



VIRGIN ISLANDS

LABOUR CODE, 2010
(No. 4 of 2010)

IN THE LABOUR ARBITRATION TRIBUNAL

Case No. BVILAT2024/002

BETWEEN

NADA MARRUGO

COMPLAINANT

AND

NATIONAL BANK OF THE VIRGIN ISLANDS LIMITED

RESPONDENT

REASONS FOR DECISION

BEFORE:

Samuel Jack Husbands, Chairperson,
Kisha Frett, Arbitrator
Kamika Aisha Forbes, Arbitrator

TRIAL AND

SUBMISSIONS ON:

22 and 23 January, 13 and 20 February, and 13 and 16 March 2026

DECISION ON:

25 September 2026

IN ATTENDANCE:

- (1) Nada Marrugo, the Complainant
- (2) Dancia Penn KC of Dancia Penn and Co, legal practitioners for Complainant
- (3) Kyra Powell of Dancia Penn and Co, legal practitioners for Complainant
- (4) Joy Penn, Chief Executive Officer of the Respondent
- (5) Asha Johnson Willins of O'Neal Webster, legal practitioners for the Respondent

ADDITIONALLY:

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

Summary of the facts

1. These proceedings arose out of the dismissal of the Complainant from the employment of the Respondent in 2020. There was some delay in getting the matter before the Tribunal. The

reasons for the delay and the consequences of it were the subject of a decision by the Tribunal on 20 December 2024.

2. The Complainant was employed by the Respondent under a series of short-term contracts beginning on 1 February 2013. Her last contract, which is the subject of this complaint, was dated 21 May 2015 [**page 196 of the Bundle**]. She had by then been appointed Internal Control Officer within the Compliance Unit. Her employment was for an indefinite period.
3. The employment contract is governed by BVI law. Under cause 2.1 the Complainant was required to perform and carry out faithfully and in a competent manner all duties and to discharge all responsibilities which are usual to the post of an Internal Control Officer as well as such duties as may be assigned to her from time to time by her supervisor or such other authorised person. Further, the Complainant was required at all times during the period of the contract to perform such duties and responsibilities in the manner and to the standard prescribed by applicable statutes, laws or guidelines.
4. A sample of her main duties were then set out later in clause 2.1 of the contract [**page 197**] and in the Job Description [**page 204**]. The Job Description was signed by the parties on 1 and 2 August 2018. These specific duties included assisting with the maintenance of systems and controls to ensure compliance with the financial services legislation, regulatory codes and directives issued by the Financial Services Commission; assisting with the preparation of monthly and quarterly reports for Executive Management and the board; assisting with the maintenance, review and updating of the Compliance Procedure Manual as specified by the Regulatory Code; and performing other duties or special projects as required or assigned.
5. The Complainant's employment was subject to termination by the Respondent with immediate effect under clause 8.2 of the contract [**page 200**] for acts of "gross misconduct" and for certain other conduct. The Respondent could also terminate the employment by one month's written notice pursuant to clause 8.4 of the contract.
6. A Human Resources Policies and Procedures Manual (**the HR Manual or the Manual**) was approved by the Respondent's board in 2019. It was not disputed by the parties that the HR Manual applied to and governed the Complainant's employment.
7. The Complainant was terminated on 26 May 2020 by letter of the same day [**page 5**]. She was paid one month's salary in lieu of notice, an ex gratia amount representing two months' salary, an amount representing eight days accrued vacation, less an amount of salary overpayment, and statutory deductions.
8. The relevant statement in the termination letter was as follows:

"On different occasions you have been cautioned about your overall uncooperative attitude towards directives from your Manager(s) as it relates to the assignment and execution of duties. This behaviour is not in line with the Bank's operating guidelines and is in contravention of Clause 2.1 of your employment contract.

According to the Human Resources Policies and Procedures Manual, “Non-compliance or refusal to carry out orders, directions, assignments etc. given by a Manager or Supervisor; defiance of authority”, warrants disciplinary action. In these circumstances, we hereby exercise our right to terminate your employment.”

9. Based on this statement, we summarise the reasons for the dismissal as follows:
 - a. uncooperative behaviour towards the assignment and execution of duties in breach of Clause 2.1 of her employment contract, and
 - b. non-compliance with or refusal to carry out orders, directions, and assignments given by a manager or supervisor, and defiance of authority under the HR Manual.
10. The Complainant claimed she was unfairly dismissed and filed a Dispute Claim Form sometime in the period 14 to 16 July 2020 [**page 3**]. She did not set out in the Dispute Claim Form the particulars or details of the dismissal or why she contended it was unfair. She simply attached a copy of the termination letter and, we believe, copies of her two pay slips for May 2020 and other correspondence listed in the Complainant’s letter to the Labour Department dated 14 July 2020 [**pages 621-622**].
11. In a Response filed on 5 February 2024, the Respondent denied the allegation of unfair dismissal. It pleaded that the Complainant was uncooperative with her managers and acted in breach of her duty to carry out orders and directives and assignments on 15 May 2020 by her refusal to sign her objectives agreed at an annual performance appraisal meeting. It was asserted that her dismissal was in accordance with sections 89(1) and 91(1) of the Code.
12. The Complainant did not file a Reply. She, however, filed an affidavit in place of a Reply on 23 February 2024 [**page 456**] and a Schedule of Loss on 31 October 2025. The Schedule of Loss included claims for at least \$539,322.15 plus unspecified damages for pain and suffering. While a pleading comprising a concise statement of facts and matters that are required by rule 23(1) of the Labour Code (Arbitration Tribunal) (Procedure) Rules 2020 (SI 2020 No. 98) (**the Rules**) is to be preferred to an evidential document, the Complainant’s affidavit contained most if not all of the required information except the Schedule of Loss which was filed later as a separate document. The Tribunal was not placed at a disadvantage and we do not believe the Respondent was either.
13. In summary, the Complainant felt that failure to adhere to the customer due diligence (**CDD**) and Know your Customer (**KYC**) protocols would result in large fines and penalties not only to the Respondent but to herself as well. Hence her concern for what she saw as the Respondent’s abuse of the protocols and her ensuring that the proper processes were conducted. She requested Octavia Alexander, her immediate supervisor and the Senior Compliance Officer, to refer what she saw as a breach of the protocols to Chief Compliance and Risk Officer (**the CCRO**).
14. Apart from the disputes over job functions and the execution of directives, the Respondent complained of the Complainant’s refusal to sign her proposed 2020 personnel objectives following her performance appraisal. This was not immediately understandable given that the sole and specific reason for termination was the Complainant’s alleged “overall

uncooperative attitude towards directives” from her managers relating to the assignment and execution of her duties. No mention was made in the termination letter of any alleged failure of refusal to sign performance objectives.

The evidence

15. The Complainant testified she is an experienced compliance professional who took her role and responsibilities seriously. It was the burden of the Compliance Unit to ensure that effective CDD and KYC was applied throughout the organisation and she was concerned that this was done. The Unit had utilised a report known as the Customer Master Maintenance Report (**the CMM Report or the Report**) in the fulfilment of its remit. She considered she could not effectively achieve her objectives without recourse to this report. As stated above, she held the view that Respondent’s failure to comply with applicable regulations would expose it and expose her to liability and large penalties and fines, imposed under the authority of section 4 of the Anti-Money Laundering and Terrorist Financing Code of Practice. She also held the view that Mrs Alexander did not quite understand the importance of the report and the responsibility of the Compliance Unit in undertaking file review and activity monitoring. She said she did not consider this defiance but an expression of concern for the Respondent and its due functioning and for herself and the conduct of her professional responsibilities [**page 461 para 18**].
16. She received a request by email dated 4 May 2018 [**page 482**] from Mrs Alexander to discontinue her review of the Report. The Complainant was on leave and on her return to work she replied by email dated 5 July 2018 [**page 481**] to state her views of the importance of continuing to review this report.
17. The Complainant denied she was insubordinate, disrespectful or defiant at a meeting held later on 5 July but she asked, for better administration, that oral instructions be followed up by email. She denied some of the behaviour attributed to her at a meeting with Mrs Alexander and Sophia Berkeley the next day [**page 460 para 15**]. Mrs Berkeley was the Human Resources Manager. The Complainant denied displaying discourteous behaviour or open defiance during her tenure in the Compliance Unit. She stated she was subject to annual and mid-year performance reviews by Mrs Alexander. She contended that she never was reprimanded in her mid-year or annual performance review or otherwise for discourteous conduct.
18. The Complainant testified further about the email from Mrs Alexander dated 9 July 2018. On 9 July, the next working day after their meeting on Friday 6 July, Mrs Alexander replied to her email of 5 July and confirmed she stood by her decision and requested the Complainant to “take a look at” the reports generated by the Respondent to determine which report was best suited to monitor for the type of risk the Complainant had identified and what reports could be used as their measure to ensure quality of review [**pages 480-481**]. The Complainant stated she informed Mrs Alexander there were no applicable reports yet, upon Mrs Alexander’s insistence, she did painstakingly “go through” all 100 reports and at the end notified Mrs Alexander there were none. She considered Mrs Alexander used derogatory means of communicating with her and gave her very short deadlines, yet she was not uncooperative in any way. Her opinion that Mrs Alexander did not quite understand the

importance of the report caused her to inform Mrs Alexander on 9 July [page 365] that she would discuss Mrs Alexander's request to take a look at other reports with the new CCRO [page 461 para 18].

19. The Complainant was issued with a warning letter on 11 July 2018 in relation to the CMM Report on 5 and 9 July [page 54]. The warning specifically mentioned the Complainant's alleged use of discourteous remarks at the meeting on 5 July, her failure to carry out orders, directions and assignments given by a manager or supervisor on 9 July, and "Failure or refusal by proper authority to take action when the facts are known and corrective measures are warranted" on 9 July.
20. The Complainant also testified about the attempts between herself and Annette Braithwaite, the CCRO, to secure agreement on her performance objectives in 2020. Her main complaint was to the proposed objective that she review and update the Compliance Charter and provide a draft no later than 24 April 2020. She was of the view her role was to assist not to assume primary responsibility as she lacked the required expertise to complete a review. She also felt she was not afforded sufficient time prior to the meeting to review the proposed objectives. She had other concerns regarding Objective 6 and about following up on engagement findings outside of the Internal Audit Department. She denied rejecting Mrs Braithwaite's instructions.
21. Evidence was given on behalf of the Respondent by Mrs Berkeley, Mrs Braithwaite, and Joy Penn. The evidence of these witnesses was very detailed in outlining the history of the matter from 2016 and including the ample correspondence, employment contracts [pages 185 and 196], the Job Description [page 204], and the HR Manual [pages 207-367].
22. Mrs Berkeley included in the duties of the Complainant, assisting with the preparation of monthly and quarterly reports for executive management and the board, assisting with the maintenance of the Compliance Procedures Manual, assisting with the identification and monitoring of FATCA-related accounts and ensuring FATCA due diligence is performed, and assisting with FATCA, CRS and other requisite submissions to the International Tax Authority of the BVI. According to her, the Complainant was expressly obliged to carry out the orders, directions and assignment of Mrs Alexander and the failure to carry out Mrs Alexander's directions amounted to misconduct under the HR Manual and the contract of employment.
23. Mrs Berkeley was of the view that the Complainant and Mrs Alexander shared an uneasy relationship [page 176 para 10]. By email dated 4 May 2018 [page 176 para 12 and page 359] Mrs Alexander notified her team, including the Complainant, that the Compliance Department would no longer review the CMM Report. The Complainant was on leave at the time. This decision did not appear to sit well with the Complainant. The Complainant replied on 5 July 2018 upon her return to work to state what she considered to be the true purpose of the report [page 359]. She implied the report is better reviewed by Compliance Unit. Mrs Alexander replied on 9 July to thank the Complainant for her email and to explain her decision and to indicate she stood by it [page 358].

24. Mrs Berkeley testified that on 5 July she was advised that in a meeting convened by Mrs Alexander, the Complainant was in open defiance of Mrs Alexander's authority and had dismissed her attempts to communicate with the team. It was reported that the Complainant also stated that all instructions to the team should be by way of email and not made orally. A note of this meeting is not in evidence.
25. On 6 July Mrs Alexander requested a meeting with the CEO Mrs Penn, the Complainant, Mrs Berkeley and herself to discuss what she considered to be insubordination by the Complainant. It may be noted that the Complainant testified that she could not recall Mrs Penn being present at the meeting. Mrs Berkeley stated that at the meeting the Complainant denied the insubordination but "lashed out" and referred to Mrs Alexander a liar and as being unethical. She recalled that the Complainant's behaviour at the meeting displayed a limited grasp of deference and decorum, that she interrupted other speakers and spoke over them and raised her voice even when asked to stop. Following the meeting, Mrs Berkeley met with Mrs Penn who then issued an email to Mrs Alexander and the Complainant requesting them to work together and recommending that they discuss the CMM Report with the new CCRO on her joining the team on 16 July. Mrs Berkeley also reminded the Complainant that Mrs Alexander had the authority to make the decision [**page 178 para 18 and pages 363-364**]. She also advised the Complainant (and it would appear Mrs Alexander also) to maintain a clear and respectful relationship in a professional manner and that failure to do so could result in disciplinary action. This advice did not ameliorate the relationship.
26. On the next working day, 9 July 2018, Mrs Alexander's emailed a request to the Complainant timed at 3:03pm to review applicable reports and determine which would be best suited to monitor the type of risk identified by the Complainant and to consider and identify what could be used as the measure to ensure quality of review [**pages 365-366**]. The Complainant's short reply timed at 3.08pm was in these terms [**page 365**]:
- "Octavia
Thank you for your email.
I will discuss the matter further with the CCRO upon her arrival.
Kind regards,
Nada"
27. Mrs Alexander must have considered this another example of the Complainant's blatant disregard for her authority. Refer to her email at top of page 365. Within the hour, according to Mrs Berkeley, Mrs Alexander sent Mrs Berkeley a lengthy email [**pages 361-363**], copied to the Complainant, commenting on the Complainant's demonstration of lack of respect for authority of her superiors and her defiance in the face of instructions, the Complainant's attacks on her character, professionalism, integrity and authority, and the Complainant's "known track record" of lack of respect for her superiors. She added that the root core of the problem she was experiencing with the Complainant was not simply a communications breakdown but the Complainant's lack of respect for her authority. She recommended that the Complainant's behaviour should not be tolerated but should be properly documented and a warning issued.

28. Mrs Alexander conceded that the risk relating to the CMM Report identified by the Complainant was important but that the CMM Report was not the report to monitor that risk and she stood by her decision to discontinue the review of the report. This may have been a surprising statement to make in view of management's decision to escalate the use of the report to the incoming CCRO and therefore that the issue should pause until then. But in her email to the Complainant of 9 July [**pages 365-366**] Mrs Alexander had simply requested the Complainant to look at other reports to determine which report it was best to monitor in order to identify the risk mentioned by the Complainant. The Complainant stated that she had to go through 100 reports to comply with this request. Mrs Alexander concluded that the Complainant's reply was dismissive of her instructions. She noted, among her recommendations, that the working relationship between the Complainant and her was so damaged that it might be best to transfer the Complainant to another department.
29. We note here that to some extent the Complainant's response may have been influenced by the decision of management to escalate the matter of the CMM Report to the new CCRO. But that misses the point that Mrs Alexander's request on 9 July was materially different from the matter escalated to the new CCRO. What was escalated to the new CCRO was a request of 4 May 2018 to discuss the discontinuation of the report with her. The new request of 9 July was not a repeat of that original request. It was a more general request to review applicable reports and determine which would be best suited to monitor the type of risk identified by the Complainant. One could see how this information could be helpful to the new CCRO in her determination of whether to discontinue reviewing the CMM Report.
30. Mrs Penn and Mrs Berkeley considered Mrs Alexander's report of 9 July [**pages 361-363**] and her recommendations and agreed that there was evidence of the misconduct described in paragraph 19 above [**page 179 para 23**]. The Complainant was issued with the warning letter dated 11 July 2018 [**page 54**]. The warning was in respect of this alleged misconduct. It notified that Complainant that further disciplinary action would be taken should the behaviour reoccur.
31. By giving a written warning, the Respondent must have been acting pursuant to section 102(1) of the Code or clause 14.3.2 of the HR Manual [**pages 286-287**] and must have concluded that disciplinary action short of termination was reasonable in the circumstances. Under section 102(3) of the Code the Respondent ought to have had regard to (i) the nature of the violation, (ii) the terms of the employment contract, (iii) the Complainant's duties, (iv) the pattern and practice of the employer in similar situations, (v) the procedure followed by the employer, (vi) the nature of any damage incurred, and (vii) the previous conduct and the circumstances of the employee.
32. In addition, the Respondent ought to have advised the Complainant in writing of the misconduct and of what steps it would be likely to take in the event of a repetition of the behaviour in respect of which the warning was issued. It was stated in the warning letter that if the behaviour reoccurred, disciplinary action would be taken. It did not specify that the disciplinary action might include termination. The Complainant did not make a complaint to the Labour Commissioner under section 26 that the warning was unfair or unreasonable.

33. There was also concern by the Respondent that the Complainant had not signed her performance objectives for 2020. While the signature of the outstanding objectives was being pursued, the Respondent decided in about early to mid-May 2020 that there were grounds to terminate the Complainant and it did terminate her on 26 May.
34. Mrs Braithwaite, the CCRO, was the next witness. She commenced employment with the Respondent on 16 July 2018, right in the middle of the dispute between Mrs Alexander and the Complainant over the discontinuation of the review of the CMM Report. She became aware of the warning letter dated 11 July 2018 [**page 406 para 5**].
35. Mrs Braithwaite was also aware of the list of objectives assigned to the Complainant at the end of the 2019 performance appraisals and that they included the review and updating of the Compliance Charter. She accepted that updates to the Compliance Charter entailed a responsibility of working with Mrs Alexander at every stage in the process. According to Mrs Braithwaite, it was always a difficult process getting the Complainant's agreement to her objectives or to accept the reasonable suggestions. She was aware of the list of objectives sent to the Complainant by email dated 24 February 2020 [**page 406 para 6**]. After some meetings and changes and concessions by the Respondent, she sent the Complainant an email on 15 May 2020 enclosing a note on the revised proposed objectives [**page 408 para 14 and pages 427-429**] and the Complainant responded in just over 20 minutes to state she could assist with the review of the Compliance Charter but could not have primary responsibility for reviewing it [**page 408 para 14 and pages 426-427**]. In her email the Complainant also stated she would not be able to sign the objectives as presented as she did not agree with their terms but was willing to meet with Mrs Braithwaite to discuss them further. It shocked Mrs Braithwaite, who considered she had been very detailed, and thorough and had provided ample context and examples to clarify all outstanding points made by the Complainant. that the Complainant was able to vet, consider and reject her proposals in the short space of 20 minutes [**page 408 para 14**]. The objectives submitted by Mrs Braithwaite called for the Complainant not only to review the Charter but to update it. The difference between the two appeared to be the word "assist". We note here that the Complainant to be saying she could only assist with the review. This seemed to be more than a matter of semantics. The Complainant took the view that in order to review and update the Charter she would have to become privy to information regarding the objectives of the Respondent's operation which was not readily available to her, and it would require extensive research and expertise and would take a considerable amount of time. She felt the update could only be conducted at the highest level and she did not have the expertise.
36. After receipt of the Complainant's email of 15 May rejecting her amended objectives, Mrs Braithwaite replied on 18 May to say she would revert to the Complainant [**page 378/426**]. The Complainant sent follow up comments on 20 May and Mrs Braithwaite replied the same day [**page 544**] to remind the Complainant that she said she would follow up. We note that the next correspondence was the termination letter on 26 May.
37. Mrs Braithwaite concluded that the position taken by the Complainant was without merit. She considered the Complainant's continued rejection of the objectives amounted to a dismissal of her instructions and as a result she recommended termination for cause. She

considered there was uncooperative behaviour similar to that displayed toward the directives given by Mrs Alexander.

38. The final witness for the Respondent was Joy Penn. Mrs Penn was the Chief Executive Officer of the Bank. She confirmed the circumstances surrounding the Complainant's email of 5 July 2018 in response to Mrs Alexander's email of 4 May 2018 concerning the discontinuation of the review of the CMM Report in the Compliance Unit and the Complainant's conduct at the meeting on Friday 6 July 2018 with herself and Mrs Berkeley. Mrs Penn also confirmed Mrs Alexander's report on the next working day on Monday 9 July 2018 of an additional refusal by the Complainant to comply with a directive [**pages 717-718 paras 21-22**]. The Complainant had, in her view by escalating a directive from Mrs Alexander to Mrs Braithwaite, demonstrated disregard for Mrs Alexander's instructions and authority. Mrs Penn had been advised the Complainant to work with Mrs Alexander as part of a team, to display respect and that there be no further insubordination [**page 717 para 19**]. Mrs Penn further testified that Mrs Alexander immediately reported the matter to Mrs Berkeley in an email of the same date, copying both the Complainant and Mrs Penn [**pages 361-363**]. Mrs Penn agreed that at the meeting on 9 July there was evidence of Minor Misconduct and Gross Misconduct and that a warning should be issued to the Complainant.
39. Mrs Penn next dealt with the Complainant's refusal to sign her 2020 performance objectives. The practice is that at the end of the performance appraisal for one year a set of objectives is agreed with employee for the following year. Mrs Penn testified at paragraph 28 of her affidavit [**page 719**] that it was important to the Respondent that objectives are submitted to allow the Respondent to document the expectation of each employee based on its strategic plan. The policy is to have agreed objectives signed within one week. The Complainant had been away on leave until 17 February 2020. By the month of May, her 2020 objectives still had not been agreed.
40. Mrs Penn was aware of the Complainant's request for a copy of her revised objectives in her email of 25 March 2020 [**page 375**], Mrs Braithwaite's submission of revised objectives on 12 May [**page 375**], the discussion with the Complainant at their meeting on 13 May, the re-submission of amended objections by Mrs Braithwaite on 15 May [**pages 379-381**], and their rejection by the Complainant in her email on 15 May [**pages 378-379**].
41. Mrs Penn then testified as follows at paragraph 32 of her affidavit filed on 14 February 2025 [**page 720**]:

“The HR Manager and I considered the terms of Ms. Marrugo's employment and paragraphs 2.1 and 8.2.1 in particular, the Human Resources Manual and the table of misconduct and penalties. We also considered Ms. Marrugo's previous infractions and in particular, the written warning dated July 11, 2018, Ms. Marrugo's refusal to accept the reasonable objectives provided to her by CCRO Braithwaite and the position on the matters raised in Ms. Marrugo email dated May 15, 2020. A copy of the [sic] Ms. Marrugo's email dated May 15, 2020, is located at pages [**191-201**]¹. A copy of the highlighted page of the Human Resources Manual and the timeline of the

¹ Pages 915-925 of the Trial Bundle

2020 Objective for ICO Nada Marrugo is located at page [202]². We therefore agreed and concluded that there were valid and fair reasons to terminate the employment of Ms. Marrugo.”

42. Mrs Penn stated in cross examination that the Complainant’s review itself was not a relevant factor. What was relevant was what she characterised as the Complainant’s uncooperative behaviour and refusal to sign the objectives. Management agreed that the Complainant was being uncooperative towards directives from a manager regarding the assignment and execution of her duties and that her defiance was causing delays in the work of the Compliance Unit. She treated the Complainant’s refusal to sign her objectives as uncooperative behaviour. She considered the terms of the Complainant’s employment contract, particularly clauses 2.1 and 8.1, the Human Resources Manual, the Complainant’s previous conduct, the warning on 11 July 2018 and the categories of misconduct and penalties in the Manual [page 720 para 32 and page 926]

Analysis of the evidence

43. The evidence was well documented by the detailed statement of the Complainant’s duties and other terms of her employment contract and the HR Manual, and most of all, by numerous emails between the parties. We believe the facts can be distilled down to these. In July 2018 the Complainant did challenge and refuse to accept the directions of her supervisor, Mrs Alexander. She thought her own opinion of the CMM Report was a valid opinion, and that Mrs Alexander was not knowledgeable enough [page 461 para 18] and had incorrectly assessed the need for review of the report within the Compliance Unit. The situation got muddled when the management agreed to defer the matter to be dealt with on Mrs Braithwaite’s arrival. On 9 July the Complainant informed Mrs Alexander she would discuss her request with Mrs Braithwaite upon Mrs Braithwaite joining the bank. This was clearly not a step that was open to a junior employee in an organisation like the Respondent with a clearly defined management structure although the Complainant stated in evidence that she did “painstakingly” carry out the work requested.
44. Regarding the performance objectives there was considerable delay in securing agreement. Agreement means a consensus between parties. The objectives are not imposed by management but management is entitled to expect reasonable approach on the part of the employee and some give and take. Mrs Braithwaite was of the view that she had prepared very detailed, and thorough objectives and had clarified all outstanding points made by the Complainant only to have it summarily rejected by the Complainant. The Complainant may have taken long to make a detailed objection but eventually raised a fair point about her capacity to review a firm-wide document. By then management had lost patience. Mrs Braithwaite said she would revert to the Complainant. The Complainant’s conduct was characterised as uncooperative behaviour towards directives from a manager regarding the assignment and execution of her duties. Management also concluded that there was a refusal to sign the objectives and that her defiance was causing delays in the work of the Compliance Unit. As stated above, they considered the terms of the Complainant’s employment contract, the Human Resources Manual, the Complainant’s previous conduct, her warning on 11 July

² Page 926 of the Trial Bundle

2018, and the categories of misconduct and penalties in the Manual and they terminated her with pay in lieu of notice.

45. The Complainant could have been more precise in her rejection of the draft objectives in February 2020. Her attitude bordered on uncooperative. She rejected the objectives before without giving a clear reason until 15 May 2020. Her statement that she ought not be given responsibility for the review the Compliance Charter was not mere semantics. It is a distinct position that could have been addressed. It may be that the Respondent could have pointed out to her that she was not being asked to perform a task that was meant for a senior or chief compliance officer, or that she would not be required to do it without support. The Respondent grew impatient that the year was nearly halfway through and the Complainant's objectives still had not been agreed. Management equated the failure to reach agreement on objectives with failure to comply with directives. These are distinct matters in our view.
46. We understand the process to permit reasonable disagreement on the part of the employee. We do not consider that the Complainant's rejection of the performance objectives was a failure to follow any directive given or evidence of disobedience or unreasonable refusal to comply with directives even though it may have been frustrating to the management and the Complainant was not doing enough to secure agreement.
47. The Respondent, having determined that it had good cause to terminate the Complainant, referred to its two-year old warning issued in July 2018. It also mixed the causes in its termination letter. The ground of termination was failure to comply with a directive but the immediate conduct that triggered the termination was the failure of the parties to reach agreement over the objectives. As we have stated previously, the failure to reach agreement was not failure to comply with a directive.

Provisions of the Code

48. Relevant provisions of the Code are sections 81, 89(1), 102 and 103(2) and (3). These provisions are set out below.

Section 81:

- (1) The employment contract of an employee shall not be terminated by an employer without a valid and fair reason for such termination connected with the capacity or conduct of the employee, or with the operational requirements of the undertaking, establishment or service, pursuant to section 88, 89, 101 or 103, and unless the notice requirements in section 90 are complied with.
- (2) Subject to section 89, an employer may not terminate the appointment of an employee unless the employer has informed the employee in writing of the nature and particulars of the complaint against the employee and has given the employee or his or her representative a fair opportunity to defend himself or herself including access to his or her employment record.

Section 89(1):

- (1) The employment contract of an employee may be terminated with notice, or with pay in lieu of notice, for any valid and fair reason connected with the capacity or conduct of the employee, or the operational requirements of the undertaking, establishment or service.

Section 102:

- (1) An employer is entitled to take disciplinary action other than dismissal when it is reasonable to do so under the circumstances.
- (2) For purposes of this section, “disciplinary action” includes in order of severity (a) a written warning; (b) suspension from duty for a period not exceeding one week without pay.
- (3) In deciding what is reasonable under the circumstances pursuant to subsection (1), the employer shall have regard to the nature of the violation, the terms of the employment contract, the employee’s duties, the pattern and practice of the employer in similar situations, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.
- (4) Where action is taken by an employer in accordance with this section, he or she shall advise the employee concerned in writing of the misconduct or action in breach of the employment contract and of what steps the employer is likely to take in the event of any repetition of the behaviour in respect of which the disciplinary action is taken.
- (5) A complaint that any disciplinary action taken against an employee was unfair or unreasonable may be made by the employee to the Commissioner pursuant to section 26.

Section 103(2) and (3):

- (1) ...
- (2) If the employee, after being warned pursuant to subsection (1), is guilty of a similar offence or misconduct in the following six months, the employer may terminate the employee’s employment without further notice.
- (3) An employer who dismisses an employee under subsection (2) shall provide the employee with a written statement of the reasons for the action and the principles set out in section 101(3) and (4) shall apply to the provision of, or failure to provide, such statements,

The parties’ submissions

49. It was submitted by Dancia Penn KC, lawyer for the Complainant, that the Complainant was wrongfully dismissed in breach of her contract of employment and unfairly terminated under the Code. Counsel relied on **Abraham v Sunny Caribbee Herbal and Spice Co Ltd** (EHC, April 2010), **Henry v Mount Gay Distilleries Ltd** [1999] UKPC 39 at paragraph 8 and **Golden Years Home for the Elderly v Hughes** (ECCA, January 2026) for the proposition that summary dismissal is justified only where the employee’s conduct demonstrates a deliberate repudiation of the employment contract. Counsel accepted that **Henry** further established that a single act of carelessness or negligence could provide a valid ground for summary dismissal.

50. Ms Penn also submitted that a termination will be wrongful where the breakdown in relationship was caused or instigated by the employer's own conduct, as where an employee had for example used inappropriate language during a confrontation but had been provoked by unjust accusations by the employer. Counsel relied on **Wilson v Racher** [1974] ICR 428 and [1974] IRLR 114. Thus, argued Ms Penn, an employee's disagreement with or an isolated challenge to a superior does not of itself justify summary dismissal. An isolated instance of such misconduct must amount to a repudiation of the contract, i.e., conduct often exemplified by a deliberate and fundamental refusal to comply with an essential contractual condition. The Tribunal must evaluate the full factual context including proportionality, provocation, and any disciplinary history. Counsel cited **Massy Stores (Barbados) Ltd v Forde** [2025] CCJ 15 (AJ).
51. In any event, Ms Penn argued there was no evidence which demonstrated defiance of authority and refusal to carry out directions and, moreover, the Respondent had failed to comply with the disciplinary procedures contained in the employment contract and in the HR Manual. In particular, the Respondent failed (i) to conduct a proper investigation, (ii) to provide written particulars of the allegations against the Complainant, (iii) to conduct a hearing and give the Complainant an opportunity to be heard, and (iii) to apply progressive disciplinary measures established under the HR Manual. She argued that these procedural breaches rendered the termination unfair.
52. Ms Penn submitted that the employer must genuinely believe the employee was guilty, have reasonable grounds for that belief and conduct a reasonable investigation. She cited **British Home Stores Ltd v Burchell** [1978] IRLR 379.
53. Regarding, the Complainant's duty to mitigate damage, Ms Penn submitted, based on **Antigua and Barbuda Transport Board v Carty** (ECCA, July 2023)³ that the dismissed employee is under a duty to mitigate her loss but the burden of proving a failure to mitigate rests on the employer. Counsel contended that the Respondent failed to discharge the burden and as a consequence the Complainant is entitled to loss of wages for the period of 65 months. Counsel claimed this follows from section 86(2)(b) of the Code under which the Tribunal shall take into account wages lost on account of the dispute up to its determination of the issue.
54. Regarding a punitive award, Ms Penn relied on **Ranger-Vassell v Mainsail B.V.I. Ltd** (BVILAT, July 2021) and **Hodge v Road Town Wholesale Trading Ltd** (BVILAT, July 2021). The jurisdiction to award punitive damages was recently analysed by the Privy Council, albeit under the differently worded Antigua and Barbuda statute, in **Antigua and Barbuda Transport Board v Carty** [2025] UKPC 38. This is dealt with later.
55. Asha Johnson Willins, lawyer for the Respondent, submitted that the Complainant did in fact commit clear and serious acts of insubordination justifying her termination. In any event the Tribunal has no jurisdiction in cases of wrongful dismissal. She cited **Smith v BVI**

³ Antigua and Barbuda Transport Board v Carty was reversed on appeal to the Privy Council on the award of punitive damages at [2025] UKPC 38

Electricity Corp (ECCA, January 2009) and **Williams v Casepak Company (Grenada) Ltd** [2022] UKPC 9. We will refer later to the Respondent’s statement at paragraph 17 of its Response [page 453] that if the Complainant prevails in establishing unfair dismissal an award of compensation would be acceptable.

56. Ms Johnson Willins relied on **Laws v London Chronicle (Indicator Newspapers) Ltd** [1959] 2 All ER 285 to establish the circumstances in which a single act of disobedience could justify dismissal, distinguishing **Wilson v Racher** on the ground that in **Wilson** the employer had provoked the employee. We note here that the decision in **Massy Stores** indicates the Caribbean Court of Justice’s support for a contextual approach in line with a “more humanizing patina” in deciding cases of one act of misconduct – see **Massy Stores** [2025] CCJ 15 at paragraphs [30] to [40].
57. Ms Johnson Willins also submitted that Clause 14.3.2 of the HR Manual [pages 286-287] is not engaged because no formal written grievance report was ever made by the Complainant. We do not agree. The clause on disciplinary procedure seems independent of the clause on grievance procedure and different procedures apply.

Application of the law and the HR Manual

Breaches of the Code

58. The starting point is section 81 of the Code. The Respondent must possess a valid and fair reason for dismissal connected with the capacity or conduct of the employee or its operational requirements. It must also give the full length of notice required by section 90. Finally, except as provided in section 89, it must also inform the employee in writing of the nature and particulars of the complaint against her and give a fair opportunity for the employee to defend herself. Where the employer has issued a section 103(1) misconduct warning to the effect that repetition of the behaviour will result in termination, it may terminate without further notice pursuant to section 103(2) if the behaviour is repeated within six months. It follows therefore that where the warning did not contain a specific threat of termination, the employer may not terminate without pausing to issue a threat of termination. It must also be noted that where the employer does not terminate the employee for misconduct within a reasonable period of time after the warning, it may be deemed to have waived its right to terminate based on the expired warning.
59. Applying the law to the facts, the Respondent ought not to be entitled to rely on the warning issued in July 2018. The second warning letter of 27 August 2018 [page 525] had been subsequently withdrawn [page 513]. There is no evidence that the Complainant repeated similar infractions in the period July 2018 to May 2020. And as we have found, the failure to agree the objectives, while frustrating to the Respondent, was not a breach of the employment contract or the HR Manual neither did it amount to misconduct.

Breaches of the HR Manual

60. The Complainant also raised the question of whether disciplinary action could have been successfully implemented pursuant to the HR Manual. Ms Penn submitted that the disciplinary procedures in the Manual must at least conform to the minimum requirements of

the Code although employer and employee may agree terms which offer greater benefits to employees. Refer to section 43 of the Code.

61. Clause 14.3 of the HR Manual contains the procedure by which disciplinary proceedings are to be carried out. It divides misconduct into categories of Minor Misconduct and Gross Misconduct. In clause 14.3.2 the failure to comply with a reasonable order is listed as an example of gross misconduct. A table of Misconduct comprising a list of violations and applicable penalties is at appendix Q of the Manual [**pages 349-353**]. In the table, however, non-compliance with or refusal to carry out orders, directives or assignments given by a manager or supervisor and defiance of authority is listed under Minor Misconduct [**page 350**]. The penalty on a first offence for this infraction is an oral or written warning; on a second offence, a written warning or suspension without pay for a week or dismissal; and on a third offence, suspension or dismissal. Mrs Berkeley conceded in cross-examination that the infraction for which the Complainant was terminated was in the category of Minor Misconduct.
62. In order to effect a valid, fair and reasonable termination, the following procedure must be followed pursuant to clauses 14.3.2 to 14.3.4 of the HR Manual [**pages 286-288**]: (a) where there is strong evidence of serious or repeated misconduct, the CEO after consultation with the HR Manager may impose a written warning, (b) the warning should clearly state the consequences for the employee of a repetition of the misconduct within six months or, in the case of unsatisfactory performance, if the employee fails to properly perform within three months, (c) the manager should meet regularly with the employee to discuss the issues raised and notes of the discussions recorded on the employee's personnel file, (d) if the conduct does not improve sufficiently (or is repeated) the employee may be suspended from duty for a period not exceeding one week without pay, (e) a final warning letter may be issued by the CEO after consultation with the HR Manager with an "explicit explanation of the potential consequences". Where there is compelling evidence for the commission of gross misconduct in the commission of a grave offence such that the employment relationship cannot reasonably be expected to continue and after taking advice from counsel, the CEO may summarily dismiss the employee after consultation with the HR Manager.
63. It is not clear if the provisions of clause 14.3.5 of the HR Manual on disciplinary hearings apply only to the proposed termination of senior management. In any event the provisions of the Code, section 81 in particular, require that employees, junior as well as senior, be given an opportunity to defend themselves and access to their employment records.
64. Mrs Berkeley candidly accepted that the above procedural steps were not followed in their entirety.

Other grounds of complaint

65. In a letter from Dancia Penn & Co on behalf of the Complainant dated 6 June 2020 [**page 15**] certain additional grounds of complainant were raised. These were the discriminatory unfair practice of assigning telephones, the failure to communicate evenly with the Complainant, and refusal to respond to her request for information [**pages 18-19 paras 2 and 3**]. These were not allegations raised in the Dispute Claim Form or in a Reply and in any event do not

affect the decision we have reached as they do not form the basis of any claim by the Complainant but are part of the correspondence between counsel and background to the breakdown of the relationship between the parties.

Conclusion as to liability

66. Although we consider that the grounds could have been more clearly stated in the termination letter, we are of the opinion the letter was sufficient to inform the Complainant of the nature and particulars of the complaint against her as required by section 81(2) of the Code. We agree with Ms Penn that, despite this, the grounds of termination are not valid. The alleged failure on the part of the Complainant to agree the objectives was not an example of uncooperative behaviour. Even if the Complainant was considered stubborn or difficult or was delaying the settling of her performance objectives, the fact is that she did raise fair questions about the objectives in her email of 15 May 2020 [**pages 918-919**] and was awaiting an answer when she was terminated. Her 2018 conduct regarding Mrs Alexander's instructions was dated and could not be relied on.
67. We agree with Ms Penn that the Respondent's procedural breaches rendered the termination unfair. We do not accept the contention by Mrs Johnson Willins that Clause 14.3.2 of the HR Manual [**pages 286-287**] is not engaged. The HR Manual provides for two procedural tracks. One track at Clause 14.2 is called Grievance Procedure. The other at Clause 14.3 is called Disciplinary Procedure. They are separate tracks. The Disciplinary Procedure must be invoked by the employer as a prelude to disciplinary action such as termination. The Respondent did not comply with the Disciplinary Procedure.
68. We recognise that the breach of procedural rules does not necessarily render a termination unfair. This is especially the case where an employee's conduct was so egregious that the insistence on the procedural rules would have been utterly useless such that there was no doubt that termination was a reasonable, proportionate and justifiable response to the misconduct. This is not such a case. The parties would have benefitted from consultation and a hearing. We have said previously that it is of considerable significance to disregard or fail to adhere to the very procedural rules that the Legislature has prescribed to govern termination of employees and in this case, which are contained in the HR Manual.
69. In the circumstances we find that there was no reasonable investigation or adherence to the procedures in the HR Manual and the Complainant was unfairly dismissed. This is not to cast and doubt as to the sincerity of the management or the witnesses for the Respondent. They were very patient in accommodating the concerns of the Complainant. At the same time, we do not find there was a deliberate attempt on the part of the Complainant to cause disruption to the business of the Respondent. We believe she was motivated by a desire to achieve the best results for the Respondent even if she were over-zealous to the extent that she departed from the Respondent's management structure and perhaps considered herself a whistleblower.
70. We find that the Complainant was unfairly dismissed.

Remedies

71. The Complainant claims in excess of \$539,322.15. The loss is based on her last gross salary of \$4,766.68 and net salary of \$3,447.84 per month and a period of loss of 65 months from the date of termination to October 2025. She also claims an extra 3 months' pay for future loss. The main head of loss is \$224,109.60 for loss of earnings. Other heads of loss are loss of medical and medical-related benefits, loss of Social Security and private pension benefits, overdue interest on loans and credit cards, loss of future earnings, interest on this award and damages for pain and suffering.
72. We find that the claims in the Schedule of Loss were not supported by the evidence and some heads of compensation were not justified by principle. We address them in paragraphs 73 to 89 below.
73. Loss of earnings. The Complainant admitted in cross-examination that she had not provided proof of job applications since her termination. She had failed in her statutory duty to mitigate her losses – see section 86(2)(e) of the Code. We held in **Freeman v BVI Ports Authority** (BVILAT, March 2024) at paragraphs 40 to 42 that though the mitigation of loss is expressed as a duty on the part of the employee in the section 86(2)(e) the burden of proving that no reasonable steps were taken falls on the employer. The employee however simply cannot remain silent and say nothing in evidence but must at least aver and testify that she sought employment. If she does so, the employer has a basis for interrogating her as to the steps she took.
74. The evidence of loss and mitigation is sparse. The Complainant did not plead, except in her Schedule of Loss, the period in which she was unemployed and therefore the period over which she sought compensation. She did not give evidence of the period of her loss in her affidavits. The period was first mentioned in her Schedule of Loss and was not adequately supported in her oral evidence.
75. At the trial, the Complainant amplified her witness statements with oral evidence to the effect that she submitted job applications to three banks doing business in the BVI and a statutory corporation and that she is now employed at one bank. In cross-examination, the Complainant confirmed her statement at paragraph 5 of her affidavit [page 457] that she was an experienced compliance professional. She admitted she provided no written proof of her job applications. That was the extent of the evidence of mitigation.
76. It is expected that she would take some time to find a job, perhaps more time than usual during the restrictions in the economy to fight the spread of Covid-19 between her termination in May 2020 and late 2021 when the restrictions began to ease. It would appear from the other heads of damages that she did not work for what may have been a considerable period after termination. We consider the entire period of 5.5 years to be extraordinarily long. We are of the view that, with such evidence of loss as there was, the Respondent has established the insufficiency of the steps taken by the Complainant in the discharge of her duty to mitigate. We consider the period of nine months post-termination loss would be more reasonable commencing at the end of the period covered by one month pay in lieu of notice

plus the two months ex gratia payment. We award the Complainant the sum of \$24,134.88, being nine months' salary of \$31,030.56 less two months' net salary of \$6,895.68.

77. Loss of bonus or commission. Mrs Penn testified that the Respondent did not pay bonuses of commission during the years 2020 to 2025. We accept her evidence. This head of loss is refused.
78. Loss of benefits such as air ambulance service, NHI, Social Security and pension contributions. These benefits ceased on termination. We make no award. Even if these benefits could be taken into account, the private policies would have lapsed for non-payment a long time ago. It is not the Complainant's case that she failed to receive a benefit to which she was entitled or that she continued to pay these contributions and was seeking a refund from the Respondent. Regarding NHI contributions the Complainant was able to make voluntary contributions at the rate of 53 per cent of her employed contribution, presumably for the same level of cover she received while employed. In **Barzey-Penn v SHRM Trustees (BVI) Ltd** (BVILAT, March 2026) we considered these contributions and benefits at paragraphs 34 to 39. We decided that the Complainant was entitled to the continuation of the employer's contributions in the notice period or the period covered by payment in lieu of notice.
79. Loss of pension contributions. We understand this to be claim for loss of post-termination pension rights. It may be that a dismissed employee is unable to continue to meet Social Security or private pension contributions while unemployed and therefore his or her pension on reaching the age of retirement would be higher but for the missed contributions. Unless the employee finds new employment in a short period with at least similar benefits he or she might suffer a loss. An actuary might be able to calculate the present value of the reduced pension. There is no evidence to support such a claim.
80. Loss of personal vehicle. We understand from this claim that whilst employed, the Complainant purchased a motor vehicle with funds derived from a loan advanced by the Respondent, that she was unable to repay the loan after her termination and that the vehicle was repossessed by the Respondent. She therefore claimed the replacement cost or market value of the vehicle. A claim for the payment of money after termination would ordinarily be a claim for lost wages or benefits. How the employee applied the compensation she is awarded would be a matter for him or her. The best the Tribunal can do is to award interest for her loss of income. It could result in double recovery if the employee were to obtain both lost wages and the award of the cost of the items the wages would have been spent on.
81. Arrears of principal and interest accrued on her bank loans and credit cards. The basis of the claim is the lack of funds resulting from her termination and loss of income. There was no evidence other than a statement in the Schedule of Loss. The Schedule of Loss has the force of a pleading. Further, on a claim for unfair dismissal this loss is too remote.
82. Future loss. This was dealt with under loss of earnings at paragraphs 73 to 76 above.
83. Damages for pain and suffering. The Tribunal has held in **Dennis v First Caribbean International Bank** (BVILAT, August 2025) that this type of loss, specifically injury to

feelings, is not recoverable. There is an argument that the power to order a respondent to pay a punitive sum permits the Tribunal to some extent to redress this type of loss. In any event the Respondent included in its Response a statement pursuant to rule 20(1)(f)(ii) of the Rules that the remedy of compensation would be acceptable if the Tribunal found unfair dismissal and compensation is being awarded. The Tribunal would therefore be unable to order the Respondent to pay a punitive sum in addition to compensation.

84. Punitive damages. In her closing submissions Ms Penn KC argued that the Complainant was entitled to a punitive award. Counsel relied on **Ranger Vassell** which is cited above. In **Ranger-Vassell** the Tribunal, basing itself on section 86(1) of the Code, observed at paragraph 98 that the employer had given no indication that compensation would be an adequate remedy and the Tribunal was therefore constrained to order the payment of a punitive sum. The Tribunal observed further at paragraph 108 that punitive awards are appropriate under the Code wherever the Tribunal does not award either reinstatement, reengagement or compensation after coming to a determination that the dismissal was unfair. We would add that this is so even if reinstatement, reengagement or compensation were acceptable to the parties but the Tribunal does not award either remedy.
85. A similar provision was considered by the Privy Council in **Antigua and Barbuda Transport Board v Carty** [2025] UKPC. Sections 10(4), (5) and (6) of the Antigua and Barbuda Industrial Court Act provided as follows:

(4) Notwithstanding any rule of law to the contrary, but subject to subsections (5) and (6), in addition to its jurisdiction and powers under this Part, the Court may, in any dispute concerning the dismissal of an employee, order the reemployment or re-instatement (in his former or a similar position) of any employee, subject to such conditions as the Court thinks fit to impose, or the payment of compensation or damages whether or not in lieu of such re-employment or reinstatement, or the payment of exemplary damages in lieu of such re-employment or re-instatement.

(5) An order under subsection (4) may be made where, in the opinion of the Court, an employee has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice; and in the case of an order for compensation or damages, the Court in making an assessment thereon shall not be bound to follow any rule of law for the assessment of compensation or damages and the Court may make an assessment that is in its opinion fair and appropriate.

(6) The opinion of the Court as to whether an employee has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice and any order for compensation or damages including the assessment thereof made pursuant to sub-section (5) shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever.

86. The Privy Council summarised section 10(4) at paragraph [17] of its decision as follows:

“The Industrial Court may in any dispute concerning the dismissal of an employee: (a) order the re-employment or re-instatement (in his former or a similar position) of any employee, subject to such conditions as the Industrial Court thinks fit to impose; or (b) order the payment of compensation or damages whether or not in lieu of such re-

employment or re-instatement; or (c) order the payment of exemplary damages in lieu of such reemployment or re-instatement.”

87. It then held at paragraph [19] of the decision:

“The Board notes that the statutory power to award exemplary damages under section 10(4) is available only in lieu of an order for re-employment or re-instatement. It would not be open to the Industrial Court to order re-employment or re-instatement and also to make an award of exemplary damages. However, in the Board’s view it is not a necessary precondition to an award of exemplary damages that the Industrial Court should have expressly addressed re-employment or re-instatement. The power to award exemplary damages is available if the other conditions are met and no order for reemployment or re-instatement is made.”

88. The Antigua and Barbuda legislation differs from section 86(1) of the Code to an important degree. It seems to us that in the BVI, an order for the payment of a punitive sum is in lieu of reinstatement, re-engagement and compensation. The section would have been made clearer if, in our respectful view, the proviso “if this remedy is acceptable to both parties” had been inserted between sub-paragraphs (ii) and (iii) and if paragraph (b) was prefaced with the words “If the Tribunal orders compensation, it may also”. As the BVI section stands, the Tribunal may order reinstatement, reengagement or compensation if these remedies are acceptable to both parties. If the remedies are acceptable to the parties and the Tribunals awards them it may not order the payment of a punitive sum as well⁴.

89. Even if we were able to make a punitive award we do not think the manner of dismissal or the treatment of the Complainant by the bank or any other circumstances justify it.

90. We refuse to make a punitive award.

Summary

91. For the reasons we have given we find that the Complainant has been unfairly terminated. We award her compensation of \$24,134.88.

92. We award her interest on the sum of \$24,134.88 for the period commencing 26 August 2021 to the date of this judgment at the rate of 3 per cent per annum.

93. The parties shall exchange written submissions by **4.00pm on Friday 16 October 2026** (with a costs schedule if necessary) on whether there are exceptional circumstances for an award of costs.

Samuel Jack Husbands
Chairperson

⁴ In *Ellis v ATU General Trust (BVI) Ltd (BVILAT, August 2026)* the majority held that where compensation was acceptable to both parties but the Tribunal did not make an order for compensation, it may make a punitive award

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

Kisha Frett

Arbitrator

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

Kamika Aisha Forbes

Arbitrator

By Order

Labour Arbitration Tribunal

Samuel Jack Husbands

Chairperson