COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCivApp. 106 of 2020

B E T W E E N

BRANDLY MORTIMER ROBERTS

Appellant

AND

PERFECT LUCK EMPLOYER (NO. 1) LIMITED

Respondent

BEFORE: **The Honorable Mr. Justice Isaacs, JA**
The Honorable Madam Justice Crane-Scott, JA
The Honorable Mr. Justice Evans, JA

APPEARANCES: **Mr. Obie Ferguson Jr, Counsel for the Appellant**
Mrs. Viola Major, Counsel for Respondent

DATES: **10 March 2021; 26 May 2021**

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Civil appeal – Unfair dismissal – Breach of contract – Pleadings – Suspension without pay – Right of a fair hearing

The appellant was terminated from her employment with the respondent company in January 2017. Following her termination she brought an action against the respondent on the basis of unfair dismissal and breach of contract. The appellant's case is that she was suspended without pay constituting a breach of her contract of employment and that she was unfairly dismissed because she was not given the right of a fair hearing. The judge below dismissed the appellant's claims, and she now appeals.

Held: appeal dismissed; costs to the respondent, to be taxed if not agreed.

Suspension without pay, in the absence of an express agreement, is a breach of contract entitling the employee to sue for damages as a result of lost wages; it does not, however, bring the contract of employment to an end. There is nothing in the appellant's pleadings which asserts that such a breach was fundamental and went to the root of the employment contract.

Notwithstanding submissions being made on unfair dismissal, particulars of the alleged unfair dismissal were not pleaded. In the circumstances, the learned judge cannot be faulted for how he addressed the issue of unfair dismissal which was not properly pleaded.

The appellant's claim, as pleaded, was bound to fail in the absence of particulars in support of the claim. Nevertheless, in fairness to the appellant, the judge considered the submissions of counsel, not properly covered by the pleadings. However, this Court can find no fault with how the learned judge ultimately determined the claim.

Al Medenni vs. Mars UK Limited [2005] EWCA Civ 1041 applied
Carlton Butler v Paradise Island Limited [1997] BHS J No. 140 considered
Hanley and Pease and Partners Ltd. (1915) 1 II. B. 698 mentioned

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J U D G M E N T

Judgment delivered by the Honourable Mr. Justice Evans, JA:

1. By Notice of Appeal filed herein on 30 September 2020 the appellant appeals the Decision of the Honourable Mr. Justice Keith Thompson, delivered on 18 September 2020. By that Decision the learned judge dismissed the appellant's action in which she made a claim for unfair dismissal and breach of contract.

2. At the end of the trial the learned trial judge found inter alia that:

> **"[73] In my opinion the Statement of Claim in the instant matter has not risen to the required standard.**
>
> **[74] In light of the evidence therefore and in all the circumstances, the Plaintiff's Specially Indorsed Writ of Summons is hereby dismissed with costs to the Defendant to be taxed if not agreed."**

3. By Notice of Appeal the appellant is seeking an Order that the said Decision be set aside; the action be restored and be converted to an unfair and wrongful dismissal claim pursuant to the plaintiff's pleadings and for an Order that the respondent pays to the appellant the costs of this appeal and the costs of the proceedings below.

BACKGROUND FACTS

4. In his judgment the learned judge set out the facts as follows:

> **"[3] The Plaintiff commenced employment in or about 2004 by different employers, who at times were responsible for hiring persons to work at the Melia Nassau Beach and its predecessors who occupied the**

same premises. The Defendant herein is but one of those employers. However, there appears to be no issue of the continuation of employment of the Plaintiff.

[4]. At the time of the termination, the Plaintiff's job title was that of Front Desk Manager and she was earning some $620.00 per week. She claims that she was also enrolled in the Defendant's group medical plan.

[5]. The Plaintiff also claims that at the material time she was a member of the Bahamas Hotel Managerial Association, a registered trade union for all supervisory and managerial employees of the Defendant.

[6]. It is further alleged that the terms and conditions of the Plaintiff's contract of employment were embodied in an industrial agreement made between the Defendant and the Bahamas Hotel Managerial Association.

[7]. The Plaintiff says that she supervised approximately fifteen (15) persons and her job duties included among other things to oversee front desk staff, which included making sure that staff properly checked in and checked out guests and to generally oversee the operations and ensure that company policies and procedures were adhered to.

[8]. The genesis of the termination came about as a result of allegations against the Plaintiff in relation to a distressed Air Canada Flight. Of special interest are paragraphs 7 — 15 of the Plaintiff's Witness Statement:

> **'7. The defendant from time to time had requests from airlines who were experiencing flight issues (distressed flights) to accommodate passengers and crew on short notice.**
>
> **8. When I arrived at work on the 8th day of January, 2017 for the 4 p-m to 12 midnight shift my co-worker Lakeshia Symonette informed me that there was a request from Air Canada (who had a distressed flight). She also told me that the numbers had not been confirmed and that Air Canada was liaising with Andrea in the reservation department.**
>
> **9. Kera Rolle obtained the information regarding the request from the other agents who said that they**

will be making some money because Air Canada flight is an upsell to (all inclusive) AI. Later that evening a representative from Air Canada called to confirm the number and I then added reservations in the system to accommodate the request. I assumed that because they indicated that all persons would be receiving meals and no alcohol beverages that it was an all- inclusive (AI).

10. I subsequently notified all relevant departments (restaurants and housekeeping). When I spoke to Kera she asked me if she could get my upsell because she knew I would not be able to receive the upsell. I told her that in order for her to receive it she would have to sign in at my terminal land my desk and she did so. I did not know that this would create a problem because I was not aware that I could only give my upsell to another person if that person was on duty.

11. As a result of the incident the Defendant suspended me without pay for five days in breach of the relevant provisions of the industrial agreement.

12. The defendant terminated my contract of employment without reference to the relevant provisions of the industrial agreement thereby breaching my contract of employment.

13. During my employment with the defendant I was never reprimanded or warned about my job performance. I just became aware of the documents listed below when they were shown to me by my attorney (who had been provided the same by the defendant's attorney).

- **Personal action from (sic) (PAF) dated January 16, 2017**
- **Separation pay calculation dated 25/01/2017**
- **Punch list report**
- **Internal Audit Review dated January 9, 2017**

14. Before termination I worked four public holidays namely Christmas Day, 2016, Boxing Day 2017, New Year's Day 2017 and Majority Rule Day

2017. At termination the defendant paid me in respect of the first three holidays but failed and refused to pay me in respect of the Majority Rule Day.

15. As a result of the defendants unfair/wrongful termination of my contract of employment I have suffered loss and damage as particularized in my Statement of Claim'." [Emphasis added]

5. As is evident, the Statement of Claim filed by the appellant in the court below is of significance having regard to the finding by the learned judge. As such I have set it out in full, below, as follows:

"STATEMENT OF CLAIM

1. The Defendant is a company Incorporated and existing under the Laws of the Commonwealth of the Bahamas and company in business therein as an (sic) Hotelier.

2. At all mentioned times the Plaintiff was employed by the Defendant having commenced her employment sometime on or about the year 2004.

3. The Plaintiff continued to be employed by the Defendant until January 12th 2017 when the Defendant unfairly terminated the Plaintiff's contract of employment her right not to be unfairly terminated as provided by Section 34 of the Employment Act 2001 and failed to give the Plaintiff notice of termination or payment in lieu of notice.

4. The Defendant breached paragraph 4 of the progressive discipline documentation.

5. At termination the Plaintiffs job title was Front Desk Manager and she earned a salary of $620. The Plaintiff was also enrolled in the Defendant's group medical plan.

6. The Plaintiff supervised approximately 15 persons.

7. The Defendant suspended the Plaintiff without pay for 5 days contrary to the Plaintiff's contract of employment.

8. The Plaintiff was a member of the Bahamas Hotel Managerial Association, a registered trade union for all supervisors and managerial employees in the Defendant's employ.

9. At termination the Defendant paid the Plaintiff in respect of 3 Public Holidays worked being Christmas day 2016, Boxing Day, 2017 and New Year's Day 2017 but failed and refused to pay the Plaintiff in respect of Majority Rule day 2017 when the plaintiff worked.

10. The Plaintiffs terms and condition of employment is embodied into an industrial agreement between the Defendant and the Plaintiff's union (B.H.M.A.).

11. As a result of the Defendant's unfair dismissal and breach of the Plaintiff's contract of employment the Plaintiff has suffered loss and damages.

PARTICULARS OF SPECIAL DAMAGES

12. Calculated in accordance with the provisions of the Employment Act 2001 relative to unfair dismissal.

Basic Award - 52 weeks @ $620.00 per week	**$32,240.00**
Compensatory award — 26 weeks @ $620.00 per week	**16,120.00**
Vacation pay — 4 weeks	**2,480.00**
Meals @ $20.00 per day	**5,200.00**
Suspension pay for 5 days	**620.00**
Group medical insurance (to be assessed)	
Total:	**$56,660.00**

13. The Plaintiff further claims interest at 10% on the said sum pursuant to section three (3) of the Civil Procedure (Award) of Interest Act, 1992 on such sum as are found to be due and owing from the breach until final payment.

14. And the Plaintiff claims:

(1) The total sum of $56,660.00

(2) Damages

(3) Cost

(4) Interest

> **(5) Such further or other relief as the Court deems just." [Emphasis added]**

6. In dismissing the appellant's action, the learned judge made these observations:

> **"[72] In the instant matter, the Plaintiff is claiming unfair dismissal and filed a specially indorsed Writ of Summons, July 17th, 2018. The Statement of Claim however in my view fails to meet the threshold as set out in the case of EDEN BUTLER V ISLAND HOTEL COMPANY LIMITED(T/A Atlantis Paradise Island) SCC iv. App & CA[I]S No. 210 of 2017 wherein Mr. Justice Evans JA. (Actg.) said at paragraph 32:**
>
> > **'As is evident from the amended statement of claim the appellant provided no particulars of his claim for unfair dismissal. A plaintiff must complete a statement of claim in which are set out the allegations of facts they intend to prove. In the aggregate those allegations of fact if proven at trial, must suffice to give rise in law to the relief being claimed. The Plaintiff would have to [provide] sufficient detail in the claim so that the defendant knows what the allegations of facts are, otherwise, that person cannot defend. The nature and extent of particulars depend on the nature of the claim. If, for example, trespass is alleged in the claim, the allegation of fact must make the claim out. Similarly, for breach of contract, the claim will set out the material terms of the contract and the details of the alleged breach."**

7. In **Al Medenni vs. Mars UK Limited** [2005] EWCA Civ 1041 Dyson, LJ giving the decision of the English Court of Appeal said:

> **"[21] …It is fundamental to our adversarial system of justice that the parties should clearly identify the issues that arise in the litigation, so that each has the opportunity of responding to the points made by each other. The function of the judge is to adjudicate on those issues alone. The parties may have their own reasons for limiting the issues or presenting them in a certain way. The judge can invite, and even encourage, the parties to recast or modify the issues. But if they refuse to do so, the judge must respect that decision. One consequence of this**

may be that the judge is compelled to reject a claim on the basis on which it is advanced, although he or she is of the opinion that it would have succeeded if it had been advanced on a different basis. Such an outcome may be unattractive, but any other approach leads to uncertainty and potentially real unfairness.

[22] The starting point must always be the pleadings. In Loveridge and Loveridge vs. Healey [2004] EWCA Civ 173, Lord Phillips MR said at paragraph 23:

> **'In McPhilemy vs. Times Newspapers Ltd. [1999] 3 ALL ER 775 Lord Woolf MR observed:**
>
> > **'Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties.'**

It is on the basis of the pleadings that the party's decide what evidence they will need to place before the court and what preparations are necessary before trial. Where one party advances a case that is inconsistent with his pleadings, it often happens that the other party takes no point on this. Where the departure from the pleadings causes no prejudice, or where for some other reason it is obvious that the court, if asked, will give permission to amend the pleading, the other party may be sensible to take no pleading point. Where, however, departure from a pleading will cause prejudice, it is in the interests of justice that the other party should be entitled to insist that this is not permitted unless the pleading is appropriately amended. That then introduces, in its proper context, the issue of whether or not the party in question should be permitted to advance a case which has not hitherto been pleaded."

8. It is to be noted that the specially endorsed Writ on which the appellant relied in the court below had been amended pursuant to Order 20(3) of the Rules of the Supreme Court. As such, the appellant had the opportunity to recast her claim and put her case in proper order. In my view she failed to do so. I should also note that the learned judge did not just dismiss the appellant's claim simply on the basis of the pleadings, but he also considered the merits of the appellant's case based on the submissions of counsel which he was not obligated to do having regard to his finding that the claim failed on the face of the pleadings.

9. Before us Mr. Ferguson raised two main issues. Firstly, that the respondent suspended the appellant without pay which he says was a fundamental breach of her contract of employment; and secondly that the appellant was unfairly dismissed as there was a failure to afford to the appellant the right of a fair hearing to which she was entitled.

SUSPENSION WITHOUT PAY

10. It is to be noted that the only reference to the suspension in the Statement of Claim was in paragraph 7 which stated that:

> **"7. The Defendant suspended the Plaintiff without pay for 5 days contrary to the Plaintiff's contract of employment".**

It is to be further noted that there is nothing in the pleadings which asserts that the alleged breach was a fundamental breach which went to the root of the contract of employment. When pressed by this Court to provide authority for his submission Mr. Ferguson relied on the decision in **Carlton Butler v Paradise Island Limited** [1997] BHS J No. 140 where Adderley Jr., Acting President of the Industrial Tribunal relied on the Ruling of **Hanley and Pease and Partners Ltd**. (1915) 1 II. B. 698 where it was stated that:

> **"20 … in the absence of an express power giving entitlement to do so, the employer acts in breach of contract by suspending the employee from work without pay."**

11. It is to be noted, however, that a close reading of the decision in **Carlton Butler's** case shows that the learned President (Actg.) in that case did not find that it was a fundamental breach. Even more significantly in that case the learned President (Actg.) observed as follows:

> **"19 Before I proceed to go into the merit of the Applicant's claim perhaps I should state the legal position as I understand it with respect to suspension without pay,**
>
> **20 The case that is cited as the Authority on this point is the case of HANLEY AND PEASE AND PARTNERS LTD (1915) 1 1 II. B. 698. This case established that in the absence of an express power giving entitlement to do so, the employer acts in breach of contract by suspending the employee from work without pay.**
>
> **21 Whilst the contract continues, the employee can sue for damages representing lost wages during the period of unpaid suspension…"**

12. In **Carlton Butler's** case the learned President (Actg.), while finding that there was no power to suspend without pay, resolved the matter by ordering that the employer pay to the employee:

> **"39 …ten (10) days salary for the relevant period of suspension at $53.40 per day with interest at six (6%) percent from the date of suspension to payment."**

13. Mr. Ferguson was able to provide us with no authority which supported his submission that suspension without pay, in the absence of express power to do so, constituted a fundamental breach which brought the contract to an end.

14. Mrs. Major submits that there is no such evidence that the appellant's suspension without pay amounted to a repudiation of the contract of employment. She noted that at the end of the appellant's period of suspension, she returned to the workplace for the return from suspension meeting and continued to participate in the disciplinary proceedings. In addition, Mrs. Major submits that the appellant is bound by her pleadings, and she further submits that the appellant did not plead that her suspension without pay amounted to a repudiation of the contract of employment. Counsel concluded that, in any event, it is not for the Court to speculate regarding the details of the alleged breach, and that in the absence of any particulars, the appellant's claim for breach of contract was bound to fail.

15. Finally, on this issue, Mrs. Major contends that as a part of the respondent's Defence, it was pleaded and argued in the court below that certain terms and conditions of the expired Industrial Agreement had been incorporated into the appellant's individual contract of employment. This, she said, was pleaded at paragraph 10 of the Defence, and the evidence in support of this line of argument is contained at paragraphs 15-16 of the Witness Statement of Bergit Godet-McKenzie, filed 1 April 2019, as well as in her viva voce evidence. Counsel concluded that, in essence, the evidence of Bergit Godet-McKenzie was that after the expiry of the last formal Industrial Agreement, certain terms of the Industrial Agreement continued to be followed as the terms of contract for individual employees. Such terms included the disciplinary provisions regarding the breakdown of minor and major breaches and the utilization of suspension without pay as a tool of discipline. However, it was also her evidence that the provisions of the Industrial Agreement which related to the union itself did not continue as part of the individual contracts of employment.

UNFAIR DISMISSAL

16. The appellant's second premise for seeking the orders sought on appeal was, as noted earlier, that she was unfairly dismissed as there was a failure to afford to her the right of a fair hearing to which she was entitled. At paragraphs 3 and 11 of the Statement of Claim the following appears:

> "**3. <u>The Plaintiff continued to be employed by the Defendant until January 12th, 2017 when the Defendant unfairly terminated the Plaintiff's contract of employment her right not to be unfairly terminated as</u>**

> **provided by Section 34 of the Employment Act 2001 and failed to give the Plaintiff notice of termination or payment in lieu of notice.**
>
> **…**
>
> **11. As a result of the Defendant's unfair dismissal and breach of the Plaintiff's contract of employment the Plaintiff has suffered loss and damages". [Emphasis added]**

17. It is obvious that no particulars of the alleged unfair dismissal have been pleaded which is surprising having regard to the tenor of the terms of the Employment Act governing unfair dismissal. It is to be noted also that the Statement of Claim does not specifically lay out a claim for wrongful dismissal. It is therefore interesting that the relief which the appellant now seeks from this Court is an Order that the learned judge's decision be set aside and the action be restored and be converted to **"an unfair and wrongful dismissal claim pursuant to the Plaintiff's pleadings."**

18. In disposing of the unfair dismissal claim the learned judge relied primarily on the lack of proper pleadings. His comments are set out above, but I repeat them here for proper context as follows:

> **"[72] In the instant matter, the Plaintiff is claiming unfair dismissal and filed a specially indorsed Writ of Summons, July 17th, 2018. The Statement of Claim however in my view fails to meet the threshold as set out in the case of *EDEN* BUTLER V ISLAND HOTEL COMPANY LIMITED (T/A Atlantis Paradise Island) SCC iv. App & CA[I] S No. 210 of 2017 wherein Mr. Justice Evans JA. (Actg.) said at paragraph 32:**
>
> > **'As is evident from the amended statement of claim the appellant provided no particulars of his claim for unfair dismissal. A plaintiff must complete a statement of claim in which are set out the allegations of facts they intend to prove. In the aggregate those allegations of fact if proven at trial, must suffice to give rise in law to the relief being claimed. The Plaintiff would have to [provide] sufficient detail in the claim so that the defendant knows what the allegations of facts are, otherwise, that person cannot defend. The nature and extent of particulars depend on the nature of the claim. If, for example, trespass is alleged in the claim, the**

allegation of fact must make the claim out. Similarly, for breach of contract, the claim will set out the material terms of the contract and the details of the alleged breach.'

[73] In my opinion the Statement of Claim in the instant matter has not risen to the required standard.

[74] In light of the evidence therefore and in all of the circumstances, the Plaintiff's Specially Indorsed Writ of Summons is hereby dismissed with costs to the Defendant to be taxed if not agreed."

19. In his submissions before us Mr. Ferguson sought to argue several issues relative to the application of the expired Industrial Agreement between the Bahamas Hotel Managerial Association and the respondent; and the extent to which those terms were incorporated into the employment contract of the appellant. He further sought to persuade us that the disciplinary process was not properly carried out. However, it is difficult to see how we can fault the learned judge as those issues were not properly pleaded and although some submissions were made before him on these points no amendments were made to the pleadings.

WRONGFUL DISMISSAL

20. Again, I would note here that notwithstanding the failure to properly plead a case of unfair dismissal and not having specifically put a case of wrongful dismissal the learned judge took the precaution of dealing with these claims. The learned judge's findings relative to the un-pleaded or not properly pleaded wrongful dismissal claim were as follows:

"**THE INVESTIGATION**

[61] Based on the evidence it would appear that a thorough investigation was carried out in this matter. There was information as to how the upsell was processed. This was not only ascertained from the Plaintiff in the interview but also from the internal investigation by the Defendant. The Plaintiff was only terminated after the return from suspension interview. She had an opportunity to explain her actions and did so, if I may say, honestly. However, it is obvious that the Defendant considered what was done to be a major breach of contract.

[62] The events which led to the Plaintiff's termination resulted in another employee being put in a position to benefit when she was not entitled to. In fact that employee was not even scheduled to be at work when she was

> **allowed by the Plaintiff to access the Defendants computer system to upgrade a transaction referred to as an "upsell". The Plaintiff admitted that she committed a wrong.**
>
> **BREACH OF THE OBLIGATION OF MUTUAL TRUST AND CONFIDENCE**
>
> **…**
>
> **[65]. The evidence shows that the Plaintiff was only terminated after a thorough investigation and after the Plaintiff had an opportunity to address the allegations made against her by the Defendant".**

REVIEW AND ASSESSMENT

21. A review of the Statement of Claim shows that the specific breaches alleged by the appellant were as follows:

> "**3. The Plaintiff continued to be employed by the Defendant until January 12th, 2017 when the Defendant unfairly terminated the Plaintiff's contract of employment her right not to be unfairly terminated as provided by Section 34 of the Employment Act 2001 and failed to give the Plaintiff notice of termination or payment in lieu of notice.**
>
> **4. The Defendant breached paragraph 4 of the progressive discipline documentation.**
>
> **…**
>
> **7. The Defendant suspended the Plaintiff without pay for 5 days contrary to the Plaintiff's contract of employment.**
>
> **…**
>
> **9. At termination the Defendant paid the Plaintiff in respect of 3 Public Holidays worked being Christmas day 2016, Boxing Day, 2017 and New Year's Day 2017 but failed and refused to pay the Plaintiff in respect of Majority Rule day 2017 when the plaintiff worked."**

22. The allegation in paragraph 3 was the overarching position of the appellant's claim in the court below. Paragraph 4 is unclear as there are no adequate pleadings to establish the issue being raised. The purpose of progressive discipline is to give employees the opportunity to improve their performance or change their behavior before severe disciplinary action is taken. In essence its really a way of saying that the decision to terminate was too harsh. Not only did

Mr. Ferguson not provide particulars, but also, he did not develop the point in the court below, nor did he develop the point before us. I have dealt, earlier in this judgment, with the issue touched on in paragraph 7 of the Statement of Claim. The issue raised in paragraph 9 of the Statement of Claim also seemed not to have factored into Mr. Ferguson's submissions either below or before us and is not covered by a ground of appeal.

23. The big point raised by Mr. Ferguson at trial, but which was not pleaded, was that the appellant was not allowed to have Union representation at her disciplinary hearing. However, the learned judge found that not all of the terms and conditions of the Agreement carried over into the individual contracts of employment and that, in particular, clauses or parts of clauses regarding the Union did not carry over into the individual contracts. I should note also that, as submitted by Mrs. Major, no evidence was led that the appellant sought Union assistance and that assistance was blocked by the respondent. There is, therefore, no merit in the appellant's claim for unfair and/or wrongful dismissal.

RESOLUTION

24. I am satisfied that the appellant's case as pleaded in the Statement of Claim was bound to fail as the absence of specific pleadings and particulars of the items pleaded was fatal to the claim. In my view, the learned judge would have been on good footing to dismiss the action on that basis alone. However, in fairness to the appellant the learned judge did, in fact, consider the submissions made by counsel which were not properly covered by pleadings. I can find no fault with his determinations on those issues.

25. I have also given consideration as to whether the penalty imposed on the appellant was too harsh. In this regard it should be noted that in her written statement, recorded by security officer Ian McQueen and referred to in the Witness Statement of Bergit Godet-McKenzie filed on 1 April 2019, the appellant stated that:

> **"12. …Ms. Rolle came in to do something for her niece, and while she was there, Ms. Rolle told her that she wanted the upsell, and logged into her profile so that [the appellant] could enter the upsell on it. [The appellant] stated that after the Air Canada guests checked in, she posted six (6) upsells using Ms. Rolle's profile, so that Ms. Rolle could receive the commission. [The appellant] also stated, "As a manager, I do not get commissions on the upsells and I knew if I gave it to Kera she would give me a portion of the commission." At the end of her statement, she sought to change her statement slightly by stating, "I want to clarify that Kera would not directly give me a portion of the commission she receives but that she would return the favour with a friendly gesture, like a small cash token at a later date".**

26. The appellant, under cross-examination at trial, claimed that the contents of the written statement were not her words, but were the security officer's interpretation of her words and that she did not agree to the contents of the statement. However, the learned judge was not obligated to accept her changes to her evidence as truth. As a manager the appellant's employer would have reposed a certain level of trust in her to carry out her duties with skill and integrity. It defies logic that the appellant's assertion that she was not aware that she could only give her upsell to another person if that person was on duty could be considered as credible. As found by the learned judge her conduct raised issues of both dishonesty and a loss of trust. Both of which are essential components of an employee especially a managerial employee retaining employment.

27. I accept Mrs. Major's submission that the appellant failed to properly plead her claim that her suspension without pay was a breach that went to the root of her contract. In any event, the evidence is that she did not accept it as a breach and reported for work. Finally, the evidence from the respondent which seemed to have been accepted by the trial judge was that the clause of the Industrial Agreement which allowed such a practice continued in operation after the expiration of the Agreement.

28. In these circumstances, I would dismiss the appeal with costs to the respondent, such costs to be taxed if not agreed.

The Honourable Mr. Justice Evans, JA

29. I agree.

The Honourable Mr. Justice Isaacs, JA

30. I agree also.

The Honourable Madam Justice Crane-Scott, JA