Case No. BVILAT/2017/021

VIRGIN ISLANDS

LABOUR CODE, 2010
(No. 4 of 2010)

IN THE LABOUR ARBITRATION TRIBUNAL

BETWEEN

Qasim Yoba **COMPLAINANT**

AND

Peter Island (2000) Ltd. **RESPONDENT**

BEFORE: **Jamal S. Smith**, Chairperson
Dancia Penn, OBE, QC, Member (on the recommendation of the Complainant)
Benedicta P.T. Samuels, Member (on the recommendation of the Respondent)

ATTENDANCE:
(1) Qasim Yoba, Complainant
(2) David Penn, legal practitioner for the Complainant, instructed by David A. Penn & Co.
(3) Chad James, representative for the Respondent
(4) Hazel-Ann Hannaway Boreland, legal practitioner for the Respondent, instructed by Harney Westwood & Riegels LP

ADDITIONALLY:
(5) Malisa Ragnauth-Mangal, Secretary to the Tribunal
(6) Scott Hart, Witness for the Respondent

FINAL AWARD

18 March 2021; 25 May 2021; 27 May 2021;
10 June 2021; 15 June 2021; 15 July 2021

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A. Introduction

1. In this award, reference will be made to an Agreed Trial Bundle originally filed by the Complainant on 14 July 2020 which was re-filed on 05 March 2021 (the "**Original Trial Bundle**"). During the trial on 18 March 2021 there were several documents that were discovered to be missing from the Original Trial Bundle and the legal practitioner for the Complainant submitted additional documents electronically, including all the Case Management Orders made since the Original Trial Bundle was first filed and the trial was therefore adjourned. During the trial on 27 May 2021, the Original Trial Bundle was found to be unsatisfactory for the purposes of the trial and again caused the adjournment of the trial for the purpose of filing a new bundle. The Complainant filed a supplemental bundle on 03 June 2021 that sought to insert documents that should have been included in TAB 2, TAB 5, TAB 10 and TAB 14 of the Original Trial Bundle, contrary to the express directions of the Tribunal, and still did not include the missing documents sent electronically to the Tribunal on 18 March 2021 (the "**Supplemental Trial Bundle**"). Many of those inserts were duplicates of documents in the Original Trial Bundle which did not readily assist the Tribunal. Reference will also be made to Submissions of the Complainant filed on 01 April 2021 (the "**Complainant's Submissions**") and the submissions of the Respondent filed on 05 March 2021 along with a Bundle of Authorities filed by the Respondent on 09 March 2021 (the "**Respondent's Submissions**"), which, unlike the Complainant, partly complied with the directions given by the Tribunal for filing skeleton arguments.

2. Together, the Original Trial Bundle, the Supplemental Trial Bundle, the Complainant's Submissions and the Respondent's Submissions, contain all the documents and legal arguments considered by the Tribunal, unless otherwise expressly stated in this Final Award.

3. The full panel heard oral testimony from both parties over a period of five (5) days. The entire trial took place via the WebEx video conferencing platform in accordance with the Labour Code (Arbitration Tribunal) (Telephone and Video Hearing) Guidelines, 2020 (S.I. No. 99 of 2020) and in accordance with those Guidelines the trial was electronically recorded for the sole purpose of obtaining a transcript of the proceedings.

4. The Secretary to the Tribunal issued a Notice of Decision Hearing on Thursday, 08 July 2021 fixing a date for the delivery of the decision to Thursday, 15 July 2021 at 9:30 a.m. The Tribunal now gives the decision for its final award.

B. The Case History

5. The Complainant filed a formal complaint with the Labour Commissioner on 11 July 2016 (the "**Complaint**") alleging that he was unfairly dismissed by the Respondent on 16 April 2016, being three (3) months prior to the filing of the complaint, and therefore complied with section 181 of the Labour Code, 2010 (the "**Code**").

6. There is no evidence of any agreement to extend the time to refer the matter to the Minister or to the Tribunal and so there is no explanation as to why the Complaint was only referred to the Tribunal by the Minister on 18 May 2017.

7. Despite the referral of the matter to the Tribunal since 2017 this matter had a chequered history before this Tribunal with numerous applications and cross-applications all concerning the tardiness of the Complainant in the progressing of the Complaint.

8. The Complainant filed Points of Claim on 20 March 2019 (the "**Points of Claim**") found at TAB 1 of the Original Trial Bundle, which replaced his Complaint, asking for damages for unfair dismissal, which at paragraph 9 thereof, refers to a Schedule of Compensation which was never included either in the Original Trial Bundle or the Supplemental Bundle, as follows:

    (a) Immediate Loss of Earnings;
    (b) Loss by reason of manner of dismissal; and
    (c) Loss of Benefits
        (i) Health Insurance
        (ii) Term Life Insurance
        (iii) BVI Pension Plan
        (iv) Laundry Allowance
        (v) Travel Allowance
        (vi) Entertainment Allowance
        (vii) Benefit Allowance
    (d) Return of funds which were unlawfully deducted from his bank account;
    (e) Interest; and
    (f) Punitive Damages.

9. The Points of Claim attached five (5) photographs of various derelict vehicles, but were never exhibited to any affidavit and as it pre-dated the LPR did not include a written undertaking to produce the originals as is required by LPR 33(11), but the legal practitioner for the Complainant made no application to have the photographs entered into evidence during the trial and, therefore, the Tribunal will disregard those photographs.

10. The Respondent filed Points of Defence on 02 July 2019 (the "**Points of Defence**"),

found at TAB 2 of the Original Trial Bundle, which had various annexures that were not included in the Original Trial Bundle and had to be included in TAB 2 of the Supplemental Bundle, but except for a letter dated 26 July 2016 from the legal practitioners for the Respondent to the legal practitioner for the Complainant attaching an outstanding telephone bill for the Complainant with a balance in the amount of $7,227.12 (the "**Demand Letter for Telephone Expenses**"), all the other annexures were exhibited to the Affidavit of Chad James. The Tribunal will, therefore, disregard the Demand Letter for Telephone Expenses as the Respondent never raised it at trial.

11. The Complainant filed a Reply to the Respondent's Points of Defence on 10 September 2019 (the "**Reply**").

12. On 06 October 2020 a status hearing was held and a Case Management Order was issued outlining the history of the matter and giving directions for trial which was fixed for 28 January 2021 (the "**First CMO**").

13. While there is no evidence that it had been filed with the Tribunal or served on the Respondent, the Complainant sought to comply with the First CMO by swearing an affidavit on 22 October 2020 and it merely reproduced the contents in the Points of Claim and the Reply, with no exhibits, and curiously included a public notice at paragraph 40 of the said affidavit, but there being no objection or concerns raised by the Respondent, the Tribunal will accept the affidavit (the "**Affidavit of Qasim Yoba**"), found at TAB 4 of the Original Trial Bundle.

14. On 27 October 2020 the Respondent filed an affidavit sworn by Chad James who says that he makes the affidavit on behalf of the Respondent in his capacity as its Human Resources Director (the "**Affidavit of Chad James**"), found at TAB 5 of the Original Trial Bundle, which included the following exhibits, found at TAB 5 of the Supplemental Trial Bundle:

    (a) a copy of the employment letter dated 20 May 2015 (the "**Contract of Employment**"), identified as "CJ-1";

    (b) a copy of the Employee Handbook and Code of Conduct updated as at January 2014 (the "**Employee Handbook**"), identified as "CJ-2";

    (c) a letter of complaint dated 17 March 2016 from Lee Williams (the "**Lee Williams Letter**"), identified as "CJ-3";

    (d) "CJ-4" was intentionally left blank with an explanation as they were unable to locate the photographs to which it related;

    (e) screen shots of Lee Williams' phone (the "**Lee Williams Screenshots**"), identified as "CJ-5";

    (f) a copy of the termination letter dated 16 April 2016 (the "**Termination Letter**"), identified as "CJ-6"; and

(g) a copy of various electronic correspondence, including their photographic attachments identified as "CJ-7".

15. During the trial, permission was granted to the Respondent to amplify the evidence of Chad James who then entered the following documents into evidence with the leave of the Tribunal:

(a) The Statement of Benefits on Termination for Qasim Al'Nasir Yoba as part of Peter Island Resort and Spa Employee Pension Plan issed by PMI Capital Services, Inc. (the "**Pension Plan Statement**"), found at TAB 15 of the Original Trial Bundle and entered into evidence as "CJ-8";

(b) photographs of the backhoe and other items (the "**Photographs**"), found at both TAB 10 of the Original Trial Bundle and TAB 14 of the Supplemental Trial Bundle and entered into evidence as "CJ-9"; and

(c) the Fixed Asset Disposal/Adjustment Form dated 31 August 2015 with a picture of the backhoe (the "**Disposal Form**"), found at TAB 14 of the Original Trial Bundle and entered into evidence as "CJ-10".

16. On 06 January 2021 the parties filed a joint application to vary the First CMO and that joint application was granted on 07 January 2021 without a hearing, which among other things, changed the date fixed for trial to 18 March 2021 (the "**Second CMO**").

17. The Secretary to the Tribunal issued a Notice of Hearing as a result of various applications and oppositions filed by the parties and at the hearing on 02 March 2021 further directions were given, including provisionally allowing the evidence of Scott Hart (the "**Third CMO**").

18. In accordance with the Third CMO the Respondent filed an affidavit sworn by Scott Hart who says that he makes the affidavit in support of the Respondent as its former General Manager (the "**Affidavit of Scott Hart**"), found at TAB 5 of the Original Trial Bundle, which included identical exhibits to those in the Affidavit of Chad James, found at TAB 5 of the Supplemental Trial Bundle, and therefore, the Tribunal will only refer to the exhibits of Chad James, solely for purposes of efficiency.

19. As indicated earlier, when this Complaint came up for trial it had to be adjourned due to the poor quality of the Original Trial Bundle and the very unhelpful manner in which both legal practitioners conducted their cross-examinations and re-examinations of two (2) witnesses, the Complainant and Mr. Scott Hart, over the course of an entire day, and so it was summarily adjourned with the Secretary to the Tribunal on 28 April 2021 issuing a Notice of Hearing fixing a new date for the trial to 25 May 2021, and on that date it again was summarily adjourned to 27 May 2021 to continue hearing oral evidence.

20. On 27 May 2021 when Mr. Chad James was about to give evidence to the Tribunal it was discovered that the Respondent was never served with the Original Trial Bundle and had to put together its own bundle which was not identical to what was before the

Tribunal. Out of an abundance of caution to ensure the fairness of the proceedings the Tribunal decided to adjourn the trial for a further time to 10 June 2021 with specific directions about the trial bundle (the "**Fourth CMO**").

21. On 10 June 2021 the Tribunal had to again adjourn the trial to 15 June 2021 due to the technical problems with the internet connection as well as the manner in which the legal practitioner for the Complainant conducted the cross-examination of Mr. Chad James, for well over two (2) hours, most of which was irrelevant to the matters that this Tribunal has to consider (the "**Fifth CMO**").

22. On 15 June 2021 the Tribunal heard the re-examination of Chad James and oral arguments from both legal practitioners.

C. The Evidence

(a) *The Evidence of Qasim Yoba*

23. On Saturday, 16 April 2016 he was summoned into a meeting with the then General Manager, Scott Hart, and the Human Resources Manager, Chad James, that lasted from 9:03 a.m. to 9:35 a.m.

24. Before the meeting began the General Manager had in his possession the Termination Letter. He claims that the allegations were unfounded and malicious, and without giving him a fair and proper hearing or the opportunity to respond to the unfounded and malicious allegations.

25. He further claimed that he was being accused of selling a derelict Backhoe which had been written off by the Respondent along with a number of other derelict vehicles which were transported off Peter Island for disposal at the Pockwood Pond Waste Disposal site on Tortola.

26. During the meeting he claimed that Scott Hart informed him that he should go ahead and tell them everything that he knew and that he should come clean and to inform both him and Chad James of all the parties who were supposedly involved with the alleged transaction or transactions.

27. He was told that Lee Williams made a complaint that a derelict Backhoe was sold to him for the sum of $4,500.00. However, he absolutely denied any knowledge of any sale of any derelict equipment from Peter Island, or otherwise, as he was certainly not involved in, nor had any knowledge of, any such deed or deeds. Under cross-examination he indicated that he was told not to contact Lee Williams and it was noted that this was not in his Affidavit evidence. He also admitted to never asking to see the Lee Williams Letter because it never existed. However, he admitted that he knew who Lee Williams was, and that he was a contractor who did work for the Respondent. When asked whether Lee Williams was ever in his house, the Complainant responded that he could have seen inside his house from on Facebook. He insisted that he never got a chance to face his accuser.

28. He contends that the period when it is alleged that he supposedly sold this derelict Backhoe, he was not even in the Virgin Islands at that time, as he had recently gotten married and was in Dominica, the land of his wife's birth, on his honeymoon. However, under cross-examination he admitted that he presented no passport or other evidence of his travel to prove that he was in fact out of the jurisdiction as he alleged which he admitted was the case. However, in response to the allegation he claimed that from 05 October to 06 November he was in Dominica.

29. He was then given until 10:15 a.m., just about 30 minutes to leave Peter Island. He was not given an opportunity to gather his belongings and was taken straight to the ferry and was refused access to his wife who was residing with him on the Respondent's property, which he claims he and his wife were rudely and callously uprooted from their residence and place of employment on Peter Island. Under cross-examination he indicated that he had keys for the residence.

30. He said he was escorted off Peter Island by security guards like a criminal within minutes of the allegations being made known to him for the first time. He was not even permitted to return to his residence to ensure the security of his wife, who was forced to remain on the island to gather their belongings while being watched by two (2) male security guards. This he claimed made his wife extremely traumatized and horrified, not only by the allegations, but also by the conduct of the management of the Resort, particularly by the way in which they were being treated, like criminals, as she too was escorted by security guards off the island on a ferry, but it was not the regularly scheduled trip for the ferry. The General Manager had the ferry make two (2) separate, special trips just to take the Complainant and his wife off of the island, one trip for him and the other trip for his wife. They were dropped off at the CSY Dock on Tortola without any regard for where they were going to stay that night or otherwise. They were not even given an opportunity by the General Manager and the Human Resources Manager, or the Respondent to make any kind of arrangements to obtain any form of accommodations. They had no idea where they were going to sleep that night.

31. During cross-examination he was taken to the Employee Handbook and shown that the conduct complained of would be grounds for summary dismissal and as a result of the seriousness of the allegations against him which he was unable to refute he was terminated and it was put to him that he was not treated like a criminal.

32. The plant and equipment were written off since August 2015 with the approval of the head office in Michigan and designated for disposal.

33. He went further to suggest that it appeared as an attempt by the General Manager to smear his good name, with every intention of damaging his reputation. He referred to the publication of a public notice in the BVI Beacon newspaper in its Thursday, 21 April 2016 issue that was designed to further embarrass, belittle and to exact maximum damage to his reputation and in the job market. Under cross-examination he indicated that he was told that the police would be notified and three (3) days later he got a call from the Immigration Department informing him that he had to leave the island.

34. On the day of his dismissal, the Complainant's last salary in the amount of $3,246.70

was already paid into his bank account at what was then known as Scotiabank (British Virgin Islands) Limited ("**Scotiabank**"), when the Respondent contacted the bank and had them withdraw his last salary from his bank account. Under cross-examination he was taken to the last sentence of Clause 16 of the Contract of Employment.

35. According to the Complianant, his pension, which amounted to around $6,000.00, was also unlawfully withheld.

36. As a result he wanted compensation not only for the unlawful termination, the withdrawal of monies from his account by the Respondent and his pension, but also compensation for the damage to his reputation and the disgraceful treatment of himself and his wife.

37. During cross-examination he confirmed that the telephone number shown in the Lee Williams Screenshots was his phone number.

38. Having had the opportunity to review the Complainant's pleadings, written evidence and to observe his demeanour, candour and responsiveness during cross-examination and re-examination, as well as considering the inherent plausibility of his account, the consistency between his written and oral evidence under oath, as well as the internal consistency of his written and oral evidence, the consistency of such evidence with other evidence before the Tribunal, the Tribunal finds him to have been a credible witness as to parts of his evidence, but lacking in credibility as to certain aspects of his evidence.

(b) *The Evidence of Scott Hart*

39. He claimed that Mark Buggie from the Respondent's corporate office in Grand Rapids, Michigan, United States of America, contacted the Respondent's management team, including himself around March 2016 providing them with the Lee Williams Letter which had been sent to the Respondent's Michigan office.

40. After exhibiting the Lee Williams Letter he claimed that he found it to be particularly disturbing because it asserted that the Complainant had repeatedly insisted that Mr. Williams should only speak with the Complainant and not contact the Resort directly. It also went on to recount what he read in the letter where Mr. Williams apparently found the Complainant's behaviour suspicious which caused Mr. Williams to reach out to the Respondent to verify if the sale was legitimate. He was never cross-examined on this interpretation of the Lee Williams Letter.

41. He then outlined the investigation that the Respondent conducted and indicated that Chad James confirmed that the backhoe at Lee Williams' residence was in fact the Respondent's backhoe. During re-examination he was given an opportunity to further explain the process of investigation and he indicated that they took the allegations very seriously. It started with Chad James who went to visit Lee Williams at his house who photographed the backhoe at Lee Williams' home, however, as Lee Williams was not before this Tribunal anything concerning the report of that conversation would be inadmissible hearsay and was not permitted by the Tribunal.

42. The Respondent was at that time going through a process of disposing of their derelict vehicles and, in his capacity of Director of Engineering, the Complainant was in charge of supervising the disposal process. He was given the authority to sell the derelict vehicles or their parts on behalf of the Respondent and to send any remaining vehicles or parts to the incinerator at Pockwood Pond. If any derelict vehicle or equipment designated for disposal was sold, the Complainant had to report the intended sale and turn over the sale proceeds to the Respondent. There was no indication from the Complainant that there was ever a prospective buyer.

43. He then gave a brief account of the meeting between himself, Chad James and the Complainant on the day of the Complainant's termination.

44. On cross-examination he was unable to recall what the Complainant's salary was and whether instructions were given to Scotiabank to withdraw the salary from the Complainant's bank account. He, however, confirmed that one of the benefits given to the Complainant was housing which was taken away from him upon his termination.

45. Having had the opportunity to review Mr. Hart's written evidence and to observe his demeanour, candour and responsiveness during cross-examination and re-examination, as well as considering the inherent plausibility of his account, the consistency between his written and oral evidence under oath, as well as the internal consistency of his written and oral evidence, the consistency of such evidence with other evidence before the Tribunal, the Tribunal does not find him to have been a credible witness overall. The Tribunal also takes into consideration the fact that this incident took place about 5 years prior to both the written and oral evidence of Mr. Hart and a witness' memory may fade over time so that the evidence given cannot be an exercise into a witness' powers of recall, but as to the cogency of the general nature of that evidence.

(c) *The Evidence of Chad James*

46. He identified the Lee Williams Letter as emanating from the Respondent's corporate office in Grand Rapids, Michigan, United States of America.

47. He then explained how the investigation of the allegation raised in the Lee Williams Letter was conducted by the Respondent. He initially said that both he and Scott Hart went to the home of Lee Williams to see the derelict vehicle. However, at the generous invitation of the legal practitioner for the Complainant, he corrected the statement he made in his affidavit and confirmed that he was the only person that went to the home of Lee Williams to see the derelict vehicle.

48. He identified the Lee Williams Screenshots which confirmed to him that Lee Williams was in contact with someone referred to as Qasim about the forks for a backhoe.

49. He then recounted the meeting that took place between himself, Scott Hart and the Complainant on 16 April 2016, the day of the termination of the Complainant. During that meeting the Complainant vehemently denied that any such thing happened when the allegations were put to him. The Complainant asked for a receipt and then suggested that Chirs and Ricky Connor were behind it because he took the contract from Ricky

Connor. Scott Hart suggested that he come clean, but he denied the allegation and so Scott Hart then terminated him by handing him the Termination Letter.

50. He recounted that the Complainant asked "how can someone say they know the inside of my house", when at that point neither he nor Scott Hart had told the Complainant that Lee Williams had described inside his house. He indicated that "you can see the layout on Facebook, there are photos of my house all over Facebook, he was not in my house." There was also confirmation from a Vernon Johnson that he saw a family at the Complainant's residence one afternoon. There is nothing in the other aspects of the evidence to demonstrate why that confirmation from Vernon Johnson is relevant, as the Complainant is accused of having met with Lee Williams at the Complainant's home on Peter Island. The other evidence does not indicate that the description of the man by Vernon Johnson as being a tall man, or having a wife with a little girl between 6 and 8, could adequately describe Lee Williams. However, even if the evidence of Vernon Johnson is somehow relevant, as Vernon Johnson is not before this Tribunal evidence about anything Vernon Johnson said would be excluded as inadmissible hearsay, but he is important to the *dramatis personae* of the investigation conducted by the Respondent, otherwise known as the *res gestae*, and the Complainant would have had adequate notice of the intention of the Respondent to adduce that information into evidence in accordance with section 73 of the Evidence Act, 2006.

51. On cross-examination a lot of time was spent on an e-mail correspondence with Ricky Connor where the Complainant was insisting on payment for the Resort to demonstrate that this showed the Complainant's integrity and character. Mr. James accepted that the Complainant's dealings with Ricky Conner were according to the Respondent's policies.

52. The serious nature of the allegations against the Complainant and the extensive access to operational systems as Director of Engineering exposed the Respondent to serious operational security risk that required standard security measures to be put in place, which included informing the Departments of Labour and Immigration about the termination as well as adding his name to a list of persons no longer permitted to return to Peter Island and CSY Dock. He indicated that the public notice in the BVI Beacon contained no offensive or derogatory statements but merely indicating that the Complainant was no longer authorized to transact business for the Respondent. It was a statement of fact and not an attack on his character. Collectively, these were all security measures taken by the Respondent to mitigate potential security breaches arising from the Complainant's termination.

53. The security officers were specifically instructed to assist Mrs. Yoba with the lifting of heavy items into the vehicle, not for the purpose of intimidating her in any way.

54. Having had the opportunity to review Mr. James's written evidence and to observe his demeanour, candour and responsiveness during cross-examination and re-examination, as well as considering the inherent plausibility of his account, the consistency between his written and oral evidence under oath, as well as the internal consistency of his written and oral evidence, the consistency of such evidence with other evidence before the Tribunal, the Tribunal finds him to have been a credible witness.

D. The Tribunal's Analysis

(a) *The Findings of Fact*

55. The Respondent owns a resort in the Virgin Islands with a corporate office in Grand Rapids, Michigan.

56. The Respondent employed the Complainant as its Director of Engineering from 01 June 2015 in accordance with Clauses 2 and 4 of the Contract of Employment which was signed by the Complainant on 26 May 2015 and witnessed by his wife, Eudine Paul-Yoba. The Complainant suggested that at the time of the alleged sale of the backhoe he was on his honeymoon as he had recently been married, however, he had already been married when he signed the Contract of Employment and provided no evidence to substantiate that he was in fact recently married or was away on his honeymoon from 05 October to 06 November 2015. However, the Tribunal does not consider whether he was on the island a relevant fact to justify whether the transaction took place. As that was the only rebuttal evidence given by the Complainant, in the form of an alibi, to defend himself from the very serious allegations, it is the Tribunal's opinion that it is unlikely that, even if he had been given a greater opportunity to defend himself, if that is the extent of his defence he could not satisfy a reasonable employer that the allegations against him were untrue.

57. The Lee Williams Letter raises serious allegations of impropriety by the staff of the Respondent, which included the Complainant. It indicates that Lee Williams made an offer to someone named "Kisson Dookram", who it was confirmed in evidence by Mr. Chad James is no longer employed by the Respondent. The circumstances surrounding the termination of employment of Kisson Dookram were not disclosed to this Tribunal and therefore the Tribunal will infer that it had nothing to do with the allegations made in the Lee Williams Letter. It also referred to a telephone conversation between Lee Williams and someone named Phillip who operated as the middle-man between Lee Williams and the Complainant. The final transaction took place in September 2015 (about a month or at least a week before the Complainant left on what he claims was his honeymoon). Contrary to the evidence of Scott Hart, nowhere in the Lee Williams Letter does it repeatedly insist that Mr. Williams should only speak with the Complainant and not contact the Respondent directly. However, the Complainant's conduct did raise a red flag for Mr. Williams which prompted the letter.

58. What is of great concern to the Tribunal is that Mr. Williams, a contractor with the Respondent, would bypass the Respondent's General Manager and send an unsolicited letter directly to the Respondent's corporate offices in Grand Rapids, Michigan, United States of America, and that it was Mark Buggie in Michigan who sent the Lee Williams Letter to Scott Hart, the then General Manager in the Virgin Islands. While the Tribunal agrees with the legal practitioner for the Complainant that this state of affairs seems very far fetched the Tribunal makes no finding of fact on that issue as that fact is not a relevant consideration as to whether the dismissal was unfair. Whether or not the Lee Williams Letter was a fabrication or fraudulent is a matter that was not properly put before this Tribunal since fraud must be specifically pleaded and all the elements of a fraud must be put before the Tribunal. As this was not done, the Tribunal will accept, for

the sole purpose of determining the reasonableness of the Respondent's conduct, that the Lee Williams Letter was a valid complaint duly lodged with the Respondent despite the many unanswered questions surrounding that letter.

59. After the Lee Williams Letter was received by Scott Hart in March 2016, both himself and the Human Resources Director, Chad James, began investigating the allegations. Chad James went to the house of Lee Williams and claims to have taken photographs at Lee Williams' house, but those photographs have mysteriously disappeared amidst all the plethora of documentation in this case. However, the Tribunal notes that nowhere in the evidence of either Scott Hart or Chad James was there any reference, as part of the investigation, to the other persons named in the Lee Williams Letter, namely Kisson Dookram and the person named Phillip. It appears the entirety of the investigation focused on the Complainant whether rightly or wrongly. In any event the Tribunal will accept that the Respondent conducted an investigation into the allegations raised by the Lee Williams Letter, including looking extensively at the internal records of the Respondent, many of which were produced before this Tribunal. Their investigation also led them to get information from another resident on the island, Vernon Johnson. However, that appears to be the extent of the 3-week investigation which concluded with a meeting on 16 April 2016 in the office of Scott Hart that commenced at 9:03 a.m. and ended at 9:35 a.m.

60. During the meeting between Scott Hart, Chad James and the Complainant that took place for less than a half-an-hour, the Respondent continued its investigation by informing the Complainant for the first time that they received a complaint from Lee Williams and put the general nature of those allegations to him. However, during that investigation the Respondent concluded that the Complainant was being less than truthful, as an example the Complainant's statement that anyone could describe the inside of his house based on his Facebook page without the Respondent first suggesting that Lee Williams had described the inside of his house, and the Complainant made a similar unsolicited proposition before this Tribunal without putting his own Facebook page into evidence. Scott Hart then issued the Termination Letter, which was already prepared, and arrangements were already made for the departure of the Complainant from the island.

61. Contrary to the suggestion made by Scott Hart that he would not have issued the Termination Letter had the Complainant not been recalcitrant, the evidence of Chad James demonstrates that his mind had already been made up because he was asking the Complainant to "come clean" to make it easier on himself. That does not suggest that he would not have terminated him, but instead that suggested that he wanted him to confess.

62. The Respondent then had the Complainant escorted from the premises of the Respondent by ferry. They arranged for security guards to assist the Complainant's wife to move the heavy items from their home and remove them from the island. There were two (2) special ferries arranged just for the Complainant and his wife to be escorted from the island.

63. Evidence was provided to the Tribunal that part of the benefit package provided to the

Complainant was housing on Peter Island. However, there is nothing included in either the Contract of Employment or the Employee Handbook that deals with staff accommodation. In the absence of any tenancy agreement or other evidence establishing a tenancy, the Tribunal must infer that the staff accommodation was a bare license.

64. The final payment to the Complainant by the Respondent in the amount of $3,246.70 was paid into his account at Scotiabank and then withdrawn. As there is no evidence about any agreement, special or otherwise, given to the Respondent to take such action, reliance was placed by the Respondent on the final sentence of Clause 16 of the Contract of Employment to justify this action, which provides that "Final compensation from the Resort will be withheld until materials have been returned".

65. The Complainant alleged that his pension was withheld, however, in accordance with the Pension Plan Statement he had not become vested in the pension plan and so rather than his pension being withheld, no pension was paid. Additionally, the pension amount claimed in the Affidavit of Qasim Yoba was $6,000.00 without any supporting documentation to evidence how that was calculated or otherwise agreed. According to the Pension Plan Statement the most that the Complainant would have been entitled to was $1,425.11 and since the Complainant would have been employed with the Respondent for less than a year on a balance of probabilities the entitlement would likely have been the amount provided in the Pension Plan Statement only where the Complainant can show that he was vested, or partially vested, in the Respondent's pension plan. The Complainant provided no evidence to show that he was vested in the pension scheme, and, therefore could not claim even that lower sum.

(b) *The Law*

66. The Respondent has consistently maintained that the termination was a summary dismissal and very helpfully identified their view of the relevant law and procedure supported by six cases, namely, *Henry v. Mount Gay Distilleries Limited*,[1] *Leonart Matthias v. Antigua Commercial Bank*,[2] *Maurice Leader v. St. Kitts-Nevis-Anguilla Trading and Development Company Limited*,[3] *Cleeve Link Ltd v. Ms E Bryla*,[4] and *Denley v. Staples (trading as De Montfort Recruitment)*.[5]

67. The Code provides the minimum conditions of employment and in accordance with section 6 an employer is permitted to establish working conditions more advantageous to employees than those minimum standards which are set out in the Code. However, section 43 of the Code imposes a mandatory duty for employers not to provide terms and conditions which do not conform generally with the minimum provisions of the Code and an employee is not obligated to accept such employment on those terms and conditions. Additionally, section 44 of the Code makes any provision of any contract of employment which falls below the minimum employment standards established by the Code void. It is significant to note that the Code makes the provision void and not

[1] [1999] UKPC 39.
[2] ANULTPAP2017/0002, unreported, 28 May 2020.
[3] SKBHCV2005/0295, unreported, 28 April 2008.
[4] UKEAT/0440/12/BA.
[5] [1992] 1 AC 687.

voidable, and as a result, the offending provision is not subject to the equitable jurisdiction of this Tribunal to determine that the provision may be rescinded at the option of either party, but instead the provision (and not the entire contract) would be as though it never existed and is wholly unenforceable.

68. The Contract of Employment and the Employee Handbook must be read in conjunction with the minimum standards of the Code. The Tribunal will, therefore, declare any provision in the Contract of Employment and the Employee Handbook that offends against the Code to be void.

(i) The Assignment of Duties

69. Under Clause 2 of the Contract of Employment the Complainant was employed as the Director of Engineering subject to the terms and provisions of that contract and the Employee Handbook. A general job description was said to be attached to the Contract of Employment but that was never produced to the Tribunal. The Respondent was said to retain the right to define, extend or curtail the duties of the Complainant from time to time and that the Complainant had to perform such other duties as shall be assigned by the General Manager from time to time in addition to those contained in the job description. He was to report directly to the General Manager.

70. Section 42 of the Code outlines the public policy that must be used in interpreting Part IV of the Code (sections 42 – 80) and this includes the policy that an employee should know what his or her job consists of as well as what his or her employment conditions are.

71. Section 45(1) of the Code provides that an employee who is engaged for a term of employment exceeding four (4) months must be furnished with a written statement within ten (10) days of engagement containing, among other things, the general responsibilities and related duties for which the employee is hired. Furthermore, section 45(3) provides that where the employer desires to change those responsibilities and related duties must furnish such employee with a new written statement.

72. In interpreting those provisions, it is important for an employee to be provided at the start of employment but not exceeding four months thereafter, with a job description that provides general responsibilities and related duties, and notwithstanding the Tribunal has not seen the job description, the Tribunal is satisfied that this was done. However, any changes to the job description must be provided in a new job description. It is the Tribunal's view that it is not satisfactory for the Respondent to retain the right (and in fact cannot retain something that they never had to begin with) to define, extend or curtail those duties from time to time and any amendment to those duties must be in writing at the time of the change. However, the Tribunal accepts that the inclusion of a catch-all duty that can be assigned by the General Manager from time to time is acceptable and would therefore have allowed the General Manager, Scott Hart, to assign the responsibility to supervise the project to dispose of derelict vehicles, and, therefore, that assignment, which is the subject of the Complaint, was lawful.

(ii) The Termination

73. Clause 4 of the Contract of Employment provides that the term of employment was to "continue for a period of one year from the commencement date in the first instance, unless earlier terminated in accordance with the terms herein or otherwise at law." Additionally, Clause 19(c) of the Contract of Employment provides the circumstances under which the Complainant could be terminated without notice, and it was accepted that this was the provision invoked by the Respondent to summarily dismiss the Complainant based on the allegations made in the Lee Williams Letter.

74. Section 81(1) of the Code provides a mandatory restriction on an employer seeking to terminate an employee without a valid and fair reason connected with the capacity or conduct of the employee, or with the operational requirements of the employer pursuant to sections 88, 89, 101 and 103 of the Code, and unless the notice requirements in section 90 are complied with.

75. Section 81(2) of the Code gives an additional requirement to inform the employee in writing of the nature and particulars of the complaint against the employee and to give the employee a fair opportunity to defend himself or herself including access to his or her employment record, except where section 89 is involved which is termination with notice. As section 89 does not apply to this particular case, the requirement of section 81(2) must have been followed by the Respondent to effect a valid termination. Therefore, the Respondent had an obligation to inform the Complainant in writing of the nature and particulars of the complaint and then give the Complainant a fair opportunity to defend himself.

76. Section 101 of the Code outlines the procedure for summary dismissal, where the employee must be guilty of serious misconduct of a nature that it would be unreasonable to require the employer to continue the employment contract. It also provides two (2) examples of serious misconduct but makes it clear that it is not limited to those two (2) examples, as long as the conduct complained of is directly related to the employment contract and has a detrimental effect on the business. When summarily dismissing an employee under section 101 of the Code the employer is required to provide the employee with a written statement of the precise reason for the action and the employer is conclusively bound by the contents of the statement. The employer will be estopped by this Tribunal from introducing testimony as to facts which might have been included in the written statement upon termination.

77. The Tribunal is satisfied that the Termination Letter contained the precise reason for the action, which was the allegations made in the Lee Williams Letter. There was no testimony as to facts which, in the Tribunal's view, did not touch and concern the allegations made in the Lee Williams Letter other than how they conducted their investigation about those allegations.

78. The Tribunal is concerned, however, that before the Termination Letter was issued the Respondent did not provide the Complainant with the nature and particulars of the complaint against him in writing, or at the very least a copy of the Lee Williams Letter,

to give him an opportunity to defend himself. The fact that the first time the Complainant saw the Lee Williams Letter was in the course of these proceedings is, in the Tribunal's view, fatal to the Respondent's case. However, the Tribunal is also concerned that the Complainant was not given a fair opportunity to defend himself. It would have been necessary to satisfy the natural justice requirement of a fair hearing to have provided the Complainant with the full details of their three (3) weeks of investigation and give him time to consider those allegations, including taking legal advice, before responding. In fact, it was quite open to the Respondent to take disciplinary action under section 102 to suspend the Complainant from his duties for a period of up to one (1) week without pay to give him an opportunity to respond, or at the very least, to have given him by the end of that day to give him a fair opportunity to respond. If at the end of that period he presented no satisfactory information to defend himself, which to the Tribunal's mind after all this time he still has not provided any satisfactory evidence to defend himself, then it would have been open to the Respondent to terminate the Complainant. Having failed to provide the Complainant with a copy of the Lee Williams Letter, at the very least, since that was the basis of their investigation, and not giving him an opportunity to take legal advice if he wished and respond to the allegations made in the Lee Williams Letter, the Tribunal finds that the termination was unfair.

(iii) The Salary

79. Clause 6 of the Contract of Employment provides a base annual salary of $65,000.00 payable in bi-weekly instalments of $2,500.00 less required deductions and withholdings. Additionally, clause 16 of the Contract of Employment provides, as shown earlier, that the final compensation will be withheld until materials have been returned.

80. Section 56 of the Code requires the base annual salary to have been paid directly to the Complainant or to a person specified by him or her in writing except as provided in section 58 which requires the employer to make a simultaneous statement of wages earned and describe the deduction made. Section 57 outlines the ability of the employer to make deductions and excludes from any deduction from the employee for bad or negligent work or for the damage to the employer's materials or property except where it is due to the wilful misconduct of the employee. In any event, it is not possible to deduct or stop the payment of more than one-third of the gross wage, excluding the value of any payments in kind. Therefore, the Tribunal is of the view that regardless of the employer's opinion of the Complainant's culpability in the allegations made by the Lee Williams Letter, the Respondent had no right to order the stop payment of the entire salary of the Complainant. There is a fundamental reason for ensuring that an employee is not without the entirety of their salary during a pay period as it means that the employee would be unable to meet their usual obligations if the entirety of their salary is withheld and it will have a domino effect within the economy. Therefore, the Tribunal will declare that the last sentence of clause 16 of the Contract of Employment is void in so far as it seeks to withhold more than one-third of the salary of the Complainant. This would be an aggravating factor to be taken into consideration by the Tribunal when making its award for unfair dismissal.

81. The Tribunal finds that the Respondent acted unlawfully in withdrawing the Complainant's last salary from his account at Scotiabank. This would be a further aggravating factor to be taken into consideration by the Tribunal.

(iv) The Benefits

82. Clause 6 of the Contract of Employment provides for a discretionary bonus of up to 25% of base pay. Clause 7 of the Contract of Employment provides for certain benefits such as laundry, health and life insurance, the payment for the work permit bond, moving expenses to and from Tortola to an agreed upon destination upon termination by the Respondent, along with a monthly benefit amount based on on-island living arrangements of $483.00 and an annual ticket of $996.00.

83. Section 3 of the Code defines "wages" as including "money or other benefits however designated or calculated . . . as recompense, reward or remuneration for services rendered or labour done". Section 55(3) of the Code allows for the "giving of food, a dwelling-place or other allowances and privileges in addition to money wages as a remuneration for services" as long as "the allowances and privileges are fairly evaluated at cost to the employer".

84. The Complainant was not entitled as of right to the discretionary bonus, nor does the Contract of Employment or the Employee Handbook detail how and when that discretionary bonus is to be paid. The Tribunal will, therefore, not consider that the Complainant suffered a loss by the Respondent's failure to pay the bonus since he produced no evidence showing an agreement or commitment to pay it at any time since the Contact of Employment.

85. However, as it relates to the other benefits, save for housing which will be dealt with separately, the Tribunal finds that the Complainant did suffer a loss of entitlement to those benefits. In fact, the Tribunal disagrees with the evidence of Scott Hart that the moving expenses were only to be paid for moving to Peter Island, when the Contract of Employment is very specific about moving from Tortola "to an agreed upon destination" upon termination by the Respondent. As such, the moving expenses of the Complainant upon termination were also to be paid by the Respondent.

(v) Housing

86. As indicated earlier, the Contract of Employment does not deal with staff accommodation, and there is no evidence before the Tribunal that deals with it. The Tribunal having found that the staff accommodation was a bare license must now deal with the consequences of the termination on that accommodation.

87. Had the Tribunal found that the dismissal was fair it would have followed that as a bare licensee the Complainant could still have been immediately turned out of the staff accommodation without any warning or other notice. The termination of the employment would have been sufficient to terminate the bare license and send the Complainant packing. However, since the Tribunal has found that the dismissal was unfair, the question remains does that change the consequence of the bare license and its

effect? Unfortunately, that is the nature of a bare license. The owner of the property, in this case the Respondent, can terminate the license at will and without prior notice and the bare licensee should always understand the precarious position that they are in. Therefore, the concern by the Complainant that he was removed from his accommodation without any concern as to where he would sleep that night, while an appealing emotional argument, has no legal basis and the Respondent was well within their right to act as they did with respect to the termination of the bare license.

(vi) Pension

88. Section 111 of the Code leaves it to employers to provide a pension plan and only if they do not provide a pension plan for their employees does the statutory regime take effect. As the Respondent provided a pension plan, the statutory regime under the Code does not apply. The Pension Plan Statement makes it clear that under the employer's pension scheme the Complainant was not entitled to any payment and as the Complainant provided no evidence about the pension plan, the Tribunal finds that he is not entitled to any pension payment.

(vii) The Post-Termination Actions

89. The Respondent maintains that the way in which the Complainant was removed from Peter Island was necessary for security reasons due to his position within the organization. The Tribunal agrees that if the proper procedure had been followed and the termination was lawful and fair the measures taken by the Respondent would have been appropriate. However, the Tribunal is concerned that considering the unfair dismissal the post-termination actions, which included the publication of a notice in the BVI Beacon, the adding of the Complainant's name to the list of persons not allowed to return to Peter Island and the separation of the Complainant from his wife who was left to pack on moment's notice, were aggravating factors to be taken into consideration by the Tribunal when making an award for unfair dismissal.

(c) *The Remedies*

90. The Complainant has not asked to be reinstated pursuant to section 86(1)(a)(i) of the Code where the Tribunal finds the dismissal was unfair but has asked for compensation in lieu of reinstatement or re-engagement under section 86(1)(b)(iii) of the Code. However, compensation may only be awarded by the Tribunal where it is acceptable to both parties and the Respondent has not expressed, either in pleadings or in evidence, that compensation would be an acceptable remedy. Section 86(1)(b) gives the Tribunal the discretion to award such punitive sum as it thinks fit where it finds the dismissal was unfair.

91. It should be noted, however, that the power to make a punitive award should be used sparingly and is subject to the general obligation of the Tribunal to make an order or award as it considers fair and just having regard to the interests of the persons concerned and the community as a whole under section 30(2) of the Code. Therefore, the punitive award must balance the interests of the Complainant and the Respondent and take into consideration the community as a whole.

92. The Tribunal has explored the principles upon which it will make a punitive award in its decision in *Ursuline Joseph v. Aramo Corporate Services Inc*,[6] and recently in *Colleth Ranger-Vassell v. Mainsail B.V.I. Limited*.[7] In the latter case, the Tribunal examined the statutory penalties created by the legislature to determine an appropriate starting point for its punitive awards that was determined to be $25,000.00, which can then be increased or decreased based on various factors, which would include:

(a) the nature, size and scope of the Respondent's business based on evidence produced to the Tribunal, either voluntarily or by directions issued by the Tribunal in accordance with LPR 27(1)(a) where the Respondent has failed to comply with LPR 20(1)(f)(ii) to state whether compensation is an adequate remedy. This does not limit the Tribunal's discretion to make any inference about the Respondent's means where it fails to comply with any such directions given by the Tribunal;

(b) the conduct of the parties from the beginning of the proceedings up to the date of the final award, and this would also include the conduct of any legal practitioner at trial;

(c) the relevance of any compensation that may have otherwise been awarded, and the punitive award should be in addition to any sum that would have been awarded as a means of punishment; and

(d) any fine or other penalty already suffered by the Respondent for the wrongful conduct to ensure that the Respondent is not punished twice, and this would also include ensuring that the Complainant is not compensated twice by any mitigation of the loss suffered by the Complainant through other employment is taken into consideration when considering any compensation that would ordinarily have been awarded to the Complainant.

93. Applying those principles, and after taking into consideration that even if the employer had followed the proper statutory procedure for summary dismissal the Complainant may not have been able to produce any convincing evidence to the employer to disprove the allegations in the Lee Williams Letter, the Tribunal has considered the fact that the Respondent provided no evidence of its means and the Complainant did not make any request for any such directions to be given to ensure that the Respondent provided that information. The Tribunal cannot make any adjustment to the starting point based on any knowledge of the Respondent's means. However, the Tribunal notes that based on the Contract of Employment, the likely level of compensation to have been awarded would have been about $240,000.00, especially in light of the Complainant's evidence that he has found it difficult to find comparable employment since termination. Adding that loss of compensation to the starting point which would not be reduced based on any mitigating factors in favour of the Respondent, but would be reduced based on the Tribunal's concern that the evidence of the Complainant would not convince any

[6] BVILAT2016/016.
[7] BVILAT2020/002.

reasonable employer to disprove the allegations in the Lee Williams Letter. Additionally, the Tribunal has taken into consideration the conduct of the parties throughout these proceedings which the Tribunal has already mentioned. Taking all these factors into consideration, the Tribunal is of the view that a punitive award of $100,000.00 would be fair and just in the circumstances.

(d) *Costs and Interest*

94. Section 30(3) of the Code limits the Tribunal's power to award costs only for exceptional reasons which the Tribunal considers appropriate. Even though a punitive award in itself would ordinarily amount to an exceptional reason to grant costs in favour of the Complainant, in this particular case the Tribunal has raised significant concern about the assistance it received from the legal practitioner for the Complainant which fell far short of the standards expected of a legal practitioner appearing before it. As such, the Tribunal will make no order as to costs.

95. Section 78(2) of the Code gives the employee the right to recover wages, exclusive of sums lawfully deducted, plus interest at the rate to be determined by a court. Section 3 of the Code defines "wages" and this includes various forms of compensation, including salaries and benefits. Additionally, sections 55(2)(a), 79(2) and 107(2) all provide a rate of 10% as a reasonable rate of interest for monies owed to an employee.

96. While the Tribunal is not a "court", it has jurisdiction to determine any employment dispute referred to it with the broad powers to make orders and awards under section 30(2)(a) of the Code which would allow the Tribunal to award interest. Additionally, section 33(b) of the Code gives the parties and any person summoned before it the same right or privilege as he or she would have before a court. Even on a limited view of this section it would only apply to the right to appear before the Tribunal either personally or through a legal practitioner, including the right to call and examine witnesses, as well as the protection of legal professional privilege. On a purposive interpretation in accordance with section 42 of the Interpretation Act (Cap, 136), as amended, it would include the right to be awarded interest by a court. Also, where an arbitral award can generally award interest, there appears to be no limitation on the power of this Tribunal to award interest.

97. According to the highly persuasive English Court of Appeal decision in *Carrasco v Johnson*[8] there is a broad discretion to award interest. However, in exercising that discretion the Tribunal should have regard to the general principle that interest is awarded to compensate complainants for being kept out of money which ought to have been paid to them rather than as compensation for damage done, and showed a reasonable level of pre-judgment interest, that is from the date of the complaint to the date of the award, would be 3%.

98. The High Court has the jurisdiction to award pre-judgment interest as was recognized by the Court of Appeal in the binding decision of *Steadroy Matthews v Garna O'Neal*.[9] It

[8] [2018] EWCA Civ 87.
[9] BVIHCVAP2015/0019.

was stated at paragraph 69 of the judgement, referring to the Eastern Caribbean Supreme Court Act (Cap. 80):

> *"The effect of section 7 of the BVI Act is to give to the High Court in the BVI the same jurisdiction, and the powers and authorities incidental to the jurisdiction, as was vested in the English High Court as of 1st January 1940. The High Court of Justice in England, being vested (at least by 1934) with the jurisdiction to award pre-judgment interest on damages, the High Court of the Territory of the Virgin Islands would, therefore, be vested with the same jurisdiction."*

99. The court went on to mention that Justice Bannister, as he then was, committed a grave error in the case of *Ocean Conversion (BVI) Limited v The Attorney General*,[10] by refusing to abide by the Court of Appeal decision in *Alphonso v Ramnath*,[11] which allowed for the High Court to award pre-judgment interest.

100. Pre-judgment interest is not limited to the period between the initiating of the action to judgment. The persuasive case of *Clinton Belfon v The Attorney General*[12] shows that pre-judgment interest can be awarded from the time that the cause of action arose, i.e., the time of the incident. This approach was later followed by Master Raulston Glasgow, as he then was, in the binding decision of *Shawn Chinnery DBA Key Rentals and Charters v Department of Customs and the Attorney General*.[13] In both cases the rate of pre-judgment interest is 3%, and this Tribunal intends to follow that guidance in awarding pre-judgment interest.

101. However, where the punitive award would normally consider the effect that the failure to compensate the Complainant in making a global award, there would ordinarily not be a good reason to award pre-judgment interest on a punitive award, and it would be for the Complainant to demonstrate sufficient grounds upon which the Tribunal must additionally award pre-judgment interest. In this case, the Complainant has not done so and, therefore, the Tribunal will not award pre-judgment interest.

102. After considering whether to award pre-judgement interest, the Tribunal would then consider post-judgment interest, that is from the date the award indicated payment is due, which unless the Tribunal exercises its discretion to give the party some time to pay would take effect immediately, until payment is made. The relevant law on this area was explored in the persuasive decision from the Chancery Division of the English High Court in *ACLBDD Holdings Ltd et. al. v Ruedi Staechelin et al.*[14] which again demonstrated that the purpose of interest is to compensate complainants for being kept out of money which ought to have been paid to them. In this case, however, it is meant to ensure that if there is a delay in paying the sum awarded the harm caused by the further delay is compensated with interest. The Tribunal, therefore, has no difficulty ensuring that if the punitive sum is not paid within a reasonable time after award, which

[10] BVIHCV2008/0192.
[11] (1997) 56 WIR 183.
[12] GDAHCV2007/0439.
[13] BVIHCV 2013/0195.
[14] [2018] EWHC 428 (Ch).

the Tribunal would ordinarily give a party thirty (30) days to pay rather than leaving it to be immediate, that interest should accrue from that date until payment is made at the rate of 5% per annum in accordance with section 7 of the Judgements Act (Cap. 35), unless a higher rate of interest is required under the Code or any other law, but calculated at the daily rate.

103. Additionally, the Tribunal also has a duty to ensure that its awards are complied with and that all other labour related legislation are also complied with. As such, the Tribunal as a matter of course, following the practice in the UK Employment Tribunal of making the award subject to all applicable taxes and ensuring that those taxes are paid, will make its award subject to all statutory deductions.

The Award

104. The award of the Tribunal is as follows:

(a) The Complainant was unlawfully and unfairly dismissed by the Respondent.

(b) The Respondent shall pay punitive damages to the Complainant in the amount of $100,000.00 on or before Tuesday, 31 August 2021, less all statutory deductions.

(c) If the punitive damages are not paid on or before Tuesday, 31 August 2021 the Respondent shall pay interest to the Complainant in the amount of $14.05 for each day thereafter that the sums remains unpaid.

(d) There shall be no order as to costs.

(e) The Secretary to the Tribunal shall cause a copy of this Final Award to be served on the Director of the Social Security Board and the Commissioner of Inland Revenue for their information and further action.

- PENAL NOTICE -

If PETER ISLAND (2000) LTD. fails to comply with the terms of this order proceedings may be commenced for contempt of court and you may be liable to be imprisoned or to have an order of sequestration made in respect of your property.

Post-Script: Any person who is dissatisfied with this Final Award may appeal to the High Court on any question of law on or before Friday, 13 August 2021.

By Order
Labour Arbitration Tribunal

Main Office:
Ashley Ritter Building
Road Town, Tortola VG1110
British Virgin Islands

Jamal S. Smith, LLB(Hons), MCIArb.
Chairperson

I Concur.

I Concur.

Dancia Penn, OBE, QC
Member on the recommendation of the Complainant

I Concur.

Benedicta P.T. Samuels, LLB(Hons), LLM, Ph.D.
Member on the recommendation of the Respondent

LABOUR ARBITRATION TRIBUNAL
JUL 15 2021
BRITISH VIRGIN ISLANDS