

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2015/CLE/gen/00602**

BETWEEN

KEVIN DEAN

Claimant

AND

QUALITY AUTO SALES LIMITED

Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Eleanor Albury for the Claimant
Roger Minnis for the Defendant

Hearing Date(s) 19 January 2017, 15 June 2018, 25 June 2018, 27 February 2024,
Submissions (25 July 2024 and 25 November 2024)

JUDGMENT

WINDER, CJ

[1.] This is a claim for the breach of a contract of employment by the Claimant (Dean) who was terminated from his position as a senior mechanic with the Defendant (Quality) on 5 July 2013.

[2.] The action was commenced by Writ of Summons dated 12 May 2015. The Statement of Claim endorsed thereon provides as follows:

1. The Plaintiff was at all material times an employee of the Defendant.
2. The Defendant is a limited company purportedly incorporated under the laws of The Commonwealth of The Bahamas and is and was at all material times carrying on the business as selling motor-vehicles and auto-repairers at Shirley Street in the Island of New Providence.
3. On the 10th October, 1990 the Plaintiff was hired by the Defendant as a Tool Assistant and during the course of his employment worked his way up to the position of Senior Mechanic until the 5th July, 2013 when he was summarily dismissed by the Defendant Company without any justifiable cause or reason.
4. By letter dated the 5th July, 2013, the Plaintiff was wrongfully dismissed from the Defendant's employment, and was given a cheque in the sum of \$5,057.57 as termination pay but the Plaintiff did not accept the said sum of money, or any part thereof.
5. Notwithstanding the said determination notice the Defendant at all material times failed to properly and reasonably investigate the allegations of misconduct as contained in the aforesaid letter, or at all, and the Plaintiff was denied a fair hearing even though he had been a dutiful and faithful employee of long standing with the Defendant.
6. At the time of the aforesaid dismissal, the Plaintiff earned the weekly salary \$865.51, and was entitled to 6 weeks vacation each year. The Plaintiff also earned commissions on a weekly basis. Further, an annual Christmas bonus of approximately \$600.00 was paid to the Plaintiff during his 24 years of employment by the Defendant.
7. Whilst employed by the Defendant, the Plaintiff sustained personal injury which injury was unrelated to his employment the result of which required hip replacement surgery for which the Defendant had promised the Plaintiff under the employee group insurance scheme and for which the Plaintiff would have received had his employment not been summarily determined.

By reason of the matters aforesaid the Plaintiff has suffered loss and damage.

PARTICULARS OF LOSS

(1) Salary due to Plaintiff in lieu of notice for 24 years (865.51x2x24)	\$41,544.48
(2) Defendant's commissions for week ending 4 July, 2013	\$ 3,154.51

(3) EML commissions for week ending 4 July, 2013	\$ 310.50
(4) Contributions for June, 2013	\$ 280.00
(5) 5 wks vacation pay @865.51 per wk	\$ 4,327.55
(6) Hip replacement surgery (Estimate)	\$35,000.00

The Plaintiff further claims a sum in respect of bonus calculated at the amount hereinbefore mentioned from December, 2013 to August 2015 particulars of which the Plaintiff is unable to give until after discovery. Further, the Plaintiff is entitled to and claim interest on the amount found to be due at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFF claims:-

- (1) The said damages
- (2) Interest pursuant to the Civil Procedure (Award of Interest) Act;
- (3) Further or other relief deemed necessary by the Court; and
- (4) Costs.

[3.] Quality defended the claim in a Defence filed on 1 July 2015. The Defence provided, in part, as follows:

...

3. Paragraph 3 is admitted except that the Plaintiff was summarily dismissed for gross insubordination, substandard work and incompetence after numerous previous infractions and warnings including a final warning of an action of dismissal on or about 12th June, 2012.

4. Paragraph 4 is denied as after numerous recent disciplinary actions the Plaintiff was summarily dismissed in accordance with the Employment Act 2001 for his flagrant breach of his contract of employment as the Plaintiff blatantly refused to carry out work as lawfully instructed by the Defendant without a reasonable reason. The Plaintiff was presented with what was due to him subject to his summary dismissal. The Defendant does not admit or deny whether the Plaintiff accepted the said sum of money or any part thereof and the Plaintiff is put to strict proof thereto.

5. Paragraph 5 is denied; the Defendant at all material times did properly and reasonably investigate the allegations of misconduct as contained in the termination letter as warranted. The Plaintiff had numerous disciplinary warnings and infractions in recent years and could in no way be classified as a dutiful and faithful employee. As it relates to a fair hearing, the dismissal was carried out in accordance with Section 33 of the Employment Act.

6. Paragraph 6 is denied as the Plaintiff's basic wage was \$350.00 per week and he was entitled to five (5) weeks vacation each year.

7. Paragraph 7 is admitted save that the Defendant never made any promise related to hip replacement surgery as this would logically be an undertaking of the Plaintiff as the accident had nothing to do with his employment and took place some 15 years before his dismissal. The Defendant further denies that the status of the Plaintiff's hip replacement surgery had anything to do with his dismissal.

8. The Defendant denies owing the Plaintiff any bonus or anything save for as presented in the termination letter of 5th July, 2013. The Defendant expressly denies that the Plaintiff has suffered any loss or damage due to his employment or dismissal.

...

[4.] At trial Dean gave evidence in his case and called Kent Williams (Williams) as a witness. Quality called Carol Bowleg, its Human Resources Manager, and Leah Lowe, its Dispatcher as witnesses in its case.

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

1. I am the Plaintiff named herein, and am a former employee of the above-named Defendant having been employed from 15 October, 1990 until 2013 when I was unfairly and wrongfully dismissed.

...

5. At the time of employment, the Company had a Human Resource Personnel so there was wasn't any Company's Policies or an employees' Handbook. I reported directly to my Service Manager for any concerns or issues and if it couldn't be resolved then it would be placed before the General Manager who would make the final decision.

6. Around the time of 10 June 1997, I was involved in a very bad traffic accident the job left me with a broken hip bone and needing numerous surgeries. At the time I was covered by the Company's insurance which paid 80% of my medical bills. I was hospitalized for a period of 31 days and away from work for 7 months and was told by doctor that I should not perform any heavy duties for the next year due to the seriousness of my injuries.

...

8. While I was employed with the Company although my injury had nothing to do with my job, I was promised that I could get the badly needed hip surgery which would help my injury under the employee group insurance scheme. I had provided documentation from my physician as requested by Mrs. Carol Bowleg, the Human Resources Manager. Had I not been summarily dismissed, the Company under the said scheme would have provided the surgery.

...

25. I attempted to explain to the service advisor about the History of the job and that in the History it had just been into the workshop for the same complaint where it was worked on by another mechanic, and that mechanic is not doing any work at the moment. ...She also asked me if she should contact Mr Demeritte about the job and I told her yes. ... Demeritte's response was that I knew of the problem of the car. I was dumbfounded by this statement as I had never worked on the car...

26. I further explained that I never worked on that particular car and that the mechanic who had worked on it was sitting on his bench and not doing anything. Demeritte immediately cut short my conversation by telling me to do the job or go home for the day with my bad attitude, and he no longer wanted to hear what I had to say or explain. I insisted that I wanted to speak to upper management and that I was not doing the job until I speak to him. Upper management had always assured the mechanics about the policy with regard to carrying out pre-assigned jobs and had on an occasion indicated that if there was a problem to speak with them. So I was requesting to see upper management based on that assurance by upper management.

27. I indicated that I was not doing the job until I speak with L. J. so Demeritte said he will call him. I told him that I would go to Administration now to speak with L. J. I spoke to L. J.'s secretary and asked her to tell L. J. that I needed to speak with him. She called L. J. and he told her that he will be out in 10 minutes to speak with me. I waited for about half an hour and L. J. never came out to see me. Whilst waiting for L. J., Mrs. Carol Bowleg, the Human Resources Manager, asked me if everything was 'ok' and she proceeded to walk to the outside of the office. I waited for another 5 minutes, and then told the Secretary to inform L. J. that I was going back to the Service Department, and when it would be convenient for him he could call me.

28. I left L. J.'s office and went back to the Service Department to continue on with my work which would've been my first job for that morning. As entered (sic) back into the workshop, I was greeted by Mr. Thomas Johnson who is also a senior mechanic, and indicated to me that Leah Lowe had given him the job in question, and that he was unable to do it at that time because he had just gotten an approval on a previous work so I said 'ok'. I took the repair order with the keys, and continued on with finishing my work that I started and upon completion I closed the repair order out in the system. There wasn't any more work in the system to do because no jobs popped up under my number when I closed out my job.

29. I went into Leah Lowe's office, the Dispatcher, and asked her to re-open the job in question under my number because Thomas Johnson had the go-ahead on other repairs and was unable to do the job in a timely fashion. Miss Lowe replied to me that she was told by Ricardo Demeritte not to give me any work as I was suspended for that day. I told her ok and left the office, and headed back to administration to see L. J. where I asked the Secretary if she had heard from L. J., and she said she had not heard from him. So I asked her if she could please call him letting him know that I am still waiting to see speak with him. She picked up the phone and dialed L. J. making him aware that I was still waiting to see him. After hanging up from L. J. his Secretary told me he was still busy, and I told her I will wait until he is free. Again, she picked up the telephone, and told him what I did, and she said to me that he said it wasn't a good idea to wait.

30. I left administration and went back to the service department, and waited for a while hoping that Mr. Demeritte would return to the workshop but I was informed by my colleagues that he went to the airport to collect a group of people coming here from the Hyundai Company. Upon hearing this, and not being able to speak with or see L. J., I decided to leave for the rest of the day.

31. When I returned to work, I saw Mr. Demeritte who said nothing to me except "Good Morning", and I proceeded to log into the system looking for work, and then went about work like any other day. Throughout the day, I encountered L. J. but he didn't say anything to me, and he

appeared to be busy with the people from the Hyundai Motor Company. I knew that LJ was aware that I wanted to speak with him so I figured that when he can he would have informed me on a meeting so as to investigate why I was suspended. I continued to work as usual for the remainder of the week until Friday when I was confronted by Mr Demeritte who told me that I was needed in administration. I immediately headed to the Administration and upon my arrival I met Mrs. Carol Bowleg, Dave Moree and Mr. Demeritte. I was given a letter of termination along with a breakdown of monies that would be paid to me by the Company in the sum of \$5,057.57 but I did not accept the cheque. I was also given a copy of infraction, many of them I had no idea of and was fabricated.

32. I was summarily and unfairly dismissed without there being an investigation into the alleged misconduct prior to dismissing me notwithstanding I have requested meetings to be given an opportunity to be heard and a proper investigation carried out by the Company I was never made aware of any investigation nor made aware of its findings of my alleged misconduct for my dismissal. The Company never carried out a reasonable investigation into the misconduct to be expected of a reasonable employer they claimed they terminated me for.

[6.] Kent Williams' evidence was contained in his witness statement which was subject to cross examination. In the witness statement Williams stated, in part:

1. I was employed by the Defendant ("the Company") from 2006 to 2012 as a Service Dispatcher. I know the Plaintiff, Mr. Kevin Dean, and know him by having worked for the Company at the material time as a Senior Mechanic.

2. My responsibility as a Dispatcher was to distribute jobs to the mechanics employed by the Company on a daily basis. The job starts about 8 a.m. and ends at 5:30 pm., and the mechanic will come to me for whatever job is available. I also had the duty that I could distribute a job to a mechanic before 8 a.m. if he is there and he wants to start early. Those types of jobs will be what is called "waiter" and involve small work done, for example, a 1,000 mile check after purchasing a new car Or, an oil change which does not involve much to do I am familiar with the day-to-day operations of the Defendant as relates to mechanics and the treatment of customers.

...

12. As to the infraction alleged to have occurred on 31 October, 2011 where it was stated that I was present. I must emphatically state that I was not present nor do I know Mr. Kevin Dean to ever be a person who uses profanity on the job, at all, or otherwise. I have also socialized with him outside of the job and cannot ever hearing him use a curse word ever or any vulgarity.

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

1. I am employed as the Human Resource Manager at Quality Auto Sales Limited, the Defendant herein.
2. I am of the view that the termination of Mr. Dean's employment with Quality Auto Sales Limited was justified based on the numerous warnings highlighting the various complaints concerning Mr. Dean's behavior.
3. The warnings for substandard work, poor attitude and behavior towards co-workers and refusal to perform his duties during normal work hours support the decision made with reference to his dismissal.
4. Mr. Dean while employed at Quality Auto Sales Limited earned a basic pay or salary of \$350.00 per week. Since about 2012 Mr. Dean began to have disciplinary reports made against him by his supervisors.
5. The incident in question was very straightforward. Mr. Dean was given an assignment to do by the relevant authorized person; this fact was confirmed by his supervisor/manager. I received information on the day in question, which has since been verified by other co-workers, that Mr. Dean in the carshot of other staff members blatantly refused to carry out the reasonable and lawful instructions given to him by his superiors.
6. This was gross insubordination and to have other staff members, witness Mr. Dean getting away with such behavior was extremely bad for business and would eventually be adverse to the company's bottom line.
7. I recall on the day in question that I saw Mr. Dean around the time that I now know was when the incident occurred in the Administrative Area. I asked Mr. Dean if all was well and he did not bring anything to my attention at that time. Mr. Dean would know that as Human Resource Manager and as a part of the management of Quality Auto Sales Limited I would be the person who he would bring any grievance to but in any event if he had mentioned anything to me at the material time that he had an issue with anything I would have convened a meeting with him to hear him out.
8. After carefully listening to the account of Mr. Dean's supervisor and the dispatcher I drew a conclusion that Mr. Dean was grossly insubordinate. At no time up to this point did Mr. Dean refute that he did not carry out the instruction given to him.
9. Taking into account Mr. Dean's disciplinary record and his act of gross insubordination at the material time the company took the decision to summarily dismiss Mr. Dean for gross insubordination amongst other things.

[8.] Leah Lowes's evidence was contained in her witness statement which was subject to cross examination. In the witness statement Lowe stated, in part:

...

2. Since I have been a Dispatcher I have noted with concern Mr. Dean's (the Plaintiff) attitude and interactions with co-workers.
3. There have been instances where Mr. Dean has dismissed or not entirely adhered to instructions.

4. One such incident occurred on or about 26th June, 2013. A job had been “pre-assigned” to Mr. Dean; meaning it was reserved and waiting for him to do and no other Technician could do the job unless someone with the authority to do so removed Mr. Dean and assigned the job to another Technician. However, Mr. Dean refused to do the job as (in his opinion) it should not have been assigned to him.

5. The system is automated and I was only monitoring it, so I asked the Service Advisor why she had assigned the job to Mr. Dean and she told me that she had been instructed to do so by the Service Manager.

6. I confirmed this with the Service Manager who further informed me that he had assigned this job to Mr. Dean because of his experience in working with this particular type of vehicle and also the specific customer issue/complaint.

7. However, even after I explained to Mr. Dean why he had been assigned the job he still refused to do the job.

8. Mr. Dean was asked to do the job no less than (3) three times and all three times he refused to do so. As a result of his refusal to do the job he was asked to leave work for the rest of the day. I gave this information to Mrs. Carol Bowleg.

9. However, I would stress that this incident was not a new or first time occurrence for Mr. Dean; he had behaved in this manner many times before. It was not unusual for Mr. Dean to have to be given instructions several times before they were followed or for him not to follow the instructions completely or as given.

10. There were also times when Mr. Dean would be speak (sic) disrespectfully to co-workers. He showed a lack of respect for authority and even used profane and offensive language. Occasionally, I would have to overlook his response (i.e body language and one of voice) when giving him instructions just so that the job could get done.

11. Usually, when Mr. Dean behaved this way management would have a conversation with him and not usually issue him a formal written notice.

Issues

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

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

[10.] Dean’s termination was set out in a letter of termination dated 5 July 2013. The letter provides as follows:

July 5, 2013

Kevin Dean
P. O. Box EE-1744
Nassau, Bahamas

Dear Mr. Dean,

Re: Termination of Employment

Effective July 5, 2013, you are being summarily dismissed for gross insubordination, substandard work and incompetence in accordance with the Employment Act 2001.

Your performance and constant mistakes have been discussed with you and documented on numerous occasions with little to no improvement. A copy of your warning reports is attached for ease of reference.

Enclosed, please find three cheques for a total of \$5,057.57 showing the breakdown of your entitlement as follows:

QAS Commissions to the week ending July 4, 2013	\$3,154.51
Five weeks' Vacation Pay (\$350x5)	\$1,750.00
National Insurance Deductions (2 weeks)	(\$ 46.80)
Group Medical Insurance (2 weeks)	(\$272.97)
Outstanding amount owed on QAS account	(\$ 63.33)
Outstanding amount owed on EML account	(\$ 54.34)
Cheque Total	\$4,467.07
EML Commissions to the week ending July 4, 2013	\$ 310.50
Contribution for June 2013 being returned	\$ 280.00
Overall Total:	\$5,057.57

[11.] Numerous warnings were issued to Dean in the last several years of his employment with Quality. These warnings were attached to Dean's letter of termination as indicated in the second paragraph of that letter. At trial, in support of its assertion that Dean had a history of poor behavior, Quality helpfully chronicled the disciplinary instances involving Dean in an Incident Report, which it tendered in evidence. The Incident Report provided:

07/08/2010	Not securing customers' vehicles	Description of Infraction: July 7, 2010 the keys to Yolanda Dorsett's vehicle was left in the vehicle. This leaves the department liable for security issues with the customer. This is the third time you've been warned about this behavior. Plan for improvement: Secure all customers' vehicles in your care
01/27/2011	Not securing customers' vehicles	Consequences of Infraction: One day suspension. Description of Infraction: Yesterday Mr. Dean left the keys to BG Construction HD-65 in the vehicle. Along with the keys; Mr. Dean did not secure the company's tools, which were left outside of the truck. This is the fifth time Mr. Dean was warned about leaving the customers' keys in their vehicles.

08/18/2011	Substandard Work	<p>Plan of Improvement: Secure Company's tools and all customers' vehicles that are in his care.</p> <p>Consequences of Infraction: One week suspension</p> <p>Description of Infraction (Second warning) Failure to write parking space # on key when finished with vehicle after servicing/repairing it. Failure to place proper date and mileage on Service sticker (e.g. placed sticker on window with a year's difference, you wrote 09/11/12 meaning 2012 which would put the driver of the vehicle to believe that the next service would be due November of 2012 not 2011). Failure to secure vehicles at the end of the work day (e.g. Not closing doors or placing ignition in off position. Battery voltage the next day.)</p>
10/31/2011	Rudeness to Customers/Coworkers	<p>Plan of Improvement: Focus on what you are working on.</p> <p>Consequences of Further Infractions. Final warning.</p> <p>Description of Infraction: (Third warning for 2011)</p> <p>On October 17, 2011 Mr. Dean as to working on a car he was repairing (RO 20856) before he went on vacation break. I instructed Mr. Kevin Dean to give me the repair order he was assigned to but had not yet gotten the car as yet to work on. He used profanity in his response to me. I asked him to repeat what he said an (sic) he used it again. Mr. Barry Williams was present in the Dispatch Office at the time. There was work to be done at the time and training coming up, it was for that reason I did not send Mr. Dean without pay for the week. I am doing so now from October 31 – November 7, 2011.</p> <p>Plan for Improvement: Take the time to consider how he speaks so the people he works with.</p>
03/08/2012	Leaving Early	<p>Description of Infraction: Left work without permission.</p> <p>Plan of Improvement: To inform supervisor if wanting to leave before 5:30 p.m.</p>
06/12/2012	Rudeness to Customers/Coworkers: Sleeping on the job; Misuse of ADP system.	<p>Consequences of Further Infractions: Second warning.</p> <p>Description of Infraction: Yesterday you were rude to the Dispatcher. This behavior would not be tolerated. You were found sleeping in a customer's vehicle, while you were listed in the ADP system.</p> <p>Plan of Improvement</p> <ul style="list-style-type: none"> - Show respect to all coworker. - There is no sleeping allowed in the Company. - Utilize the ADP system to monitor correct working times. <p>Consequences of further Infraction: (Final Warning)</p> <p>Note: A official notice memo of suspension without pay for period of three weeks (June 12, 2012 – July 3, 2012)</p>

Dismissal.

06/26/2013	Substandard Work; Refusal to Work (2013 Hyundai Accent – R028856)	<p>Description of Infraction:</p> <p>On Friday, June 21, 2013, while installing the headlights for Demille Saunders Smith (RO28694) Mr. Dean did not connect one of the headlights' plugs. As a result of his action, the customer was ticketed by the police over the weekend for no headlights. The warranty parts for the same job was not placed into the storage area until he was instructed by Mr. Demeritte to do so two days later.</p> <p>On Tuesday, June 25, 2014 while completing a service on Alexander P. Maillis' Tucson (RO28811) Mr. Dean neglected to top up the radiator with coolant. Our Quality Control Person (Quintees Rolle) had to top up the cooling system with gallon of water.</p> <p>On Thursday, June 27, 2013 Mr. Dean refused to work on a job that was pre-assigned to him. Ms. Lowe called Mr. Demeritte (after being informed by Ms. Johnson that she was instructed to pre-assign the job to Mr. Dean) in the presence of Mr. Dean to query why the job was pre-assigned to him. Mr. Demeritte explained to him that it was done because of his knowledge and experience with the same complaint in other vehicles of the same make. Mr. Dean repeated three times that he would not work on the vehicle.</p> <p>Mr. Demeritte then instructed Mr. Dean to leave for the rest of the day.</p> <p>Plan for improvement; N/A</p> <p>Consequences of Infractions: (Final Warning) Dismissal</p>
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Analysis and Disposition

[12.] Dean says that he has proven his case on a balance of probabilities that Quality summarily and unfairly dismissed him without any justifiable cause or reason. Quality has not discharged its burden under Section 33 of the Employment Act “(the EA”) that it conducted a reasonable investigation of the alleged misconduct prior to dismissing the Plaintiff, and that the Plaintiff was denied a fair hearing with regard to the alleged misconduct. Further it is respectfully submitted that the Plaintiff has a statutory right conferred by Section 34 of the Act not to be “*unfairly dismissed*” by his employer, the Defendant.

[13.] Quality’s case is that Dean was properly terminated for cause, as indicated in the termination letter of 5 July 2013, for gross insubordination, substandard work and incompetence in accordance with the Employment Act 2001. They say that Mrs. Bowleg’s evidence, tested under Cross-examination, was consistent with what was pleaded by Quality in the Defence. Quality also

dismisses the complaint with regard to the lack of an investigation. They say that Dean was permitted to speak directly to senior management prior to the dismissal. Quality relies on Sections 31-33 of the EA.

[14.] Quality's position with respect to Dean's claim for hip replacement surgery was denied. Mrs. Carol Bowleg's evidence was that she informed Dean of this fact and that his group insurance covered such an injury. Quality denies that there was any undertaking by or on behalf of it to cover the cost of the Dean's hip replacement surgery.

[15.] I should indicate that having observed the witnesses as they gave their evidence I prefer the evidence of Quality and its witnesses. I should also indicate that this is a case of wrongful dismissal as there is no pleaded claim for unfair dismissal, notwithstanding Dean's submissions that he was unfairly dismissed. Dean concedes in his written submissions that there was no pleaded claim for unfair dismissal. Parties, and the Court, are bound by the pleadings. In **Ervin Dean v Bahamas Power & Light** [2024] UKPC 20, the Privy Council upheld the decision of the Court of Appeal to set aside a finding of the Supreme Court with respect to a claim of unfair dismissal which had not been pleaded. (See also **Coleby v BSI Trust Corporation et al** SCCivApp & CAIS No. 128 of 2012)

[16.] Sections 31, 32 and 33 of the EA provides:

SUMMARY DISMISSAL

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.

[17.] Dean's employment records reveal that prior to the incident in June 2013, Dean had received three warnings in 2011 and a Final Warning in June 2012. On receiving the Final Warning Dean had been suspended for three weeks. On the evidence, which I accept, Dean was instructed by his supervisor to do a job no less than three times and all three times he refused to do so. Thereafter, Dean was asked to leave the work place for the rest of the day.

[18.] The Dispatcher's evidence was that this incident was not a new or first time occurrence for Dean and that he had behaved in this manner many times before. She stated that it was not unusual for Dean to have to be given instructions several times before they were followed or for him not to follow the instructions completely or as given. She indicated that he would speak disrespectfully to co-workers and showed a lack of respect for authority and even used profane and offensive language.

[19.] In **Island Hotel Company Limited v. Shikera Isaacs-Sawyer**, *Longley JA* (as he then was) provides a helpful discussion on what is meant by a reasonable investigation. According to *Longley JA* at paragraph 35 of **Island Hotel**:

35. What then is a reasonable investigation? The authorities seem clear. What one gleans from them is that *the investigation must enable the employer to ascertain the true facts upon which it can make an informed decision to ground or support an honest belief on reasonable grounds that the employee committed the act of misconduct. It must be within reason, full and fair.* That would normally involve where it is considered necessary an account of the incident from as many eyewitnesses 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.

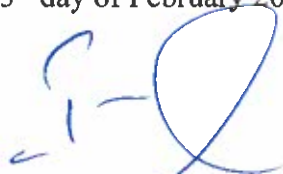
[20.] Dean was dismissed from Quality's employment in the week following the incident. In the context of this dismissal, I am satisfied that a reasonable investigation was conducted by Quality prior to Dean's dismissal. Bowleg indicated that she carefully listened to the account of Dean's supervisor and the dispatcher and she concluded (reasonably believed) that Dean was grossly insubordinate. According to her, when confronted, Dean did not refute the allegations that he did not carry out the lawful instruction given to him. His response, she says, was that he wished to plead his case to LJ. Having been given every opportunity to be heard, Dean insisted that he speak to LJ. The decision taken to terminate his employment would not be taken until days later, giving him the opportunity to speak to LJ. Within reason and on balance, the investigation was full and fair.

[21.] In any event, even if the investigation could be considered as deficient, having regard to the circumstances I am satisfied that an investigation was not warranted. Taking into account Dean's disciplinary record of multiple warnings and his open acts of gross insubordination at the material time, Quality's decision to summarily dismiss him for gross insubordination could be covered by the exception to Section 33, i.e., where an investigation is not warranted.

[22.] As to the promise to pay for Dean's hip surgery, I did not find that this claim was proven by Dean. Given the long period since the occurrence of the injury, which was unrelated to his employment, and the existence of a group insurance to cover the injury, I did not accept Dean's evidence on this gratuitous promise.

[23.] In all the circumstances therefore, Dean's claim is dismissed with costs to Quality to be taxed in default of agreement.

Dated the 5th day of February 2025



Sir Ian R. Winder
Chief Justice