

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Civil Appeal No. 11 of 2016

BETWEEN:

CHEFETTE RESTAURANTS LIMITED Appellant

AND

ORLANDO HARRIS Respondent

Before: The Hon. Sandra P. Mason, The Hon. Andrew D. Burgess and The Hon. Kaye C. Goodridge, Justices of Appeal

2017: April 5, August 23

Ms. Esther Obiora Arthur for the Appellant

Mr. Edmund Hinkson for the Respondent

DECISION

BURGESS JA:

INTRODUCTION

[1] This is an appeal against the decision of the Employment Rights Tribunal (the ERT or the tribunal), established under **section 6** of the **Employment Rights Act, 2012** (the **ERA** or **the Act**), that the respondent, Mr. Orlando Harris (Mr. Harris), was unfairly dismissed from his employment by his employer,

the appellant, Chefette Restaurants Limited (Chefette). The appeal is also against the decision of the ERT that Mr. Harris was entitled to an award of compensation in the sum of \$106, 630.01 to be paid by Chefette.

[2] Of particular note is the fact that this appeal is the first under the **ERA** to this Court on the right of an employee not to be unfairly dismissed and that of an employer to dismiss an employee fairly. In deciding this appeal, therefore, it behoves this Court to be aware of the importance of interpreting the relevant provisions of **the Act** to give guidance on how the ERT should approach those provisions; guidance on how an employer should act so as to be regarded as being reasonable and fair; and, guidance on how the disciplinary procedures established by **the Act** should be operated.

[3] With this mission firmly in mind, we begin by outlining the factual background to this case.

FACTUAL BACKGROUND

Mr. Harris' Employment History

[4] Chefette is a major fast food chain in Barbados. On 10 January 2000, Mr. Harris entered the employment of that company as an assistant manager at their branch located at National Heroes Square, Bridgetown. Mr. Harris remained in the employ of Chefette until he was dismissed on 13 January

2014. At the time of his dismissal, he earned a gross monthly salary of \$4,200.00.

[5] At the commencement of his recruitment by Chefette, Mr. Harris participated in a six months mandatory orientation for managers, where he was trained in the daily operations of the restaurant. As part of that training, Mr. Harris was taught the following cash handling procedures:

- i. Cashiers are allowed to cash a cheque for employees on the same or similar category but are not allowed to cash the Respondent's cheque made out to a manager, without permission from the Manager on Duty (the "Manager").
- ii. If the Manager wants to cash a cheque issued by the Respondent, he would pass the cheque to the cashier during the balancing of the intake.
- iii. When the Manager is reconciling the Takings at the end of the shift he would balance all monies e.g. cheques, credit or debit slips, foreign currency and ensure that all information matches with the Micros cash register report for the shift.
- iv. The Manager must verify that the information on the front and back of the cheque is correct.
- v. It is the Manager's responsibility to write up the Manager's Daily Report with the denominations of the sales.
- vi. The Manager then writes up a Deposit Slip for the bank which must correspond with the Takings documented on the Daily Report.
- vii. The Manager's signature must be appended to the Daily Report as well as the Deposit Slip for the bank.
- viii. The day's Takings from both day and night shifts are sent off with the Security Company by the night shift manager."

- [6] On 27 February 2012, Mr. Harris received further training in respect of the updated policies and procedures relating to cash handling. That training was conducted at Chefette’s Black Rock branch by Ms. Sherry-Ann Greenidge, Human Resources Officer for Chefette.
- [7] On the occasion of that training, Mr. Harris was presented with a copy of a “Cash Handling Manual” issued by Chefette (the Manual). On that occasion also, Mr. Harris was supplied with a Memorandum of Agreement between Chefette and the Barbados Workers Union entitled “Conditions and Terms of Employment 2010-2013” which contained a “Code of Discipline” (the Code). The Code set out the employee’s punishment for first, second and third time offences. It reads in its relevant parts as follows:

	Offence	1 st Offence	2 nd Offence	3 rd Offence
10	Negligence, incompetence or carelessness in performance of duty. Loafing on the job or wandering off without permission.	Warning	Suspension	Dismissal
11	Negligence or carelessness which caused or might have caused injury to a customer or employee or negligence or carelessness involving a product served by the restaurant or to the provision, equipment or property of the restaurant; or to the business of the restaurant.	Dismissal		

- [8] During the course of his 14 years of employment with Chefette, Mr. Harris received several awards. These include awards for perfect attendance, assistant manager of the year, a Group Managers award, recommendations from Ms. Farrell, a former Manager and from Mr. Haloute, the owner of Chefette, and a cash award.
- [9] On the negative side, Mr. Harris received a warning letter as a result of a complaint made against him by a customer. Of this, Mr. Harris stated that no action was taken against him because it was determined that he was not at fault. In addition, Mr. Harris, along with all other managers, received a warning while he was working at the Broad Street Branch, Bridgetown because the storeroom door was left unlocked.

Mr. Harris' Dismissal

- [10] Mr. Harris' employment with Chefette came to an end when he was handed a letter dated 27 January 2014, informing him that his employment was terminated effective 13 January 2014. The reason given in the letter for his dismissal was his "failing to follow the Company's cash handling procedures" in relation to an incident which is described in detail in the succeeding paragraph of this judgment. Enclosed in the letter were a termination of services certificate, a certificate of employment record, a cheque for two

months' payment in lieu of notice, and a payment for any leave entitlement due.

[11] The incident which led to Mr. Harris' dismissal concerned a cheque dated 9 September 2013 issued to Ms. Donnalyn Ward, a manager at Chefette, (Ms. Ward), in the sum of \$40.00. That sum was payment for an "audit", that is, for Ms. Ward visiting a Chefette restaurant branch to verify that Chefette's operation standards and procedures at that branch were being adhered to.

[12] Sometime around mid-September that same year, Ms. Ward called Ms. Junette Knight, Operations Assistant at Chefette, (Ms. Knight), and subsequently sent an email to her, Ms. Knight, indicating that she, Ms. Ward, had not received any payment for the audit which she had done on 2 August 2013. Ms. Ward requested that she, Ms. Knight, confirm whether a cheque was sent out for her, Ms. Ward, for that period.

[13] On 10 October 2013, Ms. Knight sent out an email to all Managers, Assistant Managers and to "Chef Foods" management enquiring about a missing envelope. The email read as follows:

"Attention: All Branches & Chef Foods,

We are asking everyone, including Chef Foods to assist us in looking for a missing envelope addressed to Donnalyn Ward.

This envelope would have been sent after September 9th 20113 (*sic*).

Kindly do a check and reply to this e-mail of your findings by tomorrow 12:00 noon.

Your cooperation in this matter is greatly appreciated.

Regards,

Junette.”

- [14] The enquiry proved unsuccessful. Consequently, on 4 October 2013, Ms. Knight reported the matter of the missing cheque to the Accounts Department (Accounts) at Chefette.
- [15] On 1 November 2013, an employee of Chefette in Accounts informed Ms. Knight that the Bank had indicated that the cheque was cashed and cleared on 16 September 2013. Ms. Knight was advised that she had to wait until the cheque was returned by the bank and for the bank to indicate whether the transaction was done through the ATM or over the counter.
- [16] Subsequently, on 28 November 2013, Accounts informed Ms. Knight that the cheque was in its possession. The cheque was handed to Ms. Knight, who verified that it was signed “O Harris”, and that it had a FirstCaribbean Bank stamp dated 16 September 2013, a stamp from the Heroes Square Restaurant marked “HEROES SQUARE CASH”, and a stamp marked “FOR DEPOSIT ONLY Chefette Restaurants Ltd. A/C #2300419”.

- [17] Ms. Knight thereafter reported her findings relating to the cheque to Ms. Marva Niles, the Executive Operations Manager of Chefette.
- [18] Upon further investigation, it was discovered that the cheque was deposited on Saturday, 14 September 2013, and cleared by the bank on Monday, 16 September 2013, the next working day. The only manager on duty on Saturday, 14 September 2013 was Mr. Harris. Two cashiers were also on duty. One of these was Ms. Maria Wallace (Ms. Wallace) who was on duty from 4.00 p.m. to 11.00 p.m.
- [19] It is worth noting here that each cashier at Chefette is required to fill out a “Daily Employee Detail”, which details the transactions conducted during the cashier’s shift, particularly, the cash intake, VISA cards, foreign exchange and cheques received. No provision is made in the “Daily Employee Detail” for recording the names of the persons to whom the cheques are made payable, nor for the amounts for each cheque.
- [20] Included in the transactions recorded in Ms. Wallace’s “Daily Employee Detail” during her shift were two cheques which totalled \$191.96. One cheque was in the sum of \$151.96, made out to Noel Lewis, another employee of Chefette. The other was in the sum of \$40.00 made out to Ms. Ward. At the end of her shift, Ms. Wallace handed her “Daily Employee Detail”

to Mr. Harris, the manager on duty, who made no complaints about her “Daily Employee Detail”.

- [21] Mr. Harris recorded in his manager’s “Daily Restaurant Report” that he received two cheques totalling \$191.96. It is to be noted that, as in the cashier’s “Daily Employee Detail”, there is no provision in the manager’s “Daily Restaurant Report” for recording the names to whom the cheques are made payable, nor the amounts for the cheques. It is also to be noted that the takings from the two cashiers matched and balanced with Mr. Harris’ “Daily Restaurant Report” 20 cents short, because one cashier balanced one dollar short, and the other, balanced 80 cents over.

Mr. Harris’ meetings with Chefette

- [22] Mr. Harris was invited to meetings with the senior managers of Chefette on three occasions. We consider it advantageous to recount these meetings in some detail.

The first meeting

- [23] On 9 December 2013, at about 5.00 p.m., Mr. Harris received a telephone call from Mrs. Valerie Mayers, the Operations Manager at Chefette (Mrs. Mayers), inviting him to attend a meeting on 12 December 2013 at Chefette’s Corporate Office at Clapham Court, Wildey, St. Michael (the first meeting).

- [24] On 12 December 2013, Mr. Harris attended the meeting. Present there were three senior managers, Mrs. Mayers, Ms. Niles and Mr. Kenneth Harvey, Industrial Relations Manager at Chefette (Mr. Harvey). Ms. Niles called the meeting to order and informed Mr. Harris that Mr. Harvey was in attendance as a witness to the proceeding and that Ms. Mayers was in attendance because she was the Operations Manager in charge of Chefette Heroes Square branch when the incident in question occurred while he was on duty at that restaurant.
- [25] Mr. Harvey then proceeded to question Mr. Harris as to whether he, Mr. Harris, recalled the email that was sent to all managers and assistant managers regarding a missing envelope addressed to Ms. Ward. Mr. Harris replied that he did recall such an email. Mr. Harvey then asked Mr. Harris whether he, Mr. Harris, had responded to the email. To this query, Mr. Harris replied that he had not responded to the email because he had not seen any such envelope. Mr. Harris volunteered that he was under the impression that the envelope might have contained a cheque for Ms. Ward which was directed to the wrong restaurant as happens from time to time with other employees. Thereupon, Mr. Harvey asked Mr. Harris why he, Mr. Harris, thought that it was a cheque that was missing when the email only stated that an envelope was missing. To this, Mr. Harris responded that it was his experience that envelopes addressed to managers usually contained money or cheques.

- [26] At this point, Ms. Niles took a cheque out of an envelope, handed it to Mr. Harris, and asked him to explain it. Mr. Harris took the cheque and noted that the cheque was made payable to Ms. Donnaly Ward for the sum of \$40.00 and the signature at the back of the cheque was "O. Harris". Mr. Harris immediately informed Ms. Niles that he had never seen the cheque, that the "O. Harris" written on the back of the cheque was not written by him and that he could not therefore explain how the signature got there.
- [27] Upon this, Mr. Harvey told Mr. Harris that the signature on the cheque was his, Mr. Harris', signature or that the signature looked just like that of Mr. Harris. Mr. Harris emphatically denied that it was his signature even if it looked like his. Mr. Harris was then asked to show a sample of his signature, and he provided three samples thereof on a blank sheet of paper. These were compared to the signature at the back of the cheque.
- [28] Mr. Harris asked to see the cheque again and tried to point out what he saw as "the definite differences between the two signatures". To this, Miss Niles told Mr. Harris that "a person's signature is different and sometimes one has to sign their name a few times before it is accepted at the bank". Mr. Harris continued to encourage Mr. Harvey and Ms. Niles to examine the signatures more closely "and see the formation of some of the letters". However, Mr. Harvey told Mr. Harris that he, Mr. Harvey, was not a handwriting expert

and therefore he could not verify the signature. Mr. Harris replied that none of them were and suggested that the cheque be examined by a handwriting expert and turned over to the Royal Barbados Police Force due to the seriousness of the incident.

[29] At this juncture, Mr. Harris was asked to leave the room while Mr. Harvey, Ms. Niles and Mrs. Mayers held a discussion amongst themselves. About ten minutes later, Mr. Harris was recalled to the room.

[30] On resumption, the meeting continued along the same lines as before, with Mr. Harvey and Ms. Niles asking Mr. Harris for an explanation as to why “O. Harris” was written on the cheque and Ms. Niles insisting that the cheque was submitted in Mr. Harris’ bag at the Heroes Square branch on 14 September 2013.

[31] Mr. Harris then asked if the cheque was changed at the Heroes Square branch, who was the cashier that cashed the cheque and where was the Chefette stamp and the initials of the cashier who changed the cheque since it was a mandatory requirement that all Chefette’s cashiers stamp and put their initials on the back of any cheque changed by the cashier. Ms. Niles replied that the investigation had not been done to that stage. We feel bound to interject here, however, that Mr. Harvey in his witness statement stated that prior to the meeting with Mr. Harris on 12 December 2013, he questioned Ms. Maria

Wallace, who was the cashier on duty at the Heroes Square Branch on 14 September 2013, about the missing cheque, but she was unable to recall cashing any such cheque.

[32] Mr. Harris again called for a handwriting expert to examine the signatures and that the police be informed. He also asked that his “Daily Restaurant Report” be examined, as that Report documents in detail all monies, VISA slips and cheques received from cashiers at the end of the shift.

[33] In response, Mr. Harvey insisted that the onus was on Mr. Harris to prove that it was not his, Mr. Harris’, signature and on him, Mr. Harris, to explain how his, Mr. Harris’ signature got on the cheque. Upon this, an altercation broke out between Mr. Harvey and Mr. Harris in which Mr. Harris stated that he, Mr. Harris, “was feeling very much accused of stealing \$40.00”.

[34] Again, Mr. Harris was asked to leave the room. Before exiting the room, Mr. Harris stated that it was a vital part of his duties to handle large amounts of cash and stock daily, and that not once, in the fourteen years he had been working as an Assistant Manager, had he submitted his cashier’s balancing or the manager’s cash float short.

[35] On his return to the room, Ms. Niles informed Mr. Harris that the meeting was “getting nowhere”. The meeting culminated after Ms. Niles informed

Mr. Harris that he was suspended with pay until further investigation and that he would be contacted upon completion of their investigation.

[36] After the meeting, Mr. Harris wrote a letter, dated 12 December 2013, addressed to Mr. Harvey, which read as follows:

“I have worked at Chefette Restaurant Limited for 14 years approximately. At present I am an Assistant Manager. On the 12th December 2013 about 1:30 p.m. I attended a meeting with yourself, Ms. Marva Niles and Ms. Valerie Mayers. I was shown a cheque payable to Ms. Donnalyne Ward with the name O Harris at the back. I was asked to explain it and I indicated that it was not my signature and I am unaware how it got there.

The meeting lasted for approximately 1 hour and 15 minutes after which Ms. Marva Niles told me that I was suspended. I categorically deny that the O Harris written on the back of the cheque was written by me, and I am therefore requesting that the matter be referred to the Chief Labour Officer so that a handwriting expert can be requested to determine if it is my handwriting or alternatively that the matter be reported to the Royal Barbados Police Force. I would expect a reply from you within seven days.”

[37] There was no reply to this letter.

The second meeting

[38] By letter dated 23 December 2013, Mr. Harvey informed Mr. Harris of a meeting to be held on 30 December 2013 (the second meeting). The letter read as follows:

“Dear Mr. Harris

You are invited to attend a meeting which will be held on Monday, 30th December, 2013 at Chefette Wildey Office in Clapham Court, St. Michael, scheduled for 11:00 a.m.

The purpose of the meeting is to discuss the investigation of the unauthorized cashing of a co-worker’s cheque which occurred on the 14th September, 2013.

You may have a friend attending the meeting. Kindly submit his/her name by the 27th December, 2013.

Yours faithfully
Chefette Restaurants Limited

Kenneth Harvey
Industrial Relations Manager”

[39] On 30 December 2013, Mr. Harris attended the second meeting with his then attorney-at-law, Mr. Keith Simmons (Mr. Simmons). Chefette claimed to treat this second meeting as the “first disciplinary meeting” with Mr. Harris. However, Mr. Simmons contended that Chefette had failed to follow the guidelines of Part B of the *Fourth Schedule* of the **ERA** relating to standard disciplinary procedures, in that disciplinary action was taken against Mr. Harris prior to the meeting, and that Mr. Harris was not informed of his right to have a representative nor a friend present at the meeting. As a consequence, Mr. Simmons argued, Mr. Harris, had no case to answer.

[40] Chefette expressed disagreement with Mr. Simmon’s contention. Nonetheless, Chefette agreed to reschedule the second meeting.

The third meeting

[41] By letter dated 30 December 2013, sent via registered mail to Mr. Harris, Mr. Harris was invited to a meeting to be held on 13 January 2014 (the third meeting). The letter was almost identical to that dated 23 December 2013, save for the new dates and the insertion of the words “representative/shop steward” in the last paragraph. The letter read as follows:

“Dear Mr. Harris

You are invited to attend a meeting which will be held on Monday, 13th January, 2014, at Chefette Wildey Office in Clapham Court, St. Michael, scheduled for 11:00 a.m.

The purpose of the meeting is to discuss the investigation of the unauthorized cashing of a co-worker’s cheque which occurred on the 14th September, 2013.

You may have a friend/representative/shop steward attending the meeting. Kindly submit the person’s name by the 9th January, 2014.

Yours faithfully
Chefette Restaurants Limited

Kenneth Harvey
Industrial Relations Manager”

[42] Neither Mr. Harris, nor his representative or attorney at law, attended the third meeting slated for 13 January 2014.

[43] On 15 January 2014, Chefette received a letter, dated 10 January 2014, from Mr. Simmons acknowledging Mr. Harris’ invitation to the third meeting

and restating that any meeting at that juncture was in violation of the **ERA**. Mr. Simmons indicated that he had nonetheless advised his client that he should take all reasonable steps to attend the third meeting, as a matter of courtesy.

[44] By a letter dated 27 January 2014 addressed to Mr. Harris, Chefette informed Mr. Harris that his employment was terminated effective 13 January 2014 on the ground of “failure to follow the cash handling procedures”.

MR. HARRIS’ CLAIM BEFORE THE ERT

Mr. Harris’ Claim and Chefette’s Response

[45] On 30 June 2014, Mr. Harris filed a claim before the ERT on the ground of unfair dismissal.

[46] A response to Mr. Harris’ claim dated 9 July 2014 was filed by Mr. Harvey on behalf of Chefette. In that response, the reason given for the termination of Mr. Harris’ employment was simply that Mr. Harris failed to follow the cash handling procedures.

[47] Mr. Harvey filed a subsequent response dated 30 July 2014 which read as follows:

“As the Assistant Manager at the Chefette Restaurants Ltd, the Claimant is mandated under his employment agreement to follow specific cash handling procedures (“the Procedures”). The Claimant was duly trained on the Procedures in February 2012 and his branch was provided with a Cash Handling Manual which includes the procedure that must be followed for handling

cheques. On September 14, 2013, a cheque payable to Donnalyn Ward (the “Cheque”) was received, endorsed with the signature O Harris, cashed and deposited during the shift managed by the Claimant. The Claimant has failed to explain how the Cheque was received, cashed and deposited. A critical function in the Claimant’s role as Assistant Manager is the carrying out and enforcing of the company’s cash handling procedures.

The Claimant’s employment was terminated in accordance with the Code of Discipline in the Chefette Restaurants Ltd. Conditions and Terms of the Employment 2010-2013 which forms part of the Claimant’s employment agreement with the Respondent. Section 11 of the Code of Discipline provides that an employee’s negligence or carelessness involving property of the restaurant or the business of the restaurant will result in dismissal for the first offence.”

The Evidence and the Hearing

[48] The ERT heard Mr. Harris’ claim on 17 February 2016, 22 February 2016 and 13 April 2016. Mr. Harris appeared in person on each of the dates of hearing.

Chefette was represented by Ms. Esther Arthur, attorney-at-law.

[49] The ERT had before it the complaint which was supported by Mr. Harris’ witness statement dated 10 July 2014, and by a bundle of documents including the termination letter and several commendations which Mr. Harris received during the course of his employment with Chefette. The ERT also had a bundle of documents submitted by Chefette. This bundle included the witness statements of Mr. Harvey, Ms. Wallace, Ms. Greenidge and Ms. Knight. It also included cheques numbers 00069196 and 00069201, both dated 9 September 2013, and drawn in favour of Donnalyn Ward and Orlando Harris

respectively. At its request, the tribunal was provided with a complete copy of Chefette's Cash Handling Manual 2012 in substitution for the extract from that Manual which was included in Chefette's bundle of documents.

[50] At the hearing, Mr. Harris gave evidence on his own behalf. Four witnesses, Mr. Harvey, Ms. Wallace, Ms. Greenidge and Ms. Knight gave evidence on behalf of Chefette.

The Submissions

[51] Mr. Harris, who was self-represented, maintained that the signature on the cheque in question was not his. He argued that a more adequate investigation by Chefette would have vindicated him.

[52] Counsel for Chefette, Ms. Arthur, made three principal submissions before the ERT. The first was that Chefette had "shown in accordance with Section 29 of the Employment Rights Act that the Claimant was dismissed for a reason relating to his capability and his conduct". She conceded that this meant that Chefette, in dismissing Mr. Harris, would as a general rule be required to follow step 1 (setting out in writing the alleged conduct of Mr. Harris) and step 2 (sending the statement to Mr. Harris) of the procedure set out in *Part B* of the *Fourth Schedule* to the **ERA**. She contended, however, that, in this case, Chefette was exempted from following step 1 and step 2 because of the operation of "Section Four, Part B of the *Fourth Schedule*". This "section"

provides that, where an employee was suspended with full pay pending an investigation, as Mr. Harris was in this case, steps 1 and 2 in *Part B* of the *Fourth Schedule* did not apply until the employer contemplated taking disciplinary action against the employee. According to Ms. Arthur, Chefette only contemplated disciplinary action against Mr. Harris after the completion of its investigation and was therefore not required to follow steps 1 and 2 at the first meeting.

[53] Second, Ms. Arthur argued that another issue before the tribunal was whether Chefette “breached the **ERA** by dismissing the Claimant for the first offence”. Here, counsel cited *Halsbury Laws of England 5th Edition Volume 40 Paragraph 628* as authority for the proposition that an employer may rely on a Code of Discipline made a part of an employee’s contract. On this authority, counsel submitted that Chefette was not in breach of the **ERA** as Chefette could rely on “Offence 11” in its “Code of Discipline”, which was a part of Mr. Harris’ “Conditions and Terms of Employment 2010-2013”. “Offence 11” provided that an employee may be dismissed for the first offence for “negligence or carelessness which involved the property of a Restaurant or the business of a Restaurant.”

[54] Lastly, counsel argued, citing *Halsbury 4th Edition Re-issue Volume 2, Volume 16, paragraph 325*, that, in determining whether Mr. Harris’ dismissal was

fair or unfair, “the key consideration for the Tribunal is the reasonableness or otherwise of the employer’s conduct, not the injustice to the employee”. She continued, relying on the English Employment Appeal Tribunal case of **Iceland Frozen Foods Limited v Jones [1983] ICR 17** at pp. 24-25, that “the function of a Tribunal as an industrial jury is to determine whether in the particular circumstances of each case, the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted”. She submitted further that the Tribunal cannot substitute its own thinking for that of the employer, but the question must be what the reasonable employer would deem reasonable under the circumstances.

[55] Ms. Arthur cited the English Employment Appeal Tribunal case of **British Home Stores Limited v Burchell [1978] IRLR 379 (Burchell)** as establishing a three pronged test of reasonableness. Ms. Arthur argued that Chefette satisfied all three prongs of the **Burchell** test and therefore had established that it had acted reasonably in dismissing Mr. Harris.

The Decision

[56] The ERT dealt with the question of the fairness of Chefette’s decision to dismiss Mr. Harris first. Here, the ERT accepted Ms. Arthur’s submission that the key consideration for the Tribunal in determining the fairness or unfairness

of a dismissal under **section 29 (4) of the Act** was the reasonableness of the employer's conduct. In this regard, the ERT stated at p.5 of its DECISION as follows:

“In **Burchell**, Arnold J set out the correct approach to section 98 (4) of the United Kingdom's Employment Rights Act, 1996, which is identical to Section 29 (4) of the Act...His Lordship outlined a three-pronged test of reasonableness which the Tribunal should follow. This Tribunal, in applying that three-pronged test must determine:

1. Whether the Respondent genuinely believed that the Claimant's failure to follow the cash handling procedure resulted in misappropriation of another employee's money as a consequence of which the Respondent suffered loss; and
2. Whether the Respondent had reasonable grounds for believing that the Claimant had failed to follow cash handling procedures resulting in misappropriation of that money and loss to the Respondent; and
3. Whether the Respondent had completed as much investigation into the matter as was reasonable in the circumstances, when the Respondent determined that it would dismiss the Claimant.”

[57] Applying the **Burchell** test of reasonableness to the case before it, the ERT held that Chefette satisfied the first and second prongs of that test. However, the ERT held, disagreeing with Ms. Arthur, that Chefette did not satisfy the third prong of the test. It held at p.8 of its DECISION that “when the Respondent made the decision to dismiss, it had not carried out as much

investigation into the matter as was reasonable, even though...the Respondent had the resources necessary to do so”.

[58] The ERT next considered the question whether Chefette was justified in dismissing Mr. Harris for his first offence. In this regard, the ERT held that the type of offence of which Mr. Harris was accused was one that could result in dismissal under Chefette’s Code of Discipline but not for the first offence.

At p.10 of its DECISION, the ERT stated:

“Counsel submitted that the employer may rely on a code of discipline made a part of the employee’s contract, and that the Conditions and Terms of Employment, 2010-2013 were a part of the Claimant’s contract. She relied on *Halsbury’s Laws of England, Fifth Edition, Vol. 40 at para 628*. We concur with her submission. However, it is also stated in that paragraph, that “[c]ontractual authority to dismiss, in the sense that a contractual disciplinary procedure lays down grounds for dismissal that cover the particular misconduct by the employee, does not necessarily make dismissal fair”.

[59] The ERT, applying the caveat in the statement of the law in *Halsbury*, held that in all the circumstances of the case before it, dismissal of Mr. Harris for his first offence was not fair.

[60] Lastly, the ERT considered the question whether Chefette had complied with the relevant disciplinary procedures in *Part B* of the *Fourth Schedule* of the **ERA**. On this, the ERT held that Chefette was not exempted from following step 1 and step 2 of the “Standard Disciplinary Procedures” in *Part B* of the *Fourth Schedule* and that it had not followed these two steps.

[61] For all those reasons, the ERT held that Mr. Harris' claim for unfair dismissal was well-founded. The ERT further held that Mr. Harris was entitled to compensation in the sum of \$106,630.01.

THE APPEAL

The Notice of Appeal

[62] It is against this decision of the ERT that Chefette filed a notice of appeal on 22 April 2016, titled Civil Appeal No. 11 of 2016. On 13 October 2016, the appellant filed a notice of application of leave to amend the notice of appeal, and also an amended notice of appeal. In its amended notice of appeal, the appellant seeks an order that the decision of the ERT be set aside on the following grounds:

“(1) The Tribunal erred in law by substituting its own opinion as to what was a reasonable and adequate investigation, instead of applying the objective standard of the reasonable employer as to what was a reasonable investigation.

(2) The Tribunal erred in law in that it substituted its own judgment for that of the Appellant in the determination of whether the sanction of dismissal was within the band of reasonable responses. There was no evidence that any other employer would have acted differently or similarly.

(3) The Tribunal erred in law in that it substituted its own reason for terminating the Respondent's employment for that of the Appellant. The Respondent was dismissed for “failure to follow cash handling procedures,” not for misappropriating the Appellant's property.

(4) The Tribunal erred in its interpretation of the Appellant's Code of Discipline, especially in not viewing the evidence found in the Appellant's Cash Handling Policies as corroborating, clarifying or informing its interpretation of the Appellant's Code of Discipline.

(5) The Tribunal's decision that the Appellant did not question any of the several other employees who were on duty on the Claimant's shift is perverse in that the Tribunal had before it the Witness Statement of Maria Wallace who was the only other person involved in the Cash Handling Process which formed the basis of the Respondent's dismissal.

(6) The Tribunal erred in law by misapplying settled legal principles and by substituting itself for the Appellant's decision maker.

(7) The Tribunal erred in its application of the law in that it read into the Employment Rights Act that the size and administrative resources of the employee were relevant considerations in determining whether the employer had acted fairly.

(8) The Tribunal erred in its interpretation of Part B, section 4 of the Fourth Schedule of the Act. No reasonable tribunal on the evidence could have determined that the employer contemplated disciplinary action at the first meeting held for the sole purpose of questioning the Respondent on the circumstances surrounding the missing cheque.

(9) The Tribunal's decision that the Respondent did not appeal because "the Claimant could not therefore follow a procedure which did not exist" was perverse because the Respondent testified that he chose not to appeal and gave no evidence that he was never apprised of an appeal process by the Appellant.

(10) The Tribunal erred in law in that it applied too high a standard in determining what constituted sufficient information to the Respondent Employee of the allegation against him in accordance with Part B section 1 of the Fourth Schedule of the Act.

(11) The Tribunal erred in law in that it overcompensated the Respondent by the award of a sum for vacation pay in addition to a sum representing his annual salary. In any event, the sum representing vacation pay was not calculated in accordance with the relevant law.

(12) The Tribunal erred in interpreting the benefits to be paid by the employer under section 1(b) of the Fifth Schedule as including lost wages and not factoring in the payment made to the Respondent by the Appellant in lieu of notice. It overcompensated the Respondent Employee by awarding him a sum for the entirety of his lost wages under paragraph 1(b) of the Fifth Schedule as “any benefit which an employee might reasonably be expected to have had but for the dismissal”.

(13) That the Chairperson of the Tribunal erred in assuming the role of advocate for the Respondent thereby abdicating her role as an arbiter.”

The Issues

[63] In her written submissions to, and oral arguments before, this Court, Ms. Arthur, by and large, repeated the arguments and submissions she made to the ERT in respect of Chefette’s liability for unfair dismissal which are outlined at paras [52] through [55] of this judgment. She also contended before us that the ERT erred in its calculation of the compensation awarded to Mr. Harris which resulted in him being over-compensated.

- [64] For his part, Mr. Edmund Hinkson, counsel for Mr. Harris, contended that, save for a minor error in the calculation of the amount of compensation awarded to Mr. Harris, the ERT's interpretation and application of the **ERA** was correct and should be upheld.
- [65] In our judgment, having regard to the grounds of appeal in the amended notice of appeal and the written submissions and oral arguments of counsel, there can be no doubt that two principal issues arise for our determination in this appeal. The first is whether the ERT correctly interpreted and/or applied **section 29** of the **ERA**. The second is whether the ERT correctly calculated the compensation awarded to Mr. Harris.
- [66] Ground 13 of the amended notice of appeal raises an issue as to whether the chairperson of the ERT erroneously assumed the "role of advocate for the Respondent thereby abdicating her role as an arbiter". However, counsel mentioned but did not pursue this ground before us by showing any factual basis to support this ground. We have studied the transcript of the hearing before the ERT and have ourselves not found any such factual basis. For our part, we have found the chairperson's conduct in complete conformity with accepted standards of conduct of a judicial officer in the circumstances of a self-represented claimant under a statute like the **ERA**. Accordingly, we do not think it necessary to say anything further on this ground.

[67] In light of the foregoing, we turn to the two principal issues left for our determination. In this regard, we first consider the question whether the ERT erred in its interpretation and/or its application of **section 29** of the **ERA**. After that, we consider the second question in the appeal, namely, whether the ERT erred in calculating the compensation awarded to Mr. Harris.

The Interpretation of Section 29

[68] **Section 29 of the ERA** provides as follows:

“(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show

- (a) the reason, or, if more than one, the principal reason, for the dismissal; and
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) An employer shall have the right to dismiss an employee for a reason which falls within this subsection if it

- (a) relates to the capability of the employee to perform work of the kind which he was employed by the employer to do;
- (b) relates to the conduct of the employee;
- (c) ...
- (d) ...

(3) In subsection (2) (a), “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality.

(4) Where the employer has fulfilled the requirements of subsection (1), the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether

- (a) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
- (b) the employer complied with the rules set out in Part A of the *Fourth Schedule*.

(5) Notwithstanding subsection (1), an employer is not entitled to dismiss an employee for any reason related to

- (a) the capability of the employee to perform any work; or
- (b) the conduct of the employee,

without informing the employee of the accusation against him and giving him an opportunity to state his case, subject to the Standard Disciplinary Procedures and the Modified Disciplinary Procedures set out in Parts B and C, respectively of the *Fourth Schedule*.”

[69] In approaching the construction of this section, it is important to recall the well-established principle of statutory interpretation that it is permissible, and often necessary, that a provision of an Act be construed in its statutory context and in light of other provisions of that Act in ascertaining the intention of the

legislature. In our view, that principle is particularly apposite in construing **section 29** of the **ERA**.

[70] To begin with, the **ERA** expressly declares in its purpose clause that it was enacted “to make provision for the rights of employed persons”. One such right provided for in **section 27 (1)**, which is found in **Part VI** (headed “*Unfair Dismissal*”) of that Act, is the right of an employee not to be unfairly dismissed by his employer. **Section 27 (2)**, however, stipulates that the right in **section 27 (1)** takes effect subject to the ensuing provisions of **Part VI**. **Section 29** is found in **Part VI**. **Section 29** is therefore to be understood in the context of **section 27 (1)**.

[71] **Section 29** is headed “*Fairness*”. The need for a provision on “fairness” arises because an employee’s **section 27 (1)** right not to be unfairly dismissed is subject to the right conferred on an employer by **section 29 (2)** to dismiss an employee for a reason which is fair. On the plain language of **section 29 (1)**, **section 29** is intended to define for purposes of **Part VI** when an employer has properly exercised his/her **section 29 (2)** right of fair dismissal and consequently whether or not an employee’s **section 27 (1)** right has been violated.

[72] By the operation of **section 29 (1)** and **section 29 (2)**, it is for the employer to show that the dismissal of an employee was fair. This he/she may do by

showing the reason, or, if more than one reason, the principal reason, for the dismissal. The employer has the right to dismiss an employee if the reason shown (a) “relates to the capability of the employee to perform work of the kind for which he was employed”: **section 29 (2) (a)**; (b) “relates to the conduct of the employee: **section 29 (2) (b)**”; (c) “is that the employee is redundant”: **section 29 (2) (c)**; (d) “is that the employee could not continue to work in the position which he held without contravention, either on his part or on that of his employer, of a duty or restriction imposed by law”: **section 29 (2) (d)**; (e) or, is some other substantial reason of a kind such as to justify dismissal: **section 29 (1) (b)**.

[73] All that said, it is critically important to note that **section 29 (5)** carves out of the list of statutory reasons which entitle an employer to fairly dismiss an employee, reasons related to the capability and the conduct of the employee, and imposes a strict statutory procedural regime which must be followed by a dismissing employer before any question of the fairness of a dismissal can arise. More particularly, that subsection stipulates against an employer exercising his **section 29 (2)** right of fair dismissal for any reason related to the capability or conduct of the employee without first informing the employee of the accusation against him and giving him an opportunity to state his case. To satisfy this requirement, the employer must show that he

followed, as appropriate, either the Standard Disciplinary Procedures or the Modified Disciplinary Procedures set out in *Part B* and *C* respectively of the *Fourth Schedule* of the **ERA**.

[74] To be sure, **section 29 (5)** imposes a burden upon an employer dismissing an employee for his capability or conduct to show that the employee was informed of the accusation against him and was given an opportunity to state his case in the manner stipulated in *Part B* of the *Fourth Schedule*. If the employer fails to discharge this burden, the employer is disentitled from invoking the right of dismissal conferred on him/her by **section 29 (2)** and that is the end of the matter. No question of fairness or unfairness of the dismissal can then arise. Where the reason for the dismissal relates to the capability or conduct of the employee a question of fairness or unfairness can only arise if the employer shows that the procedure in **section 29 (5)** has been followed by him/her.

[75] **Section 29 (4)** contains the test for determining whether a dismissal was fair or unfair. By this test, the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, depends on two considerations. These are, first, whether the employer acted reasonably or unreasonably in treating it as a sufficient reason for the dismissal, and second, whether the employer complied with the rules set out in *Part A* of the *Fourth*

Schedule of the **ERA**. It is to be stressed here that, read in light of **section 29 (5)**, the **section 29 (4)** test only applies where the reason for the dismissal relates to a reason other than to the capability or conduct of the employee, or, where the reason relates to the capability or conduct of the employee, the employer has complied with the procedural requirements in accordance with **section 29 (5)**.

[76] The upshot of the foregoing, then, is that, in determining whether the dismissal of an employee is fair or unfair under **section 29**, the ERT must have regard to four conditions. These are (i) whether the employee has met the criteria in **section 27 (3)** necessary to qualify for the right in **section 27 (1)** not to be unfairly dismissed; if so, (ii) whether, pursuant to **section 29 (1)** and **(2)**, the reason, or principal reason, for the dismissal of the employee, related to the employee's capability or conduct or to some other statutory reason that justifies dismissal; if the reason relates to capability or conduct, (iii) whether the appropriate statutory disciplinary procedures were complied with pursuant to **section 29 (5)**; and if the reason for dismissal relates to reasons other than to the capability or conduct of the employee, or if the reason relates to the capability or conduct of the employee and the employer has complied with the procedural requirements in **section 29 (5)**, (iv) whether the dismissal was fair under **section 29 (4)**.

The Application of Section 29

[77] In this case, no issue was raised either before the ERT or before us in this appeal as to whether Mr. Harris met the criteria necessary to qualify for the right not to be unfairly dismissed afforded employees under **section 27 (1)**. The undisputed evidence is that he did. The questions raised before us in this appeal relate to the reason for Mr. Harris' dismissal, compliance with **section 29 (5)** and the fairness or unfairness of Mr. Harris' dismissal.

[78] And so, we turn to considering these.

The Reason for Mr. Harris' Dismissal

[79] In its letter of dismissal addressed to Mr. Harris dated 27 January 2014, Chefette wrote as follows:

“Dear Mr. Harris

On the 14th September, 2013 you did not follow company policy as it relates to cash handling.

On the above mentioned date, a cheque payable to Donnalyn Ward was received, endorsed with the signature O. Harris, cashed and deposited on your shift at Chefette Heroes Square.

Base (sic) on the Company's investigation, it was affirmed that you could not explain how Ms. Ward's cheque was received, cashed and deposited during your shift and endorsed in your name. One of the main functions of your role as an Assistant Manager is the carrying out and enforcement of the company's cash handling procedures during times when you are in charge of the restaurant.

The Company has loss (*sic*) confidence in you as Assistant

Manager because you have committed a serious offence in failing to follow Company's cash handling procedure in relation to the above incident.

As a consequence, Chefette Restaurant Ltd, hereby terminates your services for failure to follow the cash handling procedures with immediate effect..."

[80] The clear reason given by Chefette in this letter of termination of Mr. Harris' employment was his failure to follow the company's cash handling procedures in relation to the incident surrounding Ms. Ward's cheque. It is equally clear from a reading of the DECISION of the ERT, however, that the ERT found that the real reason for Mr. Harris' dismissal was, not only his failure to follow the company's cash handling procedures in relation to the incident surrounding Ms. Ward's cheque, but also, because that failure "resulted in misappropriation of another employee's property as a consequence of which (Chefette) suffered loss".

[81] At page 7 of its DECISION, the ERT stated the basis of its finding as follows:

"The whole tenor of the Respondent's communication with the Claimant and of its evidence before the Tribunal was that the Claimant pocketed the proceeds of the cheque...Mr. Harvey labeled the endorsement of the cheque a "*deliberate*" act. While the invitation to the disciplinary hearing alluded to the "*unauthorized cashing of a co-worker's cheque*", Counsel argued that dismissal for failure to follow the cash handling procedures was a "*much milder...reason than cashing a fellow employee's cheque*". Regardless of how the accusation was framed, it is apparent as much to this Tribunal as it was to the Claimant, that the reason for his dismissal was theft."

- [82] Counsel for Chefette took issue with this finding and argued on ground 2 of the appeal that the Tribunal erred in law in that it substituted its own reason for terminating Mr. Harris' employment for that of Chefette. She maintained that Mr. Harris was dismissed for "failure to follow cash handling procedures", not for misappropriating Chefette's property.
- [83] True, **section 29 (1) (a)** of **the Act** has placed the burden of showing the reason for the dismissal on the shoulders of the employer. Albeit, this does not mean that the ERT is bound to accept whatever reason that is given by the employer as the reason for dismissal. On the contrary, in our view, the ERT is duty bound to decide on the evidence before it whether the reason given by the employer is the real reason or whether, on that evidence, the real reason is one other than that given by the employer. To construe **section 29 (1) (a)** otherwise would be to underwrite frustration of the whole purpose of **section 29** and, would be in effect, to issue a pass to unscrupulous employers for undermining employees' **section 27 (1)** right not to be unfairly dismissed by giving a reason for dismissal other than the real reason.
- [84] The English Court of Appeal decision of **Abernethy v Mott, Hay and Anderson [1974] IRLR 213**, has taken a similar approach to "reason for the dismissal" in the corresponding provision in English legislation. In that case Cairn LJ said:

“A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him which cause him to dismiss the employee. If at the time of his dismissal the employer gives a reason for it, that is no doubt evidence, at any rate as against him, as to the real reason, but it does not necessarily constitute the real reason. He may knowingly give a reason different from the real reason out of kindness or because he might have difficulty in proving the facts that actually led him to dismiss: or he may describe his reasons wrongly through some mistake of language or of law.”

[85] In **W Devis & Sons Ltd v Atkins [1977] 3 All ER 40**, the English House of Lords approved that statement of law. Indeed, the jurisprudence of “real” reason in interpreting “reason for dismissal” in legislation *in pari materia* with the **ERA** was underlined in the English House of Lords case of **West Midlands Co-operative Society Ltd v Tipton [1986] 1 All ER 513**. There, the House of Lords stated in relation to the question of what was the reason (or principal reason) for the dismissal that “the reason for dismissal” “may...be aptly termed the real reason” for dismissal.

[86] It is evident from the foregoing that the ERT was legally justified in ascertaining, on the evidence before it, what was the real reason for Mr. Harris’ dismissal by Chefette. What is more is that we have no jurisdiction to interfere with the ERT’s finding of fact as to the real reason. This is so because **section 48** of the **ERA** provides that an appeal lies to this Court on a question of law from any decision of, or arising in any proceedings before, the ERT under or by virtue of the **ERA**. *Per contra*, by that section,

we have no jurisdiction on appeals against findings of fact.

[87] In its recent decision in **Trimart v Glenda Knight Civil Appeal No. 9 of 2014 (Trimart)**, this Court held that a provision in the **Severance Payments Act, Cap. 355A** similar to **section 48** of the **ERA**, limited its jurisdiction to hearing appeals from decisions of the tribunal on questions of law only. Recalling its decision in **E. Pihl and Sons A/S (Denmark) v Brondum A/S (Denmark) Civil Appeal No. 24 of 2012**, this Court concluded that a question of law involves a question about what the correct legal test is (the interpretation of the law), and also questions as to whether the facts in issue satisfy the legal tests (the application of the law to the facts).

[88] It is palpable that the ERT's finding as to what was the real reason for Mr. Harris' dismissal does not involve either the interpretation of law or the application of the law to the facts found by it. In consequence, we have no power to interfere with the ERT's finding as to the real reason for Mr. Harris' dismissal by Chefette. Be that as it may, we feel bound to add that, in our view, the whole tenor and tone of the first meeting more than justified the ERT in its finding as to the real reason for Mr. Harris' dismissal.

[89] Given its finding that the reason for Mr. Harris' dismissal related not only to his failure to follow the company's cash handling procedures but also because that failure resulted in misappropriation by Mr. Harris of another employee's

property as a consequence of which Chefette suffered loss, we are of the view that the ERT correctly classified that reason as relating to Mr. Harris' capability as well as to his conduct. We are of the further view that the ERT was correct in holding that that reason fell within **section 29 (2)**.

[90] To be fair, though, Chefette has not raised any issue with the holding of the ERT that the reason shown for the dismissal of Mr. Harris related to the capability as well as to his conduct. Similarly, Chefette has not disputed the ERT's finding that the reason shown therefore fell within **section 29 (2)**.

Compliance with the Disciplinary Procedures in Section 29 (5)

[91] Having determined that Mr. Harris' dismissal was for reasons relating to his capability as well as conduct within **section 29 (2)**, the ERT next considered the question of whether the dismissal was fair under **section 29 (4)** and treated **section 29 (5)**, and the disciplinary procedures provided for in that subsection, as aspects of the **section 29 (4)** fairness test. The ERT interpreted **section 29 (4) (a)** as laying down a test of what it called "substantive fairness" and **section 29 (4) (b)** and **section 29 (5)**, a test of what it called "procedural fairness".

[92] Grounds 8, 9, and 10 of Chefette's grounds of appeal concern the ERT's treatment of the disciplinary procedures established by **section 29 (5)**. But nowhere in its grounds of appeal does Chefette challenge the ERT's

interpretative approach to **section 29 (5)** and the disciplinary procedures provided for in that subsection. Despite this, we feel compelled to point out that the ERT's approach to **section 29 (5)** was based on an erroneous interpretation of the relationship between that subsection and **section 29 (4)**. As indicated previously in this judgment, instead of treating **section 29 (5)** as an aspect of the **section 29 (4)** fairness test, as soon as the ERT determined that the reason shown for Mr. Harris's dismissal related to his capability as well as to his conduct, it should have turned its consideration to whether Chefette complied with the disciplinary procedures mandated in **section 29 (5)** as a matter separate and distinct from the question of whether the dismissal was fair or unfair under **section 29 (4)**.

[93] It is evident that the interpretative stance taken by the ERT was predicated on the assumption that **section 29 (4)** of our **ERA** is, in the express words of the ERT, "identical" "to *section 98 (4)* of the United Kingdom *Employments Rights Act, 1996*", and, in the words of counsel for Chefette, "has commonality with the UK Act". In pursuance of this assumption, the ERT attempted to force **section 29 (4)** and **section 29 (5)** into the taxonomy of substantive and procedural fairness developed in the English case law interpreting the meaning of "reasonableness" in *section 98 (4)* of the United Kingdom 1996 Act which itself was a consolidation of provisions in United

Kingdom enactments relating to employment rights.

[94] *Section 98 (4)* of the United Kingdom 1996 Act provides as follows:

“(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case.”

[95] In the English Court of Appeal decision of **Whitbread plc (trading as Whitbread Medway Inns) v Hall [2001] ICR 699** at 705, Hale LJ explained the taxonomy of substantive and procedural fairness as being rooted in the particular wording of *section 98 (4)*. She stated:

“Section 98 (4) of the 1996 Act requires the tribunal to determine whether the employer ‘acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee’ and further to determine this in accordance with ‘equity and the substantial merits of the case’. This suggests that there are both substantive and procedural elements to the decision to which the ‘band of reasonable responses’ test should be applied.”

It may be worthwhile adding as a footnote here that the “band of reasonable responses” test referred to by Hale LJ is a test of whether or not the employer acted reasonably or unreasonably in dismissing the employee. That test proposes that there is a band of reasonableness within which one employer might decide to dismiss, whilst another might decide not to do so. If the

circumstances of the case are such that a reasonable employer might dismiss, the dismissal is to be treated as fair even though not all employers would take that view.

[96] The crucial point, though, is that, on its plain language, our **section 29 (4)** is not “identical” to the United Kingdom *section 98 (4)* as was claimed by the ERT. There may be “commonality” between the two subsections but there exists a gulf of difference between them. The most obvious difference is that our **section 29 (4)**, unlike the United Kingdom *section 98 (4)*, makes no provision that the reasonableness or unreasonableness of a dismissal “shall be determined in accordance with equity and the substantial merits of the case”. This, it will be remembered, according to Hale LJ, is the clause in *section 98 (4)* which imports the substantive and procedural elements into the *section 98 (4)* test of reasonableness.

[97] What is more, as was seen at paragraph [74] of this judgment, **section 29 (5)** provides that an employer is not entitled to dismiss an employee for any reason related to capability or conduct “without informing the employee of the accusation against him and giving him an opportunity to state his case, subject to the Standard Disciplinary Procedures and the Modified Disciplinary Procedures set out in *Parts B and C*, respectively of the *Fourth Schedule*”.

[98] *Part B of the Fourth Schedule contains the Standard Disciplinary Procedures.*

It sets out three steps that an employer must follow before dismissing an employee by reason of their conduct or capability as follows:

“Step 1: Statement of grounds for action and invitation to meeting

1. The employer must

- (a) set out in writing the alleged conduct or characteristics of the employee, or other circumstances, which lead him to contemplate taking disciplinary action against the employee; and
- (b) send the statement or a copy of it to the employee and invite the employee, along with his representative, if any, to attend a meeting to discuss the matter.

Step 2: Meeting

2. (1) The meeting must take place

- (a) before disciplinary action is taken; and
- (b) where reasonably practicable, within 7 working days of the transmission to the employee of the statement or copy of the statement referred to in paragraph 1 (b).

(2) The meeting must not take place unless

- (a) the employer has informed the employee of
 - (i) his right to have a friend or a shop steward, if he is a member of a trade union, present during the proceedings; and
 - (ii) the basis for including in the statement referred to in paragraph 1, the ground

or grounds set out therein; and

(b) the employee has had a reasonable opportunity to consider his response to the information referred to in paragraph (a) (ii).

(3) The employee must take all reasonable steps to attend the meeting.

(4) After the meeting, the employer must inform the employee in writing of his decision and notify him of the right to appeal against the decision if he is not satisfied with it.

Note on Steps

4. Where an employee is suspended with full pay pending an investigation, steps 1 and 2 do not apply until the employer contemplates taking disciplinary action against the employee.”

[99] *Part C of the Fourth Schedule contains the Modified Disciplinary Procedures.*

This is to be followed where the employer has dismissed the employee. In such a case, the employer must set out in writing the alleged misconduct of the employee which led to the dismissal; the basis for the employer thinking at the time of the dismissal that the employee was guilty of the alleged misconduct; and the right of the employee to appeal against the dismissal. The employer must send a copy of this statement to the employee.

[100] There is no provision in the United Kingdom Act similar to our **section 29**

(5). True, *section 98* of the United Kingdom Act was amended by *section 34* of the United Kingdom *Employment Act, 2002* to include *section 98A* which

provides as follows:

“(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if –

- a. one of the procedures set out in Part 1 of Schedule 2 to the Employment Act 2002 (dismissal and disciplinary procedures) applies in relation to the dismissal,
- b. the procedure has not been completed, and
- c. the non-completion of the procedure is wholly or mainly attributable to failure by the employer to comply with its requirements.

(2) Subject to subsection (1), failure by an employer to follow a procedure in relation to the dismissal of an employee shall not be regarded for the purposes of section 98(4)(a) as by itself making the employer's action unreasonable if he shows that he would have decided to dismiss the employee if he had followed the procedure.”

[101] There are, however, two important, if obvious, differences between *section 98A* and **section 29 (5)**. The first is that the procedures enacted in *section 98A* are to be considered as an aspect of determining fairness of the dismissal. *Per contra*, under **section 29 (5)**, the procedural requirements are to be considered separately and apart from the **section 29 (4)** fairness test. The second is that *section 98A* excuses employer non-compliance with the statutory procedures established by it if the employer shows “that he would have decided to dismiss the employee if he had followed the procedure”. On the contrary, compliance with the procedural requirements under **section 29 (5)** is not excused for any

reason in any case of employee capability or conduct dismissal.

[102] It is apparent from the foregoing, then, that **section 29 (4)** and **section 29 (5)** are in form, substance and intent very different from the relevant provisions in the United Kingdom Act. All that said, we hasten to underline that the meaning and operation of **section 29 (4)** and **section 29 (5)** can only be found in the revealed intention of our Parliament in enacting those provisions and that that intention is not to be sought in English judge-made law. As **Simmons CJ** stated in **Wood v Caribbean Label Crafts Ltd (Unreported) Magisterial Appeal No. 11 of 2001 (16 July 2003)**, our task in approaching English decisions is to read them with “a discerning eye and an analytical mind”. We would add that the approach advocated by **Simmons CJ** is especially apposite where, as is the case with the **ERA**, the relevant law is contained in an Act of our Parliament.

[103] With the foregoing caveat in mind, we return to the issues raised by Chefette with respect to the ERT’s interpretation and application of the disciplinary procedures provided for in **section 29 (5)**. In this regard, Chefette accepts that the exercise of its right to dismiss Mr. Harris was subject to the *Standard Disciplinary Procedures* set out in *Part B*; not the *Modified Disciplinary Procedures* set out in *Part C*. Be that as it may, Chefette challenges the ERT’s decision (i) that it was bound to follow steps 1 and 2 in *paragraphs 1* and *2* of

Part B of the *Standard Disciplinary Procedures*; (ii) that it did not follow those steps; and (iii) that Mr. Harris did not appeal because he could not “follow an appeal procedure which did not exist”.

[104] This Court next turns to consideration of these challenges.

Was Chefette bound to follow Steps 1 and 2?

[105] As was seen at paragraph [97] of this judgment, a dismissing employer must, as a general rule, follow steps 1 and 2 set out in *paragraphs 1 and 2 of Part B* of the *Standard Disciplinary Procedures*. Before the ERT and before this Court, Chefette argued that, by virtue of *paragraph 4 of Part B*, it was not bound to follow these steps. That paragraph provides that, where the employee is suspended with full pay pending an investigation, these steps do not apply until the employer contemplates taking disciplinary action against the employee. Chefette contended that the first meeting with Mr. Harris was not a disciplinary hearing, and that, at the date of that first meeting, it had not contemplated taking disciplinary action against Mr. Harris. As a result, Chefette maintained, it was entitled to rely on *paragraph 4* of the standard disciplinary procedures and was therefore not required to follow steps 1 and 2.

[106] In addressing Chefette’s argument, the ERT at p.12 of its DECISION interpreted *paragraph 4* as follows:

“To avail itself of that exception, the Respondent must:

- i) have suspended the Claimant with full pay; and
- ii) not yet have completed an investigation into the Claimant’s alleged misconduct; and
- iii) not yet have contemplated taking disciplinary action against the Claimant.”

[107] We do not accept the contention of counsel for Chefette that this was an erroneous interpretation of *paragraph 4* by the ERT. On its plain words, that paragraph relates to an occasion where the employer, pending an investigation of a complaint relating to the employee’s conduct or capability, suspends the employee with full pay. In such circumstances, steps 1 and 2 do not apply until the employer contemplates taking disciplinary action against the employee.

[108] Similarly, we do not accept Chefette’s contention that the ERT erred in its application of the facts to its interpretation of *paragraph 4*. The ERT found as a fact at p.12 of its DECISION that, when Mr. Harris was suspended with full pay, Chefette had already completed its investigation into his alleged misconduct and had contemplated taking disciplinary action against him when he was invited to the first meeting. In coming to this conclusion, the ERT rejected the evidence of Mr. Harvey that the first meeting was part of the investigative process which was completed approximately two weeks after

that meeting. It concluded instead that the first meeting was in fact a disciplinary hearing, and found that *paragraph 4 of Part B* sought to be relied on by Chefette was inapplicable to this case.

[109] The ERT made the following findings at pp. 12-13 of its DECISION:

“[R]eliance on the very evidence which was disclosed to the Claimant at the first meeting as the basis for his dismissal is sufficient to persuade us that the first meeting was not merely part of the investigative process, but that it was in fact a disciplinary hearing. By the date of that meeting, an investigation had not only been initiated, but had already been concluded and the Respondent was contemplating taking disciplinary action against the Claimant. In the circumstances, section 4 of Part B is not applicable in the instant case.”

[110] We agree with the finding of the ERT that the first meeting was a disciplinary meeting. We further agree with its conclusion that Chefette was therefore bound to follow steps 1 and 2.

Whether Chefette followed Steps 1 and 2?

[111] Having decided that the first meeting was a disciplinary meeting and that Chefette was bound to follow steps 1 and 2, the ERT held that Chefette had not followed steps 1 and 2 before that meeting. In this regard, the ERT stated at p. 13 of its DECISION:

“While the first meeting took place before disciplinary action was taken against the Claimant as stipulated in Part B, Section 2 (1) (a), prior to that meeting, the Respondent failed to provide the Claimant with a written statement or to advise him of his right to have a friend present at that meeting. Having failed to disclose the basis for the allegations against him until the meeting

was in progress, the Respondent did not afford the Claimant a reasonable opportunity to consider a response to the accusations against him.”

[112] Before us, Chefette maintains that the first meeting was not a disciplinary meeting as the ERT held, but that the disciplinary meeting was either the second or third meeting. Accordingly, ground 10 of Chefette’s notice of appeal challenges the ERT’s interpretation and application of steps 1 and 2 set out in *paragraph 1 of Part B of the Standard Disciplinary Procedures*. Counsel for Chefette maintains that those provisions only require the employer “to give the employee such information as would enable him or her to understand the nature of the charges and to prepare a defence to them” and that, assuming that Chefette was required to follow steps 1 and 2, its letters of 30 December 2013 and 13 January 2014 gave such information. Accordingly, counsel for Chefette argued that the ERT was wrong in holding at pp.13 to 14 as follows:

“In its letter dated December 23, 2013, the Respondent failed to properly inform the Claimant of the allegations against him. The letter merely stated that the purpose of the meeting was “*to discuss the investigation of the unauthorized cashing of a co-worker’s cheque*”. The letter did not identify the subject of the accusation, nor the grounds on which the accusation was based. It did not specify the particular cash handling procedure or procedures which the Claimant was alleged to have breached. The letter was vague and, contrary to Counsel’s assertion, did not comply with the step 1 requirements. The Respondent had a duty to present to the Claimant a comprehensive statement setting out all the evidence, including witness statements, on which it

intended to rely at the disciplinary hearing, whether or not that evidence was potentially incriminating or exculpatory.

The letter of invitation to the third meeting was dated December 30, 2013, and was virtually identical to the first letter, except that the Respondent extended the invitation to attend the meeting “*to a representative or shop steward.*” The addition of those six words was not curative. The letter was still defective. It did not meet the requirements of section 1 (a) and (b) of Part B of the Fourth Schedule.”

[113] We reject the argument of counsel for Chefette and are in complete agreement with ERT’s interpretation of the duty imposed on a dismissing employer by steps 1 and 2 set out in *paragraph 1 of Part B of the Standard Disciplinary Procedures*. We also accept, for the reasons given by it that, assuming the disciplinary meeting was either the second or third meeting, the ERT’s determination that the letters sent by Chefette to Mr. Harris in respect of those meetings did not satisfy the requirements of *paragraph 1 of Part B of the Standard Disciplinary Procedures*.

[114] We would only add that any other approach to the duties imposed by that paragraph would be inexplicably hostile to the employee’s right against unfair dismissal guaranteed under **section 27 (1) of the Act**. It is our judgment that the jurisprudential urge of our Parliament in enacting the **ERA** was to shift employment relations in Barbados away from the traditional contract of employment model and the ever lurking spectre of the master and servant relationship to a model which views employment law as ultimately being

about workplace justice. The procedure established in **section 29 (5)** is, in our view, an example of such a shift. It has introduced into the work place in Barbados an overriding employee right to natural justice. To be compliant with **section 29 (5)**, an employer must strictly follow the steps set out in that sub-paragraph.

Failure to appeal against the dismissal decision

[115] In Ground 9 in its notice of appeal, Chefette challenges that the ERT's decision that "the Respondent did not appeal because 'the Claimant could not therefore follow a procedure which did not exist' was perverse because the Respondent testified that he chose not to appeal and gave no evidence that he was never apprised of an appeal process by the Appellant." This ground is patently meritless.

[116] *Paragraph 3 of Part B of the Standard Disciplinary Procedures* provides as follows:

- “(1) Where the employee wishes to appeal, he must so inform the employer in writing, and follow the established disciplinary procedure of the work place.
- (2) Where the matter is not settled under sub-paragraph (1), the employee or the trade union, if he is a member, may refer the matter to the Chief Labour Officer for conciliation.”

One thing that is clear from sub-paragraph (1) is that there is no requirement on a dismissed employee to appeal the dismissal decision. Another is the

irresistible implication of the express words of the sub-paragraph that a dismissed employee who wishes to appeal can only follow “the established disciplinary procedure of the work place” if such procedure exists. Given this, it is difficult to understand Chefette’s complaint with the ERT’s decision at p.15 of the DECISION that:

“No disciplinary appeals procedure is set out in the Respondent’s Conditions and Terms of Employment 2010-2013 and the Respondent adduced no evidence of an established disciplinary appeals process. The Claimant could not therefore follow a procedure which did not then exist. The Claimant exercised his right of appeal by formally complaining to the Chief Labour Officer on March 7, 2014. The Claimant’s failure to lodge an appeal with the Respondent is not, in these circumstances, an answer to his claim of unfair dismissal.”

Surely, it would be impossible for Mr. Harris to follow Chefette’s non-existent “established disciplinary procedure”.

Conclusion on Chefette’s Compliance with Section 29 (5)

[117] It is manifest from the foregoing that the reason shown for the dismissal of Mr. Harris by Chefette related to Mr. Harris’ conduct and capability. By **section 29 (5)**, Chefette was therefore bound to follow the procedural requirements in *Part B* of the *Standard Disciplinary Procedures*. We agree with the ERT’s decision that Chefette failed to do so. The legal effect of that failure is that Chefette is disentitled from raising the defence that Mr. Harris’ dismissal was fair pursuant to **section 29 (4)**.

[118] This Court has already explained that, notwithstanding holding that Chefette had failed to follow the procedural requirements in *Part B* of the *Standard Disciplinary Procedures*, the ERT entered into an extensive consideration of whether Chefette’s dismissal of Mr. Harris was fair within the meaning of **section 29 (4)**. The ERT determined that the dismissal was unfair. Grounds 1, 2, 4, 5, 6 and 7 in Chefette’s amended notice of appeal challenge as incorrect in law that determination by the ERT.

[119] We therefore turn to consideration of Chefette’s challenge of the ERT’s determination that Mr. Harris was unfairly dismissed.

Fairness of Mr. Harris’ Dismissal

[120] As appears from paragraph [75] of this judgment, under **section 29 (4)**, the question of whether the dismissal of an employee was fair or unfair, having regard to the reason shown by the employer, depends upon two considerations. These are, (i) according to **section 29 (4) (a)**, whether “the employer acted reasonably or unreasonably in treating it (the reason) as a sufficient reason for dismissing the employee”; and, (ii) according to **section 29 (4) (b)**, whether “the employer has complied with the rules set out in *Part A* of the *Fourth Schedule*”. It is particularly important to note here that the rules set out in *Part A* of the *Fourth Schedule* are that:

- “(a) disciplinary action must be applied progressively in relation to a breach of discipline;

- (b) except in the case of gross misconduct, an employee should not be dismissed for his first breach of discipline;
- (c) in relation to breaches of discipline not amounting to gross misconduct
 - (i) an employee should be warned and given a reasonable opportunity to make correction; and
 - (ii) oral or written warnings or both should be utilised before stronger forms of disciplinary action are implemented; and
- (d) where a period of 12 months or more elapses after a written warning is given, any breach of discipline committed before the commencement of that period shall be treated as expunged from the record of the employee.”

[121] In our judgment, in approaching the question as to the fairness or unfairness of the dismissal of Mr. Harris by Chefette, the first enquiry is whether, having regard to the reason shown for that dismissal, Chefette, as the employer, acted reasonably or unreasonably in treating the reason for the dismissal as a sufficient reason for dismissing Mr. Harris. This is plain from the language of **section 29 (4) (a)**.

[122] It is our further judgment that the enquiry under **section 29 (4) (a)** is a two stage enquiry. The first stage involves ascertaining the reason shown for the dismissal decision by the employer. The second involves evaluating whether the employer acted reasonably in treating the reason shown as a sufficient reason for dismissing the employee. We wish to stress here that, in our

judgment, given section **29 (4) (b)** and section **29 (5)**, the section **29 (4) (a)** enquiry does not involve any consideration of the fairness of the procedure adopted by Chefette as employer.

[123] In an enquiry under section **29 (4) (a)** as to whether the employer acted reasonably in treating the reason shown as a sufficient reason for dismissal, regard must first be had to the seriousness of the misconduct or lack of capability shown as the reason for the dismissal of the employee. Naturally, serious misconduct will be regarded as sufficient; whereas trivial misconduct will not.

[124] The seriousness of the misconduct or lack of capability shown in a particular case may be determined by the terms of the contract between the employer and the employee. So that, if the employer and employee agree in their employment contract that certain misconduct is to be treated as serious, that will usually be determinative. If the misconduct is not expressly or impliedly governed by the employment contract, then, the seriousness of the misconduct may be determined by having regard to the intrinsic nature and quality of the misconduct or lack of capability.

[125] If the misconduct or lack of capability shown as the reason for the dismissal are sufficiently serious, regard must then be had to whether the evidence available to the employer is sufficient to consider the employer as acting

reasonably in treating the employee as guilty of such misconduct or lack of capability. It goes without saying that a critical part of such evidence is the sufficiency of the investigation by the employer into the employee's guilt of the particular offence which is the basis of the reason for the employee's dismissal. If an employer completes as much investigation as is reasonable in all the circumstances, it will be sufficient; if he/she does not, it will not be sufficient.

[126] In this case, the ERT did not focus on the enquiry under **section 29 (4) (a)** in determining the reasonableness of Chefette's dismissal of Mr. Harris. Instead, accepting the submissions made to it by counsel for Chefette, the ERT applied tests developed in English case law on statutory provisions very different from **section 29 (4)**. In particular, the ERT purported to apply the "band of reasonable responses" principle developed in English case law and which we have described at paragraph [95] of this judgment. This principle has absolutely no place in our law. This is so because **section 29 (4) (b)** makes the rules in *Part A* of the *Fourth Schedule* applicable in determining whether the sanction of dismissal was fair or unfair under **section 29 (4)**. Because of **section 29 (4) (b)**, the question is whether the dismissing employer complied with the rules in *Part A* of the *Fourth Schedule*; not whether the conduct of the employer was such as a "reasonable employer" carrying on his business

would have regarded the dismissal as reasonable. In a word, the English “reasonable employer” is replaced in our **ERA** by a set of statutory rules which must be followed by a dismissing employer.

[127] All that said, within its overall analysis of the case, the ERT considered, as required by **section 29 (4) (a)**, the question of the seriousness of Mr. Harris’ misconduct as well as the question of whether the evidence available to Chefette was sufficient to consider Chefette as acting reasonably in treating Mr. Harris as guilty of such misconduct. In relation to the seriousness of the misconduct for which Mr. Harris was dismissed, the ERT at pp. 9-10 of its **DECISION**, found that based on “the stipulation specific to breaches of the Respondent’s cash handling policies”... set out at page 15 of the Manual under the rubric ‘Float Procedures-Managers’, the “type of offence of which the Claimant was accused could result in dismissal”. In other words, it was serious misconduct. As regards the question of the sufficiency of the evidence on which Chefette based its decision to dismiss, after a careful consideration of all the evidence, the ERT stated at p.8 of its **DECISION**:

“...the Tribunal concludes that when the Respondent made the decision to dismiss, it had not carried out as much investigation into the matter as was reasonable, even though, in our opinion, the Respondent had the resources necessary to do so.”

[128] It is our judgment, therefore, that when the findings of the ERT are considered in light of **section 29 (4) (a)**, Chefette did not act reasonably in treating the

reason shown for the dismissal of Mr. Harris as a sufficient reason for dismissing him. True, the misconduct for which Mr. Harris was dismissed was of a type sufficiently serious to warrant dismissal. However, the evidence on which Chefette dismissed Mr. Harris was not sufficient. Thus, Chefette's action in dismissing him was not fair for purposes of **section 29 (4) (a)**.

[129] Another reason why Chefette must be regarded as having acted unfairly in dismissing Mr. Harris is because Chefette failed to comply with the statutory rules set out in *Part A* of the *Fourth Schedule*. Compliance with these rules, as this Court has already explained, is made by **section 29 (4) (b)** a determinative aspect of the **section 29 (4)** fairness/unfairness test. This means that an employer, like Chefette, no matter how reasonable be its reason for dismissal, cannot claim to have dismissed an employee fairly unless such employer has complied with the relevant rules in *Part A* of the *Fourth Schedule*. So that, Chefette, as a dismissing employer, could not fairly dismiss Mr. Harris under our **ERA** without compliance with the rule that disciplinary action must be applied progressively; the rule that except in the case of gross misconduct, an employee should not be dismissed for his first breach of discipline; and the rule that the requirements of warning before dismissal must be observed.

[130] The uncontroverted evidence was that Mr. Harris was dismissed, without any less severe punishment being applied and without any warning, for his first breach of discipline. Chefette argued before us, as it did before the ERT, that it was legally entitled to do so because Mr. Harris' was dismissed under clause 11 of the Code of Discipline. This clause states in the relevant part that the sanction for conduct amounting to "[n]egligence or carelessness...to the property of the restaurant or to the business of the restaurant" is dismissal for the first offence.

[131] In our judgment, there are two reasons why this argument must fail. The first is that **section 29 (4) (b)** does not contemplate any contracting out of compliance with the rules in *Part A* of the *Fourth Schedule*. And yet, to accept that Chefette was entitled to dismiss pursuant to clause 11 necessitates acceptance that clause 11 superseded the rules in *Part A* of the *Fourth Schedule*. To be clear, an employment contract in Barbados after the **ERA** can incorporate the rules laid down in *Part A* of the *Fourth Schedule*; but an employment contract in Barbados after the **ERA** cannot incorporate rules which conflict with those in *Part A* of the *Fourth Schedule*.

[132] The second reason relates to the conduct regulated by clause 11 of the Code of Discipline itself. The conduct regulated by that clause is conduct

amounting to “negligence or carelessness”. Such conduct on its ordinary, natural understanding does not without more amount to “gross misconduct”. It cannot therefore fall within the exception in *rule (b) in Part A of the Fourth Schedule*. Indeed, the mere fact that clause 11 provides that the sanction for breach of it is dismissal for the first offence does not transmogrify “negligence or carelessness” into “gross misconduct”.

[133] For all the foregoing reasons, it is clear to us that Mr. Harris was unfairly dismissed by Chefette. First, having regard to the reason shown for Mr. Harris’ dismissal, Chefette did not act reasonably in treating that reason as a sufficient reason for dismissing him. Second, Chefette failed to comply with the rules in *Part A of the Fourth Schedule*.

CALCULATION OF COMPENSATION

[134] In grounds 11 and 12 of its grounds of appeal, Chefette challenged the ERT’s calculation of the compensation awarded to Mr. Harris. In ground 11, Chefette’s case is that the ERT erred in awarding Mr. Harris holiday pay for the years 2014 and 2015. Before us, counsel for Chefette argued that the award of holiday pay should not be for both of these years because of the words “during the period of 12 months” in **section 5 (1) of the Holidays With Pay Act, Cap. 328**. We do not agree with counsel. **Section 5 (1)** of that Act

actually provides: “during the period of 12 months to which such annual holiday relates”.

[135] In our view, the additional phrase “to which such annual holiday relates” when read in the context of **section 5 (1)** makes it clear that the phrase “during the period of 12 months” relates to the annual holiday in question. The phrase does not operate to limit an award of holiday pay for a 12 month period and not beyond such a period.

[136] Meanwhile, in ground 12, Chefette contended that the ERT, in calculating the compensation to be awarded to Mr. Harris, pursuant to **section 36 (1) (a)** of the **ERA** should have taken into account the \$11,540.88 paid by it to Mr. Harris in lieu of notice. We agree that this sum should have been deducted from the award.

[137] As a result of the foregoing considerations, we hold that the correct calculation of the compensation paid to Mr. Harris ought to have been \$95,089.13. That is arrived at by subtracting the in lieu payment of \$11,540.88 from the total of \$106,630.01 arrived at by the ERT.

DISPOSAL

[138] In light of the foregoing, the appeal is dismissed with costs to the respondent to be assessed if not agreed. The appellant shall pay compensation to the respondent in the sum of \$95,089.13.

Justice of Appeal

Justice of Appeal

Justice of Appeal