

Case Number ERT/2014/078

EDISON FORDE v. PRECONCO LIMITED

Panel: Christopher Blackman, Chairman

Edward Bushell. Member

Beverley Beckles Member

Miss. K Benjamin, Attorney-at-law for the Claimant with Mr. Dwaine Paul

Mr. Ryan Mosely Attorney-at-law for the Respondent with Ms. Olivia Watson,

October 5 and 19, 2020, May 6, 2021

1. Edison Forde (the Claimant) was hired by Preconco Limited (the Respondent) as a Precaster on February 3, 2003. He was terminated on February 17, 2014.
2. The termination of the Claimant was for non-attendance at work on Saturdays.
3. The Respondent in the NIS Termination Certificate gave as the reason for termination, non-compliance with the Company's Operating Procedures.
4. The Respondent did not have a hearing for the Claimant to explain his position, as required by Part B of the Fourth Schedule of the Employment Rights Act (the Act). The parties are directed to the decision of the Tribunal dated February 18, 2020 in *Theresa Foster v. Sinclair Gittens* and the CCJ's decision in *Cheffete v. Harris* delivered on May 7, 2020, where at para 76, Justice Anderson said: **"For the sake of guiding the future conduct of employers and employees, lawyers and tribunals, that section 29 (5) must be taken literally: an employer is not entitled to dismiss an employee for misconduct without the prescribed due process. A dismissal done in non-compliance with the disciplinary procedures designed to ensure due process is unfair."**

5. The provisions of the Act as to discipline and termination supersede any provisions that may appear in the Handbook or Manual of Company's Operating Procedures.
6. As a consequence of the failure to comply with the provisions of the Act, the Claimants' dismissal was unfair.
7. Section 22 (1) (d) of the Act provides that the Claimant is due 6 weeks' notice, when terminated without notice. The average weekly pay of the Claimant was \$486.76. The amount therefore due is \$2920.76.
8. The Claimant having been employed for 11 years, is per paragraph 2 (2) (C) of the Fifth Schedule to the Act further entitled to a basic award of \$16,063.08, being $\$486.76 \times 3 \times 11$.
9. The Respondent is ordered to pay the Claimant the sum of \$18,983.64 within 30 days of this decision.

Dated this 6^h day of May 2021.

Christopher Blackman	Chairman
Edward Bushell.	Member
Beverley Beckles	Member