IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. HCV02775 2005

BETWEEN	*EDWARD GABBIDON*	*CLAIMANT*
A N D	*RBTT BANK OF JAMAICA*	*DEFENDANT*

Heard: June 15, 16 & 17; July 28, 2009 and June 24, 2010

Appearances: Ms. H. Phillips Q.C., (up to July 20, 2009); Mr. C. Dunlkey and Ms. S. Gayle instructed by Phillipson Partners for the Claimant.

Mr. K. Anderson and Ms. M. Burke instructed by Dunn Cox for the Defendant.

Miss N. Roberts on behalf of the Defendant.

P.A. Williams, J.

Background

1. Mr. Edward Gabbidon (the claimant) was appointed Assistant General Manager, Information Technology Operations and Technology Solutions at RBTT Bank of Jamaica (the defendant) on the 25th of October, 2001.

   In December 2003, there was a technical operational problem in the defendant's computer system which resulted in them sustaining substantial financial loss.

   There followed a series of investigations, reports, meetings, discussions and decisions which ultimately culminated in the claimant being suspended for fifteen days without pay on May 16, 2004.

The claimant wrote to Mr. Peter July the chairman of the defendant on the 28th of May, 2004 referring to him the issue of this suspension.

On the 3rd of June 2004, he received a letter from the defendant's managing director, Mr. Amrit Sinanan advising, inter alia, that his services was being terminated pursuant to clause 9 (a) of his letter of employment which had stated…

> ".....termination of your services may be on the basis of one (1) months written notice on either side without any reason being given thereof. The bank has the option of making payment in lieu of notice".

2. It is arising from this termination that the claimant filed this action on September 20, 2005. The claim is for liquidated damages in the sum of $22,270,448.97 being for loss of present and future earnings as a result of the defendant's dismissal of the claimant arising from the detrimental reliance placed on the defendant's own Employee Supervision Programme. He also claimed US $1.5 million as aggravated, exemplary and punitive damages but at the close of the case, Mr. Dunkley indicated they were not pursuing this award.

In the closing submissions for the claimant a summary of the damages sought was set out as follows:-

General Damages for Breach of Implied Duty of Trust and Confidence.

Definition.

1. Loss through suspension $322,433.89

2. Past Financial Loss

Salary, Gainshare & Benefits July 04-09	$24,986,613.85

(3) Future Financial Loss

Salary, Gainshare & Benefits August 09 to July 2014	$39,021,427.76

(4) Inability to take care of Family	$3,240,000.00
(5) Mental Stress and Emotional Turmoil (over suspension)	$1,500,000.00
(6) Punitive Damages	$10,000,000.00

General Damages for Breach of Implied Duty of Good Faith

(1)	Financial loss had employment contract run its course – 10 years less mitigation	$64,008,041.61
(2)	Failure to be offered a negotiated severance package	$32,000,000.00
(3)	Further financial loss for proper provision for family	$3,240,000.00
(4)	Mental Stress and Emotional Turmoil (for manner of dismissal)	$2,500,000.00
(5)	Punitive Damages	$10,000,000.00

3. In the particulars of claim, the particulars of detrimental inducement are set out as follows:

(1) Establishing an employee suggestion programme ("ESP") which expressly provided for confidential and/or anonymous communication with pre-designated advisors to the programme.

(2) Promulgating the said programme to all members of staff of the defendant's bank to include the claimant.

(3) Failing to adhere to the defendant's own policy on

- Direct employee participation
- General advise and liaison responsibility of the advisor for problem resolution as set out on the ESP manifesto.

(4) Failing to direct the claimants report to the Independent Party but instead to the director of Group Human Resource of the defendant who had overall responsibility for the claimant's grievance complaint as well as the officers directly associated with the complaint in breach of the covenant of anonymity of the defendant's own policy under its ESP.

Further in the particulars, the claimant asserted:-

> "That the actions of the defendant were a complete breach of the articles of faith of the ESP; being confidence and confidentiality, between the claimant and defendant (through its advisors) which had the legal effect of a double punishment to the claimant, without any or any sufficient regard to the damage occasioned to the claimant".

4. While admitting the basic facts as alleged by the claimant, the defendant asserted that the correspondence of the claimant (i.e. the letter to Mr. Peter July) was inappropriate in the circumstances and a breach of protocol. In any event, the claimant's services were terminated in accordance with the express terms of his contract of employment in particular clause 9 (a) thereof.

The defendant went on to deny the allegations of inducement as stated and

particularized.

Further they asserted the claimant was paid all sums due to him by them on the termination of his contract and was entitled to no further payments or the fulfillment of any further obligations by them.

The issue

5. When the matter commenced, in the opening statement it was highlighted that in effect the claimant would be seeking to establish that it was as a result of the defendant's breach of an implied term of its contract with the claimant i.e the obligation of trust and confidence that an employer owes to its employee; that its actions towards the claimant caused him to suffer damages and loss.

   In the closing submissions, it was stated that the claimant was seeking compensation for the breach of the employment contract on two accounts:

   (a) The defendant's breach of its implied duty of trust and confidence

   (b) The resultant dismissal by the defendant arising from the claimant's detrimental reliance on a policy (ESP) of the defendant.

6. The defendant in its opening address, points out that its primary contention is that the claimant was dismissed wholly in accordance with the provisions of his contract of employment. Further it is contended there was no substantial breach of any implied term of the contract, giving rise to any financial loss which was foreseeable and having been likely to arise in the event of a breach of that implied term.

7. The nature of these arguments is such that it would perhaps be useful to consider the law as it relates to this implied term and then to determine if it is applicable

and whether the evidence of the claimant established that there was in fact any such breach.

In the event that it is determined that there was a breach, there needs then be a decision as to what if any damages are occasioned there from.

The law

8. The thrust of the claimant's claim turns not on issues of unfair or wrongful dismissal but rather in the manner in which he was treated; which it is argued was unfair; leading to the dismissal. It is on this basis that the claimant purports to seek damages outside of those normally limited by the usual approach in cases of wrongful dismissal as held in **Addis v. Gramophone Ltd. 1909 AC 488:-**

> "where a servant is wrongfully dismissed from his employment the damages for the dismissal cannot include compensation for the manner of his dismissal, for his injured feelings or the loss he may sustain from the fact that the dismissal of itself makes it more difficult to obtain fresh employment".

9. In **Mallock v. Aberdeen Corp. [1971] 2 All ER 1278** Lord Reid summarized the relationship that once existed in an employment contract; in what may be seen as brutally frank terms; at page 1282…

> "At common law a master is not bound to hear his servant before he dismisses him. He can act unreasonably or capriciously if he so choose but the dismissal is valid. The

servant had no remedy unless the dismissal is in breach of contract and then the servants only remedy is damages for breach of contract".

10. In our jurisdiction the approach of our Courts was clearly seen in **Cocoa Industry Board and Cocoa Farmers Development Ltd. and F.D Shaw v. Burchell Melbourne (1993) 30 JLR 242**. It was there held that since the contract of employment had made it clear that the appellants could terminate the agreement on the giving of one months notice or one months salary in lieu of notice, their conforming with these terms meant there was no basis on which a claim for wrongful dismissal could be upheld. Further it was stated that the statements as to the respondent's behaviour in the letter of dismissal was of no importance since he was not dismissed summarily but was given a months' salary in lieu of notice.

11. The case of **Malik and Mahmud v. Bank of Credit and Commerce** (in **liquidation) SA 1997 3 All ER** is recognized for the House of Lords seemingly confirmation of the existence of an implied obligation of mutual trust and confidence in employment contracts. It was here acknowledged that an employer is accordingly under an obligation not to without reasonable and proper cause conduct his business in a manner calculated and likely to destroy or seriously damage that relationship of confidence and trust between employer and employee.

It was signalled that this case was departing from the decision on **Addis v. Gramophone** (supra) when Lord Nicholls at page 9 said:-

"Addis v. Gramophone Co. Ltd. was decided in the days

before this term was adumbrated. Now that this term exists and is normally implied in every contract of employment damages for its breach should be assessed in accordance with ordinary contractual principles".

12. Halsbury's Laws of England 4th edition 2000 (reissue) at paragraph 47 refers

to this implied term as one of trust and respect and from decided cases gives examples of the kind of behaviour which may be considered a breach of this term. These include abusive and false accusations, intolerable behaviour and bad language, failure to give an employee necessary support; seducing the employee, failure to follow established procedures and failure to take seriously a complaint of sexual harassment.

It is noted that the kinds of behaviour which breach this implied term is entirely variable and in each case is a question of fact for the tribunal.

Further it is noted that the "implied term of trust and respect in the contact of employment has been held to have overriding effect, that is to say that even where the employer has express powers in a particular way under the terms of the contract he must exercise that power in the light of his overall duty of trust and respect...."

13. The significance of the recognition of this implied term is succinctly put by Lord Nichols in **Malick v. BCCI SA** [supra] at page 9 thus:-

"the trust and confidence term is a useful tool, well established now in employment law. At common law damages are awarded

> to compensate for wrongful dismissal. Thus loss which an employee would have suffered even if the dismissal has been after due notice, is irrecoverable because such loss does not derive from the wrongful element in the dismissal. Further it is difficult to see how the mere fact of wrongful dismissal, rather that dismissal after due notice, could of itself handicap an employee in the labour market. All this is in line with Addis' case. But the manner and circumstances of the dismissal as measured by the standards of conduct now identified in the implied trust and confidence term may give rise to such a handicap. The law would be blemished if this were not recognized today."

14. It is immediately apparent that the existence of this implied term may be seen to ensure much more to the benefit of the employee.

In his judgment at page 15 Lord Steyn made this observation-

> "It is true that the implied term adds little to the employees' implied obligations to serve his employer loyally and not to act contrary to his employer's interests. The major importance of the implied duty of trust and confidence lies in its impact on the obligations of the employer... And the implied obligation as formulated is apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business as he sees fit and the employee's interest in not

being unfairly and improperly exploited."

15. The potentially widescope of the application of this implied term is recognized and the need for limitation on its scope seem necessary.

Lord Steyn at page 22 may be well addressing this issue when he stated:-

> "Earlier I drew attention to the fact that the implied mutual obligation of trust and confidence applies only where there is "no reasonable and proper cause" for the employer's conduct, and then only if the conduct is calculated to destroy or seriously damage the relationship of trust and confidence. That circumscribes the potential reach and scope of the implied obligation."

16. The next decision regarded as significant in the development of this area in employment law is **Johnson v Unisys Limited (2001) 2 All ER 801.** In recognizing the decision in **Mahmud v. BCC I SA** (Supra) Lord Nicholls noted in passing that that was not a manner of dismissal case.

17. A useful instructive analysis of the development was by Lord Hoffman at page 815:

> "At common law the contract of employment was regarded by the courts as a contract like any other. The parties were free to negotiate whatever terms they liked and no term would be implied unless they satisfied the strict test of necessity. Freedom to contract meant that the stronger party, usually the employer was free to impose his terms

> upon the weaker. But over the last thirty (30) years or so the nature of the contract of employment has been transformed. It has been recognized that a person's employment is usually one of the most important things in his or her life. It gives not only a livelihood but an occupation, an identity and a sense of self-esteem. The law has changed to recognize this social reality."

18. He described the implied term of trust and confidence as the most far reaching in the evolution of implied terms in the contract of employment.

He readily recognized and defined possible problems in the application of these terms. At page 861 he said:-

> "The problem lies in extending or adapting any of these implied terms to dismissal. There are two reasons why dismissal present special problems. The first is that any terms which the courts imply into a contract must be consistent with the express terms. Implied terms may supplement the express terms of the contract but cannot contradict them. Only Parliament may actually override what the parties have agreed. The second reason is that judges, in developing the law, must have regard to the policies expressed by Parliament in legislation. Employment law requires a balancing of the interests of

> employers and employees, with proper regard not only to the individual dignity and worth of the employees but also to general economic interest."

19. In Johnson's case, the claim was for damages alleging that his dismissal was in breach of various implied term of his contract the main one being this implied term of trust and confidence. While acknowledging the existence of the term the Law Lords held that unfairness in the manner of dismissal does not give rise to a common law action as such a conclusion would be inconsistent with the statutory system for dealing with unfair dismissals.

20. It was recognized that the employer's right to dismiss the employee was strongly defended by the terms of the contract.

Lord Hoffman at page 817 commented:-

> "....in the face of this express provision that Unisys was entitled to terminate Mr. Johnson's employment on four weeks notice without any reason, I think it is very difficult to imply a term that the company should not do so except for some good cause and not after giving him a reasonable opportunity to demonstrate no such cause existed.
>
> On the other hand, I do not say that there is nothing which consistently with such an express term judicial creativity could do to provide a remedy in a case like this".

21. It was therefore against the background of the statutory/legislative framework that had developed in England that the Law Lord seemingly felt constrained to curtail the common law development of this implied term.

    Such legislation dealing extensively with employment and labour law as exists in England is not mirrored in the Jamaican legislation. The Labour Relations and Industrial Disputes Act of 1975 provided the frame- work applicable.

    At the time of this instant case it provided specific procedure for an employee who felt aggrieved at the manner of his dismissal to approach the Industrial Dispute Tribunal. Some argue that non-unionized workers had little redress for such complaints.

22. In England the case of **Eastwood and Anor. V. Magnox Electric PLL 2004 3 All ER 991** seemed to have re-vitalized the development in the area which was curtailed in **Johnson v. Unisys** (supra) Lord Nicholls had this to say at page 1001:-

> "The statutory code provided remedies for infringement of the statutory right not to be dismissed unfairly. An employee's remedy for unfair dismissal whether actual of constructive, is the remedy provided by statute. If before his dismissal whether actual of constructive, an employee has acquired a cause of action at law for breach of contract or otherwise, that cause of action remains unimpaired by his subsequent unfair dismissal and the statutory rights flowing there from. By definition in law such a cause of action exists independently of the dismissal."

Thus Johnson v. Unisys was distinguished and the "boundary of the Johnson exclusion area" established.

23. In our courts, recognition has been given for the application of this implied term. In **United General Insurance Co. Ltd. v. Marilyn Hamilton SCCA 88/08** delivered 15th May 2009, Mr. Justice Morrison J.A. reviewed the development and at page 20 said:-

> "It will be seen that from all this that although Addis has yet to be formally overruled in England, the concept of the employment contract as an ordinary commercial contract which it enshrined is plainly wearing thin....."

24. Justice Morrison J.A. considered the cases of **Malik and Mahmud v. BCC I** (supra) and **Johnson v. Unisys** (supra) he highlighted the importance of the latter at page 18.

> "Less than five years after the decision in Malik and Mahmud, Addis would only escape direct assault in the subsequent decisions of the House of Lords in Johnson v. Unisys (supra) as a result of the conclusion of the majority that, because Parliament in the United Kingdom had (under Part X of the Employment Rights Act 1996) provided the dismissed employee with a limited remedy for the wrongful manner of his dismissal, it would be an improper exercise of the judicial function for the House to craft a judicial remedy in light of the evident intention of Parliament that such

> claims should be heard by specialist tribunals empowered to provide a remedy restricted in application and extent. Were it not for this limitation, it is clear that the house might have been disposed to conceive of an implied term in the contract of employment that would allow an employee to recover damages for loss arising from the manner of dismissal."

25. Mr. Justice Morrison J.A. also went on to consider **Eastwood and Anor. V. Magnox Electric PLC** (supra) and of this case commented at page 20:-

> "The House of Lord held that while an employee's remedy for unfair dismissal was that provided by legislation, where before his dismissal he had acquired a cause of action for breach of contract or otherwise that cause of action remained unimpaired by his subsequent unfair dismissal and the statutory rights to which that gave rise."

26. Finally from this judgment it is noted that Mr. Justice Morrison J.A. described what he found to be formidable hurdles that that claimant would have in establishing the breach.

At page 21 his instructive observations were as follows:-

> "In the first place apart from the obiter comments of Lord Nicholls in **Malik v. Mahumud (at page 10) and Johnson v. Unisys (at page 803)** and the sustained assault by Lord Steyn on **Addis** in his judgments in both these cases and in **Eastwood v. Magnox Electric**, there has not been uniform

> support for the extension of the implied term of trust and confidence to a manner of dismissal case which this plainly is. Secondly any development of a new implied term that the power of dismissal will be exercised fairly and in good faith (the possible solution favoured by Lord Hoffman and Milett) will still have to overcome the obstacle of Addis itself, as a decision of the House of Lords that has withstood the test of a hundred years, and the fact that it has readily been followed and applied in this jurisdiction.

27. It is clear that this is a still developing area which must be, as Lord Hoffman said in **Johnson v. Unisys** [supra] at page 819 and a comment Mr. Justice Morrison J.A. repeated in **UGI Co. Ltd. v. Hamilton** [supra] at page 22; "finely balanced"

The Facts

28. There are some undisputed facts which can first be acknowledged starting with the recognition that the claimant was evidently a hardworking, ambitious young man who was once a valued employee of the defendant.

In the closing submissions on his behalf, his attorneys described him as a hardworking, dedicated and competent professional who has been building his career and reputation since 1985.

It is also recognized that over the years he had been steadily promoted, earned consistent commendations, received various merit increases and incentives based on his performance.

29. Under cross-examination Mrs. Lorraine Harrison who in 2003 was the general manager of Human Resources of the defendant, acknowledged that the claimant's work regularly called for commendations; that he regularly got high performance ratings and that she trusted him to be hardworking, dependable and honest.

30. Mr. Howard Gordon who was then the general manager corporate operations of the defendant admitted under cross-examination that he had known the claimant since 1992 and found him a very good employee who as a team player had risen through the bank with several promotions which were well deserved.

31. There had been no complaints about the quality of the work rendered by the claimant over the years ending with his promotion to the position of Assistant General Manager Information, Technology Operations and Technology Solution. There is no challenge to his having worked well and competently while serving in that position.

32. At the time he was offered that position, it was clearly stated that he was required to observe and uphold the Bank's policies." The existing polices in addition to any variations, additions and exemptions associated with the Bank's policies are deemed to form part of your terms and conditions of employment with the bank" (per clause 7).

A regards termination of employment, clause 9 (a) stated-

> "Termination of your services may be on the basis of one (1) months written notice on either side without any reason being given thereof. The bank has the option of making payment in lieu of notice."

33. In December 2003 the defendant experienced an electronic banking technical error which resulted in a number of unauthorized debit card transaction mainly through automated teller machines resulting in substantial monetary losses to the bank.

34. What follows after this event, culminated on June 3, 2004 when the claimant received the letter terminating his services.

The parties differ on the interpretation and significance to be given to these subsequent events. For the claimant, they represented unfair treatment. The defendant consider them largely insignificant for at the end of the day they acted in keeping with the contract between the parties.

35. It is undisputed that after the problem/error the defendant called for and instituted investigations as to the cause.

Two reports were subsequently prepared namely-

(a) The first dated January 16, 2004 was titled analysis of RBTT electronic banking incident December 2003 and defined as the outcome of the corporate work of Group corporate resources and RBTT Jamaica Information technology staff from January 5-16, 2004.

The principal author was Krishendath Maharaj, with contributions from Maria Hamilton, Sean Parris, Henry Grant and the claimant. This report was generally regarded as the technical report.

(b) The second report dated February 3, 2004 was titled report on system error and unauthorized debit card transactions RBTT Bank Jamaica Limited during the period December 23 to 26, 2003 and was prepared by two (2) corporate investigators. It included statements from employees of the defendant who it was felt could assist in determining the cause of the problem.

The claimant was one of those persons who gave a statement.

It is perhaps useful to note that under cross-examination the claimant explained that in his position he was responsible for four (4) units/departments – i.e. infrastructure, computer operations, e-solutions and hardware repairs.

The second report was generally described as the security report.

36. Both reports gave findings, came to conclusions and made specific recommendations.

The technical report was concerned chiefly with the hardware, change management and user acceptance testing.

Whereas the security report recommendation included disciplinary action against persons deemed responsible for the breaches of the bank's policies which had contributed to the incident.

37. Mr. Howard Gordon expressed the opinion that the recommendations in the latter report were too strong and not all correct. He admitted he did not raise his concerns with the authors of the report.

It was further acknowledged by him that the report did not name the claimant as one of those persons to be "disciplined."

38. Mr. Gordon was the claimant's immediate supervisor and gave evidence that it was not until April that the claimant was invited to a meeting with himself and Mrs. Lorraine Harrison.

He admitted that the claimant had queried the purpose of the meeting and had been told the details would not be disclosed.

39. Mrs. Harrison said the meeting was being called to discuss the outcome of the bank's investigations into the matter; to pose certain questions and also to consider the issue of disciplinary action on the claimant's direct reportees and him.

She admitted under cross-examination she had no communication with the claimant as to the reason for the calling of the meeting and did not know if he was told.

40. Both of the defendant's representatives gave evidence of the fact that attorneys on behalf of the claimant had become involved and seemed to have had discussions with the defendant's in house counsel prior to the meeting.

The claimant under cross-examination agreed that it may have been prudent to put in writing his request for information as to the purpose for the meeting.

41. A meeting was eventually set for May 3. Mrs. Harrison's recollection was that the attorneys were initially present and left her, Mr. Gordon and the claimant to have their discussions.

She later said the claimant was never actually in the room at the time the attorneys were present.

42. At the meeting Mr. Gordon asked the claimant questions based on the two (2) reports.

It is accepted that up to this time the claimant was not privy to the contents of the security report.

Under cross-examination the claimant conceded that he was then fully aware of what the meeting was about. He was asked questions to which he responded and discussions followed. Indeed he went on to accept that there was nothing "unfair " about the meeting.

43. After the meeting the claimant requested the questions be put in writing.

Mrs. Harrison said she drafted some of them while Mr. Gordon framed those related to technical matters.

The questions were done and given to the claimant by May 6th with the response expected the following day. The responses were not received until May 10.

44. Mrs. Harrison explained that during the time between May 3 and 10 discussions were had with the officials of the bank relating to the responses the claimant had given during the meeting with him.

A letter of suspension was prepared and taken to the second meeting with the claimant held on May 10 at about 5 p.m.

45. Her recollection is that further discussions as to the claimant's written responses were had.

The same three persons present at the first meeting were involved with this second one.

The responses were found to be no different from those previously given and were found to be unsatisfactory.

The claimant was handed the letter of suspension effectively suspending him for fifteen (15) days without pay.

Mrs. Harrison maintained that if his answers had proven satisfactory the letter may never have been handed to him.

She explained that even if a decision was taken prior to a meeting with an employee, if new information was presented subsequently that could inform a review of the action previously decided upon.

46. The claimant's recollection, however, is that no discussion took place but that he submitted his response and was called to a meeting where he was simply handed the letter.

47. In the letter dated May 10, 2004 the claimant was advised inter alia that following it investigations the bank had determined he had committed certain breaches. Further it stated:-

> ..... "As a result of the negligence in carrying out your duties as indicated ....., the Bank initially suffered a loss of $20.1 million. In addition, this incident had undermined customer's confidence and seriously tarnished the image and reputation of the bank. Your explanations given of your actions are unsatisfactory."

48. On May 28, 2004 the claimant wrote to the defendant's chairman, Mr. Peter July. This he said was in accordance with the defendant's Employee Suggestion Programme "ESP" which had been introduced by the defendant's Managing Director Mr. Amrit Sinanan in May 2003.

49. The objective of the programme was to build organization loyalty and commitment to team work and reinforce behaviours that are consistent with the standards, ethics and core values of the RBTT group.

50. The rationale behind the programme originated from the defendant's commitment to fostering a culture that facilitated honest and open communication recognizing a direct correlation between business performance and the freedom of staff to express their views, ideas and concerns.

51. The objective of the programme was to encourage staff to provide feedback on behaviour/actions that:

- negatively impact the Bank's image and programme
- detract from the Bank's ability to provide exceptional service to internal and external customers.
- are contrary to the Bank's core values, code of ethics, policies and procedures.

52. The process for the programme was for advisors to facilitate solutions, not to usurp the role of general managers, assistant general managers, managers, departmental heads, supervisors or other authority. Their duties entailed giving general advice and where appropriate liaise with other support channels to resolve the problem and to be alert to trends/warning signals within the organization and initiate appropriate action.

There were four advisors named including Mrs. Harrison and Peter July, the executive chairman and chief executive officer of the RBTT group.

53. The procedure envisioned staff accessing a hotline number or writing a report in which they may identify him/herself or remain anonymous.

The reports would be probed promptly and handled as sensitively as possible with the employee's anonymity and confidentiality being maintained unless otherwise indicated.

An inquiry concerning financial irregularity would be guided by the Bank's fraud prevention manual. Cases of harassment, discipline or a grievance would be handled in accordance with the Bank's relevant Human Resources Policy, or Grievance procedure

and where there has been a breach of the bank's code of ethics, the Human Resources policy would be the guide.

54. The claimant felt that he had a grievance which warranted his writing to one of the advisors – Mr. Peter July.

He opted not to remain anonymous and did not keep this letter confidential as between himself and the advisor but choose to copy it to Mr. Gordon and Mrs. Harrison.

He spoke, in this letter, to changes taking place at the defendant, whereby persons including himself "had been affected in ways that raised questions as to the manner in which the institution treats it employees"

He in effect complained about being suspended without being afforded an opportunity to defend his responses to question posed.

He expressed his feeling that a proper case had not been made out to justify the actions taken. He questioned on whose authority the suspension was done as the country manager, Mr. Amrit Sinanan, was neither present or in attendance at any of his meetings, nor was he the author of the suspension letter which was not copied to him.

55. The claimant went on the explain, in his seeking redress that he viewed with great disappointment the bank's handling of this matter.

He had difficulty with the decision as no culpability was established and he failed to see "how the suspension of a senior officer could benefit the bank vis-à-vis his effectiveness and authority over any subordinates upon his return."

He explained that the concerns of a number of senior persons subjected to internal movement within the bank had been voiced to him as the most senior of their number and had been brought to the attention of the recently formed union.

He apologized for any breach of protocol in bringing the matter directly to Mr. July's attention but felt it necessary to do so, for him to be made aware of the extent of unease existing in the interest of good management/employee relationship since all actions taken against officers/staff members should stand any test of scrutiny or justification.

56. In evidence, the claimant maintained that he was acting in reliance of the programme, feeling that it would not be held against him but rather that his case would be reviewed at the end of which the decision made by the advisor would be guided by the policy of the bank.

His apology for a possible breach in protocol was not for writing the letter itself but for not remaining anonymous and copying it to the persons he did. He said this was done because he wanted those persons to be aware of what he did so it would not be seen as underhanded – he did not want to jeopardize the good relations he had with them.

57. Mrs. Harrison revealed that she had actually participated in the creation of the Employment Suggestion Programme (ESP). She agreed under cross-examination that all matters about which a person could be aggrieved could come under this programme.

She found that the request by the claimant of Mr. July, as an advisor to investigate and report could be considered appropriate.

She also thought it was reasonable that she and Mr. Gordon were copied the letter.

She further did not consider the claimant's writing to Mr. July as an advisor inappropriate.

Outside of the programme the procedure would be to write to the next level of management which in this case would be the managing director.

58. A letter dated June 3, 2004 from Helen Drayton, the director of Group Human Resources was next delivered to the claimant. It referred to his letter of May 28 which had been directed to her.

She maintained in it, that he had been given an opportunity to respond to the issues contained in the technical report during the meeting of May 3, 2004 and expressed the view that the bank's management had acted in accordance with due process.

It was regretted that he had chosen to by pass what was considered the appropriate channels of communications being;- directed to the General Manager Human Resources for the attention of the managing director.

It was felt he had chosen to challenge the authority of Mrs. Harrison and Mr. Gordon to carry out the management's decision which action suggested he had no trust and confidence in the bank's management. His actions were not to be condoned and was referred to the managing director RBTT Bank Jamaica Limited.

59. On June 3, 2004 a letter over the signature of Mr. Amrit Sinanan – the managing director – was written to the claimant indicating the defendant's decision to terminate his services pursuant to clause 9(a) of his letter of employment dated 25th October, 2001.

The Submissions

On behalf of the claimant

60. It was pointed out that at the time of his dismissal the claimant had spent approximately nineteen (19) years building his career and reputation and had established an excellent career and sterling reputation, a fact not disputed.

61. The circumstances of the technical error of December 23, 2003 was reviewed and it was submitted that from the reports and the evidence the problem ultimately was with CSF I and JE TS.

The point was made that in the information technology department, one employee was disciplined after the claimant was dismissed – this employee had been supervised by the claimant. The claimant's supervisor was transferred to another position and then made redundant, receiving a severance package.

From the operations department, one employee received a warning letter despite being recommended to be held culpable for the exposure after December 23, 2003. The fact that no disciplinary action was taken against her supervisor was noted.

62. It was then submitted that the suspension of the claimant was unreasonable especially in relation to the reasons stipulated in the suspension letter.

It was duly noted that neither of the reports contained any assertions, suggestions or conclusions that the claimant should have been held responsible for the incident or that any disciplinary action should be taken against him.

The Court was asked to reject the evidence of Mr. Gordon where he expressed his opinion that the recommendations of the security report were unreasonable as having no basis.

63. A further complaint submitted was that the claimant was never told the purpose of the meeting he had been summoned to by Mrs. Harrison and Mr. Gordon.

It was recognized that at the lengthy meeting, questions were posed to the claimant with a view he said to determine where the blame lies. The fact that the

questions seemed to have originated from a report that was never shown to the claimant was urged as yet another indication of the unfairness of the treatment meted out.

64. In any event it is accepted that once he requested it, the questions were put in writing and the claimant given an opportunity to address them again.

It was however submitted that the meeting held after the answers/responses were given, was a sham as the claimant had been given no opportunity to explain his answers or address the concerns of the defendant.

The suspension letter had already been written when that meeting began hence, it is further submitted, that the defendant did not afford the claimant an opportunity to pose a defence to the disciplinary proceedings to all the persons who had made the decisions to suspend him.

65. The suspension letter of May 10, 2004 is described as harsh and containing a reference to a loss of $20.1 million which was itself intentionally harsh and oppressive since the defendant had known the loss suffered was far less.

66. As relates to the ESP, it was noted that despite the express wording of the policy, the parties interpreted its applicability differently.

It was urged that since the claimant's belief was that the ESP should form part of the bank's policy and thus became a part of the terms and conditions of his contract was not challenged or disputed it should be accepted as accurate.

67. The Australian cases of **Riverwood International PTY Ltd. v. McCormick (2000] FCA 889** and **Nikolick v. Goldman Sachs JB Were Services PTY Ltd. (2006) FLA 788** were referred to.

The latter case was appealed and the Full Court of the Federal Court of Australia

In Goldman Sachs JP Were Services PTY Limited v. Nickolich (2007) FCAFC 120 was also referred to.

68. From these cases the position urged on the court in this instant matter was that "policies (or sections thereof) were incorporated as terms of the employment contract largely due to the contract requiring the employee to "comply with" the relevant policies or "abide by" them."

In the instant case the wording in the claimant's contract was even more clear, as it was expressly stated that the defendant's policies were deemed to form part of the terms and conditions of his employment with the bank.

It was therefore submitted that there could be no clearer expression of the defendant's intention that the ESP, as a policy of the defendant; is incorporated into his employment contract and is legally binding.

69. Further it was submitted that given the wording of the ESP, the defendant had a responsibility to investigate any concerns of an employee without reprimand. It is opined that with the ESP being incorporated into the employment contract the defendant should be held liable for any breach of the terms of the ESP.

It was further argued that the letter written to Mr. July by the claimant was in reliance on the ESP and was an appropriate and reasonable exercise of the avenue it made available.

It was also pointed out that despite statements to the contrary in its pleadings, the defendant's witness Mrs. Harrison confirmed the appropriateness of this manner of communicating his grievance.

70. The claimant's ultimate dismissal, it was urged, was based on a perceived breach of protocol and abuse of the ESP. But it was countered, that although the claimant himself referred to a breach of protocol, his perception was that his breach was in fact in his decision to waive anonymity and copy the letter to Howard Gordon and Lorraine Harrison.

Ultimately however it was recognized that the claimant was never spoken to about any breach.

71. In reviewing the law applicable in this matter, the case of **Addis v. Grammaphone Co. Ltd**. [supra] was the starting point. It was noted that this well known authority was followed locally in **Kiser Bauxite Company v. Cadien (1983) 20 JLR 168; Chang v. N.H.T. (1991) 28 JLR 49 5** and **Cocoa Industry Board and Cocoa Farmers Development Company Ltd. and F.D Shaw v. Burchell Melbourne (1993) 30 JLR 242.**

72. Naturally, the development in employment law as seen in **Malik and Mahmud v. B.C.C.I** [supra] and **Johnson v. Unisys** [supra] was discussed much as it was reviewed previously.

However there was also urged to give recognition not out to the implied term of trust and confidence but also the implied term of good faith in the manner of dismissal as was discussed in the cases.

73. There was a recognition of the fact that there was no statutory provisions similar to that of England's Employee Rights Act which allows individual employees a right to claim compensation for the manner of dismissal or the actual dismissal (unfair dismissal)

The effect of **Johnson v. Unisys** [supra] in placing limitations on the application of the implied term was accordingly duly noted.

74. The pronouncement of Smith C.J. in **R v. Minister of Labour and Employment and Ors. exparte West Indies Yeast Co. Ltd. (1985) 22 JLR 407 at page 412** was referred -

> "I agree with the contention of council for the applicant's company that the Minister is authorized to act only in the public or national interest or in the interest of industrial peace. In my view he had no authority to act in the interest of a dismissal ex-employee where his dismissal has not given rise to a dispute which threatens industrial peace, as would occur if for example he is represented in his dispute by a trade union which also represents workers currently employed by his former employer who may take industrial actions if the dispute is not settled....."

This pronouncement led to the submission that the restriction found by the House of Lords in **Johnson v. Unisys** [supra] does not arise in Jamaica and thus the common law can be developed freely which should include the employer exercising his implied obligation of trust and confidence and/or implied duty of good faith in the manner of dismissal or the actual dismissal.

75. The further development distinguishing **Johnson v. Unisys** [supra] in **Eastwood and Anor. V. Magnox Electric PLC** [supra] was also noted.

It was ultimately submitted in terms that bears repeating:-

> "The genesis of the common law in the area of employment law

is largely found in four (4) cases, **Addis, Malik, Johnson v. Unisys and Eastwood** which culminated in the House of Lords unanimously holding in Eastwood that where an employee had prior to his unfair dismissal, whether actual or constructive, acquired a common law cause of action against his employer in respect of the employer's failure to act fairly towards him such that it could be said to exist independently of his subsequent dismissal, he could bring an action at common law which would not be barred by the availability of a claim in the Employment Tribunal under statute."

76. It was further noted that our courts have recognized the existence of this implied term in **United General Insurance Company Ltd. v. Marilyn Hamilton SCCA 88/2008.**

It was submitted therefore that Jamaica can now move on from **Addis** and in line with the development of the common law cited by Lord Steyn in **Malik, Johnson v. Unisys** and **Eastwood.**

It was noted that other commonwealth jurisdictions have opted to abandon Addis and chosen to integrate suitable terms in the contract of employment to offer compensation to an employee who suffers as a result of an employer's unfair treatment in dismissal.

77. From New Zealand the cases in which this development can be seen were noted to be **Whelan v. Waitaki Meats Ltd. [1991] 2 NZLR 74, Stuart v. Amourguard Ltd. 1996 1 NZLR 484.**

From Canada this position wad discussed in **Wallace v. United Grain Growers Ltd. [1997] 3 SCR 701** and **Honda v. Keays [2008] SCJN 40**

78. Thus in applying the law the overall submission was made that the defendant had breached the following implied terms of the employment contract:-

(a) the mutual implied duty of trust and confidence for unfair conduct before the dismissal of the claimant which is separate and distinct from the dismissal process and

(b) the implied duty of good faith in the manner of dismissal for failing to conduct proper disciplinary investigations and unjustifiably dismissing the claimant.

79. The court is urged to look closely at the conduct of the defendant to determine whether there was any breach.

The conduct the claimant held to be unfair commenced in December 2003 or January 2004 in the defendant's failure to indicate to the claimant that disciplinary action was being considered against him until May 2004.

This failure is considered dishonourable and unreasonable as it gave the claimant a false sense of security as he would have felt the issue surrounding the incident was resolved and no longer affecting his employment.

80. Another act found to be grossly unfair was the fact that the claimant was summoned to a meeting without being informed as to its purpose. This was contrary to the right of an individual to be aware of a disciplinary hearing against him and the right to prepare a defence.

Arising from this meeting there was the failure to provide the claimant with the report relied on to question him.

81. The cases of **Spink v. Express Food Group (EAT) (1990) 1 RLR 320; Bentley Engineering Co. Ltd. v. Mistry (EAT) (1979) I CR 47, Lowes v. Coventry Hood and Seating Co. Ltd. [EAT] 1990 I CR 54, Budgen & Co. v. Thomas [EAT] 1976 I CR 344** are referred to as demonstrative of the approach of the Employment Appeal Tribunal in England when dealing with matters such as this.

These cases confirm the right of the employee not only to know the case against him and be given a chance to answer but also to know sufficiently what was being said against him, whether contained in statements or otherwise, so to put forward his own case.

Further the latter case found that an employee should be afforded an opportunity of explaining his conduct to the members of the management who was responsible for making the decision whether dismissal was an appropriate penalty.

Hence it is concluded in the case being considered the claimant had been denied a fair hearing.

82. The defendant's conduct as it relates to the ESP was described as outrageous. It is stressed that the claimant was induced to use the ESP to his detriment and was reprimanded without any further investigations being conducted in accordance with the terms of the ESP itself.

The conduct of the defendant in relation to this programme it is opined eroded any trust and confidence that existed between the parites.

83. Ultimately it is re-enforced that the conduct of the defendant breached its implied duty of good faith by its conduct in unjustifiably dismissing the claimant and the manner of dismissal; as well as acts during employment including the decision to suspend the claimant without conducting a fair hearing.

It is conceded that this implied term is not as established as other implied duties but it is still urged that "there is no fetter for the court not to accept that this duty does exist in keeping with Lord Steyn's clear reasoning discussed earlier."

84. The submission as to liability ended with the argument that the defendant's conduct in the way it dismissed the claimant, would constitute unjustifiable dismissal and a breach of any duty to exercise good faith; the conduct pointed to in conclusion included:-

(a) dismissing the claimant without first discussing the decision with him and failing to give any indication he would be dismissed.

(b) dismissing him with no reason and whereas the defendant would argue no reason was needed, the fact that the letter expressing the defendant's displeasure with the claimant's letter to Mr. Peter July was followed soon thereafter by the dismissal letter suggesting that the reasons on the former led to the latter. It is further submitted that those reasons were unjustified, unfair and unreasonable.

(c) one basis of his dismissal – an alleged breach of protocol, was never discussed with the claimant.

(d) the position held by and the reputation of the claimant warranted some warning, indication or discussion before the drastic step of dismissal was taken.

For the defendant

85. It was the starting point of the submissions made by Mr. Anderson that both as a matter of law as well as fact the claimant had failed to prove his case and even if liability could be established on this case the claimant would in any event only be entitled to an award of general damages, interest and cost.

86. The submission in law started with the reminder that the common law had always permitted either party to a contract to terminate the same once reasonable notice has been given. Further it is when there is failure to give required notice or wage in lieu of notice that the common law action of wrongful dismissal will lie.

87. The pronouncement of Lord Bowne-Wilkinson as to what amounts to payment in lieu of notice in **Delany v. Staples [1992] 1 All ER 944 at page 947** is noted, with the opinion being expressed that from this analysis and views, there was no breach of contract by the defendant in the instant case.

The defendant had terminated the contract with immediate effect in accordance with the terms of the written contract between the parties.

It was pointed out that this reasoning of Lord Browne-Wilkinson was approved and applied in the cases of **Straugh v. Lodge School (Board of Management) [1997] 55 WIR 76; Cocoa Industry Board and Cocoa Farmers Development Co.Ltd. and F.D. Shaw v. Burchell Melbourne [supra].**

88. It is further submitted that in this case not only is the claimant wrong in saying there was any breach of contract but the error is compounded by the claim for damages based on a wrong legal assumption that if the claimant succeeds in proving a breach of his contract of employment with the defendant, the measure of damages would be based upon inter alia, the court enforcing the claimant's contract.

89. As it concerns the issue of whether or not the claimant was entitled to and did not receive a fair hearing prior to the termination of his contract, the case of **Kaiser Bauxite Co. v. Vincent Cadien (1983) 20 JLR 168** was relied on.

In this case it was held inter alia, that the concept of natural justice which was generally applicable in the sphere of public law has no application to private contractual relationships and could not therefore be relied on by the respondent to challenge his dismissal.

90. As to the issue of the ESP, it is opined that the legal issue which must be addressed by the court was whether or not it formed part and/or parcel of the claimant's contract of employment with the defendant.

It was pointed out that from its opening submissions the claimant and his counsel are seeking to rely on evidence of the ESP and of the alleged reliance upon its provisions as a bar to the reliance by the defendant upon its contention that the dismissal was in accordance with the terms of his contract of employment.

91. The case of **Airports Authority of Jamaica v. F.R.E.M. Ltd. (1996) 33 JLR 145** is relied on for the principle that a court cannot imply terms that are contrary to the express terms of the contract and that a court will only imply terms not in the contract which are necessary to give efficacy to the contract.

92. Further the case of **National Commercial Bank Jamaica Ltd. v. Guyana Refrigerators Ltd. (1996) 53 WIR 229** is relied on for the principle that the court should only imply a term into a contract if such implied term would be necessary in order to give business efficacy to the contract.

It is therefore submitted that the ESP cannot be relied upon by the claimant as negating the effect of clause 9 (a) of the contract of employment by virtue of the terms of such programme being implied into the employment contract.

93. The final point in law addressed started with the submission that there exists in Jamaica a statutory regime which is based, at least to some extent upon the existing model relating to 'unfair' dismissal. This is to be found in the Labour Relations and Industrial Disputes Act which is admittedly not nearly as broad in its application as the United Kingdom Legislation on this aspect of labour law.

The pronouncements of Mr. Justice Morrison J.A., in **U.G.I. Ltd. v. Hamilton** [supra] at page 22 is noted.

94. Only one section of his comments is quoted in the submissions but for completeness and proper context all of the related sentences should be borne in mind.

> ".....while the Industrial Dispute Tribunal may in cases of industrial dispute within its jurisdiction order re-instatement or compensation if it finds that the dismissal of a worker was 'unjustifiable.'[LRIDA sec 12 (5) c (i) and (ii)] there is no comprehensive unfair dismissal legislation in Jamaica such as that which posed what Lord Nicholls characterized as an 'insuperable obstacle to a successful claim for damages arising

> out of the manner is dismissal in Johnson v. Unisys (page 803). This point may arguably also admit of the opposite preposition which is that by providing a remedy for unjustifiable dismissal to a limited category of workers, the legislature in Jamaica must be taken to have considered and rejected extending it beyond that category. This is itself an indication, in my view that the question of whether it is open to our courts to develop the law in this area by implying a suitable term on the contract of employment is to borrow from Lord Hoffman at this time "finely balanced" (Johnson v. Unisys page 819)

95. In concluding the submission at it relates to the law applicable it is contended that the **Addis v. Gramaphone** case had not yet been overruled in England and the **Malik** case clearly in view of the later Johnson and Unisys case must be considered as one which is distinguishable from Addis based upon it own peculiar facts.

96. In reviewing the facts/evidence, the clause in the employment contract which speaks to termination is pointed to and noted that under cross-examination the claimant admitted being fully aware of the terms and understand and agree to its terms. Hence from the contract it was contemplated that summary termination of the contract could have been by either side with one (1) months written notice and the bank had the option of making payment in lieu of notice.

In the circumstances it is argued that the contention of the claimant that the termination of his employment was carried out in breach of his contract is wholly devoid

of merit and must of necessity fail. This is because it matters not whether or not there existed at the material time a fair or justifiable reason for the termination.

97. It is pointed out that the claimant seemed to be of the view that the bank had no good reason to terminate his employment if they had reasoned through it correctly. Further it is noted that the claimant seemed to feel that if the bank had done this reasoning they would never have terminated his services since in his view they had failed to take into account clause 7 of the contract.

It is stressed that whether or not the bank acted appropriately or with good reason in terminating the contract is irrelevant – no reason needed have been offered.

98. Although maintaining the position that no reason was necessary, the significance of some of the findings of the security report is highlighted.

It is opined that the lack of proper change management procedure pointed to deficiencies in the technology department's method of operation. Further it is urged that there was a clear example of the technology department's failure to follow up on the issue of the parameter change to ensure compliance. There was also, it is urged failure of the technology department to carry out adequate comprehensive risk assessment before the fix was implemented.

99. In the final analysis it is considered not surprising nor unwarranted that disciplinary action was taken not only against the claimant – as the assistant general manager who had ultimate responsibility for RBTT's information technology systems – but also against the general manager for the department.

The fact that the claimant did not lose his employment arising from the financial losses suffered by the defendant was considered significant.

100. It was conceded that it was only after the claimant had written to the bank's chairman purportedly under the ESP and challenging the decision to suspend him, that the defendant acting pursuant to the relevant employment contract decided to terminate the claimant's employment services.

The view taken of this programme by Mr. Anderson, is that it was not intended to be utilized by members of staff in respect of disciplinary action taken against them.

It was the claimant himself who had chosen to break the confidentiality aspect of the programme in having copied his complaint to two (2) other persons. It is therefore urged that the claimant cannot seek to legitimize his writing of the letter on a misplaced reliance, if reliance at all upon the ESP.

101. It is noted that in his particulars of claim, the claimant set out among the basis of his claim, the concepts of "detrimental inducement" and "legitimate expectation."

As to the latter the claimant's admission under cross-examination that he could not say with any certainty what would have happened in terms of his future with the bank – supports the assertion that there could be no legitimate expectation that he would be employed permanently.

The concept it is urged is not known to employment law and is more particularly and directly applied to administrative law.

As to the issue of detrimental inducement, it is submitted that firstly there was none and even if there was, it affords no basis for a complaint by the claimant in so far as the law of contract or employment is concerned.

102. In conclusion, it was submitted that the claimant had failed to prove its case to a great extent by the simple fact that the law does not support his claim in so far as the particular facts of this case are concerned.

It is further opined that even if the law was favourable to him the evidence is not of such a quality for this court to conclude that there exists any cogent evidence of a breach by the claimant in relation to the defendant, if the implied term of trust and confidence. It is noted that the comments of Lord Steyn as it relates to the existence of any other implied term, was made in a dissenting judgment.

The decision

103. The development of labour/employment law over the years has seen a fight for the rights of workers/employees from the days when they were regarded as servants – to comply with all their masters bidding to their peril.

Some argue, however, that in the effort to take the employee from that position resulted in an almost overcompensation for how they were treated, with the employer now being made to "pay" for perceived past wrongs.

It is therefore important that while we move to ensure that the rights of the employee are jealously guarded, it must not be at the expense of those of the employer.

104. There cam be no doubt that the recognition of the implied term of trust and confidence in an employment contract is a welcomed development.

It is clear that in any relationship these two principles can be regarded as pillars on which to build a successful symbiotic union.

I am however not satisfied that a recognition of any other implied term can be afforded to the employment contract given the developments in the law

105. The defendant acted well within their rights in seeking to terminate the employment contract with the claimant by relying on the provisions of the contract.

However it would be disingenuous not to recognize the proximity between the termination of the contact and the letter of June 3, 2004, where it was pointed out that the matter was to be referred to the managing director of RBTT Bank Jamaica Ltd.

In recognizing this proximity the question must arise as to whether a reason for the claimant's dismissal could not be discerned from this letter. The fact remains however, reason need be given in accordance with the terms of the contract.

106. It is interesting and useful to note that the defendant itself acknowledged the existence and relevance of the implied term of trust and confidence when it was noted in the letter of June 3, that the action of the claimant; seen in his letter purportedly relying on the ESP; suggested that he had no trust and confidence on the bank's management.

107. It is to be accepted that given the terms of the employment contract and the fact that the ESP was a policy of the bank the claimant was entitled to make use of the ESP in his quest for resolution of the grievance he had.

His reliance on and use of the ESP can indeed be considered appropriate; as the defendant's witnesses agreed.

108. The claimant however recognized that he was not in full compliance with the terms of the ESP when he chose to copy the letter to the persons he did and further chose not to remain anonymous. It should follow that in not so doing he cannot expect the protection of confidentiality in declaring without more than he had relied on the terms of the ESP to his detriment.

109. It is to be noted one provision of the ESP was that the process of the programme was for the advisors to facilitate solutions not to usurp the role of the general managers, assistant general managers, department heads, supervisors or other authority.

The question may well be asked if the complaints and expectations of the claimant may well not also be viewed as a wish to usurp the role of these two (2) general managers, Mr. Gordon and Mrs. Harrison.

It is also significant to note that the claimant found it necessary to point out he had been the person to whom other employees had brought their concerns and that the concerns had been brought to the attention of the newly formed union. This raises the question as to whether the claimant did not have the avenues afforded him upon dismissal by the relevant legislation if he was a member of a union.

110. The actions of the defendant leading up to the exchange of letters were undoubtedly behaviour which impacted on the manner in which the claimant was treated which he holds up to be in breach of the implied terms. The thin line between assertions of this breach and allegation of unfair and/or unjustifiable dismissal is apparent.

111. There is acceptance that the claimant was not advised of the purpose of the meeting to which he was summoned.

However it cannot be without significance that prior to attending this meeting, he sought legal advice and his lawyers met with the defendant's in house counsel.

At the meting which the claimant admits was lengthy, it was recognized that there was a quest to determine where blame should lie. The claimant was thereafter furnished with questions and given an opportunity to give written responses. There is no dispute that these questions were those addressed during the meeting.

It cannot be disputed that this meeting led to the decision to suspend the claimant but as Mrs. Harrison had said the suspension letter would have been withdrawn if the written answers were different from the oral ones. This clearly was not so.

112. The attitude of the defendant suggest that the decision made stemmed from the premise that the buck had to stop somewhere and as usually is the case it stopped with the persons at the helm of the department where the problem arose.

The opinion of Mr. Gordon as to the view he took of the recommendations made in the security report cannot be disregarded, without more.

The claimant's refusal to accept responsibility for what had happened may have been well made since he was clearly not the one directly responsible. Indeed there may have been little more that the department for which he was responsible, could have done given the nature of the problem.

However, the buck stopped with him as the assistant general manager and the general manager.

113. The complaints of the claimant did not address any matter that arose during this employment.

Indeed it is evident that over the years he was regarded as a valuable employee and was treated as such with promotions and appropriate recognition for his contribution.

There is nothing put before the court to suggest his employers having any reason to be dissatisfied with or expressing any dissatisfaction with his performance.

114. In the submissions on behalf of the claimants many adjectives were used describing the actions of the defendants in their treatment of the claimant leading up to his dismissal.

The question ultimately to be resolved is whether those actions are of that standard where they can be regarded as breaching the implied term of trust and confidence, i.e did the defendant conduct his business in a manner calculated and likely to destroy or seriously damage that relationship of confidence and tryst between them.

To my mind the proof of such a breach requires something more that what the claimant has here complained of.

115. This then is not a matter that I can depart from the long and well established principles in **Addis v. Grammaphone** [supra] although I am prepared to accept that given the developments, this case has lost some of its authority and in the appropriate matter can be challenged.

116. I therefore must give judgment for the defendants with cost to them to be taxed if not agreed.