



[2026] JMCC Comm 11

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMERCIAL DIVISION

CLAIM NO. SU2024CD00019

BETWEEN	CATHERINE ALLEN	CLAIMANT
AND	CLAUDETTE ASHMAN	1ST DEFENDANT
AND	DEBBY LIVINGSTONE	2ND DEFENDANT
AND	MICHAEL PARKER	3RD DEFENDANT
AND	JEROME LEE	4TH DEFENDANT
AND	DIAN SAMUELS	5TH DEFENDANT
AND	HARRIS ROBINSON	6TH DEFENDANT
AND	KENNETH DACOSTA	7th DEFENDANT

IN OPEN COURT

Ms Stephanie Williams instructed by Henlin Gibson Henlin for the Claimant

Mr Kevin Powell KC and Ms Daynia Allen instructed by Hylton Powell for the Defendants

Civil Procedure – Civil Procedure Rules - Pensions – Pension Funds – Civil Procedure Rules (“CPR”) 2002, R. 28.4 (1), 40, 40.3

March 20, 2025 & May 8, 2026

BROWN BECKFORD J

INTRODUCTION

[1] The Claimant, Catherine Allen, is a former employee of Guardian Life Limited (“the Company”) and was, during her employment, a member of the Guardian Life Limited Pension Plan (“the Pension Plan”). The governing documents of the Pension Plan are the Supplemental Deed and Rules of the Pension Plan made on the 2nd February 2009. The Claimant was required to pay 5% of her pensionable salary into the Pension Plan, which the Company was obliged to match. The Claimant claims to be entitled to her full pension, being the accrued benefit of her and the Company’s contributions, resulting from the termination of her employment. Not having been paid that pension entitlement, she has brought this claim against the Trustees of the Pension Plan.

[2] No oral evidence was given at the trial, and the case rests entirely on the Affidavit of Catherine Allen in Support of Fixed Date Claim Form for the Claimant and the Affidavit of Jerome Lee for the Defendants. The Affidavits are uncontradicted, and to the extent that they are not incongruous with each other and with reason, the Court accepts the statements of fact contained therein, leaving open the question of the weight to be given to those facts.

THE CLAIM

[3] The Claimant’s claim is as follows:

1. A Declaration that the Claimant is entitled to:
 - a. a Deferred Annuity based on 100% of the benefit provided by Guardian Life Limited's contribution to the Guardian Life Limited's Pension Plan up to the 15th August 2018.
 - b. 100% of Claimant's contribution to the Guardian Life Limited's Pension Plan with credited interest up to the 15th August 2018.
2. A Declaration that the Claimant is entitled to supplemental retirement benefit as detailed in email dated the 15th July 2016.

3. An Account of all sums due to the Claimant pursuant to supplemental retirement benefit established on or about the
4. An order that the Defendants transfer the Claimant's full pension entitlement as detailed at orders 1, 2 and 3 above, to a pension plan approved by the Claimant within seven (7) days of the date of this order.
5. Costs and attorneys' costs.
6. Such further and/or other relief that the court finds just.

[4] The parties have agreed a statement of facts and issues, which is adopted for the purposes of this decision and is repeated in full below:

THE UNDISPUTED FACTS

1. The Claimant Catherine Allen was employed to Guardian Life Limited from the 3rd January 2005 to the 15th August 2018.
2. The Defendants were at all material times the trustees of the Contributory Pension Plan for Guardian Life Limited, created by Trust Deed dated 27th June 2003 and as altered with effect from the 2nd February 2009 (hereinafter referred to as "the Plan").
3. By virtue of their appointment as Trustees, the Defendants' duties and responsibilities include the management and administration of the plan and to pay out of the Fund the pensions, administrative expenses and other benefits prescribed by the Rules.
4. The Plan is funded by contributions made by both employees of Guardian Life Limited and the employer Guardian Life Limited. Clause 6 of the Claimant's letter of employment referred to contributions to be made to the Plan. It stated as follows:

You shall become a member of the Company's defined contribution pension scheme. This scheme has 5% employee contribution and a matching 5% employer contribution. You also have the option to invest an additional 5% of salary on a voluntary basis.
5. Pursuant to the Claimant's contract of employment, she made contributions to the Plan. Guardian Life Limited also made contributions to the Plan during the tenure of her employment and

for and on behalf of her pension account. These funds were also placed in a pool which constituted the Pension Trust Fund.

6. On or about the 15th July 2016, the Claimant was advised by Audrey Basanta-Henry, Vice President Corporate Resources for Guardian Life Limited that a Supplemental Retirement Benefit in the sum of Thirty-Five Thousand Nine Hundred and Sixty-Nine United States Dollars and Thirty-Eight Cents (US\$35,969.38) was currently being held on account for her benefit in respect of the years 2015 and 2016. Further amounts were also to be set aside on an annual basis and the total paid to her on retirement or earlier, should she separate from the Company, for other than cause, prior to normal retirement age.
7. On the 15th August 2018, the Claimant's employment was terminated by reason of redundancy. In the termination letter dated the 15th August 2018, she was advised that she would receive the full benefit of her mandatory and voluntary pension contributions to the Plan as well as contributions made by Guardian Life Limited. She was also advised in said letter that she would receive further payment for her supplemental pension benefit, although it was referred to as an "ex gratia payment". She did not agree to the termination of her employment by reason of redundancy and so she signed and returned the said letter, but struck through the words "full and final".
8. By letter dated October 18, 2018 Guardian Life gave the Claimant notice that certain actions she carried out constituted grounds for summary dismissal and that it was considering terminating her for cause.
9. By letter dated 1st November 2018, Guardian Life informed the Claimant they were terminating her for cause and enclosed to that letter a Change of Status Benefit Statement.
10. On or about the 17th December 2018, the Claimant referred the dispute concerning the termination of her employment to the Minister of Labour and Social Security.
11. In or about January 2020 Guardian Life Limited informed the Trustees that it had dismissed the Claimant for cause.

12. The Claimant's dispute was further referred to the Industrial Disputes Tribunal (the "Tribunal") for determination on the 23rd December 2020.
13. On or about the 3rd December 2021 in a claim in the Supreme Court between Guardian Life Limited and the Claimant in relation to her alleged breach of employment contract and/or breach of fiduciary duties, the Supreme Court ruled in favour of Guardian Life Limited. The Claimant appealed and the appeal is pending.
14. The Tribunal delivered its decision on the 28th April 2022. It found that:

Ms Allen was unjustifiably dismissed but has taken note of her egregious behaviour that contributed to her dismissal as well as the fact that she has mitigated her loss.
15. Consequent on the decision of the Tribunal, the Claimant demanded that the total pension entitlement including the employer's portion be paid to her pursuant to Clause 7.02 of the said Pension Trust Deed which states:

A member of five (5) or more years of Pensionable Service who is not being dismissed for fraud or misconduct after due process will receive a Deferred Annuity based on 100% of the benefit provided by the Employer's contribution to date of withdrawal plus:

 - i. A refund of his own contributions, with Credited Interest up to the date of termination; or
 - ii. A deferred annuity purchased by (i) above.
16. On or about the 5th July 2022 Guardian submitted an updated Change of Status Benefit Statement to the Claimant. The Claimant did not complete and/or return it. The Change of Benefit Statement records the amount payable to or on the directions of the Claimant in relation to the pension scheme.
17. The said Statement only referred to a refund of the Claimant's contributions. The Employer's portion was not reflected in the Statement.

18. The Defendants have not complied with the Claimant's requests to pay over the full entitlement and supplemental retirement benefit to the Claimant.

FACTUAL ISSUES IN DISPUTE

19. The Parties state that the following factual issues are in dispute and remain to be resolved:
 - a. Whether Guardian Life Limited paid over funds to the pension fund as supplemental pension in relation to the Claimant?

LEGAL ISSUES IN DISPUTE

20. The Parties state that the following legal issues are in dispute and remain to be resolved:
 - a. Whether the Claimant is entitled to the total pension entitlement including the employer's portion in light of the decision of the Industrial Disputes Tribunal that her termination was unjustifiable?
 - b. Whether the Trustees acted in accordance with the provisions of the Pension Scheme?
 - c. Whether the "supplemental retirement benefit" claimed by the Claimant is provided for or payable under the Pension Scheme?
 - d. Whether the Trustees are responsible or liable for the payment of the "supplemental retirement benefit"

CLAIMANT'S SUBMISSIONS

[5] Ms Williams, on behalf of the Claimant, identified two main issues which in her view, this Court is required to resolve. These are as follows:

- a. *Whether the Claimant is entitled to the total pension entitlement including the employer's portion in light of the decision of the Industrial Disputes Tribunal that her termination was unjustifiable?*
- b. *Whether the "supplemental retirement benefit" claimed by the Claimant is provided for or payable under the Pension Scheme?*

[6] Counsel rested on the entitlement of a member under the Pension Plan Rules (mistakenly referred to as the of the Pension Trust Deed) at Clause 7.02 which states:

A member of five (5) or more years of Pensionable Service who is not being dismissed for fraud or misconduct after due process will receive a Deferred Annuity based on 100% of the benefit provided by the Employer's contribution to date of withdrawal plus:

*iii. A refund of his own contributions, with **Credited Interest** up to the date of termination; or*

iv. A deferred annuity purchased by (i) above.

[7] Counsel argued that the Claimant was entitled to the employer's contribution as it was accepted by both parties that the Claimant is a member of five or more years of pensionable service. Counsel, relying on **Coley et al v Perea et al unreported decision, judgment delivered on October 19, 2007**, submitted that the interpretation of Clause 7.02 should be practical and purposive as opposed to detached and literal, as there are no special rules when construing the terms of the pension Trust Deed. The clause is clear and unambiguous that an employee should only be deprived of the employer's contribution where the employee is dismissed for fraud or misconduct after due process.

[8] Counsel submitted that, consequent on the Industrial Disputes Tribunal's finding that the termination of the Claimant's employment was unjustifiable, it is not open to the Trustees to act contrary to this decision. Counsel also emphasised that this decision has not been appealed by the Company.

[9] Counsel directed the Court to the definition of "unjustifiable" given by the Court of Appeal in **Village Resorts Limited v Industrial Disputes Tribunal** Unreported decision, judgment delivered on June 30, 1998. That is:

It equates in my view to the word "unfair" and I find support in the fact that provisions of the Code are specifically mandated to designated inter alia "...to protect workers and employers against unfair labour practices" (sec 3(1)(c) of the Act.)

[10] She also pointed out that the court accepted the following definition from Somers J from the jurisdiction of New Zealand in **Auckland City Council v Hennessey** [1982] A.C. 699:

We think the [word] “unjustified” should have its ordinary accepted meaning. Its integral feature is the word “unjust”- that is to say not in accordance with justice or fairness. A course of action is unjustifiable when that which is done cannot be shown to be in accord with justice or fairness.

[11] Counsel submitted that these definitions support the Claimant’s position that the Trustee, in relying on the letter they received from the employer in January 2020, issued prior to the decision of the IDT in April 2022, was unlawful and was not in alignment with the terms of the Trust Deed. Given the known information, the decision was also not made in good faith.

[12] Counsel further submitted that the supposed termination of the Claimant for cause was not a proper basis for disentitlement of her full pension benefit on the grounds that she was dismissed for misconduct. Counsel pointed to the IDT decision, which outlined that the Claimant’s 1 November 2018 termination was not valid because at that time the Claimant was no longer employed to the Company. The Tribunal held that the purported dismissal for misconduct on 1 November 2018 was invalid since she had already been terminated on 15 August 2018, the employer failed to revoke that termination and reinstate her upon discovering the alleged breach on 17 August 2018 and, therefore, had no jurisdiction over her at the time of the later dismissal.

[13] Counsel argued that it is not open to the Trustees to rely on statements of the employer in the circumstances. In fact, the Trustees’ refusal to act in accordance with the IDT’s ruling is in breach of their duty to act in good faith and in accordance with the terms of the Pension Trust Deed and Rules. It is also not open to them to rely on Supreme Court proceedings, which are not relevant to the question of due process in relation to the Claimant’s dismissal, an issue resolved by the IDT. Counsel highlighted that the IDT in

its ruling acknowledged that the Claimant's 'egregious conduct' did not affect its findings on the point of her unjustifiable dismissal.

[14] On the issue of the Claimant's entitlement to the supplemental retirement benefit, Counsel took the position that there is adequate evidence for the court to find on a balance of probabilities that these funds form part of the Claimant's pension entitlement. Counsel asked the Court to order an inquiry by a certified actuary or accountant to ascertain whether the funds were paid over to the pension fund and to order same to be paid to the Claimant.

[15] On the matter of costs, Counsel submitted that the Defendants acted in bad faith by failing to carry out their duties under the Trust Deed and at law. Resultantly, the Claimant was illegally denied her full pension benefit for almost three (3) years. The Defendants should therefore be personally liable for costs on an indemnity basis. For this point, Counsel relied on **Singh v Basin - The Times 21 August 1999** and **Advantage General Insurance Company Limited v Marilyn Hamilton** [2021] JMCA App 25.

DEFENDANTS' SUBMISSIONS

[16] Mr Powell King's Counsel, on behalf of the Defendants, outlined the primary issues, agreed by the parties for consideration by the Court:

- a. Whether the Claimant is entitled to the total pension entitlement including the employer's portion in light of the decision of the IDT that her termination was unjustifiable.
- b. Whether the Trustees acted in accordance with the provisions of the Pension Deed.
- c. Whether the "supplemental retirement benefit" claimed by the Claimant is provided for or payable under the Pension Deed.
- d. Whether the Trustees are responsible or liable for the payment of the "supplemental retirement benefit".

[17] On the issue of the Claimant's entitlement to the Company's contribution, King's Counsel contended that this issue ought to be determined based on the proper interpretation of clause 7.02.

[18] King's Counsel relied on **AGCO Ltd v Massey Ferguson Works Pension Trust** [2003] EWCA Civ 1044 for the principles of interpretation in relation to a trust deed. While the facts of this case are dissimilar to the facts at bar, King's Counsel was of the view that the following statement from Lord Justice Rix at paragraph 64 was nevertheless useful:

The question then arises whether the structure and purpose of the rules, or what might be described as their logic, support or undermine such a view of what their language naturally seems to provide. It may be that if their logic pushes strongly enough in a different direction, then it will be necessary to think again before concluding finally as to their true construction.

[19] King's Counsel also pointed to where Lord Justice Aldous said that the court was to "ascertain the intention of the draftsman when he drafted the Rules".

[20] King's Counsel also relied on **Re Courage Group's Pension Schemes; Ryan and others v Imperial Brewing and Leisure Ltd and others** [1987] 1 All ER 528 in which the court considered the proper construction of a trust deed. In that case, there were likewise no special rules of construction applicable to the pension scheme. The court nevertheless observed that the provisions should be construed in a manner that gives reasonable and practical effect to the scheme, bearing in mind the changing commercial context.

[21] King's Counsel submitted that the clear intention of the draftsman in clause 7.02 was to reward employees who remained loyal to the Company, rather than those whose employment had been terminated for fraud or misconduct. He argued that the words "due process" were included to ensure fairness in the imposition of sanctions by affording employees an opportunity to respond to allegations made against them. They were not

intended to impose a requirement that the dismissal satisfy the IDT, as such an interpretation would place a strained construction on the provision.

[22] King's Counsel argued that clause 7.02 was correctly engaged on the facts. The Company had an independent third party investigate the alleged breaches of the Claimant and invited her to respond to the allegations against her. When she failed to do so, she was terminated for cause. Counsel further submitted that, in determining industrial disputes referred to it, the IDT is required to consider certain statutory and regulatory provisions. The considerations of the IDT in relation to the Claimant and the Company did not include the meaning of "due process" nor did the IDT consider clause 7.02 in its findings. Further, not all dismissals for fraud or misconduct would be referred to the IDT. The phrase "due process" merely gives employees accused of fraud or misconduct an opportunity to respond to allegations against them.

[23] King's Counsel for the Defendants took the position that the Claimant's conduct should not be ignored and directed the Court to consider the claim by the Company against her for breach of contract and breach of confidence. Justice Laing, ruling against the Claimant, noted there was no justifiable reason for her disclosure of confidential documents. King's Counsel also highlighted that the Claimant did not challenge the reasons for her dismissal at the IDT and emphasised their finding that it was her "*egregious behaviour that contributed to her dismissal*". Further, the Claimant has already been compensated for the manner of her dismissal. Allowing her the full benefits under Clause 7.02 would put her on equal footing with members who were not terminated for misconduct. The proper interpretation of the clause is that it is intended to exclude members dismissed for misconduct or fraud from receiving the Company's contributions.

[24] It was submitted on behalf of the Defendants that they did not fail to act in accordance with the Pension Deed. Their role is to act in accordance with the Pension Deed and the Pension Rules. Clause 7 outlines the pension benefits available to a member on termination of employment. The member needs to inform the Trustees how

their benefit ought to be handled. Clause 9.01 of the Pension Rules outlines that before any benefit “... shall become payable to a Member, he shall provide the Trustees with such information...which they shall require in order to determine his entitlement to the benefit.” Guardian sent the Claimant two Change of Status Benefit Statements, which the Claimant never signed or returned, leaving the Trustees without instructions. King’s Counsel relied on **Fredrick Leighton v Kingston Wharves Ltd and Grantley Stephenson** Unreported Claim 2009 HCV 2249 delivered on December 9, 2009 in support of this position.

[25] In addressing the Claimant’s position that the pension calculations were inaccurate because she was still entitled to the Company’s contributions, King’s Counsel pointed out that the Trustees’ decisions were based on communication from the Company that the Claimant’s cause for termination made her ineligible for the Company’s contributions. For the Trustees to conclude otherwise would be contrary to clause 7.02. Issues in relation to dismissal are between the employer and employee and not between the employee and the Trustees (see **Duignan v Dudgeon and others** [2005] IEHC 348).

[26] King’s Counsel rebuffed the Claimant’s contention that she is entitled to the supplemental retirement benefit. The Claimant had relied on a July 2016 email from Guardian, which indicated that a sum was being maintained in an account on her behalf for that purpose. This is, however, a separate arrangement from the pension schemes to which the Trustees are not a party. King’s Counsel further submitted that even if it did form part of the Pension Deed, the email imposed the clear condition that entitlement would be extinguished if the Claimant was dismissed for cause. The Trustees had no knowledge of this supplemental retirement benefit, nor does it fall within the pension scheme, and therefore they are not liable to pay the Claimant the sums claimed as supplemental retirement benefit.

[27] King’s Counsel urged that the Claim be dismissed with costs to the Defendants.

ANALYSIS/DISCUSSION

A. *Whether the funds were paid over to the Pension Fund as Supplemental Pension Benefit*

[28] The Claimant relies on a letter dated 15 July 2016 written to her by Audrey Basanta-Henry in support of her claim to the sum of **THIRTY-FIVE THOUSAND NINE HUNDRED SIXTY-NINE UNITED STATES DOLLARS AND THIRTY-EIGHT CENTS (US\$35,969.38)** as supplemental retirement benefits due to her. The terms of the correspondence are relevant and state:

I refer to the meeting that Eric held with us and advise that an amount of U.S.\$35,969.38 is currently being held on account for you in respect of the years 2025 and 2026. As Eric mentioned, further amounts will be set aside on an annual basis, and the total paid to you at retirement or earlier should you separate from the Company, for other than cause, prior to the normal retirement age.

There is no reference in the correspondence to this sum being related to the Employer's contribution to the Company's pension scheme, or to the Trust Deed or the Rules of the Pension Plan.

[29] In the Affidavit of Jerome Lee, he asserts that the Trustees have no knowledge of the supplemental retirement benefit. It is not contested that there is no mention of this supplemental retirement benefit in the Trust Deed or the Rules. Counsel for the Claimant submitted that there is sufficient evidence on which the Court could find, on a balance of probabilities, that these funds form part of the pension entitlement of the Claimant. She further submitted that, in the face of the denial by the Trustees, the appropriate course is for the Court to order an inquiry by a certified actuary or accountant into whether the funds were in fact paid into the Fund of the Pension Plan (the Pension Fund).

[30] The burden of proof lies on the Claimant to prove, on a balance of probabilities, that this sum was paid into the Pension Fund and therefore forms part of her pension to be paid by the Trustees. The Court is reminded of the test of proof on a balance of

probabilities from the oft-cited case of **Miller v Minister of Pensions** [1947] 2 All ER 372 where Lord Denning expressed the legal test in this way [372 E-G]:

'...the case must be decided according to the preponderance of probability. If at the end of the case the evidence turns the scale definitely one way or the other, the tribunal must decide accordingly, but if the evidence is so evenly balanced that the tribunal is unable to come to a determine conclusion one way or the other, then the man must be given the benefit of the doubt. This means that the case must be decided in favour of the man unless the evidence against him reaches the same degree of cogency as is required to discharge a burden in a civil case. That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: "We think it more probable than not," the burden is discharged, but, if the probabilities are equal, it is not.'

The Claimant, in seeming acceptance of the deficiency in her evidence, asks the Court to have an inquiry conducted to determine whether the funds were in fact paid into the Pension Fund. The legal basis for so doing was not indicated.

[31] The **Supreme Court of Jamaica Civil Procedure Rules, 2002 ("CPR")**, **CPR Rule 40** allows the Court to refer any question or issue of fact arising in a claim to a referee for inquiry or report. **Rule 40.3** sets out the procedure for the appointment of a referee, which must be made at a case management conference or pre-trial review. I have not been made aware of any case in which the procedure under **Part 40** has been employed. Some available literature suggests that the procedure is useful in complex commercial litigation where the expertise of the referee would be advantageous. (**See the Supreme Court Civil Procedure Rules PRACTICE GUIDE 2024**, a publication of the Bahamas Judicial Education Institute; **A New Way to Litigate: The Increasing use of Court Appointed Referees in Complex Litigation** by Michael Kontoudis, Simone Michel, Liam Prescott, Austyn Campbell, and Nick Wray-Jones published in **LEXIS-NEXIS Australia 25 May 2023** and **REFEREE AND ASSESSOR PRACTICE NOTE (GPN-REF)** General Practice Note Federal Court of Australia)

[32] The procedure set out in **CPR 40.4** is less constrained and more informal than a trial but contemplates that the parties would present their evidence through witnesses. To that extent, to appoint a referee in the present circumstances would seem to be a repetition of the trial of this issue. Further, there is no complex question requiring expertise that does not lie within the Court. It therefore falls to the Court to consider the issue.

[33] The only “evidence” in relation to this claim is the correspondence to the Claimant. The question for the Court is whether that evidence is such that the Court could reasonably draw the conclusion that the sum referred to in the email communication was paid over to the Pension Fund. Does it follow inexorably? The Court must make certain inferences or apply certain presumptions to arrive at that conclusion.

[34] The Court is entitled to draw reasonable and inescapable inferences, or logical conclusions, from facts it accepts as true and proven. A presumption is defined in the **Oxford Dictionary of Law (7th edn, OUP 2013)** as “a supposition that the law allows or requires to be made”. A presumption may be rebuttable or irrebuttable. A rebuttable presumption shifts the burden of proof and is rebutted by contrary evidence. Examples of rebuttable presumptions are the presumption of innocence, the presumption of advancement, the presumption of death, the presumption of due execution of a will, and the presumption of legitimacy. An irrebuttable presumption is one that the law does not allow to be contradicted by evidence, for example, the presumption that a child below the age of 12 is incapable of committing a crime (**Child Care and Protection Act**).

[35] It also seems to the Court that, before it embarks on what could turn out to be a fishing expedition, there ought to be some substratum of facts suggesting that the funds were placed with the Pension Fund as the Claimant contends. As pointed out before, there is nothing in the correspondence to her concerning the subject matter that indicates that the sums were going to be so placed or utilised. The Claimant gives no evidence of the details of the meeting referred to. The Claimant had by then been employed for over

ten years with the Company. Was this benefit being given to her in recognition of her years of service to the Company?

[36] The Trust Deed obliges the Trustees to have a statement of accounts prepared annually, together with an annual report of the Pension Fund. The statement of accounts must be audited, with the auditor having access to all relevant records (Clause 18.2 of the Supplemental Deed). The duty of disclosure requires a party to make a reasonable search for documents which are directly relevant to the matters in question in the proceedings. Where no such documents are produced, it must be taken that they do not exist (**CPR Rule 28.4(1)**). A party also has the option of seeking an order for specific disclosure or making a Request for Information. The Claimant failed to utilise any of these procedures provided for in the **Civil Procedure Rules**.

There is no mention in the offer of employment of a supplemental retirement benefit as part of the pension scheme. Reference is made only to the 5% employee contribution, the matching 5% employer contribution, and a further voluntary 5% contribution by the employee. In **Air Jamaica Limited v Joy Charlton and Others** [1999] UKPC 20; (1999) 54 WIR 359 [1999] 1 WLR 1399 (**'Air Jamaica Limited v Joy Charlton and Others'**) it was affirmed that the employer's obligation under the trust deed was contractual. It was said:

[27] Their Lordships should add for completeness that, while the Members' entitlements arise under the trusts of the Pension Plan, the Company's obligation to deduct contributions from Members and to pay them to the Trustees together with its own matching contributions, is contractual. The Company undertook this obligation by its covenant with the Trustees in the Trust Deed.

[37] The Company's covenant under the Trust Deed is to pay to the account of the Trustees all contributions collected by it from members, together with such contributions as are payable by the employer in accordance with the Rules of the Pension Plan. The Pension Plan Rules do provide that "the employer shall make additional contributions, as recommended by the actuary to be necessary, to provide for any improvement that the

employer shall require from time to time, or to provide for any augmentation to pensions or accrued pensions, provided that such payments are restricted to be within an amount stipulated by the Commissioner responsible for Taxpayer Audit and Assessment Department, or any other regulatory body". This is clearly referable to a contribution to the Pension Fund as a whole, and not to the pension entitlement of any particular employee. The Company was not, therefore, under a contractual obligation to pay this supplemental retirement benefit to the Trustees' account, such that it could be said that it must have been received and so form part of the Pension Fund.

[38] In contrast, there is some evidence that this sum *does not* form a part of the Pension Fund. In the initial letter of termination by way of redundancy to the Claimant, it is indicated that she would receive an ex-gratia payment of **THIRTY-ONE MILLION EIGHT HUNDRED SIXTY-FOUR THOUSAND SIX HUNDRED THIRTY JAMAICAN DOLLARS (\$31,864,630.00)** as provided under the supplemental retirement benefit arrangement of which she was advised. The letter also indicated that she would be entitled to the contributions made by the Company to the Guardian Life Limited Pension Plan made on her behalf, clearly establishing the separateness of the supplemental retirement benefit and the pension entitlement under the Pension Plan.

[39] The Court cannot reasonably, rationally or logically conclude from the evidence presented that Guardian Life Limited paid over the sum of **THIRTY-FIVE THOUSAND NINE HUNDRED SIXTY-NINE UNITED STATES DOLLARS AND THIRTY-EIGHT CENTS (US\$35,969.38)** to the Pension Fund as a supplemental pension benefit for the Claimant. There is, of course, no presumption of law applicable to these facts. The Claimant has therefore not met her burden of proof in this regard.

[40] The secondary issue raised is whether, notwithstanding that it has not been proven that the supplemental retirement benefit was paid over to the Trustees, the Trustees are liable to the Claimant for this payment. The Claimant may have been relying on the dicta from **Air Jamaica Limited v Joy Charlton and Others** at paragraph 24 that:

The interposition of a trust fund between the Company and the Members meant that payment of benefits to Members was the responsibility of the trustees, not the Company.

[41] In his Affidavit on behalf of the Trustees, Mr Lee asserts that the supplemental retirement benefit does not fall within the approved Pension Plan and is not payable under the Supplemental Trust Deed or from the Pension Scheme for which the Trustees are responsible. Liability for this payment, if due, would thus not be from the funds under the control and management of the Trustees.

[42] Brooks JA (as he then was) in **United General Insurance v Marilyn Hamilton** [2020] JMCA Civ 29, in applying the reasoning of the Privy Council in **Air Jamaica Limited v Joy Charlton and Others**, makes it clear that once the employer has paid the contractually due contributions into the pension scheme fund, the trust deed regulates what is paid out. The obligation is therefore placed on the trustees to make the pension payment. The case further makes the point that, in such a situation, the sums paid are not recoverable from the employer. Brooks JA stated:

*[108] In **Air Jamaica Limited v Joy Charlton and Others**, Lord Millett, in delivering the judgment of their Lordships' Board made it clear that after the employer had paid the contractually due contributions into the pension scheme fund, the trust deed regulates what is paid out of the fund thereafter. He said, at paragraphs 25 and 26 of the judgment:*

"25. ...

*26. In the present case prospective employees were informed that the Company maintained a pension scheme for its staff and that membership was compulsory for those under 55 years of age. They were told the amount of the employee's contribution, and that the company paid 'An amount not less than the employee's contribution, plus any amount necessary to support the financial viability of the scheme'. Even if these can be regarded as imposing contractual obligations on the Company, **the only obligation which was undertaken by the Company, and one which it has fully performed, was to make contributions to the***

fund. The obligation to make pension payments was not a contractual obligation undertaken by the Company, but a trust obligation imposed on the trustees. Their Lordships agree with the observation of Carey JA, who was dissenting in the Court of Appeal, that each employee becomes a Member of the pension scheme by virtue of his employment, but that his entitlement to a pension arises under the trusts of the scheme.” (Emphasis supplied)

[115] In neither scenario, however, is UGI liable to Mrs Hamilton in this regard. If Mrs Hamilton was bound by the pension scheme rules, then the monies that UGI had paid into the pension scheme trust fund, in respect of Mrs Hamilton’s employment, were not recoverable from UGI. Rule 8.01, even if accurately interpreted by the learned judge, was not applicable against UGI, but instead against the trustees of the pension scheme.

The converse must also be true: that the Trustees of the Pension Fund are not obliged to make payment of sums not paid into the pension scheme fund.

[43] It is the conclusion and finding of this Court that the supplemental retirement benefit claimed by the Claimant was not paid by the Company into the Pension Fund. Further, there is no contractual obligation arising from the Trust Deed on the Company to pay this supplemental retirement benefit to the Pension Fund. The Trustees consequently bear no liability under the Pension Scheme to pay the Claimant the amount of **THIRTY-FIVE THOUSAND NINE HUNDRED SIXTY-NINE UNITED STATES DOLLARS AND THIRTY-EIGHT CENTS (US\$35,969.38)** as a supplemental retirement benefit. The Claimant is not entitled to the declaration and orders in respect of the supplemental retirement benefit.

B. *Whether the Claimant is entitled to the Employer’s Contributions*

[44] The issue has been framed by the Claimant’s Counsel as “whether the Claimant is entitled to the total pension entitlement including the employer’s portion in light of the decision of the Industrial Disputes Tribunal that her termination was unjustifiable”. The Rules of the Pension Plan provide that an employee with five or more years of

pensionable service, who is not being dismissed for fraud or misconduct after due process, is to receive a deferred annuity based on 100% of the benefit provided by the employer's contribution on termination of service. The availability of the benefit secured by the accumulated value of the Employer's contribution (accrued benefit) is subject to the member not being dismissed after due process for fraud or misconduct.

[45] The Claimant's contention is this: the ruling of the Industrial Disputes Tribunal (IDT) that the Claimant was unjustifiably dismissed sufficiently proved that she had not received due process, which therefore entitled her to the accrued benefit of the employer's contribution to the Pension Fund, her not being terminated for "fraud or misconduct after due process". The opposite contention is that the ruling by the IDT has no bearing on the reason for the termination of the Claimant's employment insofar as her entitlement to the pension payment is concerned.

[46] It is necessary to understand the IDT's ruling. The complaint by the Company was that the Claimant committed a serious breach of confidentiality, contrary to the terms of her employment, by sharing confidential information with third parties. That she committed such a breach was not challenged in that hearing. Her counsel at the IDT indicated that what was being challenged was the manner of her dismissal. The IDT clearly accepted that she had breached the terms of her employment contract, finding her actions to be egregious. Notwithstanding the cogent reasons for her dismissal, the IDT determined the Company had not abided by the principle of developing and maintaining good personnel management techniques designed to secure effective cooperation between workers and their employers and to protect workers and employers against unfair labour practices. This required that in keeping with good industrial relations best practices, the Company should have revoked Ms Allen's termination by way of Redundancy, reinstated her and instituted disciplinary proceedings. In the circumstances, the IDT found that Miss Allen was not afforded the dignity to which she had a right as the approach taken by the Company was not in keeping with good industrial relations. The IDT took into account her egregious behaviour in arriving at its award. A proper reading

of the decision shows that the operative dismissal was the dismissal for cause and it was for that dismissal, which was improperly done, that she was compensated.

[47] It is not disputed that the Pension Plan Rules form the basis for the Claimant's entitlement. At issue is the construction of the Supplemental Plan Rules.

[48] The construction of the trust deed and rules of an occupational pension plan has been, in this jurisdiction, a recurrent exercise for the courts. The starting point is that there are no special rules of construction. The basic proposition is that the trust deed and rules of a pension plan are construed by the same general principles which govern any written instrument. There is no rule or presumption that pension documents are to be approached with greater latitude or greater rigidity than other commercial trusts. The speech of Lord Collins of Mapesbury in **Scully & Anor v Coley & Ors** [2009] UKPC 29, a case concerning the Salaried Staff Pension Plan administered by Life of Jamaica Limited, for the employees of Gillette Caribbean Limited is often referred to. His Lordship, at paragraph 30, distilled the position as follows:

30. The question whether the respondents have an entitlement to an allocation under Rule 12(c) is solely a question of construction of that Rule in the light of the Rules as a whole and the Trust Deed. It has been said more than once that there are no special rules for the construction of pension scheme documents. The provisions of a pension scheme should be construed to give reasonable and practical effect to the scheme, bearing in mind the practical consequences and the fact that it has to be operated against a changing commercial background. See, e.g. Re Courage Group's Pension Schemes [1987] 1 WLR 495, 505, per Millett J; Mettoy Pension Trustees Ltd v Evans [1990] 1 WLR 1587, 1610, per Warner J; National Grid Co pic v Mayes [2001] UKHL 20, [2001] 1 WLR 864, at [53], per Lord Hoffmann; Stevens v Bell [2002] EWCA Civ 672, [2002] PLR 247, at [26]-[32], per Arden LJ.

[49] The second principle is that the court should adopt a purposive and practical approach to the interpretation of the trust deed and rules. In **Air Jamaica Limited v Joy Charlton and Others**, though the factual matrix is dissimilar to the instant case, the

approach approved by the Board is enduring. Lord Millett emphasised that pension scheme rules ought, where possible, to be construed so as to give effect to the bargain which the Members had made. He pointed out that the obligation of the trustees to pay additional benefits to the Members was itself one of the benefits for which the Members had bargained. Therefore, in construing the trust instrument, regard should be had to the nature of an occupational pension and the employment relationship that is its genesis.

[50] **Scully & Anor v Coley & Ors** suggests a third principle. That is, the rules are to be read together. The Board reasoned that the Rules should be read together as an integrated whole. A rule is also not to be construed in isolation, and the Court must resist the temptation to give a single provision a meaning which sets it at variance with the architecture of the instrument as a whole. Further, the words in pension instruments take their meaning from their context, and that the same word may bear different shades of meaning according to its setting.

[51] The starting point in construing the Trust Deed and Rules is the nature of a pension plan. This was ably put by Lord Millett in **Air Jamaica Limited v Joy Charlton and Others** thus:

This is not to say that the trust is like a traditional family trust under which a settlor voluntarily settles property for the benefit of the object of his bounty. The employee members of an occupational pension scheme are not voluntary settlors. As has been repeatedly observed, their rights are derived from their contracts of employment as well as from the trust instrument. Their pensions are earned by their services under their contracts of employment as well as by their contributions. They are often not inappropriately described as deferred pay.

[52] Sir Nicolas Browne-Wilkinson V-C in **Imperial Group Pension Trust Ltd v Imperial Tobacco** [1991] 2 All ER 597 had earlier stated that:

Pension scheme trusts are of quite a different nature to traditional trusts. The traditional trust is one under which the settlor, by way of bounty, transfers property to trustees to be administered for the beneficiaries as objects of his bounty. Normally, there is no legal

*relationship between the parties apart from the trust. The beneficiaries have given no consideration for what they receive. The settlor, as donor, can impose such limits on his bounty as he chooses, including imposing a requirement that the consent of himself or some other person shall be required to the exercise of the powers. As the Court of Appeal have pointed out in **Mihlenstedt v Barclays Bank International Ltd** [1989] IDLER 522 a pension scheme is quite different. Pension benefits are part of the consideration which an employee receives in return for the rendering of his services. In many cases, including the present, membership of the pension scheme is a requirement of employment. In contributory schemes, such as this, the employee is himself bound to pay for his or her contributions. Beneficiaries of the scheme, the members, far from being volunteers, have been given valuable consideration. The company employer is not conferring a bounty. In my judgment, the scheme is established against the background of such employment and falls to be interpreted against that background.*

[53] The consequence of the employer's contribution to the employee's pension payment being a part of his package of compensation for services to his employer means that it should not be malignantly, spitefully, capriciously or arbitrarily taken away. Equally, an employee whose conduct is inimical to the interest of the employer, and who causes harm to his employer, should not be allowed to reap benefits. This is recognised in the forfeiture or 'bad leaver' clause found in many such pension schemes. The phrase in the Pension Plan Rules "...who is not dismissed for fraud or misconduct after due process" is to be construed having regard to the nature and purpose of the pension scheme, and in recognition of both the employer's and employee's obligations as well as the trustee duties.

[54] An intimation of misconduct justifying dismissal can be gleaned from the case of **David Cousins v Abraham Ferguson** [2023] JMCA Civ 7. D Fraser JA stated:

[23] The E(TRP)A has, however, not abrogated the common law concerning the effect of abandonment of employment or where summary dismissal is justified. Neither notice nor payment in lieu of notice is required if the employee either abandons the job or the contract is justifiably terminated for cause by summary dismissal. If that were not the case the employee would unfairly benefit from

his/her wrongful action. As Langstaff J President of the Employment Appeal Tribunal stated in the English case of British Heart Foundation v Roy (Debarred) UKEAT/0049/15/RN, (Transcript) at para. 8: “Just as all contracts of employment contain an implied term on the part of the employer that it will not act without reasonable or proper cause so as to damage or destroy the relationship of trust and confidence which exists, or should exist, between employer and employee, so too the employee may be bound by that term, and is undoubtedly bound by the term that the employee is to provide loyal service to the employer. Stealing from an employer is a clear and undoubted breach of those terms. It could not be otherwise. If an employer, knowing of the repudiatory conduct, dismisses an employee for it, the employer is, by doing so, accepting the employee's breach as terminating the need for it, the employer, to continue to perform its side of the bargain which is the employment contract. In short, if an employee is guilty of repudiatory conduct, which stealing inevitably is, then except perhaps in the most exceptional circumstances (which for myself I cannot readily bring to mind, but I am prepared to accept may possibly exist), an employer is entitled to dismiss that employee without notice. The employer, by doing so, is not in breach of the contract. It is the employee's breach which causes the termination.” (Emphasis supplied)

[55] An employer may therefore dismiss an employee summarily for serious misconduct. The length of employment and the role of the employee would be relevant considerations in determining the seriousness of the misconduct. The employer would also be required, in dismissing the employee in this circumstance, to have regard to the employment contract, which includes the implied duty of good faith.

[56] Some guidance as to the nature of the employer's duty toward an employee may be taken from **IBM United Kingdom Holdings Ltd v Dagleish** [2017] EWCA Civ 1212 (03 August 2017), under the heading ‘Relevant Legal Duties, Sir Timothy Lloyd traced the history of the implied obligation of good faith. He stated:

THE RELEVANT LEGAL DUTIES

1. *The so-called Imperial duty was first formulated in the Imperial Group case already mentioned. It was framed by reference to a duty which had already been identified as an implied term of*

contracts of employment. That implied duty was then expressed as an obligation on the employer not, without reasonable and proper cause, to conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Browne-Wilkinson VC gave this duty the label "the implied obligation of good faith in his reasoning in the Imperial Group case.

2. *He held that this obligation "applies as much to the exercise of his rights and powers under a pension scheme as they do to the other rights and powers of an employer": [1991] 1 WLR 589, at 597H. He went on to say (at 598A):*

Construed against the background of the contract of employment, in my judgment the pension trust deed and rules themselves are to be taken as being impliedly subject to the limitation that the rights and powers of the company can only be exercised in accordance with the implied obligation of good faith.

[57] Sir Timothy Lloyd further explained the obligation:

[30] The contractual duty (which is owed each way under a contract of employment) has been affirmed at the highest level of authority: Malik v BCCI [1998] AC 20; Johnson v Unisys Ltd [2001] UKHL 13, [2003] 1 AC 518. In each of those cases passing reference was made to the Imperial Group case. The Imperial duty itself has been considered directly on a few occasions. It was followed and applied by Knox J in Hillsdown Holdings plc v Pensions Ombudsman [1997] 1 All ER 862. It was referred to with approval (but not as a matter of decision) in National Grid Co plc v Mayes in the House of Lords [2001] UKHL 20, [2001] 1 WLR 864. It was followed and applied by Newey J in Prudential Staff Pensions Ltd v The Prudential Assurance Co Ltd [2011] EWHC 960 (Ch), [2011] PLR 239, to which we will refer later. It was touched on in the Privy Council on appeal from Jamaica in Air Jamaica Ltd v Charlton [1999] 1 WLR 1399 and in UC Rusal Jamaica Ltd v Miller [2014] UKPC 39, [2015] PLR 15, but neither of these cases calls for further reference in relation to the present appeals.

[58] The Caribbean Court of Justice in **Maurice Arjoon v New Building Society Ltd, Trust Company (Guyana) Limited, Executor of the Estate of Ahmad Khan**

(Deceased), Seepaul Narine and Nizam Mohamed [2024] CCJ 7 (AJ) GY (Arjoon v New Building Society) also referred to the Imperial duty:

[27] The lawfulness of the Appellant's response merits some discussion, and the research of Mr Luckhoo SC for the Appellant has been helpful. In Commonwealth Caribbean Employment and Labour Law the authors note that in the Commonwealth Caribbean there is standard application of the principles of natural justice, especially in the context where there is a dearth of statutory provisions regarding the actual steps to be taken in terms of procedural fairness. The text refers to the case of Banking, Insurance and General Workers Union v PriceSmart Trinidad Ltd where no investigations were made into the employee's alleged misconduct before summoning her to a meeting, and she was not advised of the charges against her, even when she requested them. The employer subsequently demanded her resignation. The court held the employer's actions were reprehensible, in breach of the rules of natural justice and quite contrary to all known tenets of what can be regarded as good industrial practice.

*[28] More pointedly, counsel submitted that this Court **decided that a term of mutual trust and confidence would be implied into a contract of employment, in Sandy Lane Hotel Co Ltd v Cato. This necessarily requires that an employer must furnish an employee with particulars of allegations** in circumstances similar to those in the instant case, it was submitted, and the employer cannot refuse to do so and then allege fundamental breach by the employee for opting not to appear in person but by counsel. In this vein, the court in King v University Court of the University of St Andrews determined that the implied duty of trust and confidence subsisted whilst the investigation procedures were being carried out. Therefore, it was held, the pursuer in that case was entitled to be given a fair opportunity to reply to the complaints made against him. Another recent decision is Burn v Alder Hey Children's NHS Foundation Trust in which Underhill LJ agreed **that a separate duty of procedural fairness could readily be implied into the contract of employment in the context of the disciplinary process, apart from the implied duty of trust and confidence.***

[59] From these authorities, which the Court accepts, the relevant provision is to be interpreted in keeping with the underlying purpose of the Pension Plan of securing an earned benefit for employees and/or their beneficiaries on retirement. Construction

should give effect to this purpose, denying the employee his benefit only on the strictest interpretation. It therefore means that the determination of the phrase “(a Member) who is not being dismissed for fraud or misconduct after due process” is not the same question or issue that was presented to the IDT. While the ruling is not irrelevant, it cannot be the basis of the interpretation of the Pension Rules. The IDT was concerned with the manner of dismissal, while the Pension Plan Rules are concerned with the reason for dismissal, that reason being determined after the employee has the opportunity to challenge it.

[60] Brooks JA (as he then was) in **United General Insurance v Marilyn Hamilton** highlighted the different treatment of compensation for wrongful dismissal and the withholding of pension. He said:

[111] Having concluded that Mrs Hamilton was bound by the terms of the pension scheme rules, it is necessary to address another point that the learned judge made. She held that rule 8.01 of those rules was conclusive for finding that UGI’s contributions to the pension scheme could not be withheld from Mrs Hamilton. The learned judge said at paragraphs [150] - [151]:

“[150] In any event, short shrift can be made of [the issue of whether UGI’s contribution could be withheld]. Clause 8.01 of the [pension scheme rules] specifically speaks to the employee who withdraws from the scheme before retirement. Ms. Hamilton did not of her volition, withdraw from the scheme. Her services were wrongfully terminated. She is therefore entitled to what she has lost as a result of [UGI’s] breach. Had [UGI] not terminated her employment wrongfully, she would have been entitled to her contributions plus that of employer’s.

*[151] I find support for this view in Salmon’s J [sic] statement. [sic] in the case of **Acklam v Sentinel Insurance Co Ltd** [1959] 2 QB 683, 697, as similar case. He enunciated:*

‘[The pension scheme rule in Mr Acklam’s case] does not say that if he does exercise one of the options he then forfeits any rights which he might otherwise have had by reason of wrongful dismissal and I refuse to read any such words into the contract. If that is what was intended and I

am sure it was not-it could and should have been plainly stated.”

[112] The learned judge concluded in paragraph [152] that Mrs Hamilton “is therefore entitled to [UGI’s] contributions from the time she became a permanent member of” UGI’s staff.

[113] Acklam v Sentinel Insurance is not entirely on all fours with this case, in that, unlike Mrs Hamilton, Mr Acklam’s contract did not allow his employer to dismiss him other than for misconduct or negligence. It is not a critical distinction for this issue. The critical distinction is that it does not seem that the pension scheme in Mr Acklam’s case was operated by a separate legal entity from the employer. At best, it is not clear, and there was no issue made of it in the case. It is noted that, at one point in correspondence between the parties in that case, it was the defendant who offered to pay to Mr Acklam his contributions to the scheme (see page 696). This suggests that it had control of those funds rather than the funds being under the control of a separate entity.

[114] The distinction is important for these purposes. It is to be noted that the learned judge has again conflated two separate issues, namely, the entitlement under the pension scheme rules, and the issue of UGI compensating Mrs Hamilton for that which she lost as a result of wrongfully dismissing her. That conflation resulted in an order for an account of “the contributions that UGI should have made between 10th January 2000 to the 29th July 2006 and payment of the amount due to [Mrs Hamilton]” (order 3 of the orders made by the learned judge).

This reasoning is consistent with the statutory scheme in Jamaica which gives the jurisdiction to determine unfair or unjustifiable dismissal to the IDT. Neither the Court, nor the Trustees should attempt to usurp that function.

[61] In **Arjoon v New Building Society**, Barrow J also took the view that the issue of wrongful termination was separate from the issue of the member’s entitlement to his pension. He said:

[50] It is not surprising that the rules make no provision for payment of pension where the Society wrongfully terminates the employment. The draftsperson could hardly have been required to provide for the

employer acting wrongfully and, indeed, nor were they competent to so provide. Provision for the consequences of a wrongful termination is necessarily a matter left to the courts

[62] The phrase “(a Member) who is not being dismissed for fraud or misconduct after due process”, in the context of the foregoing, is to be construed as obliging the Trustees to ensure: (1) the Claimant was terminated for fraud or misconduct and (2) that the Claimant had been given due process in her dismissal, that is the opportunity to challenge the allegations. The Trustees were bound therefore to ensure that there was a legitimate basis for her dismissal, that the Company was not acting arbitrarily or vindictively and that she was afforded procedural fairness that is, she was told of allegations and given the opportunity to refute or challenge them.

[63] Miss Allen had several opportunities to respond to the allegations. The first was the letter to her of October 18 2018, the subject matter of which was ‘Termination for Cause’ in which she was invited to comment and respond to the allegations set out in the letter, which contained the findings of the Mintz Group, who conducted a forensic examination of her laptop. She declined so to do by the date indicated or at all, or to seek any accommodation for her response. The Claimant also had the opportunity before the IDT to challenge the Company’s allegations but she again, expressly through her Attorneys-at-Law, chose not to do so. The Trustees accepted this to be the case.

[64] The Affidavit of Jerome Lee refers to the letter of October 18 and the fact that there was no response by the Claimant. He stated that the Trustees do not enquire into the dismissal of Guardian Life Limited’s employees and that their decisions are informed by communication from Guardian Life Limited, being the sponsor of the pension scheme. With respect, in the Court’s view, the Trustees do have a duty to satisfy themselves that the employee was dismissed for fraud or misconduct and that the employee was afforded due process in their dismissal. Mr Lee goes on to say, however, that the Trustees formed the view, thus exercising the independent judgment, that Ms Allen had been dismissed by reason of misconduct. They were entitled to come to that view on the available

evidence, being the letters from the Company of October 18 and November 1 of 2018 to Ms Allen which indicated that no contest had been made by Ms Allen to the allegations of sharing the company's confidential information with external parties, having been invited to do so. The Trustees were also aware of the Judgment received in favour of the Company finding that the Claimant disclosed confidential information in breach of her contract of employment. (There is a pending Appeal of this Judgment). Ms Allen was highly placed in the Company as an Assistant Vice President and Actuary. Such actions as were attributed to her could clearly amount to a repudiatory breach of what was an express term in her contract.

[65] The Court finds that the Trustees, having properly determined that Ms Allen was dismissed for misconduct after due process, are not liable to pay to her the accrued benefit of the Company's contribution. The Claimant is therefore not entitled to the declarations and orders sought in respect of the Employer's contribution to the Pension Plan.

[66] Consequent on these findings the Court makes the following Orders:

1. Judgment for the Defendants
2. Claimant to pay seventy-five percent (75%) of Defendants' costs.
3. Order for costs stayed for a period of forty-two (42) days from the date of this order.
4. Claimant's Attorney-at-Law to prepare file and serve Formal Order

[67] The Court wishes to offer the parties and Counsel her sincere apologies for the delay in the delivery of the judgment. The Court is cognisant of the time standards fixed for the delivery of judgments and continues to endeavour to deliver timely decisions despite well-known constraints.