THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2005/0129

BETWEEN:

PAULETTE MATTHEW
(suing on her behalf of all other Security Officers dismissed from the Port in the month of July, 2004)

Claimant

And

ANTIGUA AND BARBUDA PORT AUTHORITY
BOARD OF COMMISSIONERS

Defendant

Appearances:
Mr. Steadroy C.O. Benjamin for the Claimant
Mr. Raymond Wason & Mr. Craig Christopher for the Defendants

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2007: September 26
2008: September 04
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JUDGMENT

[1] **Harris J:** Paulette Matthew was a security guard employed by the Antigua and Barbuda Port Authority (the Defendant) in the security division. She was employed along with up to 85 other persons (the claimants) in this capacity. Ms. Matthew along with the majority of the other security guards received training in their field from time to time. In or around September of the year 2002 the Government of Antigua entered into a international security arrangement referred to as the "International Ship and Port Facility Code (ISPS). The introduction of the full operation of the code was effected on July 1st 2004. The ISPS Code required an upgrading of the security equipment and personnel services of the Port, an upgrade the Port Management did not feel the existing security personnel and

organization structure could handle. Notwithstanding this and after several training courses for the security guards, the Port did receive two (2) preliminary certifications under the said code prior to June of 2004[1]. Several meetings between the Labour Union and the Port Authority took place in the first half of 2004 concerning the Boards decision to terminate the security guards in its bid to reorganize and restructure the port security services and to save costs. The proposal was to retain a private security firm that met the required standard and to that end the contract for the provision of the port security services was put to tender.

[2] The correspondence between the Union and the Port Authority discussed the terminal benefits of the workers in the main. There was no agreement by the union to the Port Authorities termination proposal evidenced in the communication (See trial bundle) between the parties.

[3] By letters dated 1st July and 2nd July 2004 all (80) security personnel hired by the Port Authority were terminated forthwith including personnel on vacation leave, maternity leave and sick leave and they were all subsequently paid terminal benefits in accordance with the Antigua and Barbuda Labour Code provisions in relation to severance in a redundancy situation[2]. The letter of termination referred to the employee being '*severed*' which although alludes to a redundancy situation, did not contain an express reason for the termination. The terminated security guards did not request a reason in writing for their termination, pursuant to the Antigua and Barbuda Labour Code. The reason ultimately assigned for the termination by the employer/ Port Authority, is pleaded in the Port Authority Defence as '*restructuring'* and *'reorganization for cost effectiveness'.* This assigned reason was broadly consistent with the content of the prior discussion with the union as evidenced by the documentary and oral evidence in this matter.[3] The Claimants are aggrieved, allege wrongful dismissal and have brought this action to recover their loss

[1] See pp 162 and 163 of the Trial Bundle for a copy of the certificate. But the evidence in cross examination of Defence witness, Agatha Dublin, Chief Port security officer from May 2004: "*It does not follow that the port security workers were competent and capable for the statements of compliance to have issued "*

[2] The evidence is oddly silent on what appears to be the claimants initial acceptance of the termination and the terminal benefits thereto.

[3] See pp 73-87 of the exhibits bundle for the letters between the Union and the Defendant.

and damage over and above the "severance" pay they received upon termination. There was not a lot of contention over the evidence in this matter. The contention was largely over the application of the evidence and the inferences to be drawn from the evidence.

[4] The issues raised here are **(i)** Did a redundancy situation exist on the 1st July 2004 and 2nd July 2004 **(ii)** Were the contract(s) of the Claimants terminated for a substantial reason of a kind which would entitle a reasonable employer to dismiss an employee in the position of the Claimant **(iii)** Were the contracts of the Claimants and each of them terminated with just cause – factual basis **(iv)** In awarding damages to the Claimants can the High Court exercise powers conferred on the Industrial Court in relation to breaches under the Antigua and Barbuda Labour Code.

Preliminaries

[5] At the onset let me note that neither party has pleaded or led evidence as to whether the Claimant's relationship with the Defendant was governed by a collective agreement. The terms of the employment contract whatever form it takes, have not been pleaded. The significance of this is that there is no evidence that either party had any contractual powers that affected the application of the Labour Code to the actions and circumstances in this case. Finally, the evidence in this matter proved that discussions took place between the Defendant and the Trade Union concerning the Defendant intention to terminate the Claimants. However, the evidence is not conclusive that the union agreed to the termination. I have accepted that the union did represent the claimants in those discussions. No evidence to the contrary has been led or can be inferred from the evidence and such is my finding. Further , I do not accept that the content of what must have been at the time, "heady" ,highly inflamatory and potentially explosive discussions and communications between the Port Authority and the Union, were not brought to the attention of the claimants or that the claimants were not otherwise in possession of that information[1].

[1] See para 32 note 2 below.

Did a redundancy situation exist at the Port?

[6] This question arises as it turns out, because of the use of the word, "sever" in the letters of termination. 'Sever' and 'severance' is a term of art. It is used in the Labour Code in specific reference to a redundancy. Redundancy is defined in the Act *as "a situation in which by virtue of lack of customers orders, retrenchment, the installation of labour saving machinery, an employee going out of business, a force majeure, or any other reason, work which a person was last employed to perform has ceased or substantially diminished* **".**

[7] Counsel for the Defendant submits that a reorganizing and restructuring of an organization such as with the Port Authority, can also result in a redundancy. In support of this submission the Defendant cites the authorities, Bowers and Simon in Labour Law pp 177-183 and summarizes the learned authors review of case from the United Kingdom dealing with "substantial reason" **(**see A.L.C. C.56 (1)(e) for Antigua and Barbuda 'equivalent' provisions**)**.

[8] In summary, contends the Defendant, where there are economic, technical or organizational reasons entailing a change in the work force such as the Port Authorities need to conform with the requirement of the ISPS Code by 1st July, 2004, the employer may rely on such reasons to justify dismissal. Contrary to the submission of counsel for the Defendant at para. 6(b) of its written submissions, the Port Authority having advanced reorganization and restructuring as a reason for the termination under a redundancy or any other basis, has failed to show the existence of a policy other than merely stating that it exists and more importantly, failed to show the advantages to be derived from the implementation of the policy[1] and the necessity to terminate the claimants thereto**.** Further, the flaw in this argument, is that it fails to take into consideration the Antigua and Barbuda Labour Code definition of a Redundancy. In that definition the ground relied on for dismissal can only fall under "… or any other reason...". I accept that it can be considered under that heading. However, it still remains that it has to be shown that as a result of 'any other reason', the work which the security guards were last employed to perform had not

[1] No evidence of the relevant requirements of the ISPS Code being actually put into practice was put before the Court nor was it shown how the work normally performed was as a consequence no longer required or reduced.

ceased or substantially diminished[1] as required by the Labour Code. I accept that if it is shown that the 'work now required to be done required expertise that the claimants did not possess' that that may satisfy the definition of 'redundancy' under the Act.

[9] The evidence is pellucid. The work which the security guards were last employed to perform still substantially exists. Indeed in this case, based on the evidence the work and the character of the work has not diminished at all and for the most part required the same expertise that existed in the claimants. Notwithstanding the Defendant witnesses description of the expected effect of the implementation of the ISPS Code, I have no evidence before me that the 'work' since the termination requires a greater level of expertise, training or personal capacity in the personnel[2] and/or very importantly that the replacement guards in fact reflect this elevated qualification. I know of no category of employee from the highest employee in our global civilization to its lowest that could not do with some improvement in their performance. The Defendant needs to go further than this. Suffice it to say, a redundancy situation did not exist at the time of the termination of the Claimants.

Were the contracts of the Claimants terminated for a substantial reason?

[10] The Defendant contends that in any event the termination of the contracts of the claimants do not amount to an unfair dismissal. That under C58 (i) (c) of the Antigua Labour Code a dismissal is not unfair if it is for a *substantial reason of a kind which would entitle a reasonable employer to dismiss an employee in the position of the Claimants.*

[11] The Act permits a broad spectrum of grounds for terminating the services of an employee as long as it does not fall within any of the assigned reasons in C58 of the Antigua and Barbuda Labour Code.

[1] Leslie Williams, the Deputy Port Manager at the time, gave evidence in cross examination that the Port Authority concluded prior to the termination that some of the guards were good and they considered keeping them. He acknowledged also that: *"at the time of severance the functions of the claimants still had to be done."*

[2] Save for the evidence of Agatha Dublin. Regrettably, her evidence does not provide the court with a proper basis for assessing the source and ultimately the adequacy of the expertise on security assessment and training she purports to exercise in giving her evidence.

[12] Although the termination letter alluded to a redundancy by reference to the word "sever", it is accepted by the parties that at that time the Port Authority did not furnish a precise reason for the termination of the Claimants services in the letter of termination. It is also accepted by the parties in their oral submissions that no request for the precise reason for the termination was requested by the Claimants pursuant to C10 of the Labour Code. In any event there is no evidence that such a request was made. Ultimately the "assigned reason" given for the termination in this matter is pleaded at para 6(a) of the Defence filed in this matter; *"… the Claimant and other security officers were severed for reasons of re-organization for cost effectiveness"* and in paragraph 4(b): *"… in or about the month of June, 2005, there immediately began at the port a policy of rationalization and re-organization of the work force so as to improve efficiency at the Port"* and again at paragraph 4(e): *"Upon the severance of the security staff as a result of the Defendant's policy of rationalization and reorganization …".* The evidence of the Defendant is somewhat contradictory on the reason for the termination of the workers. Leslie Williams who was the deputy Port manager at the time said in cross examination that: *"The guards were severed because we were not satisfied with the performance of the guards generally. We would have been in problems with the ISPS code... The cost effectiveness of the operations of the port is not connected to the security guard issue".* The Defendant's pleadings clearly state cost effectiveness as a reason for the reorganizing and restructuring.

[13] The evidence of Leslie Williams and that of Agatha Dublin, witnesses for the Defendant, and the witness for the Claimant including Paulette Matthew and Loretta Barnes are replete with references to the ISPS Code and elements of the Code as introducing a new dispensation at the work place. The witness statements of both Agatha Dublin and Leslie Williams set out the nature and character of the ISPS code. In cross-examination, Agatha Dublin, the Chief Port Facility Officer, said that: *"I am aware that the ISPS code touches things like preventing things like criminal exploitation of the sea port, preventing terrorism and drug smuggling in a sea port, improving identification of high risk containerized cargoes, reducing operations for internal conspiracies and disrupting the link between*

corruption, terrorism and organized crime.". The evidence discloses that a 1st July 2004 deadline was fixed for ISPS compliance at the Port[1].

[14] In determining whether the termination was fair under the Labour Code (C58) one has to determine if the reason assigned for the dismissal by the Defendant is captured by C58. .

[15] It is initially captured by C58 (1) (2)[2] which reads that a dismissal shall not be unfair if the reason assigned by the employer for the dismissal, ... "(*e) is some* ***other substantial reason*** *of a kind which would entitle a reasonable employer to dismiss an employee holding the position which the employee held provided, however, that there is a factual basis for the assigned reason" (emphasis mine).*

[16] Before considering whether or not the assigned reason would entitle the Port Authority to dismiss the Claimants as in C58 (1) (e), I believe we need to look at the proviso. The proviso requires that there must be a *factual basis* for the assigned reason. This means that the assigned reason be supported by the facts, and that a factual link exists between the dismissal and the assigned reason[3].

[17] What are the facts in this matter that support the assigned reason? Beyond the mere assertion in the pleadings and in the evidence of the Defendant's witness that the Port was re-organizing and restructuring for the improvement of efficiency and saving of costs, no evidence was lead detailing what the re-organizing and restructuring involved. Further, no evidence was lead as to how costs were being saved and linking all this to the termination of **all** the security personnel. No evidence was led showing that the installation of a private security firm was consistant with the ISPS international obligations and the aspirations of the Port Authority. There might very well be an abundance of information and justification for the termination and assigned reason if one were to speculate, however, evidence of if it was not led. The authorities suggest that the Defendant/ employee would not require an

[1] See letter dated 10th June 2004 from David Jonas to the Manager of the Port Authority at pp 72 of the exhibits bundle
[2] This point is argued by the Defendants in its submissions although not decidedly raised on its pleadings. The pleadings point to 'severance'.
[3] Byron, C.J .in Sundry Workers v Kings Casino Ltd Civil Appeal No. 28 of 2001 at para 5

abundance of evidence to get over the threshold under the sub-section *"...some other substantial reason"*, but it does require evidence beyond a mere statement of its intention to reorganize, restructure and save costs[1]. The contracting out of the security services may not necessarily necessitate the termination of the guards. It could, for instance have been a term of the service contract that the guards be retained as opposed to rehired. Whatever the situation though, if the Defendant wanted to terminate the guards they have to justify it under the code.

[18] The relevance of the evidence of the Defendant's witnesses of the proficiency tests administered to about a third of the Claimants and the subsequent discarding of any reliance on the test results, at best, if the test was to be relied on, is peripheral to the reason now assigned by the Defendants for the dismissal.

[19] There are insufficient facts before the court for it to make an objective assessment of the basic factual adequacy of the assigned reasons in favour of the Defendant employer. On the evidence therefore, the termination of the Claimant/security guards did not satisfy section C58 of the Labour Code.

[20] Whether or not a dismissal was unfair, the Labour Code provides a general test in C58 (2). In applying this test, I find that the dismissal was unfair.

Were the contracts of the Claimant and each of them terminated with just cause?

[21] This issue raised by the Claimant cannot for the purposes of this judgment be practically distinguished from issue "(ii)" above. The short answer to this is that the contracts of the Claimants and each of them were, in the absence of an adequate factual basis linked to the assigned reason for the dismissal, and in all the circumstances, terminated without just cause. This may be a pleadings issue in that a just cause may exist, but the Defendant has failed to adequately respond to the claimant's pleading that the termination was not just.

[1] No doubt the work place now is a substantially different environment than it was in 2004 as a result of the ISPS code.

Can the High Court award damages for unfair dismissal on the same basis as the Industrial Court?

[22] The Industrial Court Act Cap 214 provides at S.10 that the Industrial Court in awarding damages can be guided by certain principles which I note are peculiar to the industrial relations environment and relationships, within that environment.

[23] The Claimant contends that the High Court is guided by the same principles in awarding damages as the Industrial Court in matters arising out of the Labour Code. That is, that damages are awarded on the basis of four (4) established heads. The Claimant submits that the breadth of the Heads of Damage in these matters is influenced primarily by the policy considerations of the Labour Code, buttressed by S. 10 of the Industrial Court Act and the Act as a whole and industrial relations practice and convention[1] in Antigua and Barbuda.[2] The relevant policy consideration of the Labour Code is set out in C2(6) of the Labour Code (Cap 27) and reads as follows:

> **"C2. It is hereby declared that the following expressions of public policy underlie and shall be used in the interpretation of the various provisions of this Division - … (6) As an individual works at a job he gradually earns an equity therein above and beyond his periodic wages, privileges, and allowances, and the maintenance of this equity requires protection". (emphasis mine)**

[24] The Defendant on the other hand contends that the court is bound by the ordinary principles of award of damages for breach of contract.[3]

[25] As noted earlier, the terms and conditions of the contract between the Claimant and defendant has not been pleaded, disclosed or exhibited in this matter. I cannot assume that it does contain any provision that impacts on the bases for the award of damages outside of the ambit of the Ordinary Law of breach of a Contract (employment) or the conventional Industrial Court bases referred to above.

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[1] The Claimant's arguments imply that practice and convention, if nothing less, support the four (4) Heads of Damage.

[2] There can be little contention that the High Court at the very least can apply The Labour Code and consider the Industrial relations practice and conventions in treating with this case.

[3] I noted earlier that neither party has pleaded the terms of the "contract", leaving the court in an invidious position. No good purpose would be served by allowing at this stage, an amendment to the pleadings and the leading of further evidence.

[26] The High Court is a court of unlimited jurisdiction and unless expressly or by necessary implication excluded from applying the same principles for the award of damages in matters arising out of the Labour Code, I am inclined to the view that I can apply the four (4) heads of damage to this matter as would the Industrial Court.

[27] To hold otherwise would be to **(i)** pare down the powers of the High Court of Justice where no clear statutory intent to that end is evident and **(ii)** to deprive a litigant of his legitimate expected entitlements under the law and the practice and conventions in relation to Industrial matters merely by his opting to pursue his case in this constitutionally protected court of unlimited jurisdiction.

[28] It is noteworthy, that it was submitted by both parties that at the time of the filing of the reference in the High Court, the Industrial Court was not properly constituted and not functioning.

Damages

Immediate Loss of Earnings

[29] At paragraph 15 of the Statement of Claim under **PARTICULARS OF SPECIAL DAMAGE** the Claimants claim immediate loss of earning for 12 months @$2,750.00 per month. The Defendant at paragraph 3 of its Defence deny the paragraph 15 of the Statement of Claim. No claim is made by the Claimant's as to the inadequacy of the Defendant's pleading.

[30] The Claim is for 12 months immediate loss. This 12 months is required to equate to a period of unemployment. There is no satisfactory evidence of the actual period of unemployment, if any, of any of the Claimants[1]. Even on an uncontested matter or on an uncontested issue, in a matter, the Claimant who asserts must prove a modicum of facts in support of its assertion. It has failed to do so under this head. The evidence of Avanella Walker is the only instance where there is evidence of unemployment. Her evidence in

[1] The Claimants at pp 88 of the exhibit bundle have merely produced a schedule showing the mechanical calculation for the damages under this head – immediate loss of earnings - for a 12 month period for eighty-seven (87) former Port Authority security guards.

chief did not contain any reference to her period of unemployment. Leslie Williams, the Deputy Port Manager at the time, gave evidence that he did invite Avanella Walker to make an application at the port. At the time of signing her statement Avanella Walker says she is still unemployed. Some three (3) years after the termination. She says that she has tried to get a job all over but just can't. She did not say whether she made an application to the security company at the port. Her period of unemployment according to her evidence extends some two years beyond the period of one (I) year that she has claimed in her pleadings. Her evidence borders on incredulous and is simply not to be accepted. Notwithstanding the absence of sufficient evidence of the length of unemployment by all the claimants, the court is not precluded from making an award in fit and proper circumstances. It is not unreasonable to accept that in circumstances of dismissal without formal *"notice"* such as this one, some lag time would be required for a party to gain employment. Further, the facts in this matter from the Claimant witnesses, are that on the day after the termination the new security company at the port was attempting to hire dismissed security guards.

[31] In the case of Antigua Village Condo Corp. v Jennifer Watt, Civil Appeal No. 6 of 1992 Sir Vincent Floissac C.J. considered the overreaching effect of section 10(3) of the Industrial Court Act in calculating the amount of the heads of loss as encompassing the general fairness and justice of the award[1].

[32] Considering the issue of mitigation as well, and bearing in mind that under the severance provisions of the Labour code the claimants would have been paid their salary in lieu of notice[2], I find that an additional **three (3) months period for the immediate loss of earnings** in the economy of Antigua and Barbuda in 2004, to be fair and just[3].

[1] See pp 3 and 4 of Judgment
[2] There is no dispute on the pleadings or otherwise that the claimants did receive terminal benefits in accordance with the severance provisions of the Labour Code. The intention and reason for the termination – lawful or not - was well known to the claimants prior to the termination. See para 35 above.
[3] Para 1195, 12 Halsbury's Laws of England 4th edit; LIAT v Sheppard (Civil Appeal No. 6 of 1991) per Byron J.A.

Loss for reason of manner of dismissal

[33] With regard to this head of loss, counsel for the Claimants conceded that there is no evidence to support an award under this head. I agree.

Future Loss

[34] The Claimant submits that an award under this head takes the form of a 'gestimate'. In their written submissions they contend that they were unemployed for a period of 1 year. As I noted earlier, no evidence was lead to support the length of unemployment, if any. Exhibiting a schedule of calculation for future loss over a 1yr period provides the corresponding 'loss' **if** one were unemployed for 1yr, but does not, in this case at any rate, amount to proof on a balance of probabilities that the parties were in fact unemployed for 1yr. or even could reasonably have been expected to have been unemployed for that period[1].

[35] That employment was available for some if not most guards at the Port immediately after the dismissal and thereafter, is not in dispute. Further, the Claimants are not engaged in a highly specialized field that would narrow their prospects on the job market as security guards or in alternative employment within their skill level and education. If so, I would have expected to have been treated to evidence of a litany of woes of hardship and frustration along with evidence to prove their inability to find alternative employment or evidence of their reduced income in their alternative employment. This was not forthcoming. That their alternative employment may have brought several of the claimants a reduced income in the short run is not entirely incomprehensible. Antigua and Barbuda has a minimum wage limit which in 2004 calculated for a standard forty hour week answers the question raised in this issue.

[36] Floissac C.J. in the ***Antigua Village Condo*** case pointed out that the loss under this head is the difference between earnings at termination and the lesser earning generated from future earnings. Loss under this head he noted, is predicated in future earnings being less

[1] See "Exhibit O.2" that sets out the dollar value claim – based on their weekly wages - for loss of protection for one year (1yr) for **forty-nine (49)** former Port Authority security guards.

than the earnings from the terminated employment. If future earnings could be calculated to be equal to or in excess of earnings at termination, there would be no entitlement under this head. There is no evidence of the income level or anticipated levels of income of any of the claimants after termination, whether they were rehired or not. In 2008 the point seems somewhat moot now.

[37] An award under this head involves a complex consideration of several factors, some intangible, and thus not susceptible of calculation. The award is made even more complex by the sparsity of critical facts on these issues. On the facts of the instant case, the distinction between this Head of Damage and that of 'Immediate Loss of Earnings' is , I believe, hardly one that can be made with a *straight face*, outside of the Industrial relations Policy , practice and convention.

[38] Sir Vincent Floissac quoted Megarv L.J. in **Edwards v Gogat (1970) 3 All ER 689 (at 704 & 705)** that; ***"****It must take into account one's assessment of many factors"* and further, that; *"Inevitably it depends on hypothesis and speculation***".**

[39] The consideration under this head also takes into account the Claimant's continuing duty to mitigate his loss. Megarv L.J. continued, that; ***"****Where there are so many incalculables, it would not be right to seek to give an aura of scientific respectability to the assessment of future damages by purporting to apply any arithmetical or actuarial formulae to the assessment, or to any individual factor on which the assessment partly depends****"*** **.**I agree entirely.

[40] Sir Vincent Floissac C.J. in the said ***Antigua Village Condo*** case, between pages seven (7) to ten (10) comprehensively sets out the principles to apply in assessing damages under the head of Future Loss of Earnings. I adopt this learning as the applicable law on this point.

[41] Before leaving this issue and **Condo case**, I make the point that**;** It is a salutary principle that the onus is on the unfairly dismissed employee to prove the probability of loss upon

which an award of compensation is based and to prove the probable duration of that probability[1].

[42] This point is underscored by Bristow J in **Adda International Ltd v Curcie (1976) 3 All ER 620 (624)** that first; *"… there must be some evidence of future loss and the scale of the future loss to enable the tribunal to make any award under that head. The tribunal must have something to bite on …"*[2]. And so it is with this matter, that the Court has nothing to bite on other than the common logic that some initial loss would flow from the dismissal. Having regard to the restrictive rules governing the award of compensation for loss of future earnings including the duty to mitigate; fairness, justice and logic demand that in this case there be compensation under this head and that it **should not exceed the equivalent of three (3) months salary.** There is nothing about the economy of Antigua and Barbuda from 2004 that suggests that the three months is not adequate**.**

Exemplary Damages

[43] On the evidence, I see no basis in Law for an award under this head.

Conclusion

[44] The correspondence in the core bundle suggests that there were employees of the defendant that were otherwise entitled to retire and receive their statutory and/or contractual benefits thereto and some specified others, were to be offered a voluntary separation package. Whether all those employees were offered or otherwise exercised those options and received benefits thereto has not been canvassed in this matter.[3] The court is unable in the circumstances to make allowances in this judgment for or against such persons if they exist among the claimants herein. The Defendant has not alleged that any of the Claimants occupy a peculiar position with respect to a damage award in this

[1] See pp 9 of the Antigua Village Condo case.
[2] 'Future Loss' is not exactly speculative in the instant case. The period claimed has passed and the loss, if any, crystallized. Evidence of this loss could have been given. The identical period of 1yr given by all the Claimants defies logic and renders it implausible.
[3] See pp 49-54 of the exhibit bundle for termination letters containing the offer to proceed on retirement. I do not know whether the respective parties did so.

matter. On the pleadings all the claimants are entitled to an award for loss and damage applying the same principles. The Claimants themselves, by their statement of claim, have made the same special damage claim for all of them without distinction. The Defendant has not sought in its pleadings and evidence to separate the Defendants into different categories. Further, Loretta Barnes, the principal claimant has pleaded her monthly salary as $2700.00 month. The Salary of the other claimants have not been specifically pleaded but the pleading at para. 15 of the amended statement of claim reads: *"...the claimant and each of the dismissed Security guards have suffered loss and damage".* The pleadings go on to itemize the particulars of Special Damage, stating the sum of $2,750.00 a month, presumably, as their monthly earnings. The evidence however - the claimant's documentary – reflect varying income levels ranging from $350.00 - $630.00 **a week** with one, Carlton Kentish represented as earning the monthly sum of $3,650.00 and Dennis Horsford earning the monthly sum of $2,750.00. There is no evidence of earnings coming from the Defendant or evidence disputing the claimant's evidence. What figure does the court use? The figure pleaded or figure proven? The issue is not a straight forward one, but having now resolved it, I shall use in calculating the Damages, the figures proved and contained in the bundle in an itemized list for "loss of earnings" at pp 88 of the exhibit bundle.

[45] The Claimants, according to the evidence, have been paid their salary in lieu of notice and for vacation leave. These are their entitlements in Law in any event and do not form part of the Damage award. The Claimants have been further paid in accordance with the provisions of C40 and 41; that is, using the severance formula. This contends the Claimant, was not the appropriate formula to calculate their benefits for a redundancy situation did not exist.

[46] The payment already made to the Claimants appears to be a lump sum payment without regard to the four (4) heads of damage.

ORDER

[47] Judgment for the Claimants. **(i)** The Claimants are granted the declarations claimed at "a" "b", "c", "d", "e" of their amended statement of claim **(ii)** The claim for reinstatement or reinstatement without loss of pay, benefits and privileges is dismissed[1] (**iii)** The claim for exemplary Damages is dismissed **(iv)** The following award in Damages in favour of the claimants is made in place of and not in addition to, the **severance payment**[2] already made. That is, if this award exceeds that which the Claimants or each of them is already in receipt of **(**less the sums referred to in footnote '2" below**)**, they are to receive only the difference between the two. If this award is less than that which they have already received then it is fair and just and it is not inconsistent with the intent of S.10(3) of the Industrial Court Act, policy considerations of the Antigua and Barbuda Labour Code and equity, that the Claimant keep the greater sum already received, as Damages in this matter.

[48] **The Damages award then will be the total of; (i) the equivalent of 3 months salary for loss of job protection (ii) the equivalent of 3 months salary for immediate loss of earnings (iii) the equivalent of 3 months loss of earnings for future loss of earnings.**

[49] That costs are the claimant's costs[3]. Leave to apply if quantum not otherwise agreed between the parties in writing within 28 days of this order.

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[1] Antigua and Barbuda's duty to meet its international treaty and convention obligations is paramount. Agatha Dublin gave evidence in chief that Antigua Barbuda signed the convention to implement the International Ship and Port Facility Security (ISPS) Code at the Diplomatic conference of the 108 contracting governments to the 1974 SOLAS Convention (Safety of Life at Sea), held 9-13 December, 2002. Security Guards at the Port must meet the new standards and must apply in the normal way.

[2] Less the vacation pay and the pay in lieu of notice, both of which are the entitlements of the claimants in any event.

[3] The Masters Case Management Order has not been exhibited in this matter to assist the court in determining what, if any, basis for the award of cost had already been determined.

[50] That parties at liberty to apply with respect to the calculation of the damages award.

DAVID C HARRIS
JUDGE, HIGH COURT
ANTIGUA AND BARBUDA