

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**COMMON LAW & EQUITY DIVISION**

**2017/COM/lab/00070**

**BETWEEN**

**TERRANCE PENN**

**Plaintiff**

**AND**

**BAHAMAS POWER & LIGHT CO. LTD.**

**Defendant**

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

**Appearances: Obie Ferguson Jr for the Plaintiff  
Dywan Rodgers for the Defendant**

**14 November 2019, 25 May 2020 and 17 June 2020**

**JUDGMENT**

## **WINDER J.**

This is an employment dispute brought by the plaintiff (Penn) for breach of his contract of employment with the Defendant (BPL) as a as Foreman, Safety and Environment Department in the Energy Supply Division (SED).

### Background

1. Penn was employed with BPL, an electricity service provider on or about 1 August 2007. He was a member of the Bahamas Electrical Worker's Union (BEWU) and as such his employment with BPL was governed by the Industrial Agreement (the IA) between BPL and the BEWU.
2. Penn was stationed at BPL's Clifton Pier facility where he was responsible for the direct supervision of nine (9) persons when allegations arose regarding his mistreatment of persons under his supervision in July 2016. Following his suspension pending an investigation on 8 August 2016, Penn was dismissed from his employment on 29 August 2017. The letter of dismissal, signed by Villiema Black, Manager, Human Resources was settled in the following terms:

Re: Major Breach – Gross Misconduct and Dishonesty

Further to our letter dated August 15<sup>th</sup>, 2016, in which you were suspended with half pay for a period of ten (10) days for contravention of Clause 16.5(11) and 16.5(14) of the BEC/BEWU Industrial Agreement, please be advised that the Corporation has completed its investigation relative to the subject matter, and find you to be culpable of the same.

Therefore, in accordance with Clause 16(12)(1)a, of the industrial agreement the Corporation has decided to separate you from the organization effective immediately.

You are required to immediately return all property of the Corporation to the Manager, Safety & Environment.

3. Penn commenced this action by specially endorsed Writ of Summons on 22 November 2017. The Statement of Claim endorsed on the said Writ of Summons provided in part as follows:

2. The plaintiff was employed by the defendant sometime on or about August 1<sup>st</sup>, 2007 pursuant to the terms of an oral contract of employment.
  3. The plaintiff continued to be employed with the defendant until sometime on or about August 29<sup>th</sup>, 2016 when without notice or pay in lieu of notice, the defendant breached the plaintiff's contract of employment and unfairly/wrongfully terminated the plaintiff's employment on the grounds of gross misconduct and dishonesty.
  4. The plaintiff's contract of employment was terminated ultra vires the rules of the Industrial Agreement between the defendant and the Bahamas Electrical Workers Union the bargaining agent for the employees of the defendant. In particular Article 16.3 & 16.5 were violated.
  5. At termination the plaintiff's job title was Foreman of the Safety and Environmental Department and as such he supervised a staff of approximately 9 persons.
  6. At termination the plaintiff earned a salary of \$2,800.00 per month and was entitled to the following benefits:
    - (a) Meal allowance 12.50 per day;
    - (b) Participation in the group medical plan at 30% of the cost;
    - (c) Christmas bonus
    - (d) 20 vacation days per annum
  7. Further at termination the Defendant owed the Plaintiff the sum of \$10,437.87 in respect of accrued vacation for the period 2014 to 2016.
4. BPL's Defence, filed 23 February 2018, provides in part as follows:
2. As regards paragraph 3 of the Statement of Claim, the Defendant admits that the Plaintiff continued to be employed by the Defendant until on or about the 29<sup>th</sup> day of August, A.D. 2016, when the Plaintiff was terminated without notice or pay in lieu of notice. However, the Defendant denies that the Defendant breached the Plaintiff's contract of employment and the Defendant denies that the Defendant unfairly or wrongfully terminated the Plaintiff's employment. The Defendant puts the Plaintiff to strict proof thereof.
  3. The Defendant says that in or about the month of August 2016 the Defendant received information that the Plaintiff was engaging in gross misconduct in the form of fraudulent activity and/or dishonesty and/or gross negligence and breach of confidence and trust. A reasonable investigation was conducted by the Defendant and at the conclusion of the same the Defendant honestly and reasonably believed on a balance of probability that the Plaintiff committed the aforesaid gross misconduct.
  4. According to termination letter dated the 29<sup>th</sup> day of August, A.D. 2016, "please be advised that the Corporation has completed its investigation relative to the

subject matter (gross misconduct and dishonesty), and find you to be culpable of the same...Therefore...the corporation has decided to separate you from the organization effective immediately". The Plaintiff's employment was summarily terminated for cause.

5. The Defendant denies paragraph 4 of the Statement of Claim and puts the Plaintiff to strict proof thereof.

5. Penn alleges wrongful/unfair dismissal and that there has been a breach of the IA.

The relevant provisions of the IA are the following:

- 16.1 Without discipline the Corporation cannot effectively perform the public service for which it has been established. Each case must be weighed on its own merits, but the decision of the Corporation must always be on reasonable grounds and for just or lawful cause.
- 16.2 Breaches of discipline are classified as either major or minor.
- 16.3 The Corporation may summarily dismiss from its service or suspend without pay any employee who commits a major breach of discipline. The said suspension without pay would not affect the continuity of employment and other entitlements of the employee concerned, save for as provided at Clause 38 (Christmas Bonus).
- 16.4 Any employee summarily dismissed under the provisions of this Clause 16 shall not be entitled to notice or pay in lieu of notice. The Corporation shall have the right to "set off" any loss against the employee's entitlements only up to the amount of such entitlements.
- 16.5 Although fixed penalties are not established, major breaches of discipline will normally call for suspension or dismissal. Major breaches of discipline include but are not limited to:
  - (1) Theft of the Corporation's or employee's property;
  - (2) Removal without permission of the Corporation's or employee's property;
  - (3) Drunkenness, drinking and/or selling alcoholic beverages on the job;
  - (4) Fighting or other acts of physical violence on the job;
  - (5) Malicious damage or wilful neglect of duty resulting in damage to the Corporation's property or an employee's property;
  - (6) Negligence or carelessness in the performance of duty resulting in injury to another employee or major damage to the Corporation's or employee's property;
  - (7) Absence from duty without authorized leave for a period of five (5) consecutive working days;
  - (8) Possession and/or use of narcotics except where prescribed by a bona fide medical practitioner, or conviction for dangerous drugs as defined in the Dangerous Drugs Act;
  - (9) Alteration or falsification of any official records;
  - (10) Unauthorized use of the Corporation's properties;
  - (11) Gross Misconduct;

- (12) Unauthorized re-connection or connection of electricity supply;
- (13) Solicitation or acceptance of bribes in any form including money for performance or non-performance of duties;
- (14) Dishonesty; and
- (15) Breach of Confidentiality.

16.11 Where in the judgment of the Corporation a major breach or four (4) minor breaches of discipline warranting dismissal have been committed by an employee, the Corporation may first suspend the employee from duty with half pay pending further investigation for a period of up to five (5) working days and shall confirm this suspension in writing to the employee and the Union, provided always that the breach does not warrant immediate dismissal.

16.12 If at the end of five (5) working days the investigation is not completed, the suspension may be extended for a further period not to exceed twenty (20) working days to complete the investigation.

(1) Thereafter, the Corporation may:

a) Dismiss the employee immediately if in the Corporation's view the circumstances justify such action; or

b) Suspend the employee without pay for a further period up to but not exceeding twenty (20) working days; or...

16.18 All employees that are suspended or dismissed shall have the right of appeal. Such appeal will be heard within thirty (30) days of the suspension or dismissal by the Joint Industrial Council (JIC).

6. Penn was the only witness in his case. His examination in chief was settled in a witness statement dated 8 January 2019 and a supplemental witness statement of 3 May 2019. He was subject to cross-examination on his witness statements.

7. Penn's evidence in chief that as a part of his job description he managed the oil recovery process for BPL using three BPL vessels to check for oil spills and to clean them up. According to Penn, at 9:00am on 8 August 2016, Bharti Jones, Safety and Environment Manager and Obadiah Butler his manager and BPL's Security Supervisor respectively, arrived at the Clifton Pier worksite and advised him that HR wanted to see him and his staff at the Head Office.

8. At BPL's Head Office, Penn stated that he was questioned by Jones; Butler; Chequita Johnson – Compensation and Benefits Manager and Renee Rahming – Assistant Manager Relations. At the meeting Penn says that allegations were levelled by Johnson that she had credible information that he was putting time in for staff when

they were not at work. It was also alleged that he had staff to his home during work hours. Penn said that he denied the allegations of putting in time for staff but admitted that he did take Michael Bullard to his home to work and clean his car but only on his personal time.

9. Penn says there was no union representation present at this meeting but following the initial questioning he was asked if he wished Union Representation to be brought in on his behalf. Astrid Bodie, Secretary General of the Union, was brought into the meeting. Bodie was present when he was handed a letter addressed to him which suspended him for 5 days. The letter of 8 August, 2016, signed by Bharti Jones, Manager – Safety & Environment is settled in the following terms:

RE: Suspension From Duties – Gross Misconduct and Dishonesty

The Corporation is presently conducting an investigation involving Gross Misconduct and Dishonesty in accordance with Clause 16.5(11) and 16.5(14) of the BEC/BEWU Industrial Agreement.

Therefore in accordance with Clause 16(11) of the Industrial Agreement, effective August 8, 2016 you are hereby suspended with half pay for a period of five working days, pending further investigation.

Please be advised that on completion of the suspension you are to report to Mrs. Renee Rahming in the Human Resources at 11:00am on Monday, August 15, 2016.

10. On 15 August 2016 Penn says he was again asked to come to Head Office. Penn says that he met with Villiemae Black, Jones, Johnson, Rahming and Butler. During this meeting he was asked if Justice Decius had ever performed work at his home. He denied that this had ever happened and stated that Decius had referred a friend to him who was not an employee of BPL who had in fact performed the work at his home and not Decius.
11. Penn says questions were also asked about Captain Stubbs taking one of the BPL boats on a trip to Andros. He denied any knowledge of the Andros trip and added that

he would not authorize such a trip if it was unrelated to the duties. During this meeting there were also allegations that there was improper use of fuels for the boats used by BPL. Penn stated that he reminded Jones at this time that she was the only person authorised to see to the fuel needs of the boats.

12. Penn says that allegations that the staff was paying him for favours was brought up. He says that he demanded that his accusers be brought before him with their evidence, but this did not happen. Penn says that at this meeting he advised BPL that he had a problem with Ricardo Riley as he was absent from work on a frequent basis and he created a hostile work environment. He said that he also advised BPL that he had problems with Edwin McClain and that McClain had been suspended by Johnson for breaches in the past. At the end of the meeting Penn was suspended for a further ten (10) days at half pay pending further investigation.
13. Penn said that on 29 August 2016 he was terminated by BPL in a letter handed to him by Villiemae Black who had shown him some timesheets for persons in his department. These timesheets he acknowledged signing and he said that they contained the signatures of Jones and Rochelle McKinney of BPL.
14. Penn was questioned about a group in BPL called LOD. Penn said that he had heard the phrase used in passing by staff but had never made any inquiry into its use and was not aware that it related to a group of his staff. He denied allowing members of LOD to smoke marijuana and/ or to drink alcohol while on duty at BPL's Clifton Facility. Penn denied allowing staff to do as they pleased as long as he was paid by them. Penn also denied logging in hours for staff when they did not work. He stated that he told Johnson at the time these allegations were levied at the meeting of 15 August that she ought to produce the electronic clock logs or the security gate log to corroborate by way of evidence the claims being made against him. During his evidence Penn did admit to being in control of time keeping for the temporary staff. He said that if he was aware that a staff member was leaving the premises he would ensure that they clocked out via the electronic clock.

15. Penn was also cross examined about the statement given by Ricardo Riley. He characterised Riley as having no respect for authority and said that he created a hostile work environment. He stated that Riley constantly caused problems but admitted that he had entered no evidence to support this assertion in this matter and that he had never given Riley any written reprimands or suspensions, only oral.
16. With respect to Edwin McClain, Penn's evidence was that he had disciplined him many times including suspensions. Penn stated that Justice Decius was very bitter and hot-tempered and could not co-exist with the other employees. He stated that Decius was removed from the Safety & Environment Department and transferred to another department as a consequence. Penn opined that Decius was not even assigned to S&E when he gave the statement. He went on to assert that Decius was bitter because he was removed from S&E and blamed him for being kicked out of the department.
17. At trial BPL called Chequita Johnson (Johnson), former Manager of Compensation and Benefits at BPL in support of their case.
18. Johnson's examination in chief came by way of a witness statement dated 12 November 2019 and upon which she was subject to cross examination. Prior to her retirement Johnson had been with BPL for over 29 years. According to her, it was both a term and condition of Penn's employment that he be governed by the IA.
19. Johnson's evidence was that the investigation into Penn arose from a complaint made by Decius in July 2016 to BPL's Manager of Security, Steven Strachan. Within days of the complaint by Decius, which Strachan had advised her he would look into, Johnson says that HR was approached by Riley who also complained about Penn. She further stated that Riley informed her that he was afraid of Penn.
20. Johnson said that BPL created an internal report (IR) which reflected the investigation:
  - i) *29 July 2016* Ricardo Riley (Riley), an employee in the SED under Penn's supervision gave a written statement to BPL's Human Resources Division. In that statement Riley said if an employee including himself missed a day from work their salary would not be cut, 'you just had to give Penn something.' He



said he found this out three months into his employment contract. He missed a day from work and Penn pointed out that 'he' did not cut his salary. He said he gave Penn \$50 the first time he missed work but that there was no standard fee. Penn's advice on the amount of money that should be forthcoming following time missed from work by employees was, 'let your conscious be your guide'. However, there was a day that he went to do some banking and did not return to work the next day. Upon his return he offered Penn \$100.00 but was advised by Penn that '\$200.00 would be better'. Riley also alleged that he was taken to Penn's residence during normal work hours to clean Penn's private vehicles.

- ii) *29 July 2016* Edwin McClain another employee in SED under Penn's supervision stated that approximately a year prior to his interview he noticed that several of his co-workers would come to work, 'sporadically or when they feel like, and leave whenever they wanted'. He noticed that once they 'gave Penn something back' he would put in their time as normal. McClain stated that a group of temporary workers in the SED formed a group calling themselves the Lords of Doom (LOD). These individuals would hang out by the sea while drinking alcohol and smoking marijuana during working hours. McClain stated that he could not remember the dates but he reported two incidents to Penn's immediate supervisor. Penn confronted him and told him to report any issues directly to him and did not allow him to work any weekend overtime after that.
- iii) *2 August 2016* Justice Decius stated that he was taken to Penn's residence about three weeks after he started employment with BPL, where he washed windows and repaired cabinets for Penn. He stated that he was not paid for the work outside of his usual salary from BPL. He said that Michael, another employee was also taken to Penn's residence. He also stated that some of his co-workers formed a group called LOD who smoked marijuana and consumed alcohol at work.
- iv) *8 August 2016* Yorick Carroll stated that he is a temporary worker and that Penn was his supervisor. He admitted to being paid on four occasions for weekend shifts that he did not work and stated that these payments were authorized by Penn. He re-called three occasions that he would have paid Penn for shifts that he received a salary for but did not work. He also stated that he had in fact consumed alcohol during his lunch break and while he did not witness any of his co-workers using marijuana but he did notice the scent of it. He further stated that he did notice that Penn took workers – particularly Michael off site during normal working hours. Carroll also claimed he was on board one of BPL's boats when it was taken on what management contend was an unauthorized excursion to Abaco island.
- v) *8 August 2016* John Hepburn stated Penn was his immediate supervisor. He stated that Penn had always been fair to him. He stated that he was unaware of any incident in which Penn was threatening or abusive to any employee. Additionally he did not know of any instances where an employee was paid for working days that they were absent, nor if employees paid Penn for time. He further stated that he was on the BPL boat when it was driven to Abaco around 6pm one evening and that they returned around 4-5am the next morning.

- vi) *9 August 2016* Elexio Stubbs stated that he captained the boats for BPL. He stated that it was his job to clean up oil wherever it was found. He said that he never went near the island of Andros in a BPL vessel. Stubbs said he took a boat out after hours on the advice of the mechanic with Penn's knowledge.
- vii) *9 August 2020* Adrian Clarke another employee in SED under Penn's supervision denied knowing anything about any of the allegations that had been levied against Penn including the driving of a boat to Andros and Abaco.
- viii) *16 August 2016* Michael Bullard stated that he was an employee of PENTA who works from Clifton Pier and Penn was not his immediate supervisor. However, Penn was responsible for logging his time at work. He stated that he attended at Penn's house between one or two days a week and on weekends and that sometimes he would not return to the worksite until the end of the day. He also said he would clean Penn's car while he was at his home. He stated that he was on the boat trip that went to Andros and that Penn authorized the trip to Abaco also. He denied knowing of any of the men under Penn who would have gotten paid for time that they did not work.

21. When questioned about the service record of the three men it was Johnson's evidence Riley nor Decius had any disciplinary matters on their personnel file. McClain however did have two suspensions dating back to 2012. She was unaware of any plans for removing Decius from S&E. Johnson said that she did not recall there being any disciplinary proceedings taken out against Penn.

22. Johnson acknowledged that when Penn was suspended and up to the time his employment was terminated she had not shown him the statements contained in the internal investigation report. She was unable to state when exactly the statements became available to Penn. Counsel for Penn suggested to Johnson that clause 16.13 of the Agreement was not complied with by BPL. Clause 16.13 provides:

"No employee shall be dismissed without being afforded an opportunity to be heard and respond to the allegation(s) made against him."

Johnson answered that Penn had the benefit of union representation at the meeting with management and that his representative had sight of the statements made by Penn's supervisees as well as the investigation summary. Johnson stated that during the course of BPL's investigation Astrid Bodie – Secretary General, Aqila Knowles and the BEWU president Paul Maynard all saw the statements and the IR.

23. Penn's counsel suggested to Johnson that Penn was entitled be given the exact details of the allegations made against him asserting that he could not defend against that which he was unaware. He contended it was unfair that this information which was not given to Penn. Johnson disagreed and stated that all of the allegations contained in the statements were put to Penn during his interview with the management of BPL. Johnson explained that the IR was merely the summary of the statements given by the three men. She stated that the IR was up for review by HR and the company's executive management inform their decision after they would have discussed the contents. She contended that the Union president, a labour consultant and the Assistant General Manager of Human Resources would have all met to discuss the IR and witness statements.

24. Johnson stated that the Union was given copies of the documents and that no restrictions were placed on them in relation to sharing them with Penn. She also stated that Penn had never requested copies of the documents from her nor had he ever asked to speak to any of the witnesses during the two meetings that were held with him prior to his termination.

25. Penn relies on the case of ***T'Shura Ambrose v The Central Bank of the Bahamas*** to say that BPL is statutorily bound to the procedures set out in the registered IA. In his closing submissions Penn submits that the rules of natural justice have not been allowed to operate in Penn's case. They rely on the Court of Appeal case of ***Bahamasair Holdings Limited v Omar Ferguson, SCCivApp No.16 of 2016*** and the dicta of ***Crane-Scott JA*** as follows:

“At the very minimum, an employer's duty under section 34 to act fairly would require the employer to adhere to the audi alteram partem rule of natural justice; that most cherished principle of procedural fairness which mandates that no man should be condemned, punished (or as in this case, dismissed) without being given a hearing and the opportunity to explain or respond to any charge or adverse decision to be taken against him. We hasten to add that the right to be heard does not require the employer to conduct a full blown hearing, but may be satisfied by giving an employee an opportunity before a decision is made, to make

representation (whether in writing or in person) to the employer as to why he should not in the circumstance be terminated.”

26. Penn argues that BPL failed to follow the terms and conditions of the registered IA and to show that the company had a lawful cause for the dismissal of Penn. He relies also on the case of *BMP d/b/a Crystal Palace Casino and Yvette Ferguson* Industrial Tribunal App No. 116 of 2012 to highlight the point that the question on whether a dismissal is deemed fair or unfair “shall be determined by the merits of the case.” Penn contends that there was a breach of his right to be heard relative to the charges. He says that BPL failed to put the charges to Penn that they were relying on before effecting his termination. Further, he was denied an opportunity to meet his accusers and address the company as to why he should not be terminated.

27. Penn says that BPL has failed to establish the element of gross misconduct and they have failed to show that Penn was dishonest. Further, there has been no documentation showing that there were hours paid for employees that did not work. Ultimately, he says, there is no proof of misconduct as is required, as no evidence has been adduced by BPL regarding the same.

28. BPL avers that Penn was engaged in gross misconduct as he was engaged in fraudulent activity and dishonesty which included gross negligence as well as breach of trust and confidence. BPL maintains that a reasonable investigation was carried out which culminated in BPL’s honest and reasonable belief on a balance of probability that Penn had been dishonest and committed gross misconduct. BPL says that they are within their rights under sections 31 and 32 of the **Employment Act** which provides:

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.

29. BPL relies on the case of ***Sheldon Jones v Commonwealth Building Supplies Limited No.2003 COM/lab/00002*** and the dicta of **Thompson J** (as she then was) to establish BPL's obligations to Penn as an employer as follows:

"The test for the court, as pointed out by counsel was not whether Mr. Jones actively committed the breach of contract complained of, but whether the company honestly and reasonable believed on a balance of probability that the employee (Mr. Jones) had committed the misconduct in question" and "that he (the company) " conducted a reasonable investigation of such conduct except where such investigation was otherwise unwarranted. Section 33 of the Employment Act."

They say the law in this matter is set out in ***Anya Dorsett v Pictet Bank & Trust Limited Supreme Court Action No. COM/lab/00024 of 2010*** where the following was said:

"It is settled law that there is an implied duty of trust and confidence owed by employers and employees to each other".

Reliance is also placed on the Court of Appeal decision in ***Walker v Candid Security Limited SCCivApp No.55 of 2010***

"...where such conduct so undermines the trust and confidence essential to such a contractual relationship that an employer should not be required to continue to employ him...in as much as the last mentioned provisions, do not define what constitutes ...gross misconduct, the test to be applied in determining whether a

dismissal is justified, in our view, is the common law test as suggested in Halsbury's".

30. BPL says that the BEWU was present at all meetings with Penn and that there was what was described as 'a small plea for leniency' on Penn's behalf. However, at no time was there a request made by the Union to meet or confront with any of Penn's supervisees who had given the statements in the IR. The Union made indications that they would conduct their own investigation into the matter and that BPL was not apprised of whether this investigation had actually taken place or the result if any of the Union's efforts.

### *Analysis & Discussion*

31. I have considered the evidence of the parties and observed the demeanour of both Penn and Johnson while they gave their evidence to the Court. I prefer the evidence of Johnson where they differ. I find on the balance of probabilities that BPL held an honest and reasonable belief that Penn committed the misconduct in question at the time he was dismissed. I also find that the company conducted a full and fair investigation into the allegations that were made against him pursuant to the statutory requirement under the Employment Act.

32. The test on what constitutes a reasonable investigation was laid down by **Longley JA** in the Court of Appeal decision in ***Island Hotel Company Limited v Shakera Isaacs-Sawyer*** as follows:

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

Regarding the relevance of the guilt of the employee, **Longley JA** had this to say:

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

33. On 14<sup>th</sup> November 2016, following his summary dismissal from BPL, Penn wrote to Pamela Hill, the then Chief Executive Officer of BPL, describing an investigation undertaken by BPL. That letter was settled as follows:

Thank you for taking the time to view this letter on such a serious matter concerning my welfare and livelihood.

On the 8<sup>th</sup> August 2016, I was summoned before a tribunal which included Mrs Jones my department head without union representation. A number of serious accusations were levied against me which were false and were never substantiated. Just before I was given a letter suspending me for 10 days at half pay, a union rep suggested by H.R. was present.

On the 19<sup>th</sup> August I was summoned back to the tribunal with union representation of my choosing and questioned again about other allegations that have not been substantiated. It was even suggested at this time that there had been impropriety on my part when it came to fuel usage. A further suspension of 5 days at half pay was given pending further investigation.

On the 29<sup>th</sup> August I was terminated by Ms. Black Manager, Human Resources, and the reason given ‘Gross Misconduct & Dishonesty’. This was based on a contract staff who alleged that I paid him for working a weekend in which he further alleged that he was off the island. To date, no hard evidence to support such claim such as a ticket was ever produced just one man’s word. In addition, the case was prejudice against me due to the fact that my manager Ms. Jones was a part of the tribunal putting questions to me unimpeded by HR. No one should be a judge in his own cause; it is a principle of natural justice that no one can judge a case in which they have an interest.

My character has always been built on trust, integrity and reliability. Please view my records which show that I, Terrance Penn, for the last 9 years without any incident have been submitting time for staff and at one point for up to 18 staff

members under my direct supervision. As it stands all overtime must be approved by the department head for payment.

I humbly request your intervention to correct this miscarriage of justice and have me return to normal duties as I love my job and always had the jobs best interest at heart.

34. In the course of their investigation BPL interviewed eight of the men who worked with Penn. It does not appear that they singled out any particular individual to give a statement that was either favourable or unfavourable to Penn. Indeed, some of the statements taken did not implicate Penn in any misconduct.

35. A major contention by Penn appears to be that he was not shown any physical proof outside of a timesheet that contained his signature and that of his immediate supervisor and manager to support the allegations against him. Penn never suggests at any point that he asked for a copy of the timesheet or any other document. Penn said that he denied the allegations and demanded proof. However, there was never any correspondence from him to BPL in this regard save for the Pamela Hill letter that was not written by him until after his termination. I am satisfied that in the circumstances of this case that even though the suspension letters to Penn did not elaborate on his suspected conduct that he was made aware during his interview of the nature of the complaints and of the statements were made by some of his supervisees and who they were. He, through his union representatives, had access to the IR and the statement of the accusers. There was no guessing game between Penn and BPL as to what he was being accused of and by whom.

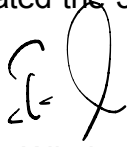
36. I find that pursuant to his contractual rights under the IA and under the Employment Act, Penn was afforded a fair and reasonable opportunity to be heard and respond to the allegations made against him. This fact is borne out in his own evidence where he says that there were allegations put to him at the meetings he had with management that he was inter alia falsifying time sheets and having employees go to his home



during working hours to perform personal tasks on his behalf. Following their investigation I am satisfied that BPL formed an honest and reasonable belief that Penn committed the misconduct in question at the time he was dismissed.

37. Penn's claim is therefore dismissed. Penn shall pay BPL's reasonable costs to be taxed in default of agreement.

Dated the 3<sup>rd</sup> day of November 2020

A handwritten signature in black ink, appearing to read 'Ian Winder', written over a faint circular stamp or watermark.

Ian Winder

Justice