**COMMONWEALTH OF THE BAHAMAS**
**IN THE COURT OF APPEAL**
**IndTribApp No. 117 of 2024**

**BETWEEN**

**Island Hotel Company Limited**

**Appellant**

**And**

**Bradley Babbs**

**Respondent**

**BEFORE:** **The Honourable Mr. Justice Evans, President**
**The Honourable Madam Justice Charles, JA**
**The Honourable Mr. Justice Turner, JA**

**APPEARANCES:** **Mr. Ferron Bethell KC, with Mrs. Lakeisha Hanna, Counsel for the Appellant**
**Mr. Sidney Collie, Counsel for the Respondent**

**DATES:** **7 November 2024; 31 January 2025**

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**REASONS FOR DECISION**

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**Delivered by The Honourable Mr. Justice Evans, P:**

1. By Notice of Appeal dated the 2nd July, 2024, the Appellant lodged an appeal from the Ruling of the Learned Vice President of the Bahamas Industrial Tribunal, Mrs. Ingrid Cooper-Brooks, wherein she-

   *(1) Held that the Respondent had been Unfairly Dismissed and awarded the Respondent the sum of Thirty-one Thousand Two Hundred Dollars ($31,200.00), with interest at Ten percent (10%) per annum, from the date of the award until the date of payment;*

   *(2.) That the Appellant's conduct in terminating the Respondent and failing to restore his Two (2) days' pay, while on suspension, was procedurally unfair and awarded compensation to the Respondent, under Section 46 (2) of the Employment Act for the unpaid Two (2) days' of suspension.*

2. The Appeal came on for hearing on the 7th November, 2024 and after hearing submissions from the parties we allowed the appeal in its entirety and promised to provide written reasons at a later date. This we do now.

**FACTUAL BACKGROUND**

3. The Respondent was employed by the Appellant since 7th December, 1992 for almost thirty (30) years, serving at the material time as a Restaurant Manager, until his termination on 14% February, 2022. He worked a standard eight hour shift at a weekly salary of Six Hundred and Fifty Dollars ($650.00).

4. The Respondent's claim arose out of his dismissal from the Appellant on 14th day of February, A.D., 2022, for sexual harassment. On 10th February, 2022 a female employee (hereafter referred to as "the Complainant"), made a formal complaint that she received a call from the Respondent, offering to recommend her transfer to the restaurant he managed, on condition that she would video chat with him to see her "sexy body". She claimed that she found the Respondent's comments inappropriate. Consequently, on 12th February, 2022, the Respondent was suspended for two (2) days without pay, pending investigation.

5. Upon the Respondent's return from suspension on 14th February, 2022, the Appellant conducted a hearing regarding the complaint of gross misconduct; namely, for sexual harassment of the Complainant, and for offering, in his managerial capacity, to ensure the Complainant's transfer to another restaurant. At the conclusion of the hearing the Respondent was summarily dismissed for Gross Misconduct, without pay and without notice. The

Appellant considered this conduct a fundamental breach of company policy which undermined the trust and confidence inherent in the Respondent's contract of employment.

6. The next day, on the 15th day of February, A.D., 2022, the Respondent had a meeting with the Vice President of Labour Relations, Mr. Kenneth Lightbourne, and the Vice President of Food and Beverage, Mr. Charlie Colebrooke. He requested that his dismissal be reviewed and/or overturned as there was no sexual intent in his message and communication with the female employee. Mr. Colebrooke and Mr. Lightbourne listened to the Respondent's explanation and, thereafter, Mr. Colebrooke affirmed the Appellant's position and advised the Respondent that his communication with the female employee amounted to sexual harassment. The Respondent, thereafter, initiated the Appellant's domestic appeal process and requested that his dismissal be reviewed as the allegations levied against him were false.

**The Internal Appeal**

7. The Review panel was an independent body who was not involved in the suspension or termination of the Respondent. The Review Board panel consisted of a Senior Executive, Mr. Robbie Leming, a Senior Human Resources representative, Mrs. Cathy-Ann Cromarty-Johnson and Ms. Charmaine Hepburn, an employee of equal status as the Respondent.

8. On the 2nd day of March, A.D. 2023, the Respondent's appeal was heard and another inquiry into the facts of the matter was conducted. The female employee stated her case and the Respondent was once again allowed to defend the allegations, in the presence of the employee. Subsequent to hearing all of the facts, the Review panel agreed to uphold the decision to summarily dismiss the Respondent. The Respondent then made his claim for Wrongful Dismissal and Unfair Dismissal.

**The Tribunal Hearing**

9. The Trade Dispute was referred to the Industrial Tribunal by Certificate of Referral issued by the Minister of Labour on 3rd May, 2022. By Originating Application dated the 20th June 2022 and filed on the 22nd June 2022, the Respondent commenced these proceedings wherein he sought compensation for Wrongful Dismissal and Unfair Dismissal. The Appellant filed a defence on the 3rd August 2022 in which it asserted that the Respondent was summarily dismissed for Gross Misconduct.

10. The evidence before the Tribunal was obtained from the Respondent who testified on his own behalf and the Appellant called one witness, Mr. Horatio McKenzie, Executive Director of Food & Beverage ("F&B") Division of Human Resources ("HR") at the Appellant's Company.

11. After hearing the evidence of the witnesses and submissions made on behalf of the parties the Learned Vice President delivered a written decision on the 24th May 2024. The Learned Vice President identified the issues for her determination as follows:-

> ***"(i) Whether the Respondent (Appellant in this Court) honestly and reasonably believed in the Applicant's (Respondent in this Court) misconduct at the time of his dismissal;***

***(ii) Whether the Respondent had conducted a fair and reasonable investigation, and***

***(iii) Whether on the substantial merits of the case, the Respondent's dismissal of the Applicant was unfair."***

**THE VICE PRESIDENT'S FINDINGS**.

**Wrongful Dismissal**

12. The Learned Vice President's finding on the issue of Wrongful Dismissal is best gleaned at paragraphs 30-33 of her written decision. She stated as follows-

> **"30. The Respondent submitted that it conducted a fair, thorough, and reasonable investigation because upon the complaint being made against the Applicant, statements were obtained from both him and the Complainant, and Security investigated him.**
>
> **31. Having considered all of the evidence, the Tribunal accepts the Applicant's submissions above that the phone conversations tendered into evidence lacked critical corroborative details such as names, dates, numbers, or any definitive link to the Applicant or the receiver. It could be said in the circumstances that the Respondent had conducted a fair and reasonable investigation. The Tribunal therefore finds on the facts that the Respondent has not substantiated claim against the Applicant on the ground of sexual harassment.**
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> **32. The Tribunal next considered the Respondent's claim that the Applicant's offer to ensure the Complainant's transfer to another restaurant, as well as his discussion with her about the other manager. The Respondent submitted that the Applicant's conduct in his capacity as a manager and a part of the interview team who could influence the panel's decision, undermined the trust and confidence inherent in the terms and conditions of his employment contract, amounting to gross misconduct. Notably, the Applicant admitted to the above contact, albeit with explanations, as indicated above. After consideration of the evidence, the Tribunal accepts the Respondent's submissions in this regard.**
>
> **33. Tribunal accordingly finds on the facts and law that the Respondent had conducted a fair and reasonable investigation. Further, the Respondent had reasonable grounds on which it**

**honestly and reasonably believed on a balance of probability that the Applicant had committed gross misconduct at the time of the Applicant's dismissal, per Section 33 of the Act. The Tribunal finds moreover, that the Applicant has not established his claim for Wrongful Dismissal."**

**Unfair Dismissal**

13. The Vice President's findings on the issue of Unfair Dismissal are found at paragraphs 36-39 of her decision as follows:-

> **"36. The Applicant contended that his dismissal was unfair on the ground of procedural unfairness, citing the following reasons: he was refused a copy of the complainant's report; punished twice for the same allegation- suspension without pay and dismissal in breach of the disciplinary procedures; and prejudiced by having his hearing presided over by an Executive Director with whom he had a previous contentious relationship.**
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> **37. The Respondent argued that the Applicant was given the opportunity to be heard and to respond to the allegations, while being allowed to face and confront his accuser on more than one occasion, fulfilling the duty of procedural fairness, per *Bahamasair Holdings Limited v. Omar Ferguson* SCCivApp No. 16 of.2016. Refusal of Complainant's Statement.**
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> **38. Mr. McKenzie testified that he read, received, and reviewed the complaint from Security and all statements were read to the Applicant, The Applicant gave evidence that when he requested a copy of the Complainant's statement, however, he was advised that it was not the company's policy to provide the same. The Applicant argued that it was procedurally unfair because he had no way of verifying if what was being read in his hearing was what was reported by the Complainant to the Respondent.**
>
> **39. The Tribunal accepts the Applicant's submission that it was unfair for the Respondent to withhold information to which he was entitled and ought to have been provided as a normal part of discovery and procedural fairness, particularly since he requested it. The Tribunal is of the view that the Applicant's request for the document was a reasonable one and such vital information could have assisted him to better defend against the allegations and it was not sufficient to have it just read in his hearing. The Tribunal therefore finds the Respondent's conduct in this regard unfair."**

**Suspension without pay/Breach of Disciplinary procedures**

14. The Learned Vice President also found that the Appellant breached the procedure by its handling of the suspension of the Respondent. Her findings are set out at paragraphs 40-42 as follows:

> **"40. The Applicant submitted that he was suspended for two days without pay for allegedly sexually harassing the Complainant and also dismissed on the same allegation, amounting to double jeopardy, making it procedurally unfair. He argued that he was not compensated for his two days' suspension although he was terminated. Further, he was dismissed on allegations of sexual harassment where there was no corroborating evidence, and the burden was put on him to prove that he did not commit the act.**
>
> **41. The tribunal notes that the Policy Manual provides (on page 87) "Subject: Disciplinary Procedures", under the topic "Major Breaches ..." for suspension without pay pending Investigation. Alternatively, should the investigation confirm the major breach the following should occur:**
>
> ***"a further suspension ... without pay for a reasonable period; OR (ii) termination of the colleague."***
>
> **42. Clearly, the above provision is intended to provide for either further suspension or termination as an alternative, as a penalty for a major breach, and not for both suspension and termination. The Tribunal accepts the Applicant's submission in this regard and finds that the Respondent's conduct in terminating the Applicant, and also failing to restore his two days' pay while on suspension, was procedurally unfair. The Applicant ought, therefore, to be compensated per Section 46(2) of the Act."**

15. The Learned Vice President then concluded her findings relative to procedural unfairness (procedural hearing) as follows:-

> **"43. The Applicant claimed that he was prejudiced by the fact that an Executive Director, with whom he had a previous contentious relationship, presided over his hearing. The Tribunal notes, however, that no evidence was produced in this regard and therefore finds that this claim is unsubstantiated.**
>
> **44. Having considered the case in the round, the Tribunal finds on the substantial merits of the case, that the Respondent's dismissal of the Applicant was unfair. Consequently, the Applicant has made out his case for Unfair Dismissal.**

**DECISION**

**45. In the premises, the Tribunal orders that Island Hotel Company Limited pay to the Applicant the sum of Thirty-one Thousand, Two Hundred Dollars ($31,200.00) for Unfair Dismissal as calculated below. Interest is awarded on the sum at the rate of ten percent (10%) per annum per Section 59(2) of the Industrial Relations Act from the date of this award until paid.**

**Unfair Dismissal**

**One month's basic pay (or part thereof on a pro rata basis) for each year up to 48 weeks) (48 x $650.00)**

**Total: $31.200.00."**

## THE APPEAL

16. The Appellant proceeded before us by way of an amended Notice of Appeal filed on the 29th October, 2024. The grounds of appeal set out in the said notice were as follows:-

"**1. The Learned Vice President erred in law and fact when she determined that there was a lack of procedural fairness by the Appellant's alleged refusal to provide the Respondent with a physical copy of the Complainant's Statement. The Learned Vice President, in her aforementioned conclusion, failed to adequately consider the following factual and substantial merits of the case:-**

***i. The Complainant's entire statement was read to the Respondent;***

***ii. The Respondent saw a physical copy of the statement;***

***iii. The Respondent was given the opportunity to face and confront the Complainant/accuser with regard to the contents of the Statement during the return from suspension meeting;***

***iv. At no time was it alleged, by the Respondent, that the contents of the Statement, which were read to him, differed in any aspect (material or otherwise) from the allegations which were made by the Complainant to the Appellant.***

***v. The Complainant confirmed the accuracy of her written Statement when she repeated what transpired between her and the Respondent, on the return from suspension meeting; and***

***vi. The Respondent was given a further opportunity to face and confront the Complainant with regard to the contents of the Statement during the Appellant's domestic appeal process.***

**In all the circumstances, the Learned Vice President ought to have found, having regard to the substantial merits of the matter, that there was no procedural unfairness and/or any violation of the Respondent's rights or rules of natural justice.**

**2. The Learned Vice President also erred in law and fact when she determined that there was a lack of procedural fairness by the Appellant's alleged refusal to provide the Respondent with a physical copy of the Complainant's Statement, when there was no evidence given by the Respondent to this effect and this was not the Respondent's pleaded case. The Respondent's pleaded case was that he did not have a fair Appeal Board hearing because he had a contentious relationship with Mr. Bowleg, who presided over the appeal and if another Manager presided over or took part in the hearing, the Respondent would have had more confidence in the outcome. The Appellant's alleged refusal to provide the Respondent with a physical copy of the Complainant's Statement was a mere allegation made by the Respondent's representative in his Closing Submissions, which is not evidence. The Learned Vice President therefore erred in law when she considered this unsubstantiated claim. Moreover, as the Learned Vice President found that no evidence was produced in support of the Respondent's pleaded case and that this claim was unsubstantiated, the Learned Vice President ought to have dismissed the Respondent's claim in its entirety.**

**3. The Learned Vice President erred in law and fact when she found that it was procedurally unfair for the Appellant to dismiss the Respondent after suspending him for two (2) days and also for the Appellant's failure to restore the Respondent's pay as a result of his two (2) day suspension. The Learned Vice President's conclusion is contradicted by the documentary evidence, namely, the Policy Manual, which unequivocally allowed the Appellant to suspend the Respondent, in the first instance, for up to Four (4) days, without pay and if the breach was confirmed, to thereafter further suspend OR dismiss the Respondent. The Learned Vice President failed to adequately consider that this was a two-stage process which permitted both suspension and dismissal. Consequently, there was no "double jeopardy" as alleged, or at all.**

> **4. Any other ground that the Court may deem just and equitable."** [My emphasis]

**THE APPELLANT'S SUBMISSIONS**

17. Mr. Ferron Bethell, KC submitted that the Respondent in his Originating Application failed to plead any particulars of Wrongful and/or Unfair Dismissal and that it was only from his witness statement the nature of his complaint could be seen. Leading Counsel referred to paragraphs 20-21of that witness statement where the Respondent asserted as follows:-

> **"20. I honestly do not believe that I had a fair hearing because Mr. Bowleg, who presided over the appeal, he and I had a contentious relationship during my tenure working for the Company, and I very (sic) believe that he was not fair or impartial in dealing with my case.**
>
> **21. Had another manager presided over or took part in the hearing 1 would have had more confidence in the outcome regardless of what it was although I may not agree with the decision."**

18. Mr. Bethell contended that this was the case which the Appellant was required to meet and that this claim was rejected by the Learned Vice President who found that the Respondent had failed to prove the allegation. In support of this submission he referred us to paragraph 43 of the Vice President's judgment where she stated as follows:-

> "**43. The Applicant claimed that he was prejudiced by the fact that an Executive Director, with whom he had a previous contentious relationship, presided over his hearing. The Tribunal notes, however, that no evidence was produced in this regard and therefore finds that this claim is unsubstantiated."**

19. Mr. Bethell submitted that having regard to the Vice President's finding on the Respondent's pleaded claim her subsequent finding at paragraph 44 was clearly erroneous. At paragraph 44 the Vice President found as follows:-

> "**44. Having considered the case in the round, the Tribunal finds on the substantial merits of the case, that the Respondent's dismissal of the Applicant was unfair. Consequently, the Applicant has made out his case for Unfair Dismissal."**

20. Leading Counsel submitted that the Learned Vice President unreasonably predicated her finding that the Respondent was unfairly dismissed on the allegation that the Respondent did not receive a physical copy of the employee's statement when he asked for it. This was an error as the aforementioned allegation was not pleaded and was merely contained in the Respondent's Closing Submissions. In support of this submission Counsel cited the case of

**Bahamas Ferries Limited v Charlene Rahming** SCCiv App No.122 of 2018 which reinforced the principle that a litigant is bound by his pleaded case.

21. Notwithstanding his position that the Vice President ought not to have considered and rely on the claim which was not pleaded, Mr. Bethell addressed the substance of the allegation. Leading Counsel submitted that the omission to provide the Respondent with a Physical copy of the complainant's statement did not amount to Unfair Dismissal having regard to the substantial merits of the case. He then cited the factors which he said were supported by the evidence and were uncontroverted. These were as follows:-

> "**i. The Complainant's entire statement was read to the Respondent;**
>
> **ii. The Respondent saw a physical copy of the statement;**
>
> **iii. The Respondent was given the opportunity to face and confront the Complainant/accuser with regard to the contents of the Statement during the return from suspension meeting;**
>
> **iv. At no time was it alleged, by the Respondent, that the contents of the Statement, which were read to him, differed in any aspect (material or otherwise) from the allegations which were made by the Complainant to the Appellant.**
>
> **v. The Complainant confirmed the accuracy of her written Statement when she repeated what transpired between her and the Respondent, on the return from suspension meeting; and**
>
> **vi. The Respondent was given a further opportunity to face and confront the Complainant with regard to the contents of the Statement during the Appellant's domestic appeal process."**

22. Mr. Bethell submitted that based on the aforesaid factors it could not be said that the Appellant's omission in providing a physical copy of the Complainant's statement was procedurally wrong, when in fact the Respondent had all the information required to defend the allegations made against him.

23. The other issue of significance in the appeal related to the Vice President's findings that the Appellant's conduct in terminating the Respondent, and also failing to restore his two days' pay while on suspension, was procedurally unfair. She then ordered that the Respondent ought, therefore, to be compensated per Section 46(2) of the Act.

24. Mr. Bethell submitted that the aforesaid findings were based on a misinterpretation of the Appellant's Policy Manual in that the Learned Vice President failed to appreciate that the alternative of a further suspension or termination only arises subsequent to the conclusion of the investigation, during which time the Appellant was allowed to suspend without pay. In these circumstances he concluded there was no double jeopardy as alleged.

**THE RESPONDENT'S SUBMISSIONS**

25. Mr. Sidney Collie submitted that the substantial merits of the case related to three issues which I gleaned to be as follows:-

> (i) Whether the Appellant honestly and reasonably believed that the Respondent was guilty of the misconduct alleged.
>
> (ii) Whether the Appellant conducted a fair and reasonable investigation; and
>
> (iii) Whether the Appellant's dismissal of the Respondent was unfair as alleged and found by the Learned Vice President.

26. Mr. Collie sought to persuade us that the Appellant fell short on all three issues and that the Learned Vice President was right to make the findings and orders which she did. Firstly he submitted that the misconduct alleged even if it was true could not amount to gross misconduct. Further, that the letter of hire did not list gross misconduct among the offences for which he could be terminated.

27. Secondly, Counsel contended that the Appellant did not conduct a fair and reasonable investigation. He contended that The Respondent was never given or even shown a copy of Ms. Cartwright's statement against him; that it is not enough for Mr. McKenzie to read from the complainant's statement with the excuse that it was not the Company's policy to provide the documents to the accused. If this is done, as it was in this case, this Respondent correctly argued that he had no way of verifying if what was being read in his hearing was what was actually reported by the complainant.

28. Thirdly, Mr. Collie submitted that –

> **"the Appellant/Respondent's dismissal of the Respondent/ was unfair. In the first place the Respondent was suspended for two (2) days without pay. Then he was terminated after the alleged investigation and finally dismissed following his appeal on the spot. It is submitted that in the circumstances of this case when all is considered, the Learned Vice President had no choice but to accept the Respondent's Submission in paragraph 42 of her Decision. For as she cited in paragraph 41 of her Decision under the Companies Manual at page 87 thereof. "Disciplinary Procedures", under the topic of major breaches... For suspension without pay pending investigation. Alternatively, should the investigation confirm the major breach, the following should occur. A further suspension without pay for a reasonable period or termination. Under the terms of the manual, there is no mandate to employ both punishment."**

**DISCUSSION, ANALYSIS AND CONCLUSIONS**

29. It is important to note that the Respondent's claims as set out in his Originating Application were for Wrongful Dismissal and Unfair Dismissal. It is trite that these represent two separate claims. The relevant considerations for a claim for Wrongful Dismissal is provided for by Section 33 of the Employment Act which -states as follows:-

> **"33. An employer shall prove for the purposes of any proceedings before the Tribunal that he honestly and reasonably believed on a balance of probability that the employee had committed the misconduct in question at the time of the dismissal and that he had conducted a reasonable investigation of such misconduct except where such an investigation was otherwise unwarranted**."

30. The relevant considerations for a claim of Unfair Dismissal are set out in paragraphs 35 and 36 of the aforesaid Act. Section 36 deals with specific considerations relative to trade Unions which are not relevant to this matter. Section 35 is however very relevant and provides as follows:-

> **"35. Subject to sections 36 to 40, for the purposes of this Part, the question whether the dismissal of the employee was fair or unfair shall be determined in accordance with the substantial merits of the case."**

31. The Learned Vice President recognized that she had before her two separate claims and dealt with them in that fashion. After considering the matter as a whole she determined that-

> "**33. Tribunal accordingly finds on the facts and law that the Respondent had conducted a fair and reasonable investigation. Further, the Respondent had reasonable grounds on which it honestly and reasonably believed on a balance of probability that the Applicant had committed gross misconduct at the time of the Applicant's dismissal, per Section 33 of the Act. The Tribunal finds moreover, that the Applicant has not established his claim for Wrongful Dismissal".**

32. Whatever view either party may have of that finding it is sufficient and important to note that the Respondent has not filed a Respondent's Notice seeking to challenge that finding. It follows that, that finding disposes of the first two issues which she identified as relevant for her consideration. The Respondent is therefore not able to assert that the Appellant did not have an honest belief in his guilt nor to allege that they did not conduct a reasonable investigation. The only issue remaining was whether on a consideration of the substantial merits of the case his termination was unfair.

33. It is clear that the Learned Vice President based her finding of unfair dismissal on her view that the Appellant was wrong to not provide the Respondent with a copy of the Complainant's

Statement at or before the hearing. The first issue to be determined however, is whether that issue was properly before her. Mr. Bethell took objection that this was an issue which was not pleaded and was first mentioned during closing submissions. This position was not disputed by Mr. Collie and so I accept that those are the facts.

34. In the normal course of ordinary litigation pleadings are of the utmost importance as it is on the basis of pleadings that the parties decide what evidence they will need to place before the court and what preparations are necessary before trial. [See **Bahamas Ferries Limited v Charlene Rahming** supra at para. 40]. I am also however cognizant of Section 57 (1) and (2) of the Industrial Relations Act which provides that-

> **"57. (1) In the hearing and determination of any matter before it, the Tribunal-**
>
> > **(a) shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings;**
> >
> > **(b) shall not be bound by any written law or rule of law relating to the admissibility of evidence in proceedings before courts;**
> >
> > **(c) shall make such enquiries of persons appearing before it and witnesses as it considers appropriate; and**
> >
> > **(d) shall otherwise conduct the hearing in such manner as it considers most appropriate for the clarification of the issues before it and generally to the just handling of the proceedings.** [My Emphasis]
>
> **(2) Subject to subsection (1), at the hearing of a matter before the Tribunal, a party to the proceedings shall be entitled to give evidence, to call witnesses, to question any witness and to address the Tribunal, and any such party may appear in person or may be represented by a counsel and attorney or by any officer of a registered trade union (including a shop steward)."**

35. In my view the provisions of section 57 provides flexibility as to how evidence is received. However, what it does not do is remove the need for evidence to be provided and as we have too often had to remind persons, submissions are not evidence. Submissions are expected to refer to evidence which has been provided. . It should also be noted that the Industrial Relations Tribunal Rules provide for Originating Applications to state the reasons for the applications and details of the complaint. There is a requirement for a defence to be filed and parties can apply for further and better particulars. In the final analysis the powers of flexibility which have been vested in the Tribunal relative to the proceedings are all geared towards the just handling of the proceedings.

36. In my view it was wrong for the Learned Vice President to rely on the allegation raised that the Respondent had been deprived of access to the Complainant's statement. If she considered

that issue material to her determination she ought to have given the parties the opportunity to lead evidence on that issue. The harm in not taking that course of action is seen in that before us Mr. Bethel submission was that the statement was shown to the Respondent during the hearing and also read to him. Mr. Collie for his part submitted that '*the Respondent was never given or even shown a copy of Ms. Cartwright's statement'*. There is no possible way for us to resolve that issue as all we have is submissions from both Counsel and no supporting evidence. At the very least, a party ought to know what case he is expected to meet and defend. Submissions do not rise to the level of pleadings even in Tribunal matters.

37. If I am wrong in my view that the Learned Vice President was wrong to give consideration to the allegation that a copy of the Complainant's statement was not provided to the Respondent the question remains whether it rendered the termination unfair. The concept of Unfair Dismissal has at its root the failure to adhere to the principles of Natural Justice.

38. In keeping with the adherence to Natural Justice, where an employment contract requires a particular procedure to be followed, in arriving at the conclusion that termination should take place that procedure ought to be followed. There was no evidence lead that the policy Manual specified that a copy of a complainant's statement was required to be given to a person under investigation. In these circumstances, the question is whether fairness required that the statement be provided.

39. It is accepted that an accused person ought to know (i) what offence he is accused of having committed. (ii) the identity of the person making the Complaint; (iii) an opportunity to face/confront his accuser; and the opportunity to be heard in his defence before a decision is made. These principles are relevant when an employer is considering whether an employee should be terminated for cause.

40. It is also accepted that when a claim for Unfair Dismissal is being considered the Tribunal must consider the substantial merits of the case and do justice between the parties. It follows that even where it is determined that a breach has occurred the ultimate decision will rest with the justice of the case as some breaches may not be considered material in all of the circumstances of the case.

41. In the present case Mr. Bethell contended that the omission to provide the Respondent with a copy of the Complainant was not fatal. He submitted that the Respondent was shown the statement and had it read to him. The complainant herself was produced and provided her version of what transpired between them. The Respondent therefore knew who his accuser was, what her allegation was and he was given the opportunity to confront her and to give his defence to that allegation.

42. In considering this issue I have given consideration to the fact that the only real difference between the Complainant's version and that of the Respondent is that he denies asking her to show him her sexy body if she wanted to get the transfer on her job. He admitted asking her to turn on the video but denied requesting to '*see her sexy body'*. Management believed the Complainant's version of the conversation and not that of the Respondent. The learned Vice President accepted that Management conducted a reasonable investigation and honestly

believed that the Respondent had committed the offence. In these circumstances, I can see no reason why the omission to have a copy of the statement would render the Dismissal unfair.

**THE SUSPENSION/DOUBLE JEOPARDY CLAIM**

43. It is clear that the Learned Vice President's finding on the suspension issue was erroneous and was based on a misunderstanding and thus misapplication of the procedure for investigation and discipline set out in the Appellant's Policy Manual at page 87 thereof.

**DISPOSITION**

44. For all of the foregoing reasons, I find that the Vice President erred in law when she determined that the Respondent has made out his claim for Unfair Dismissal. I would therefore allow the appeal in its entirety.

45. Since this matter originated from the Industrial Tribunal, I make no order as to costs.

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**The Honourable Mr. Justice Evans, P**

46. I agree

_____

**The Honourable Madam Justice Charles, JA**

47. I also agree.

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**The Honourable Mr. Justice Turner, JA**