

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law & Equity Division**

**2018/COM/lab/00059**

**B E T W E E N**

**CHENARA CAREY**

**Plaintiff**

**AND**

**CAPE ELEUTHERA ISLAND SCHOOL**

**Defendant**

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

**Appearances: Donovan Gibson for the Plaintiff**

**Gail Lockhart-Charles QC with Lisa Esfakis for the Defendant**

**13, 14 April 2021 and 18 August 2021**

**JUDGMENT**

## **WINDER, J**

This is the claim of the plaintiff (Carey) for wrongful and unfair dismissal from her employment with the Defendant (Cape) on 8 August 2018.

[1.] The action was commenced by Writ of Summons dated 11 October 2018. The Statement of Claim indorsed thereon is settled in the following terms:

1. The Plaintiff was at the material time employed by the Defendant.
2. The First Defendant is a non-profit entity incorporated under the laws of The Commonwealth of The Bahamas which serves and functions as an educational facility in Eleuthera, Bahamas.
3. The Plaintiff commenced employment with the Defendant on the 1<sup>st</sup> June 2012 and at the material time was employed as Chief Administration Officer earning inter alia a monthly salary of \$5,307.68.
4. By a Document entitled "Summary Dismissal of Chenara Carey" dated the 8<sup>th</sup> August 2018 the Defendant purported to terminate the Plaintiff's employ summarily on the grounds of dishonesty and gross misconduct.
5. Wrongfully and in breach of Section 29 of the Employment Act, the Defendant terminated the employment of the Plaintiff without the prescribed notice or payment in lieu thereof.
6. The Defendant in breach of Sections 34 and 35 of the Employment Act unfairly dismissed the Plaintiff from its employment.

### Particulars of Unfair Dismissal

- i) The Defendants purported to terminate the Plaintiff for dishonesty and gross misconduct but failed to provide any particulars of the dishonesty or gross misconduct to the Plaintiff;
  - ii) The Defendant terminated the Plaintiff based on representations/allegations made by third parties without allowing the Plaintiff the opportunity to confront her accusers or to understand the nature of any questionable conduct or wrongful actions imputed to her, if any at all;
  - iii) The Defendant failed to allow the Plaintiff to state her case or to offer any justification for any alleged wrongdoing or at all;
  - iv) The Defendant failed to conduct a fair and reasonable investigation and simply believed the allegations made by the third parties without more.
7. As a result of the aforementioned breaches, the Plaintiff has suffered loss and damages

[2.] Cape defended the claim in a Defence filed on 4 December 2018 which provided, in part, as follows:

4. As to paragraph 4 of the Statement of Claim, it is admitted that the Plaintiff was terminated by the Defendant for cause on 8<sup>th</sup> August, 2018 and it is admitted that on that date the Plaintiff was provided with a document entitled "Summary Dismissal of Chenara Carey" which set out the particulars of the Plaintiff's misconduct which was repugnant to the fundamental interests of the Defendant. It is denied that the termination was effected by that said document. The termination was, in fact, effected by Mr. Edward Brooks, the Chief Executive Officer of the Defendant during a meeting with the Plaintiff on 8<sup>th</sup> August, 2018.
5. It is admitted that dishonesty and gross misconduct were among the grounds for summary dismissal.

#### Particulars

The Plaintiff on at least two separate occasions made seriously defamatory statements against the Defendant maligning its reputation and causing it loss and damage. These statements characterized the Defendant as a racist and sexist organization that was willfully breaking the laws of the Commonwealth of The Bahamas. On both occasions the statements were made to candidates seeking employment with the Defendant. On the first occasion, in 2017, the Plaintiff disparaged the Defendant to Mr. Rodney Lloyd when driving Mr. Lloyd from the airport on his first visit to the Defendant's campus. The second occasion was during a meeting with Ms. Fiona Daniels who was applying to the Defendant for the position of Chief Financial Officer; the Plaintiff again maligned the Defendant referring to is (sic) as a racist, sexist law-breaking entity.

On the first occasion, the Defendant accepted the Plaintiff's denial over the word of Mr. Lloyd, and Mr. Lloyd was actually terminated, as the Defendant believed Plaintiff (sic) when she said that Mr. Lloyd was being dishonest. In 2018 when the Defendant received a second report of (strikingly similar) disparaging comments made by the Plaintiff to Ms. Fiona Daniels, the Defendant confronted the Plaintiff once again with the accusation. When confronted, the Plaintiff stated that Ms. Daniels was being untruthful. The Defendant did not accept the Plaintiff's denial on the second occasion. The Defendant will maintain at trial that it was fully justified in holding that the Plaintiff's explanation as to Ms. Daniels' accusation was dishonest and that no further investigation was warranted in the circumstances.

The Plaintiff was nevertheless afforded an opportunity to appeal. The Plaintiff initially participated in the appeal process by submitting a document appealing her termination and denying the accusations made against her. In her appeal document, in addition to denying the statements made by Mr. Lloyd and Ms. Daniels, the Plaintiff remarkably and repeatedly referred to herself as "the only token black Bahamian". The Defendant vehemently denies any racist practices and asserts that such practices go against its vision, mission, core principles and everything that it represents and has built as an outstanding corporate

citizen and community leader over the years. The Plaintiff subsequently declined to participate in the appeal process or attend the appeal hearing; however, the Defendant will rely on the Plaintiff's appeal document itself at trial as evidence of the manner in which the Plaintiff characterized her employment and the Defendant's organization and as further corroboration of the truth of the allegations made against the Plaintiff by Mr. Lloyd and Ms. Daniels.

6. Wrongful termination or termination in breach of Section 29 of the Employment Act as alleged in paragraph 5 of the Statement of Claim or at all are each denied. The Plaintiff was terminated summarily for cause pursuant to Section 31 of the Employment Act.
7. It is denied that the Plaintiff was dismissed unfairly in breach of Sections 34 and 35 of the Employment Act or at all.
  - 7.1. It is denied that the Defendant purported to terminate the Plaintiff for dishonesty and gross misconduct but failed to provide any particulars of the dishonesty or gross misconduct to the Plaintiff as alleged in the first alleged "particular of unfair dismissal". The Plaintiff was in fact provided with full particulars of the dishonesty and misconduct during the meeting with Defendant's CEO prior to her termination on 8<sup>th</sup> August, 2018.
  - 7.2. It is denied that the Defendant terminated the Plaintiff based on representations/allegations made by third parties without allowing the Plaintiff the opportunity to confront her accusers or to understand the nature of any questionable conduct or wrongful actions imputed to her as alleged in the second alleged "particular of unfair dismissal". The Plaintiff was provided with the details of the seriously defamatory statements which she had made against the Defendant on two separate occasions to Mr. Rodney Lloyd and to Ms. Fiona Daniels. The Plaintiff responded to the accusations by stating that Mr. Lloyd was mentally unstable and that Ms. Daniels was being untruthful. The Plaintiff's explanation was neither credible nor truthful and the Defendant was justified in proceeding with the termination in the circumstances.
  - 7.3. It is denied that the Defendant failed to allow the Plaintiff to state her case or to offer any justification for any alleged wrongdoing or at all as alleged in the third alleged "particular of unfair dismissal" the Defendant repeats paragraph 7.2 above. The Plaintiff's (sic) offered a denial of the alleged wrongdoing, which was neither credible nor true, thus confirming the Defendant's finding of dishonesty.
  - 7.4. It is denied that the Defendant failed to conduct a fair and reasonable investigation and simply believed the allegations made by the third parties without more as alleged in the fourth alleged "particular of unfair dismissal". The allegations that were made by third parties were corroborated by the circumstances such that further investigation was unwarranted.

[3.] At trial Carey gave evidence in her case. The Defendant called Fiona Daniels (Daniels), Edd Brooks (Brooks) and Christopher Maxey (Maxey) as witnesses in its case.

[4.] The agreed statement of facts and issues provided:

**FACTS**

- 1) The Plaintiff commenced employment with the Defendant on the 1<sup>st</sup> June 2012 and at the date of her termination the Plaintiff was employed as Chief Administration Officer.
- 2) The Defendant is a non-profit entity incorporated under the laws of The Commonwealth of The Bahamas and operates the school known as the Island School on the Island of Eleuthera.
- 3) The Plaintiff was terminated by the Defendant on 8<sup>th</sup> August 2018 on the grounds of gross misconduct, following the receipt by the Defendant of a report from Mr. Rodney Lloyd in or about October, 2017 that the Plaintiff had made highly disparaging statements to him against the Defendant describing it as a racist organizations (sic) and a subsequent report from Ms. Fiona Daniels in July, 2018 that the Plaintiff had made highly disparaging statements to her against the Defendant describing it as a racist organizations (sic).
- 4) The Plaintiff denied both allegations.
- 5) The Defendant did not accept the Plaintiff's denial as truthful.

**ISSUES**

- 6) Whether the conduct the Plaintiff's termination was wrongful and unfair?
- 7) Whether the Defendant had just cause to summarily dismiss the Plaintiff?

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

...

16. Before all this took place, there was a man by the name of Mr. Rodney Lloyd who we hired as an Executive Team to be the Manager of the Accounting Department. After the 1<sup>st</sup> day of Mr. Lloyd's arrival, I realized that something was mentally wrong with Mr. Lloyd. After a few arguments with this new employee and him asking for permission to leave the campus on the first day and also to record conversations, we decided as an Executive team (Edd, Katie and myself) that I would fire Mr. Lloyd and give him a week's pay because it was only the second day. I did as we decided but then Edd went behind me, changed the decision and gave Mr. Lloyd a month's pay with a new severance letter which allowed him to stay in the apartment for free for a longer period. This was a clear sign that Edd did not respect me in the capacity that I held. This action would turn around to bite us. Mr. Lloyd refused to move out the apartment on the day that Edd stipulated, and he also left his bags in the apartment with the instruction that we should ship them to Freeport. These instructions were left for Edd because Edd stepped in to negotiate with Mr. Lloyd even after I had let him go. Mr. Lloyd then started Cyber bullying us, he put our financial statements on Facebook, and he emailed everyone on the Division Heads team that he could find. Every time we would block his email, he would create a new account and bully us online, he sent a number of

statements defaming my character, made up conversations that we did not have, he said bad things about Edd, the Accounting Staff and everyone he was in contact with including Sony, our IT guy who was his neighbor and the one helping him while he was on island. He also sent a complaint to the Prime Minister who in turn asked for the Department of Labor to come down and do an investigation. The Department of Labor came down and while they did their investigation, Edd was slapped on the wrist and was told by Dion Johnson, the Labor Department investigator, that he was the one that did something wrong in this whole process. He told him that he owed me an apology, but he never gave me one. They also told him that he never should have undermined my authority and give Mr. Lloyd payment for a month after only working for 3 days and humiliating me in the process. Labor also realized that something was not right mentally with Mr. Lloyd because he harassed the NIB department in Freeport and then went on to Abaco and commenced a court case against his employer at Hope Town Lodge in Abaco. The owner who also called for us to exchange notes on the actions of Mr. Rodney Lloyd, the Labor Department told us that they gave the report to the Prime Ministers' (sic) office.

...

19. The week before my firing, I got into a huge argument with Chris Maxey, where he stormed into my office to demand that either my HR administrator or I let the 35 expats that they were hiring all over again (with no Bahamians) to come in as visitors. I told him that I could not do that. We had worked so hard to make sure not to let anyone come in the country without a work permit; which was not happening before I started managing the Human Resources Department. ... I also would question in the past, receiving millions of dollars of Tuition and keeping it held up in the bank accounts in Boston yet stating to Central Bank and we only have a small amount of money in our bank accounts. He said then I will not have a job and he will close the school and all the Bahamians will not have a job. I insisted that he pay for temporary work permits until the regular ones were processed. He said he has never paid the Government in 20 years for work permits and he does not intend on doing it now. I told him I will not be telling those people to come in as visitors because it was against the law. I also advised the HR administrator not to do so.

...

21. Edd decided that now Harris did not work out like he had planned, he would go looking for someone else, the plan was for me to train this person and then I thought they were going to push me out of the organization. I had been asking for two years for a Comptroller, someone to just watch the numbers and mind the books while I oversee because it was too much for me to check every single entry. I had the Accounting team up and running, the HR team was performing better that it ever had been, and the Kitchen staff was making huge strides. Edd asked Fiona Bellot Daniels from Freeport to come for an onsite interview, before this, he bragged to everyone who would listen about how awesome she was, how she would get along great with Harris and they can take the school to another level. Edd told me that Fiona was trained in Human Resources and Accounting, he wanted me to decide where I would fit after she was hired. He

told me to be transparent and let her know what she is up against because she would be moving her whole family to Eleuthera. Fiona came, Edd decided to schedule interviews with everyone in the accounting team one by one and not as a group as previously handled. He gave everyone a time and for 2 days, Fiona interviewed everyone in Accounting along with some division heads who would sit with her and talk about what it would be like to live in Eleuthera, what they do on a daily basis and the culture of the Island School. I found it strange that Edd also had Fiona meet with Annabelle two times, even though she was not an employee anymore. Edd told me that he had all intentions of Fiona working with me to do some of the work that I was doing and pay her \$100,000. He spoke as if her coming was just a formality, but she was already hired. He said he was ok with that amount that Fiona said that she would start with even when I reminded him about the pressure that I was under with the budget. In my mind, Fiona was already hired, she was coming to get acquainted with everyone before moving.

22. I met with Fiona, she had a list of questions and I answered them like everyone else. One of the questions that she asked was, did I think that there was a need for a CFO after I told her everything that everyone did in the department.

...

25. Fiona and I also discussed the immigration policies and said that she was not aware of the amount. I asked her if she had HR experience but soon realized that the praises that Edd gave her were totally untrue because she was not well versed in Human Resources at all. ...

26. She asked me if there is anything else that she should be aware of and what are the most common issues that Human Resources deal with daily, I told her that the majority of issues that I deal with are due to racism, sexism, ageism and any other "ism" that you can think of. Because of this multicultural environment, racism comes up a lot in conflicts between expats and the Bahamian community especially when it came to benefits, salaries, titles, promotions etc.

27. On August 8, 2018 after 10 minutes of me arriving at work, Edd called me on my phone to ask if I was at my desk. He asked me how I was feeling, I told him my stomach wasn't feeling to well but I was coming over to talk to him about something. My intentions were to tell Edd that I was expecting a baby. He said that he was coming over to my office now. Edd and the Lawyer, Kenya Bethel (Holowesko, Pyfrom and Fletcher) came into my office, I greeted Kenya and they sat down. He said we are firing you and gave me the letter, they told me to read it and give him all the keys, shut down my computer and leave. He said we have a complaint about you sabotaging Fiona Daniel's (sic) interview and we have a written statement. The statement was not given to me, there was no question asked about what she said in the statement. I asked about my severance check, they said to read the paper, then I saw that they were firing me with cause and included Rodney Lloyd who was fired a year prior in the letter because of dishonesty and gross misconduct.

...

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

1. I first met Mrs. Chenara Carey on Thursday 26 July, 2018, as a part of an interview exercise for the CFO position that I was applying for at the Island School. The School had given me the opportunity to meet with various key members of staff so that we could evaluate whether the position would be a good fit for me. I met with a number of employees of the school as a part of this exercise, including Mrs. Carey.
2. The meeting with Mrs. Carey was held in her office at the School, and only she and I were present. The meeting began with Mrs. Carey asking me to tell her about myself. We both talked briefly about our families, kids etc. I then had the chance to tell Mrs. Carey about my current position, and the team that I currently manage. When given the opportunity to ask questions, I asked about the accounting function at the school. I wanted to get an idea of how Mrs. Carey perceived her department, and I asked her if she felt that things were pretty good, or if she felt there was more work and improvement necessary. Her response initially was that things were going well. She told me that it had not always been that way, but with lots of work they had managed to get things under control. I asked her if she felt that a CFO was needed, to which her response was "No". I do not fault her for her honesty, as it was a very direct question. It gave me some insight as to how she perceived things.
3. The conversation evolved, and Mrs. Carey and I discussed a number of topics. She mentioned that the department had recently dealt with employee fraud, which was tough on the entire team. We spoke a bit about how that went unnoticed and she told me how they had learned and grown from it. Mrs. Carey spoke highly of her team, describing herself as the "Mother Hen". She also said that that (sic) she did not feel that the finance team was appreciated the way they should be. I saw this as an opportunity to connect with her and remind her that In Finance we often work behind the scenes and rarely get the praise, it just comes with the territory. Mrs. Carey told me that she didn't feel that upper management knew enough about what they do or how they do it to make an assumption that finance was in bad shape. I told her that my impression was not that things were in bad shape, but that the school was ready for growth, and with that would come a more robust finance function. She said that that (sic) the Executive Director "couldn't pick any of those girls out of a line up", referring to her team. Mrs. Carey explained to me that the outgoing interim CFO, Andrew Harris, had only spent 2 weeks on island, and simply did not have the time to really know what was going on in the department. Mrs. Carey spoke at length about the large amounts of transactions she and her team had to process, and she explained that no one really understood how much it takes to stay on top of everything. I definitely got the sense that she was overwhelmed. I made it a point to tell Mrs. Carey that if I were involved, I would want to first listen and understand what they do and why, before passing judgment or changing things (sic)



4. Mrs. Carey was very critical of the school and said that they were breaking the law by hiring people without proper work permits. Mrs. Carey told me that she was asked by Mr. Maxey just the day before (Wednesday) to assist in getting 25 employees on the island for full-time positions without work permits. She told me that she refused, and that he then went into HR to make a similar request. Mrs. Carey's description of the interaction between herself and Mr. Maxey the previous day was surprising. She said that her job was threatened, but she stood her ground, and even offered to apply for temp work permits for the new hires to which Mr. Maxey refused. Mrs. Carey told me that Mr. Maxey said that he was not giving the Government any more money. This led me to ask her about the cost of permits. I was curious. She said that they were paying \$100 per teacher for an entire year, and she also said that she did not agree that scientists should only require teacher permits. We talked about it. I mentioned that once the job is to teach, there really is no violation there, but I asked her why would the school want to violate the rules for inexpensive permits? Her response was simply that the school did not want to pay money to the government. This discussion led to the mention by Mrs. Carey of an earlier incident where she said the school had been fined \$80,000 for conducting work without proper permits and approvals. I explained to her that acting outside of the law was a deal breaker for me. I said that I would not be involved in that in any way. I told her this outright. I said I think it's absolutely wrong for anyone to ask an employee to break the law. I told her I wouldn't do that. At one point during our meeting, Mrs. Carey warned that I would "experience every kind of "ism" – racism, sexism, every kind of "ism"". In addition to heavily criticizing the school and its employees, alleging that some were racist and sexist and law breakers, she also stated that Ed (sic) Brooks was not qualified to be the CEO. She said that he had taken some kind of course recently, but he was not experienced or qualified to do the job.
5. My overall impression was that Mrs. Carey cares deeply for her team (I got this impression from her staff as well), and I am sure any team leader could relate to her in this way. My concern was that I could clearly see a great deal of tension between her and the executives and division heads, and in light of a few other points, and the negative comments made by Mrs. Carey to me about the school and its personnel during the interview, I decided not to further pursue the position; however, I wanted to be honest with the school about the reasons why.

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

1. I was CEO of the Defendant ("the Island School") from November 2016 to July 2020 (sic)
2. References in square brackets in this document are to the page numbers of the Defendant's Bundle of Documents filed on 2 October, 2019.
3. It was a written term of the Plaintiff's contract and the Plaintiff agreed that her contract may be terminated without payment and in lieu of notice for the

following reasons amongst others: (i) if she committed misconduct or (ii) if she committed an act of dishonesty or any conduct tending to bring the school into disrepute or (iii) if any of the circumstances warranting summary dismissal under the Employment Act arose [23].

4. The Plaintiff was terminated on 8 June 2018 for gross misconduct and dishonesty as described below.
5. On 24 October, 2017 Mr. Rodney Lloyd, an employee of the Island School who had been terminated sent an e-mail to me and other representatives of the Island School in the following terms [13]:

*A cutthroat individual whose primary aim is her own ambitions never mind the politics of her speech about high standards and professional behavior on my first visit/interview at the island school campus while driving me from the airport Cary went into a verbal tirade about 'how the white people at the IS don't like the Black's [sic] and think that the Black's [sic] are stupid. Possibly fearing her own job security on my arrival and seeking allies. Carey went on about the guy in Boston who wants to replace her with a white Bahamian, and how IS refuses to hire more black teachers' (sic) she pointed out businesses she owned in Eleuthera the funeral home and water depot. Carey said the theft at the island school with (sic) something the whites expected the niggers to do. I listened in shock and silence. This is how Chanara Carey introduced me to the island school.*

6. The Plaintiff was provided with a copy of the statements that were made against her by Mr. Lloyd at the time, however she denied that these statements were correct. The School accepted the Plaintiff's explanation and dismissed Mr Lloyd's accusations as false and no further action was taken against the Plaintiff.
7. Approximately 6 months later the School received another report, this time from Ms Fiona Daniels that the Plaintiff had disparaged the school in a similar fashion. Ms. Daniels who was applying to the Defendant for the position of Chief Financial Officer reported that the Plaintiff had maligned the School referring to it (sic) as a racist, sexist law-breaking entity. The Plaintiff made these statements to Ms. Daniels when Ms. Daniels came for an on-site interview. As a result of Plaintiff's disparaging statements about the school, Ms. Daniels declined to take up the position of CFO which she had interviewed for. Ms. Daniels informed the school of the Plaintiff's conduct by e-mail dated 31 July, 2018 [15].
8. Ms. Daniel's statement led the School to reasonably believe that the Plaintiff had been dishonest when she denied the allegation that she told Mr Lloyd that the School was racist organization (sic) on the drive from his interview. As a result of the Plaintiff's misconduct, the School later lost the opportunity to hire Ms Daniels to fill the position of CFO. There was also great concern that the school had an employee within its ranks who was fundamentally disloyal to the School and actively sabotaging its reputation as well as its employee recruitment efforts.
9. On 8 August, 2018 I met with the Plaintiff and informed her of what Ms. Daniels had stated and I told her that this indicated to me that she was trying to

sabotage the hiring of a new CFO. The Plaintiff denied the accusation. I did not accept the Plaintiff's denial as truthful and I provided her with a written summary of dismissal that had been prepared [9]. The Plaintiff read the summary and when she finished she said that it was all lies. She then took a pen and underlined the reference to "CEO" at 8.3.2. of the Summary and immediately stated that she was referring to Mary Assini, the Executive Director of the Cape Eleuthera Foundation, not Brooks, CEO of The Cape Eleuthera Island School. This action was taken by me as indirect confirmation that she had indeed had such a conversation with Ms Daniels. I asked the Plaintiff why she would make such statements in an interview and she responded that this was not all that was discussed.

10. After the Plaintiff gave no satisfactory or credible explanation of her conduct the Plaintiff was asked to sign the Summary, which she did. I then countersigned the Summary and the Plaintiff was given a signed copy and terminated. It was explained to the Plaintiff that she had a right to appeal the decision to the School's board.
11. The Plaintiff initially submitted an appeal in writing [5]. The Appeal itself confirms the deeply jaundiced view that the Plaintiff has of the School and her perception that the School is a racist organization, as she repeatedly refers to herself in the document as "a token black Bahamian".
12. The Plaintiff's conduct has caused the School to lose all trust in the Plaintiff. Given the extremely damaging statements that the Plaintiff has made against the School it was felt that there was no option but to terminate her. After the Plaintiff was terminated the School discovered that she had made similar comments to Mr. Andrew Harris in an interview that occurred in early 2018. The School does not know how many other persons the Plaintiff has made such disparaging comments. It is evident that Mr. Lloyd's statements with regard to the Plaintiff bad mouthing the School was correct. By the time this fact was recognized by the School it was unfortunately too late to prevent the harm that was done including the loss of Ms Daniels as CFO.

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

4. I have read the Witness Statements of Chenera (sic) Carey, Fiona Daniels and Edd Brooks. I am also familiar with Mr. Rodney Lloyd's account of what Chenera (sic) Carey had said to him about the Island School, as recounted in Mr. Brooks' witness Statement. Like Edd Brooks, I dismissed Mr. Lloyd's comments as untrue and I accepted Ms Carey's denial that she had described The Island School to Mr. Lloyd as a sexist, racist organization.
5. Subsequent to rejecting Mr. Lloyd's account of Ms Carey's conduct, I was shocked and saddened to hear from Ms. Daniels that Chenera (sic) Carey had described The Island School to her in disparaging terms as well. The suggestion that The Island School is a sexist, racist and law-breaking organization is not only untrue, but it goes against the core principles that The

Island School stands for and everything that the school has strived since inception to represent.

6. With regard to the criticism that Ms. Carey made of me personally, as reflected in paragraph 4 of Ms. Daniels' Witness Statement, I would like to clearly state that at no time did I ask Chenara (sic) Carey to break the law, nor was her job threatened. Ms. Carey's account of the events as set out in paragraph 4 of Ms. Daniel's witness statement is not an accurate representation of the facts. I set out in the paragraphs below a true account of the events and my discussion with Chenara (sic) Carey and others with regard to the immigration matters mentioned.

### Analysis and Disposition

[9.] The issues for determination in this dispute are:

- (1) Whether Carey's conduct warranted summary dismissal; and
- (2) Whether the decision to terminate was taken after a proper investigation had been done.

[10.] Carey's termination occurred following a meeting with Brooks, her direct report. At the meeting she was presented with a Summary Dismissal Statement which provided:

**CAPE ELEUTHERA ISLAND SCHOOL**  
**SUMMARY DISMISSAL OF CHENARA CAREY**  
**AUGUST 8<sup>th</sup> 2018**

**Introduction:**

1. This is a summary dismissal statement based on the facts stated herein.

**Background:**

2. Chenara Carey, you have been employed by the Cape Eleuthera Island School ("CEIS") for approximately six years, most recently acting as Chief Administrative Officer.
3. Pursuant to s.31 – 33 of the Employment Act 2002 as amended by the Employment (Amendment) Act 2017 (the "EA") an employer may summarily dismiss an employee without pay and notice when the employee has:
  - 3.1. Acted in a manner repugnant to the fundamental interests of the employer (EA s.31).
4. Pursuant to EA s.32. an employee may be considered to have acted in a manner repugnant to the fundamental interest of the employer if the employee:
  - 4.1. Is dishonest (EA s.32 (c)); or
  - 4.2. Commits gross misconduct (EA s.32 (i)).
5. Pursuant to the Contractual Terms of Employment between CEIS and yourself, which you signed on 5<sup>th</sup> June 2018, you agreed that your

employment may be terminated without notice and without payment in lieu of notice:

- 5.1. If you committed misconduct;
  - 5.2. If you committed any conduct tending to bring the school into disrepute;
  - 5.3. If any circumstance from the EA providing for summary dismissal arose.
6. Your actions, comments, and conversations with persons in recent months has caused CEIS to conduct a reasonable investigation into whether grounds existed for your summary dismissal. Our investigation included a review of written accusations made against you by Mr. Rodney Lloyd and Ms. Fiona Daniels.
  7. Our investigation has concluded that your actions, comments and conversations are serious enough to warrant summary dismissal as follows:  
Particulars of Actions Repugnant to the Fundamental Interests of CEIS:
  8. CEIS is under the honest and reasonable belief that you have acted in a manner repugnant to the interests of CEIS in that:
    - 8.1. During Mr. Lloyd's first visit to CEIS he alleges the following:
      - 8.1.1. "On my first visit/interview at the island school campus, while driving me from the airport, [Chenara] Carey went into a verbal tirade about 'how the white people at the [CE]IS don't like the Black's and think that the blacks are stupid';
      - 8.1.2. You described CEIS as racist in that Caucasian management at CEIS refused to hire more coloured Bahamians;
      - 8.1.3. You described Jim Anderson, the then BO, as racist in that he intended to replace you with a Caucasian Bahamian on the grounds that you are a Coloured Bahamian;
      - 8.1.4. You described Caucasian management at CEIS as racist in that they blindly blamed the robbery in January 2018 on coloured Bahamians;
    - 8.2. Mr. Lloyd's comments were part of a Labour Tribunal action for wrongful termination which was resolved summarily, however, these allegations are now corroborated by Ms. Daniels account (sic) which shows a trend in your comments and behaviour.
    - 8.3. Ms. Daniels alleges that during your interview with her as a candidate for the CFO position at CEIS on July 26<sup>th</sup>, 2018:
      - 8.3.1. You told Ms Daniels that a CFO was not needed;
      - 8.3.2. You told Ms Daniels that the CEO of CEIS could not pick any of your team out of a line up, implying that he did not care about the members of your team because of the colour of their skin;
      - 8.3.3. You told Ms Daniels that CEIS intentionally operates in violation of the law to avoid fees;

8.3.4. You gave Ms Daniels the impression that CEIS operates with a racist and sexist demeanour.

Conclusion:

9. CEIS absolutely denies operating illegally or with any racism or sexism and furthermore paragraph 8 indicates that you have acted dishonestly, with gross misconduct, that you have seriously misused the CEIS name and you have brought CEIS into serious disrepute.
10. Due to the above, CEIS has decided there is no alternative but to summarily dismiss you from your employment without pay or notice.
11. Your (sic) last day of employment with CEIS will be the date hereof. All benefits provided under your employment with CEIS will terminate on the date hereof as well.
12. Any items of CEIS property must be returned immediately together with electronic passwords for equipment. Any CEIS confidential information which you possess must be irrevocably deleted immediately.
13. You have the right to receive previous pay earned and accrued by untaken holidays which we will provide to you within 10 business days.
14. You have the right to appeal against this decision. Should you wish to appeal you should set out your reasons for appeal in writing and address them to the CEIS Board within 1 week of the date herein.
15. We are thankful for the work and service you have provided to CEIS and our community.
16. By signing below you acknowledge that these contents have been explained to you in their entirety.

## Submissions

[11.] Carey says that:

On the 8<sup>th</sup> August, 2018 Edward Brooks along with a Kenya Bethel met with the Plaintiff during the meeting, handed her a termination letter, told her to read it, asked for all the keys for the property, and demanded that she shut down her computer and leave. He accused her of sabotaging the interview of Fiona Daniels. The letter set out various allegations. The Plaintiff was not given an opportunity to be heard at all.

The onus is on the Defendant to prove that it had just cause to terminate the Plaintiff summarily. The basis of the termination letter was the email statement provided by Ms Daniels to Mr Brooks at Tab 10. Mr Brooks conceded that the allegations mentioned in his termination letter were not accurate and thus there were no grounds for Mr Brooks to sustain the belief that the Plaintiff was dishonest or committed gross misconduct as alleged in his termination letter. Moreover, absolutely no investigation was carried out by Mr. Brooks therefore none of the elements set out in British Home Stores were satisfied.

[12.] Cape says:

5. The Defendant's case is that the termination was effected by Mr Edd Brooks, the Chief Executive Officer of the Defendant during a meeting with the Plaintiff on 8 August 2018.

6. The grounds for summary dismissal were that the Plaintiff was on at least two separate occasions made seriously defamatory statements against the Defendant maligning its reputation and causing it loss and damage. These statements characterized the Defendant as a racist and sexist organization that was willfully breaking the laws of the Commonwealth of The Bahamas. On both occasions the statements were made to candidates seeking employment with the Defendant.

7. On the first occasion, in 2007, the Plaintiff disparaged the Defendant to Mr Rodney Lloyd when driving Mr Lloyd from the airport on his first visit to the Defendant's campus. The second occasion was in July 2018 during a meeting with Ms Fiona Daniels who was applying for the position of CFO at CEIS and was being provided to meet the various key members of staff to evaluate whether the position would be a good fit for her. After the meeting with Ms Carey and hearing Ms Carey's description of the school and its executives, which Ms Carey characterized as racist, sexist and law breakers, Ms Daniels withdrew her application, however she informed the school of what Ms Carey had said to her, out of her desire to be fair and let them know why she would no longer be pursuing the position.

8. The reasons for termination were comprehensively set out in Summary Dismissal document that was handed to Ms Carey during her meeting with Mr Brooks. This document contained the details of the conduct that was relied upon as dishonest, gross misconduct and acting in a manner repugnant to the fundamental interest of her employer. The provision of her contract that were alleged to have been breached were also set out in the document.

...

45. Applying this standard, the court is invited to find that Ms Carey did in fact describe CEIS as a racist organization to Mr Lloyd and that she did in fact tell Ms Daniels that CEIS operates in a racist sexist manner and that CEIS intentionally operates in violation of the law. The Defendant submits that these facts have been proved on the balance of probability having regard to the whole of the evidence and, in particular, the following facts:

a. The admissions made by Ms Carey in her evidence, in particular her perception of herself as a "token black" as reflected in her appeal document. This supports the view that Ms Carey in fact viewed CEIS in the manner that Mr. Lloyd and Ms. Daniels stated she portrayed it.

b. The credibility of Ms. Daniels evidence (sic), which, it is submitted should be accepted in its entirety.

c. That it is highly improbable that Ms. Daniels and Mr. Lloyd would both report encounters with Ms. Carey where she conveyed to them the view that the school operated in a racist manner if this had not in fact occurred.

d. The evidence of Mr. Maxey regarding his denial of law breaking was not challenged and should be accepted.

## Analysis and Disposition

[13.] 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)

[14.] According to *Crane-Scott JA*, the right not to be unfairly dismissed is a statutory right conferred by section 34 of the Employment Act on every employee in The Bahamas and 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.

[15.] The contention in this dispute, of whether the claim is wrongful and/or unfair dismissal, is focused on the conduct of the investigation by Cape. Section 33 of the Employment Act provides:

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

[16.] In my view, on balance, the dismissal was neither unfair nor wrongful, having regard to Cape's conduct of the investigation. The investigation, in the round, was fair. Additionally I was satisfied that in accordance with Section 33 of the Employment Act, Cape had an honest belief that Carey misconducted herself after conducting a reasonable investigation.

[17.] Section 32 of the Employment Act identifies the grounds for summary dismissal. Section 32 provides:

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 confidentiality, 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.

[18.] On the authorities, questions of guilt or innocence on the part of Carey is not a matter for the Court in this exercise. In *Island Hotel Company Limited v. Shikera Isaacs-Sawyer, Longley JA* in discussing the burden imposed upon an employer, such as Cape, in effecting a summary dismissal, stated at paragraph 23:

*"The finding by the Vice President at paragraph 111 of the decision is somewhat convoluted, in my judgment, because it purports to combine two distinct tests and*

*several incompatible positions and errors of law, namely: proof of guilt and honest belief on reasonable grounds. This runs counter to the established authorities. Proof of guilt is not the law. See **Princess Hotel v Bahamas Catering and Allied Workers Union** [1985] BHS J. No. 128 and **Carnival Leisure Industries Ltd. v. Zervos** [1988] BHS J. No. 139, both judgments of this Court, differently constituted.”* (Emphasis added).

The question is whether Cape formed an honest belief that Carey had committed acts of gross misconduct. I am satisfied, on balance that Cape has demonstrated such an honest belief.

[19.] It must be accepted that if Carey did as Cape alleges, Cape was entitled to terminate her for cause, as this conduct falls within the meaning to be ascribed to “misconduct which may constitute a fundamental breach of a contract of employment or may be repugnant to the fundamental interests of the employer”. Accusing an organization, to a potential employee, of racist practices and operating outside of the law is an extremely damaging allegation and without a doubt repugnant to its fundamental interests. (See: Super Value Food Stores Ltd v. Adderley – [2018] 1 BHS J.)

[20.] I am not required to find that Carey was guilty as charged of dishonesty describing the school as a racist, law breaking organization to Daniels, a potential employee of Cape. I make no such finding. The law only requires me to find that Cape honestly believed that she did.

[21.] According to **Longley JA** at paragraph 35 of **Island Hotel**:

35. What then is a reasonable investigation? The authorities seem clear. What one gleans from them is that *the investigation must enable the employer to ascertain the true facts upon which it can make an informed decision to ground or support an honest belief on reasonable grounds that the employee committed the act of misconduct. It must be within reason, full and fair.* That would normally involve where it is considered necessary an account of the incident from as many eye witnesses or persons in the know as possible yet at the same time giving the employee an opportunity to be heard and to respond to the gathered information and complaint.

At paragraph 51 **Longley JA** continued:

51. The Act speaks of a reasonable investigation the purpose of which if necessary, is to enable the employer to ground its belief that the employee

committed the acts in question. It is not to establish guilt. All that is required is that the employer conducts a full and fair investigation, which involves giving the employee an opportunity to be heard so as to enable it to form a belief on reasonable grounds that the employee committed the misconduct in question. It was not to determine the guilt of the employee.

[22.] According to Brooks he met with Carey and informed her of what Daniels had stated and that this indicated that she was trying to sabotage the hiring of a new CFO. Carey denied the accusation which he did not accept as truthful. He provided her with a written summary of dismissal that had been prepared. Carey read the summary and when she finished she said that it was all lies. She then took a pen and underlined the reference to "CEO" at 8.3.2. of the Summary and immediately stated that she was referring to Mary Assini, the Executive Director of the Cape Eleuthera Foundation, not Brooks, CEO of the Cape Eleuthera Island School. Brooks said that to him that was indirect confirmation that she had indeed had such a conversation with Daniels. He says that he asked Carey why she would make such statements in an interview and that she responded that this was not all that was discussed.

[23.] I readily accept that the document presented could have been interpreted as a *fait accompli*. Brooks explains that the document was unsigned and that had Carey provided a satisfactory response to the allegations of misconduct he would not have signed it or terminated her employment. He did accept that it would have been difficult for her to have explained her way out of the allegations. His oral evidence on this issue was as follows:

Q. Okay, understood. Let me ask you, if you felt comfortable with a response that Ms. Carey gave, you would have what, rescinded this Summary Dismissal Letter?

A. I mean, I – based on the data that I had available to me, it would been – I'm not sure what response could have changed the course of things. But I mean, I – I would struggle to understand what alternative course of events could have explained the data we had in front of us.

Q. So, your mind - - so, you went into the meeting with your mind made up? That is fair to say.

A. No, no. Not at all. I think - - I think the evidence is pretty overwhelming. And I would - - you know, I was - - I'm a Scientist by training before I ended up in the Management role.

And you know, I'm trained to look at evidence. And again I - - two separate, unrelated incidents, relating to Ms. Carey's conduct with the new hirers or during


interview processes for position within her field, to me are pretty strong evidence that this was true.

[24.] Brooks says that after Carey gave no satisfactory or credible explanation of her conduct she was asked to sign the Summary, which she did. He countersigned the summary and Carey was given a signed copy. It was explained to Carey that she had a right to appeal the decision to the School's board. Brooks says that Carey initially submitted an appeal in writing in which she repeatedly referred to herself as "a token black Bahamian".

[25.] Cape submits that even if the procedure may have been flawed, in presenting Carey with the unsigned summary of the case against her at the start of the interview, the Court should nonetheless find the dismissal fair. They say that the report from Fiona Daniels that Carey had characterized the school as a racist organization coupled with the earlier report from Rodney Lloyd could not be written off as coincidental and there was nothing that Carey could say that would change that. In *Polkey v A E Dayton Services Ltd [1988] A.C. 344* the House of Lords held that a court hearing the complaint of unfair dismissal may conclude that the appropriate procedural steps would not have avoided the employee's dismissal. Notwithstanding my finding that that dismissal was fair, I accept this alternative submission.

[26.] In all the circumstances therefore Carey's claim is dismissed with costs to the Cape to be taxed in default of agreement,

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



Ian R. Winder

Justice