



VIRGIN ISLANDS

LABOUR CODE, 2010
(No. 4 of 2010)

IN THE LABOUR ARBITRATION TRIBUNAL

Case No. BVILAT2026/002

BETWEEN

LISA WALMISLEY

COMPLAINANT

AND

CANDEY (BVI) LIMITED

RESPONDENT

REASONS FOR DECISION

BEFORE: **Samuel Jack Husbands**, Chairperson,
Dancia Penn OBE, KC, Arbitrator
Paul Webster KC, Arbitrator

HEARING ON: 30 July 2026
DECISION ON: 22 September 2026

IN ATTENDANCE:

- (1) The Complainant
- (2) Michael Fay KC of ABVI Law, legal practitioners for Complainant
- (3) Ashkhan Candey, Managing Partner of the Respondent
- (4) Andrew Dunn, director of the Respondent
- (5) Harrison Shaylor, lawyer the Respondent

Introduction

1. This judgment is given on the Respondent's application to stay these proceedings pending determination of related proceedings between the parties in the High Court (**the Stay Application**).
2. The Complainant is a lawyer. The Respondent is a company that carries on legal practice. By the Complainant's undated contract of employment [**page 21 of the bundle**] she joined the firm as a "partner". After the end of her probationary period, her employment could be terminated within the first five years by one month's notice or payment in lieu of notice. On

Saturday 10 May 2025 [**page 27**] the Complainant received a letter from the Respondent purporting to terminate her employment with effect from 4.00pm London time on Monday 12 May, with one month's pay in lieu of notice if she did not resign. There then followed correspondence between the parties.

- a. On 12 May the Complainant notified the managing partner of the Respondent that her termination was unlawful and unfair and contrary to sections 81, 89(1), 92(1), and 103(7) of the Labour Code (**the Code**).
 - b. On 13 May the Managing Partner replied purporting to terminate her on specific grounds contained in that letter.
 - c. On 13 May the Complainant insisted she was terminated by the letter dated 10 May and not by the letter dated 13 May. She set out her reasons for this view.
3. The Respondent did not pay the Complainant salary for the period 1 to 12 May 2025 or the amount of payment in lieu of notice.

Summary of the proceedings before the Tribunal

4. The Complainant filed a Dispute Claim Form with the Labour Commissioner on 6 June 2025 [**page 11**]. She claimed her termination was unlawful and unfair. She seeks compensation or a punitive sum for unlawful and unfair termination. The parties failed to reach a settlement in proceedings before the Labour Commissioner and the matter was referred by the Minister to the Tribunal pursuant to section 28(1) of the Code by memorandum of the Minister dated 13 February 2026.
5. In a Response filed with the Tribunal on 4 May 2026 [**page 43**] the Respondent denied it dismissed the Complainant unlawfully or unfairly or that the Complainant was entitled to compensation or a punitive award. The Response was supported by the First Affidavit of the Managing Partner [**page 84**], a List of Documents [**page 95**], and the First Affidavit of Martha Noble, Head of Operations & Technology [**page 254**], all filed on 4 May 2026. The Respondent alleged that the employment contract was vitiated by misrepresentation on the part of the Complainant in relation to her previous employment.
6. The Respondent also pleaded the following in the alternative.
- a. It merely intended by the alleged termination letter of 10 May 2025 to provide the Complainant with an opportunity to resign on notice as a gesture of goodwill and in order to protect her reputation [**para 32 of the Response at page 55**]. The 10 May letter did not constitute a written statement within the meaning of section 101(3) of the Code as the Complainant had not then been terminated and the Respondent was still open to resignation [**para 36 of the Response at page 57**].
 - b. As a result of the Complainant's letter of 12 May 2025, in which she alleged breaches of the Code and threatened legal action and potential criminal proceedings, the Respondent considered the mutual understanding of discretion and goodwill to have ended at the election of the Complainant and it then treated her employment contract as having been terminated summarily in accordance with section 101 of the Code. It sent her the

termination letter dated 13 May containing the grounds for termination [**para 33-34 of the Response at page 55**].

- c. In any event the Complainant was notified of the allegations of misconduct by the email from the Respondent dated 9 May 2025 [**para 38 of the Response at page 57**] and in a virtual meeting earlier that day, and was therefore aware of the allegations of misconduct against her and that she would be terminated unless she resigned [**para 35 of the Response at page 56**]. She was not given a prior warning and no disciplinary action was taken because, according to the Respondent, she was guilty of serious misconduct under section 101(3) of the Code [**para 40 of the Response at page 58**].

Summary of the proceedings before the High Court

7. The Complainant filed a Claim Form [**page 267**] in the High Court in respect of her termination on 6 June 2025, the same date on which she filed the Dispute Claim Form with the Labour Commissioner. In the High Court she seeks the following relief:
 - a. a declaration that her termination was unlawful,
 - b. salary, private health insurance premium and pension entitlement for the period 1 to 12 May 2025,
 - c. salary, private health insurance premium, pension entitlement and loss of vacation for the period of one month in lieu of notice of termination,
 - d. damages,
 - e. the provision of a certificate of employment pursuant to section 95 of the Code,
 - f. interest, and
 - g. costs
8. The Respondent filed a Reamended Defence [**page 381**] and Counterclaim [**page 396**] on 14 November 2025. The Defence is in terms similar to the Response before the Tribunal. The Counterclaim is for a declaration that the employment contract was rescinded by the Complainant's pre-contract misstatement relating to her previous employment, a restitutionary award comprising at least \$333,893.57 for the return of salary and other payments made to the Complainant, substantial loss of profits, loss of profits caused by the Complainant's inadequate billing, and reputational loss caused by the poor standard of the Complainant's work and conduct, and by its association with her [**pages 396-398**].
9. The following is a summary of the state of the proceedings so far in the High Court in addition to the Claim Form and the Reamended Defence and Counterclaim:
 - a. On 6 June 2025 the Complainant filed a Statement of Claim accompanying the Claim Form [**page 271**].
 - b. On 14 November 2025 the Respondent filed a Reamended Reply to the Complainant's Defence to Counterclaim [**page 402**].
 - c. On 26 November 2025 the Complainant filed an Amended Reply to the Respondent's Defence and a Defence to the Counterclaim [**page 421**].
 - d. On 15 December 2025 the Respondent filed a Request for Information.
 - e. On 29 January 2026 at a case management conference the Master made an order for, inter alia, disclosure and inspection of documents [**page 438**].

- f. On 23 January 2026 the Respondent filed an application [page 459] pursuant to rule 34.2 of the Eastern Caribbean Supreme Court (Revised Edition) 2023 (**the CPR**) for an order that the Complainant be compelled to respond fully to its Request for Information. This application was heard on 27 March 2026. The decision has been reserved [page 465].
- g. On 12 March 2026 the Respondent filed an application for directions [page 449] including an order pursuant to rule 26.1 of the CPR concerning the use before the Tribunal of information disclosed by the parties in the High Court proceedings.

Application to stay proceedings before the Tribunal

10. The Stay Application was filed on 4 June 2026. In it, the Respondent sought a stay of the whole of these proceedings until the determination of the proceedings in the High Court. It is made pursuant to rule 25(1)(n) of the Labour Code (Arbitration Tribunal) (Procedure) Rules 2020 (SI No. 98 of 2020) (**the Rules**). The grounds are that:
 - a. as a consequence of the dual proceedings, the Tribunal and the High Court would be required to make findings in relation to identical legal and factual issues and to make the same findings of fact and law in relation to the employment contract and alleged misconduct and there is therefore a significant risk of inconsistent findings and manifest injustice,
 - b. the High Court proceedings are at an advanced stage,
 - c. a stay would ensure compliance with the overriding objective pursuant to rule 3 of the Rules and the fair and just disposition of the dispute with regard to the preservation of the resources of the court and the Tribunal and the saving of expenses of parallel proceedings,
 - d. a finding of the High Court would render the Tribunal's proceedings superfluous, and
 - e. it is contrary to the principles of natural justice and is unfair to have two ongoing parallel proceedings determining the same issues of fact and law.

The parties' submissions

11. Mr Shaylor, counsel for the Respondent, submits that the Respondent's defence and counterclaim in both proceedings concern a contractual and equitable question as to the effect of the Complainant's alleged misrepresentation concerning the employment contract, namely whether the contract is void *ab initio*. Only the High Court can grant the declaration sought and, in any event, the contractual and equitable remedies are best dealt with in the High Court. It is not disputed that rule 25(1)(n) of the Rules confers jurisdiction on the Tribunal to stay its own proceedings.
12. The applicable test for the grant of a stay in the English Employment Tribunal is to determine in which court the complaint may be most conveniently and appropriately tried. Counsel referred to **Bowater PLC v Charlwood** [1991] ICR 798 at page 804C; **Mindimaxnox LLP v Gover and Ho** (2010) UKEAT/0225/10 at paragraphs 28 to 42, [2011] All ER (D)194; **Chorion PLC & Others v Lane** [1999] 2 WLUK 403 and [1999] All ER (D)194; **Antigua Commercial Bank v Armstrong** (ECCA, July 2016); **Lycatel Services Ltd v Schneider** [2023] EAT 81 and [2023] IRLR 668; **Onea v Contingent and Future Technologies Ltd** [2023] EAT 125 and [2023] IRLR 986; and **Carter v Credit Change Ltd** [1979] ICR 908.

13. Counsel submitted that these authorities show it is wrong for essentially the same issue to be tried in two separate proceedings. Factors which will point in favour of a stay are voluminous documents in both cases (especially where there are mainly the same or similar documents), where there is very substantial factual dispute, where the findings of the Tribunal could be embarrassing for the judge in the High Court proceedings, where there are complex legal issues and where there is considerable overlap of the factual material in both sets of proceedings and where there were allegations of dishonesty permeating the dispute. Counsel submitted further that there may be certain types of cases, such as equal pay claims in the UK, in which an employment tribunal may have a particular expertise but there is no presumption that the tribunal ought to hear the case first.
14. Counsel further submitted that based on these authorities, the following factors weighed in favour of a stay:
- a. Overlap at paragraphs 10 and 11 of the Statement of Claim and paragraphs 2 and 12 of the Dispute Claim Form might require the Respondent to rely on the same or substantially the same facts and legal principles.
 - b. Overlap of the misrepresentation claim. The Respondent asserts in both proceedings that the employment contract was vitiated by the same alleged misrepresentation on the part of the Complainant.
 - c. Overlap of the summary dismissal claim. In both proceedings it may be necessary to determine whether the Complainant was summarily dismissed. We pause here to note that the issue turns principally on the 10 May and 13 May letters and is unlikely to require extensive evidence or to create a material risk of inconsistent findings on the nature of the termination.
 - d. The risk of inconsistent findings generally
 - e. A finding in the Tribunal of summary dismissal and misrepresentation will create an issue estoppel before the High Court
 - f. The High Court proceedings are more advanced than the proceedings in the Tribunal.
 - g. The duplication of evidence
 - h. The issues of dishonesty are better tried in the High Court which is “best equipped” to deal with such allegations
 - i. A finding in the High Court might induce the parties to settle
 - j. Staying the Tribunal proceedings would ensure an efficient and fair allocation of resources and save costs
15. Mr Fay, counsel for the Complainant, submitted that the unfair dismissal claim and the claim for unpaid wages are distinct and separate claims. The latter arise from the alleged failure to give notice under the contract or the Code and are brought pursuant to section 92(2) of the Code. It would appear to us that this section provides an alternative mode of redress to a claim under section 86(2)(b) for pre- and post-termination unpaid wages and does not oust the power of the Tribunal to make orders for the payment of unpaid wages.
16. Mr Fay puts the Complainant’s case in simple terms. He described the misrepresentation defence as “very very thin” [**para 11(g)(ii)(1) of his submissions**]. The reason for this characterisation of the defence is that it is contradicted by a letter from the Complainant’s previous employer, dated 9 February 2026 [**page 523**], in which the previous employer

confirmed that its termination letter dated 28 December 2023 [page 121] was not effective to end the Complainant's employment and that her employment actually ended on 21 March 2024. If this 9 February letter is correct and the writer gives evidence to that effect, it would mean that the misrepresentation defence is very likely to fail.

17. Regarding the termination by the Respondent, Mr Fay submits that the only valid notice of termination was the Respondent's email dated 10 May 2025 [pages 27-28] and that it did not comply with section 81(2) of the Code nor with sections 101(1) or (2) and 101(3). We note here that the termination was expressed to be on one month's pay in lieu of notice but it is not disputed the pay was never received by the Complainant.
18. We note that a termination is not necessarily unfair merely because it was effected in breach of statutory procedural safeguards, if there were otherwise good grounds for termination. Such a situation can normally only be justified where the Complainant's conduct was clear and egregious. The Tribunal may, however, reflect the chance that the Complainant could have been validly terminated by an adjustment of any compensation awarded — see **Polkey v A. E. Dayton Services Ltd** [1988] AC 344 and [1987] IRLR 503, and **Chefette Restaurants Ltd v Harris** [2020] CCJ 6, per Barrow JCCJ obiter at paras 127-133.
19. On the question of the stay generally, Mr Fay submitted, relying on **Amlin Corporate Member Ltd v Oriental Assurance Corp (Princess of the Stars)** [2012] EWCA Civ 1341, that the correct approach was to consider whether there were rare and compelling circumstances justifying a stay. That decision concerned the stay of English proceedings in favour of foreign proceedings and does not modify the approach in the authorities relied on by employment tribunals where the comparison is between domestic Tribunal and High Court proceedings. The preferred approach is to determine the complaint in the court where it will be most conveniently and appropriately tried.

Discussion

20. The Tribunal accepts that it must take account of the factors proposed by Mr Shaylor. A closer review and comparison of the Dispute Claim Form in these proceedings and the Claim Form in the High Court show some differences which we have outlined above. In these proceedings the complaint is within the limited statutory jurisdiction of unfair termination, for which compensation or a punitive award are the statutory remedies. The defences raised by the Respondent in respect of both the substantial reasons and procedural steps leading to termination are matters the Tribunal commonly determines. The defence challenging the validity of the employment contract is not a matter with which members of the Tribunal is unfamiliar.
21. We accept that the claims in paragraphs 10 and 11 of the Statement of Claim and paragraphs 2 and 12 of the Dispute Claim Form, i.e., unfair termination before the Tribunal and wrongful ~~unlawful~~ termination before the High Court, are, however, different in law. The claim for unfair termination is properly before the Tribunal. The Legislature has expressly clothed the Tribunal with exclusive jurisdiction to hear unfair dismissal claims – see **Burrill v Schrader** (1991) 50 WIR 193; **Ray A George v British Virgin Islands Ports Authority**, (BVI Civil Appeal No 28 of 2006); **Bryon Smith v British Virgin Islands Electricity Corp**, (BVI Civil

Appeal No 10 of 2008) and also **Williams v Casepak Company (Grenada) Ltd** (GDAHCVAP2018/0008)¹ especially at paragraphs 6, 25 and 35.

22. The Tribunal also has jurisdiction to hear and determine the claims made before the High Court for (i) salary, private health insurance premium and pension entitlement for the period 1 to 12 May 2025, (ii) arrears of salary, private health insurance premium, pension entitlement and loss of vacation for the period of one month in lieu of notice of termination, (iii) interest, and (v) costs. The Tribunal may also determine, for the purposes of the unfair termination complaint, the preliminary point as to the alleged invalidity of the agreement. It may not award declaratory relief or damages for wrongful dismissal; that relief is solely within the jurisdiction of the High Court. However, so far as the proceedings before the Tribunal are concerned, the availability of additional relief in the High Court is not by itself a reason why the statutory complaint should not be heard by the Tribunal in the usual manner.
23. The correct question, identified in **Bowater** at page 804D, is “In which court is this action most conveniently and appropriately to be tried bearing in mind all the surrounding circumstances including the complexity of the issue, the amount involved, the technicality of the evidence, and the appropriateness of the procedures”. If the Complainant wished to preserve her position under the Code, in which the limitation period is six months, it was open to her to issue the High Court Claim Form and then seek a stay or adjournment in the High Court pending the determination of these proceedings.
24. Slynn J had issued a reminder at first instance in **Carter v Credit Change Ltd**, cited in the Court of Appeal judgment at [1979] ICR 908 and pages 915G-916C, that the question before him was whether the employers had substantial grounds for dismissing the employee and whether the employer behaved fairly in doing so. The judge also bore in mind that Parliament intended unfair dismissal claims to be dealt with as quickly and simply as the issues in the case allow and that such claims should go ahead despite the existence of High Court proceedings if one of the parties wishes, unless there are special reasons why the matter should not proceed, even if there is to some extent an overlap of the issues. The Court of Appeal disagreed insofar as the judge appeared to elevate what was only one factor among others into a general principle, and insofar as he trespassed on the wide discretion of tribunals to stay proceedings before them. Even if Slynn J went too far, we consider that he essentially identified the approach that should guide this Tribunal.
25. A similar approach was adopted by Glasgow J in **Antigua Commercial Bank v Denise Austin** (ANUHCV2015/0913), a case involving an application to the High Court for a stay of proceedings before the Industrial Court of Antigua and Barbuda. Glasgow J refused the application and noted at paragraph 34 of his judgment that the Industrial Court was established to deal with employment claims and it is uniquely positioned to produce speedier and more cost-efficient results.
26. The Tribunal is satisfied that these case cases, albeit from different jurisdictions, reflect the national policy of the Virgin Islands for speedy and inexpensive trials underlying the establishment of the Labour Tribunal.

¹ Upheld on appeal by the Privy Council at [2022] UKPC 9

27. The limited jurisdiction of the Tribunal to hear complaints and the fact that it does not enquire into claims of wrongful dismissal at common law presents what may be termed an occupational risk. Many complaints will comprise elements of both claims as the employee may well end up suing before the Tribunal for compensation for unfair dismissal and before the High Court (or the Magistrates Court) for damages for wrongful dismissal. Bearing this in mind, there are two matters which in our view might have tipped the scale in favour of a stay.
28. First, this is not a case in which the employer issued proceedings in the High Court as a device for delaying the unfair termination proceedings. It was the Complainant who sued in the High Court and she did not apply to stay those proceedings pending the proceedings before the Tribunal. She is content to run both proceedings together. The Respondent has, as it is entitled to do, issued a counterclaim in the High Court. That step was not available to it before the Tribunal. The dual proceedings are undoubtedly onerous for the Respondent given (i) the relatively small size of the liquidated amounts claimed in the High Court that could have been claimed before the Tribunal, (ii) that any additional damages for wrongful dismissal may be reduced by some of the compensation awarded by the Tribunal for unfair termination, and (iii) the considerable factual and legal overlap and the trouble and expense of defending and pursuing both claims at once.
29. We are mindful that if the proceedings before the Tribunal are stayed, and bearing in mind Slynn J's reminder above, the very matter for which the Legislature provided a summary mode of disposition will be stymied and delayed.
30. The Tribunal also accepts that there is a risk of inconsistent findings on the misrepresentation point. That risk may arise where a party brings a claim in court that does not fit within the narrow limits of the Tribunal's jurisdiction. In this case, however, the risk is not significant. The facts and law are not complex, the relevant issues have been clearly ventilated in correspondence and pleadings, and the likelihood that the High Court would be embarrassed by a decision of this Tribunal is low.
31. In all the circumstances, having considered the interests of justice and the factors referred to above, including the fact that it was the Complainant who initiated and has proceeded with separate High Court proceedings in which overlapping issues have arisen, we do not think it is unfair to refuse a stay of the proceedings before us. The Respondent is confronted with two sets of proceedings and is being forced to defend overlapping issues in both proceedings at greater expense, time and effort. However, we do not find that the issues are "multiple and complex" as was found in **Onea** at paragraph 103, or that there is likely to be a considerable dispute of fact or a substantial volume of evidence.
32. We are concerned about delay. Based on the state of our list and subject to the convenience of counsel and witnesses, this matter could get to trial later this year or in January next year. We note that an interlocutory decision is still awaited in the High Court, that trial directions including the exchange of witness statements have not been made, and that a date for the pre-trial review has not yet been fixed. We do not accept that the claim in the High Court is more advanced than these proceedings and we are in a position to issue trial directions, including a trial date, immediately after disposing of this application.

The order

33. We dismiss the Stay Application. Mr Shaylor proposed in the alternative that the trial of the proceedings before the Tribunal be listed after mediation in the High Court proceedings or after the pending decision of the Master on the Respondent's application concerning the Request for Information. We decline to make the order in those terms.
34. We would prefer to deal with the incidence of costs now even if we defer assessment to the end of the proceedings. A party seeking costs shall file written submissions (accompanied by a costs schedule) by 4.00pm on Monday 5 October 2026 on whether there are exceptional reasons for an award of costs. The party opposing an award of costs shall file submissions in reply by 4.00pm on by 4.00pm on Tuesday 20 October 2026, Monday 19 October being a public holiday.
35. A case management hearing will be set for a date and time convenient to the parties.

By Order

Labour Arbitration Tribunal

Samuel Jack Husbands
Chairperson

Paul Webster KC
Arbitrator

I have read the reasons of Mr Husbands and Mr Webster in draft and I agree the order.

Dancia Penn OBE, KC
Arbitrator