**VIRGIN ISLANDS**
**LABOUR CODE, 2010**
**(No. 4 of 2010)**
**IN THE LABOUR ARBITRATION TRIBUNAL**

Case No. BVILAT2025/014

BETWEEN

**NIKOLAI BRATHWAITE**
Complainant

and

**THE MOORINGS LIMITED**
Respondent

**AWARD**

Tribunal: Mr William Hare, Chairman; Ms Miglisa Cupid, Accredited Labour Arbitrator, Member.

Appearances: the Complainant in person; Ms Hazel-Ann Hannaway Boreland of Harney Westwood & Riegels (BVI) LP for the Respondent.

In attendance: Ms Malisa Ragnauth-Mangal, Secretary to the Tribunal; Mr Kendall Porras, Ms Natalie Spencer Crosdale and Ms Lindsay Roberts, witnesses for the Respondent; Mr Phillippe Renaud, representative of the Respondent.

Hearing: 25 and 28 September 2026, by video conference in accordance with the Labour Code (Arbitration Tribunal) (Telephone and Video Hearing) Guidelines, 2020. Written submissions for the Respondent filed 13 October 2026.

**Introduction**

1. This is the unanimous award of the Tribunal on the complaint of Mr Nikolai Brathwaite that he was unfairly dismissed by The Moorings Limited from his employment as a porter at its marina at Wickhams Cay, Road Town, on 17 March 2025. The Labour Commissioner reported on 22 August 2025 that no settlement had been reached, and the Minister referred the dispute to the Tribunal under section 28(1) of the Labour Code, 2010 (the Code) on 2 December 2025.

2. In summary, we have concluded that the dismissal was not carried out in accordance with the Code. The Respondent did not inform Mr Brathwaite in writing of the nature and

particulars of the complaints against him before the meeting at which they were considered, as section 81(2) requires. The statement given to him on dismissal did not state the precise reason for it, as sections 101(3) and 103(3) require, and the process by which the decision was reached did not give him a fair opportunity to defend himself. The dismissal was accordingly unfair. We decline to order reinstatement, which neither party realistically seeks, and we award compensation in the sum set out at the end of this award. We have not found it necessary to decide whether the conduct alleged against Mr Brathwaite in the weeks before his dismissal occurred as the Respondent says it did, and we have made findings on the incidents only where the facts are admitted.

**Procedural history**

3. Mr Brathwaite filed his Dispute Claim Form with the Department of Labour and Workforce Development on 23 April 2025. It describes his complaint as "wrongly terminated and needs to be compensated", and alleges that he had been micromanaged, stalked at work by his supervisor and newly hired staff, slandered, and left with a "deep feeling of sabotage" by his supervisor. It seeks reinstatement and compensation, records his pay as USD 9.00 an hour paid bi-weekly, leaves his weekly hours blank, and gives his start date as April 2024 and his end date as 17 March 2025. No further particulars were given at any stage.

4. The Respondent filed its Response and Statement on Relief Sought on 23 January 2026 and, on 30 January 2026, affidavits from Mr Kendall Porras, its Human Resources Senior Advisor, and from Ms Natalie Spencer Crosdale and Ms Lindsay Roberts, its Customer Operations Managers, together with an application for an extension of time for filing them. The affidavits stood as the evidence in chief of the three witnesses at the hearing.

5. The Notice of Case Management Hearing of 9 January 2026 directed Mr Brathwaite to file any Reply, with any evidence by affidavit or statutory declaration, by 6 February 2026. He did not. At the case management hearing on 23 July 2026, which he attended, he was directed to file his Reply and any witness evidence by 14 August 2026, and confirmed that the time allowed was sufficient. Again he filed nothing.

6. The trial took place by video conference on Friday 25 September 2026 and Monday 28 September 2026, Mr Brathwaite appearing in person and Ms Hannaway Boreland for the Respondent. Mr Brathwaite joined the first day by mobile telephone from the street in Road Town. At the Tribunal's direction he moved to the Tribunal's hearing room at the Department of Labour before being affirmed, and gave his evidence from there. On the second day he did not appear at the appointed time of 9.00 am and could not be reached by telephone; the Secretary to the Tribunal emailed him at 9.11 am and again at 9.51 am. The Tribunal adjourned to await him. He attended later in the morning and the hearing resumed.

7. Mr Brathwaite gave evidence, adopting his claim form and the written statement he had given his employer on 28 February 2025, and was questioned by the Chairman and cross-examined. On the second day the Respondent recalled him for one further question and then called Mr Porras, Ms Crosdale and Ms Roberts, each of whom adopted their affidavit, answered supplementary questions, and was cross-examined by Mr Brathwaite and

questioned by the Tribunal. At the close of the evidence the Tribunal invited written submissions within 14 days and indicated the provisions of the Code on which it would particularly welcome assistance: on liability, sections 81(2) and 101(3); on remedy, whether reinstatement was realistic, notice under section 90 and compensation under section 86(2). The Respondent filed written submissions on 13 October 2026, together with the signed version of a staff statement that had appeared unsigned in the bundle. Mr Brathwaite filed nothing. We have taken his case from his claim form, his written statement and his evidence.

**The objection to Mr Brathwaite's oral evidence**

8. The Respondent objected at the hearing, and renews the objection in its submissions, to Mr Brathwaite being permitted to give oral evidence when he had filed no Reply and no affidavit or statutory declaration in compliance with the Tribunal's directions. It relies on rule 33(4) of the Labour Code (Arbitration Tribunal) (Procedure) Rules, 2020 (the Rules), under which a witness whose statutory declaration or affidavit is not filed within the time specified may not be called unless the Tribunal permits, with good cause shown, in accordance with rule 5(7).

9. We dealt with the objection at the hearing and our reasons can be stated shortly. Mr Brathwaite was unrepresented. His case, such as it was, had been on the record since April 2025 in his claim form, and the Respondent had answered it in its Response and in three affidavits. He told us that since his dismissal he had been without a computer and in difficult personal circumstances. The overriding objective in rule 3 requires us to deal with complaints justly, and that includes ensuring, so far as practicable, that an unrepresented employee is able to put his case. We therefore permitted him to give oral evidence under rule 5(7), read with rule 33(4), on terms that protected the Respondent. His evidence was confined to the matters relied on for the dismissal. Ms Hannaway was given time to take instructions before cross-examining, and the Respondent was permitted to recall Mr Brathwaite and to supplement the evidence of its own witnesses in answer to what he had said, both of which it did. We are satisfied that the Respondent suffered no prejudice. We note that the Respondent's own affidavit evidence was itself filed late, with an application for an extension of time.

**The facts**

10. The following facts are either common ground or established by documents whose authenticity is not in dispute. References to KP numbers are to the exhibits to Mr Porras's affidavit, and page references are to the hearing bundle.

11. The Respondent operates the marina and resort at Wickhams Cay II under the Moorings and Sunsail brands. Mr Brathwaite had worked for it, or for an associated water sports business, in an earlier period that ended in circumstances neither party explored. He was re-hired as a porter on 6 June 2024 and started work on 7 June 2024, at USD 9.00 an hour paid bi-weekly, reporting to the Customer Operations Managers, Ms Roberts and Ms Crosdale. His duties were those of a dock porter, namely taking luggage, groceries, linen and ice to yachts, and assisting guests on arrival and departure. He received the Employee Handbook (KP 3), which contains a Code of Conduct listing examples of unacceptable

conduct, among them failure to follow the reasonable instructions of management, discourteous treatment of colleagues or guests, the use of abusive, threatening or profane language, and the unauthorised or careless use of equipment, and listing "fighting and/or making violent threats in the office" as gross misconduct. The corrective action policy is progressive, from verbal warning to written warning to final written warning and then termination following a hearing, with a reserved right to issue a final written warning at any stage depending on the severity of the offence.

12. Two probation reviews, in August and September 2024, recorded good attendance and punctuality but identified his working relationships with colleagues, his communication with the front desk and his uniform as areas for improvement. He signed neither form. He says he was not given the opportunity. Ms Roberts says he walked out of the first review and declined to sign the second. Nothing turns on it.

13. On 7 December 2024 there was an incident in the lobby area in which Mr Brathwaite walked between two colleagues, Mr Leshan Mapp and Mr Kennel Stoutt, brushing against one of them, and then went behind the customer service desk. Ms Giselle George, who was at the desk, gave Mr Porras a statement by telephone the same day in which she recorded him saying there that he was "going to stab the big belly one", that he would "go to his house and get his gun", that "they don't know me" and that he would "mash them up" (KP 5, page 43). Mr Mapp also gave a statement (KP 4). Mr Stoutt declined to. Ms Roberts, who was in the lobby, saw the physical movement but did not hear what was said; she learned of the words from Ms George afterwards. Mr Brathwaite denies saying anything of the kind. We return to this incident below.

14. On 20 December 2024 Mr Brathwaite had an altercation with Mr Anthony Cheltenham, a fuel attendant, at the Friday staff meeting, in the presence of Ms Roberts and Ms Crosdale. They say he used profanity. He denies it.

15. On 26 December 2024 Ms Roberts issued a Disciplinary Action Form (KP 9, pages 50 to 51) with both the "Verbal" and the "Final" boxes ticked. It gave a final warning in respect of three matters: entering and sitting behind the customer service desk despite repeated requests not to; unacceptable conduct in the lobby in front of guests and staff, in that he was "not discreet" when discussing matters that should be addressed in private and his language and behaviour were inappropriate; and conduct with staff members and the way conflicts were dealt with, citing the altercation with Mr Cheltenham on 20 December. The box headed "Required improvements / Consequences of further problems" was left blank. The form does not mention the incident of 7 December or any threat. Mr Brathwaite signed it on 10 January 2025 beneath a printed acknowledgment that failure to make improvements "could result in further action up to and including termination of employment". He appealed. Mr Philippe Renard of Human Resources dismissed the appeal on 31 January 2025 (KP 11).

16. On 24 January 2025 there was a heated exchange under the customer service tent between Mr Brathwaite and a colleague, Ms Sandrelym Rodriguez, known as Naji, during a lunch break. She complained the same day. On 25 January 2025 Mr Seth Miller, another porter, complained that Mr Brathwaite had told him in an unprofessional tone, in front of guests, that his help was not needed in transferring guests between boats (KP 10, pages 52 to 53).

Ms Phoebe Kingdon, who had assigned the task to Mr Miller, saw tension between the two men but no altercation, and insisted that Mr Porras's summary of her account record that Mr Brathwaite had been "nothing but helpful" in carrying out duties she had asked of him (KP 12).

17. Mr Porras, who was off island, discussed the two January complaints with Mr Brathwaite by telephone on or about 27 or 28 February 2025 and by email of 28 February (KP 6) asked him for a written statement on each. Mr Brathwaite had no computer. He wrote his account by hand and a colleague, Ms Nandi Christopher, typed it and sent it to Mr Porras that evening (KP 7 and KP 8). In it he said that Ms Rodriguez had shouted at him, insulted him and his girlfriend and threatened to send someone after him, and that after she had walked away he had called her an "emotional bitch", which he accepted "may have not been the best reaction". On the Miller incident he said there had been no altercation, profanity or cursing. The Response pleads that both Ms Rodriguez and Mr Brathwaite were warned in relation to the incident of 24 January. No warning document exists, and Mr Porras's affidavit exhibits the December warning as the warning for it.

18. On 28 February 2025 Ms Roberts convened the Friday team meeting as a health and safety briefing, to be given by Mr Darryl Flanders, the Health and Safety and Security Manager, on incident reporting and the use of golf carts on the base. Moments before Mr Flanders began, Mr Brathwaite asked to be excused, saying he had something to do; Ms Roberts told him the meeting was important and that he was required to stay; he left, did not return, and was seen on the dock shortly afterwards. That is the account of Mr Flanders in his email of 5 March 2025 and of Ms Roberts in evidence. Mr Brathwaite says he cannot recall the meeting but would not have left one without asking permission. There was no written rule on the use of golf carts before the procedure presented at that meeting.

19. On 1 March 2025 Mr Flanders spoke to Mr Brathwaite about his use of the cart after receiving a further report, and Mr Mark Figgins, the Commercial Operations Manager, came across him sitting in a cart looking at his phone with earbuds in. Mr Brathwaite accepts that he had been told to use a trolley where a cart was unnecessary, and that he sat in a cart with earbuds in on what he described as his own time, which he says was common. Neither Mr Flanders nor Mr Figgins gave evidence.

20. On 5 March 2025 Ms Roberts sent Mr Figgins and Mr Flanders an email headed "Nikolai Brathwaite Hearing Mar7", copied to Mr Porras, asking them to "write in a few words your recent experiences and interactions" with him (KP 13, pages 62 to 64). She described him as "this final warning employee", referred to "unsafe usage of the cart" and "unprofessional mannerisms on the dock", and prompted each of them with the encounter she had in mind. Both replied within the hour. Mr Figgins described the encounter of the previous Saturday, said that Mr Brathwaite's "attitude is quite deplorable", and relayed the plumber's concern about damage to fittings on the docks caused by buggies, without attributing the damage to any individual. Mr Flanders described the walkout on 28 February and his conversation of 1 March, and said that, as Mr Brathwaite was not the only cart operator, an operating policy was to be developed.

21. On 10 March 2025 Ms Crosdale handed Mr Brathwaite a letter (KP 15, page 67), after lunch, inviting him to a "post-investigation meeting" at 8.30 the following morning "to discuss the

outcome of the recent investigation regarding an incident of unprofessional behavior and conduct in the workplace". The letter identifies no incident, date or person. It states that the meeting would be conducted by Ms Crosdale with Mr Porras as note taker, that he could present mitigating circumstances, that the outcome could be a warning up to and including dismissal, and that he could ask for the meeting to be rescheduled. It refers to no other document.

22. The meeting took place on 11 March 2025, in the afternoon rather than at 8.30, attended by Mr Brathwaite, Ms Crosdale, Mr Porras and Ms Roberts. No notes of it were produced. Mr Porras was the note taker named in the letter; Ms Crosdale, who chaired it, had not seen any notes and could not say whether any exist. What was put to Mr Brathwaite at the meeting is in dispute, and we deal with it below. At the end of it he was asked to sign the typed statement of 28 February, and did.

23. The three attendees then conferred among themselves, on Ms Roberts's evidence on 12 or 13 March. No one communicated with Mr Brathwaite in the meantime. On 17 March 2025 Ms Crosdale and Mr Porras met him and handed him a Disciplinary Action Form (KP 16, pages 68 to 69), with the "Termination" box ticked and the prior warning recorded as "December 26, 2024 - Final Written Warning". The operative text reads:

*"This serves as formal notice of your termination from The Moorings, effective immediately. This decision has been made following a recent investigation conducted by the HR team, which revealed repeated violations of our company's Code of Conduct.*

*The recent incidents that have been thoroughly investigated, along with additional concerns identified during the investigation, reveal a consistent pattern of behavior that is incompatible with the standards and expectations outlined in our company policies. Despite multiple opportunities to address these issues, including verbal and written warnings, no significant progress has been observed in your conduct or adherence to company guidelines.*

*These matters collectively represent a serious breach of our company's Code of Conduct and workplace expectations. Our organization is committed to fostering a professional, respectful, and ethical work environment. Unfortunately, your actions have consistently failed to meet these standards, undermining our core values and the trust placed in you as an employee.*

*We stress that adherence to our Code of Conduct is non-negotiable for all employees, regardless of position or tenure. Unacceptable conduct, such as demonstrated in these incidents, cannot be tolerated as it negatively impacts workplace culture, team dynamics, and overall organizational integrity."*

24. Mr Brathwaite signed the form on 17 March 2025. He was paid on 25 March 2025 for 23.5 hours worked, 16 hours' leaver's vacation and 8 hours' sick pay for 16 March, all at USD 9.00 an hour, a gross sum of USD 427.50 (KP 17, page 70). Nothing was paid in respect of notice or of any period after 17 March.

**The Respondent's case**

25. At the opening of the hearing Ms Hannaway identified KP 16 as the written statement of reasons and KP 15 as the written statement of the nature and particulars of the complaint required by section 81(2), supplemented, she said, by what was said orally at the meeting and, when pressed, by Mr Porras's email of 28 February (KP 6) and the final warning (KP 9), which she invited us to read together with it. She accepted that none of those documents put to Mr Brathwaite the walkout of 28 February, the complaints about golf carts or Mr Figgins's report. She put the case as one of summary dismissal for serious misconduct under section 101, on a cumulative rather than a single-incident basis, and reserved the right to argue section 103(2) in the alternative. In the written submissions the order is reversed. The primary case is that Mr Brathwaite was dismissed under section 103(2) for repeating, within six months of the final warning, conduct of the kind warned against; the alternative is that the accumulated incidents between January and March 2025 amounted to conduct within section 101(2)(a). KP 16 is said to satisfy both section 103(3) and section 101(3). The submissions do not address section 81(2).

26. Mr Porras identified the "recent incidents" referred to in KP 16 as the Rodriguez and Miller complaints and the Flanders and Figgins reports, while saying that the whole history from probation and the subsisting final warning were taken into account. Ms Crosdale, who signed KP 16, said that the "aggressive and threatening behaviour towards other members of staff" referred to in her affidavit as part of the basis for dismissal was the incident of 7 December 2024, and that it was a reason for the dismissal together with the incidents after the final warning. Ms Roberts said that 7 December was what the final warning meant by "unacceptable conduct in the lobby", that it should have been stated in the warning, and that the December matters had been dealt with by the warning, so that what was in issue in March was the February and March conduct.

**The statutory framework**

27. Section 81(1) of the Code provides that the employment contract of an employee shall not be terminated by an employer without a valid and fair reason connected with the capacity or conduct of the employee or the operational requirements of the undertaking, "pursuant to section 88, 89, 101 or 103, and unless the notice requirements in section 90 are complied with". Section 81(2) provides that, 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". By section 85(1) it is for the employer to prove the reason for the dismissal, and by section 85(3) the test of whether a dismissal was unfair is whether, in the circumstances, the employer acted unreasonably.

28. Section 101(1) entitles an employer to dismiss summarily, without notice, an employee who is guilty of serious misconduct of a nature that it would be unreasonable to require the employer to continue the employment contract. Section 101(2) restricts serious misconduct to conduct directly related to the employment contract which has a detrimental effect on the business, and includes conduct that clearly demonstrates that the contract cannot reasonably be expected to continue. Section 101(3) requires the employer, when terminating under the section, to provide the employee with "a written

statement of the precise reason for the action", by which the employer "shall be conclusively bound … in any proceeding contesting the fairness of the dismissal". Section 101(4) provides that an employer who fails to provide that statement "shall be stopped from introducing testimony as to facts which might have been included in the statement, in any proceeding contesting the fairness of the dismissal".

29. Section 103(1) provides that where an employee is guilty of misconduct such that the employer cannot reasonably be expected to continue to employ him if it is repeated, the employer may, when taking disciplinary action in accordance with section 102, warn the employee that repetition of the behaviour will result in summary dismissal. By section 103(2), if the employee is guilty of a similar offence or misconduct in the following six months, the employer may terminate the employment without further notice. Section 103(3) requires a written statement of the reasons for the action, to which "the principles set out in section 101(3) and (4) shall apply". Section 102(4) requires an employer taking disciplinary action to advise the employee in writing of the misconduct and of what steps the employer is likely to take in the event of any repetition.

30. Section 90(1)(a) fixes the notice to which an employee with up to seven years' service is entitled at not less than the interval between his pay days. Section 90(2) disapplies it where the employer is entitled to dismiss summarily, and section 91 permits payment in lieu. Section 86(1) provides that where the Tribunal determines that a dismissal was unfair or illegal it may order reinstatement, re-engagement or compensation in lieu, if that remedy is acceptable to both parties, or may order the employer to pay such sum as it thinks fit. Section 86(2) requires the Tribunal, in ordering compensation, to take into account vacation pay earned but not taken, wages lost on account of the dispute up to the date of determination, the notice to which the employee would have been entitled, the employee's category, seniority and prospects of alternative employment, and his duty to mitigate.

31. Rule 45(3) of the Rules requires an award on a termination under section 101 to take into consideration, among other things, that the reason for the dismissal must be given in writing and "must be precise in accordance with section 101(3)", and that the Tribunal "shall grant an estoppel … against any employer who seeks to introduce any new reasons or clarifications of the precise reason for the dismissal"; that the reason must be the real reason; whether the employer carried out a reasonable investigation, believed on reasonable grounds that the employee was guilty, and gave him a fair opportunity to defend himself, including access to his employment record, in accordance with section 81(2); and whether dismissal was within the band of reasonable responses of a hypothetical reasonable employer. Rule 45(4) applies corresponding principles to a termination under section 103, and adds that where the disciplinary action taken was wrong or improper the dismissal is invalid. Rule 45(5) and (6) direct the Tribunal to section 86 on remedy.

32. Two authorities cited by the Respondent are of assistance. In *Ingrid Branford-Hughes v Golden Years Home for the Elderly* (MNILTAP 2019/0002, 26 May 2020) the Court of Appeal, considering the equivalent provisions of the Montserrat Code, drew the distinction between summary dismissal for gross misconduct and termination for repetition after a warning, and held that an employer is entitled to the lower threshold of the latter only where it has given a warning in accordance with the statute and relies on it. A tribunal is not to supply that case for an employer that did not run it. In *Leonart Matthias v Antigua Commercial Bank*

(ANULTPAP2017/0002, 28 May 2020) the Court of Appeal applied, through *Blackburn v LIAT* (1974) Ltd [2020] UKPC 9, the principle in *Polkey v A E Dayton Services Ltd* [1988] AC 344 that a failure to give the employee an opportunity to explain renders a dismissal unfair except in the rare case where a reasonable employer could properly take the view that nothing the employee might say would make any difference.

**Issue 1: the written particulars required by section 81(2)**

33. Section 81(2) imposes two requirements before an employer may terminate for conduct: the employee must have been informed in writing of the nature and particulars of the complaint against him, and he must have been given a fair opportunity to defend himself, including access to his employment record. Rule 45(3)(d)(iii) and 45(4)(e)(iii) make the second of these an express element of the fairness of any dismissal under section 101 or section 103.

34. The only document given to Mr Brathwaite before the meeting of 11 March was KP 15. It informs him of nothing beyond the fact that there has been an investigation into "an incident of unprofessional behavior and conduct in the workplace". It does not say which incident, when, with whom, or what is alleged. A letter in those terms does not inform the employee of the nature of the complaint, let alone its particulars. Mr Porras's affidavit asserts that the invitation set out the series of incidents to be reviewed under four headings. It does not. The affidavit describes something else.

35. Ms Hannaway's answer at the hearing was that KP 15 is to be read together with the email of 28 February and the final warning. We are prepared to accept that the requirement of section 81(2) may in principle be met by more than one document, provided that, read together, they inform the employee in writing of what is alleged against him before he is called upon to answer it. That does not, however, assist the Respondent here. The email of 28 February identified the Rodriguez and Miller incidents and asked for his account of them, which he gave. The final warning identified the December matters, for which he had already been warned. Neither document, nor KP 15, said anything about the walkout on 28 February, the use of golf carts or Mr Figgins's report, and Mr Porras accepted in terms that nothing in writing was ever sent to Mr Brathwaite about those matters. They were, however, on the Respondent's own case, two of the four "recent incidents" for which it dismissed him. They were put to him, if at all, orally, at a meeting convened on less than a day's notice.

36. There is a further difficulty. Ms Crosdale, the author of KP 15, told us that the "incident" it referred to was the threat by the desk on 7 December 2024, possibly together with one other she could not identify, and that when she handed him the letter she told him that was what the meeting was about. That is irreconcilable with the submission that KP 15 was the culmination of written notice given in February of the January complaints. On its author's own evidence it was notice of something else: an incident for which he had already received a final warning and which, according to Mr Porras, was not discussed at the meeting at all.

37. As to the second limb of section 81(2), Mr Brathwaite's evidence that he was shown neither the statements against him nor his employment record was not challenged, and there is no

suggestion that the emails of 5 March were given to him at any time before these proceedings.

38. We find that the Respondent did not comply with section 81(2). Mr Brathwaite was not informed in writing of the nature and particulars of the complaints on which he was dismissed, and he was not given access to his employment record.

**Issue 2: the written statement of the reason for dismissal**

39. Whether the dismissal is analysed under section 101 or under section 103(2), the Respondent was required to give Mr Brathwaite a written statement of the precise reason for it. Section 101(3) says so in terms, and section 103(3) applies the principles of section 101(3) and (4) to a dismissal under section 103(2). The consequences are spelled out in the same provisions. The employer is conclusively bound by the contents of the statement, and an employer who fails to provide it is stopped from introducing testimony as to facts which might have been included in it. Rule 45(3)(a) directs us to grant an estoppel against an employer who seeks to introduce new reasons or clarifications of the precise reason.

40. KP 16 is the statement. It refers to a recent investigation, to "recent incidents" and "additional concerns identified during the investigation", to a pattern of behaviour and to verbal and written warnings. It does not identify a single incident, date, person or rule. An employee reading it would not know what he was being dismissed for. Ms Crosdale accepted as much, and said that the form never contains reasons: they are explained orally. That may be the Respondent's practice, but it is not what the Code requires. The word "precise" in section 101(3) is there for a purpose. The statement is the employee's protection against exactly what happened at this hearing, where three witnesses gave three different accounts of what the dismissal was for.

41. Nor can the deficiency be cured by reading KP 16 with the earlier documents, for the reasons already given. None of them identifies the Flanders and Figgins matters, and the December warning identifies conduct for which the Respondent had elected to warn rather than to dismiss.

42. We accordingly find that KP 16 was not a written statement of the precise reason for the dismissal within the meaning of section 101(3) or section 103(3). The Respondent was therefore not entitled to make good by evidence at this hearing the reasons it failed to state, and we have not treated the evidence of its witnesses as establishing reasons beyond those appearing on the face of the statement. Taken at its highest, the statement records a dismissal for unspecified recent incidents and concerns, following warnings. That is not a statement of serious misconduct within section 101(1) and (2), and it is not a statement that the employee has repeated, within six months of a warning given under section 103(1), the misconduct of which he was warned.

43. In case we are wrong about that, we add two observations on the section 103 case, which is now the Respondent's primary case. First, section 103(1) contemplates a warning, given when disciplinary action is taken in accordance with section 102, that repetition of the behaviour "will result in summary dismissal", and section 102(4) requires the employer to advise the employee in writing of the misconduct and of the steps the employer is likely to

take on any repetition. KP 9 ticked both "Verbal" and "Final", left blank the box for required improvements and the consequences of further problems, and contained only the printed acknowledgment that failure to improve "could result in further action up to and including termination". Whether that is a warning within section 103(1) is at least doubtful. Secondly, of the matters relied on as repetition, only the Rodriguez and Miller incidents are of the same kind as the conduct warned against in KP 9. Leaving a meeting and the use of golf carts are not. We do not decide either point, because it is unnecessary to do so.

**Issue 3: the process**

44. Rule 45(3)(d) and (4)(e) require us to consider whether the employer carried out an investigation that was reasonable in the circumstances, whether it believed on reasonable grounds that the employee was guilty of the reasons for the dismissal, and whether the employee had a fair opportunity to defend himself. We have already found that he was not informed in writing of what was alleged. We add the following.

45. The investigation, the hearing and the decision were all the work of the same three people. Mr Porras investigated and sat. Ms Roberts, Mr Brathwaite's line manager, the author of the final warning and of the email of 5 March, sat and took part in the decision. Ms Crosdale chaired the meeting and signed the dismissal. There is no investigation report and no note of the meeting, although Mr Porras was named in the invitation as note taker. There is nothing inherently wrong in an employer of this size using the same managers to investigate and to decide, but it places a premium on the record, and here there is none.

46. The email of 5 March 2025 is headed with a hearing date two days ahead and describes Mr Brathwaite, to the two managers from whom accounts were being sought, as "this final warning employee". Ms Roberts could not explain the heading beyond saying that a hearing may originally have been intended for 7 March, nor the description. We accept that she did not set out to procure a particular answer. But an email in those terms, sent six days before the employee was told that any meeting was to take place, is not the way to gather evidence for a disciplinary hearing, and the replies it produced read as they were invited to read.

47. The meeting was convened on less than a day's notice. Two of the four matters relied on had never been put to Mr Brathwaite in any form before it. What was said at the meeting is disputed. Mr Porras says that every matter, including the Flanders and Figgins reports, was explained and that Mr Brathwaite declined to add to his written statement, saying "do what you have to do". Ms Crosdale, questioned by the Chairman, said that the two staff statements on the incident of 7 December were read to him, and could recall nothing else being discussed; in re-examination she agreed that the Rodriguez incident and the safety briefing were also addressed. Ms Roberts said the focus was on the Rodriguez, Miller and Figgins matters and the golf carts, with December touched on. Mr Brathwaite says that no specific allegation was put, that he was taken through the handbook and told that his behaviour had been watched for some time, and that what he said was that his managers had been given what they wanted. In the absence of any note, we cannot resolve those differences, and we do not attempt to. It is enough to say that the Respondent, on whom the burden lies, has not established what was put to him.

48. The decision was then taken within two or three days. Ms Roberts's evidence was that time was allowed for Mr Brathwaite to submit something further in writing, but that the opportunity consisted of the passage of time. Nothing was said to him about it. Mr Porras described a further meeting on 17 March, before the dismissal was handed over, at which Mr Brathwaite was asked whether he had anything to add. That meeting is not mentioned in his affidavit.

49. In the circumstances, we are not persuaded that this process gave Mr Brathwaite a fair opportunity to defend himself. Nor is this one of the rare cases, discussed in *Matthias*, in which a reasonable employer could properly take the view that nothing the employee said could make any difference. Two of the matters were new to him. One of them, the alleged damage to plumbing fittings, has never been attributed to him in any document and, on Ms Roberts's evidence, could not be without further enquiry of Mr Figgins.

**Mr Brathwaite's conduct**

50. None of this should be taken as an endorsement of Mr Brathwaite. We did not find him an impressive witness, and he did not exude a particularly interested attitude, either to his work or to the Tribunal. He filed nothing in answer to the Respondent's case despite two directions and his own assurance that he had time enough. He joined the first day of the trial from the street on a mobile telephone. He did not appear at the time fixed on the second day. His evidence was discursive and at times evasive. His allegations that he had been micromanaged, stalked, slandered and sabotaged were never particularised, and we rejected them at the hearing. What they came to, on his own account, was that his managers expected him to work when he was at work and checked that he did. An employer is entitled to manage its staff, and an employee who regards being given a task, or being told to attend a meeting, as persecution has misunderstood the relationship.

51. On the Rodriguez incident his own written account, which he adopted, is that he called a female colleague an "emotional bitch". In evidence he sought to distinguish between saying it to her face, which he denied, and saying it about her to other colleagues after she had walked away, which he admitted. The distinction does him no credit. The words were spoken in the hearing of colleagues, at a place of work frequented by guests, and they are conduct of precisely the kind his final warning had told him not to repeat. He also accepted that he had been told to use a trolley where a cart was unnecessary and that he sat in a golf cart with earbuds in during the working day, and in effect that he regarded both as unremarkable. Had the Respondent dealt with him in accordance with the Code, there would have been a substantial case for him to answer.

52. We add this about the incident of 7 December 2024. We make no finding whether Mr Brathwaite spoke the words attributed to him by Ms George. The Respondent did not investigate them with him at the time, did not put them to him, did not mention them in the final warning it chose to give, and on Mr Porras's evidence did not raise them at the meeting of 11 March. It cannot now rely on them as a reason for dismissal, and we have not allowed it to. But the Respondent's own handbook lists making violent threats as gross misconduct, and that is right. An employee who makes a serious threat of violence against a colleague in the workplace, whether to that colleague's face or to others, has done something that no employer can be expected to tolerate. An employer which investigates

such an allegation and finds it proved is, in our view, entitled to dismiss without any further warning, consistent with its duty to the safety of its other employees. Employers in this Territory should not feel that the Code obliges them to go through a cycle of warnings before acting on conduct of that kind. If it did, the culture of respect and courtesy in the workplace that the great majority of employers, residents and visitors in the Virgin Islands want and expect could not be sustained. What went wrong here is that the Respondent neither investigated the allegation properly nor acted on it, and then sought to bring it back in at the dismissal stage without ever having put it to the employee.

**Conclusion on liability**

53. For the reasons given, the Respondent did not comply with section 81(2) before terminating Mr Brathwaite's employment, did not provide the written statement of the precise reason required by sections 101(3) and 103(3), and did not give him a fair opportunity to defend himself. It follows that the Respondent has not established that it was entitled to dismiss him summarily under either section 101 or section 103(2). Mr Brathwaite was dismissed without the notice required by section 90, contrary to section 81(1). The dismissal was unfair and unlawful within section 86(1), and invalid within rule 45.

**Remedies**

54. Mr Brathwaite's claim form sought reinstatement and compensation. In evidence he said that if the Respondent would not have him back he would accept compensation, and that the problem had not been the company. The Respondent rejects reinstatement. We regard it as wholly unrealistic. The working relationship between Mr Brathwaite and his managers had broken down by March 2025, the Respondent's witnesses were united in their view of him, and nothing we heard from him suggested that he would return in a different frame of mind. We decline to order reinstatement or re-engagement.

55. Section 86(1)(a)(iii) permits an order for compensation in lieu of reinstatement where that remedy is acceptable to both parties, and section 86(1)(b) permits an order that the employer pay such sum as the Tribunal thinks fit. The Respondent's Response states that compensation is not acceptable to it. We read that as a denial of liability rather than as a considered objection to compensation as the form of remedy should liability be established, and the Respondent's submissions address the quantum of compensation on that footing. We make the award under section 86(1)(a)(iii) and, so far as necessary, under section 86(1)(b). In either case we have had regard to the matters in section 86(2) and to rule 45(5).

56. Mr Brathwaite had been employed for nine months. Under section 90(1)(a) his notice entitlement was the interval between his pay days, which was two weeks. There is no evidence of his normal working hours. The claim form leaves them blank, and the final payslip covers a part period. In the absence of evidence we take the standard working week prescribed by section 47(2) of the Code, 40 hours. Two weeks' pay at USD 9.00 an hour is USD 720.

57. As to lost wages and mitigation, Mr Brathwaite gave no figures for his earnings since dismissal. He told us that he had worked at two establishments in Cane Garden Bay, at

dates he could not give, and that at the time of the hearing he was working on a construction site near the Moorings. The Respondent says, and we did not understand him to dispute, that he has been earning more an hour than it paid him. He has therefore mitigated his loss, though he has not shown us for how long he was without work. He adduced no evidence of loss, despite the Tribunal's express invitation at the close of the hearing. We also bear in mind, as rule 45(5) requires, that had the Respondent followed the Code a dismissal with notice was a likely outcome within a short time: he was on a final warning, he substantially admits two of the matters relied on, and his response to the process, on any view of the evidence, was not one of engagement. Doing the best we can on the material before us, we assess the compensation for wages lost on account of the dispute, beyond the notice period, at four weeks' pay, USD 1,440.

58. Vacation pay earned but not taken was paid on 25 March 2025. No further sum is due under section 86(2)(a). The total award is therefore USD 2,160.

**Costs**

59. Neither party applied for costs. The Tribunal may in any event award costs only for exceptional reasons under rule 47, and we see none. There will be no order as to costs.

**Award**

60. The Tribunal awards and orders as follows:

(a) The Complainant was unfairly dismissed by the Respondent on 17 March 2025.

(b) The Respondent shall pay the Complainant the sum of USD 2,160.

(c) The sum awarded does not include interest from the date of the cause of the complaint to the date of this award. Interest runs on the sum awarded from the date of this award until payment in accordance with section 7 of the Judgments Act (Cap. 35).

(d) There is no order as to costs.

(e) This award takes effect from the date on which it is given.

Dated: 30 October 2026

William Hare
Chairman

LABOUR ARBITRATION TRIBUNAL
OCT 30 2026
BRITISH VIRGIN ISLANDS

Miglisa Cupid
Member