[2025] UKPC 38
Privy Council Appeal No 0039 of 2024

JUDGMENT

Antigua and Barbuda Transport Board (Respondent) *v* Anderson Carty (Appellant) (Antigua and Barbuda)

From the Court of Appeal of the Eastern Caribbean Supreme Court (Antigua and Barbuda)

before

Lord Lloyd-Jones
Lord Hamblen
Lord Leggatt
Lady Rose
Lady Simler

JUDGMENT GIVEN ON
13 August 2025

Heard on 13 May 2025

Appellant
David Dorsett
(Instructed by Teacher Stern LLP)

Respondent
Hugh Marshall
(Instructed by Marshall & Co (Antigua))

LORD LLOYD-JONES:

1. This appeal concerns an award of exemplary damages made by the Industrial Court of Antigua and Barbuda (The Hon Charlesworth O D Brown, The Hon Hayden Thomas and The Hon Megan Samuel-Fields) in proceedings relating to unfair dismissal.

Background facts

2. Mr Anderson Carty ("the appellant") had been employed by the Antigua and Barbuda Transport Board ("the respondent") since April 2006. During that time he held several managerial positions with the respondent including Human Resources and Training Officer and Operations Manager. At the time of his dismissal on 15 October 2014 he was engaged as Operations Manager under a three-year contract which was due to expire on 17 April 2015. While the appellant was on approved vacation leave, the respondent issued on 29 September and 3 October 2014 two memoranda to staff informing them that as a result of financial circumstances, in particular as employment costs were outweighing revenues, there would be some restructuring. The appellant did not receive these memoranda. On 3 October 2014, when the appellant was still on approved vacation leave, a newspaper article was published in Antigua and Barbuda stating that the respondent had decided to dismiss several managers including the appellant. There was no evidence before the Industrial Court that the publication was at the behest of the respondent. On his return to work on 15 October 2014 the appellant received a letter dismissing him with immediate effect as a result of retrenchment.

3. At the time of his dismissal the appellant was earning a monthly base salary of $7,300 plus allowances totalling $2,500.

4. The appellant filed a reference in the Industrial Court claiming that he had been unfairly dismissed on the purported ground of redundancy arising from retrenchment by the respondent. He claimed that his dismissal was politically motivated and raised issues as to whether a genuine redundancy situation existed at the material time and whether the respondent acted reasonably in terms of its selection process, consultation, notice and manner of termination.

5. On 28 August 2020 the Industrial Court held that this was not a genuine case of redundancy and that the appellant had been unfairly dismissed. It awarded compensation under several heads of loss. Most relevantly to this appeal, it awarded exemplary damages in the sum of $25,000. It also awarded costs in the sum of $2,500.

6. The respondent appealed to the Court of Appeal where it did not challenge the conclusions of the Industrial Court on redundancy, unfair dismissal or entitlement to

compensation. However, it did dispute the Industrial Court's calculation of those awards. In particular, the respondent challenged the award of exemplary damages and the award of costs. The appellant filed a counter-appeal against the Industrial Court's failure to make an award under the head of loss of protection.

7. The Court of Appeal (Thom JA, Ward JA and Farara JA (Ag)) allowed the respondent's appeal in part and allowed the counter-appeal. In particular, it set aside the award of exemplary damages and the award of costs.

8. On 6 November 2024 the Judicial Committee of the Privy Council granted the appellant permission to appeal against the order of the Court of Appeal.

9. The following issues arise on this appeal:

(1) Did the Court of Appeal err in setting aside the Industrial Court's award and assessment of exemplary damages?

(2) Did the Court of Appeal err in setting aside the Industrial Court's award of costs?

Statutory provisions

10. The Industrial Court Act provides in relevant part:

> "10. (1) The Court may in relation to any matter before it–
>
> (a) make an order or award (including a provisional or interim order or award) relating to any or all of the matters in dispute or give a direction in pursuance of the hearing or determination;
>
> (b) without prejudice to and in addition to its powers under section 7(2), award compensation on complaints brought and proved before it by a party for whose benefit the order or award was made regarding any breach or non-observance of an order or award or any term thereof (other than an order or award for the payment of damages or compensation).

(2) The Court shall make no order as to costs in any dispute before it, unless for exceptional reasons the Court considers it proper to order otherwise, and the Court of Appeal shall in disposing of any appeal brought to it from the Court make no order as to costs, unless for exceptional reasons the Court of Appeal considers it proper to order otherwise.

(3) Notwithstanding anything in this Act or in any other rule of law to the contrary, the Court in the exercise of its powers shall–

> (a) make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;
>
> (b) act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations and, in particular, the Antigua and Barbuda Labour Code.

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

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

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

(7) Where, in any proceedings for the non-observance of an order or award or the interpretation or application of a collective agreement, it appears to the Court that an employee of the employer has not been paid an amount to which he is entitled under such an order or award or such an agreement the Court, in addition to any other order, may order the employer to pay the employee the amount to which he is entitled and any such amount shall be deemed to be damages and be recoverable in the manner provided by section 13.

…

17. (1) Subject to this Act, any party to a matter before the Court shall be entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no others–

> (a) that the Court had no jurisdiction in the matter, but so however, that it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the matter before the making of the order or award;
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> (b) that the Court has exceeded its jurisdiction in the matter;
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> (c) that the order or award has been obtained by fraud;
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> (d) that any finding or decision of the Court in any matter is erroneous in point of law; or

> (e) that some other specific illegality, not hereinbefore mentioned, and substantially affecting the merits of the matter, has been committed in the course of the proceedings.
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> …
>
> (4) Subject to subsection (1), the hearing and determination of any proceedings before the Court, and an order or award or any finding or decision of the Court in any matter (including an order or award)–
>
> (a) shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever; and
>
> (b) shall not be subject to prohibition, mandamus or injunction in any court on any account whatever."

The decision of the Industrial Court

11. In its judgment the Industrial Court referred to its obligation under section 10(3) to make such awards as it considers fair and just. With regard to exemplary damages it concluded as follows (at para 48(f)):

> "There are several grounds for an award of exemplary damages to Mr. Carty, these include the following:
>
> i. He was virtually dismissed while he was on approved vacation leave.
>
> ii. Notice of his imminent dismissal was repeatedly published in the media before he received any official notice of the same.
>
> iii. Generally, there was a blatant disregard for the principles and practices of good industrial relations.

> iv. Mr. Carty was prevented from collecting his personal items from the Employer's premises and had to resort to making a complaint to the Police Commissioner.
>
> v. Although he had a contractual arrangement to repay the government advance (loan) by monthly instalments of $343.33 per month, the Employer unreasonably deducted the full outstanding balance of $16,823.37 from his final payment without consulting with him.
>
> vi. Overall, we are of the opinion that the treatment meted out to Mr. Carty was harsh and oppressive.
>
> For the foregoing reasons we award exemplary damages in the sum of $25,000.00 to Mr. Carty."

12. With regard to costs, the Industrial Court concluded:

> "In our opinion, the exceptional reasons disclosed above will justify an award of costs in the sum of $2,500.00 to [Mr Carty]."

The decision of the Court of Appeal

13. Delivering the sole judgment in the Court of Appeal Thom JA stated (at paras 49, 50):

> "Exemplary damages are awarded or imposed to punish a defendant for their wrongdoing and to deter similar behaviour in the future. These damages are penal and not compensatory. Given their nature, exemplary damages may only be awarded in a limited number of circumstances. These circumstances have been detailed in the House of Lords decision, *Rookes v Barnard*. In *Rookes*, Lord Devlin stated that exemplary damages may be awarded: (1) where there has been oppressive, arbitrary or unconstitutional action by a defendant exercising governmental functions, but–pertinently–not where there has been oppressive behaviour by private corporations or individuals or trade unions; (2) where the defendant's conduct

> was calculated by him to make a profit for himself; and (3) where exemplary damages are expressly authorised by statute.
>
> In this instant case the first category, 'where there has been oppressive, arbitrary or unconstitutional action by a defendant exercising governmental functions,' is the most apt."

After setting out para 48(f) of the judgment of the Industrial Court (set out above at para 11) she continued (at para 52):

> "While I do agree that the conduct of the Transport Board was harsh and deserving of criticism and that there was no reasonable basis for dismissing Mr. Carty as a genuine redundancy did not exist, it was not in my view sufficient to enable this Court to declare that it was 'oppressive and arbitrary or unconstitutional'. The matters outlined in the decision of the President of the Industrial Court taken individually or collectively cannot be categorised as oppressive and arbitrary or unconstitutional."

Referring to the speech of Lord Hailsham of St Marylebone LC in *Broome v Cassell & Co Ltd* [1972] AC 1027, Thom JA stated that in her view bullying, malice, outrageous or contumelious behaviour should not attract an award of exemplary damages, not because these actions did not deserve to be punished but because they could be adequately satisfied with compensatory awards like that of manner of dismissal. There was no basis for the award of $25,000 as exemplary damages and the award was therefore set aside. (The Court of Appeal did make an award of $2,500 in respect of manner of dismissal and an award of $58,400 in respect of loss of protection, whereas the Industrial Court had made no order under those heads. The Court of Appeal also set aside the Industrial Court's awards in respect of additional pay in lieu of notice ($7,300) and Thrift Fund entitlement ($2,370.39) and reduced the award of loss of emoluments (from $52,525 to $42,225).)

14. On costs, Thom JA referred to section 10(2) of the Industrial Court Act and concluded that the appellant had not been able to establish that exceptional reasons existed for the court to depart from the general rule. The order for costs was therefore set aside.

Exemplary damages

15. On behalf of the appellant, Mr David Dorsett makes two principal submissions.

(1) First, he submits that the Court of Appeal erred in law in its interpretation of the Industrial Court Act, in particular in requiring compliance with further and more onerous conditions than those imposed by the statute before an award of exemplary damages could be made.

(2) Secondly, he submits that, in any event, the Court of Appeal had no jurisdiction to hear the appeal.

Statutory power

16. In setting out the powers of the Industrial Court, section 10 of the Industrial Court Act emphasises a special feature of its jurisdiction. The Industrial Court, in the exercise of its powers, is required to make such orders and awards as it considers fair and just, having regard to the interests of the person immediately concerned and the community as a whole (section 10(3)(a)), and to act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations and, in particular, the Labour Code (section 10(3)(b)). Similarly, in the case of an order for compensation or damages under section 10(4), the Industrial Court in making an assessment is not bound to follow any rule of law for the assessment of compensation or damages and may make an assessment that is in its opinion fair and appropriate (section 10(5)). It is, no doubt, a reflection of the experience of the Industrial Court in the field of employment relations that the legislation gives full scope to its view as to what is a fair and appropriate outcome as opposed to the strict application of legal rules. This is also evident in the restrictions on appeals and other challenges against decisions of the Industrial Court (sections 10(6), 17(1), (3), (4) considered further below). The obvious legislative intent is that the Industrial Court should exercise its jurisdiction on the basis of its perception of fairness: ex aequo et bono.

17. On its face section 10 confers a power on the Industrial Court to award exemplary damages. Section 10(4) makes specific provision for three remedial orders in addition to the Industrial Court's jurisdiction and powers under Part I of the Industrial Court Act. The Industrial Court may in any dispute concerning the dismissal of an employee:

(a) order the re-employment or re-instatement (in his former or a similar position) of any employee, subject to such conditions as the Industrial Court thinks fit to impose; or

(b) order the payment of compensation or damages whether or not in lieu of such re-employment or re-instatement; or

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

The power to make each of these orders, including an award of exemplary damages under the third head, is subject to the condition set out in section 10(5), namely that in the opinion of the Industrial Court "an employee has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice".

18. The Industrial Court held that this condition was satisfied (para 48(f), summarised at para 11 above). (The Board also notes in this regard that the Court of Appeal itself expressed the view (at para 52) that the conduct of the respondent was harsh and deserving of criticism and that there was no reasonable basis for dismissing the appellant.) No attempt was made to challenge this finding on appeal to the Court of Appeal or by respondent's notice on the appeal to the Board. It is therefore not open to the respondent to argue, as Mr Hugh Marshall sought to do at the hearing before us, that there was no evidential basis for the findings of the Industrial Court.

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

20. On behalf of the respondent, Mr Marshall submitted that in order to justify an award of exemplary damages, the conduct complained of must be conduct which it was appropriate to punish or deter. He submitted therefore that the Court of Appeal was correct in insisting (at para 52) that, before there could be an award of exemplary damages, the conduct of the respondent must be shown to be oppressive, arbitrary or unconstitutional. In an alternative formulation of his argument Mr Marshall submitted that it follows from the punitive as opposed to compensatory character of exemplary damages that, before an award of exemplary damages could be made under the Industrial Court Act, the Industrial Court must be satisfied not merely of the statutory conditions identified above, but also that the harsh and oppressive conduct was calculated to be injurious or of an outrageous character.

21. In support of these submissions, the respondent relied on *Rookes v Barnard* [1964] AC 1129. That decision, and most notably, the speech of Lord Devlin, redefined the scope of the common law power to award exemplary damages. It cannot, however, assist the

respondent in the present appeal where there is express statutory authority for the award of exemplary damages. Moreover, it does not in any event support the gloss which the Court of Appeal imposed on the statutory language of the Industrial Court Act. The effect of *Rookes v Barnard* was that exemplary damages were thereafter recoverable only in three situations. The first was that of "oppressive, arbitrary or unconstitutional action by the servants of the government" (at p 1226). This was, no doubt, the source of the formulation favoured by the Court of Appeal in the present case. However, in *Rookes v Barnard* Lord Devlin expressly declined to extend this category to oppressive action by private corporations or individuals. Although the respondent in the present appeal is a statutory corporation, it was common ground before us that the present case is not concerned with an exercise of governmental power. The second category of case identified by Lord Devlin is where "the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff" (at p 1226). This has no application to the present appeal. Thirdly, Lord Devlin added (at p 1227):

> "To these two categories which are established as part of the common law there must of course be added any category in which exemplary damages are expressly authorised by statute".

It follows that, in any event, it is not possible to limit the scope of statutory powers to award exemplary damages by reference to the scope of the common law power to award exemplary damages.

22. The Board concludes therefore that there is no need or justification for a gloss on the words of the statute. The legislature has taken the view that the statutory test ("harsh and oppressive or not in accordance with the principles of good industrial relations practice") justifies an award of exemplary damages. The Industrial Court held that that test was satisfied on the facts of the present case and that conclusion has not been controverted. In these circumstances the Court of Appeal was wrong to set aside the award of exemplary damages.

23. Finally, in this regard, the Board notes the following observation by the Court of Appeal (at para 48) in relation to the claim for exemplary damages by the appellant who appeared in person on the hearing of that appeal.

> "Mr. Carty initially rejected Mr. Marshall's argument that the Industrial Court erred in law in awarding him exemplary damages. However, in his oral submissions, he partially agreed that the Industrial Court ought to have awarded him compensation under the head [of] manner of dismissal, given the public and prejudicial manner in which his dismissal was

> effected, causing him to be less attractive to prospective employers in Antigua and Barbuda."

An award for manner of dismissal is intended to compensate for loss of employment prospects, as the Court of Appeal recognised, and is distinct from exemplary damages. The appellant is not to be taken to have abandoned or waived his claim to exemplary damages.

24. The award of exemplary damages should be reinstated.

Jurisdiction of the Court of Appeal on appeal from the Industrial Court

25. On behalf of the appellant, Mr Dorsett raises a further, more fundamental, objection to the decision of the Court of Appeal. He submits that the Court of Appeal lacked jurisdiction to hear the appeal.

26. Appeals from the Industrial Court to the Court of Appeal are governed by section 17(1) of the Industrial Court Act. Section 17(1) provides that any party shall be entitled as of right to appeal to the Court of Appeal on any of the stated grounds but on no others. The stated grounds are lack of jurisdiction (section 17(1)(a)), excess of jurisdiction (section 17(1)(b)), fraud (section 17(1)(c)), error of law (section 17(1)(d)) and some other specific illegality in the course of the proceedings (section 17(1)(e)). Section 17(1) must be read in conjunction with section 17(4) which provides, in relevant part, that, subject to section 17(1), an order or award or any finding or decision of the Industrial Court shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever. Section 17(4) confines an appeal from the Industrial Court to the Court of Appeal to the grounds set out in section 17(1) and precludes any collateral challenge to the decision of the Industrial Court by judicial review or otherwise (*Sundry Workers v Antigua Hotel and Tourist Association* [1993] 1 WLR 1250, 1253).

27. Furthermore, section 17(1) must be read subject to the even more specific provision in section 10(6) which relates to the statutory power to award exemplary damages and expressly refers to the statutory criteria for such an award. It provides that the opinion of the Industrial Court as to whether an employee has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice and any order for compensation or damages including the assessment thereof made pursuant to sub-section (5) shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever.

28. In *Blackburn v LIAT (1974) Ltd* [2020] UKPC 9, Sir Rupert Jackson, delivering the advice of the Board, noted that section 10(6) accords special status to the decision of

the Industrial Court. He drew attention to the judgment of Sir Isaac Hyatali CJ in *Flavourite Foods Ltd v Oilfield Workers' Trade Union* (unreported) 26 January 1983 which explains the rationale of section 10(6). In Sir Isaac's view section 10(6) occupies a special place in the Industrial Court Act and had been deliberately inserted there to put it beyond doubt that appeals will not be allowed against the Industrial Court's opinion in what is manifestly a highly specialised area of industrial relations, namely whether or not a worker has been dismissed in circumstances that offend against the principles of good industrial relations practice or are otherwise harsh and oppressive. The opinion of the Industrial Court on this specialised issue is intended to be final and not subject to review by the Court of Appeal. (See also the judgment of de la Bastide CJ in *Caroni (1975) Ltd v Association of Technical, Administrative & Supervisory Staff* (2002) 67 WIR 223, 226C-G.)

29. In *Sundry Workers* Lord Bridge of Harwich, delivering the advice of the Board, observed at p 1259:

> "It appears to their Lordships that when the Industrial Court has found that employees have been unfairly dismissed the necessary implication of such a finding is that the dismissals were in circumstances that were 'not in accordance with the principles of good industrial relations practice'. From this it must follow that no appeal lies against the awards of compensation made by the Industrial Court in this case."

30. It is most unfortunate that section 10(6) was not drawn to the attention of the Court of Appeal and is not referred to at any point in the judgment of Thom JA.

31. On appeal to the Judicial Committee of the Privy Council Mr Marshall submitted that an appeal lay to the Court of Appeal under section 17(1)(d) because the award of exemplary damages was erroneous in point of law. That submission was incorrect for the reasons set out at para 21 above. Furthermore, the effect of section 10(6) was that the Court of Appeal had no jurisdiction to set aside the decision of the Industrial Court that the condition for the award of exemplary damages under section 10(4) and (5) was satisfied.

32. At para 48 of her judgment in the Court of Appeal, set out at para 11 above, Thom JA suggested that in the course of his submissions in person the appellant may have shifted from his rejection of Mr Marshall's argument that the Industrial Court erred in awarding exemplary damages. This, however, could not have constituted a waiver on the part of the appellant who had no power to confer a jurisdiction the Court of Appeal did not enjoy.

Costs

33. The effect of section 10(2) of the Industrial Court Act is that the Industrial Court may not make an order as to costs in any dispute before it, unless for exceptional reasons it considers it proper to order otherwise. In the present case, however, there were exceptional reasons justifying an award of costs, namely its findings as to the manner of dismissal. The award of costs was a proper exercise of discretion by the Industrial Court. There was, therefore, no valid ground on which the Court of Appeal could set aside the costs order.

34. More fundamentally, there was no jurisdiction in the Court of Appeal to hear the appeal in relation to costs. Sections 17(1) and (4) permit an appeal from the Industrial Court to the Court of Appeal but only on the grounds stated in section 17(1). None of those grounds applied here. In particular, there was no arguable error in point of law so far as the costs order was concerned. Furthermore, section 10(2) does not confer jurisdiction on the Court of Appeal to hear an appeal on a point of costs from the Industrial Court.

35. The order for costs should be reinstated.

Conclusion

36. For these reasons the Board will humbly advise His Majesty that the appeal should be allowed.