

**INDUSTRIAL DISPUTES TRIBUNAL**

**Dispute No.: 46/2024**

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**SETTLEMENT OF DISPUTE**

**BETWEEN**

**TRADE MANAGEMENT SERVICES LIMITED**

**AND**

**MRS. YVETTE SPENCE-CUNNINGHAM**

***AWARD***

**I.D.T. DIVISION**

MS. SADEERA SHAW	-	CHAIRMAN
MR. RODCLIFFE ROBERTSON, JP.	-	MEMBER
MR. KEITH FAGAN	-	MEMBER



FEBRUARY 5, 2026

**IDT 46/2024**

**INDUSTRIAL DISPUTES TRIBUNAL**  
**AWARD**  
**IN RESPECT OF AN INDUSTRIAL DISPUTE**  
**BETWEEN**  
**TRADE MANAGEMENT SERVICES LIMITED**  
**AND**  
**MRS. YVETTE SPENCE-CUNNINGHAM**  
**(THE AGGRIEVED WORKER)**

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**REFERENCE:**

By letter dated September 12, 2024 the Honourable Minister of Labour and Social Security pursuant to Section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute describe therein:-

The Terms of Reference were as follows:

*“To determine and settle the dispute between Trade Management Services Limited on the one hand, and Yvette Spence-Cunningham on the other hand, over the termination of her employment”.*



## **DIVISION**

The Division of the Tribunal which was selected in accordance with section 8(2)(c) of the Act and which dealt with the matter comprised:

Ms. Sadeera Shaw	-	Chairman
Mr. Rodcliffe Robertson, JP.	-	Member, Section 8(2)(c)(ii)
Mr. Keith Fagan	-	Member, Section 8(2)(c)(iii)

## **REPRESENTATIVES OF THE PARTIES:**

The **Company** was represented by:

Mr. Andrew Silburn	-	Industrial Relations Consultant
Mr. Nigel McFarlane	-	Managing Director

The **Aggrieved Worker** was represented by:

Mr. Alexander Nicholson	-	Industrial Relations Consultant
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In attendance:

Mrs. Yvette Spence-Cunningham	-	Aggrieved Worker
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## **SUBMISSIONS AND SITTINGS**

Briefs were submitted by both parties who made written and oral submissions during four (4) sittings between the period of March 10, 2025, and September 8, 2025.





## **BACKGROUND TO THE DISPUTE:**

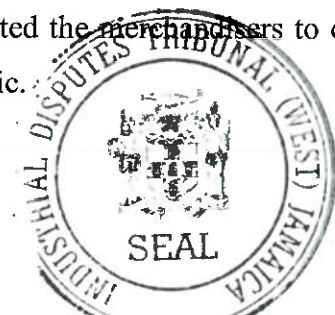
1. Trade Management Services Limited, *hereinafter referred to as the Company*, provides trade marketing services primarily to manufacturers and distributors in the grocery and beverage business. The main services offered are market research, merchandising and promotions.
2. Mrs. Yvette Spence-Cunningham, *hereinafter referred to as the "Aggrieved Worker"*, worked at the Company as a Merchandiser. By letter dated December 10, 2019, the Aggrieved Worker's services were terminated effective December 31, 2019.
3. The Aggrieved Worker engaged the services of Mr. Alexander Nicholson, Industrial Relations Consultant, who contested her termination and sought the intervention of the Ministry of Labour and Social Security. No resolution was reached and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

## **THE COMPANY'S CASE**

4. The Company, through its representative Mr. Silburn, called its sole witness Mr. Nigel McFarlane, in support of its case. Mr. McFarlane testified in examination-in-chief that he is the Managing Director at the Company. He described the company as a trade marketing company where it provides services for entities primarily in the distribution business.
5. One such service provided by the Company is merchandising where entities contact the Company to merchandise their products in supermarkets. He gave evidence that the nature of merchandising varied from one-off point of purchase to other services such as providing brand ambassadors, trade auditing (marketing research), replenishing store/supermarket shelves, pricing items and removing expired products. He stated that the services provided by merchandisers tended to be a little longer than their other services ranging from six (6) weeks to six (6) months.
6. It is his evidence that during the period relevant to this matter he had one hundred and twenty (120) persons working on five (5) or six (6) projects across several stores and supermarkets.

He testified that the entities would contact the Company and indicate the service they were in need of. The Company would then draft a proposal and when agreed by the parties, the Company sought to hire the necessary persons as independent contractors. He noted that the Company recruited persons through social media, recommendations from existing workers or from a pool of persons who worked on past projects. The entity would then communicate work expectations to the Company and that information would be relayed to independent contractors in the form of project specific contracts.

7. He gave evidence that the Aggrieved Worker was engaged as an independent contractor in the capacity of merchandiser where she was assigned to one of their clients, namely, Massy Distributors Jamaica Limited (hereinafter referred to as Massy Distributors). As a merchandiser, Massy Distributors provided branded shirts for her to wear which showcased the brands that it (Massy Distributors) represented. He explained that he couldn't recall the number of stores that was assigned to her but knew that she was based in the parish of Hanover. He stated that she was engaged for 4 contract periods, namely, six months, then four months, then six months and the last contract period was for about one year and three months.
8. Mr. McFarlane went on to explain that the reason why the Aggrieved Worker among others were hired as independent contractors was because they (the independent contractors) were hired for specific projects and the timelines for each project varied. He further explained that due to the fact that the Company did not know when it would be engaged by entities for new projects, it could not provide full time employment. In essence, the way the system worked was that if the client had no work for the Company then the Company had no work for the workers. It is his evidence that the Aggrieved Worker was aware that she was hired as an independent contractor as stipulated in clause 3.2 of her contract.
9. He testified that Massy Distributors determined the duties of each contractor under its project, including the Aggrieved Worker. Massy Distributors also issued a planogram that detailed how and where goods should be placed on the shelves in the supermarkets. He gave evidence that the Aggrieved Worker's work hours depended on the different supermarkets as some stores opened very early and wanted the merchandisers to come in and be out of the supermarket before it opened to the public.



10. He stated that in instances where the Aggrieved Worker was not able to attend work, she was expected to inform both Massy Distributors and the Company. He also stated that if a supermarket lodged a complaint about a merchandiser, said complaint was made to Massy Distributor who would then bring it to the Company's attention. If necessary, both companies would address the matter jointly.
11. In explaining how the Company monitored the activities of the Aggrieved Worker, it is his evidence that the Company's responsibility was to ensure that the Aggrieved Worker visited the store(s) at the required times to execute her duties. Secondly, the Company ensured that the Aggrieved Worker was merchandising the goods in accordance with the client's planogram. Thirdly, the Company ensured that the prices were correct and visible by checking them. These checks were done by a supervisor from the Company as well as a supervisor from Massy Distributors.
12. It is his evidence that the Aggrieved Worker didn't receive any benefits other than the contracted fee paid to her on the 15<sup>th</sup> and 30<sup>th</sup> of each month. In order to get paid, the Aggrieved Worker had to submit timesheets, verified by a store supervisor at the different supermarkets, to Massy Distributors. Massy Distributors would then send the funds to the Company to pay the Aggrieved Worker as well as a management fee for its role. Upon receipt of the funds, the Company would then pay the Aggrieved Worker via bank transfer. He then noted that the Aggrieved Worker did not receive a pay slip and the Aggrieved Worker was responsible to pay her statutory deductions.
13. He gave evidence that the Aggrieved Worker's services were terminated effective December 31, 2019, as stated in termination letter dated December 10, 2019. He stated that the instruction to terminate came from Massy Distributors as Massy Distributors no longer required her services. He went on to explain that the period November to December were usually busy which required additional merchandisers. After the November to December period ended, business slowed down which didn't require as many merchandisers. He noted that the reason for termination fell under clause 6.1 of the Aggrieved Worker's contract where it stipulated that the contract could be terminated if the project was terminated. It is his evidence that the



entire project didn't come to an end as there were different projects under the contract between Massy Distributors and the Company.

14. He testified that whenever the client (Massy Distributors) informed the Company that they were no longer in need of merchandisers in an area, the Company did not question the reason. He couldn't recall if Massy Distributors gave a detailed reason in this instance for the Aggrieved Worker's termination but the afore-mentioned reason was usually the case as the number of merchandisers fluctuates based on the volume of business.
15. He indicated that he was unable to speak of the Aggrieved Worker's work ethics and performance as he didn't have any immediate interaction with her. Further, he wasn't aware of any work issues with her. He gave evidence that all merchandisers were assessed once per year with an end of year bonus from Massy Distributors and that her termination was not for disciplinary reasons but rather that her services were no longer needed by the client.
16. When asked if the Aggrieved Worker reached out to the Company after her termination, Mr. McFarlane initially stated that the Aggrieved Worker did not but later acknowledged receiving a letter dated July 3, 2020 from her where she requested vacation pay. It is his evidence that the Company made a payment to her amounting to six (6) weeks' pay as an ex gratia payment after he considered that she worked for a year, it was in the middle of the pandemic, the Company's client base dropped drastically due to the said pandemic and the Company didn't have any new projects to provide her with employment.
17. He further testified that he responded to a correspondence, dated October 5, 2020, from the Aggrieved Worker's representative after her termination where he explained to the Aggrieved Worker's representative that the Aggrieved Worker was on a fixed contract for the period December 15, 2017 to April 30, 2018. At the end of the said contract, she was retained on the same project under the same terms until December 2019. Whilst admitting that there was no written record of the said extension, he indicated that it was normal for an extension to be done for a short period of time or a new contract granted when projects were prolonged. He also indicated in the said letter that the Aggrieved Worker was not terminated for disciplinary reasons and as such re-instatement didn't arise in the circumstances. He further gave evidence



A handwritten signature in blue ink, appearing to read "H. McFarlane", is located in the bottom right corner of the page.

that he became aware that the Aggrieved Worker later gained employment with Derrimon Trading as he was informed by one of his workers and he also saw her in the uniform working in a store.



## **THE COMPANY'S CONTENTIONS**

The Company contends that:

- a. The Aggrieved Worker's contractual relationship with the Company was that of an independent contractor;
- b. The principles from the Labour Relations Code, Employment Termination and Redundancy Payment Act nor any principles of natural justice were breached; and
- c. The Company submits that The Tribunal finds that the manner in which the contractual relationship ended between the Company and the Aggrieved Worker was justifiable.

## **THE AGGRIEVED WORKER'S CASE**

18. The Aggrieved Worker, in her examination in chief, testified that she worked for the Company from 2017-2019 and that she had a good working relationship with them. In explaining how she started working at the Company, she stated that she had been a merchandiser for Massy Distributors for years but was managed by a company, namely, Ideal Promotions, for five (5) years. It is her evidence that in 2017, Massy Distributors called a meeting with the merchandisers where it was explained that there would be a change in the management company. The change was that the management company would be switched from Ideal Promotions to Trade Management Company Limited (the Company). It is also her evidence that she wasn't terminated from Ideal Promotions but after being informed of the change in the management company, she continued working as usual with the new company.

19. She went on to testify that she signed more than one (1) contract with the Company in which she understood the terms. She noted that the terms of the contract from Ideal Promotions were

similar to that of the Company's contract. She gave evidence that after her last contract period, which ended on April 30, 2018, she continued working. She stated that her daily duties entailed visiting five (5) supermarkets in the parish of Hanover where she clocked in by signing a time sheet, ensured that the goods are sellable, packed the supermarket shelves and removed expired goods from the said shelves. She also assisted with sales and ordering of goods. At the end of her work day, she clocked out on the said time sheet which was then submitted to Massy Distributors in order for her to be paid.

20. It is her evidence that she reported to the Company and Massy Distributors and both entities had a supervisor that visited the stores to check on her and the other merchandisers to ensure that the work was being done properly. She testified that Massy Distributors provided her with the tools to carry out her duties and her performance evaluations were conducted by them (Massy Distributors). She gave evidence that her work time was fixed from 9am-5pm but she sometimes arrived earlier if the store opened earlier.
21. She recalled that on December 24, 2019, she received a call from the Company's supervisor who informed her that she had something for her. When collected, she realized that it was a termination letter. She indicated that she waited until after the holiday to call Mr. McFarlane concerning the said letter. She stated that Mr. McFarlane responded to her query about her termination to the effect that Massy Distributors no longer required her services. It is her evidence that she called Massy Distributors as well to enquire about her termination in which a Human Resources personnel indicated that she was a good worker and was not aware of it.
22. She testified that she went to the supermarket where she worked after her termination and saw someone working in her space. She indicated that she didn't have any proof that the person took her spot but the person was working in all the stores she worked in the same branded shirt she wore and she was the only Massy Distributor merchandiser in those stores. She gave evidence that she attempted to call Mr. McFarlane about it but was unsuccessful. She then wrote to him and requested vacation pay. She noted that the Company, in response, paid her a sum of money which she came to the conclusion that it was the vacation pay she had requested. She later stated that she also received a letter with the monies and that the letter didn't indicate



that the monies were for vacation pay. She also stated that during her time with the Company, she was not notified that she was entitled to vacation.

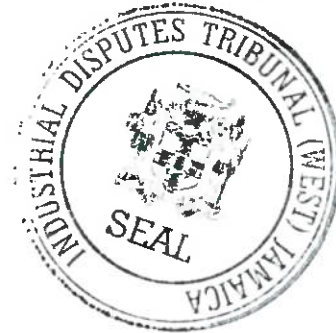
23. It is her evidence that the Company only paid her the fee as stipulated in her contract and that she was responsible for paying the statutory deductions. She testified that her contract stipulated that there may be periods in which she would be without work but she had always worked. She also testified that she was not entitled to sick leave and recalled a period where she had taken unpaid leave for two (2) months in order to recover from a surgery. She explained that on her return to work, she was only required to inform her supervisors at Massy Distributors and at the Company of the date she planned to return.

24. She then clarified the Company's evidence by stating that she worked for Derrimon Trading for one (1) month as she covered for someone who was on vacation leave. She gave evidence that she didn't make further attempts to seek other employment after completing her time at Derrimon Trading as she sold things at times to help herself.

### **THE AGGRIEVED WORKER'S CONTENTIONS**

The Aggrieved Worker contends that:

- a. She was an employee of the Company;
- b. The actions of the Company in terminating the Aggrieved Worker contravened paragraph 22 of the Labour Relations Code as no charge was proffered in writing, she was not afforded a disciplinary hearing nor given the right to be accompanied by a representative of her choice;
- c. The overall procedure adopted by the Company to terminate her services was not fair as it contravened her rights, the law, the Labour Relations Code, procedural fairness and natural justice; and
- d. It was asked of the Tribunal to reflect on the leading English case on impartiality *R v Sussex Justices, ex parte McCarthy* which is famous for bringing into common



parlance the oft-quoted aphorism *"not only must justice be done; it must also be seen to be done."* in considering any remedy.

## **THE TRIBUNAL'S RESPONSE AND FINDINGS**

25. The Tribunal, after careful examination of the evidence adduced by both parties to the dispute, must determine whether the termination of the Aggrieved Worker's services was justifiable or not.
26. The Tribunal accepts both parties' evidence that the Aggrieved Worker was engaged by the Company as a merchandiser. One issue raised was whether the Aggrieved Worker was engaged as an employee or an independent contractor. The Tribunal agrees with the Company's submission that the distinction between an employee (contract of services) and an independent contractor (contract for services) is important in determining whether the Aggrieved Worker falls within the ambit to seek redress for unfair dismissal.
27. In making this determination, the Tribunal finds it important to highlight s. 2 of the Labour Relations and Industrial Disputes Act, 1975 where a worker is defined. It states:



*"Worker" means an individual who has entered into or works or normally works (or where the employment has ceased, worked) under a contract, however described, in circumstances where that individual works under the direction, supervision and control of the employer regarding hours of work, nature of work, management of discipline and such other conditions as are similar to those which apply to an employee."*

28. In examining the evidence, the Tribunal finds that the Company didn't have any control over how the Aggrieved Worker performed her duties. This direction came directly from the Company's client, Massy Distributors, with the provision of a planogram. It is also of note that the stores designated to her and the tools required for the Aggrieved Worker to perform such duties were not provided by the Company. The Aggrieved Worker's evidence was accepted that her work schedule depended on the opening hours of the stores. The Tribunal is of the

view that the Company had limited supervision over the Aggrieved Worker where a supervisor checked to ensure that the work was being completed in accordance with what its client required. This supervision was also exercised by a personnel from Massy Distributors.

29. With regards to payment of the Aggrieved Worker's services, the Tribunal finds that the Aggrieved Worker was paid a fee as stipulated in clause 3 of her agreement with the Company. The evidence concerning payment from both parties is the same where the Aggrieved Worker had to submit a time sheet to Massy Distributors in order for the fee to be paid. The Company's evidence went further to state that Massy Distributors sent the funds to them along with a management fee in accordance with the contract between both entities. The said fee is then paid to the Aggrieved Worker from the funds sent by Massy Distributors. The Aggrieved Worker then confirmed that she was responsible for paying her statutory deductions and was not paid any other monies other than the contracted fee. She also confirmed that she was not entitled to sick leave nor was she informed that she was entitled to vacation leave.

30. The Tribunal does not find that the Aggrieved Worker was integrated into the Company's business operations but rather hired to work on a project for one of its clients. The Tribunal finds that the relationship was not continuous despite the Aggrieved Worker's evidence that she worked continuously. This finding is supported by the Aggrieved Worker's evidence that she was aware that there could be periods when work was not available. This project-based relationship is also evident from the fact that her (the Aggrieved Worker's) fee was paid by Massy Distributors and not directly from the Company's earning. This is consistent with the Company's reason why the persons were hired as contractors as the Company cannot provide work without new projects and/or clients.

31. Further, the Tribunal finds that the Aggrieved Worker was not a representative of the Company and was not identified as such in the stores. The uniform worn by the Aggrieved Worker was not provided by the Company and didn't bear the Company's logo. The Tribunal accepts the Company's evidence that in the event there was a complaint concerning the Aggrieved Worker, said complaint was not made to the Company. The Company would be notified of the complaint by the client.



32. The Aggrieved Worker's services were terminated by letter dated December 10, 2019, with effect on December 31, 2019. The said letter explicitly indicated that the Company's client no longer required her services as the reason for the said termination. The Tribunal finds that the directive to terminate came from the client and that the Company was not in a position to act otherwise as the Aggrieved Worker's engagement in every aspect flowed from its client.
33. In her evidence, the Aggrieved Worker stated that she requested vacation pay after her termination and the Company, in response, paid a sum of money. It was her argument that based on the fact that the payment was made, that meant she was an employee. She later admitted to receiving a letter with the monies which did not refer to the payment as vacation pay. She also indicated that she was not notified that she was entitled to vacation and she assumed the monies was for vacation as it was paid after requested same.
34. The Company submitted that the payment was an ex-gratia payment taking into consideration that it was during the pandemic, the Company's clientele had declined and there were no new projects to provide her with work. The Tribunal does not accept the Aggrieved Worker's submission as she failed to prove that the monies received was in fact for vacation. An assumption is not sufficient for the Tribunal to make a determination of fact. Based on the evidence provided from both parties, the Tribunal accepts the Company's reason for the payment as plausible.
35. From the evidence provided and looking at the entire picture, the Tribunal finds that the Aggrieved Worker was not an employee of the Company. As such, paragraph 22 of the Labour Relations Code would not apply in the circumstances.
36. Thus, the Tribunal concludes that the Aggrieved Worker was not unjustifiably terminated.



**AWARD**

Tribunal awards that Mrs. Evette Spence-Cunningham was not unjustifiably terminated because she was not an employee of the Company.

DATED THIS 5<sup>th</sup> DAY OF FEBRUARY 2026

Sadeera Shaw  
Chairman

Mr. Rodcliffe Robertson, JP.  
Member

Keith Fagan  
Member

Witness

Jody-Ann Lindo (Ms.)  
Secretary to the Division

