

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

2016/Com/lab/00017

BETWEEN

DOYLE SAUNDERS

Plaintiff

AND

BIMINI SANDS MARINA LIMITED

Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Obie Ferguson Jr. for the Plaintiff
Mrs. Kelpheene Cunningham for the Defendant

Hearing Date: 4 May 2017

Employment Law – Oral Contract of Employment – Termination of Employment – Summary Dismissal - Unfair Dismissal – Section 34 of Employment Act Ch. 321 A of 2001– Summary Dismissal – Sections 31- 33 of Part VIII of Employment Act – Was resort justified in summary dismissal of employee for gross misconduct, namely, assaulting a guest of the resort on its premises - Was Plaintiff afforded a fair hearing before dismissal

The Plaintiff was summarily dismissed by the Defendant, his employer, for gross misconduct, namely assaulting a guest of the resort on its premises. He sued the Defendant for damages for unfair dismissal alleging that the incident complained of on 9 August 2015 did not occur and that he was not afforded a fair hearing.

HELD, dismissing the action and finding in favour of the Defendant,

- (1) Although unfair dismissal is not defined in the Employment Act, section 35 gives a clear indication of what is the threshold test. It provides for the determination of the question whether the dismissal of an employee is fair or unfair and that question shall be determined in accordance with the substantial merits of the case.
- (2) 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. Thus, an employer who wishes to summarily terminate an employee's employment must assess

whether or not the reason for doing so is sufficiently serious and substantial to justify relying on it to terminate: section 31 of the Act.

- (3) In order to fulfill the requirements of section 33, an employer must show in any proceedings brought by an employee against him that he honestly and reasonably believed that the employee was guilty of misconduct equivalent to a fundamental breach of his contract of employment.
- (4) The question whether misconduct is such to justify summary dismissal is a question of fact and degree: see **Henry v Mount Gay Distilleries Limited (Barbados)** [1999] UKPC 39.
- (5) The Plaintiff's conduct on 9 August 2015 of assaulting one of the resort's guests amounted to gross misconduct and no reasonable employer could be expected to tolerate or respond otherwise than by summary dismissal.
- (6) The Plaintiff was afforded a fair hearing upon his return from vacation. A first opportunity was given to him on the day of the incident. He walked away from it. On his return from vacation, he was heard. The General Manager made a decision to summarily dismiss him as his behaviour was unbecoming of an employee of a vacation resort.
- (7) Summary dismissal is dismissal without giving the employee such notice, or wages in place of notice, as the contract requires.
- (8) The issue of damages does not arise for consideration as the Defendant was justified in summarily dismissing the Plaintiff.

The following cases were referred to in the judgment.

1. B.M.P. Limited d/b/a Crystal Palace Casino v Yvette Ferguson IndTribApp No. 116 of 2012 –Court of Appeal of The Bahamas.
2. Neary v Dean of Westminster [1999] IRLR 288.
3. Boston Deep Sea Fishing & Ice Co. v Ansell [1988] 39 Ch. D. 339.
4. Cyril Leonard & Co. v Simo Securities Trust Ltd [1972] 1 WLR 80.
5. Carnival Leisure Industries Ltd v Peter Zervos Civil Appeal No. 26 of 1985 – Court of Appeal of The Bahamas.
6. Jupiter General Insurance Co. Ltd. v Ardeshir Bomanji Shroff, 1937 Privy Council 67.
7. Henry v Mount Gay Distilleries Limited (Barbados) [1999] UKPC 39 (21 July 1999); Privy Council Appeal No. 43 of 1998.
8. Phillip James v Road Town Wholesale (Trading) Ltd Magisterial Civil Appeal No. 1 of 2004 [unreported] –Written Judgment delivered on 27 June 2005.

JUDGMENT

Charles J:

Introduction

- [1] The Plaintiff, Doyle Saunders ("Mr. Saunders") was employed as a dock master by the Defendant, Bimini Sands Marina Limited ("the resort") from January 2003 to 13 September 2015. He earned a salary of \$530.00 weekly. By letter dated 14 September 2015, he was summarily dismissed by the resort for gross misconduct, namely assaulting a guest of the resort on its premises.
- [2] On 16 February 2016, Mr. Saunders instituted these proceedings alleging that he was unfairly dismissed by the resort. He claims special damages of \$32,241.66 as well as general damages, interest and costs.
- [3] On 1 June 2016, the resort filed a Defence. In a nutshell, the resort alleged that: (i) Mr. Saunders was summarily dismissed for gross misconduct namely, assaulting Mr. Ortiz who was one of the resort's guests; (ii) he was afforded a fair hearing and (iii) his attorney was fully cognizant of the circumstances that led to his dismissal in an exchange of correspondence between the parties.
- [4] The resort denied that it owes Mr. Saunders any vacation pay, basic award for 52 weeks of \$27,560.00 and an additional one week vacation pay for 6 years totaling \$32, 241.66. It stated that it owes Mr. Saunders the sum of \$648.49 for the period of time that he worked. A cheque was issued to Mr. Saunders but he refused to accept it.

The Issues

- [5] The primary issues to be determined in this action are:
- 1) Whether Mr. Saunders' dismissal was unfair or justified having regard to all of the circumstances of the case and;
 - 2) If he was unfairly dismissed, what is the amount of damages that he is entitled to?

The law

Unfair Dismissal

[6] Part IX of the Employment Act, Ch. 321A of 2001 (“the Act”) deals with unfair dismissal. Section 34 provides that every employee shall have a right not to be unfairly dismissed by his employer, as provided in sections 35 to 40.

[7] 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.*”

[8] In **B.M.P. Limited d/b/a Crystal Palace Casino v Yvette Ferguson** IndTribApp App No. 116 of 2012, the Court of Appeal of The Bahamas alluded to what may constitute unfair dismissal. It held, among other things, that (i) the Employment Act does not contain an exhaustive list of instances of what could be considered to be unfair dismissal; (ii) sections 35 to 40 contain what may be regarded as “statutory unfair dismissal” and (iii) section 35 provides for the determination of the question whether the dismissal of an employee is fair or unfair.

[9] At paragraph 36 of the judgment, Conteh JA stated:

“The expression “unfair dismissal” itself is not defined in the Act. What it provides for, in our view, is to itemize instances of what we 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).

[10] At page 12, paragraph 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. And this question shall be determined in accordance with the substantial merits of the case. All sections 36 to 40 do is to categorize instances which the Legislature deemed to be unfair cases of 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 found a claim for unfair dismissal because that instance is not listed in Sections 36, 37, 38 and 40 of the Act?" [Emphasis added]

Summary Dismissal

[11] Section 31 of the Act (Part VIII - Summary Dismissal) states that 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. What constitutes a fundamental breach of contract by an employee was articulated in **Neary v Dean of Westminster** [1999] IRLR 288 where it was suggested that the basis of summary dismissal should now lie, not in unrefined ideas of repudiation and acceptance, as the earlier cases suggest, but instead in the more contemporary area of trust and confidence. This celebrated case concerned the summary dismissal of the organist of Westminster Abbey and his wife due to alleged financial irregularities in the operation of certain musical events and the adoption of inappropriate financial methods unknown to the Abbey authorities. Lord Jauncey of Tullichettle was appointed as a special commissioner by the Queen to hear their appeal petitions. He determined that summary dismissal was justified. Setting out the principle to be applied, Lord Jauncey said:

"...conduct amounting to gross misconduct justifying (summary) 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. Whether a particular misconduct justifies summary dismissal is a question of fact. The character of the institutional employer, the role played by the employee in that institution and the degree of trust required of the employee vis-à-vis the employer must all be considered in determining the extent of the duty of trust and the seriousness of any breach thereof..."

[12] Section 32 of the Act appears to 'codify' the common law position with respect to what conduct constitutes a fundamental breach by an employee of his contract of employment. The section enumerates nine categories of misconduct (including dishonesty, gross insubordination or insolence, **gross misconduct** and breach of confidentiality by an employee) which may constitute a fundamental breach of

a contract of employment or may be repugnant to the fundamental interests of the employer. These grounds are not exhaustive.

[13] Section 33 provides as follows:

“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.”

[14] In order to fulfill the requirements of section 33, an employer must show in any proceedings brought by an employee against him that he honestly and reasonably believed that the employee was guilty of misconduct equivalent to a fundamental breach of his contract of employment either prior to, or at the time of his dismissal, or that subsequent to the employee’s dismissal he discovered that the employee had been guilty of such misconduct during his tenure of employment and based his defence to the wrongful dismissal claim upon such discovery: **Boston Deep Sea Fishing & Ice Co. v Ansell** [1888] 39 Ch. D. 339 and **Cyril Leonard & Co. v Simo Securities Trust Ltd** [1972] 1 WLR 80.

[15] With regards to proof of misconduct discovered at the time of or prior to an employee’s dismissal, the case of **Carnival Leisure Industries Ltd v Peter Zervos** Civil Appeal No. 26 of 1985 is instructive. At paragraph 38, Melville JA said:

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

[16] Another illuminating authority is the case of **Jupiter General Insurance Co. Ltd v Ardeshir Bomanji Shroff** [1937] Privy Council 67. At page 74, the Privy Council said:

“...[W]hether the misconduct of the respondent was not such as to interfere with and to prejudice the safe and proper conduct of the business of the company, and therefore to justify immediate dismissal. It must be remembered that the test to be applied must vary with the nature of the business and the position held by the employee, and that decisions in

other cases are of little value.”

- [17] In addition, in **Chitty on Contracts** Vol. 2, 29th Edn. (2004), para. 39-176, the learned authors explained the nature of “misconduct” stating that ‘*the general rule is that if the employee does anything which is incompatible with the due or faithful discharge of his duty to the employer, he may be dismissed without notice; 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.**”* (Emphasis added).
- [18] In my opinion, four key principles may be distilled from the above authorities namely: (i) in order to justify summary dismissal, the misconduct must be gross; (ii) a single act of gross misconduct may warrant summary dismissal; (iii) the question of an employee’s behaviour which warrants summary is a question of fact and degree to be determined by the Court and (iv) the test to be applied to justify summary dismissal will vary depending on the nature of the business and the position held by the employee.

The evidence

- [19] Mr. Saunders testified and gave evidence on his own behalf. He did not call any witnesses. He stated that he was employed as the dock master at the resort with a staff of 3 to 4 persons. He and his wife operated a golf cart business on South Bimini. He said that golf carts are permitted to be used on public roads in the Island of Bimini. On or about Saturday 8 August 2015, a customer rented a four-seat golf cart from his establishment. On the said day, he was in the vicinity of the public dock when he noticed his golf cart with seven passengers on it. Being concerned for the safety of the passengers, he approached the driver (“Mr. Ortiz”) and identified himself as the owner of the golf cart. He explained to Mr. Ortiz the danger of overloading the cart and he asked him to let some of the passengers off. He offered to drive them to wherever they wished to go. Mr. Ortiz was not pleased with his request and told him that he had paid \$80.00 to rent the

golf cart so he could use it as he saw fit.

- [20] Mr. Saunders testified that, at the time, he saw a police officer and sought his intervention but the officer did not wish to be involved. He then went to the police station to make a report.
- [21] In the morning of the following day, Mr. Saunders stated that he went to the resort to purchase some gas. He saw Mr. Ortiz who started to “rage with me” and proceeded to the office stating that he was reporting him. He never assaulted Mr. Ortiz although “some exchange of words took place”.
- [22] Mr. Saunders testified that shortly after the “encounter” on Sunday, 9 August 2015, he left the island on vacation. When he returned to work, Mr. Michael Munnings (“Mr. Munnings”), the resort’s General Manager called him to his office regarding the events of 8 and 9 August 2015. He said that Mr. Munnings informed him that Mr. Ortiz, a guest of the resort, had complained about the events of 8 and 9 August 2015, and in order to appease the guest, he refunded the cost of the golf cart of \$110.00. Mr. Saunders said that Mr. Munnings asked him to pay him the \$110.00. At first, he was reluctant but in order to avoid problems, he did so. Despite this, Mr. Munnings kept the keys of the cart and never returned them until he was terminated.
- [23] By letter dated 14 September 2015, Mr. Saunders was terminated with immediate effect for gross misconduct, namely, assaulting Mr. Ortiz and his family/associates.
- [24] Mr. Saunders reiterated that he never assaulted Mr. Ortiz. He stated that the incidents on 8 and 9 August 2015 had nothing to do with his job or his performance. On 9 August 2015, he was on the resort premises for the sole purpose of purchasing gasoline as is customary.
- [25] Mr. Saunders stated that he was never afforded a hearing and no disciplinary action was taken against him.

- [26] Under cross-examination, Mr. Saunders said that he does not recall an incident on the resort's premises on Sunday, 9 August 2015 in the morning. He stated that the only thing that occurred that Sunday morning when he went to purchase some gasoline, was that he saw Mr. Ortiz who said to him that he was going to report him for the incident which happened the day before. He said that, as a result of what Mr. Ortiz said, he left the resort. He had no confrontation with Mr. Ortiz.
- [27] Mr. Saunders said that he did not disable the golf cart on the Sunday morning although Mr. Ortiz was dangling and taunting him with the bunch of keys and saying to him that he would not get the golf cart. He said that this was after Mr. Ortiz "cursed me out or whatever the night before." Mr. Saunders said that all he did was to say "okay, fine." He was asked again whether he disabled the golf cart that Sunday morning and he admitted that he did. He agreed that the fuel pump is on the resort's property, about twenty feet from the office.
- [28] Under further cross-examination, Mr. Saunders said that he did not see Mr. Munnings that Sunday morning because he had left the property. He said that someone called him on the phone to say that Mr. Munnings wished to see him. He said that when he went to Mr. Munnings' office, he was told that Mr. Munnings was with Mr. Ortiz. He waited for a while but left since he had a ship to catch and he was actually on vacation, his vacation having commenced two days before.
- [29] He stated that after he came back from vacation, he went to Mr. Munnings who terminated his employment summarily.
- [30] The resort called Mr. Munnings to testify on its behalf. Mr. Munnings was the General Manager from 2 April 2015 to 9 May 2016, that is, during the period that the incident allegedly took place. He is no longer employed with the resort which has closed down. He is now a business administrator and resides in New Providence.

[31] Mr. Munnings testified that, on Sunday 9 August, 2015, he was at his apartment when he received a telephone call from the Front Desk/Administration building of the resort asking him to come to the office immediately to deal with an urgent matter. When he arrived at the office, he was informed that Mr. Saunders and one of the resort's guests, Mr. Ortiz were involved in an altercation in the office. Mr. Munnings said that Mr. Ortiz explained to him that Mr. Saunders assaulted him and that the Sunday morning altercation on the resort's premises was a carry-over from an altercation the evening before. According to Mr. Munnings, Mr. Ortiz told him that the altercation concerned the golf cart and that, during the altercation, Mr. Saunders threatened him and his family with a piece of 2 x 4 wood putting them in fear of their lives.

[32] Mr. Munnings said that he commenced speaking to Mr. Ortiz and told Mr. Saunders that he would speak to him after he was finished his conversation with Mr. Ortiz. He said that Mr. Saunders refused to wait and left the premises. Mr. Munnings stated that Mr. Saunders was scheduled to commence three weeks' vacation from Monday 10 August 2015 which he did. He was therefore only able to speak with him upon his return from vacation. He stated that the matter was reported to the police and Mr. Ortiz gave a statement to the police. Mr. Munnings said that his deep concern was that the resort would be sued because of the incident which took place on its premises involving an employee.

[33] Mr. Munnings asserted that when Mr. Saunders returned from his vacation, he called a meeting with him regarding the incident with Mr. Ortiz. In attendance at that meeting were the Financial Controller and the Facilities Manager. During the meeting, Mr. Saunders admitted that he had been drinking and he also admitted to picking up a piece of 2 x 4 wood and threatened Mr. Ortiz and his family. Mr. Munnings said that, after hearing Mr. Saunders' side of the story and based on his own admissions, there was no question in his mind that Mr. Saunders had placed the resort's guests at grave risk of harm and injury. He said that Mr. Saunders' action particularly on the resort's premises on Sunday, 9 August 2015 opened up the resort to a potential law suit. Mr. Munnings felt that the only

course of action was to dismiss Mr. Saunders as he could no longer trust him.

[34] Mr. Munnings testified that since Mr. Saunders had just returned from vacation, he was not entitled to any vacation pay. He said that, contrary to the allegation of his attorney, Mr. Saunders was entitled to three weeks' vacation after he had been with the resort for seven years and he received that vacation after his seventh year pursuant to the Employment Act. As such, he is not entitled to any further vacation pay from the resort.

[35] Mr. Munnings said that Mr. Saunders' attorney, Mr. Ferguson Jr. wrote to him on 6 October 2015 (Exhibit 3 in Agreed Bundle of Documents filed on 20 December 2016) in regard to the matter and he responded on 13 October 2015 (Exhibit 4 of said agreed Bundle). Mr. Munnings stated that he was astonished when this action was brought as he followed proper procedure and held a hearing. At that hearing, Mr. Saunders was allowed to put forward his side of the story and he admitted what took place. Mr. Munnings said that there was no breach of the rules of natural justice and Mr. Saunders was not unfairly or wrongfully dismissed.

[36] Under cross-examination, Mr. Munnings said that he actually saw Mr. Saunders "tinkering" with the golf cart. He had just received a phone call to come and deal with an urgent matter which the Front Desk said they could not handle. He stated that Mr. Saunders was terminated as a result of the incident which occurred on Sunday, 9 August 2015 on the resort's premises.

Analysis and findings

[37] This is a civil case wherein the standard of proof is based upon a balance of probabilities. Examining the facts presented to this Court, I was much more impressed with the demeanour of and the evidence given by Mr. Munnings. He impressed me as a witness of truth. He was candid, calm and composed. He also appeared to be a very sincere person.

- [38] I believed Mr. Munnings when he stated that he was at his apartment when he received a telephone call to attend to an urgent matter which the Front Desk could not handle. He said that when he arrived, he saw Mr. Saunders “tinkering” with the golf cart. He said that he was conversing with Mr. Ortiz and requested Mr. Saunders to remain so that he could speak to him. However, Mr. Saunders left.
- [39] On the other hand, I found Mr. Saunders to be an unimpressive and inherently unreliable witness. I came to the conclusion that the account which he gave to this Court was pure fabrication in order to bolster up his claim. There are occasions when he contradicted himself during his oral testimony. For example, at first, he stated that he did not disable the golf cart but, upon intense cross-examination, he admitted that he did. He also stated that he was not on the resort’s property but subsequently, he stated that he was there to purchase gasoline. Mr. Saunders also stated that he did not see Mr. Munnings although Mr. Munnings saw him interfering with the golf cart and greeted him. Mr. Saunders portrayed himself as a meek and mild person and Mr. Ortiz as the aggressor. I believed Mr. Munnings’ evidence that Mr. Saunders told him that he had a beer or two. As such, he may not be as temperate as he appeared during his oral testimony in this Court. That being said, and having had an opportunity to see and hear both witnesses as they testified, I am more inclined to accept Mr. Munnings’ evidence to that of Mr. Saunders.
- [40] As I see it, the facts which led to the summary dismissal of Mr. Saunders are quite straightforward. I found as a fact that he assaulted a guest on the resort’s premises. I agree with learned Counsel Ms. Cunningham that Mr. Munnings felt that such behaviour could not be condoned in a very sensitive industry.
- [41] Assaulting any person is a criminal offence. However, in my opinion, assaulting a visitor to a country which is so heavily dependent on tourism appears even more serious especially when such assault is committed by a staff of the resort where the visitor is a guest. As Mr. Munnings surmised, the tourism industry is very

sensitive. I may add volatile. Mr. Munnings was concerned that the resort may have been exposed to a potential law suit. This is true but, in the bigger picture, an important pillar of this country could have been marred by this incident.

[42] I agree with learned Counsel Ms. Cunningham that the resort was justified in summarily dismissing Mr. Saunders. In **Henry v Mount Gay Distilleries Limited (Barbados)** [1999] UKPC 39 (21 July 1999); Privy Council Appeal No. 43 of 1998, the Board stated at [8]:

“It is well established that summary dismissal is only justifiable where there has been a breach of one or more duties of the employee and such breach constitutes a repudiation of the contract of employment as being inconsistent with the continued employment of the employee. Thus a single act of carelessness or negligence can provide grounds for summary dismissal if the negligence itself or the circumstances surrounding it show that there has been a “deliberate flouting of the essential contractual conditions.” *Laws v. London Chronicle Limited* [1959] 2 All E.R. 285 at p. 287.” [Emphasis added]

[43] The present case bears some affinity with the British Virgin Islands case of **Phillip James v Road Town Wholesale (Trading) Ltd** (Magisterial Civil Appeal No. 1 of 2004 [unreported]) – Written Judgment delivered on 27 June 2005 although I am cautioned that each case must turn on its own peculiar facts and circumstances. In **Phillip James**, Mr. James physically attacked his supervisor in the course of his employment. The learned Magistrate held that (i) summary dismissal was justified where an employee physically attacks his supervisor in the course of his employment and (ii) the circumstances of this case fall within section C58(1) of the Labour Code which permits the termination of employment where the employee has been guilty of misconduct in or in relation to his employment so serious that the employer cannot reasonably be expected to take any course other than termination. The Eastern Caribbean Court of Appeal affirmed the Magistrate’s decision and accordingly, dismissed the appeal.

Was Mr. Saunders afforded a fair hearing?

[44] Although not specifically pleaded, the Plaintiff alleged, at paragraph 16 of his witness statement, that he was not afforded a hearing relating to the matter

complained of. At paragraph 17, he alleged that *“in the case of my employment with the resort no disciplinary action was ever brought against me.”*

[45] In his witness statement, at paragraphs 10 to 16, Mr. Munnings addressed this issue. The gist of his evidence is that Mr. Saunders left the premises on 9 August 2015 when he was told to wait. Subsequently, upon his return from three weeks' vacation, he was called to his office. Present at that hearing were the Financial Controller and the Facilities Manager. Mr. Munnings stated that Mr. Saunders admitted that he had been drinking and he also admitted that he threatened Mr. Ortiz was a piece of wood and brandished it in a menacing manner. Mr. Munnings said that Mr. Saunders continued his actions on Sunday 9 August 2015. He said that Mr. Saunders' actions on Sunday 9 August 2015 was the catalyst for his decision to summarily relieve him of his duties since it occurred on the resort's property to a guest. Mr. Munnings stated that the enormity of what happened was troubling to him.

[46] In my opinion, Mr. Munnings honestly and reasonably believed that Mr. Saunders was guilty of misconduct equivalent to a fundamental breach of his contract of employment and I so find.

Damages

[47] Summary dismissal is dismissal without giving the employee such notice or wages in place of notice even in an oral contract of employment.

[48] Having found that the resort was justified in summarily dismissing Mr. Saunders, the issue of damages does not arise for consideration.

Conclusion

[49] For all of the reasons stated above, I will dismiss this action with costs. At the hearing, it was agreed that the successful party will be entitled to costs of \$17,500. I will award costs of \$17,500 to the Defendant. In addition, the Defendant will pay to Mr. Saunders, the sum of \$648.49 which he had previously

refused to accept.

[50] Last but not least, I am grateful to both Mr. Ferguson and Ms. Cunningham for their patience in awaiting the protracted delivery of this judgment. For this, I am terribly sorry.

Dated 31st day of May A.D., 2018

Indra H. Charles

Justice