015, Norman Bastian informed Management that again the Plaintiff willfully and intentionally refused to follow his lawful instructions and request and failed to perform his duties in line with his scope of duties. After being instructed to prime and paint the fuel supply line and fuel return line that leads from the filling station for the fuel barge to the fuel tank farm, the Plaintiff refused to buff off, prime and paint the pipes. The Plaintiff was instructed by Norman Bastian to provide Management with an explanation in writing for his refusal, but the Plaintiff failed to do so.



- 21.7. May 21, 2015, Norman Bastian reported to Management that the Plaintiff did not follow normal start-up procedures on unit 4 when he started the engine without checking the water or lubrication oil and proceeded to put the engine online. Several minutes later, the engine tripped on high coolant temperature due to very little water being in the radiator.
- 21.8. May 22, 2015, it was reported to Management that the Plaintiff was instructed to prime the fuel lines for the main fuel bund. After investigation into the matter Management learned that Juwan Saunders had to prime the fuel lines because of the Plaintiff's unjustified refusal to follow lawful instructions.
- 21.9. June 1, 2015, the Plaintiff while on the 9:00-4:00 shift took his lunch break at 3:30 and without authorization never returned to work/property to turn over the shift to the incoming operator, Godfrey Francis. When questioned by Management, who he turned his shift over to when he left the Plaintiff DISHONESTLY said he turned the shift over to Juwan Saunders. However, upon investigation into the matter it was learned that Godfrey Francis worked the next shift and not Juwan Saunders.
- 21.10. June 26, 2015, during his shift when unit 1 had a fire at approximately 1:00 am, the Plaintiff willfully and intentionally did not document his restoration times in the logbook as required by his job description requirements and further he did not follow lawful instructions to cut his section of grass on the same day.
22. Given the many minor breaches and some arguably major breaches, by letter dated November 18, 2015, the Plaintiff was placed on suspension pending a full investigation. I refer this Honourable Court to TAB 35 of the Bundle of Documents.
23. As part of the investigation, on November 25, 2015, Management met with the Plaintiff to discuss the various infractions stated above and allow him a further opportunity to respond to the allegations against him. I refer this Honourable Court to TAB 38 of the Agreed Bundle of Documents.
24. While it is not documented in the minutes of the meeting held November 25, 2015, I can emphatically state that before the ultimate decision was made to terminate the Plaintiff, Renee L. Rahming, Assistant Manager Employee Relations, contacted me and discussed with me what transpired during the meeting and informed me of what the Plaintiff said in response to the various breaches.
25. At the conclusion of the November 25, 2015, meeting all Management was of the opinion that the Plaintiff was disingenuous, we had NO TRUST AND NO CONFIDENCE in him. We were inclined to trust Norman Bastian and Mario Smith.
26. During his interview on November 25, 2015, the Plaintiff stated that he was on sick leave February 26 to March 3, 2015, but there was no such documentation on file.

27. During his interview on November 25, 2015, in respect of the engine catching on fire, the Plaintiff admitted to not writing the report and simply said he had all intentions of writing the report but "*did not get around to it*". This demonstrates that the Plaintiff knew of his obligation to write the report and despite the seriousness of the incident the only excuse or reason that he could proffer for not doing what he was mandated to do, was that he did not get around to doing the report.
28. During the meeting held November 25, 2015, and before, the Plaintiff did not at any time offer any reason or justification for the breaches that he committed he only tried to allege that Norman Bastian and Mario Smith were out to get him.
29. However, the decision to ultimately terminate was not made by Norman Bastian or Mario Smith, it was made by me and other Management after giving the Plaintiff an opportunity to explain his side in respect of each allegation made against him.
30. There was no credible evidence to demonstrate to us that Norman Bastian or Mario Smith were out to get the Plaintiff.
31. Further, even before Norman Bastian and Mario Smith had supervision over the Plaintiff the Plaintiff had a history of disciplinary warnings.
32. It should be noted that in addition to the above referenced infractions, I know that the Plaintiff was counselled regularly and verbally warned on occasion in respect of his lack of performance or poor performance or failure to follow lawful instructions.
33. At the conclusion of my telephone discussion with Renee L. Rahming, looking at the matter objectively, we were both of the opinion that the Plaintiff was guilty of the above infractions and that he should be terminated in accordance with Clause 16.12(1)(a) of the Industrial Agreement.
34. While the Plaintiff may allege that Norman Bastian and Mario Smith were out to get him, which they denied and which was not believed, Renee Rahming and I were definitely not out to get the Plaintiff.
35. Renee Rahming and I looked at the facts and considered what the Plaintiff had to say as open mindedly as possible, and we believed him to be guilty of the infractions.
36. The Plaintiff was thereafter presented with the letter dated November 25, 2015, signed by Villiema Black, Manager of Human Resources at that time, terminating his services effective immediately.
37. In the circumstances, I am of the view that the summary dismissal of the Plaintiff for cause was wholly warranted.
38. Further, I verily believe that the Plaintiff was provided with the full and proper amounts of compensation required to be provided to him under law in connection with his termination and/or as provided by the Industrial Agreement.
39. The contents of his Witness Statement are true to the best of my knowledge, information and belief.

## Law and analysis

[6.] Taylor's case as set out in paragraphs 3 and 4 of his submission is that:

3. On the 18<sup>th</sup> November 2015 the Plaintiff was suspended from the Defendant on half pay for a period of five (5) working days, pending the conduct of further investigation. On 25<sup>th</sup> November 2015 the [Plaintiff] was advised by letter that the investigation was completed and he was being terminated with immediate effect as a result of alleged breaches committed.

4. The Plaintiff at all material times during the employment with the Defendant performed the tasks that he was contracted to complete and was not delinquent in his duties. The Plaintiff asserts that the Defendant had no lawful reason for dismissing the Plaintiff and therefore his termination was unfair and wrongful in all the circumstances.

[7.] I did not accept Taylor's case.

[8.] The leading case in this jurisdiction on the question of unfair dismissal is the Court of Appeal decision in ***Bahamasair v Omar Ferguson SCCivApp No. 16 of 2016***. In that case ***Crane Scott JA***, delivering the decision of the Court, stated as follows:

14. It is beyond dispute that the respondent has a statutory right conferred by section 34 of the Employment Act not to be "unfairly dismissed". The section reads:

"34. Every employee shall have the right not to be unfairly dismissed, as provided in sections 35 to 40, by his employer."

15. Section 35 of the Act provides that subject to sections 36 to 40, for the purposes of Part IX of the Act, the question whether the dismissal of the employee was fair or unfair shall be determined "in accordance with the substantial merits of the case."

16. The meaning of this expression and in particular, how the question whether a dismissal was fair or unfair is to be determined, was judicially considered in *B.M.P. Limited d/b/a Crystal Palace Casino v. Ferguson* [2013] 1 BHS J. 135 (an appeal from a decision of the Industrial Tribunal).

17. In the course of its decision this Court (differently constituted) explored the broad legislative objectives of Part IX of the Act and the intended meaning of the expression "in accordance with the substantial merits of the

case” in section 35. Delivering the decision of the Court, Conteh JA explained, inter alia, that given the diverse circumstances in the workplace which might lead to the dismissal of an employee, the categories of unfair dismissal are not intended to be closed. In short, a claim for unfair dismissal may arise in situations other than those specific instances or “statutory unfair dismissals” described in sections 36 to 40 of the Act. Where such a claim is instituted, section 35 mandates the question whether the dismissal is fair or unfair to be determined following a consideration of “the substantial merits of the case.”

18. We can do no better than to reproduce with our wholesale approval, the Court’s observations located at paragraph 38 (sic) of its decision in Crystal Palace as follows:

“38. Section 35, in our view, is the touchstone for the determination of whether in any instance of the dismissal of an employee outside of the provisions of sections 36, 37, 38 and 40, is fair or unfair. And this question shall be determined in accordance with the substantial merits of the case...” [Emphasis added]

19. More recently, in Cartwright v. US Airway [2016] 1 BHS J. No. 96 this Court (differently constituted) considered the meaning of the phrase “the substantial merits of the case” as it appears in section 35. The Court drew assistance from the observations of Langstaff J in West v. Percy Community Centre UKEAT/0101/15/RN. In West, the court was considering the corresponding phrase in section 98(4)(b) of the English Employment Act, 1999. Langstaff J explained that the “statutory question is answered by a factual inquiry.”

20. Delivering the decision of the Court of Appeal in Cartwright (above), Isaacs JA, stated:

“40. Thus, it was incumbent upon Winder, J to look at the case in the round, at all the circumstances of the case, and arrive at a decision based on the substantial merits of the case. This he did do.”

...

53. We do not think it is necessary to consider whether an industrial agreement was or was not in effect at the time when the respondent was dismissed. Nor do we need to determine whether the disciplinary procedures contained in the 2000 industrial agreement were expressly or impliedly incorporated into the respondent’s contract of employment with the appellant. In our view, the statutory right conferred by section 34 of the Employment Act on every employee in The Bahamas not to be unfairly dismissed, is to be read as having imported into every contract of

employment, an implied statutory term that an employer's power of dismissal will be exercised fairly and in good faith.

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.

(emphasis added)

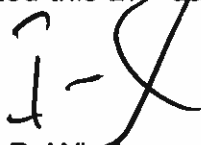
[9.] The resolution of this dispute as to whether Taylor's termination was unfair and/or wrongful is to be determined on the basis of whether the BPL adhered to its duty under the Employment Act. That duty, according to **Crane-Scott JA**, was to act fairly, which would require the employer to adhere 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.

[10.] Having considered the evidence and observed the demeanor of the witnesses as they gave their oral evidence at the trial of this matter, I have no hesitation in indicating that I preferred the evidence of Johnson on behalf of BPL. I did not accept Taylor's evidence where it differed from Johnson's. On balance, I find that BPL has established that it held an honest and reasonable belief in the circumstances that Taylor had committed the breaches alleged and chronicled in Johnson's evidence.

[11.] I accepted Johnson's evidence that Taylor was afforded an opportunity to respond to the allegations. I accept that BPL was not dissuaded by the explanations offered by Taylor, from forming an honest and reasonable belief that he had committed the breaches alleged. I am not required to find that Taylor was in fact guilty of the offences alleged and I refrain from such a finding. On the evidence before the Court, I accept that it was open to BPL to form such a belief, which I found that it honestly held.

[12.] In all the circumstances, I am satisfied that BPL was within the terms of the Industrial Agreement to terminate Taylor's employment and that it conducted a full and fair investigation before dismissing him. BPL shall have its reasonable costs to be taxed if not agreed.

Dated this 27<sup>th</sup> day of April 2022



Ian R. Winder

Justice