COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law Division

2023/COM/lab/00049

IN THE MATTER OF the Employment Act 2001(the EA 2001), Water and Sewerage Corporation Act 1976 (WSCA 1976) and an Employment Contract under the Common Law

BETWEEN

TREVOR ROBERTS

Claimant

AND

WATER AND SEWERAGE CORPORATION

Defendant

JUDGMENT

Before: The Honourable Mr. Acting Justice Raynard S Rigby KC

Appearances: Mr. Keod Smith with Mr. Obie Ferguson KC for the Claimant
Mr. Dion Smith for the Defendant

Trial Dates: 8, 9, 10 and 19 June 2026

Closing Submissions: 8 July 2026

Employment Law – Employment Act 2001 – Water and Sewerage Corporation Act 1976 – Wrongful Dismissal – Unfair Dismissal – Reasons for dismissal – Right to be heard – Mandatory Vacation Leave – Application by Clamant for Retirement – – Pension Scheme – Whether Claimant entitled to a retirement pension

Rigby J. (Actg.)

Introduction

1. This is an action seeking the sum of $972,354.39 as damages for wrongful and unfair dismissal pursuant to sections 34, 35, 43, 45, 47 and 48 of the Employment Act, 2001 ("**EA 2001**") and under the common law.

2. The Claimant was employed by the Water and Sewerage Corporation ("**the Corporation**") on 14 April 1982 as a semi-skilled labourer and rose to the position of Senior Superintendent for Road Reinstatement by 1 August 2020. He was a member of the Water and Sewerage Management Union ("**the Union**").

3. The employment relationship between the parties soured and on 2 October 2020 the Claimant was summarily dismissed. The termination letter disclosed the reason for the termination as "**For Vendor Payment Processing Irregularities with Specific attention to Contract Works for Valve Box Raising, Filter Management and Road Reinstatement**."

4. At the time of his dismissal, the Claimant was paid the sum of $13,699.71, which was based on the following sums:

Summary Dismissal Separation Package	**Amount**
Vacation Leave Accrual @ 78.25 days	$22,510.27
Salary for the period October 1 – 2 2020	$403.23
Less Reimbursement for Travel Expense	$9196.13
Less Management Union Dues for the period October 1-2 2020	$1.94
Less NIB for the period October 1-2 2020	$15.73

5. The sum set out above of $13,699.71 was adjusted by letter dated 16 October 2020 to reflect a payout of $13,430.03. Deductions were made for medical expenses incurred after termination of $1,429.95 and insurance premiums post termination of $233.72. By a further letter of 23 November 2020, the letter of 2 October 2020 was superseded and thereby the Claimant received a final payout of $20,369.20. I set out below the basis of the calculation as this letter is the final calculation of the payout made to the Claimant.

Summary Dismissal Separation Package	**Amount**
Vacation Leave Accrual @ 78.25 days	$22,510.27

Salary for the period October 1 – 2 2020	$403.23
Total Overtime Amount Due	$1,393.99
Less Outstanding Travel Expense	$2,256.96
Less Management Union Dues for the period October 1-2 2020	$1.94
Less NIB for the period October 1-2 2020	$15.73
Less Medical expenses incurred after Termination	$1,429.95
Less Insurance premiums post Termination	$233.72

6. The unfair dismissal claim was based on the alleged failure of the Corporation to give the Claimant a copy of the findings or to give him an opportunity to respond to any such findings. There are also allegations of a failure by the Corporation to follow the disciplinary procedure and to grant the Claimant's request for retirement.

7. There is also an issue as to whether the Claimant is entitled to a pension from the Corporation.

The pleadings in the action

8. In the Claim Form filed on 28 August 2023, the Claimant makes the following allegations beginning at paragraphs 3:

> **3 The Claimant was engaged with the WSC on 14th April 1982 as a semi-skilled labourer and by 1st August 2020 rose to the rank of Senior Superintendent for Road Reinstatement.**
>
> **4 At all material times, the Claimant was a member of the Water and Sewerage Management Union *("WSMU")* but the last registered Industrial Agreement between the WSMU and WSC covering the Claimant's employment was that for the period of 1st July 2010 to 30th June 2013 *("the WSCIA-2013").***
>
> **5 During that mandatory vacation leave period, particularly on 24th June 2020, the Claimant was interviewed by two persons from Internal Control and Compliance *("IC&C")* of WSC "Regarding Policies, Procedures and Practices at New Providence Operations".**
>
> **6 By letter dated 22nd June 2020 and over the signature of Mr. Robert Deal, Deputy General Manager of WSC, WSC placed the Claimant on "mandatory vacation leave" for which period, by virtue of a letters dated 7th July 2020, 22nd**

July 2020 and 27th July 2020 all over the signature of Mr. Deal, were extended to 12th August 2020 bringing the Claimant's accumulated vacation to less than 80 days in respect of which he could claim upon retirement.

7Although the Claimant countersigned each of the Employee Discussion Forms *("EDF")* for extensions of the mandatory vacation leave beyond 12th August 2020, he refused to countersign the EDFs in relation to WSC's proposal by letters dated 13th August 2020 and 19th August 2020 that he remained on mandatory vacation leave until 25th August 2020.

8 On 24th July 2020, an "Audit Report Findings and Conclusion" had been issued by IC&C indicating that it discovered certain anomalies related to invoices covering "valve box raising", but that Audit Report was not given to the Claimant at that point, or at all for him to review and be given the opportunity to be heard in relation thereto in a properly convened hearing in accordance with WSC's existing policies.

9 On 25th August 2020 the Claimant submitted his request to retire from WSC as a 38-year employee, but by WhatsApp note dated 29th August 2020 from Mr. Elwood Donaldson the General Manager *("Mr. Donaldson")* of WSC at the time, the Claimant was denied his request.

10 WSC contended that its grounds for refusing the Claimant's application of retirement was based on Article 53 of the WSCIA-2013 which had *expired* instead of pursuant to the terms of the current Pension Plan for Employees of the Water and Sewerage Corporation *("Pension Plan Booklet")* at the time under the subheading of Special Retirement on Page 2 in Item (i)(B) which allowed for Early Retirement after an employee had served 30 years with WSC and contractual term to which the Claimant was entitled by virtue of Section 4 of the EA-2001. The Claimant had already completed 38 years of service with the WSC.

11 After returning to work for the week of 24th August 2020, the Claimant was given a total of 8 weeks sick leave by Dr. Gertude Holder commencing 1st September 2020 and extended on 29th September 2020 which period he was entitled to by virtue of his contract of employment according to Section 4 of the EA-2001.

12 However, on the fourth day of the Claimant's fifth week of sick leave by Dr. Holder, by letter dated 2nd October 2020 and over the signature of Mr. Donaldson, the Claimant was summarily dismissed from his employment "for Vendor Payment Processing Irregularities with Specific attention to Contract Works for Valve Box Raising, Filter Management and Road Reinstatement" *("the 2nd October 2020 Termination Letter").*

13 The 2nd October 2020 Termination Letter was superseded by letters dated 16th October 2020 and 23rd November 2020 *("the Superseding Letters")* all over the signature of Mr. Donaldson and which adjusted the "Summary Dismissal Separation Package" but not the effective date of dismissal.

14 At the time of termination, the Claimant was overseeing the Road Reinstatement Department and a staff compliment of 7 persons at a salary of $75,000 per annum.

15 The termination of the Claimant from his employment amounted to a breach of the Claimant's contract of employment and was unfair and wrongful.

PARTICULARS OF BREACH OF EMPLOYMENT CONTRACT

16 WSC breached the Claimant's contract of employment:

16.1 in that, although the Superseding Letters stated the reason for the Claimant being summarily dismissed, the Claimant had not been given a copy of the findings of that referred to reason or to otherwise give the Claimant an opportunity to respond to any such findings, observing the Claimant's natural justice right of being heard in the face of the nature of the reason given for the summary dismissal; and/or

16.2 by refusing or failing to grant his requested retirement as set out under the subheading of Special Retirement on Page 2 in Item (i)(B) of the Pension Plan Booklet. Therefore, WSC was required to pay the Claimant as soon as he made the request that he had; and/or

16.3 by refusing or failing to observe separation settlement policy formula for payment of 50% of 200 sick days available to the Claimant for the year of 2021; and/or

16.4 when it refused or failed to pay the Claimant his tour of duty allowance for the period of February 2020 to June 2020 as allowed for by his contract and WSC's policy and payment for pre-retirement leave of 3 months; and/or

16.5 when it refused or failed to follow the disciplinary procedure regarding suspension and/or dismissal making the dismissal unfair; and/or

16.6 when it refused or failed to give notice making the dismissal wrongful and therefore entitling the Claimant to damages based on what is amounts to reasonable notice; and/or

16.7 when it refused or failed to provide a copy of their findings of the investigations into the duties of the Claimant after his interview by the personnel of the Internal Control and Compliance Department, the refusal or failure of which amounted to a breach of the Claimant's natural justice rights as provided for in Sections 34 and 35 of the Employment Act; making the dismissal unfair and wrongful; and/or

16.8 when, having regard to the fact that the WSCIA-2013 had expired, WSC refused or failed to follow the Claimant's rights to WSC's policy and procedures as guaranteed by Sections 4, 34 & 35 of the EA-2001 and it's general conduct not to compensate the Claimant properly, or at all, therefore giving rise to special and/or exemplary damages in favour of the Claimant as a result of the resulting hardships he endured; and/or

16.9 when it refused or failed to suspend the Claimant pursuant to his contract of employment but rather forcing him to take forced vacation for 2½ months while they investigated him is a violation of his contract of employment. Further the matter was turned over to the Royal Bahamas Police Force which conducted their own investigation but which, for the period of 16th October 2020 to the date of this Standard Claim, have not formally charge the Claimant with any criminal offence related to his employment with WSC. Despite this, the Claimant was terminated summarily and thereupon denying him, albeit wrongfully, his rights to his

innumerable benefits, inclusive of his monetary benefits for him to pay his bills and to have the quiet enjoyment of his retirement; and/or

16.10 when it refused or failed to allow the Claimant to retire pursuant to the terms of the Pension Booklet thereby denying him the opportunity to join the insurance coverage available to retirees which led to him losing all insurance coverage upon termination thereupon entitling him to a claim in special damages hereunder; and/or

16.11 by refusing or failing to consider that by having had promoted the Claimant to the position of Senior Superintendent in the Road Reinstatement Department with an annual salary of $75,000, he was contractually entitled to WSC paying for his life/medical & dental insurance, non-contributory pension contribution of approximately 15% of the Claimant's salary, the Claimant's Christmas bonus in December of each year equivalent to one week's salary and NIB contributions; and/or

16.12 when it refused or failed to give the Claimant reasonable and equitable notice after 37 years of service along with his pecuniary benefits, which in the circumstances amount to 30 months' pay as a basis for termination when it was claimed to have been wrongful, the notice pay made being insufficient; and/or

17 **By reason of the actions and/or inactions of the WSC in relation to the matters herein complained of, the Claimant has suffered loss.**

PARTICULARS OF LOSS

Retirement Benefits From August 2020

1/12 (2% x $75000) /12*400
($4,166.67/month for 36 months)
(Salary $75,000/year = $6,250/m = $1,442.31/week)
Retirement ($4166.67 * 36) = $ 150,000.12
Sick Days (100*$288.46) = $ 28,846.00
SUBTOTAL (on retirement) **$ 178,846.12**
Unfair Dismissal
(24 months = 104 weeks)

24 months @ $6,250.00 per Month	
SUBTOTAL (Unfair Dismissal) **$ 150,000.00**	
Wrongful Dismissal	
Notice-pay for 1 month @ 6,250.00	$ 6,250.00
30 x $6,250 b	$ 187,500.00
30 x insurance payment (163.73)	$ 4,911.90
30 x Pension payments (15% 6,250)	$ 28,125.00
30 x NIB payments ($113.32)	$ 3,399.60
SUBTOTAL	**$ 230,186.50**
SPECIAL DAMAGES	
Loss of RBC credit card for unpaid $5,000	$ 6,307.28
Rental since Jan 2021($550/months)	$ 22,550.00
Loss of Scotiabank credit card for unpaid bill	$ 20,000.00
Wife's Medical Expenses because no insurance cover	
	$ 263,464.49
Surrender of Children's medical insurance so as to pay bills	
	$ 100,000.00
SUBTOTAL (Special Damages)	**$ 412,321.77**
GRAND TOTAL DUE AND OWING	**$ 971,354.39**

18 By its Re-Amended Defence filed on 6 October 2025 the Corporation contends that the Claimant was given a copy of the report and afforded an opportunity to be heard on 29 September 2020 when a meeting was called. The Corporation also states that it never received a request by the Claimant to proceed to retirement. The claims for unfair and wrongful dismissal were denied. The salient and material paragraphs of the Re-Amended Defence are set out below:

> **3. The Defendant admits paragraph 6, save that the Claimant was issued seven (7) letters, the first being given on (a) the 22nd June 2020 for a period of 10 days; (b) the 7th July 2020 for an additional 10 days; (c) the 22nd July 2020 for a further extension of 3 days; (d) the 27th July 2020, for an additional extension of 10 days; (e) the 12th August 2020, for an extension of 4 days, which was the superseded by a new letter the next day (13th August 2020) which added an**

additional 5 days instead; the 19th August 2020 for an extension of 4 days. In all, the Claimant was directed to utilize 42 days, but was only deducted for 29, which brought his overall accrued vacation to 78.25 days.

4. The Defendant admits paragraph 8 save that the Claimant was given a copy of the report and given an opportunity to be heard in relation thereto. The Defendant also asserts that a meeting was held on the 29th of September 2020 in the conference room of WSC, where Mr. Trevor Roberts was in possession of a copy of the report and he was given an opportunity to be heard. Also present was the then general manager Mr. Elwood Donaldson, a union representative Montgomery Miller, Krystal Ferguson from WSC IC and C, Jennifer Smith from WSC HR and Sharmie Farrington-Austin, the attorney for Trevor Roberts.

...

6 The Defendant summarily dismissed the Claimant, as such is not entitled to the total claim, along with any costs and interest.

7 The Defendant has no record or knowledge of a WhatsApp note from the former General Manager, Elwood Donaldson, to the Claimant denying his request. A record of request for retirement was later discovered, via email from Mr. Donaldson to the Claimant dated the 29th August 2020 denying his retirement request. The Claimant's request was treated as non-compliant with the Industrial Agreement and custom, as the Claimant did not reach the normal age for retirement and the letter was purporting that it take immediate effect. Additionally, an any event, the Claimant did not give the Defendant the required notice of intention to retire, hence the retirement request could not take immediate effect.

8 The Defendant asserts that the provisions of Article 72.03 of the Management Industrial Agreement to be incorporated into the employment contract and is still enforceable. Further, a record of request for retirement was later discovered, via email from Mr. Donaldson to the Claimant dated the 29th August 2020 denying his retirement request. The Claimant's request was treated as non-compliant with the Industrial Agreement and custom, as the Claimant did not reach the normal age for retirement and the letter was

purporting that it take immediate effect. The Claimant's letter was deemed a mere notice of his intention to retire, which retirement customarily required one calendar month's notice pursuant to section 29(2)(b) of the Employment Act 2001. Additionally, in any event, as the Claimant appeared to be requesting pre-retirement leave, he did not give the Defendant the required notice pursuant to Article 37.04 of the Management Industrial Agreement which governs the procedure during requests for pre-retirement or early retirement. It says that requests for the pre-retirement leave must be submitted by letter to the General Manager at least six (6) months prior to the retirement date and requests not submitted on time may not be considered. As the Claimant was summarily dismissed prior to any purported retirement date taking effect, he is not entitled to any non-contributory pension or retirement benefits.

10 The Defendant lawfully terminated the employment of the Claimant, via summary dismissal. As such, this did not amount to unfair or wrongful breach of his contract.

11 The Claimant was given a copy of the findings and also an opportunity to be heard on the matter. A meeting was also held on the 29th September 2020, in the conference room of WSC, where Mr. Trevor Roberts was in possession of a copy of the findings and was given an opportunity to be heard.

...

13 Further to Article 54.06 of the Management Industrial Agreement, payment of fifty percent (50%) of unused sick leave only applies if the employee retires from the Corporation or is made redundant. The Claimant's retirement request was treated as non-compliant with the Industrial Agreement, custom and denied for the reasons similarly set out in the aforementioned paragraph 8. The Claimant was summarily dismissed by the letter dated the 2nd October 2020, thereby rendering the provision not applicable to the Claimant.

14 In accordance with Article 27.06 (b) of the Management Industrial Agreement, the Claimant was not entitled a Tour of Duty Allowance as his transfer was not from one geographical location to the next, which meant from his home base in New Providence to another WSC Island. The Claimants retirement request was treated as non-complaint with the Industrial Agreement, custom and denied for the

reasons similarly set out in the aforementioned paragraph 8. Furthermore, Article 37.04 of the Management Industrial Agreement says that requests for pre-retirement leave must be submitted by letter to the General Manager at least six (6) months prior to the retirement date and requests not submitted on time may not be considered. This did not occur; therefore, the Claimant would not have been entitled to pre-retirement leave.

15 The Defendant asserts that it followed procedure by conducting an investigation into suspected irregularities at the company, which unearthed findings of a major conflict of interest in the carrying out of the Claimants duties, which is in breach of Article 66 of the Management Industrial Agreement. By letter dated 26th August 2020, the Claimant was suspended with pay for three (3) working days to complete the investigation. The Claimant was also given a copy of the report and an opportunity to be heard on the 29th September 2020. Thereafter, by letter dated the 2nd October 2020, the Claimant was summarily dismissed "for vendor payment processing irregularities with specific attention to contract works for valve box raising, filter management and road reinstatement.

16 The Claimant was summarily dismissed pursuant to s.31 of the Employment Act, and as such he is not entitled to notice or pay, as findings revealed that he committed a fundamental breach of his contract of employment and has also acted in a manner repugnant to the fundamental interest of the Defendant.

..

20 The Claimants retirement request was treated as non-compliant with the Industrial Agreement, custom and denied for the reasons similarly set out in the aforementioned paragraph 8. So therefore, he was not entitled to the insurance coverage as alleged.

19 In a ruling dated 10 December 2024 Senior Justice Deborah Fraser (as she then was) dismissed an application for summary judgment in respect of the payment of pension to the Claimant. The reason for the dismissal of the summary judgment application is found at paragraph 26 of the ruling, which states:

> **"[26.] In law there is no absolute right to a discretionary benefit or a non-contributory pension. Obviously the employer has a discretion and may withhold such pension or benefit if warranted. These are all maters for trial."**

The Claimant's evidence

Trevor Roberts

20 In his filed witness statement, which is written like a legal treatise, the Claimant indicated that he was placed on mandatory vacation leave by Robert Deal, the Corporation's Deputy General Manager, from 22 June 2020 to 25 August 2020. He suggests that he did not agree for a period of the leave beyond 12 August 2020.

21 The Claimant says the following in his witness statement:

> **1. When I joined WSC as a semi-skilled labourer, I was told by the management of the day, and I did verily believe that I was entitled to a non-contributory pension as is set out in Article 17 of the Second Schedule of WSCA-1976 *("SS/WSCA-1976")* which is still enforce in The Bahamas based on what I am also told by Attorney Mr. Ferguson KC whom I do verily believe.**
> **2. By letter dated 22nd June 2020 and over the signature of Mr. Robert Deal, Deputy General Manager of WSC *("Mr. Deal")*, WSC placed me on "mandatory vacation leave" for which period, by virtue of a letters dated 7th July 2020, 22nd July 2020 and 27th July 2020 all over the signature of Mr. Deal, was extended to 12th August 2020 bringing my accumulated vacation to less than 80 days in respect of which I could claim for payment upon retirement.**
> **3. During that mandatory vacation leave period, particularly on 24th June 2020, I was interviewed by two persons from WSC's Internal Control and Compliance *("IC&C")* in relation to what they termed as "Regarding Policies, Procedures and Practices at New Providence Operations". I do not recall their names.**
> **4. Although I countersigned each of the Employee Discussion Forms *("EDF")* for extensions of the mandatory vacation leave beyond 12th August 2020, I refused to countersign the EDFs in relation to WSC's proposal by letters dated 13th August 2020 and 19th August 2020 that I remain on mandatory vacation leave until 25th August 2020.**
> **5. On 24th July 2020, an "Audit Report Findings and Conclusion" had been issued by IC&C indicating that it discovered certain anomalies related to invoices that had been issued for the outsourcing of "valve box raising" that fell within my duties, but that Audit Report was never given to me for me and my then Attorney, Sharmie Farrington-Austin, to review and me be given the opportunity to be heard in relation to it in a properly convened hearing in**

accordance with WSC's existing policies and practices and, as was told by Attorney Mr. Ferguson KC whom I verily believe, under the principals of the common law of The Bahamas and my right to be heard on any allegation made against me, especially of a criminal nature.

6. On 25th August 2020, as a 38-year employee with WSC, I formally informed Mr. Elwood Donaldson the then General Manager *("Mr. Donaldson")* of WSC by way of a letter which I had hand delivered it to Ms. Jacklyn Adderley, his Secretary at the time, that I intended to take Special (Early) Retirement having spent 38 years and having risen to the rank of Senior Superintendent for Road Reinstatement. See it at TR-1 of my Affidavit filed herein on 18th October 2023.

7. Unfortunately, I did not retain a signed copy of that letter, nor did I get proof of delivery of it from Ms. Adderley.

8. However, in a letter dated 29th August 2020 exhibited at page 16 of the Affidavit of Robert Deal filed herein on 23rd July 2024, at the time, the General Manager of WSC, Mr. Donaldson in acknowledging my said letter, refused to and accept my intension to retire in accordance with the terms of the Pension Plan for Employees of the Water and Sewerage Corporation *("WSC Pension Plan Fund")* as is set out in Booklet of Messrs. Imperial Life *("Pension Plan Booklet")* who I believe was managing my pension funds and that of the employees of WSC at the time as is seen in TR-5 of my said Affidavit filed herein on 18th October 2023. The fact of the existence of that said refusal was reflected in a letter dated 30th August 2020 written to Mr. Donaldson and over the signature of Attorney Mrs. Farrington-Austin.

...

15. In the Pension Plan Booklet under the subheading of Special Retirement on Page 2 in Item (i)(B) allows for Early Retirement after an employee had served 30 years with WSC to which, according to what my said Attorneys told me, whom I verily believe, by virtue of the operation of Section 4 of the EA-2001, I am entitled to under the terms of my contract of employment with WSC to being paid my Retirement Benefits in accordance to what is set out in the said Article 17 of the SS/WSCA-1976.

...

18. Up until at least 2nd April 2019, every year the Human Resources & Training Division of WSC *("WSC-HR")* would give me a CFAL's Pension Statement for the previous year which, inter alia, evidenced their acknowledgment of my being enrolled in WSC's Pension Plan which has set out in it, a specified early Retirement date for me. On the last

CFAL's Pension Statement that I received from WSC-HR for the period of 1st January 2018 to 31st December 2018, my Early Retirement Date was stated thereon as being 1st January 2019 and amounted to $48,126.67 for payout for Normal Retirement, and $132,360.37 for Termination Benefit for Credited Service to 31st December 2018. A photocopy of the said CFAL's Pension Statement ending 31st December 2018 can be seen in TR-4 of my Affidavit of 18th October 2025.

19.Although that amounts were continuing to accumulate, WSC-HR refused to provide me with CFAL's Pension Statements for the years ending December 2019 and October 2020 the month when I was summarily dismissed. My inquiry directly with Messrs. Imperial Life for an updated copy resulted in their refusal on the basis of that it was non-contributory pension, and they were contractually obliged to only give copies to WSC-HR who would then hand it over to whomever they wanted to.

...

21. I am of the view that WSC is wrong to have summarily dismissed me for the findings of IC&C which do not definitively say nor present evidence showing that I had done anything wrong or which was repugnant to WSC's interests. In fact, although I have been languishing with the criminal charges hanging over me, no proceedings have been started yet against me although I have been dismissed without any of my Retirement Benefits having been paid.

...

31. Simply put, I am not a public officer, and based on what was told to me by Attorney Mr. Ferguson KC, whom I do verily believe, nor was my pension that was actually set up under Article 17 of the SS/WSCA-1976, the type of Pension referred to in the Public Service Act 1969 and/or the Pensions Act 1952.

...

37. I believe that it is wrong for WSC to refuse to advise CFAL to pay out to me my Retirement Benefit and, according to what I have learnt from the said Affidavit of Robert Deal, it is an egregious breach of my contract of employment to give CFAL and other entities the wrong view that their position is based on WSC's criminal accusations against me although such accusations have not been proven in a Court of law.

....

38. For the last 5 years, WSC has been giving the world-at-large a view that I had done something criminally or so

wrong that it justifies then withholding my pension benefits. This wrong is exacerbated by the fact that as of this moment, there is no relevant criminal Court Trial or relevant court order by which I have been convicted of the crimes they have alleged that I have done. In fact, because of the allegations that WSC has made against me, I have lost my right as a Bahamian to traveling to the United States of American as a part of the preclearance system that I have enjoyed in The Bahamas all my life. I am restricted from being able to visit with my daughter, Payton, who now lives in the USA. My son, Trevor Jr. is having significant challenges not wanting to go to the USA for further education because he does not want to have any such restrictions from me.

...

41. In addition to me claiming the immediate payment of $961,854.39 by WSC, I believe that WSC should have to pay me for the loss I have suffered:

41.1 from not having to pay the rent to my current Landlord, Ms. Veronica Newbold who was kind enough to allow me to owe her rent since January 2021 to date totalling 56 months at $550 per month inclusive of water. That amounts to $30,800.00 rather than the 22,550.00 listed about; and

41.2 from my children having lost out on me being able to keep them insured. Both my children, Payton and Trevor Jr. coverage with Family Guardian respectively, Life Insurance Nos. 20862347 and 20862348 had lapsed for non-payment on 23rd June 2021. The monthly payment for each of them was $50.00 totaling $5,100.00;

41.3 not being able to pay the invoice for my wife's surgery done at Osceola RMC in the amount of 253,964.49 reduced from $643,848.32.

22 The Claimant was suspended from his duties by letter of 26 August 2020 ("**the suspension letter**"). The suspension letter is headed, "**Suspension with pay for Investigation Purposes", referenced "previous discussions held between you [the Claimant] and the Internal Control and Compliance Division into recent investigations of vendor payment processing irregularities**". I further highlight the following from the suspension letter:

> "Preliminary findings show that there was major conflict of interest in the carrying out of your duties. Per Article 66 of the Management Industrial Agreement, "***an employee is prohibited from engaging in any activity which involves conflict of***

interest for the employee or detracts from the Corporation's Public image or impairs the employee's ability to fulfil his position's normal function."

23 During the trial the Claimant indicated that he did not receive the suspension letter from the Corporation. I note that there is a block for the letter to be acknowledged but it does not bear a signature of the Claimant or a date of receipt. Mrs. Jennifer Smith, a witness for the Corporation addressed this in her evidence which is set out below. It was also revealed during the trial that at a meeting held on 31 August 2020 the Claimant was provided with a copy of the suspension letter in a meeting at the Corporation.

24 I further highlight that in the minutes of the meeting held on 31 August 2020 there was some discussion about the suspension letter. The Claimant and his Counsel, Mrs. Sharmie Farrington Austin, were present. The details of the meeting as per the minutes suggest that the Claimant was not provided with the suspension letter prior to the meeting although attempts to serve him were made. The minutes indicate that the Claimant was provided with the suspension letter at that meeting. The minutes record Mrs. Sharmie Farrington Austin saying: "**questioned if Mr. Roberts was just now being served with a suspension letter**".

25 The Court specifically asked the Claimant if he received the suspension letter. His answer was no. That exchange is set out below:

Q: Did you receive a suspension letter?

A: So your question was if he received it?

Q: Go to tab 24 in that very bundle.

A: Tab 24 suspension letter dated the 26th of August 2020.

Q: Did you receive this letter?

A: No sir.

26 During his cross examination, the Claimant was asked by the Defendant's Counsel, Mr. Dion Smith about the termination letter dated 2 October 2020 and whether the reason(s) for the termination changed. The exchange is set out below:

Q: *Do you agree Sir, that letter indicated that you were dismissed for vendor payment processing irregularities with specific attention to contract works for valve box raising, filter management and road reinstatement?*

A: Yes.

Q: Isn't it true, Sir, that you received a copy of the IC and C report from Water and Sewage regarding investigation into the irregularities that I just spoke about before you were terminated?

A: No Sir.

27 The Claimant was adamant that he did not receive a copy of the Audit Report Findings and Conclusion dated 26 August 2020 (**"the Audit Report"**). The Audit Report is titled "**Special Review of Vendor Payment Processing Irregularities with Specific attention to contract works for Valve Box Raising, Filter Management and Road Reinstatement**". Several copies of the Audit Report were in the Trial Bundle along with the interviews conducted by the audit team lead by Krystal Ferguson, Internal Auditor. I note however in the minutes of a meeting held on 31 August 2020 at the Corporation's Board Room the same records that the Claimant was present along with his Attorney, Shamie Farrington-Austin. The Claimant's evidence is that he was not provided with the audit report at the meeting but that he and his lawyer were given one hour to respond to the report and its findings. The minutes states as follows:

> **Purpose of meeting**
> **The meeting was called to report the findings of an investigation in vendor payment irregularities as conducted by the Internal Control and Compliance Division, relative to Mr. Trevor Roberts. A copy of the report was given to Mr. Roberts, his counsel and union representative.**

28 The minutes of the meeting of 31 August 2020 contain exchanges and statements by the Claimant's Counsel in attendance, regarding the report and its receipt as well as other matters. Mrs Sharmie Farrington Austin, with the initials SFA, is reported as saying:

> **SFA – questioned Mr. Roberts if he was previously presented with a copy of the report, to which he replied he had not. She then stated that as he had not seen the report prior to now, he certainly could not be expected to answer any questions pertaining to it.**
>
> **SFA – stated again that has he was not privy to report previously, he will not be in a position to respond.**
>
> **SFA – stated she felt the Corporation could have extended more of a courtesy out of respect to the employee. <u>She further stated she will respond to the findings in writing as it mandated by law/Industrial Agreement</u>.**

SFA – not mandated specifically but the facts were put in writing so the client will respond in writing after Mr. Roberts has had an opportunity to fairly look at the document, whether agreed or not, which is of no consequence, but know that the courts will determine or not whether the proceedings were fair. She stated that she is of the view that they are not. She stated that's how it will go for her client, the Corporations free to do whatever is deemed appropriate. <u>She stated that Mr. Roberts was just given a copy of his suspension letter</u>…

29 The Claimant also denied attending a meeting on 29 September 2020. The minutes of that meeting taken by Rosita Coleby Adderley show that he and his Counsel, Sharmie Farrington Austin, were in attendance. At this meeting Mrs. Farrington Austin stated – "**…Yes she has read the report, but if she was aware of the meeting in advance, she would have prepared for it.**"

30 The Claimant agreed that he was interviewed by Krystal Ferguson on 24 June 2020. He said that at this interview he was not aware of an investigation and no allegations were put to him. During cross examination, he was asked specifically about whether he was interviewed by 25 August 2020. I set out below the questions and answers:

> ***Q:*** *Sir, do you accept that by the 25th of August 2020, you were already interviewed by the IC and C Department in regard to the irregularities that were pointed out to you in your summary dismissal letter?*
>
> ***A:*** *No, Sir, I was not interviewed as per your question.*
>
> ***Q:*** *By the 25th of August 2020, you weren't interviewed by that? No, just a moment.*
>
> ***A:*** *Sir, as per your question I was not interviewed.*
>
> ***Q:*** *Sorry, you wasn't interviewed by the 25th, just a moment.*
> *…*
>
> ***Q:*** *Trevor Roberts. Do you see it and is it the date of the interview?*
>
> ***Q:*** *So I put to you that that's the date that you were interviewed by Miss Krystal Ferguson.*
>
> ***Q:*** *So you accept then that by the 25th of August, because June comes before August, you would have already been interviewed.*

Q: *So Sir, I put to you that the investigation is well on the way by the 25th of August 2020 when you first indicated to Water and Sewage that you wanted to retire. I'm saying they'd already started the investigation process into you from in June and then in August, that's when August 25th, that date I was referring to was the date that you claim you presented your request to retire.*

Q: *So would you agree with me the investigation was well on the way by the time as you then told them you wanted to retire?*

A: *I don't know what I didn't know about an investigation.*

Q: *OK, alright, I'll move on because you're still holding till you never received a copy of the IC&C report as well.*

Q: *That's still your answer. You never received a copy of an IC&C report, you know what I'm saying?*

A: *You asked me an investigation on the terms of irregularities. I told you no, I didn't know about irregularities under this.*

A: *This was just a report that is called to ask some questions about the process of what I do.*

A: *And I have no knowledge about any investigation for irregularities of any kind.*

31 On the alteration of 2 invoices; one from PICCS General Maintenance and the other from S Forbes Contract Services, the Claimant did not dispute that the invoices were altered by him. He indicated that he changed the date and added the "A" to the other. He also agreed that his initials were on the invoices. During cross examination, the Claimant disagreed that the altering of the invoices was conduct repugnant to the interests of the Corporation.

32 During his evidence at the trial Mr. Roberts was asked about his relationship with the owners of RGM Services and Newann Development Company. He indicated that he was aware of these companies and knew the contractors who provided service to the Corporation. He also said that the owner of RGM Services was his neighbour. When further pressed during cross exanimation, Mr. Roberts said that Vanessa Rolle is his neighbour and she is the owner of RGM Services.

33 Mr. Roberts was also questioned about his relationship with Kimley Ferguson and Shalom Development Company. He said he knew Kimley Ferguson. I set out below the exchange.

Q: So Sir, in your witness statement of the 7th sorry, of the 8th of September, you did not mention the company Shalom Development Company anywhere, correct?

Q: Do you know Shalom Development Company, a previous vendor with valve box raising at the Water and Sewage Corporation?

Q: Yeah, well, I'm saying why?

A: I know, yes, yes, yes, Sir.

Q: So you know Kimley Ferguson, who is the owner of Shalom Development?

Q: OK, can you tell us how you know Kimley Ferguson?

A: I know Kimley Ferguson based on she worked with my wife for some period of time. And where was that at Commonwealth Bank Ltd?

Q: OK and how else do you know it?
A: That's about it.

34 Mr. Roberts was also asked why he received the sum of $5,543.00 from Kimley Ferguson on 12 July 2019 to the account of Invictus Trading at Commonwealth Bank Limited. He confirmed that it was his account at Commonwealth Bank Limited and that the funds were deposited to that account. He said that he could not recall the reason for the deposit to the account of Invictus Trading. He also confirmed that Invictus Trading is a company that he owns. I set out below his exchange with Defence Counsel, Mr. Dion Smith:

Q: What do you say? That she transferred this funds to you on your instructions? Do you know why Kimley Ferguson would be sending you $5,543 dollars?

Q: Can you tell me please, if your cell phone number while you were working at the Water and Sewage Corporation was 3577959?

Q: Could you take a look for me please? At page 223 of that same document?

Q: Put to you, Sir, that that is a screenshot of the invoice, sorry, the deposit slip I showed you earlier with a conversation between you and Kimley Ferguson.

Q: So does this help you to recall since you had a conversation about this deposit, now perhaps you can answer why that was sent to Invictus?

Q: Invictus.

A: I don't recall.

35 During cross examination Mr. Roberts denied that he received funds from any contractor engaged by the Corporation, and he also denied that he would pay Kimley Fergsuon the sum of $500.00 less than the sums paid to Shalom Development Company by the Corporation

36 Mr. Dion Smith asked Mr. Roberts about the sums paid to Newann Development totalling $702,619.50 from 2010 to 2020. He did not recall this total.

37 When asked about the postal address and location address for Newann Development on its invoice to the Corporation, his evidence is that it was a postal address shared by the occupants of the apartment building where he resides, that has three units. He also confirmed that the company is owned by Marvin Scalleva, the son in law of his neighbour, Vanessa Rolle.

<u>Terrance Antonio</u>

38 Mr. Terrence Antonio was also called as a witness for the Claimant. He worked at the Corporation since 1987 to his retirement in 2023. He was a Superintendent and also served as a Manager in the Corporation's Internal Control and Compliance Division ("**ICCD**"). In his evidence he focused on the process for the findings of any audit report issued by the ICCD being used as a basis of a criminal complaint. He indicated that the Board of Directors of the Corporation had to pass a resolution "**to put the findings of the IC&C in the form of a criminal complaint before the police for the criminal prosecution of the Claimant**." Mr. Antonio also confirmed that he was aware of the investigation but was not asked to be a part of the team investigating the matter due to his closeness with the Claimant.

39 When cross examined by Counsel for the Defendant, Mr. Dion Smith, he confirmed that he played no role in the ICCD investigation due to his relationship with the Claimant and did not see the final report produced by ICCD.

40 Mr. Antonio's evidence was clear that he applied for early retirement due to health reasons and received all his benefits from the Corporation.

41 Mr. Dion Smith during cross examination asked if he was dismissed from the Corporation for misconduct and he replied no. That exchange is set out below.

A: I requested an early retirement and it was because I was entitled to it.

A: I was given it.

Q: Very well. But you were not dismissed for misconduct. You retired, you weren't dismissed and you were never the subject of any IC and C investigation leading up to your retirement.

A: I retired because of health reasons.

Q: And most definitely you are not arranged on any charges of money laundering, laundering or stealing by reason of employment before you retire.

A: Definitely not, in my almost 25 years of employment

The Defendant's evidence

42 The Defendant called six witnesses, Preston Rahming, Erica Johnson, Krystal Ferguson, Rosita Coleby Adderley and Jennifer Smith. Although a witness summary bore the name of Kimley Ivanique Ferguson filed on 23 April 2026 no witness statement was filed. The witness summary was signed by Defendant's Attorney and noted therein that the statement sets "**out the evidence which it is anticipated Kimley Ivanique Ferguson would give if called as a witness**." I address the evidence of Ms. Kimley Ferguon later in this ruling.

Jennifer Smith

43 Jennifer Smith is a former employee of the Corporation and served as Manager in the Human Resources Division, with responsibility for Recruitment Compensation and Benefits. Her evidence focused on the process for early retirement and pre-retirement leave.

44 Ms. Jennifer Smith states the following at paragraphs 3 and 4 of the witness statement filed on 22 April 2026.

RETIREMENT
3 In respect of Paragraph 9, Item 7 of the Claimant's claim, I wish to address the matter of Retirement Leave in accordance with WSC policy (SOP) and the Management Industrial Agreement. The relevant provisions are as follows:
a. Article 53.01 of the Management Industrial Agreement provides that an employee normally will be retired at sixty (60) years of age, and re-engagement shall be at the

Corporation's discretion, governed by the needs of the service in addition to other considerations.
b. Article 53.02 requires that the Corporation notify the employee and the Union in writing one (1) year prior to the employee attaining the retirement age of sixty (60) years.
c. Article 53.03 provides that twelve (12) months prior to the employee's sixtieth birthday, the Human Resources Department shall discuss with the employee retirement, pension, gratuity, and all other benefits due. A Union representative may accompany the employee if so desired.
d. Article 53.04 provides that an employee who wishes to request deferred retirement or temporary re-employment after retirement must apply in writing at least six (6) months prior to the retirement date, and the Corporation shall reply within three (3) months of receipt of such request.
e. This article further provided that when a full time employee retires from the Corporation he will receive all benefits that he is entitled to.

PRE-RETIREMENT

4 Additionally, Article 37.04 regarding Pre-Retirement Leave provides that requests for pre-retirement leave must be submitted by letter to the General Manager at least six (6) months prior to the retirement date. Requests not submitted on time may not be considered, and the Corporation endeavors to acknowledge receipt of such requests soon after submission.

45 During cross examination Mr. Keod Smith asked her about the number of vacation leave that Mr. Roberts was entitled. She confirmed that the Corporation allowed a total of 81 days to be accumulated and that as his termination letter noted 78.25 days that was his entitlement.

46 When asked about her pension rights Mrs. Smith referred to the CFAL pension booklet. Her evidence is that an employee may retire after 30 years of service with special request or at the age of 60 years, which is the mandatory retirement age. The exchange with Mr. Keod Smith is set out below:

> **A:** So take for instance, if next week or I decide that I am at my 29th year and I say you know something, I tired of this place, my 30 years will come up in August of this year.
>
> **Q:** Yes.
> **A:** Then I need to notify the corporation at least one month in advance to say to them as of the 31st, if that's the date I want to

leave, just to ensure that I am, I want to make sure I get all my salary and my benefits.

A: That would be how I would calculate my letter and say, well, I my last day would be the 31st of August. So you have sufficient notice now then for the general manager to write me and say, Miss Smith, yay or nay, whether or not you will approve my special retirement, my early retirement leave.

Preston Rahming

47 Preston Rahming is the Senior Manager in the New Providence Operations Department at the Corporation. He worked at the Corporation for 32 years. In his witness statement filed on 10 April 2026 he discussed Valve Box Raising and that it fell under the mandate of the Distribution Maintenance Department. He stated the following at paragraphs 13 to 17 (inclusive):

> **Issues Brought to My Attention**
> 13 Mr. Trevor Roberts was transferred from Distribution Maintenance to the newly formed Road Reinstatement Department on the same day I became responsible for Distribution Maintenance and Road Reinstatement was removed from my responsibility in February 2020.
> **14 On June 3rd, 2020, I first became aware that Trevor Roberts was outsourcing contractors to conduct valve box raising exercises, when I received an email from Mrs. Erica Johnson in the Accounts Department, regarding invoices associated with valve box raising processed by Trevor Roberts.**
> **15 As a result, I sent an email to Trevor Roberts' immediate Supervisor, Mr. Bradley Flowers, Senior Manager in New Providence Operations, inquiring if the responsibility associated with valve box raising was moved from Distribution Maintenance to the Road Reinstatement Department, because I was not aware of that.**
> **16 This became a concern to me because responsibility for valve box raising came within my department and I knew we were not conducting any valve box raising exercises at that time.**
> 17 There were several emails that were sent back and forth on the matter of the valve box raising was transferred to Road Reinstatement. The last email in the thread was from Mr. Robert Deal, then Deputy General Manager, to then General Manager, Mr. Elwood Donaldson, inquiring if the valve box raising responsibility was transferred to Road Reinstatement. I was not included on any response.

48 Mr. Rahming when questioned during cross examination confirmed that he had no supervisory role over the Claimant, Trevor Roberts. He confirmed that around February 2020 he assumed responsibility for the Distribution Maintenance and Waste and Leaks Department at the Corporation and that the Department is responsible for "**resolving water quality issues if you have red water, smelly water, that type of stuff**". He was also asked about the Corporation's GPS system. Mr. Rahming confirmed that the GPS devices/system at the Corporation is used to locate the Corporation's assets.

49 Mr. Rahming confirmed during his evidence at the trial that in February 2020 when he assumed responsibility for the Distribution Maintenance Department it was that Department that "**have the responsibility to conduct valve box raising**".

Rosita Coleby-Ferguson

50 Ms. Coleby Ferguson served as the Administrative Assistant to the Assistant General Manager of the Human Resources Division of the Corporation. In her role she took notes at various meetings held by the then General Manager, Mr. Elwood Donaldson. She attended three meetings involving the Claimant on 31 August 2020, 1 September 2020 and 29 September 2020. In her witness statement filed on 22 April 2026 she states the following at paragraphs: 5, 6, 7, 8, 9, 11, 15 to 18 and 20 to 24 and 29:

> **Meeting held on 31st August 2020**
>
> **5 On 31st August 2020, I attended a meeting held at WSC's Head Office Board Room concerning the findings of an investigation into vendor payment irregularities involving Mr. Trevor Roberts.**
> **6 The meeting was attended by: Mr. Elwood Donaldson, General Manager Senior management, Ms. Anthia Williams Senior Manager, Krystal Ferguson compliance personnel, Charessa Turnquest, me, Mr. Trevor Roberts, Legal counsel for WSC Ms. Viloa Major, the union representative Mr. Montgomery Miller, and Legal counsel for Mr. Roberts Mrs Shamie Farrington-Austin.**
>
> **7 The purpose of the meeting was to present the findings of the Internal Control and Compliance Division's investigation.**
> **8 At that meeting, a copy of the investigation report was provided to Mr. Roberts, his attorney, and his union representative.**

9 The findings of the report were read and explained during the meeting by Ms. Krystal Ferguson.
10 During the meeting, it was made clear that Mr. Roberts would be given an opportunity to respond to the findings.
11 Mr. Roberts, through his attorney, indicated that he wished to review the report and respond in writing.

Meeting of 1st September 2020

15 On 1st September 2020, I attended a follow-up meeting regarding the same investigation.
16 The meeting was attended by: Mr. Elwood Donaldson, General Manager Senior management, Ms. Anthia Williams Senior Manager, Krystal Ferguson compliance personnel, Charessa Turnquest, me, Legal counsel for WSC Ms. Viloa Major, and the union representative Mr. Montgomery Miller.
17 At that meeting, it was confirmed that no response had yet been received from Mr. Roberts.
18 It was further discussed that a decision by the Corporation would only be made after Mr. Roberts had been given the opportunity to defend himself.

Meeting of 29th September 2020

20 On 29th September 2020, I attended a further meeting at 11:52 am concerning the investigation.
21 The meeting was attended by: Mr. Elwood Donaldson, General Manager Senior management, Mrs. Jenefer Smith HR Manager, Krystal Ferguson compliance personnel, Charessa Turnquest, me, Mr. Trevor Roberts, Legal counsel for WSC Ms. Viloa Major, the union representative Mr. Montgomery Miller, and Legal counsel for Mr. Roberts Mrs Shamie Farrington-Austin.
22 The purpose of the meeting was to allow Mr. Roberts to present his defence or response to the findings of the investigation before a decision was made.
23 During the meeting, Mr. Roberts was given a further opportunity to respond to the findings. Mr. Elwood Donaldson advised that in light of Mr. Roberts for more time he would be given until 4:30pm today to return with his defence.
24 Mr. Roberts did not provide any substantive response to the findings at that meeting and through the union representative and Mr. Roberts counsel he asked for additional time.

Failure to Provide a Response

29 Despite being provided with a copy of the investigation report; and given multiple opportunities to respond to the findings I am unaware of Mr. Roberts having provided a response to the allegations contained in the report.

51 Also exhibited to her witness statement are copies of the minutes of the meetings held on 31 August 2020, 1 September 2020 and 29 September 2020.

52 During her cross-examination, Mrs. Coleby-Adderley confirmed that Mr. Trevor Roberts and his attorney, Sharmie Farrington-Austin, attended the meeting on 31 August 2020 and saw when they were given copies of the ICCD report. She insisted that copies of the report were given to Mr. Roberts, Mrs. Farrington-Austin and the Union representative. She said that she was also provided with a copy of the report in the meeting.

53 When questioned about who she gave the minutes to, Mrs. Coleby-Adderley replied that she should have emailed them to Mr. Donaldson, the then General Manager at the Corporation for vetting. She was unable to definitively say that a copy of the minutes was given to him. Mrs. Coleby-Adderley also said that she was never told to send the minutes to the union representative, Montgomery Miller, who attended the meeting.

54 Mrs. Coleby-Adderley evidence was also clear that she was not part of the deliberation process which led to the Claimant's suspension and termination but was only present to take the minutes of the meetings.

55 When further questioned by Mr. Keod Smith about whether she made any changes to the minutes, she confirmed that she did not make any changes to the document when she was recently required to produce the minutes. She sent the document as is, as she had it.

Erica Johnson

56 Ercia Johnson's evidence focused on the cheque collection process at the Corporation as well as about her email of 3 June 2020. That email was sent to the Claimant, Preston Rahming and Patrice Munroe. In her witness statement filed on 22 April 2026 Ms. Johnson said the email **"voice my concerns about the possibility of duplicate invoice processing due to some descriptions not reflected on the invoices"** (see paragraph 27).

57 Ms. Johnson's witness statement also addressed the Corporation's "**internal procedure for the collection of cheques**". She said the following at paragraphs 9, 14 to 17 of her statement:

> **Practice of Cheque Collection**
> 9 The Water and Sewerage Corporation does not have a policy for cheque collection nor is there a logbook to record vendors collecting their payments. However, the corporation does have an internal procedure for the collection of cheques. Upon collection of a cheque payment, the signature of the individual collecting the cheque is reflected on the payment documents. Cheque collections collected by external parties must present an identification and a copy is attached to the payment.
> ...
> 14 The exceptions to the vendor/agent cheque collection process. In the event the vendor does not have identification, the payment may not be released unless it can be proven that the company sends a third-party messenger or a call is made to the business' Accounts Department to confirm the pick-up.
> 15 It would also be noted that sometimes known vendors are given their payments without identification. If the vendor is identifiable by the AP team or WSC employee, who contracted the vendor.
> **16 Payments are also collected by WSC internal staff members without identification. Sometimes, staff would collect payments on behalf of a vendor due to logistics purposes and/or to avoid delay in receiving a good or service for operational purposes.**
> **17 The staff member is required to sign for the payment. If the need arises, futuristically, to identify a staff signature, WSC has specimen signatures of managerial staff. Although, in a handful of cases, WSC staff may not be managers, but the non-management staff is authorized to collect payments based on his/her job duties or prior approval communicated to the AP Team via their respective manager.**

58 Ms. Johnson was also interviewed by the Police in relation to the processing and collection of cheques at the Corporation. She said at paragraph 20 of the witness statement that the interview centered on cheques numbers 215972 and 215971 dated 20 April 2020 in the sums of $3,750.00 and $7,500.00 respectively and payable to Shalom Development. I set out below paragraphs 22 to 24 of her witness statement:

> **Recollection of the day when cheques were collected**
> **22 Mr. Roberts was following up on payments for his vendors with the Accounts Payable team, which WSC managers usually do to ensure their daily tasks are not hindered. At that time, the Accounts Payable team consisted of Ms. Witchell Wilson, Mrs. Hendenia Rolle and myself.**

23 During his follow-up, he purportedly received a call from one of the vendors, Shalom Development. The vendor's call was then place on speaker and the person stated their financial circumstances in respect to the backlog of payments that they were due. Upon reviewing our payments folder, we told the person that the cheques were ready for collection.

24 The individual on the cell then requested Mr. Roberts to collect the payments on their behalf. Based on the authority given and the payments were payable to a company, we released the payments to Mr. Roberts on the vendor's behalf. It was not odd as WSC managers sometimes do collect for their vendors in special circumstances.

59 During cross examination, Mr. Keod Smith inquired of the witness of the process to give out the Corporation's cheques. She confirmed that it is not the standard procedure to give away unauthorized checks, and that the Corporation have various modes to give away checks. Her evidence in reply is set out below:

> **I'm saying in the normal instances of things, the checks are disbursed to who the check is made-up to. We do have incidences where they're for family Island payments.**
>
> **Those payments are released to our family Island department for disbursement.**
>
> **We also have cases where our management be released their payments to them on their behalf of their contractors to stop delay in operations of the corporation.**
>
> **...**
>
> **So we do have instances where for example vendor may decide and resist giving us service because of a lag of payment or it could be possible where on there and their payment was delayed based on approvals or even there in the revenue requirements not met on time and so there was a backlog with processing their payments.**
>
> **So to assist the vendor, we do release checks to the managers, managers of the corporation.**

Krystal Ferguson

60 Krystal Ferguson was the lead witness for the defence. She led the investigation, which ultimately led to the Claimant's termination from the Corporation. She is an Internal Auditor at the Corporation in its Internal Control and Compliance Division (“**ICCD**”).

61 I feel constrain to set out the majority of her witness statement. I highlight the following paragraphs from her witness statement:

> **2. On June 18th, 2020, AGM John Bowleg the then Acting Division Head of IC&C, directed me to attend a meeting along with himself. The purpose of the meeting was not disclosed to me at that time. The meeting was held at #38 University Drive in the Corporation's Board Room.**
>
> **3. Upon arriving at the meeting, AGM Bowleg and I entered the Corporation's Board Room together. I observed in attendance the Executive Chairman (EC) Adrian Gibson, the General Manager (GM) Elwood Donaldson, and the Deputy General Manager (DGM) Robert Deal along with others, I do not recall the names of the other persons in attendance. Corporation matters were discussed, including matters related to Senior (Sr.) Superintendent Trevor Roberts.**
>
> **4. At the meeting, I received information concerning insufficient information on vendor invoices for works managed and approved by Sr. Superintendent Roberts. AGM Bowleg was instructed by EC Gibson to conduct an investigation into the same. In the afternoon of June 18th, 2020, I was orally instructed by AGM Bowleg to investigate works managed and approved by Sr. Superintendent Roberts. Likewise, on the same date at 2:24pm, I received an email from DGM Deal (Division Head for New Providence Operations (NPO); in which the Distribution Maintenance Department and the Road Reinstatement Department are included) explaining that he was not aware that the responsibility of valve box raising was transferred from the Distribution Maintenance Department to the Road Reinstatement Department, until June 8th, 2020. As shown in Exhibit 1.**
>
> **...**
>
> **6. At 3:35pm, on June 19th, 2020, I received an email from EC Gibson directing me to immediately interview Sr. Superintendent Roberts. The directions stated "I hope that that interview is ongoing or was already done. Delays in the investigation will not be acceptable. Please ensure that no stone is left unturned." As shown in Exhibit 3.**
>
> **<u>7. I received, from AGM Bowleg, a copy of an email (dated June 3, 2020) from Accountant III Erica Johnson to Sr. Superintendent Roberts; this was in reference to valve box</u>**

raising vendors' invoices submitted to the Accounts Department (Business Operations Division) for payment. The email document stated that "the time frame of the services nor the areas where the services were commenced are reflected: on the vendors' invoices. I don't recall the date I received the email document from AGM Bowleg. As seen in Exhibit 4.

I received information from AGM Bowleg that it was alleged that Sr. Superintendent Roberts changed filters for a customer during a time that he was not assigned to the section, Distribution Maintenance, responsible for such works. I don't recall the date I received this information. I received information that there were speculations that Sr. Superintendent Roberts were the "true" owner of several companies providing valve box raising and filter changing services to the Corporation. I do not recall who I received this information from or when I received this information.

8. I determined the investigation objectives based on the above allegations/concerns (indicated in #7) related to Sr. Superintendent Roberts, as well as a review of vendor payments audit approach guidelines. I determined the methodology based on the information and reviews required to achieve the objectives.

...

11. On the 24th of June, 2020, I interviewed Sr. Superintendent Roberts about the policies procedures and practices of both the DMD and the RRD as well as his responsibilities within each of those departments. Sr. Superintendent Roberts was also asked if he had any personal, financial or otherwise interest in any of the Road Reinstatement, Water Quality, or Districted Metered Areas contracts, and in response Sr. Superintendent Roberts told me that he did not have any person, financial or otherwise interest in any of the Water Quality contractors, Road Reinstatement neither Districted Metered Areas contractors hired by the Corporation. As seen in Sr. Superintendent Roberts Interview/Statement Report; IC&C conducted this interview, I was the interviewer.

12. I interviewed Sr. Superintendent Roberts prematurely and under duress as a result of consistent communicated directives from the EC's office to have Sr. Superintendent

Roberts interview immediately. Under normal IC&C investigation practices, the person against whom allegations are made is interviewed at the end; after gathering information and conducting the investigation, the findings/allegations are presented to the person, who then has the opportunity to respond to the findings/allegations. In accordance with the International Internal Audit Standards, internal audit activities must be conducted independently and objectively, free of interference and undue influence. Internal Auditors should be granted the authority necessary to perform their duties with integrity and objectivity, providing adequate assurance that all work and reporting are based on professional judgment and factual evidence.

13. I orally instructed Technical Officer Charesa Turnquest to generate a report from the Corporation's database (HTE) for all works coded/expensed related to filter changing, valve box adjustments, road works and/or coded under the associated departments (Road Reinstatement; Construction; Distribution Maintenance and Water Supply) for the period of January 2015 through June 2020. Technical Officer Turnquest provided me with the requested information, from which I compiled a list of vendors and selected a sample of payments made to those vendors. The sample was based on the nature of the works performed as per the description entry in the Corporation's database, as well as the payment period from January 2019 through June 2020. The documents pertaining to those payments were requested and physically retrieved from the Corporation's Accounts and Reports Department. I reviewed those documents to determine if those jobs were properly approved and processed in accordance with the Corporation's policies and procedures.
Based on my review of the above, the following irregularities were revealed:

a. there were vendor invoices that did not have the locations where works were carried out, and that the location of those associated works were not indicated on any of the supporting documentations attached to the payment documents.

b. there were two (2) vendor invoices that were altered by Sr. Superintendent Roberts; for PICCS General Maintenance invoice number PCC103, he altered the date of invoice, changing it from February 29, 2020 to the 18th day of

February 2020, and for S. Forbes invoice number 032019(A), he altered the invoice number, changing it from 032019 to 032019(A). As seen in Exhibit 5 and 6.

c. Two (2) cheques numbered 215971 and 215972 for the Shalom Development Company were signed and collected by Sr. Superintendent Roberts. The signature of the person who collected those cheques appears to be identical to the signature of Sr. Superintendent Roberts. As seen in Exhibits 7,8 and 9.

<u>The above irregularities were associated with vendors Kemp's General Maintenance, M & N General Maintenance, PICCS General Maintenance, RGM Services, Shalom Development Company and S. Forbes Contract Services</u>.

14. On June 30th, 2020, I requested from the Purchasing Department Manager Lionel Fox documentation submitted to the Corporation by the vendors, including the business licences, tax complaint certificates and contracts/agreements for vendors that conducted works under the New Providence Operations, this listing included all vendors associated with the Road Reinstatement Department that had invoices processed during the period of January 2015 through June 2020.The documents were received on July 1st, 2020.
I reviewed the Corporation's Human Resources (HR) database for Sr. Superintendent Roberts' information (address, telephone numbers, email address and P.O. Box number), in which he had submitted to the Corporation, and noted the same.
The addresses, telephone numbers, email addresses and P.O. Box numbers indicated on those vendors' invoices and business licences were compared to that of Sr. Superintendent Roberts to determine if any of the information agreed. Based on my review, the following were identified.
a. The postal address on Newwann Development Company's invoice number 091901B is the same as Sr. Superintendent Roberts. Newwann Development Company's invoice shows that the postal address is P.O. Box N-8264 and the street address is printed as Barns Close off Prince Charles Drive. No building number is indicated. In the Corporation's HR database, Sr. Superintendent Roberts' postal address is recorded as P.O. Box N-8264 and street address is #10 Barns Cl. As seen in Exhibits 10 and 11.

b. RGM Services business licence was registered as the same building number and street address as Sr. Superintendent Roberts. On RGM Services' Business Licence, the street address was registered as street address 10 Barn Close, Nassau, New Providence (Home Based). In the Corporation's HR database, Sr. Superintendent Roberts' street address is recorded as #10 Barn Cl. As seen in Exhibits 12 and 11.

15. Based on the aforementioned findings from my review as it relates to Sr. Superintendent Roberts, I considered Kemp's General Maintenance, M & N General Maintenance, PICCS General Maintenance, S. Forbes Contract Services, Shalom Development Company, Newann Development and RGM Services vendors of interest. I found it necessary to contact and schedule meetings with the following:
a. Kimley Ferguson, the registered owner of Shalom Development; considering that Sr. Superintendent Roberts collected two (2) cheques on her company's behalf.

b. Mary Ching-Neely, the registered owner of M&N General Maintenance; considering that i) the invoices presented to the Corporation, for works her company performed, did not have the locations where the works were carried out, ii) she is a security stationed at the Corporation's NPO location employed by a third-party vendor, F&B Security, and iii) she is the registered owner of Mary's Janitorial Services, which provide janitorial services (changing hygiene bins) to the Corporation.

I contacted those vendors via the telephone numbers provided to the Corporation, such as those indicated on the invoices presented to the Corporation for payment.
...

18. On July 15th, 2020, I contacted Kimley Ferguson, and she agreed to meet with IC&C at 2pm on the same date. I interviewed Kimley Ferguson on the same date at 2pm. Technical Officer Charesa Turnquest was present during this interview. As seen in Kimley Ferguson's Interview/Statement Report; IC&C conducted this interview, I was the interviewer.
At the time of the interview, I asked her "Why did you decide now to inform Water and Sewerage Corporation's Board of the business arrangements with Trevor Roberts and

yourself?" and she responded " Mr. Adrian Gibson called me the same day after you contacted me, and asked me to come in to Water and Sewerage the next day to meet with the Board. Mr. Gibson told me to come."

During that interview, Kimley Ferguson stated the following.

a. She has a business affiliation with Sr. Superintendent Roberts. She stated that Sr. Superintendent Roberts registered Shalom Development Company in her name, and also that she provided him with her government issued identifications.

b. As the registered owner, she stated that, she had no knowledge of what general maintenance entails; she was unable to confirm that any of the work that she invoiced to the Corporation was actually done nor did she at any point visit any of the locations where her company did works for the Corporation; she had no knowledge of how works were dispatched to her employees neither did she communicate with them nor did she know their names.

c. She prepared invoices and emailed them to the Corporation, based on information Sr. Superintendent Roberts provided to her.

d. Kimley Ferguson stated that she received the Corporation cheques written to Shalom Development Company, and gave all of the funds to Sr. Superintendent Roberts, except for $500.00 that she kept for herself.

19. As in accordance with the Institute of Internal Auditors (IIA) and its International Standards for the Professional Practice of Internal Auditing, internal audit activities must be independent of Management in order to ensure objectivity, integrity, and credibility in the auditing process. The Corporation's Board and/or Board Members interviewed/met with Kimley Ferguson, which compromised the impartiality of the investigation findings and jeopardized the investigation's integrity. The Board's and/or Board Members' interference in contacting and meeting/interviewing Kimley Ferguson prior to her meeting with IC&C during the ongoing investigation undermines everything she would have said to me during the interview. It led me to take a bias approach because I don't know what she told them and/or what they told her. Kimley Ferguson

also told me that EC Gibson promised her she wouldn't go to court or anything.

...

21. I prepared a report, KF- 21 Special Review Of Vendor Payment Processing Irregularities With Specific Attention To Contract Works For Valve Box Raising, Filter Management And Road Reinstatement, based on the investigation I conducted; the report was dated July 24th, 2020 and consisted of 62 pages. The same was reviewed by Senior Manager Saunders-Adderley and approved by AGM Bowleg. The following findings/concerns/conclusions were included in the report.

a. Sr. Superintendent Roberts appears to have a personal affiliation with Shalom Development Company (Kimley Ferguson). IC&C identified a signature identical to Sr. Superintendent Roberts' signature on two cheques (numbers 215971 and 2155972) for the vendor Shalom Development Company; the signature is that of the collector of those cheques.
Kimley Ferguson told IC&C that she has a personal affiliation with Sr. Superintendent Roberts and his wife Barbara Roberts. She also stated that she receives $500.00 every time she cash a WSC cheque (for works invoiced). However, Kimley Ferguson alleges that she gives the remainder of the funds to Sr. Superintendent Roberts.
b. Sr. Superintendent Roberts has a personal affiliation with the vendor, Newann Development Company. The Postal Address and Street location indicated on the invoice (to be processed for payment) provided to the Corporation by the vendor and the Postal Address and Street location presented to the Corporation's Human Resources Department by Sr. Superintendent Roberts (as his address) are the identical.

c. Sr. Superintendent Roberts has a personal affiliation with the vendor, RGM Services. The Street Address (inclusive of building number) is the same for both Sr. Superintendent Roberts and vendor, RGM Services. The street address indicated on the Business Licence for RGM Services provided to the Corporation by the vendor and Street Address presented to the Corporation's Human Resources Department by Sr. Superintendent Roberts (as his address) are the identical.

d. Sr. Superintendent Roberts was untruthful during an interview conducted by IC&C on June 24th, 2020. Sr. Superintendent Roberts said that he did not have any person, financial or otherwise interest in any of the Water Quality contractors, Road Reinstatement neither Districted Metered Areas contractors hired by the Corporation.

e. There was insufficient distance between the vendors carrying out work for the Corporation and Sr. Superintendent Roberts (manager acting on behalf of WSC). There is an apparent conflict of interest, since he was the manager responsible for managing and approving the works carried out by those vendors and also had personal relationships with the vendors.

f. The best interest of the Corporation was jeopardized. Since Sr. Superintendent Roberts is a WSC's Manager and he had responsibility for valve box raising and filter changing during the subject period, he was tasked with managing the contracts and ensuring that the said works were actually carried out by the contractors. In that positon, he needed to obtain sufficient distance and objectivity such that when he was called upon to perform the aforementioned tasks, the best interest of the Corporation would have been unquestionably preserved.

g. An apparent conflict of interest exists. The fact that Sr. Superintendent Roberts had personal affiliations with the contractors that he managed and approved works for, on behalf of WSC, created a conflict of interest.

...

29. On August 10th, 2020, at 10:49am, I contacted Sr. Superintendent Roberts, but it went to voicemail. I left a voice message in reference to IC&C request of scheduling to meet with him on August 11th, 2020. At 1:04pm, I contacted him again and asked him if he was available to meet with IC&C on August 11th, 2020 at 11am; at that time, he had many concerns, including that he was being sent home every time he came to work, that he met with HR and that he is very concerned because he is being sent home like a child and he doesn't know why. He also added that he sought legal counsel and that he would contact me within two hours to inform me of what time he could meet tomorrow (August 11th, 2020) or if he could come in because he had something planned with his family. He said he had to speak with his wife

first. At 3:11pm, he contacted me and told me that his lawyer wants to be present during the meeting with IC&C. He further asked me if I could contact his lawyer to find out what time works best for her, and I told him that I would not communicate with his lawyer, but if she wants to be present during his meeting to guide him, then that's fine. I told him that he would need to contact his lawyer, and he said he would contact her and then get back to me with a time.

On August 11th, 2020 at 3:46pm, I contacted Sr. Superintendent Roberts to schedule a meeting for IC&C to meet with him; however, it went to voicemail, so I left a message asking him to return a call to me regarding scheduling the said meeting.

...

37. I accompanied AGM Bowleg to a meeting around the summer of 2021 in relations to the subject of Report KF-21. I recall the following persons being present at the meeting; GM Donaldson; HR Division Sr. Manager A. Williams (deceased); Sr. Superintendent Roberts; the attorney of Sr. Superintendent Roberts, and the attorney of the Corporation. There were dialogues between attorneys and GM Donaldson regarding a response to the investigation from or on behalf of Sr. Superintendent Roberts. The attorney for Sr. Superintendent Roberts stated that the timeframe given to provide a response was insufficient. I do not recall the outcome of the meeting.

38. On November 3rd, 2021, I attended another meeting, that I was invited to by HR Division Executive Assistant Rosita Adderley. I recall the following persons being present at this meeting: GM Donaldson; HR Division Manager Penn; HR Division Executive Assistant Rosita Adderley; Accountant Vaneke Johnson from IC&C; Sr. Superintendent Roberts (virtual attendance) and WSC's Management Union President Montgomery Miller (virtual attendance). GM Donaldson chaired the meeting. The main purpose of this meeting was to give Sr. Superintendent Roberts an opportunity to respond to the findings raised in the KF-21 Report. During the meeting, Sr. Superintendent Roberts expressed concern that he had not received his pension as yet.
At the meeting, WSC's Management Union President Miller stated that Sr. Superintendent Roberts was unable to respond to the audit findings because he was placed on

mandatory vacation and did not have the opportunity to access any of his files at the Corporation. Sr. Superintendent Roberts confirmed the same. Sr. Superintendent Roberts agreed to provide a written response to the audit findings by November 11th, 2021.This meeting was postponed until November 4th, 2021 at 10:30am, due to the concern that Sr. Superintendent Roberts was unable to turn on his camera due to technical difficulties.

62 Ms. Ferguson was asked during examination in chief to identify the various interviews that she conducted and to explain how she recorded the interviews. The majority of the interviews had the signature of Ms. Ferguson, another employee in the ICCD and the person being interviewed. This practice however did not apply to the two interviews conducted with Kimley Ferguson on 15 July 2020 and 12 August 2020. With respect to her interview of Mr. Trevor Roberts, Ms. Ferguson gave the following response:

> **It was on. It was computer. I typed it as I went through the questions. I typed it what the Mr. Roberts said and then printed it off, gave him a copy, let him look at it. All of you looked at it. And once we agreed, then he signed off on it. And then also Mr. Roberts would have gotten a copy of it as well. You got a copy of the same day.**
> **Yes.**
> **All this happened the same day.**
> **...**
> **All of the persons who are part of the interview were in internal audit at the time. So whoever was present doing that time and available, I just pull them and then they start as a witness from internal audit standpoint, someone to keep present from.**

63 Ms. Krystal Ferguson stated that she was instructed to interview the Claimant, Trevor Roberts, by "**directives from the Executive Chairman's office**" and that the interview was premature. She also confirmed that the purpose of the investigation originated because of invoices that did not have any locations on them for valve box raising. Ms. Ferguson also indicated that when she tried to interview Mr. Roberts again she was unable to arrange a meeting and when he made contact, he told her that she should contact his lawyer. Her evidence is set out below:

> **I guess he had other obligations and so forward he told me at one instance, I think that he had a family something, something to do with his family or something like that.**

And I do believe that he may have been on vacation leave or mandatory vacation leave or something like that at that point.

So I never would. I wasn't able to present the findings from an internal audit standpoint. So Mr. Roberts and then the thing about it is the locations was needed to actually verify and I didn't have any locations.

64 During cross examination by Mr. Keod Smith, Ms. Ferguson was asked about whether the ICCD investigation she conducted was the reason for Mr. Roberts' dismissal. Ms. Fergson replied that "**only thing I did was I presented my report, I did my investigating a report and whatever HR and management decide to in terms of disciplinary action and termination and so forth. I was not a part of that process**".

65 Mr. Keod Smith also questioned Ms. Ferguson about how she received the documents attached to the ICCD report, with particular reference to the Business Licence Certificate for RGM Services. That Certificate shows that the business was located at "**10 Barn Close Nasau New Providence (Home Based)**" and was owned by Mrs. Vaness Rolle. Ms. Ferguson's response was that she did not recall but that she "**made a request to the purchasing department because they would have all the business license and so forth. Now we have a procurement system, but they have, they would have had these documents. So I would have to request it from that department and then get it**".

66 Ms. Ferguson also explained that she was led to review the company's information because Mr. Roberts altered an invoice number. Her evidence is set out below:

But I have to look back to see if this would have been one of the vendors. When I went through the invoices and I saw anomalies in terms of like, for instance, Mr. Roberts would have signed for two checks for Shalom Development, right?

Okay. So I was like, okay, let me find out, let me interview her because I need to know if she actually saved them and so forth and all those stuff like that.

And then there was some other vendors, whereas Mr. Roberts would have altered it was two, altered the invoice number and then altered the date.

On the invoice. So I found it necessary to go ahead and interview those persons.

And then this person here was interviewed because when I looked at in the system administer, I requested from the Human Resources Department, Mr. Roberts information, OK, And the information that he would have presented in terms of his PO number and his address, his PO address, postal address, sorry, postal address, yes, right.

So when I looked at that, and then I looked at the business license and if not some of the invoices, it would have corresponded to be the same thing. So I said, OK, this is the person, this is the next vendor of interest.

OK, So that what led me to go ahead and actually contact some persons.

67 Krystal Ferguson also addressed the invoice dated 20 September 2019 made out by Newann Development. That Company's address on the invoice is noted as "**P.O. Box N- 8624, Barns Close, off Prince Charles, Nassau, Bahamas**". That address is identical to the address noted on the Claimant's Human Resources Personal Information profile at the Corporation.

68 Ms. Ferguson was also asked during cross examination if the Executive Chairman of the Corporation or the General Manager provided her with any information about the investigation involving the Claimant. She said that they did not "**specifically give any information in reference to him per se. They gave after I conducted my interviews and so forward because I guess my division head would have been given them information and so forth**". She further explained that the Assistant General Manager, Mr. Bowleg, who was her supervisor at the time in the ICCD, asked her to interview some persons or entities; but by that time, she had already interviewed Shalom Development, Kimley Ferguson.

69 Ms. Feguson admitted under cross examination that she did not have a chance to get a response from the Claimant to the findings of the ICCD report because she interviewed him earlier.

70 Krystal Ferguson also confirmed that once the report was completed, she passed it to the Department's head who then decided where to disseminate the report.

71 She confirmed that the ICCD report concluded that "**there were vendor invoices that did not have the locations where works were carried out and that the location of those associated works were not indicated on any of the supporting documentations attached to the payment document. That's an anomaly. That's something that comes out if you want to do when you want to say, OK, if there's a duplication, if you want to, that's not proper or the trail. So yeah, that's an anomaly and something that we needed to fix as a corporation**".

72 The ICCD report dated 26 August 2020 featured prominently during the evidence of Ms. Krystal Ferguson. The report bears the heading - **Special Review of Vendor Payment Processing Irregularities with specific attention to contract works for valve box raising, Filter Management and Road Reinstatement** - and on its face the audit was conducted and report prepared by Krystal Ferguon, Internal Auditor. The report was approved by John Bowleg, Acting AGM IC&CD. I set out below two sections from the ICCD report: Executive Summary and the Findings from Review, and those portions that only relate to Trevor Roberts:

> **Executive Summary**
>
> **Based on IC&C's special review the following were observed and raised red flag against employees Trevor Roberts and Jermaine Collie.**
> **This internal audit report makes a number of findings that were adverse to the economic interest of the Corporation:-**
>
> **1. Page 18 -**
>
> **a. None of the supporting documents to facilitate the payment for those 15 invoices totaling to $54,000 indicated the locations where the jobs were performed. There are insufficient supporting documents and a lack of audit trail to determine that those valve box raising indicated on those 15 invoices were in fact raised.**
> **b. Jobs were approved from the Purchase Requisitions state (first required approval) by Senior Management without any street or intersection location documentation and documentation support of where those jobs were to be performed.**
> **c. It may also be reasonably concluded, in the absence of location specification that those jobs were perhaps never needed nor performed. Further, as at July 22nd, 2020, NPO could not produce a spreadsheet of locations where valve boxes were raised during 2019.**
>
> **2. Page 21 -**
>
> **Trevor Roberts neither any other WSC employee should be making any amendments to vendor's invoices, only the vendor has authority to make adjustments to their invoices. This rises a red flag and an open door for fraudulent vendor transactions.**
>
> **3 Page 33 –**

There are inadequate internal controls for filters storage at NPO. There is little to no accountability and there is an increased risk of thief and misappropriation of the Corporation's materials.

4 Page 41 –

a. Based on the information provided to IC&C, it is clear Shalom Development Company was artificially created to disguise the true owner and inner workings of the company from the Corporation.

b. It is also clear that Kimley Ferguson, as owner of the said company failed to exercise professional and ethical diligence in verifying that the monies paid were monies earned.

c. It is also clear that Kimley Ferguson knew that her dealings with Trevor Roberts were irregular, if not fraudulent.

d. Kimley Ferguson could not prove that the money exchanges alleged between herself and Trevor Roberts actually took place.

e. Kimley Ferguson alleges that she has a subcontractor, but she has no knowledge of the subcontractor's identity or actual existence.

5 Page 44 -

Upon IC&C's request, Kimley Ferguson emailed a screenshot of the WhatsApp conversation between herself and Mr. Roberts, to the Auditor of this report WSC's email address. The screenshot shows where the receipt (Figure 20) was WhatsApp to Mr. Roberts on July 12th, 2029. Mr. Roberts response upon receiving the photograph of the receipt was "Thank you so much. Have a blessed and prosperous weekend".

6 Page 46 –

Insufficient information/ documentation was provided to IC&C to conclude that the Invictus Trading Commonwealth Bank account is Trevor Robert's bank account. It cannot be concluded that those funds that were deposited to Invictus

Trading bank account by Kimley Ferguson was that of Trevor Roberts.

7 Page 52 -

a. It has been concluded that Trevor Roberts clearly has a personal affiliation with the named owners of Newann Development Company and RGM Services.

b. Given the remarkable similarity and exactness of the street address (including building number) and Postal address on the Business Licence and invoices of the subject vendors, and Trevor Roberts home address, it is clear that Trevor Roberts has direct involvement in the internal workings of RGM Services and Newann Development Company.

c. Trevor Roberts was not being truthful when he denied having any personal financial or otherwise interest in the Corporation contracted vendors.

....

11. The Corporation processes cheques totaling to $912,315.00 for these four (4) vendors (Newann Development Company, Shalom Development Company, RGM Services and C H Maintenance) that has personal affiliation with either Trevor Roberts or Jermaine Collie.

Total Cheques Processed as per H.T.E.			
Vendor No.	**Vendor's Name**	**Total Paid Amount**	**Period Cheques were Processed**
5997	Newann Development Company	$ 702,619.50	June 17, 2010 - June 15th, 2020
9043	Shalom Development Company	$ 96,054.00	May 15th, 2019 - June 15th, 2020
9028	RGM Services	$ 89,266.50	April 15th, 2019 - June 4th, 2020
9236	C H Maintenance	$ 24,375.00	January 16, - May 18th, 2020
	TOTAL	**$ 912,315.00**	

Subsequent to the investigative finding, the multi-level approval role (limited fiduciary role) and the undocumented

work verification in valve box raising works, the Corporation has acted reasonably in stopping Trevor Roberts from performing contract administration duties on behalf of the Corporation. Given the attempt by Jermaine Collie to delete files a strong inference of wrongdoing exists and given the given the close supervisor working relationship between Roberts and Collie, it is my opinion that the Corporation acted reasonably in stopping Jermaine Collie from being present on the Corporation's premises before a final determination is made by the Corporation in this matter.

The Corporation may therefore discriminate against Jermaine Collie and Trevor Roberts on the grounds of suspicion for dishonesty and or wrong doing and or unacceptable standard of work (failure to supply record of work performed in support of payment approvals.)

...

9.0 Findings from Review

9.1 WSC's Standard Pricing for Road Reinstatement per square feet, $5.00, was in effect since March 1st, 2012; the previous General Manager agreed to this pricing.

9.2 WSC's Standard Pricing per Filter Change, $2.25, was in effect since 2008.

9.3 WSC's Standard Pricing per valve box raising, $375.00, was in effect since 2016.

9.4 There are insufficient supporting documents to determine whether or not some jobs associated with valve box raising indicated on invoices paid for were actually completed.

There are anomalies related to invoices approved for processing by Accounts for valve box raising. There were invoices with no locations where the jobs were done; neither were locations indicated on the Purchase Requisitions nor Purchase Orders; neither were those Purchase Orders indicated as drawdown.

9.5 The valve box raising spreadsheet indicating the locations where box raising for 2019 were carried out along with the billings was not completed as at July 22nd, 2020. Therefore, valve box raising during 2019, that were associated with Ministry of Works, was not billed as of that date.

9.6 There were two (2) vendor invoices that were inappropriately altered by Trevore Roberts.

PICCS General Maintenance (vendor # 9217)
Invoice Number PCCS103; $3,750.00
Trevor Roberts altered the invoice date.

S. Forbes Contract Services (vendor# 2099)
Invoice Number 032019(A); $414.00
Trevor Roberts altered the invoice number.

9.7 The filter changing program was ceased by the NPO Division Head, since there is no process in place for WSC to actually verify that the filters were in fact being changed by the contracted vendors. The large volume usage of Contractors to change filters was ceased by the NPO Division Head. However, there was a limited use of Contractors to assist with critical works.

9.8 There is an excessive amount of Filter Cartridges; 11,521 at New Providence Stores and 2,400 stored at NPO (Distribution Maintenance Storage Room and Construction Storage Room).

9.9 There are inadequate Internal Controls for filter cartridges Storage at NPO.

9.10 Trevor Roberts carried filters in his WSC issued vehicle and continued to change filters for WSC's customer after being transferred from Distribution Maintenance.

9.11 Trevor Roberts have a personal affiliation with Shalom Development Company (Kimley Ferguson – vendor#9043).

IC&C identified a signature identical to Trevor Roberts' signature on two cheques (numbers 215971 and 2155972) for the vendor Shalom Development Company.

- Cheque No. 215971; dated 4/20/2020 in the amount of $3,750.00
- Cheque No. 215972; dated 4/20/2020 in the amount of 7,500.00

A signature identical to Trevor Roberts' signature signed as the collector of the two (2) named cheques above for this vendor.

Kimley Ferguson, owner of Shalom Development Company, told IC&C that she has a personal affiliation with Trevor Roberts and his wife Barbara Roberts. She also stated that she receives $500.00 every time she cash a WSC cheque (for works invoiced). However, Kimley Ferguson alleges that she gives the remainder of the funds to Trevor Roberts.

On July 12th, 2019, Kimley Ferguson deposited $5,543.50 to a Commonwealth Bank account in the name of Invictus Trading on July 12th, 2019. (See Figure 20 – Deposit Receipt). She said that this account was provided to her by Trevor Roberts, and she said this is his bank account.

Kimley Ferguson sent a photograph of this Commonwealth Bank deposit receipt to Trevor Roberts cellphone number via WhatsApp on July 12th, 2019. Mr. Roberts response upon receiving the receipt was "Thank you so much. Have a blessed and prosperous weekend". (See Figure 21).

9.12 Trevor Roberts has a personal affiliation with the vendor, Newann Development Company (vendor# 5997).

The postal Address and Street location indicated on the invoice (to be processed for payment) provided to the Corporation by the vendor and the Postal Address and Street location presented to the Corporation's Human Resources Department by Trevor Roberts (as his address) are the identical.

9.13 Trevor Roberts has a personal affiliation with the vendor, RGM Services (vendor# 9028).

The Street Address (inclusive of building number) is the same for both Trevor Roberts and vendor, RGM Services. The street address indicated on the Business Licence for RGM Services provided to the Corporation by the vendor and Street Address presented to the Corporation's Human Resources Department by Trevor Roberts (as his address) are the identical.

9.14 Trevor Roberts was untruthful during an interview conducted by IC&C on June 24th, 2020.

Trevor Roberts said that he did not have any person, financial or otherwise interest in any of the Water Quality contractors, Road Reinstatement neither Districted Metered Areas contractors hired by the Corporation.

9.15 There was insufficient distance between the vendors carrying out work for the Corporation and Trevor Roberts (manager acting on behalf of WSC). There is an apparent conflict of interest, since he was the manager responsible for managing and approving the works carried out by those vendors and also had personal affiliations with the vendors.

...

9.18 There is no Standard Operation Procedure for Valve Box Raising.

Without policies and procedures in place there is inadequate accountability.

9.19 There is a lack of knowledge of job/department responsibilities by management.

Based on interviews conducted with Department Heads, they are generally unclear as to some of the tasks in which they are responsible for.

There was an email sent to NPO's Division Head by Bradley Flowers on June 8th, 2020 stating that he wants to go over and find out the responsibilities of the Department, given that he was recently placed in responsible charge of the road reinstatement works.

Trevor Roberts was transferred to Road Reinstatement, a newly formed department, however neither him nor the Department Head (Bradley Flowers) were clear as to all of the job functions of Road Reinstatement.

Kimley Ferguson

(a) Witness summary

73 Kimley Fergsiuon did not sign a witness statement in this matter. The Defendant signed a witness summary for her. Prior to her taking the stand, Mr. Keod Smith challenged her right to be called and to give evidence. I heard submissions on the issue and exercised my discretion to allow her to be called as a witness. I promised to set out my reasons, which I now do before setting out her evidence.

74 In considering the application, I note that Part 29.6 of the CPR addresses the filing of witness summaries. That Part provides:

29.6 Witness summaries.

(1) A party who is required to provide and is not able to obtain a witness statement may serve a witness summary instead.

(2) The party who serves a witness summary must certify on the witness summary the reason why a witness statement could not be obtained.

(3) A "witness summary" is a summary of the —

(a) evidence, so far as is known, which would otherwise be included in a witness statement; or

(b) matters about which the party serving the witness summary proposes to question the witness, if the evidence is not known.

> **(4) Unless the Court orders otherwise, a witness summary must include the name and address of the intended witness or other sufficient means of identifying the intended witness.**
> **(5) A witness summary must be served within the period in which a witness statement would have had to be served.**
> **(6) Where a party provides a witness summary, so far as practicable, rules 29.4, 29.7, 29.8 and 29.9 apply to the witness summary.**

75 The Witness Summary of Kimley Ferguson was filed on 26 April 2026, and it sets out the general evidence, in some great detail, that the witness would likely give if called at the trial. It however was absent a reason why a witness statement could not be filed. The complaint by the Claimant was that the absence of the reasons for not filing a witness statement rendered the summary fundamentally defective. He argued that the word "must" in Part 39.6(2) was mandatory. Counsel for the Defendant agreed that the reasons were absent the filed witness summary.

76 Part 29.8 of the CPR provides the Court with the discretion to allow the witness to give testimony. Part 29.8 is set out below:

> **29.8 Witness to give evidence unless Court otherwise orders.**
> **(1) <u>Unless the Court orders otherwise</u>, a party must call a witness to give evidence where that party —**
> **(a) has served a witness statement or summary; and**
> **(b) wishes to rely on the evidence of that witness.**
> **(2) If a party —**
> **(a) has served a witness statement or summary; and**
> **(b) does not intend to call that witness at the trial,**
> **that party must give notice to that effect to the other parties not less than twenty-eight days before the trial.**

77 There is no issue raised by Mr. Keod Smith that the evidence that Kimley Ferguson will give at the trial is irrelevant to the issues raised in the subject matter of the action. I am satisfied that the evidence set out in the witness summary is both material and relevant to the issues to be determined at the trial of the matter. In my view, the issue of relevance, was sufficient for me to exercise my discretion to allow the witness summary and for the Defendant to call Kimley Ferguson. I also arrived at this decision because the witness summary was served within the time specified in the Case Management Order and on this premise, I did not deem it essential or warranted for a relief from sanctions application to be required.

78 I also had regard to the observations made by Wardy J in **Otuo v Watch Tower Bible and Tract Society of Britain; Otuo v Morley and another [2019] EWHC 346 (QB)**, which I set out below:

Permission to serve summaries

20. This aspect of the application requires a review, in relation to each proposed witness, of four issues: (1) the threshold question of whether Mr Otuo has shown an inability to obtain a witness statement; subject to that (2) the extent to which the witness is likely to be able to give relevant evidence; (3) the compatibility with the overriding objective of permitting Mr Otuo to lead evidence from the witness in question on the topics he has specified; and (4) the adequacy of the content of the summary.

21. The second and third of these considerations loom large in this case. First, the defendants' position is that all of the proposed evidence is irrelevant. Secondly because, as will be evident already, the descriptions of the topics to be the subject of questioning is very general and, as will appear, Mr Otuo has not obtained any form of proof of evidence from any of the proposed witnesses, many of whom he knows to be hostile to him personally, and to his claims in these actions. In several instances he, and the Court, have every reason to believe that the witness's evidence on the topics identified in Mr Otuo's summary would be adverse to Mr Otuo's case.

22. Outside the bounds of fiction, it is rare that a party will choose to call a witness "blind", without first obtaining a statement or proof of evidence, or some clear indication that the witness would give evidence favourable to the case of the party calling the witness. That is because it is rare that a party will be well-advised to do this at all, given the strong and fundamental rule that a party is not normally entitled to cross-examine or seek to discredit his own witness: *The Filiatra Legacy* [1991] 2 Lloyds Rep 337, 361 (CA). A party who puts in a witness statement is normally bound by its content. A party calling a witness, who can only ask a non-leading question, is bound by the answer. A vivid example of the practical impact of these rules in the defamation context is provided by *McPhilemy v Times Newspapers Ltd (No 2)* [2000] EMLR 575 (CA). In my judgment, these points are to be borne in mind when exercising the discretion at play on this application, particularly given Mr Otuo's status as a litigant in person. It may be a proper exercise of discretion to refuse permission to pursue a course which is liable to take up time on matters which may be peripheral at best and/or to do his case more harm than good.

> **23. I should say a word or two about the fourth consideration. What I mean by adequacy is two things. First, whether the summary satisfies the requirements of CPR 32.9(2)(a), by containing the evidence which the claimant knows and which would otherwise be contained in a witness statement. Secondly whether it is fair in all the circumstances to confront the defendants with a summary of the kind in question. This is a discretionary process, because the Court is always required to exercise its powers in accordance with the overriding objective, and is entitled to exclude relevant evidence from its consideration.**

79 I also deem that the failure to obtain the reasons may amount to a lack of 'rigour' by the Defendant to say why a witness statement could not be obtained. However, as in **Oliver Morley T/A Morley Estates v The Royal Bank of Scotland Plc [2019] EWHC 2865 (Ch)** – I deem a degree of reality is necessary to explain why a witness statement could ordinarily not be readily obtained. I set out below the statements made by Mr. Justice Kerr:

> **107. My reasoning in conclusions on this second application are as follows. I consider, first, the issue of inability to obtain statements from the witnesses. I bear in mind the useful guidance in Warby J's judgment in the *Otuo* case. I also agree with Phillips J, as he still is (just), who said in *Scarlett v. Grace* that the requirement to show inability should be applied with a degree of rigour. Normally that will, of course, require the party seeking to rely on a summary to have asked the witness whether she or he is prepared to provide a statement.**
>
> **108. I find it very surprising that the claimant's lawyers took the risk of not asking the witnesses for statements, but the requirement to show inability to obtain a statement should not be used to allow the parties to play games with each other, the witnesses concerned or the court. A degree of reality as well as a degree of rigour is called for.**
>
> **109. The wording of the rule does not refer to a "refusal" to provide a statement. Inability to obtain one can arise for other reasons, such as illness, ignorance of the witness's whereabouts, absence from the jurisdiction, confidentiality obligations, and so forth.**
>
> **110. On the plain wording of the rule, CPR 32.9(1)(a), and applying ordinary principles of causation, a person is, in my judgment, "unable to obtain" a statement if the court is**

satisfied on the balance of probabilities that had a request been made to the witnesses to provide a statement the request would have been turned down.

80 The overriding objective set out in CPR Part 1 requires the Court to consider all of the circumstances in deciding whether the objective of promoting a culture of efficiently conducting litigation outweighs the other matters relative to a fair trial. In my judgment these must include the effect that the refusal of the application may have on the ability to the conduct a fair trial as well as the relative weight to be given to 'strict-rule' objections set out in the CPR.

81 I also found that a relief from sanction application was not necessary in the circumstances. In this regard I rely on the statements made by the Privy Council in **The Attorney General v Keron Matthews [2011 UKPC 38]**. The Privy Council held that a relief from sanctions application was not required for a failure to enter a defence before the expiration of the period in the Rules.

82 It was for these reasons that I exercised my discretion to allow the Defendant to call Kimley Ferguson and to rely on the witness summary. I also granted the Claimant's request to be afforded a reasonable period to prepare for her evidence.

83 I did not entertain an application that the Defendant attempted to make on his feet during the trial to file a witness statement by Kimley Ferguson. I did not think that it was necessary or a prudent course in light of me allowing the witness summary to stand.

(b) The evidence of Kimley Ferguson

84 Kimley Feguson gave viva voce evidence and made certain startling statements, which are materially opposite the evidence of the Claimant.

85 Ms. Ferguson shared the relationship between her and the Claimant which started when she was introduced to a business proposal by the Claimant's wife. At that time, the Claimant's wife and Ms. Ferguson were coworkers at a bank in The Bahamas. Ms. Ferguson stated that she received a call from the Claimant around 2018 and they spoke about a business proposal and he asked her if she can trust him. That led to the start of Shalom Development, which the Claimant took steps to incorporate and obtain its business licence. I set out below some aspects of her testimony:

Q: Can you tell the court ma'am, if you ever became involved with Mr. Roberts, if you ever became involved with in business with Mr. Roberts and can you explain that to the court please?

A: Yes.

Mr. Robert's wife reached out to me sometime in the early 2018. She knew I always wanted to be an entrepreneur, and she said that her husband had a business venture she'd think I would be interested in and to wait for a call from him.

Q: Did that call ever come and can you tell the court about that call?

A: Yes, Sir.

Roberts started off by explaining the same, his wife said. Hey, I know you did business administration and you'd like to be an entrepreneur.
I have a business.
Position for you.

Q: And did, ma'am, anything happen as a result of these discussions or this conversation that you just told the court about?
A: Yes, a company was form and set up in the name of Shalom Development Company.

Q: And how did that company come to be established or set up, as you said?

A: Mr. Roberts instructed me to provide him with some personal documents, including identification, in order to facilitate the set up.

Q: And ma'am, once that company was set up, can you tell the court what role did you play, if any?

A: I did not control the operation of the business. I just followed instructions given to me from Mr. Roberts.

Q: And can you, can you tell the court ma'am, once the business Shalom begin to do business with Water and Sewage, what role did you play if any?

A: So I was instructed by Mr. Roberts to collect cheques that was issued by Water and Sewage, those are deposited to my account and then thereafter transfer or deliver the funds to him.
Q: Who would those checks have come from?

A: Those invoices were sent to me via e-mail by Mr. Roberts. And then I just forwarded to somebody to Water and Sewage. So there's a Water and Sewage link or website? Sorry that I forward them to Mr...

Q: OK. You mentioned something about invoices just now. Who made-up these invoices that you referred to?

A: Roberts created the invoice ....

86 Kimley Ferguson's evidence, which was clear and believable, was that she made a deposit to her bank account at Commonwealth Bank and placed the funds on the Claimant's account in his company's name Invictus Trading. She further indicated that an account was thereafter opened at Royal Bank of Canada in Shalom Development's name and when cheques were deposited, she would withdraw cash and pay the Claimant the bulk with her retaining the sum of $500.00. Ms. Ferguson shared that over the course of the arrangement with the Claimant, she may have received the total sum of $4,000.00.

87 Kimley Ferguson also confirmed that she was interviewed by Krystal Ferguson of the ICCD of the Corporation. She further identified her signature on the interview notes and confirmed that the contents were true. I set out below her evidence on the interviews:

Q: Did you ever participate, Maam, in any recorded interviews with anyone from the Water and Sewage Compliance department?

A: Yes, I could remember it like it was yesterday.

Krystal Ferguson. Yes, sir.

Q: And do you recall when and how many times this may have happened with Krystal Ferguson?

A: If not twice, at least three times. This is during covid time.

Q: Did you sign those record of interviews after you were interviewed?

A: Yes, sir.

Q: Was the information you provided in the interview is true and correct?

A: Yes, sir.

88 When she was showed the business licence of Shalom Development by Mr. Keod Smith during cross examination, she confirmed that it bore her address and that the Claimant made all of the arrangements to obtain the business licence, except that she signed the application form for the business licence.

> **Q:** OK, all right. Now take a moment. Look at this business license. Do you see Trevor Roberts his name on here anywhere?
>
> When this particular business license was made, you put it in for for approval, right?
>
> **A:** Mr. Roberts did all of the background work, did I not?
>
> **Q:** But, but did you not have to sign an application?
> Did you not have to sign an application for this license to be issued? Yes.
> Did you sign it? Yes.
> **A:** Yes, Sir.

89 Ms. Kimley Ferguson was also asked by Mr. Keod Smith if she was aware that the Claimant was arrested.

> **Q:** And you are aware, are you not, that Mr. Roberts was arrested in relation to a number of things that you would have talked with Water and Sewage about?
> **A:** You mean during the initial conversation with Mr. Gibson and another gentleman?
>
> I was not aware of any arrests, anything. No.
>
> **Q:** So you were not aware that Miss Roberts had been arrested?
>
> **A:** No Sir, no Sir.

90 Mr. Keod Smith, during cross examination, asked several questions around whether there was a "vendetta" out to get the Claimant and whether she was exempt from criminal charges because of her cooperation. That exchange is set out below:

> **Q:** I put to you, Miss Ferguson, that the reason why you were not charged with any criminal offence in relation to your dealings with Mr. Roberts at Water and Sewage is because you were granted exemption from being charged by the people you spoke with at the General Manager of Water and Sewage.

A: No, Sir, there was never any conversation relative to me being granted anything.

91 Ms. Kimley Fergsuon's evidence was of great assistance in this matter, and I found her to be a credible witness.

<u>Issues for Determination</u>

92 The parties agree that the Court must address and decide on the following issues:

- (i) **Was the Claimant wrongfully or unfairly dismissed?**
- (ii) **Were there grounds for the Claimant's summary dismissal?**
- (iii) **Was the Claimant entitled to early retirement?**
- (iv) **Is the Claimant entitled to a pension from the Corporation?**

<u>Claimant's Submissions in summary</u>

93 The Claimant's Counsel, Mr. Keod Smith, argued in his Closing Submission that the reason stated in the termination letter of 2 October 2020 does not fall within the ambit of the summary dismissal provisions set out in sections 31 to 33 of the EA.

94 Mr. Smith challenged the witnesses that were called and highlighted the witnesses that were not called by the Corporation. I set out below his argument on this point.

> **From WSC's point of view, it would seem like those who would have been in supervisory positions to the Claimant or can have some impact of his continuing employment or dismissal, as the case may have been, relevant witnesses, were simply not called. Mr. Adrian Gibson, WSC Board's Executive Chairman at the time *("EC Gibson")*, Mr. Elwood Donaldson *("Mr. Donaldson")*, WSC's General Manager at the time, Mr. Robert Deal, WSC's Deputy General Manager at the time and its current General Manager *("DGM Deal")* and Mr. John Bowleg, WSC's Acting Divisional Head of IC&C at the time *("AGM Bowleg")*, were detailly spoken of by other witnesses called by WSC especially IC&C's investigator, Ms. Krystal Ferguson, who had some very telling things to say about them all touching and concerning the "reasonableness" of her said investigation. However, those executives were never called as witnesses by WSC to assist the Court in fully understanding WSC's case and the rights of the Claimant.**

95 In challenging the ICCD report, Mr. Smith heavily relied on the evidence of Terrance Antinio that "**before any decision could be taken by the Board of**

Directors in relation to the findings of IC&C, the Board would want to ensure that the Claimant and his representative, whether Union or lawyer, had the physical copy of the IC&C Report with sufficient time to review the same before responding one way or the other. This he said was considered by IC&C to have been the Claimant's constitutional right to so receive it as IC&C would have considered it the Claimant's constitutional right to being heard".

96 Mr. Smith also attacked the evidence of Krystal Ferguson suggested that "**she was being interfered with by upper management**". Mr. Smith also characterized Krystal Ferguson's evidence that she "**did not recommend termination of the Claimant, we say because none of what was uncovered warranted dismissal**".

97 As to the evidence of Kimley Ferguson, I set out the observation made by Mr. Smith in his written closing submissions:

> **76 Despite that Kimley Ferguson essentially was billed as a whistleblower, but none of what she had to say related to the facts in issue. It amounted to unverifiable evidence about alleged matters between her and Claimant. However, based on her own testimony she asserted that not only did she not know anything about the value box raising task she was engaged to do, it was third party subcontract who did the work for her and cover all of the related costs and expenses, inclusive of government related fees and taxes. She walked away with what amounted to a $500 pure profit for every contract amounting to about 10% thereof.**

98 In turning his attention to the law, Mr. Smith relied on **Omar Ferguson v Bahamasair Holdings Ltd SCCivApp No. 16 of 2016** that a claimant is entitled to bring an action in relation to the termination of his employment claiming both unfair and wrongful dismissal. In determining whether a dismissal is fair or unfair he quoted **Cystal Palace Casino v Yvette Ferguson IndTribApp No.116 of 2012**, the need to have regard to "…the substantial merits of the case".

99 Mr. Smith strenuously argued that there was no basis for summarily dismissing the Claimant because the supposed "…Vendor Payment Processing Irregularities…" did not fall within the ambit of sections 31-33 of the EA.

100 On the claim for pension entitlement, Mr. Smith relies on section 17 of the Second Schedule of the Water & Sewerage Corporation Act and the Pension Plan Booklet. He also argued that **Parry v Cleaver [1970] AC 1** established that contributory pensions are akin to private insurance; and that the Claimant is entitled to keep those benefits because they "paid for" them through previous deductions from their wages.

101 Mr. Smith also urged the Court to agree that the Claimant was entitled to special retirement as set out in the Pension Booklet. He argued that the Claimant "**had already qualified for "early retirement", having happened on the occasion of his 30th year of employment with WSC, 8 years prior to the date of his letter of 25th August 2020**" and therefore withholding the pension was a breach of contract.

102 Mr. Smith summed up his submissions by positing that the Court should rule in favour of the Claimant and find that he was unfairly and wrongfully dismissed "**having regard to the principles and guidance coming out of the Court of Appeal cases of <u>Omar Ferguson v Bahamasair</u> as well as <u>The Gaming Board of the Bahamas v. Kayla Ward et. al</u>. [SCCivApp No. 120 of 2024] (see paras. 47-52) which have been accepted and applied in the Supreme Court cases of <u>Bernard Cooper v The Island Hotel Limited</u> Claim No. 2016/Com/lab/00048 and <u>Shernal Bethell v Family Guardian Insurance Company Limited</u> (Claim No. 2029/COM/lab/00079)**".

<u>Defendant's Submissions in summary</u>

103 Mr. Dion Smith for the Corporation focused his submissions on the test set out in **British Home Stores Ltd. v Burchell [1978] IRLR 379**. He argued that the Corporation satisfied the test during the trial by showing that the Corporation showed that it had a reasonable belief that the Claimant engaged in misconduct and that an investigation into the matter was reasonable in all the circumstances. He also referred to the Court of Appeal's decision of **Princess Cays Limited v Thomas M. Moxey, IndTribApp No. 40 of 2025** highlighting the following:

> (a) the employer's decision need only fall within the range of reasonable responses open to a reasonable employer: ***Reilly v Sandwell Metropolitan Borough Council [2018] UKSC 16, adopted at Princess Cays***;
>
> (b) the purpose of an investigation is not to establish guilt but to determine whether reasonable grounds exist to support dismissal, and the investigation need not meet forensic or criminal standards: ***Sainsbury's Supermarkets Ltd v Hitt [2002] EWCA Civ 1588 and Amachree v Wandsworth BC [2010] 8 WLUK 119***, adopted at ***Princess Cays***; and
>
> (c)evidence is not to be discounted by reason only of its form: a tribunal or court errs in law where it fails to consider material, including hearsay or documentary material, merely because of the form it takes — such material is to be weighed for reliability, not excluded: ***Hovis Ltd v Louton (EA-2020-000973-LA),*** adopted at ***Princess Cays [48] (TAB 6).***

104 In discussing the internal investigation conducted by the IC&CD, Mr. Smith urged the Court to accept that the Claimant engaged in conduct fundamentally inconsistent with his duties as an employee and manager of the Corporation and that the investigation revealed the following: (i) evidence that the Claimant directed Ms. Kimley Ferguson to establish Shalom Development Company, (ii) that invoices submitted were prepared at his direction, (iii) that the first payment made by the Corporation to Shalom Development Company was deposited into Ms. Ferguson's Commonwealth Bank account, (iv) the monies were subsequently transferred into the Claimant's Invictus Trading account; (v) the Claimant altered vendor invoices; (vi) two vendors' addresses were identical to his and never disclosed, and (vii) that the Claimant approved invoices for payment which did not identify the locations of the alleged works and thereby prevented the Corporation from maintaining a proper audit trail capable of verifying that the works had in fact been completed. Mr. Smith further suggested that the evidence showed that vendors received more than $880,000 from the Corporation on invoices certified by Mr. Roberts, while each was connected to him by an undisclosed affiliation.

105 Mr. Smith challenged the suggested the investigation's findings were not disclosed to the Claimant. He posited that that the Claimant was provided with the investigation report, afforded the opportunity to respond, represented by both legal counsel and his union representative.

106 Mr. Smith said that the results of the investigation concluded that the Claimant's conduct was a fundamental breach of his contract of employment and was repugnant to the fundamental interests of the Corporation and thereby the Corporation lawfully terminated his employment by summary dismissal pursuant to section 31 of the Employment Act.

107 Mr. Smith also called into question the Claimant's credibility. He pointed to the answer given by Mr. Roberts when interviewed by the IC&CD when asked if he ever collected cheques on behalf of any of the water-quality contractors, and he answered "No, I didn't." During cross-examination he admitted that this was untrue: he had collected cheques for Shalom Development Company. His only explanation was that his interview answer "was a mistake." In answer to whether he had any personal or financial interest in any of the contractors, he answered that he did not. Mr. Smith suggested that the answer cannot be reconciled with the deposit made by Shalom Development Company into his Invictus Trading account and the direct oral evidence of Kimley Ferguson.

108 In relying on **Shakara Ellis v Restaurant (Bahamas) Limited d/b/a Kentucky Fried Chicken, IndTribApp No. 118 of 2024** Mr. Smith argued that "**the parallel with the present case is exact. Mr. Roberts, like Ms. Ellis, was afforded the findings against him and a fair opportunity to respond through his counsel and his union representative, and, like Ms. Ellis, he elected not to take it. An opportunity to be heard that is offered and declined satisfies whatever**

requirement of procedural fairness applies; the employer is not disabled from dismissing by the employee's own choice to remain silent".

109 Mr. Smith relied on **Water and Sewerage Corporation v Ednel Rolle, IndTribApp No. 94 of 2023** to argue that the Industrial Agreement having expired and no new agreement having been consummated, the benefits it conferred were, by Article 72.03, either expressly or impliedly incorporated into the employee's individual signed contract. In this regard he relied on Article 66: the express prohibition on conflict of interest.

110 Turning to the retirement request, Mr. Smith argued that the Court should reject the claim because the request did not comply with the applicable notice requirements and Mr. Roberts had not attained the normal retirement age of 60. He was aged 57, not yet 60, at the date of dismissal, which he confirmed in cross-examination.

111 On the pension issues, Mr. Smith relied on the evidence of Ms. Jennifer Smith that the Claimant had neither attained the normal retirement age nor complied with the procedural requirements governing retirement under the Pension Plan. His application for retirement did not take effect before his employment was terminated. He also argued that the Special Retirement provisions contained in Item (i)(B) of the Pension Plan Booklet contemplates an employee retiring from service. The Claimant did not retire. His employment came to an end by summary dismissal following the Defendant's investigation into serious misconduct. Mr. Smith summed up his arguments by saying the following:

> **The pension scheme established by the Defendant was designed to reward long and faithful service to the Corporation. It was never intended to compel the Corporation to continue rewarding an employee whom the Court finds secretly profited from contracts which he himself approved, supervised and certified. The Claimant's construction would convert a scheme intended to reward fidelity into one that protects disloyalty. Neither the language of section 17, the Pension Plan, nor the common law supports such an extraordinary result.**

112 He asked the Court to reject the Claimant's claim in its entirety because the dismissal was lawful.

<u>The Law: Dismissal in The Bahamas</u>

113 I do not think it is vital to provide an exhaustive tour through the case law of The Bahamas as it relates to wrongful or unfair dismissal. The jurisprudence is now well developed and there are multiple decisions of the Courts, both first instance and appellate, which adequately sets out the law and legal principles. I will seek to

highlight a few of them for the purposes of this Ruling, which assisted in my decision.

114 In **Ervin Dean v Bahamas Power & Light [2024] UKPC 20**, the Privy Council identified two possible causes of action available to an employee whose employment was terminated in The Bahamas, namely, wrongful dismissal and unfair dismissal. Lady Simler, writing for the Board, provided the distinction between wrongful dismissal and unfair dismissal. I set out below some instructive paragraphs of that decision:

> **1. An individual whose employment is terminated by their employer has two possible causes of action in The Bahamas: wrongful dismissal and unfair dismissal. The first depends on breach of contract. The second is a statutory right available to all employees in The Bahamas to be treated fairly upon dismissal, both as a matter of substance and procedure, pursuant to section 34 of the Employment Act 2001 ("the EA 2001").**
>
> ...
>
> **22. This provision makes clear that the EA 2001 sets a floor rather than a ceiling in relation to contractual and other rights afforded to employees. It was the foundation for the conclusion below that more generous contractual rights than those prescribed by the EA 2001 can be agreed by the parties to a contract and where they are provided for by the contract, they prevail over the statutory minimum notice periods prescribed by the Act.**
>
> **25. Although not strictly relevant to this appeal, it is also convenient to record that all employees in The Bahamas have the right not to be unfairly dismissed: section 34 of the EA 2001. By section 35, the question whether the dismissal of the employee is fair or unfair is determined "in accordance with the substantial merits of the case". Although there are certain proscribed reasons for dismissal set out at sections 36 to 40 of the EA 2001 (including trade union membership and activities, pregnancy, and industrial action), it is now settled law in The Bahamas that these provisions do not limit the scope of protection afforded by section 34 to dismissal on these grounds. Rather, unfair dismissal complaints can be made no matter what reason is relied on by the employer.**

26. A successful complaint of unfair dismissal gives rise to the possibility of orders for reinstatement or re-engagement, or compensation calculated in accordance with sections 46 to 48 of the EA 2001. These provisions provide for a basic award that depends on the number of years' service the employee had; and a compensatory award of "such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer". However, there are limits on the amount of compensation that can be awarded for unfair dismissal: in the case of an employee holding a managerial position the total award (basic and compensatory) cannot exceed twenty-four months' pay (section 48(1)). Section 48(2) makes clear that any award that would otherwise be made must take account of payments made by the employer in relation to dismissal (for example, any payment in lieu of notice) before applying the limits set out by section 48.

32. There are no hard and fast rules about the assessment of reasonable notice to terminate employment in any particular case. The common law concept of reasonable notice seeks to strike a balance between the interests of employer and employee in this context. When determining what is a reasonable period of notice in a particular case, the factors and circumstances liable to affect an employee's ability to find another comparable position are relevant but not determinative. Age and length of service are generally regarded as factors in the assessment, but as the Industrial Agreement shows, they too are not determinative. Indeed article 14(2) with which the Board is concerned, specifies a series of factors, "status, loyalty, education and training, health and chances of alternative employment" but without giving any factor priority over other factors.

41. Wrongful dismissal and unfair dismissal are two distinct and separate causes of action though they are sometimes confused. Wrongful dismissal is a common law contractual claim that arises where the employer has breached an express or implied term of the employee's contract, while unfair dismissal is a statutory claim arising under legislation. By contrast with statutory unfair dismissal, wrongful dismissal is not concerned with the general fairness or unfairness of the dismissal. The only relevant

consideration in an action for wrongful dismissal is the employer's contractual obligations. Unless otherwise agreed, the employer has a right to terminate the contract by giving the employee reasonable notice of termination (or an adequate contractual payment in lieu where the contract so provides). The remedy for such a breach of contract is an award of damages based on the period of notice which should have been given.

42. Moreover, at common law, unless otherwise agreed an employer can terminate an employee's contract by notice for a good reason, a bad reason, or no reason at all: see *Ridge v Baldwin* [1964] AC 40, 65 (per Lord Reid). (See also *Labour Law in The Bahamas* by Emmanuel Enebeli Osadebay, Justice of Appeal of the Court of Appeal of The Bahamas, 2nd Edn (2005) at p119 which confirms that this is the position in The Bahamas). Provided proper contractual notice to terminate the employment contract is given, there will be no breach of contract; and only where the employer purports to dismiss without notice (for gross misconduct) will the reason for termination be relevant. The fact that an employee may be dismissed without cause does not, however, cut across the statutory right not to be unfairly dismissed: see sections 34 to 48 of the EA 2001.

52. Mr Gilbert's dismissal was for cause. In his case, the equivalent provisions of article 15 (concerning discipline and dismissal for cause) of the Industrial Agreement should have been applied. The case seems to have been dealt with, however, as one of termination by giving reasonable notice. It appears to the Board that the Court of Appeal may have overlooked the fact that dismissal for cause and dismissal by giving reasonable notice are two distinct and alternative bases for terminating the employment contract.

115 In **Nicholas Simmons v Johnson Brothers Ltd. (d/b/a Little Switzerland) 2018/CLE/01417**, Charles J (as she then was) set out the law and principles relating to wrongful dismissal and unfair dismissal. At paragraphs 19 – 28 Charles J made the following statements, which I helpfully adopt:

[19] Wrongful dismissal and remedies for wrongful dismissal exist both at common law and under the EA. They exist alongside each other and employees can choose whether they wish to claim under the common law or under the Act.

[20] A helpful meaning of wrongful dismissal at common law is provided by the learned authors of Halsbury's Laws of England, 4th ed. Vol. 16 at para. 451 wherein it was stated that:

"A wrongful dismissal is a dismissal in breach of the relevant provision in the contract of employment relating to the expiration of the term for which the employee is engaged. To entitle the employee to sue for damages, two conditions must normally be fulfilled: *Hopkins v Wanostrocht* (1861) 2 F & F 368, namely:

(1) the employee must have been engaged for a fixed period, or for a period terminable by notice, and dismissed either before the expiration of that fixed period or without the requisite notice, as the case may be (*Williams v Byrne (1837) 7 Ad & E 1117);* and

(2) his dismissal must have been without sufficient cause to permit his employer to dismiss him summarily: *Baillie v Kell (1838) 4 Bing NC 638."*

[21] The following circumstances may give rise to an action for wrongful dismissal at common law: (i) dismissal without notice or pay in lieu thereof, (ii) purported summary dismissal for cause where no cause has been proven, (iii) dismissal in breach of disciplinary procedure under the contract and (iv) purported dismissal for a reason which is not provided for in the restricted category of reasons in the contract.

[22] Wrongful dismissal under the EA occurs when the employer fails to give the employee adequate notice (or pay in lieu thereof) in breach of the provisions for notice in the EA or purported summary dismissal for cause where no cause has been proven.

[23] Accordingly, the principles that can be distilled with respect to summary dismissal being wrongful dismissal are as follows: (1) purported summary dismissal not in strict accordance with the provisions of summary dismissal in the EA is wrongful dismissal (2) In determining whether the employer had lawfully summarily dismissed the employee, the question is whether, in all the circumstances, the employer can prove that his belief of the employee's misconduct is honestly and reasonably held. Unless it is warranted in the circumstances, a reasonable investigation is required to demonstrate an honest and reasonable belief of guilt.

[24] Section 34 of the EA provides that every employee shall have a right not to be unfairly dismissed by his employer, as provided in sections 35 to 40.

[25] Section 35 states that "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".

[26] The case of **B.M.P. Limited d/b/a Crystal Palace Casino v Yvette Ferguson** IndTribApp No. 116 of 2012 gives a broad overview to what may constitute unfair dismissal. The Court of Appeal held, among other things, that (i) the EA does not contain an exhaustive list of instances of what may could considered to be unfair dismissal; (ii) sections 35 to 40 contain what may be regarded as "statutory unfair dismissal" and section 35 provides for the determination of the question whether the dismissal is fair or unfair.

[27] At para 36 of the judgment, Conteh JA stated:

"The expression "unfair dismissal" itself is not defined in the Act. What is provides for, in our view, is to itemize instances of what can be called "statutory unfair dismissal" such as provided for in section 36 (dealing with dismissal for trade union membership and activities of an employee); section 37 (dealing with dismissal on ground of redundancy); and section 40 (dealing with dismissal in connection with lock-out, strike or other industrial action).

[28] At page 12, para 39, the Learned Justice of Appeal continued:

"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. <u>And this question shall be determined in accordance with the substantial merits of the case.</u> All sections 36 to 40 do is recognize instances which the Legislature deemed to be unfair cases for dismissal, and s. 34 provides that every employee has the right not to be unfairly dismissed as provided for in those sections. We do not think it was intended to foreclose the categories of unfair dismissal. Given the heterogeneity of circumstances in the workplace that could lead to the dismissal of an employee, it would, we think, be rash to spell out in advance, by

legislation, what is or is not unfair dismissal of an employee. Can it seriously be said that an employee who is dismissed by his employer for no reason other than his or her appearance will not find a claim for unfair dismissal because that instance is not listed in sections 36, 37, 38, and 40 of the Act". [Emphasis added]

116 An employee may resort to the common law in advancing a claim for wrongful dismissal where his contract of employment, arrangement or custom affords him greater rights or better benefits than those set out in the EA 2001. Section 4 provides –

> **4. The provisions of this Act shall have effect notwithstanding any other law and notwithstanding any contract of employment, arrangement or custom (being a contract of employment, arrangement or custom made or in being whether before or after the commencement of this Act) <u>so, however, that nothing in this Act shall be construed as limiting or restricting</u> –**
>
> **(a) <u>any greater rights or better benefits of any employee under any other law and notwithstanding any contract of employment, arrangement or custom</u>;**
>
> **(b) the right of any employee or trade union to negotiate on behalf of any such employee, any greater rights or better benefits; or**
>
> **(c) an employer from conferring upon any employee rights or benefits, that are more favourable to an employee than the rights or benefits conferred by this Act.**

117 Sections 4 and 29 of the EA 2001 are frequently interpreted by the courts in The Bahamas. In **<u>Gail Smith v Snack Food Wholesale Limited SCCivApp. Side No. 45/2007</u>**, Longley JA (as he then was), at paragraphs 7 and 8, addressed the interrelationship between sections 4 and 29 of the Act. He observed as follows –

> **7. What the law contemplates is that if benefits under the Act have been paid, the employee should have resort to his common law claim only if that provides greater benefits. Otherwise, it would be a waste of time and costs.**
>
> **8. In this regard, it seems to me that consideration may well have to be given to the operation of the doctrine of election when an employee has received his full benefits under the Act. He should only be permitted to pursue a claim at**

common law for greater rights and better benefit after he has been put to an election to abandon the compensation paid under the Act, otherwise the purpose for which the Act was passed – to make a ready inexpensive formula available for calculating benefits – would be lost in the mush of litigation.

118 Section 29 provides for the minimum notice period for an employee. The portion related to managerial employees provides –

> **... (c) where the employee holds a supervisory or managerial position –**
>
> **(i) one month's notice or one month's basic pay in lieu of notice; and**
>
> **(ii) one month's basic pay (or a part thereof on a *pro rata* basis) for each year up to forty-eight weeks.**

119 Sections 34 and 35 of the EA 2001 address unfair dismissal. The sections provide as follows:

> **"34. Every employee has 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."**

120 Sections 36 to 40 of the EA set out specific situations that are deemed instances of "statutory" unfair dismissal. They relate to: (i) trade union membership; (ii) redundancy; (iii) pregnancy; (iv) replacement workers; and (v) industrial action.

121 The instances in which unfair dismissal may arise are not limited to the statutory categories, as recognized by the Court of Appeal in **Omar Ferguson, Cartwright v US Airways [2016] 1 BHS J. No. 96**. The Court indicated that the effect of section 34 is to create an implied term in every employment contract that an employer's right to dismiss an employee must be "*exercised fairly and in good faith*", and that at the minimum, the employer's duty under section 34 required the tenets of natural justice, in particular the *audi alteram partem* rule, to be applied.

122 Section 35 of the EA requires the Court to determine a claim for unfair dismissal in accordance with the "**substantial merits of the case**". This requires a factual inquiry based on all the circumstances of the case (**Omar Ferguson, supra** and **Cartwright v US Airways [2016] 1 BHS J. No. 96**). In **Cartwright**, Isaacs, JA, stated that the duty of the judge in determining a matter in accordance with the

substantial merits of the case, was to "*look at the case in the round, at all the circumstances of the case, and arrive at a decision based on the substantive merits of the case.*"

123 In **Leon Cooper v Grand Bahama Power Company Limited SCCivApp No. 178 of 2017** the issue on appeal was whether section 29 of the Act makes provision for termination without cause and can be applied to an employment contract/agreement that makes no provision for termination without cause. At paragraphs 28 – 33 of that decision, Longley P, writing for the Court of Appeal, adjudged –

> **28. To my mind, for the right or benefit conferred by the individual contract of employment to oust the application of the right or benefit conferred by the Employment Act or to take precedence over it, the right or benefit must be "more favourable to an employee than the rights or benefits conferred by this Act."**
>
> **29. The rights or benefits are not at large but must directly correlate with a right or benefit conferred by the Act. So, in this case, for the right or benefit conferred by the individual contract of employment to be more favourable to an employee than the rights or benefits conferred by this Act it must be a right or benefit conferred by the Act which is found in the individual contract of employment and which is greater or better in degree. So far as the right and benefit conferred by section 29 is concerned, the individual contract of employment must contain such a provision which makes better and or greater provision for the employee than section 29 of the Employment Act.**
>
> **30. In my judgment, the individual contract of employment of the appellant does not contain any such provision primarily because it does not address the issue of termination without cause with an accompanying compensation package and the rights and benefits to which Mr. Ferguson refers are not relevant to the issue.**
>
> **31. Mr. Ferguson further argues that a contract which provides that the employee cannot be terminated except for cause is a greater right or better benefit than section 29. I do not agree for the reason given above.**
>
> **32. It seems to me, therefore, that as a matter of construction or interpretation, when sections 4 and 29 of the Employment Act are read together the only possible construction or**

interpretation is that Parliament must have intended for the Act to have an overarching application to employment contracts unless greater rights or better benefits have been conferred by individual contracts.

33. Section 29 provides a minimum code to facilitate such a termination without cause. Once an employer complies with that provision to bring an employment to an end there is no unfair dismissal claim that would lie, unless the employee has better terms under his contract of employment for termination without cause. This is not such a case.

124 An employer has a right at common law and under the EA Act to summarily dismiss an employee for cause. Sections 31 to 33 of the Act are instructive:

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 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.

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.

125 In **<u>Princess Cays Limited v Thomas Moxey IndTribApp.no. 40 of 2025</u>**, the Court of Appeal in a Judgment handed down by Fraser JA on 3 March 2026 made the following instructive statements relating to a claim for summary dismissal. I feel compelled to highlight several paragraphs of the Judgment, which are of material assistance in this matter:

> **35 In this context, section 32 underscores that the alleged misconduct must be of sufficient seriousness to justify summary dismissal. As noted in Chitty on Contracts (Vol. 2, 29th Edn., para. 39-176): "... the employee's conduct need not be dishonest, since it is sufficient if it is 'conduct of such a grave and weighty character as to amount to a breach of the confidential relationship between employer and employee.'"**
>
> **...**
>
> **37. Section 33 codifies the dual requirements of honest belief and reasonable investigation. What constitutes a reasonable investigation is fact-sensitive, depending on the circumstances of the case. The test for a reasonable investigation has long been settled in authority. In British Home Stores Ltd v. Burchell [1978] IRLR 379, Arnold J articulated:**
>
> **" ... First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. ..."**
>
> **38. These principles were affirmed by this Court (differently constituted) in Island Hotel Company Ltd v. Shikera Isaacs-Sawyer IndTribApp. No. 88 of 2018, where it was reiterated that the statutory burden rests squarely upon the employer to demonstrate compliance with section 33 of the Employment Act.**
>
> **39. In Reilly v. Sandwell Metropolitan Borough Council [2018] UKSC 16, the UK Supreme Court recognised the**

continued application of the Burchell approach, while emphasising that the tribunal's task is to determine whether the employer's decision fell within the range of reasonable responses open to it.

40. As explained in Sainsbury's Supermarkets Ltd v. Hitt [2002] EWCA Civ 1588, the purpose of an investigation is not to establish guilt but to determine whether reasonable grounds exist to support dismissal for gross misconduct. Similarly, in Amachree v. Wandsworth BC [2010] 8 WLUK 119, a tribunal held that an investigation need not meet forensic or criminal standards, but must nonetheless enable the employer to form a reasonable belief. Finally, in Hussain v. Elonex plc [1999] IRLR 420, the English Court of Appeal confirmed that there is no universal requirement that employees be shown copies of witness statements; the inquiry is what is fair and reasonable in each case.

44. Section 33 does not oblige an employer to anticipate and disprove explanations not raised during the investigation, nor does it impose a universal requirement that direct or written statements be obtained from every potentially relevant witness. The adequacy of the investigation must be assessed by reference to the circumstances confronting the employer at the time the decision was made, and without the benefit of hindsight.

45. This approach is consistent with the guidance of Isaacs JA in Rubis Bahamas Limited v. Mario McPhee IndTribApp. No. 85 of 2021 where, in addressing the proper approach to a reasonable investigation, it was stated: "96. ... It was necessary for the VP to focus on the misconduct alleged and the evidence of such misconduct that was in the possession of the appellant at the time of the respondent's dismissal ..." [Emphasis added]

61. The statutory inquiry under section 33 of the Employment Act is directed to the employer's belief at the time of dismissal. The Tribunal is not required to determine whether the employee in fact committed the misconduct, nor whether, on a balance of probabilities, he acted with permission. Its task is to determine whether the employer honestly and reasonably believed that he acted without authorisation, following a reasonable investigation, on the material then available.

126 In **Shakara Ellis v Restaurant (Bahamas) Limited d/b/a Kentucky Fried Chicken – IndTrib App No. 118 of 2024**, Chief Justice Sir Ian Winder sitting in the Court of Appeal made the following statements in respect of claim for unfair dismissal:

> **27. In the decision of this Court (differently constituted) in the case of Bahamasair Holdings Ltd. v. Omar Ferguson SCCivApp No. 16 of 2016, Crane-Scott JA discusses how the Court ought to treat with a challenge to the fairness of the investigative process. At paragraphs 21 to 26, Crane-Scott, JA stated as follows:**
>
> **"21. In The Bahamas, unfair dismissal claims are now routinely adjudicated either in the Supreme Court or alternatively, before the Industrial Tribunal through the trade dispute procedure of the Industrial Relations Act, Ch. 321. The claims for unfair dismissal are made irrespective of whether the dismissal falls within any of the statutory situations spelled out in sections 36, 37, 38 and 40 of the Employment Act; or arise in other circumstances.**
>
> **22. A review of a few of the unfair dismissal decisions which have been decided in this jurisdiction will also confirm that where the claim is based on a dismissal which occurred in circumstances other than those spelled out in sections 36, 37, 38 and 40, the Supreme Court, or the Industrial Tribunal (as required by section 35 of the Act) have determined the question of the fairness or unfairness of the dismissal 'in accordance with the substantial merits of the case.' [See for example Cartwright v US Airways [2015] BHS J 80; Coleby v Lowes Pharmacy Ltd [2016] BHS J 15; Higgins v. Walkers Industries Ltd [2017] BHS J 79; and Burrows v. Ferry [2006] 3 BHS J No. 276]**
>
> **23. Cartwright involved a claim for unfair dismissal which was instituted in the Supreme Court and which was based on: a) the plaintiff's allegation that she had been denied an opportunity to respond to charges levelled against her; and b) her further claim that she had been dismissed following an investigation process which was unfair.**
>
> **24. As mandated by section 35 of the Act and in keeping with the guidance of the Court of Appeal in Crystal Palace (above), Winder J determined the question whether the plaintiff's dismissal was fair or unfair by examining the 'substantial merits of the case.' Following his factual**

inquiry, he dismissed the plaintiff's claim as having not been made out.

25. In reaching his decision to dismiss the claim, the learned judge conducted a meticulous review of the facts. He found, inter alia, that the history of the plaintiff's employment disclosed a tumultuous relationship with her employer and the existence of an inordinate number of disciplinary issues which had occurred in the months leading to her termination. After also considering the evidence of the various witnesses, the judge was satisfied that the plaintiff was at all times aware of the charges against her and further, that she had been given an opportunity to respond. Additionally, he found that the employer's Employee Manual contained a detailed but fair grievance procedure (including an internal appeals process) which the plaintiff was not only aware of, but had utilized efficiently during her tenure with the employer.'"

Analysis of the evidence and findings

Was the Claimant afforded an opportunity to make representations and knew of the charges/allegations?

127 I found the Claimant to be less than a frank and honest witness. It seems clear to me in light of the interview with the ICCD on 24 June 2020 and the contents of the suspension letter dated 26 August 2020 that he was fully aware of the investigation and knew that he was at the centre of the investigation by the Corporation.

128 I also accept that he was invited to two meetings; on 31 August 2020 and 29 September 2020. This is in accord with the evidence of Rosita Coleby-Adderley, and the minutes taken of the meetings. I accept the evidence of Rosita Coleby Adderley that she did not alter the minutes and they were a contemporaneous record of the discussions at the meetings.

129 The evidence of Rosita Coleby-Adderley as well as the minutes show that the Claimant attended the meetings on 31 August 2020 and 29 September 2020 with his Counsel, Sharmie Farrington-Austin. I too am satisfied that at the meeting on 31 August 2020 at the Corporation's Board Room the Claimant was provided with the audit report as well as copies were provided to the Claimant's Counsel and union representative at that meeting. It is clear from the minutes of that meeting that Krystal Ferguson read from the report "**starting at page 26…**". The minutes also refers to several interventions by the Claimant's Counsel, Sharmie Farrington-Austin. She is recorded as saying that "**her client will respond to the findings in writing as is mandated by the law/Industrial Agreement**". Mrs. Farrington-Austin is quoted in the minutes as saying the following:

SFA – not mandated specifically but the facts were put in writing <u>so the client will respond in writing after Mr. Roberts has had an opportunity to fairly look at the document, whether agreed or not</u>, which is no consequence, but know that the courts will determine or not whether the proceedings were fair. ...

130 I accept the evidence of Rosita Coleby-Adderley that the Claimant and his Counsel, Sharmie Farrington-Austin, were given a copy of the report at the meeting on 31 August 2020. The evidence is clear, which I accept, that the Claimant did not respond to the findings of the report at that meeting and rightly sought time to consider the report and to send his response in writing. It appears in the evidence before me that the Claimant never sent in a response to the Corporation in respect of the audit report prior to his termination on 2 October 2020.

131 It is also clear and I do accept that the Claimant and his lawyer, Mrs. Farrington-Austin, also attended a second meeting on 29 September 2020 at the Corporation's Board Room. The minutes of that meeting taken by Mrs. Coleby-Adderley indicates that Mrs. Farrington-Austin confirmed to reading the report but suggesting that she did not have time to prepare for that meeting.

132 On the totality of the evidence before the Court, I accept and prefer the evidence of both Krystal Ferguson and Mrs. Rosita Coleby-Adderley that the Claimant was provided with a copy of the audit report at the meeting on 31 August 2020 and was provided with the opportunity thereafter to respond to the report. I also accept the evidence that the meeting on 29 September 2020 was set up in part for the Claimant to respond to the audit report.

133 It also sems to me that the period between 31 August 2020 and 29 September 2020 was adequate for the Claimant to address his mind to the contents of the audit report and the findings. He also had the benefit of Counsel and a union representative at the meeting in the person of Montgomery Miller, whom I note was not called to give evidence at the trial of this matter.

134 I am satisfied based on the evidence adduced at the trial that the Claimant was afforded a right to be heard and knew of the charges levied against him by the Corporation. The report prepared by the ICCD is comprehensive and sets out in a logical fashion the premise and basis of the conclusion.

135 In **Itau Bank & Trust Bahamas Limited v Avis Munroe IndTribApp. No. 33 of 2021** the Court of Appeal gave guidance as to what would constitute a breach of natural justice during an investigation. I set out below the following from the decision:

"37. The Court had occasion to consider the meaning of the phrase, "substantial merits of the case" in Cherelle Cartwright v U.S. Airways SCCivApp No. 130 of 2015. The brief facts were that the appellant had an interaction with a co-worker which resulted in an internal investigation and ultimately, in her immediate termination. She filed an action against the respondent for, inter alia, unfair dismissal as she claimed that the respondent had breached the rules of natural justice and had failed to carry out an adequate investigation of the complaint made against her. She had been terminated following an incident where she approached a co-worker in a loud and offensive manner; and her employer concluded that her conduct was unprofessional.
38. She alleged that two reports had been provided by eyewitnesses to the incident, but she was not supplied with them until after her termination and just before the trial. Although this specific complaint was not addressed frontally, as Winder, J. found that, "It could hardly be said that she was unaware of the allegations against her and not given an opportunity to meet them". The Court agreed with his view.
39. In relation to the term "the substantial merits of the case" the Court said at paragraph 37:
"37. What does the phrase "the substantial merits of the case" mean? At paragraph 26 of West v Percy Community Centre UKEAT/0101/15/RN, (Transcript), a case decided on 20 January 2016, Langstaff, J, speaking for the tribunal said, inter alia:
'[26] ...The question is whether what the employer thought had happened, in the circumstances in which the employer thought the conduct to have occurred, was or was not sufficient to justify the employer's actions so as to be held not unfair within s 98(4).'"
40. <u>Even if there has been a procedural misstep, that is not necessarily fatal so as to lead to a finding of unfair dismissal.</u> In Sillifant v. Powell Duffryn Timber Ltd [1983] IRLR 91 at 97, BrowneWilkinson J, said: "...
The only test of fairness of a dismissal is the reasonableness of the employer's decision to dismiss judged at the time at which the dismissal takes effect. <u>An industrial tribunal is not bound to hold that any procedural failure by the employer renders the dismissal unfair; it is one of the factors to be weighed by the Industrial Tribunal in deciding whether or not the dismissal was reasonable</u> within s. 57(3). <u>The weight to be attached to such procedural failure</u>

should depend upon the circumstances known to the employer at the time of dismissal not on the actual consequence of such failure. Thus in the case of a failure to give an opportunity to explain, except in the rare case where a reasonable employer could properly take the view on the facts known to him at the time of dismissal that no explanation or mitigation could alter his decision to dismiss, an Industrial Tribunal would be likely to hold that the lack of "equity" inherent in the failure would render the dismissal unfair..." (Emphasis added)

136 The Court of Appeal in **Central Bank of The Bahamas v Lorenzo Deveaux SCCivApp No. 143 of 2021** also addressed if the employee was aware of the allegations that led to his dismissal. After quoting from **Itau Bank & Trust Bahamas Limited** (supra) the then President, Sir Michael Barnett, said:

> **10. I simply cannot accept the judge's finding that Deveaux was not adequately informed that charges were being laid against him and that disciplinary proceedings against him had commenced. It can be put no higher than as stated by Winder J (as he then was) in Cherelle Cartwright v U.S. Airways SCCivApp No. 130 of 2015; it can hardly be said that Deveaux was unaware of the allegations against him and not given an opportunity to meet them. In a meeting held on 25 February 2013 and 27 February 2013, he was asked various questions with respect to the location of a 2005 Nissan Murano ("the Vehicle"), which was the Bank's collateral for a loan that the Bank had issued to him. Additionally, he had been asked various questions regarding an insurance certificate for the Vehicle which had been altered. He admitted to the Bank that he altered the insurance certificate and provided an explanation that it was merely changing it from his alias to the name by which the Bank knew him.**
>
> **11. Thus, from the nature of the questions that must have been put to him, Deveaux must have been aware of the Bank's suspicions and that the Bank wanted to confirm whether he was still in possession of the Vehicle and whether the Vehicle was duly insured. There was no prescribed form or words by which the Bank had to disclose to Deveaux the alleged breach of discipline; it was sufficient that the circumstances would reasonably have enabled Deveaux to know the Bank's suspicions regarding him.**
>
> **12. With respect to the point that Deveaux was not afforded the ability to respond to the Bank's concerns, the evidence**

> **simply does not support this contention. In the meeting, held on 5 April 2013, among the parties included were Theressa Thompson, the vice president of the Union of Central Bankers ("the UCB") and Sean Swain, Shop Steward of the UCB. Both persons were there as representatives of Deveaux. Accordingly, he was afforded an opportunity to have union representation to ensure that his side was adequately put to the Bank. Even the judge, (at paragraph 24 of her judgment) found that Deveaux had participated in the investigation process.**
>
> **13. In my judgment, there was no breach of the rules of natural justice as the circumstances were sufficient for Deveaux to know the suspicions that the bank had with respect to his altering the insurance certificate, he was given an opportunity to explain why the certificate was altered, and the Bank did not deny him his right to have Union Representation at the various meetings held by the Bank.**

137 I am satisfied that the Claimant was informed of the allegations made against him and the evidence which led to the allegations. He too had the benefit of legal representation as well as union representation at the meetings held on 31 August 2020 and 29 September 2020. Although he was interviewed by Krystal Ferguson on 24 June 2020 that did not end his involvement in the matter. In finding that he received the report on 31 August 2020 led me to the view that there was no breach of the rules of natural justice.

138 The employer cannot be faulted if the employee decides and elects to not respond to the allegations made after being told of the facts and circumstances that led to the allegation. All that was required was for the Claimant, his Counsel or union representative to put forth his response so that the Corporation had the benefit of his answers to aid in its deliberations. By failing to do so the employer had no other recourse but to act on the findings without regard to the views of the employee.

Were there justifiable reasons for the Claimant's summary dismissal?

139 I find that the evidence against the Claimant was compelling in the circumstances to lead to his summary dismissal. The interview of Kimley Ferguson on 15 July 2020 was a critical piece of evidence along with the receipt showing that the Claimant received the sum of $5543.00 from Shalom Development to his account in the name of Invictus.

140 Ms. Kimley Ferguson's evidence was also clear and cogent that the Claimant directly benefitted from the contracts and only paid her $500.00 per cheque. The evidence is that the sums were paid to Shalom Development by the Corporation.

141 The Audit Report also made damning findings against the Claimant.

142 The salient question for the Court's determination is whether the actions and conduct of the Claimant were such that the Corporation was entitled to summarily dismiss him and treat him as having committed a fundamental breach of his contract of employment or as having acted in a manner repugnant to the fundamental interests of the Corporation.

143 The EA 2001 at sections 31 and 32 make reference to misconduct which may qualify as examples of a fundamental breach of an employment contract. I note that the section does not provide an exhaustive list of such misconduct. The section clearly states: "**shall include (but shall not be limited to) the following**". In **Steven Kent Jervis, KST Investment Limited v Victor John Skinner, [2011] UKPC 2** at paragraph 22, the Privy Council set out the correct test for what constitutes gross misconduct:

> **"The test has been much discussed in the authorities but it was not in dispute in this appeal that the test was correctly stated by Lord Jauncey sitting as the Visitor to Westminster Abbey in Neary v Dean of Westminster [1999] IRLR 28, where he said at para 22:**
> **"<u>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</u>."**
> (Emphasis added)

144 Guidance can also be found in the Court of Appeal's decision of **<u>Anya M. Dorsett v Pictet Bank & Trust Limited SCCivApp. No. 113 of 2011</u>**.

145 I am satisfied on the evidence before me that the Claimant committed a major misconduct amounting to dishonesty. By arranging and conspiring with Ms. Kimley Ferguson to start the business Shalom Development Company and facilitating various contracts to be given to the company and taking the majority of the proceeds for the services, save for $500 payable to Ms. Ferguson, was conduct that is repugnant to the interests of the Corporation. This conduct can constitute evidence of dishonesty and fraud. These actions are squarely within the category of misconduct that can lead to summary dismissal under section 31 of the EA.

146 In arriving at this decision, I also considered that the Claimant was a manager at the Corporation in its Road Reinstatement Department. He used his position of trust and confidence to outsource contracts for work to be conducted for valve boxes raising exercises at a time when he knew that the responsibility fell under the control of Preston Rahming, the then manager of the Distribution Maintenance.

He knew that it was not in his allocation of work and yet he proceeded to issue such contracts.

147 Additionally, the Claimant must have known that by allocating work to Shalom Development without placing locations on the various invoices give rise to the inference that the work purportedly represented on the invoices was not carried out and that the fees were in fact for services not rendered to the benefit of the Corporation. He placed himself in a position of conflict with his duty to the Corporation as an employee and his desire for personal enrichment. Such conduct too raises to the level of theft and justified the Claimant's summary dismissal.

148 In my view there was sufficient evidence to enable the Corporation to form an honest and reasonable belief that the Claimant's actions amounted to gross misconduct. His actions fell within the context and intent of sections 31 and 32 of the EA.

149 I rely on the statements made by Sir Michael Barnett P (as he then was) in **Island Hotel Company Limited v Winifred Toote SCCivApp. No. 121 of 2022** when discussing summary dismissal on the basis of a single incident of misconduct:

> **39. To justify a summary dismissal, the employee's breach must go to the root of the contract and constitute a fundamental breach of his employment contract. The court was required to consider whether the nature of the breach alleged constituted a fundamental breach. It was then necessary to consider whether there was sufficient evidence so as to lead an employer to have an honest and reasonable belief that the employee had committed the misconduct in question. That honest and reasonable belief can only be formed after a reasonable investigation. Summary dismissal must be within the range of reasonable responses that an employer could make in the circumstances.**
> **40. Dismissal for an isolated incident of misconduct will rarely be fair, although, in some circumstances, the incident will be sufficiently serious to justify dismissal for a first offence. This is particularly so where the misconduct involves an act of dishonesty or demonstrates a complete disregard for the interest of the employer or fellow employees. Generally, dismissal for misconduct will only be a reasonable sanction if the employee had committed earlier acts of misconduct and has been warned that further incidents may lead to dismissal. There is no evidence of that in this case. As the High Court of Trinidad & Tobago said, "the disciplining of an employee ought to be progressive with a dismissal being an option of last resort".**

150 Although the evidence of the Claimant being charged before the criminal court arose during the trial, it did not take center stage in the evidence. However, sufficient evidence was led to lead me to a conclusion that the Claimant was charged by the Police for the infractions alleged in the Audit Report. That fact however was not prominent in my decision that the Claimant committed a major breach warranting his summary dismissal. The evidence of Kimley Ferguson along with the proximity between the Claimant and Vanessa Rolle and Marvin Scavella of RGM Services and the Claimant's address on the invoice for Newann Development all give rise to a reasonable belief that he placed himself in a position where his duty to the Corporation and his personal interest were in conflict. Additionally, the receipt of the funds from Shalom Development which emanated from the Corporation and his "full control" of Shalom Development and its dealings with the Corporation led to a reasonable belief that he personally benefited from the valve raising work and may have engaged in fraudulent activities with various valve raising "contracts" issued to or purportedly performed by Shalom Development.

151 In my judgment the conduct of the Claimant went to "**the root of the contract and constituted a fundamental breach of his employment contract**". In the circumstances therefore the Corporation had good reasons to summarily terminate his employment contract.

<u>Was the Claimant entitled to early retirement?</u>

152 The provision for early retirement was codified in the Industrial Agreement between the Corporation and the Water and Sewerage Management Union dated 1 July 2010 to 30 June 2013. At the time of the Claimant's dismissal, the new industrial agreement was not signed by the Union and the Corporation.

153 It is settled under Bahamian law that once an industrial agreement expired, its terms are of no effect.

154 In **Hutchinson Lucaya Limited v Commonwealth Union of Hotel Services and Allied Workers et al SCCivApp No. 61 of 2014** (see **Captain Joseph Moxey v Bahamasair Holdings Limited & Anr. SCCivApp No. 185 of 2024**) the Court of Appeal addressed the legal consequences of expired or unregistered collective bargaining agreements. Allen P. (as she then was) noted the following at paragraphs 18 to 21 of the Court's decision:

> **"18. Inexorably, there are no provisions in the Act which speak to the incorporation of the terms of collective industrial agreements into the individual contracts of workers. The law which would therefore apply to that issue is the law of contract and the rules of interpretation.**
> **19. T<u>here is clear authority for the proposition that relevant provisions in an industrial agreement may be expressly or</u>**

<u>impliedly incorporated in individual contracts, but it is also undeniable that the relevant terms must be those contained in the current collective agreement at the time of incorporation</u>. See National Coal Board v Galley [1958] 1 WLR 16.

20. Moreover, once a term has been incorporated into individual contracts, the termination of the collective agreement does not in and of itself affect the incorporated terms (See Robertson and Jackson v British Gas Corporation [1983] ICR 351).

21. As noted, incorporation may be effected either expressly, or by implication, and must be done during the currency of the industrial agreement. ..."

155 There was no evidence led during the course of the trial that the terms of the expired Industrial Agreement were either expressly or impliedly incorporated into the Claimant's employment contract, and similarly no evidence of the current Industrial Agreement before the Court.

156 The expired Industrial Agreement seem to only address retirement and pre-retirement leave. Arising from the fact that the Claimant's employment letter or contract is not before the Court, I am unable to decide whether he was eligible or entitled to early retirement. If by early retirement the Claimant is seeking "Special Retirement, under the Corporations' pension scheme, I address that issue below.

157 On the basis of the evidence before the Court, I therefore find no merit in the claim for early retirement.

<u>Is the Claimant entitled to a pension from the Corporation?</u>

158 The Second Schedule to the Water and Sewage Act provides the following in relation to a pension from the Corporation. Section 15 relates to public officers transferred to the Corporation and section 17 relates to non-public officers. They provide:

15. (1) Where any public officer holding a pensionable office under the Government ceases to be the holder of such office by reason of his transfer with his consent to the service of the Corporation and such person subsequently retires from the service of the Corporation in such circumstances that, had he remained a public officer, he would have been eligible for pension under the provisions of the Pensions Act, then in any such case the following provisions of this paragraph shall have effect.

(2) Any pension payable to any such person as is mentioned in subparagraph (1) by the Corporation to whose service he has been transferred shall be calculated and granted to him in respect of his total service under the Government and with the Corporation taken together and such service shall be reckoned as continuous for pension purposes.
(3) There shall be payable out of the Consolidated Fund upon the warrant of the Minister of Finance to the Corporation as contribution to every pension paid in accordance with subparagraph (2), such amounts as would have been payable to the person concerned by way of pension under the Pensions Act, if such person had retired from the public service and if he had been granted a pension under the Pensions Act upon the date of his ceasing to be a public officer.

17. (1) The Corporation may, as regards any officers, servants or agents in whose case it may be determined by the Corporation with the approval of the Minister of Finance to make provision for the payment on their death, injury or retirement of pensions, gratuities or other like benefits, pay or provide for the payment of such pensions, gratuities or other like benefits to them or to others by reference to their service as may be determined.
(2) Provisions for pensions, gratuities or other like benefits under this Schedule may be made either by contributory or non-contributory arrangements or partly by the one or by the other.

159 There is no dispute that the Claimant was not a public servant. He therefore did not fall under section 15(1) of the Schedule. He fell in the category of section 17 of the Schedule.

160 The right to pension is governed by the CFAL Pension Plan for the Employees of the Water and Sewerage Corporation ("**the Pension Plan**"). Mrs. Jennifer Smith's evidence was clear of this fact.

161 It also seems on the evidence that the Claimant was a member of a non-contributory pension scheme at the Corporation. The Pension Plan provides the following as to right of entitlement:

Eligibility and Participation

If you are a regular, permanent, full-time employee of the Water and Sewerage Corporation, on and after November 1, 1980, you will become eligible to join this Plan on the first

day of the month coincident with or next following the date you complete one year of service and are between the ages of 23 and 55 inclusive.

...

Participation in this Plan is compulsory.

If you are eligible to join this Plan, you must obtain an application card from your employer. After completing the card, you are to return it to your Employer.

Employee Contributions

During each year of participation in this Plan, you are <u>not</u> required to contribute. However, if you wish you may make voluntary contributions either in a lump sum payable once each Plan Year or in equal regular amounts.

Normal Retirement

Your Normal Retirement Date will be the first day of the calendar month coincident with or next following the attainment of your Normal Retirement Age.

The Normal Retirement Age of a Participant will be 60.

Special Retirement

You may retire on the first day of the calendar month coincident with or next following completion of one of the following requirements:

i)...
ii)...
iii) Participants other than transferred employees.

Upon completing 30 or more years of service with the Employer.

Retirement Benefits
Each Participant upon retiring due to Normal Retirement, Special Retirement, Compulsory Retirement or Ill-Health Retirement will be entitled to one of the following benefits

depending on whether he is a Division 1, Division 2 or Division 3 employee.

The benefit will be subject to a maximum of two-thirds of his Final Earnings.

...

Payment of Retirement Benefits

...

Furthermore, you must complete a "Request for Termination Benefit" form (supplied by your Employer) indicating which option you desire. You must also include our correct address.

Optional Forms of Retirement Benefit

By giving written notice to your Employer at least ninety days before your retirement date, in lieu of the pension described above, you may elect to receive one of the following pensions:

a) a reduced pension for so long as you may live, guaranteed for 60, 120 or 180 months; or
b) ...

Termination of Employment

If you terminate employment with your employer, then you are entitled to one of the following:

a) Cash Benefit
...
b) Deferred Annuity Benefit
....

162 On the evidence before the Court the Claimant completed 38 years of service at the Corporation and was 57 years old at the time of his termination. He commenced his employment on 14 April 1982 and was terminated on 2 October 2020.

163 There is no provision in the Pension Plan that expressly governs situations where employees, like the Claimant, are entitled to a pension upon summary dismissal from the Corporation. The Pension Plan refers to and employs the words – **"if you**

terminate employment with your employer" – which suggest to me that the instance of summary dismissal is not applicable. To be entitled to a pension under the Pension Plan the employee must fall into one of the four categories: (i) attain the age of 60 years (Normal Retirement), or (ii) complete 30 years of service (Special Retirement), or (iii) compulsorily retired by the Employer consequent upon reorganization or redundance after attaining the age 50 (Compulsory Retirement), or (iv) being permanently incapable of carrying out his duties on account of ill-health or infirmity (Ill-Health Retirement).

164 The Claimant falls under one of the four categories, that is, Special Retirement, having completed more than 30 years of service. However, the Pension Plan is silent on the eligibility to a pension upon termination by the Corporation. The provision on termination appears to me to be limited and specifically directed to circumstances where the employee terminates the employment. The "you" in the section, Termination of Employment, refers to the employee and not the employer.

165 In any event no evidence was adduced during the trial that the Claimant completed a Request for Termination Benefit form.

166 The Pension Plan is a non-contributing plan. That is, the employee need not contribute to qualify for the retirement benefit. The Pension Plan clearly states that the employee is "**<u>not</u> required to contribute**".

167 In construing the Pension Plan, I deem it a contract between the Corporation and the employee and as such the words must be construed to accord with their intended meaning. In arriving at the view that the Plan does not apply to circumstances where an employee is summarily dismissed from the Corporation, I had regard to the eligibility requirements and the terms that set out the categories of retirements options.

168 In **<u>Britvic plc v Britvic Pensions Ltd & Anr [2022] 2 All ER 457</u>** the English Court of Appeal had to address the interpretation of a pension scheme. In the course of the decision, the Court made some helpful comments on the principles to construe the words in the pension scheme. Sir Geoffrey Vos MR made the following comments on the interpretation of a contract:

> **The most relevant authorities**
> **[16] The most relevant authorities are not in dispute between the parties, although there is less consensus as to their proper application. I shall set out the essential guidance from the main authorities cited, even though they are exceptionally well-known, because a proper understanding of them is central to our decision.**
>
> **[17] In Investors' Compensation Scheme Ltd v West Bromwich Building Society, Investors' Compensation**

Scheme Ltd v Hopkin & Sons (a firm), Alford v West Bromwich Building Society, Armitage v West Bromwich Building Society [1998] 1 All ER 98 at 115, [1998] 1 WLR 896 at 913, the fourth and fifth principles stated by Lord Hoffmann were as follows:

'(4) ... The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax (see [Mannai]).

(5) The "rule" that words should be given their "natural and ordinary meaning" reflects the commonsense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in Antaios Cia Naviera SA v Salen Rederierna AB, The Antaios [1984] 3 All ER 229 at 233, [1985] AC 191 at 201:

"... if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business common sense, it must be made to yield to business common sense." '

[18] In Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 4 All ER 677, [2009] 1 AC 1101, Lord Hoffmann said this at [22]–[25]:

'[22] In East v Pantiles (Plant Hire) Ltd [1982] 2 EGLR 111 at 112Brightman J stated the conditions for what he called "correction of mistakes by construction":

"Two conditions must be satisfied: first, there must be a clear mistake on the face of the instrument; secondly, it must be clear what correction ought to be made in order to cure the mistake. If those conditions are satisfied, then the correction is made as a matter of construction."

[23] Subject to two qualifications, both of which are explained by Carnwath LJ in his admirable judgment in

KPMG LLP v Network Rail Infrastructure Ltd [2007] EWCA Civ 363, [2007] Bus LR 1336, I would accept this statement, which is in my opinion no more than an expression of the commonsense view that we do not readily accept that people have made mistakes in formal documents. The first qualification is that "correction of mistakes by construction" is not a separate branch of the law, a summary version of an action for rectification. As Carnwath LJ said (at [50]):

"Both in the judgment, and in the arguments before us, there was a tendency to deal separately with correction of mistakes and construing the paragraph 'as it stands', as though they were distinct exercises. In my view, they are simply aspects of the single task of interpreting the agreement in its context, in order to get as close as possible to the meaning which the parties intended."

[24] The second qualification concerns the words "on the face of the instrument". I agree with Carnwath LJ (at [46]) that in deciding whether there is a clear mistake, the court is not confined to reading the document without regard to its background or context. As the exercise is part of the single task of interpretation, the background and context must always be taken into consideration.

[25] What is clear from these cases is that there is not, so to speak, a limit to the amount of red ink or verbal rearrangement or correction which the court is allowed. All that is required is that it should be clear that something has gone wrong with the language and that it should be clear what a reasonable person would have understood the parties to have meant. In my opinion, both of these requirements are satisfied.'

[19] In Rainy Sky, Lord Clarke said this at [21]–[23]:

'[21] The language used by the parties will often have more than one potential meaning. I would accept the submission made on behalf of the appellants that the exercise of construction is essentially one unitary exercise in which the court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. In doing so, the court must have regard to all the relevant surrounding circumstances. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other.

[22] This conclusion appears to me to be supported by Lord Reid's approach in Wickman Machine Tool Sales Ltd [1973] 2 All ER 39, [1974] AC 235quoted by Sir Simon Tuckey and set out above ...

[23] Where the parties have used unambiguous language, the court must apply it.'

[20] In Arnold v Britton, Lord Neuberger sought to bring together the previous 45 years of jurisprudence from Prenn v Simmonds [1971] 3 All ER 237, [1971] 1 WLR 1381to Rainy Sky. His judgment included the following:

'[15] When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean" ... And it does so by focussing on the meaning of the relevant words ... in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions ...

[16] For present purposes, I think it is important to emphasise seven factors.

[17] First, the reliance placed in some cases on commercial common sense and surrounding circumstances ... should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding

circumstances, the parties have control over the language they use in a contract ...

[18] Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the clearer the natural meaning the more difficult it is to justify departing from it ...

[19] The third point I should mention is that commercial common sense is not to be invoked retrospectively ...'

[21] In Wood v Capita, Lord Hodge at [8]–[15] rejected the suggestion that there had been any change in the approach to contractual interpretation. There was no need to reformulate the guidance in Rainy Sky and Arnold v Britton, and the latter had not recalibrated the former. The recent history was one of continuity rather than change. At [13], he said that '[t]extualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation'. Rather, they were 'tools to ascertain the objective meaning of the language which the parties have chosen to express their agreement', and '[t]he extent to which each tool will assist the court in its task will vary according to the circumstances of the particular agreement or agreements'. Lord Hodge drew a distinction between agreements that could 'be successfully interpreted principally by textual analysis, for example because of their sophistication and complexity and because they have been negotiated and prepared with the assistance of skilled professionals' on the one hand and where the 'correct interpretation [might] may be achieved by a greater emphasis on the factual matrix, for example because of their informality, brevity or the absence of skilled professional assistance'. The representative member relied on Lord Hodge's statement that '[t]here may often ... be provisions in a detailed professionally drawn contract which lack clarity and the ... judge in interpreting such provisions may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type'.

[22] Finally, in this summary, I should mention the most recent decision, and perhaps most relevant one for our purposes, in Barnardo's. In that case, Lord Hodge at [14] set

out five 'distinctive characteristics [of pension schemes] which [were] relevant to the court's selection of the court's interpretative tools' as follows:

'First, it is a formal legal document which has been prepared by skilled and specialist legal draftsmen. Secondly, unlike many commercial contracts, it is not the product of commercial negotiation between parties who may have conflicting interests and who may conclude their agreement under considerable pressure of time, leaving loose ends to be sorted out in future. Thirdly, it is an instrument which is designed to operate in the long term, defining people's rights long after the economic and other circumstances, which existed at the time when it was signed, may have ceased to exist. Fourthly, the scheme confers important rights on parties, the members of the pension scheme, who were not parties to the instrument and who may have joined the scheme many years after it was initiated. Fifthly, members of a pension scheme may not have easy access to expert legal advice or be able readily to ascertain the circumstances which existed when the scheme was established.'

[23] The judge in this case, as I have said, distinguished Lord Hodge's approach in Barnardo's on the basis that the fourth and fifth factors did not, he thought, apply here.

[24] Lord Hodge in Barnardo's said at [15] that '[j]udges [had] recognised that these characteristics make it appropriate for the court to give weight to textual analysis, by concentrating on the words which the draftsman has chosen to use and by attaching less weight to the background factual matrix than might be appropriate in certain commercial contracts'. He approved the dictum of Lord Briggs in Safeway at [22] that is cited at [10] above. Lord Hodge then said at [16] that '[t]he emphasis on textual analysis as an interpretative tool [did] not derogate from the need both to avoid undue technicality and to have regard to the practical consequences of any construction'. Such an analysis did not involve literalism but included a purposive construction when that was appropriate (see Millett J in Re Courage Group's Pension Schemes, Ryan v Imperial Brewing and Leisure Ltd [1987] 1 All ER 528 at 537, [1987] 1 WLR 495 at 505).

169 Based on the principles set out above, in my judgment the provisions of the Pension Plan do not support the notion that the Claimant is entitled to a pension upon his summary dismissal from the Corporation. I further note that the Pension Plan is a non-contributing plan by the employee and therefore the employer, the Corporation, could determine rules to govern the contributions it makes to the scheme.

170 Having found that the Claimant falls into one of the four categories for retirement benefits under the Pension Plan, Special Retirement, I note that the Plan requires the completion of "**a "Request for Termination Benefit" for (supplied by your Employer) indicating which option you desire**". The Plan further requires the employee to give "**written notice to your Employer at least ninety days before your retirement date** ...". No evidence was adduced by the Claimant that a request for a pension was made to the Corporation.

171 Additionally, the section headed "**Termination of Employment**" limits the benefits to a Cash Benefit or a Deferred Annuity Benefit. As I indicated earlier in this Ruling, this section requires the employee to terminate his employment at the Corporation and in my judgment does not apply to a circumstance where the employee is terminated by the Corporation. In my judgment it is open to the Corporation to decide on what terms and what circumstances a retirement benefit will accrue to an employee in a non-contributing plan.

172 No evidence was led by the Claimant that he was a contributing member of the Plan. The Plan recognises and allows employee contribution. If the Claimant made contributions to the Plan, it seems fair that he is allowed to retain and seek a repayment of his contributions in the Plan. This follows from the clear words in the Plan that provides that "**if you [the employee] have also contributed voluntarily amounts, you will be entitled to receive such additional amount of pension as can be purchased by the value of your voluntary contributions at your retirement date**".

173 I therefore find that the Claimant's claim for a pension from the Corporation as an early retirement or a Special Retirement is unsustainable on the terms of the Pension Plan.

174 I find that if the Claimant made voluntary contributions to the Plan, I deem the voluntary contributions to be capable to remitting to the Claimant a retirement plan or a repayment to him of the voluntary contributions.

Conclusion

175 For the reasons set out above, I dismiss the action and find that the Defendant had a reasonable basis to summarily dismiss the Claimant.

176 I further find that the Defendant conducted a reasonable investigation and afforded the Claimant with a right to be heard and to make representations prior to his dismissal. The fact that he refused to comment to the Audit Report and failed to make representations of his "innocence" ought not to place the employer in peril.

177 I further find that there was no factual basis for a finding of unfair dismissal.

178 I also find that the Pension Plan is a non-contributing pension and as such the Corporation did not have to grant unto the Claimant a retirement plan arising from his summary dismissal. The provisions of the Pension Plan make no allowances and grants no retirement benefits to employees who are summarily dismissed from the Corporation.

179 I find that that after 30 years of employment the Claimant could qualify for a Special Retirement, but under the terms of the Plan, the Corporation was not entitled or obligated to make its contributions available to the Claimant arising from his summary dismissal.

180 I further find that the Claimant is entitled to a pension based on any voluntary contributions made by him to the Pension Plan.

181 In light of my findings above and the dismissal of the action, I condemn the Claimant in costs and order him to pay the Defendant's costs. The costs of the action are to be assessed by the Registrar in the absence of an agreement.

DATED this 28 day of July 2026

R S Rigby J. Actg.

Raynard S Rigby KC
Acting Justice