



VIRGIN ISLANDS

**LABOUR CODE, 2010
(No. 4 of 2010)**

IN THE LABOUR ARBITRATION TRIBUNAL

Case No. BVILAT2025/002

BETWEEN

SHERIKA ELLIS

COMPLAINANT

AND

ATU GENERAL TRUST (BVI) LIMITED

RESPONDENT

REASONS FOR DECISION

BEFORE: **Samuel Jack Husbands**, Chairperson,
Professor Arthur Richardson, Arbitrator
Rhonda Hodge-Smith, Arbitrator

TRIAL AND

SUBMISSIONS ON: 18 and 19 December 2025, 11 and 27 February and 13 March 2026

DECISION ON: 31 August 2026

IN ATTENDANCE: (1) Sherika Ellis, the Complainant
(2) Marie-Lou Creque of Creque Global Group, legal practitioners for the Complainant
(3) Mohammad Kosmass, Human Resources Manager of the Respondent
(4) Davianne Holder, legal practitioner for the Respondent
(5) Erin Corbin-Boyce, legal practitioner for the Respondent

ADDITIONALLY: (6) Malisa Ragnauth-Mangal, as Secretary to the Tribunal

Minority decision of Arbitrator Husbands

Introduction

1. This is an unusual case in which the Complainant voluntarily resigned from the Respondent's employment but claims that the Respondent's conduct during the notice period converted that resignation into an unfair constructive dismissal. The questions for determination are whether the Respondent's conduct subsequent to receipt of the resignation notice amounted to a termination or repudiatory breach, whether any such termination was unfair under the Code, and whether the remedy of compensation or a punitive award under section 86 is therefore available.
2. The Respondent was licensed to carry on trust business under the supervision, inspection and regulation of the Financial Services Commission (**the FSC**). The Complainant was its Compliance Officer and Money Laundering Reporting Officer. Her lawyer, Marie-Lou Creque, submitted that no evidence was led and no fact was pleaded of what business the Respondent carried on or the reason why an FSC inspection would be of any import or significance. The Respondent licence to carry on trust business was filed on 17 June 2025 pursuant to a case management order dated 30 May 2025. The licence was excluded from the trial bundle by order dated 18 September 2025. At that stage it was not contemplated that a point would be taken about the nature of the Respondent's business. The nature of the business is also referred to in the Complainant's Certificate of Employment issued by the Respondent under section 95 of the Code [**page 329 of the Main Bundle**].

Chronology

3. The chronology of events giving rise to this claim and the loss alleged to be sustained by the Complainant is set out in the appendix.

Summary of claim

4. The principal facts and particulars of the Dispute Claim Form are as follows:
 - a. After the Complainant gave notice of termination she was locked out of the company systems without any notice,
 - b. She was instructed to return company property
 - c. She was denied access to the workplace
 - d. She was removed from the company WhatsApp chat group and excluded from communication
 - e. She was not required to work through the full notice period
 - f. She was falsely accused of mishandling company files by copying information to her private email drive
 - g. She was not given the standard job letter (i.e., the certificate of employment under section 95(1) of the Code), or an accounting schedule of payments due to her, or copies of final letters to statutory bodies regarding her resignation
 - h. There was delay in the payment of her salary for October and November 2024, and salary in lieu of notice and other benefits in breach of section 91(1) of the Code
 - i. She was coerced to sign an exit agreement and threatened with the withholding of her payments until she signed it
 - j. An employee was brought on to replace her while she was still on notice

- k. She was terminated without valid and fair reasons in breach of section 81(1) of the Code
 - l. She was subject to retaliation in breach of section 82(1)(c) of the Code
 - m. She was subject to threats, accusations and undue pressure amounting to constructive dismissal under section 83(1)
 - n. Her termination was unreasonable contrary to section 85(3)
5. Complaints are first made to the Labour Commissioner under section 26(1) of the Code. If the Labour Commissioner fails to achieve a settlement she may refer the dispute to the responsible Minister. If the Minister also fails to achieve a settlement, he may further refer the dispute to this Tribunal under sections 27(b) and 28(1) [**pages 71-72 of Main Bundle**]. The Complainant filed the Dispute Claim Form on 6 November 2024. The Respondent limited its Response to the matters specifically raised in the Minister’s reference and to some general statements and denials but did not answer the very specific, clear and detailed charges contained in the details of the Dispute Claim Form and did not state a case. It did not state, for example, which facts in the Dispute Claim Form it admitted or denied or was unable to admit or deny, and it did not provide any alternative version of the events it intended to rely on – see rule 20(1) of the Labour Code (Arbitration Tribunal) (Procedure) Rules 2020 (SI 2020 No. 98) (**the Rules**). It was a very technical pleading strategy. However, the Respondent subsequently presented witness statements in which its witnesses testified about several matters which it had not raised in its Response but which were raised in the Complainant’s Reply.
6. The Complainant expanded on her case in her Reply. She recited many of the allegations in the details and particulars of her Dispute Claim Form such as threats, undermining her dignity, being locked out of the office, being limited to use of the main entrance via the reception area, being instructed to return company property, threats of being placed on leave, and being prejudiced in her future job prospects. She also raised allegations of compliance misconduct on the part of the Respondent, the erroneous implication that her failure to submit resignation letters could cause regulatory breaches, exposure to reputational harm, the withdrawal of work benefits, coercion to sign the exit agreement, the Respondent’s failure to respond to formal communications, the requirement of management approval for visits to the office, change of her date of termination in breach of clause 14 of her employment contract, the unilateral imposition of pay in lieu of notice, emotional stress, and professional uncertainty.
7. Most of these allegations were vague and unparticularised. Having set out these allegations, the Complainant claimed damages and costs. She did not state on what basis the claim for damages was advanced.
8. The relevant provisions of the Code are sections 26, 27, 28, 29 and 86, which define the referral pathway to the Tribunal and the remedial powers available where unfair dismissal is established.
9. The field of disputes that may be referred to the Tribunal is quite wide. A dispute must arise from any matter “covered by” the Code or any law relating to labour or generally arising out of the relationship between employer and employee. Where the Tribunal having considered a dispute, determines that the termination was unfair it may make any of the orders pursuant

to section 86(1) of the Code. In this case the only remedy sought is compensation for unfair dismissal. The Tribunal is not empowered upon the referral of a dispute in accordance with section 26(1) or 27(b), to make orders for the payment of compensation except where it determines that a dismissal was unfair.

Issues for determination

10. I summarise the issues for determination as follows:
 - a. Was the Complainant terminated by the Respondent and, if so, was it unfair?
 - b. Was she subject to unlawful threats, coercion, intimidation or undue influence?
 - c. Is she entitled to compensation for the mode of treatment she claimed to have experienced or for injury to her feelings, such as the undermining of her dignity?
11. For the reasons that follow, I find that the Complainant was not terminated or constructively dismissed, and that the statutory basis for compensation under section 86 has not been established.

Termination

12. The Complainant did not include a claim for unfair dismissal in the letter before action dated 24 December 2024 or in her Reply. She did mention constructive dismissal at paragraph 22 of her witness statement. She pleaded that the restriction barring her from going to the office amounted to constructive dismissal. Despite this, a claim for unfair dismissal must have been intended and the case proceeded on that basis. I will also deal with constructive dismissal as a result of non-payment of salary and threats, bullying and victimisation.
13. The restriction of access to the premises and the termination of remote access to the computer system clearly caused the Complainant concern about procedures adopted during her notice period. Requiring her to sit in or near the IT Department was an unnecessarily conspicuous measure. The delay until 10 January 2025 to issue the certificate of employment was also not conducive to preserving good employment relations. These matters may have contributed to the Complainant's perception that she was being intimidated, but they did not, without more, amount to a repudiatory breach or constructive dismissal.

Non-payment of salary

14. There is no explanation by the Respondent for its failure to pay salary due in October and November 2024 on time. The parties were negotiating the Complainant's early termination. The discussions never reached a conclusion before 4 December when the Complainant received payment. The Respondent clearly intended to pay her in full for her notice period and for any other sums due including her pension entitlement upon receipt of or in exchange for the resignation letters from the entities of which the Complainant was Compliance Officer or Money Laundering Reporting Officer. The Complainant may have intended to receive payment and not sign the letters in the form presented. She did not accept a retirement date other than the date of her termination notice. The Respondent ultimately proposed 18 October. It was ready to pay the Complainant. By maintaining a resignation date I do not accept as correct, the Complainant made it difficult for the Respondent to complete the resignation letters and therefore her termination formalities. Notwithstanding this, the contract could not have been terminated before the end of October after her salary became

due and remained unpaid. She was clearly entitled to her salary for October even though the discussions between the parties were stalled or ongoing. The Respondent was in breach of the contract of employment by its neglect or refusal to pay the salary when it fell due in October. The Respondent would understandably have been reluctant to pay the entire settlement amount without receipt of the resignation letters, but it should have paid the October salary once it fell due.

15. Similarly, the salary for November was not paid until the Complainant received her final cheque on 4 December. The Respondent took reasonable steps to ensure payment was made. It submitted the cheque to the Labour Department on 14 November, well in advance of the salary due date. It appears that the officer of the Labour Department with oversight of the negotiations between the parties went on leave in the interim. It took until 4 December for the Complainant to receive payment. It was a short delay between the due date for and payment. A salary delay of this duration will not generally amount to constructive dismissal unless, for example, it forms part of a repeated course of conduct. Although the late payment was a breach of the employment contract, it was not of a character that evinced an intention to repudiate the contract. It did not demonstrate, in the words of section 85(1), that the employer's conduct on this occasion made it unreasonable to expect the employee to continue the employment contract.
16. A further note on salary for November is that by the salary payment date the Complainant had already entered into a contract of employment with another trust company (on 22 November). This new contract was subject to the grant of a work permit. The Labour Department refused to grant the permit. The new contract could not therefore be performed [page 253 of Supp Bundle].
17. Both parties relied on **Western Excavating (E.C.C.) Ltd v Sharp** [1978] 1 QB 761. Ms Holder, counsel for the Respondent, also relied on **Jones v F Sirl & Son (Furnishers) Ltd** [1997] IRLR 493. She submitted that these cases decided that constructive dismissal under the equivalent of section 83 of the Code must be determined according to contract principles and that the employer's conduct must have been the operative cause of the termination.
18. Ms Holder further submitted that payment timing issues do not retroactively convert a resignation into a dismissal unless the statutory and causation requirements in section 83 of the Code are met. We would agree that the non-payment of salary for one month does not necessarily amount to a repudiation of the contract, The Complainant may have treated it as repudiation when she filed the Dispute Claim Form.
19. I do not accept Ms Holder's argument at paragraphs 15 and 16 of her submissions that where an employee has given notice one may look only at what she calls the employer's pre-resignation conduct. The employer's conduct after receipt of the resignation notice may be relevant in order to determine if the employee may have been terminated in the interval between the first and last days of the notice.
- Garden leave and restriction of computer access*
20. There was much confusion on the part of the Complainant about what should happen during her notice period. Her position on so-called "garden leave" is also difficult to understand. She regarded it as a breach of contract or unfair treatment. On my view, once an employee gives

notice, the employer may place the employee on paid leave where the contract and circumstances permit it. Garden leave is a form of paid suspension during the notice period and, without more, does not amount to termination.

21. The Complainant proceeded on the incorrect understanding that being placed on garden leave on 7 October or being unilaterally barred from the office as she put it in paragraph 10 of her second witness statement [**page 403 of the Supp Bundle**], amounted to a termination and therefore entitled her to her full compensation at that point. She was not terminated. She was placed on paid suspension leading up to her departure. She remained an employee of the Respondent and remained entitled to her salary and benefits due in October and November 2024.
22. The Complainant seemed to take much offence and saw it as a slur on her professional reputation. Perhaps she took this view because the request that she go on leave coincided with the report by the IT manager of data being moved to the P drive and particularly since, as both parties admitted during the trial, the moving of documents to the P drive occurred regularly in the office. I do not find any misconduct on her part in the removal of personal files. The employer is however not to be blamed for expressing concerns about file movements (even of publicly available information) by a departing employee. I find that the suspension of her remote access privileges was not a punishment or a stain on her character. It was a standard step which the Respondent was entitled to take under the IT Policy. It was not in breach of her contract of employment or the Code.
23. Mrs Creque submitted at paragraph 77 of her submissions filed on 11 February 2026 that the Respondent was bound to permit the Complainant to continue working through to 23 December 2024 and that by denying her the right to do so, it not only breached her employment contract, but “also created an environment where the Complainant could deem herself to have been constructively dismissed”. Her argument is that the Complainant should have been paid her salary down to the resignation date on 7 October when she was barred from the office and constructively dismissed. Mrs Creque relied on **British Midland Airways Ltd v Lewis** [1978] ICR 782. Ms Holder answered that submission by arguing at paragraph 4(b) of her submissions that the decision to curtail the notice period resulted from the Respondent’s duty to determine and manage its IT security risk and its overall business needs and did not amount to a dismissal or transform voluntary resignation into dismissal. She relied on **Christie v Johnston Carmichael** [2010] IRLR 1016 (see paragraphs 38-44 and 50). She also cited **Marshall (Cambridge) Ltd v Hamblin** [1994] IRLR 260, **McLoughlin v Sutcliffe Catering (UK) Ltd** [2022] All ER (D) 76 (Aug), and **Fentem v Outform Emea Ltd** [2022] All ER (D) 09 (Mar).

Resignation letters

24. The early termination was complicated by the parties’ disagreement over the resignation letters. The Complainant’s insistence on a 23 September resignation date is difficult to understand. She did not see a difference between the date of her personal resignation letter of 23 September and the effective date of her resignation of 23 December. If the letters had to be submitted to the FSC within 7 days of the Senior Officer ceasing to be employed, her insistence on a resignation date of 23 September would have been a problem for the Respondent.

25. As MLRO and CO of entities managed by the Respondent, she was required by the Respondent to resign from each entity. The Respondent prepared what it saw as standard resignation letters and submitted them to her for signature. The Complainant did not accept them in the terms drafted by the Respondent. She amended them in a manner that was not acceptable to the Respondent. The dispute concerning the resignation letters eventually was about the date. The Respondent is in the business of trust administration and its preference for a form of draft letter for compliance purposes must be given some weight. Ms Turnbull explained these reasons in her email to the Labour Department dated 8 November 2024 [**page 302 of Main Bundle**]. The Complainant asked to see the guidance notes or the legal basis for the corporate resignation letters. The Respondent did provide this. Ms Turnbull stated at paragraph 21 of her witness statement [**page 187 of Main Bundle**] that she explained to the Complainant that the requirement to submit individual, accurate resignation letters was based on the Regulatory Code and the Approved Persons Guidelines which require written notice to the FSC containing specific information including the date of the approved person's resignation and reasons for her departure. This leaves it open to the conclusion that the notice to the FSC could be from the licence holder or trust company rather than the approved person. Even then, the Respondent's practice of requiring resignation letters is not an unreasonable imposition and appears to be a good and responsible regulatory practice of maintaining complete records. I see no reason to doubt the Respondent's reasons for its insistence on its own draft given that it is the licence holder and the entity responsible for answering the FSC's queries. The Complainant did not put forward any other construction of the FSC guidelines and regulations.
26. The Respondent eventually abandoned the second paragraph of the letters which dealt with the Complainant's rights or claims against the entities from which she was resigning. Only the resignation date remained an issue. I do not accept the Complainant's position that the letters should have retained the date of her notice of resignation. I accept that the delay in the provision of the letters could have caused the Respondent some embarrassment with its own clients or with the FSC. The Complainant maintained at paragraph 8 of her supplemental witness statement [**page 403 of Main Bundle**] that she submitted the client resignation letters in the form required by the Respondent with her email dated 22 October [**pages 33 of Main Bundle and 48 of Supp Bundle**]. This statement does not appear to be entirely accurate. Those letters are not exhibited. What are exhibited are the draft letters with 18 October and 4 November resignation dates [**pages 20-31 and 255-281 of Main Bundle**]. What the Complainant must have submitted on 18 October was the resignation letters with the 23 September date. As late as 25 October she was stating she would not alter the date [**page 288 of Main Bundle**].

Threats, victimisation and bullying

27. The Complainant alleged that the management of the Respondent threatened, victimised or bullied her, or told her she would never find another job again. She stated she recorded a meeting with Mr Gutmann on 4 October and that he did say the threatening words. She produced a transcript in the supplemental bundle. The full text of the statement attributed to Mr Gutmann is as follows:

"[00:14:30] CBG: Sherika, let's be honest, that camel can go totally one way. We can also just put you immediately on leave and you will never find a job again. I don't

think you understand how carefully you should actually tread here. We are opening you, door after door after door, and you're smashing them all, you've closed them–
SLLE: How am I smashing that Christoph? I–
CBG: Yes, I don't know what else we can offer you. You dropped the office. You dropped the inspection; everybody talks about you–
SLLE: How did I do that?
CBG: –and we are just continuously being nice to you and you are continuously slamming the door on our face, I mean there will be a point when we just slam the door on you. I mean, I don't know what you want. I don't know where you want to go here –” [page 187 of Supp Bundle]

28. To describe this exchange as a threat requires a strong inference and is not supported by the overall course of communication between the parties. It formed part of a conversation between the Complainant and Mr Gutmann about resolution of the outstanding issues. It could have been a caution to the Complainant to handle her exit affairs carefully because prospective employers might consider such matters before employing her. There was very little, if anything, the Respondent could have lawfully done to hinder the employability of the Complainant.
29. I do not think it is established on a balance of probabilities that those words were said as an illegal threat or scheme to deprive the Complainant of work, nor do I find that the Respondent bullied or victimised her. As stated previously, the Respondent took the ordinary steps of restricting her internet access and her physical access to the premises. The Respondent may have been concerned by the Complainant's refusal to extend her notice period during inspection season and may have said so in strong terms. But it is an altogether different thing to say she was bullied, belittled, victimised or defamed. Shondrea Turnbull, who was the HR manager and who attended meetings with the Complainant, denied that threats or other intimidation were made in her presence or as far as she was aware.
30. The Complainant stated at paragraph 2 of her second witness statement [page 401 of Main Bundle] that her salary was withheld to compel her to sign the resignation letters. This is not supported by facts. What emerged is demonstrated by Ms Turnbull's email to the Mr Davies of the Labour Department dated 8 November 2024 [pages 294 to 296 of the Main Bundle]. It was the total pay-out package that was conditional upon the Complainant signing the resignation letters. Mr Davies confirmed this – see his reply of the same date at pages 293-294 of the Main Bundle. The refusal to issue the total cheque was clearly tied to signature of the client resignation letters. This stance taken by the Respondent would not have been unreasonable because the cheque was being tendered in final settlement and the delivery by the Complainant of signed resignation letters in the form required by the Respondent would have been a sensible and ordinary pre-condition for the release of the cheque. In the end, however, the Complainant received the cheque and the Respondent ultimately waived its requirement that she submit the resignation letters – see paragraph 29 of Ms Turnbull's witness statement at page 188 of the main trial bundle.

Was the early termination unfair?

31. The Complainant's employment came to an end on 4 December 2024 when she accepted the payout. It was consensual. The central issue of the resignation letters was still not resolved.
32. I have found no circumstances for constructive dismissal. In the circumstances, I do not find the Complainant was unfairly dismissed.

Is the Complainant entitled to compensation for the mode of dismissal

33. In the absence of a finding of unfair dismissal, I am unable to award compensation under section 86 of the Code. In any event, the point has been settled by authority. In **Johnson v Unisys Ltd** [2001] UKHL 13, [2003] 1 AC 518, the House of Lords restated the principle that compensation is not awarded under the UK employment law regime for the manner of dismissal. I accept this statement of principle as being applicable in the BVI also. Perhaps a punitive award may be made in that case. We have ruled in **Dennis v First Caribbean International Bank** (BVILAT, August 2025) at paragraph 77 that compensation may not be awarded for hurt feelings or distress.

Remedies

34. The remedies sought by the Complainant are (i) an investigation, (ii) enforcement of payment of wages, benefits and other compensation, (iii) an order requiring the Respondent to provide a job letter pursuant to section 95 of the Code, and (iv) compensation for financial loss and distress and damages for victimisation, coercion, unfair labour practices and reputational damage from slander.
35. The remedies available to the Complainant under section 86 of the Code are however, limited to reinstatement, re-engagement, compensation and punitive damages.
36. By these proceedings, we have nevertheless effectively carried out the investigation sought. The Complainant received the wages and benefits to which she was entitled on resignation. The Respondent provided the so-called job letter or certificate of employment. It is dated 10 January 2025 [**page 179 of Supp Bundle**]. It was received by the Complainant on or after 14 January. Those claims are now moot. I will now consider the rest of the remedies of a punitive award, severance pay, and additional compensation including financial and other loss.

Punitive award

37. As stated above, compensation is not awarded for the manner of dismissal except possibly where a punitive award is made. I have held that the Complainant was not unfairly dismissed and she is accordingly not entitled to compensation or a punitive award.
38. The Respondent could have acted with greater restraint and judgment in dealing with this matter. It moved the workstation of a senior officer such as the Complainant to a desk either inside or just outside the IT room for a technical breach of the IT Policy where no malice was established and no intention to "steal" private or confidential company information was found. As a matter of fact, it was the Complainant who had first mentioned to the IT Manager her desire to transfer some publicly available data to her own account.

39. The certificate of employment was very important to the Complainant. It was only issued to her with the Respondent's lawyers' letter dated 14 January 2025 [**para 3 page 313 of Main Bundle**]. Section 95 of the Code does not stipulate a time limit for the provision of the certificate. However, the Respondent was aware of the Complainant's resignation since 23 September 2024 and although the focus was on the corporate resignation letters, more urgency could have been applied to the certificate.
40. The Respondent also removed the Complainant, a single mother, from the company after-school childcare service. This caused her great discomfort. It could have been done after she had received her payout. It was perhaps a petty measure. I however, do not consider that it was a repudiatory event.
41. Despite this, even if I had found the Complainant was unfairly dismissed, I do not consider it was open to me to make a punitive award. The Respondent filed a statement on 17 June 2025 pursuant to rule 20(1)(f)(ii) of the Rules to the effect that it would be agreeable to the remedy of compensation should the Tribunal determine that unfair dismissal has occurred [**page 86 of Main Bundle**]. That, in my view, effectively barred a punitive award.

Severance pay

42. Compensation is sometimes loosely referred to by litigants as severance pay. Severance may be claimed under section 104 for a dismissal under section 89(2) of the Code where (i) two medical practitioners have certified the employee is unfit for a certain reason to continue in employment, (ii) the employee could not continue to work in the position held without contravention of a provision of law, or (iii) the employee is made redundant as that term is defined in sub-section 89(3). The claim for severance pay was not pursued and no basis for it is made out.

Compensation

43. She claimed other unquantified loss as set out in her Schedule of Loss [**pages 84 and 85 of Main Bundle**]. This includes (i) loss of use of funds by the withholding of her pay from 7 October 2024 when she was denied access to the premises and constructively dismissed to 23 December 2024, (ii) loss of use of "work benefits and legal entitlements" to 23 December 2024, (iii) loss of income and job security following her forced separation from the Respondent including loss of comfort of immigration status, (iv) loss of job opportunity and diminished future earning capacity, and (v) injury to reputation. As I have not made a finding of unfair dismissal, the Complainant is not entitled to compensation. She received the amounts due to her on resignation.

Summary of order

44. I do not find the Complainant was unfairly dismissed. Consequently, I would make no award of compensation or punitive damages.
45. Ms Holder signalled at paragraph 69 of her submissions that the Respondent will seek an order for costs. I agree the parties should be directed to file submissions on costs within two weeks.

Post-script

46. I would like to thank the officers of the Labour Department, including Mr Hastings and Mr Davies, for their assistance to the parties in the resolution of the dispute.



Samuel Jack Husbands
Chairperson

Majority decision of Arbitrators Richardson and Hodge-Smith

47. We have read the reasons of the chair in draft.
48. We adopt the facts stated in his reasons except as stated at paragraphs 49 and 50 below.
49. We find, however, that the failure to pay the Complainant's salary in October and November 2024 and her possible subjection to ridicule by seating her in or outside the IT department was such conduct that made it unreasonable to expect her to continue her employment contract. We are satisfied that she was constructively dismissed pursuant to section 83(1) of the Code. Although she did not give notice of dismissal to the Respondent, she filed the Dispute Claim Form with the Labour Commissioner containing a claim for compensation for unfair dismissal. See paragraphs 1 to 5 under Legal Violations and under Summary of Violations in the Details attached to the Dispute Claim Form [**pages 5 and 6 of Main Bundle**].
50. We do not find it is established that the CO and MLRO resignation letters were required or required in the form stipulated by the Respondent. Ms Turnbull did explain the reasons for the letters in her email to the Labour Department dated 8 November 2024 [**page 302 of Main Bundle**] but only in a very general way. The Respondent has not cited the actual statutory provisions and sections on which it relied nor has it provided an opinion as to the effect of the provisions. We are unable to conclude that the resignation letters in the form stipulated by the Respondent were required by the employment contract or by law or practice.
51. We find therefore that the Respondent imposed an unreasonable condition on the Complainant which it used to justify not paying her salary. It unfairly terminated the Complainant's employment by not paying her salary on the due dates in the months of October and November 2024. The insistence on the letters and the withholding of her salary appear to have been a strategy by the Respondent to pressure the Complainant into signing the resignation letters.
52. We do not order compensation. The employment contract had just weeks to run in October 2024 when the Complainant was constructively dismissed. She received in the pay-out what compensation was due to her. We do not find that she proved the other compensation she claimed in her Schedule of Loss.
53. In the circumstances, the Complainant is entitled to punitive damages. We adopt the reasoning of the Tribunal in **Ranger-Vassell v Mainsail B.V.I. Limited** (BVILAT, July

2021). We would adopt a starting point of \$25,000, which is based on the awards in **Ranger-Vassell** at paragraphs 111-113, **Yoba v Peter Island (Resort) Ltd** (BVILAT, July 2021) at paragraph 92, **McKie v Nanny Cay Resort and Marina Ltd** (BVILAT, July 2021) at paragraph 84, and **Christopher v BVI Health Services Authority** (BVILAT, January 2022) at paragraph 112. We add to or subtract from that amount based on aggravating or mitigating factors. Aggravating factors include the following:

- a. failure to pay salary as it fell due and causing the Complainant stress and financial embarrassment,
- b. placing the Complainant, who was a very senior employee, to sit in an area normally designated to more junior/IT staff, which arrangement could reasonably be regarded as a demotion or as the undermining of her seniority status.
- c. excluding her from the after-school childcare programme,
- d. unreasonably delaying the pay-out process to the detriment of the Complainant,
- e. insisting on the fulfilment of a condition, which was not proven by the Respondent to be necessary,
- f. delaying until January 2025 in issuing the certificate of employment under section 95 of the Code.

54. We would also consider the following mitigating factors:

- a. ultimately paying the salary, and
- b. stating that it would accept to pay compensation if unfair dismissal was found.

55. Taking into account the aggravating and mitigating factors and using the starting point of \$25,000 we would assess the punitive award at \$20,000.

56. We order that the Respondent pay the Complainant \$20,000. We direct that the parties file submissions on costs within two weeks.


Professor Arthur Richardson
Arbitrator


Rhonda Hodge-Smith
Arbitrator

By Order
Labour Arbitration Tribunal


Samuel Jack Husbands
Chairperson

APPENDIX

CHRONOLOGY

- a. On 23 September 2024 the Complainant gave three months' notice of the termination of her contract to expire on 23 December 2024. The Respondent was then in the process of a compliance inspection by the FSC.
- b. During a meeting on 4 October 2024 the parties discussed exit arrangements. Christoph Gutmann, the Respondent's Managing Director, requested the Complainant to extend her notice period by about one month to January 2025. She considered the request and neither agreed nor refused the extension but rather asked for time to consider the request [**para 10 of SE affidavit at p184 of Main Bundle and Ex ST2 page 192 and emails in the middle of pages 233 and 232**].
- c. On 4 October the Complainant asked the IT Manager about extracting documents from the Respondent's computer system and transporting them to her personal computer. She claimed these were public documents that she had uploaded to the Respondent's system during the term of her employment. She now wished to have access to them after she left. The IT Manager reported this to management.
- d. On 6 October the Complainant's remote access facility was restricted
- e. On 7 October she was notified that she was not required to attend the office and that a meeting would be held to discuss her offboarding.
- f. On 8 October the meeting took place. The Complainant was informed of the IT Manager's report and that she would be seated near to IT and that the Respondent was drafting an Exit Agreement and after her remaining tasks were completed there would be no further need for her to attend the office.
- g. On 9 October Ms Turnbull, the Human Resources Manager, emailed the Complainant to summarise their discussions so far. The Complainant emailed the office and made allegations of misconduct, threats and intimidation by the Respondent.
- h. There were two meetings on 10 October. A draft exit agreement was presented to the Complainant [**page 235 of Main Bundle**]. She neither accepted it nor rejected it at the time. She was left to consider it. Tesca Mathurin, the Respondent's Senior Legal Counsel and Head of the Legal Department, stated in cross-examination that an exit agreement was not a usual part of the ATU employee close-out process. Later that day the Complainant emailed the Respondent to allege threats and intimidation. Further meetings were abandoned.
- i. On 11 October the Complainant was removed from company WhatsApp chat groups and was informed she was no longer eligible for inclusion in the after-school childcare service.
- j. On 12 October, in an internal company memo, Ms Turnbull stated that she found it "strenuous" dealing with the Complainant. The Respondent decided to pay the Complainant in full for the duration of her notice period. It required the Complainant to submit separate resignation letters for each company of which she was MLRO or CO. It wanted the letters signed and completed by 18 October. Ms Turnbull testified that resignation letters were a requirement of the BVI Regulatory Code and Approved Persons Guidelines.
- k. On 14 October the Complainant emailed to enquire about her employment status and her entitlements. Ms Turnbull replied and asked her to sign the so-called "exit letter". The Complainant declined to sign it.

- l. On 16 October the Complainant asked for a list of all the entities for which the Respondent required resignation letters as well as her release documentation, job letter and other documents. Ms Turnbull replied the same day and confirmed the termination procedure was in hand and the resignation letters would be processed by 18 October.
- m. On 17 October Ms Turnbull sent the Complainant the resignation letters for dating as of 18 October. The Complainant objected to the use of a date other than 23 September.
- n. On 22 October the Complainant provided amended resignation letters. She objected to the inclusion to a term in the letter that she had no rights or claims against the entities **[page 282 of Main Bundle]**.
- o. On 23 October Ms Turnbull requested the Complainant to sign the letters and told her they were standard, customary and required. She sought to resolve the Complainant's doubts by attaching a reference to other letters completed in the past based on guidance from the FSC **[page 290 of Main Bundle]**. The Complainant replied the same day. She stated she was not aware of such guidance. She asked Ms Turnbull to share the guidance note or the legal basis for insisting on the letters.
- p. On 24 October she reminded Ms Turnbull to send her the guidance note or legal basis for the letters. The Complainant did not agree they were necessary.
- q. On 25 October Ms Turnbull replied but did not provide the guidance note or the legal basis for the letters. She noted the Complainant's wish not to include the second paragraph of the letter which contained a confirmation that she had no rights or claims against the entities. She again proposed 18 October as the resignation and close-out date. It does not appear that the Respondent ever provided the guidance note or legal basis for its insistence on the letters. Ms Ellis did, however, provide a summary to Mr Davis of the Labour Department in an email dated 8 November. The Complainant replied later that day. She refused to change the resignation date of 23 September. She considered the request to change the date unreasonable. She proposed that the Respondent could pass resolutions of its directors or take whatever action it saw fit to reflect her resignation from the entities. She ended her email by asking for her payment, among other amendments. She appears to have concluded, incorrectly, that her resignation date was the date on which she gave notice. She nevertheless maintained the 23 September date. This impasse appears to have added strain to the relationship. The Respondent considered the matter time-sensitive because, it said, the letters had to be produced to the FSC within a certain period following resignation and it was concerned it could be in breach of its obligations. The Complainant felt she was being harassed, intimidated and treated unreasonably.
- r. On 6 November 2024 the Complainant filed the Dispute Claim Form with the Labour Commissioner. Thereafter the parties turned to the Labour Department for assistance.
- s. In her email to Mr Davis of 8 November referred to above, Ms Turnbull set out the payment amounts and attached the regulatory legislation regarding the resignation letters. She also proposed that the payout cheque be delivered to the Labour Department with the resignation letters and sought the assistance of the Labour Department with the close-out and the return of the resignation letters. Regarding the resignation date from the entities, Ms Turnbull proposed the date on which the Labour Department delivered the cheque to the Complainant. There was some delay in getting the cheque and the letters to the Labour Department **[pages 294-297 of Main Bundle]**.

- t. On 14 November the cheque was received by the Labour Department [**page 304 of Main Bundle**]. The responsible officer at the Labour Department had left on vacation and the cheque was not delivered to the Complainant until 4 December [**page 319 of Main Bundle**].
 - u. On 21 November the Respondent processed the Complainant's pension payment.
 - v. On 22 November the Complainant entered into an employment contract with another company subject to the grant of a work permit [**page 253 Supp Bundle**].
 - w. The Complainant was not paid her salary at the end of October or November.
 - x. On 4 December the Labour Department delivered the cheque and resignation letters to the Complainant. She accepted the cheque but did not sign the letters.
 - y. On 10 January 2025 the Respondent issued the Certificate of Employment under section 95 of the Code [**page 329 of Main Bundle**].
 - z. By a letter dated 6 February 2025 the proposed employer informed the Complainant that the Labour Department had refused her work permit application and that therefore the employment contract could not be performed [**page 253 Supp Bundle**].
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