



VIRGIN ISLANDS

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

IN THE LABOUR ARBITRATION TRIBUNAL

Case No. BVILAT2022/001

BETWEEN

MARJORIE PENN

AND

5 GIRLS LTD.

COMPLAINANT

RESPONDENT

CONSOLIDATED WITH

Case No. BVILAT2023/035

BETWEEN

MARJORIE PENN

AND

5 GIRLS LTD.

COMPLAINANT

RESPONDENT

REVISED REASONS FOR DECISION

BEFORE: **Samuel Jack Husbands**, chairperson, and **Dancia Penn KC**, and **Zebalon McLean**, arbitrators

TRIAL ON: 19 and 20 October 2023 and 25 and 26 July 2024

SUBMISSIONS ON: 11 September 2024 and 24 December 2024

DECISION ON: 29 April 2025 **and revised on 14 May 2025**

IN ATTENDANCE: (1) Daniel Fligelstone Davies, legal practitioner for the Complainant instructed by Silk Legal (BVI) Inc.
(2) The Complainant
(3) Leona Frett, director of 5 Girls Ltd
(4) Deirdre Frett, director of 5 Girls Ltd

ADDITIONALLY: (5) Malisa Ragnath-Mangal, as Secretary to the Tribunal

Summary and procedural history

1. The Respondent carried on business of a general store at Pockwood Pond, Tortola. It employed the Complainant as a general manger. She was employed from 13 May 2019 until 31 July 2021 when her employment came to an end.
2. The Complainant brought two claims. In her first Dispute Claim Form, filed with the Labour Commissioner on 26 June 2021, she claimed she was hired as a salaried employee at \$42,000 per year payable in monthly instalments but her earnings were subsequently reduced to compensation on an hourly basis and at reduced hours without her consent. She claimed the difference between what she would have received had she remained a salaried employee and what she actually received as hourly employee. She was still employed by the Respondent when she filed the claim form.
3. In second Dispute Claim Form, filed with the Labour Commissioner on 30 March 2022, she claimed compensation for unfair dismissal. She alleged she was laid off on 5 August 2021 for three months and the Respondent hired someone else in her place. It was not a true redundancy but a dismissal dressed up as a redundancy. She also alleged that the reason for her termination was her filing of a complaint (the First Dispute Claim Form) with the Labour Department. Her termination date was 3 months after receipt of the layoff notice on 5 November 2021.
4. The first case management hearing of the first Dispute Claim Form took place on 29 March 2022. By that time the Complainant had been no longer employed by the Respondent. It was determined that she file a separate complaint (the second Dispute Claim Form) with the Commissioner in respect of her alleged dismissal. She filed it the next day. Further hearing was adjourned to 31 May 2022.
5. At the adjourned case management hearing on 31 May 2022 the Tribunal made an order (i) staying all proceedings pending the resolution of the second complaint by the Labour Commissioner which by then had been filed with the Labour Commissioner on 29 March 2022 or pending the referral or transfer of the second complaint to the Tribunal, and (ii) adjourning further hearing to a date to be fixed on or before Monday 5 September 2022. In the meantime, the term of the then chairman expired and the Tribunal was not properly constituted and the matters could not proceed.
6. A new chairman was appointed with effect from 4 May 2023 and a further case management was fixed for 9 June 2023. At that hearing the Tribunal made an order continuing the stay of these proceedings until the next case management hearing on 6 July 2023. On this date the Tribunal lifted the stay and set the first claim for trial.
7. The trial of the first claim commenced on 6 October 2023. Before the completion of the trial the issue of the consolidation of the two claims was raised. The trial was adjourned and on 25 January 2024 the Complainant filed an application to consolidate the two claims, The application was granted on 22 March 2024 when it was ordered that the two matters be

consolidated and tried together even though evidence had already been taken in the trial of the first claim. The trial of the consolidated proceedings continued on 25 and 26 July 2024.

8. The directors of the Respondent, Leona Frett and Deirdre Frett, are referred to in this judgment by their first names for ease of reference. No disrespect is intended.

The evidence

9. The evidence comprised the following:
 - a. the Affidavit of the Complainant dated 15 March 2022,
 - b. the joint Statutory Declaration of Leona and Deirdre on behalf of the Respondent dated 22 March 2022 (**the first Statutory Declaration**),
 - c. the Witness Statement of the Complainant dated 16 May 2024, and
 - d. the joint Statutory Declaration of Leona and Deirdre dated 22 July 2024 (**the second Statutory Declaration**).

Reduction in remuneration

10. The Claimant was employed under a contract dated 25 April 2019. Her employment began on 13 May 2019. An unsigned copy of the employment contract is exhibited at page 73 of the Revised Trial Bundle. The Complainant's base salary was \$42,000 per annum. At the top of page 3 of the contract there is an "entire agreement" clause. There is no clause prohibiting oral amendments.
11. The effects of the Covid-19 pandemic were widespread and were experienced in the BVI from about March 2020 through 2021 and to sometime in early 2022. It is not in doubt that the Covid pandemic caused a significant decrease in the business and the profitability of the Respondent's business. The government responded to the pandemic with curfews which limited the movement of the population. International restrictions limited overseas travel and imports. These measures were designed to restrict the spread of Covid-19. The Respondent implemented measures of its own which its directors thought fit for coping with the crisis and ensuring continued employment for its staff and survival of the business. The Complainant was part of the management team that considered these measures. Employees would be put on shorter hours with the consequence of reduced earnings. The changes were also applied to salaried employees like the Complainant.
12. The Respondent, in implementing the above measures, considered public statements by the Minister of Labour that the Labour Code is not equipped with the necessary language to protect employees and employers during times of disasters and pandemics such as the Covid-19 pandemic. At Exhibit F.G.2.1 at page 14 of the second Statutory Declaration (not included in the bundle), the Minister reminded employers to be considerate to employees by notifying them of changes to their employment contracts. The Minister also stated, as quoted at paragraph 4 of the second Statutory Declaration, that he would like to thank employers who have displayed "BVI Love" by keeping their employees engaged the best they could. There is no doubt that the Respondent was making a genuine and kind attempt to keep staff employed despite a downturn in business.

13. The Complainant did not accept reduced remuneration for herself. She went to see officials at the Labour Department. In emails dated 16 and 17 June 2021 (at pages 12 and 13 of the Revised Trial Bundle), she informed Leona and Deirdre that the change of hours and remuneration would require a change of contract even if the change would only be temporary and she insisted on being paid as a salaried employee.
14. Leona and Deirdre respond as follows:
 - a. They stated, as they testify at paragraph 10 of the second Statutory Declaration, that the Complainant had received written notice of the intended change. They exhibited as F.G.3.2 at page 20 of the second Statutory Declaration an email to the Complainant dated 12 June 2021 notifying her that as a result of Covid-19 changes were being made to staff hours and compensation and that hours would be reduced and salaried personnel would be compensated hourly.
 - b. They stated at paragraph 11 that the Complainant orally agreed to the change of remuneration. They refer in support of this to Exhibit F.G.4 (or perhaps F.G..4.2) to prove the oral agreement but the oral agreement appears to be their own report of a statement alleged to be made orally by the Complainant (see Exhibit F.G..4.2 at page 25 of the second Statutory Declaration).
 - c. They stated at paragraph 13 that the Complainant orally agreed to the compromise without objection. They refer in support of this to a text from the Complainant at Exhibit F.G.3.2 at page 19 of the second Statutory Declaration. In the text the Complainant stated "*Held a brief meeting regarding how the traffics of business is in the store lately. We noted the hours may be cut back more and thanked them for their support*". This statement is not inconsistent with the Complainant's case, i.e. she thought the change would apply to other staff and not to her. In any event she was not expressing agreement.
 - d. They exhibit at F.G.4 at page 21 of the second Statutory Declaration a reduced hours schedule which the Complainant prepared and which shows herself on reduced hours for the period 4 to 24 June 2021. This also does not connote agreement. It may be that she was simply carrying out the instructions of management.
 - e. They exhibit at F.G.3.1 at page 18 of the second Statutory Declaration (i) a letter from the Complainant to a staff member dated 27 May 2021 in which the Complainant confirmed to the staff member that due to the then current economic situation the Respondent was temporarily reducing hours of all staff and changing salaried staff to hourly and that the employee would be so changed from 28 May 2021 and (ii) a letter of the same date to the staff of a temporary reduction in hours.
15. Despite the fact that the Complainant was aware of the salary reduction proposal and she participated in implementing it, there is no evidence she agreed to accept it. It was drawn to her attention and she may have helped sell the idea to staff. But it is clear from her emails dated 16 and 17 June 2021 (at pages 31 of the second Statutory Declaration and page 76 of the Revised Trial Bundle) that she was aware it was not binding unless agreed to by each staff member. She may have naively thought, as she stated at paragraphs 7 and 8 of her witness statement, that as she was part of management the changes would not apply to her. One might have thought that in order to make the changes palatable to the staff they

- had to be made applicable to management as well. One can understand the negative impact on staff and the difficulty in holding them to salary reduction if the general manager was exempt from the pay cut. The directors accused the Complainant of unscrupulous behaviour in seeking to receive her old pay for hours no longer worked and that this was to the financial detriment of other employees. They considered that throughout the pandemic the welfare of their employees had been at the forefront of their minds, but the Complainant did not share the same concerns.
16. The Respondent pointed out in paragraph 33 of its written closing submissions that the Complainant worked for one to three months under the reduced remuneration regime thereby implying that she must have consented to the reduction. The evidence of the date on which the change of remuneration was implemented appears from the payroll records at pages 94 to 99 of the Revised Trial Bundle to be the week ended 3 June 2021. The discussion with the Complainant started, as stated in paragraph 6 of the second Statutory Declaration, at the end of April 2021. At that time the Respondent decided to make staffing adjustments and it considered that the Complainant's analysis of sales and payroll concluded that the business could no longer maintain full payroll. The Respondent notified the Complainant of the changes by email dated 12 June 2021 (page 21 of the Revised Trial Bundle). The Complainant by an email dated 16 and 17 June (referred to at paragraphs 13 and 15 above) raised objection to the change. So while the Complainant may have been paid on the new basis since 3 June, she had made her position clear to the Respondent by at least 7 June 2021 and certainly by 17 June.
17. The law on a change of terms is clear. In the absence of a term which permits changes and in the absence of agreement by the employee, whether oral or in writing, the employer may not alter the major terms of the employment contract to the prejudice of the employee. We reviewed some of the authorities in **Gumbs v Morrell & Company Ltd** (BVILAT, April 2024). We conclude that notwithstanding the seniority of the Complainant and that she participated in management decisions to effect the reduction in salary, she is not bound by the reduction. The fact that she may have been paid for a short time on the reduced basis does not imply acceptance of a change of terms since, as we have stated above, the Complainant never gave positive acceptance of the change and she queried it and sought the involvement of the Labour Commissioner from early. The Complainant was entitled to stand by the terms of her contract. She is therefore owed the difference in pay between the reduced remuneration she received and the remuneration to which she would have been entitled but for the reduction.
- Termination by way of severance*
18. Leona and Deirdre stated at paragraph 24 of their second Statutory Declaration that the Complainant's position could no longer be sustained and had become redundant. The directors had taken over the general management responsibilities which they felt were not being effectively carried out the Complainant. They also stated at paragraph 24 that she was unable to keep up without (or even with) extraordinary handholding and coaching. This coincided with their decision to adjust staffing. There appears to be elements both of redundancy and termination for unsatisfactory performance in their decision.
19. Section 89 of the Code provides as follows:

(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.

(2) Without derogating from the generality of subsection (1), notice of termination may be given by an employer in any of the following circumstances:

(a) where two medical practitioners certify that the employee is unfit to continue in employment because of an incapacity of the mind or body which has lasted for at least six months and which is likely to be permanent;

(b) where the employee could not continue to work in the position held without contravention of a provision of a law; or

(c) where the employee is made redundant.

(3) For the purposes of the Code,

“redundancy” means where the work required of the employee is affected because

(a) the employer has modernised, automated or mechanised all or part of his or her business;

(b) the employer has discontinued or ceased to carry on all or part of his or her business;

(c) the employer has reorganised or relocated his or her business to improve efficiency;

(d) the employer’s need for employees in a particular category has ceased or diminished;

(e) it has become impossible or impracticable for the employer to carry on his or her business at its usual rate or level or at all, due to a shortage of material, a mechanical breakdown, a *force majeure* or an act of God; or

(f) a reduced operation in the employer’s business has been made necessary by economic conditions including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.

20. This must be read with section 104 which provides as follows:

(1) An employee whose period of continuous employment is at least twelve months is entitled to severance pay upon termination of such employment on any of the grounds specified in paragraphs (a), (b) or (c) of section 89(2) or in section 93 or 94.

(2) A periodic employee shall be deemed to satisfy the conditions as to length of service if he or she had worked with the same employer and any predecessor employer for at least a consecutive four year period.

(3) An employer who lays off an employee for a temporary period shall inform the employee in writing and indicate the proposed date for his or her re-engagement prior to the lay-off.

(4) Where a periodic employee is employed by two or more employers to perform duties that benefit the same person or associated companies, then two or more employers shall be jointly responsible for severance payment of the employee.

(5) An employer who fails, without reasonable excuse, to pay severance pay within two months of the date on which payment of severance pay is due commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars.

(6) Where an employer is convicted of an offence under subsection (5), the Magistrate shall, in addition to any penalty under subsection (5), order him or her to pay the employee an additional ten per cent of the amount of severance pay to which the employee is entitled.

21. By the combined effect of these two sections, notice of termination may be given, and the reason shall be deemed to be fair, where dismissal is by reason of redundancy. The Respondent has established that the conditions set out in paragraphs (e) and (f) of section 89(3) applied to the business, i.e., (i) the impossibility or impracticability of continuation in business at its usual rate or level or at all, due to a *force majeure* or an act of God, and (ii) a reduced operation made necessary by economic conditions including a contraction in the volume of work or sales or reduced demand apply in the present case. The question is whether these situations so affected the Complainant that she was made redundant.
22. The Complainant contends that her dismissal was for unsatisfactory performance and it is an unfair dismissal dressed up as a redundancy. Mr Davies, counsel for the Complainant cited the decision of **Rogers v Airport Services (Antigua) Ltd** (EHC Sept 2017). The learned judge adopted a statement from **Safeway Stores plc v Burrell** (1997) IRLR 205 to the effect that in order to establish a redundancy it must be demonstrated that the dismissal was either wholly or partly attributable to the state of affairs of the business and not to the work of any particular employee. The learned judge also relied on **US Naval Facility v Lewis** (1983) 31 WIR 191. At paragraphs 10 and 11 of its submissions, the Respondent quoted from section 3 of the Antigua and Barbuda Labour Code which provides a different test for redundancy. The test in the BVI is whether the work required of the employee was affected by the redundancy event. In Antigua and Barbuda, the test is whether the work which the employee last performed has ceased or was substantially diminished by virtue of the redundancy event.
23. The issue of redundancy is complicated by reliance by the Respondent on what it considered the sub-par performance of the Complainant. Where there are two possible bases for the dismissal it may be open to the Tribunal to take the view that the termination is a dismissal for cause and not a redundancy. Mr Davies submits the Tribunal ought to be guided in the determination of this question by **Rogers v Airport Services (Antigua) Ltd** cited above. By making separate provision for the two, with separate consequences the Legislature must have intended that the courts be careful not to treat a mixed-reasons dismissal as a severance. Severance is a specific type of dismissal with lighter consequences and the employer must bring the reasons firmly within the list of factors in section 89(2) and (3) of the Code to ensure the aims of the Code are not subverted.
24. Along with the correspondence and events set out at paragraph 14 above, a summary of the Complainant's conduct of which complaint is made and the steps taken by the Respondent is as follows:

- a. An undated email regarding the Complainant's alleged sub-par performance for the evaluation period ended May 2020 and in respect of the period 1 June to 31 August 2020.
 - b. An email from the Complainant to the Respondent dated 14 September 2020 giving her assessment that she has the ability to run the day-to-day business on her own, and the reply on behalf of the Respondent dated 15 September and the Complainant's reply to dated 16 September.
 - c. An email from the Respondent to the Complainant dated 3 October 2020 introducing the Complainant to the Zoho projects management tool.
 - d. An email from the Respondent to the Complainant dated 3 October 2020 responding to the Complainant's queries about various management tools.
 - e. A disciplinary action form dated 3 December 2020 for (i) failure to complete a task in a timely manner, (ii) failure to follow directives and (iii) failure to respond to questions asked by directors.
 - f. An email from the Respondent to the Complainant dated 8 January 2021 raising concerns about the Complainant's poor judgment and time management and other shortcomings which the Respondent would not allow to continue.
 - g. A text message to the Complainant dated 18 June 2021 requesting her to submit a plan by 21 June as to how she would use the resources, tools and training to get her performance up to par.
 - h. A disciplinary action form dated 5 March 2021 concerning the manner in which the Complainant dealt with the return of two bikes by a customer. The action taken was a warning.
 - i. Various WhatsApp messages passing between the Complainant and the Respondent over the period 13 to 14 June 2021 concerning a marketing event.
 - j. A text message to the Complainant dated 16-17 June 2021 about the unreasonable amount of time it takes her to complete tasks
 - k. The Complainant left for vacation on 23 June 2021 without a proper handover plan.
 - l. It was determined that an executive assistant be hired to provide administrative support but this new hire did not replace the Complainant.
 - m. The Complainant's position could no longer be "sustained" and so the directors took over her general management responsibilities.
 - n. The Complainant neglected to submit the directors' benefits in accordance with National Health Insurance and Social Security requirements.
25. On 5 August 2021 the Complainant received a lay-off letter from the Respondent dated 31 July 2021 (page 88 of Revised Trial Bundle). In the letter the Respondent stated the BVI economy was in a fragile state and had impacted on the business severely and due to the economic impact of Covid-19 pandemic it had been forced to commence layoffs. including the Complainant's position as General Manager. The letter further stated that the state of the business and economy would be reviewed in November and it would be determined if the Complainant's lay-off would be permanent. The Complainant never received a letter about her continued employment or her termination.
26. The Respondent clearly felt the Complainant was under-performing. She was also described as unscrupulous at paragraph 28 of the second Statutory Declaration and as a person who did not share their concerns for the welfare of the staff. She was placed on an improvement

plan. Leona and Deirdre used the term “sidetracked” in paragraph 31 of their closing submissions to describe the possible clouding of the real issues by the wealth of evidence on either side. These allegations have not obscured the existence of the criteria listed at section 89(3) of the Code.

27. The Covid-19 pandemic and its impact on trade and commerce brought the conditions at section 89(3)(d) and (e) into play. Under these conditions, the Respondent could have elected to sever employees who dissented from the remuneration reduction scheme. In the lay-off letter (page 88 of Revised Trial Bundle) no mention is made of the express terms of sections 89(3) (e) and (f) but the letter is sufficient invocation of the section as it states that it is due to the economic impact caused by Covid-19 that the Complainant’s position is subject to layoff.
28. The lay-off was not expressed to be temporary neither was an end date given. It stated the situation would be reviewed in November 2021 to determine if it would be permanent. Under section 107(2)(c) of the Code, no date of re-employment having been given and more than 3 months having elapsed without the Complainant having been re-employed, severance pay would have been due immediately upon the expiration of the three-month period, i.e. on 31 October 2021.
29. The evidence of the date of payment and the amount of payment made by the Respondent is not clear. Figures are provided at paragraph 11 of the Complainant’s closing submissions and paragraph 32 of the Respondent’s submissions. Counsel for the Complainant stated the Complainant received \$1,750 but should have received \$3,500. Counsel may have been referring to arrears of salary. No payment date is given. Leona and Deirdre state the Complainant was paid \$3,689.93 on 15 February 2022. These are statements in submissions. There is no evidence of these payments. We can, however, take into account Mr Davies’ concession in his submissions of the payment of \$1,750.
30. A final point on redundancy is whether a new hire replaced the Complainant. The Complainant was of the view that her position was not redundant because the new hire replaced her. The job specifications of the new hire are at page 61 of the Revised Trial Bundle. The position is entitled Executive Assistant. A comparison with the Complainant’s contract shows that the person holding the position of executive assistant works closely with the directors in an administrative not a leadership role and for a lower salary. We are not satisfied that the new hire was a replacement.

Termination for unsatisfactory performance

31. At paragraphs 14 to 26 of their second Statutory Declaration, Leona and Deirdre outline a number of areas in which they considered the performance of the Complainant fell short. These included:
 - a. acts of insubordination reflected in Exhibit F.G.7,
 - b. failure to meet expectations as a consequence of difficulty in making decisions,
 - c. an unfavourable annual evaluation in May 2021 which caused her to be placed in a development plan with possible termination if no improvement,

- d. unfitness for the position of General Manager,
 - e. poor planning as in the submission of a vacation request less than 48 hours before commencement of her vacation, leaving no or no adequate arrangements in place for her absence,
 - f. failure to respond to queries when she was placed in quarantine on her return from vacation, and
 - g. failure to submit correctly completed National Health Insurance and Social Security forms to the applicable agencies.
32. At paragraph 24 of the second Statutory Declaration they stated or suggested the Complainant's position became redundant as the directors took over general management responsibilities not effectively carried out by the Complainant. We have reviewed exhibits F.G.7 to F.G.12. They disclose complaints about the Complainant's conduct and performance but they do not show that performance issues were the grounds for the dismissal. The lay-off letter is sufficient reason in our view as it is bolstered by actual objective conditions that fall within section 89(3). We are satisfied that this is a case of redundancy. We accordingly dismiss the claim based on unfair dismissal in the second Dispute Claim Form and we find that the Complainant's position became redundant.

Remedies

- Arrears of salary*
33. Items of loss are referred to at paragraphs 15 to 18 of the Complainant's witness statement of May 2024 but the amounts due are not given. At paragraph 15 the Complainant stated she did not receive payment in lieu of severance pay. At para 26b of the second Statutory Declaration (what should have been paragraph 27) it is stated that severance payment was made after the first tribunal hearing. They do not state the date or the amount.
34. Summaries of the Complainant's pay are at pages 94 to 99 of the Revised Trial Bundle. They show remuneration for the period from 1 January 2021 to 10 June 2021. The weeks ended 3 June and 10 June show the reduced salary. There are no summaries for the period 17 June to the termination date of 31 July. Mr Davies, for the Complainant, calculates the loss as contractually due earnings of \$7,000 for June and July 2021 less reduced wages received of \$928.74. The balance would be \$6,071.26. In the absence of direct evidence for the period 19 June to 31 July, the Tribunal must assess the loss as best it can. The gross monthly salary was \$7,000. Amounts received for 3 June was \$272.16 and for 10 June was \$532.92. We would assess the loss at two-thirds of the contractually due salary rounded down to \$4,000.00.
- Severance pay*
35. The Complainant was not a periodic or piece-work employee. She was employed by the Respondent for 2 years and 79 days (27 months) at a salary of \$42,000 per annum for a daily rate of \$161.54 as a manager. In accordance with section 105(1) of the Code she is entitled on severance to three-quarters of the daily rate for each month worked. We calculate the severance pay as follows:

Annual salary = \$42,000

Daily rate ($\$42,000 \div 52 \div 5$) =	\$161.54
Three-quarters of daily rate ($\$161.54 \times 75\%$) =	\$121.15
No. of months =	27
Severance pay ($\$121.15 \times 27$) =	\$3,271.05
<u>Less amount paid</u>	<u>\$1,750</u>
Balance	\$1,521.05

Pay in lieu of notice

36. The Complainant was also entitled on termination to notice or to payment in lieu. No notice period was contained in the employment contract. The default statutory period under section 90(1)(a) of the Code the period is the interval of time between pay days or one month. We note in her contract of employment the Complainant's salary was stated as an annual amount. It was not stated she would be paid by instalments weekly, twice monthly or once monthly. We would treat her as monthly paid. We would therefore order the Respondent to pay the Complainant the sum of \$3,500 in lieu of notice of termination.

Punitive damages

37. At paragraph 20 of her Reply (page 66 of the Revised Trial Bundle), the Complainant asserts that punitive damages would be appropriate. The basis for this claim is that the Response did not include a statement that the remedy of compensation was acceptable to the Respondent and therefore by virtue of rule 20(1)(f)(ii) of the Labour Code (Arbitral Tribunal) (Procedure) Rules 1999 the Respondent is deemed to accept the Tribunal may award a punitive sum. Mr Davies cited the decision of **Ranger-Vassell v Mainsail B.V.I. Ltd** (BVILAT July 2021) in which a punitive award was made. We have since held that where an express acceptance is not made, but the case is contested on the basis that the remedy is compensation there would be no point in denying, only because the formal acceptance had not been made, that a compensation award was appropriate.
38. We have recently held in **Wilkins v Delta Petroleum (Caribbean) Ltd** (BVILAT April 2025), that it cannot be said the case was contested on the basis that the sole remedy sought was compensation if a complainant clearly signalled an intention to claim punitive damages. The Complainant expressly stated at paragraph 20 of her Reply that punitive damages would be appropriate. The Tribunal now brings to the attention of respondents the requirement to state whether they would accept the remedy of compensation if complainants succeed in claims for unfair or illegal dismissal. At the time this case first came for trial this was not, regrettably, the practice of the Tribunal.
39. In his submissions, counsel for the Complainant relied on **Ranger-Vassel v Mainsail BVI Ltd** (BVILAT, July 2021). We have not, however, found that the Complainant was unfairly dismissed. We have found her contract of employment was validly terminated by reason of redundancy under section 89(2)(c) of the Code. She is entitled to severance pay under section 104, not to compensation. In the circumstances, we do not make a punitive award.

Interest

40. Under section 107(2) of the Code the severance pay will carry interest of 10 per cent per annum from 1 November 2021 until payment.

41. The other sums, namely \$4,000 for arrears of salary and \$3,500 for payment in lieu of notice, and will carry interest at 3 per cent per annum from 1 August 2021 until the date of this judgment.

Costs

42. Section 30(3) of the Code provides that the Tribunal shall not make an order for costs save for exceptional reasons which the Tribunal considers appropriate. The Complainant is legally represented and would have borne some expense. She has succeeded in the first Dispute Claim Form. She recovers her full salary less the reduced amounts paid. She has not succeeded in her claim for compensation for unfair dismissal claim. She has recovered severance pay instead. The claim for her full salary was contested through to judgment by the Respondent when it ought never to have been in dispute. We would therefore allow the Complainant costs attributable to the first Dispute Claim Form in the sum of \$500. We make no order as to the costs attributable to the second Dispute Claim Form.

Summary

43. The Tribunal makes the following order:
- a. the Respondent pay the Complainant the following sums:
 - i. severance pay of \$1,521.05 with interest thereon at 10 per cent per annum from 1 November 2021 until payment,
 - ii. the sums of \$4,000 for arrears of salary and \$3,500 for payment in lieu of notice with interest thereon at 3 per cent from 1 August 2021 until the date of this judgment,
 - iii. the sum of \$500.00 for her costs, and
 - b. the claim for unfair dismissal be dismissed.

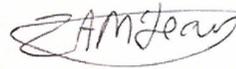
By Order
Labour Arbitration Tribunal



Samuel Jack Husbands
Chairperson



Dancia Penn KC
Arbitrator



Zebalon McLean
Arbitrator