

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 2/2018

SETTLEMENT OF DISPUTE

BETWEEN

BANK OF JAMAICA

AND

MR. LEON MARRETT

AWARD

I.D.T. DIVISION

MISS MARSHA SMITH - CHAIRMAN

MR. LESLIE HALL, JP - MEMBER

MR. CLINTON LEWIS - MEMBER

APRIL 28 2020



Ms

IDT 2/2018

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**BANK OF JAMAICA
(THE COMPANY)**

AND

**MR. LEON MARRETT
(THE AGGRIEVED)**

REFERENCE:

By letter dated January 17, 2018, the Honourable Minister of Labour and Social Security in accordance with 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 described therein:-

The Terms of Reference were as follows:

"To determine and settle the dispute between Bank of Jamaica on the one hand and Mr. Leon Marrett on the other hand over the termination of his employment."



MS

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:

Miss Marsha Smith - Chairman
Mr. Leslie Hall J.P. - Member, Section 8 (2) (c) (ii)
Mr. Clinton Lewis - Member, Section 8 (2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Bank** was represented by

Mr. Walter Scott Q.C. - Attorney-at-Law
Ms. Elizabeth Salmon - Attorney-at-Law
Mr. Dane Lazarus - Industrial Relations Manager

The **Aggrieved Worker** was represented by:

Mr. Robert Harris - Industrial Relations Consultant
Mr. John Levy - Industrial Relations Consultant

In attendance:

Mr. Leon Marrett - the Aggrieved Worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during eight (8) sittings held between April 13, 2018 and October 17, 2018.



MS

BACKGROUND TO THE DISPUTE:

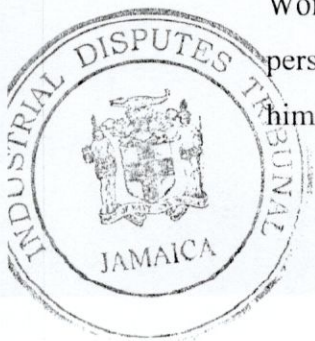
Bank of Jamaica, herein after called “the Company” is established by the Bank of Jamaica Act. Mr. Leon Marrett, hereinafter called “the Aggrieved Worker” was employed to the Company in July 2009 as Engineering Services Manager. On April 21, 2017 the Aggrieved Worker’s employment was terminated by way of redundancy. The Aggrieved Worker protested the termination and referred the matter of the termination of his employment to the Ministry of Labour and Social Security. The Minister referred the matter to the Industrial Disputes Tribunal for settlement and determination.

THE BANK’S CASE:

1. The Company called two (2) witnesses, Mr. Victor Henry, Divisional Chief Facilities Management & Protective Services and Mr. Calvin Brown, Divisional Chief, Human Resources Division
2. Mr. Victor Henry testified that since November 1, 2017 he had been employed to the Bank as the Divisional Chief Facilities Management & Protective Services. Prior to that he was employed to the Bank as the Senior Director Facilities Management Security & Project Management. When he was Senior Director Facilities Management Security & Project Management, he reported to Mr. Calvin Brown, who was the then Divisional Chief Administration & Technical Services. The Aggrieved Worker was formerly employed to the Bank as the Engineering Services Manager and reported to him. As the Senior Director Facilities Management Security & Project Management, the managers of Engineering services, Protective services, Project management & Property management reported to him. The organizational chart for the Facilities, Security & Project Management Sub-division was reviewed late 2013/early 2014 and was concluded in 2015. As a result of the review a new organizational chart was prepared for his subdivision.

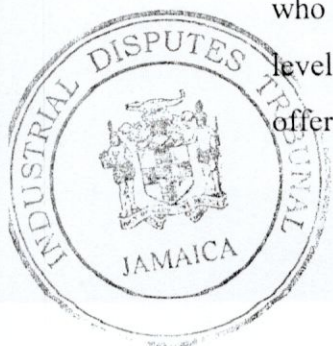


3. The Bank utilizes a performance appraisal system. It has measurable objectives agreed with supervisors and employees each year. He did several performance assessments for the Aggrieved Worker. The appraisals were satisfactory.
4. When the organizational review commenced, the Bank's Organizational Development Department had discussions with him and the members of his subdivision. The Aggrieved Worker was as a member of his subdivision. The revised structure was approved by the Bank's Management and Board. As a result of the review, there were changes in the structure of the subdivision. The Engineering Department and the Property Office Services department were merged to form one large Facilities Management Department in the new structure and there was no post for an Engineering Services Manager. There was a post for a Team Leader Engineering Services. There were no posts for Property Manager and Office Services Manager. The position of Engineering Services Manager had total responsibility for engineering, with supervisors, technical engineering staff and reported to the Senior Director Facilities Management Security & Project Management. The Team Leader was just a supervisor and was a Level 15 position on the new structure.
5. When he received the new structure, he discussed it with his team including the Aggrieved Worker. There were several discussions in the Aggrieved Worker about the new structure and the fact that there was no post Engineering Services Manager on it. The Aggrieved Worker questioned what it meant for him and he pointed him to Mr. Calvin Brown. There were several conversations when he explained the possible outcomes of the restructuring to the Aggrieved Worker. He also had regular management meeting in his subdivision where the Aggrieved Worker was present. In January 2017 the Organizational Development Department presented the new structure at a meeting with members of his subdivision. The Aggrieved Worker was present at that meeting. Also present were Deputy Governor Mr. Livingstone Morrison and the Divisional Chief Mr. Calvin Brown.
6. Following the meeting in January 2017, there was another meeting with the Aggrieved Worker. The meeting was called by Deputy Governor Livingstone Morrison. The other persons present were the Divisional Chief Mr. Calvin Brown and the Aggrieved Worker himself. The meeting explored the options available to management. The Aggrieved



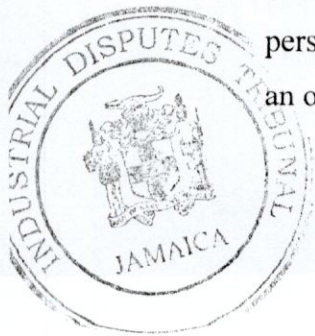
Worker had several questions for the Deputy Governor, and he responded to the Aggrieved Worker's questions. The options discussed were the Aggrieved Worker being elevated to the Level 18 position of Head, Facilities Management and competing at interview, redundancy or appointment to a level below the Aggrieved Worker's position. The Aggrieved Worker's position as Engineering Services Manager was a Level 16 position. The options of the higher level and lower position were discussed as well as the possibility of a redundancy. There was no definitive decision taken at the meeting. Further consultation was to take place and the Aggrieved Worker would be advised of the outcome.

7. Head, Facilities Management is a Level 18 position. Its functions are not the same Engineering Services Manager. It included some of the functions, but it also included functions of property management, project management and engineering. It was a new position combining the functions of property management and engineering. There was residual responsibility for the project manager. The position of project manager was not eliminated, but some of the functions were removed and given to Head Facilities Management.
8. He had a meeting with the Aggrieved Worker and himself. It was an ongoing discussion with the Aggrieved Worker. The options were repeated in these discussions but there was nothing definitive.
9. He received a memorandum dated March 22, 2016 from the Aggrieved Worker. On receipt of it he consulted with Mr. Calvin Brown. Mr Brown advised him not to refer to the Aggrieved Worker as Team Leader.
10. The Aggrieved Worker received a letter advising him of the redundancy on April 21, 2017. There was a meeting the same day chaired by Mr. Calvin Brown. He was present along with Mr. Michael Clarke Director of Human Resources and the Aggrieved Worker. The discussions at that meeting had to do with the decision that the Bank had come to.
11. The Team leader position is lower than Engineering Services manager position. It removed all leadership and management roles. The Team Leader is hands on supervisor who manages the tasks of the engineering team. The essential difference is that the higher level is a manager and the lower level is a hands-on position. He did not know if any offer was made to the Aggrieved Worker to take the lower position of Team Leader. In



his assessment, his relationship with the Aggrieved Worker was good. The Aggrieved Worker would be challenged in the area of leadership and management to carry out the role of Head, Facilities Management.

12. During cross examination Mr Henry said he conducted several performance appraisals for the Aggrieved Worker which were satisfactory. The Aggrieved Worker fell short in the area of leadership and management. He discussed the weaknesses in the assessments with the Aggrieved Worker. He had discussions about the changes to the organizational charts with the members of his department.
13. He said that the meeting with the Deputy Governor there were discussions as to the Aggrieved Worker's suitability for the Level 18 and Level 15 positions. He was not aware of the provisions of the Labour Relations Code with regards to an impending redundancy exercise. He was not involved in the consultation with the Aggrieved Worker and did not know if anyone else was. Long before the redundancy, the options were discussed with the Aggrieved Worker. The options were elevation to position of Head, Facilities Management, Team Leader, Engineering Services or separation. The Aggrieved Worker approached him to have those discussions. The meeting of April 21, 2017 was called to say where the Bank had reached with its decision and the Aggrieved Worker was handed a letter.
14. At a meeting with his department where the Aggrieved Worker was in attendance, he discussed the changes in the structure what was given to him. He had no special meeting to discuss the organizational chart. Whenever he had management meetings, he updated the managers about the organizational review. When he got a copy of the new structure, he called the Aggrieved Worker and informed him that his position was not on the new chart.
15. He said he referred to the Aggrieved Worker as Team Leader because he had a structure that had three Team Leaders for the Facilities Management Department. The three (3) Team Leaders were for three different areas. One was Team Leader Property Services, the other Team Leader Office Services and the other one was Team Leader Engineering Services. He got a new organizational structure and he had three positions and three persons. He referred to all three of them as Team Leaders. The Aggrieved Worker raised an objection to being called Team Leader in 2016. When the Aggrieved Worker wrote to



him, he spoke with the Senior Director of the Organizational Department and as well as the Divisional Chief, Mr. Calvin Brown, to whom the correspondence was copied. They said he should stop referring to the Aggrieved Worker as the Team Leader Engineering and he did so.

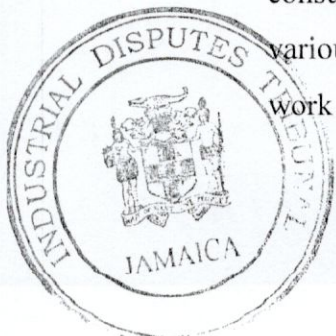
16. In his estimation, the position of Head, Facilities Management was one that Aggrieved Worker would have some challenges in. At the time of the hearing, the post of Head, Facilities Management was not filled. There was a person acting in it. He said he was not competent to speak to how the Bank filled positions. He however, was competent to say that the Aggrieved Worker would have challenges to fill the position of Head, Facilities Management.
17. He said the person currently acting as Head, Facilities Management was not interviewed. He did not know of an instance where an interview is deserved for an acting position. The acting position is something that the Bank's management at the highest level, decides on. The person acting as Head of Facilities Management had been acting since September/October 2017. As far as he knew that person possessed the minimum requirement for the job.
18. His discussions with management was about two options. One was the Aggrieved Worker occupying the Level 18 position and the second was the Aggrieved Worker occupying the Level 15 position. Those were the discussions he had with his supervisor. The Aggrieved Worker was not present in those discussions. The discussions he had about the Aggrieved Worker competing for the Level 18 position was with Aggrieved Worker, himself. He had no discussion with management about the Aggrieved Worker competing for the Level 18 position. After that meeting with the Deputy Governor on February 14, 2017, it was his understanding that the Human Resources department was attempting to place the Aggrieved Worker and he was asked questions by Mr. Calvin Brown. They looked over the Aggrieved Worker's performance and assessment over the years. Those were the discussions that they had. He could not recall the specific date of the discussions, but he knew it was after the meeting that they had with the Deputy Governor and before the meeting April 21, 2017.

19. Mr. Calvin Brown had some discussions with him on the possible placement of the Aggrieved Worker. The conclusion coming out of those discussions was that the



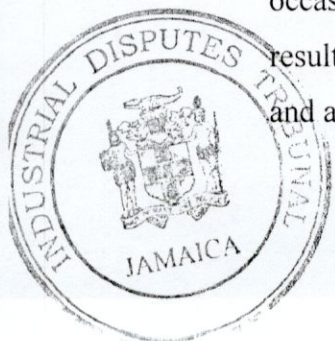
Aggrieved Worker would not be suitable for the position of Head, Facilities Management (Level 18) and the position Team Leader, Engineering Services (Level 15) would be a demotion. He discussed the available options when he had one-on-one discussions with the Aggrieved Worker. He did not think he had any authority to give an answer in respect of the Bank's position and so he directed him to ask the questions of the Division Chief, Calvin Brown and if he saw it necessary, the Deputy Governor, Livingstone Morrison. The position of Team Leader, Engineering Services was not currently filled and there was no one who was acting in it.

20. He was not re-examined. He was questioned by the Tribunal Members. The positions of Team Leader for office services and property services were filled. Protective Services Manager is a separate department in another area of the portfolio. The Facilities Manager and the Engineering Service Manager, these positions have been merged to form the Facilities Manager in the new structure. Protective Service Manager is not part of Facilities Management.
21. The company's second witness was Mr. Calvin Brown, the Division Chief, Human Resources Division of the Bank. In 2017 he was the Division Chief for Administration and Technical Services and Mr. Victor Henry reported to him. The Division of Administration and Technical Services Division encompassed Human Resources, Engineering Services, Office Services and General Facilities Management. His responsibility as Division Chief Administration and Technical Services was human resources, all aspects of operations including engineering, office services, and property services. At the time his involvement was an oversight role as then Divisional Sub Head, Mr. Victor Henry had direct responsibility for engineering services, security, office services and property services.
22. The organizational structure for the Facilities, Security and Project Management subdivision as existed in 2014 was changed. He did not play any role in the creation of the new organizational structure. The new structure was the result of an organizational review conducted by the Organizational Development Department, which is an internal consultancy department. It is the department that creates organizational structures for the various divisions in the Bank. It is a standard procedure for interviews to be done and for work processes to be reviewed in each area. There is a process involved for an



organizational structure to be approved. The process involves the detailed report from that Organizational Department being submitted to the Committee of Administration for review or endorsement. The Committee of Administration is a part of the decision-making arm of the Bank. It reviews policies and structures and comprises Deputy Governors and Division chiefs right across the Bank and it is chaired by a Deputy Governor. The report of the Organizational Development Department and the structure goes to the Committee of Administration for review. The committee does not approve it the structure, but it would endorse it. It is then sent to the Management committee which is the highest management committee in the Bank and that is chaired by the Governor of the Bank. If there are major changes to the structure of the organization, that it will go to the Board of Directors. The new organizational structure for the Facilities, Security and Project Management subdivision was considered a major change and it would have gone all the way up to the Board of Directors. The organizational structure was endorsed by the Committee of Administration. It was approved by the Management Committee. It was approved by the Board of Directors of the Bank of Jamaica.

23. The second level management within the subdivision was removed from the structure, which is the Engineering Services, the Property Services and Office Services Managers. There was also a change in the position of Project and Technical Manager. That role was placed under the Facilities Manager for greater coordination. In the new structure the Engineering Services Manager's post was abolished. The Facilities Manager Property and Office Services post was also abolished. The post of Protective Services Manager post still exists but is no longer part the Facilities Management Department. The old subdivision of facilities, Security & Project Management, which included engineering services was reshaped. There is now a Facilities Management Department and a Protective Services Department.
24. He sent a memorandum dated March 22, 2017 to the Management Committee. It was approved. Prior to his making this submission to the Management Committee he had discussions with the Aggrieved Worker. Discussions would have been held on two occasions, one generally when there was a meeting with the divisional staff where the results of the organizational review were presented and discussions held, questions taken, and answers provided. It did not involve the security staff, but it involved all other staff

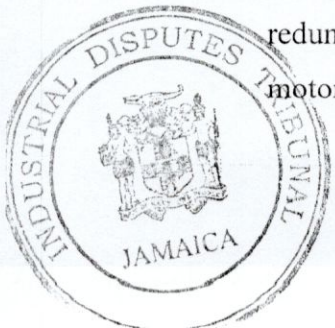


of the subdivision i.e. staff in engineering staff, facilities management, property services and office services. There was a staff meeting and a presentation. The presentation was led by the Head of the Organizational Development Department who undertook the review. The general staff meeting was February 2, 2017.

25. The specific meeting with the Aggrieved Worker was February 14, 2017. In attendance was himself, Deputy Governor Morrison and Mr. Victor Henry. The meeting discussed the general information that was provided at the general staff meeting, but specifically in relation to the engineering services department and the impact it would have on the Aggrieved Worker. It was put to the Aggrieved Worker that there was a possibility of his being made redundant, on the basis that the post was removed from the structure. The meeting specific to the Aggrieved Worker was held with him about a month before the Management Committee took its decision. Apart from the possibility of redundancy, two other options were indicated to the Aggrieved Worker of the two positions and that an assessment would have to be done in terms of determining his suitability for the Level 18 position of Head, Facilities Management and the Level 15 position of Team Leader. There was no agreed position. The meeting ended by saying that they would have to do the assessment to determine what would happen thereafter. He sent the Aggrieved Worker's profile to the Banking & Market Operations Division and the Payment System & Risk Management Division. The response was that the academics was appropriate, but that experience was required. There was consideration for the two positions Head Facilities Management (Level 18) and Team Leader (Level 15). The Level 18 position was above his substantive post and the Level 15 was below. The Level 15 post was a working foreman/hands on with no managerial role. The Level 18 post required knowledge not only in engineering but facilities management, housekeeping, office services, transportation etc.
26. In old structure Engineering Services Manager, Protective Services Manager and Facilities Manager (Property and Office Services) were Level 16 management positions. After the changes to the structure was made, Protective Service Manager was not reflected in the structure. The two other posts were also no longer on the chart. Both posts were made redundant. After review, protective services became a separate department in the subdivision. There is a separate chart for protective services.



27. His memo to the Management Committee asking the committee to consider separation on the grounds of redundancy was done after he contacted the Banking divisions. The review to determine the Aggrieved Worker suitability for possible employment as Head Facilities Management Level 18 or as Team Leader level 15 was done before the memo. He had been a Human Resource practitioner for 30 years roughly. He was aware that the Jamaica labour law required consultation and said that there was consultation with the Aggrieved Worker. The instances of consultation were the departmental meeting held in Facilities department outlining the process of the organizational development review. There was a detailed report by the organizational specialist. There was a presentation of the review of the old and new structure and a question and answer session. Outside of that, there was a separate meeting with the Aggrieved Worker on February 14, 2017. He considered this separate meeting as consultation as in that meeting the Aggrieved Worker was advised of the outcome of the approval of the new structure and they also reviewed the two positions and the possibility of redundancy. The person at the meeting were Deputy Governor, Mr. Livingstone Morrison, Mr. Victor Henry, the Aggrieved Worker and himself. Looking for opportunities to place him elsewhere was also discussed.
28. The job description of Engineering Services Manager was not same as Team Leader Engineering Services. The function was the Engineering Services Manager was largely managerial. The Team Leader operated under the direction of the Head Facilities Management. Team Leader position is equivalent to a hands-on supervisor. There was also a difference in qualification.
29. The letter of termination by way of redundancy was signed by him and the redundancy payment was lodged to the Aggrieved Worker's account. He had a meeting with the Aggrieved Worker on April 21, 2017 regarding the termination letter on April 21, 2017. Present at the meeting were Mr. Michael Clarke, Acting Head of Human Resources and Administration, Mr. Victor Henry (the direct Supervisor) the Aggrieved Worker and himself. At the meeting reference was made to the discussions held with the Aggrieved Worker before. He was advised of the submission to the Management Committee and its decision to make his position redundant and terminate his employment by reason of redundancy. An offer was made to the Aggrieved Worker to purchase the Bank assigned motor vehicle at a concessionary rate. The Aggrieved Worker was given the option to



MS

purchase the Bank assigned cell phone. There was also an arrangement for a mortgage concessionary rate for staff members made redundant. The concessionary mortgage rate would continue for a specific time and then revert to the market rate. In normal circumstances an employee is required to hand over the Bank's motor vehicle on the same day. He got special approval for the Aggrieved Worker to keep the motor vehicle and cell phone over the weekend until Monday

30. He had no personal animus with the Aggrieved Worker. The Aggrieved Worker initially reported to him after the Chief Engineer left. He had a very good working relationship with the Aggrieved Worker. He was shown a memo dated April 22, 2016 from the Aggrieved Worker to Mr. Victor Henry. He said the concerns in it were appropriate as there was no implementation of the new structure at that time.
31. The Aggrieved Worker was treated fairly and with dignity. Fairness and integrity were at the core of Human Resources. Although there were discussions with staff and the Aggrieved Worker, the Bank had to consider that the position of Engineering Services Manager had access to critical infrastructure including the servers on which sat the infrastructure for the entire financial sector. The timeline was the March 2017 submission to the Management Committee one month after the February 2017 consultation meeting, with implementation taking place a month later in April 2017. The approach was respectful, and the Aggrieved Worker's situation was considered.
32. During cross examination he insisted that the Aggrieved Worker was treated fairly and with dignity. He said he was generally aware of the principles applied to redundancy. He said the first thing to be done by management is to have discussions with the affected party and advise the Ministry of Labour. He said the Ministry was notified but he could not recall the exact day. It was after decision made on March 27, 2017. There was consultation on the February 14, 2017. The consultation entailed discussions with the Aggrieved Worker as to the purpose of the organizational review and the impact on his position. There was also a general meeting on February 2, 2017.
33. The meeting on February 14, 2017 was organized out of the office of the Deputy Governor. That meeting was consultation. The Deputy Governor's office also organized the general staff meeting. The Labour Relations Code requires the provision for full information to the affected party, so that parties can discuss issues and present their

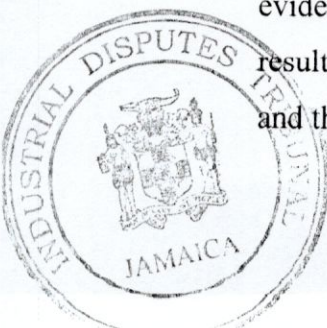


views. There was a full report at the general staff meeting and information was provided on the new structure and the positions available.

34. He was unaware if the Aggrieved Worker requested a meeting to discuss that his position was no longer on the organizational chart. He recalled three (3) meetings, a general staff meeting, a meeting with the Aggrieved Worker and a final meeting, when the Aggrieved Worker was made aware of the Bank's decision. He said the Aggrieved Worker reported to him for about two (2) years. During the two (2) years he conducted an annual appraisal of the Aggrieved Worker. The outcome was fair. In terms of engineering skills, the Aggrieved Worker performed satisfactorily. He had challenges in project management, leadership and strategic management. Engineering skills were ok. An officer must accept the need for improvement or there will be no change. The Aggrieved Worker did not accept the need to improve in those areas.
35. The Aggrieved Worker's April 2016 memo seemed concerned about two things, his job title and the status of the Team Leader's role. From his perspective the Aggrieved Worker was not a Team Leader, he was the Engineering Services Manager and his concerns were valid. The general staff meeting outlined the total information. The staff in the affected subdivision was provided with background to the exercise and the need to improve efficiency.

36. THE BANK'S CONTENTIONS:

1. The legal and factual issues are follows: -
 - i. There was an Organization Review the Employer which resulted in a number of posts including that of the Employee being made redundant.
 - ii Whether the termination by way of Redundancy of the post formerly held by Mr. Marrett.; and
 - iii Whether there was consultation with the employee during the period leading up to the termination of the contract by reason of redundancy
2. In order for the Aggrieved Worker to successfully establish a valid claim, there is an evidential burden on him to adduce cogent evidence that the Organizational review which resulted in a number of posts including his own being made redundant was not genuine and that the consultation which took place, given all the circumstances of the case,



inclusive of his qualifications, experience and background were not in keeping with the provisions of the Labour Relations Code.

3. The uncontradicted and uncontroverted evidence presented by the Bank demonstrates beyond a reasonable doubt that in order to achieved greater levels of efficiency and effectiveness, the organizational review of the Facilities, Security and Projects Management Subdivision was undertaken and this resulted in the structure of the sub-division being modified. This further resulted in, amongst other things, 3 posts at the managerial level being removed from the organizational structure and which included the position of Engineering Services Manager.
4. While Section 11 of the Labour Relations Code recognizes the need for consultation, it also allows for consideration to be given to whether or not this is consistent with operational efficiency. The level of consultation, if any, required in each case depends on the objective circumstances of each case, inclusive of many factors. These include, but are not limited to the peculiar circumstances of the post being made redundant, the peculiar circumstances of the affected employee, his qualifications, the seniority of his post, safety and security issues, confidentiality issues, the overall effect on the organization among others. For the Company to have had further consultation than it did would have been inconsistent with all the circumstances of this case.
5. The Bank urged the Tribunal to find the following facts:
 - i. That resulting from an organization review, the position of Engineering Services Manager (Level 16) along with two other posts were removed from the organizational structure of the Company in an effort to achieve greater efficiency.
 - ii The post and functions of the Engineering Services Manager no longer exist within any individual post at the Company and as such it is a genuine redundancy.
 - iii In all the circumstances of this case, there was adequate consultation between senior members of the management of the Company and the Aggrieved Worker and he was fairly treated and with dignity and respect.



sensitive and critical area in which the Aggrieved Worker worked, he was in all the circumstances, treated fairly and with dignity. This was evident from the efforts that were made by the Bank which included but were not limited to trying to find an alternative position in which the Aggrieved Worker could have been placed; ensuring that he was permitted to remain after the usual working hours to organize his belongings and doing so would invariably eliminate and/or reduce any embarrassment to him. Additionally, the Aggrieved Worker was not only given the option to purchase the motor vehicle that was assigned to him but he was also permitted to take the same home over the weekend. He was also allowed to retain the Bank's cellular phone over the weekend.

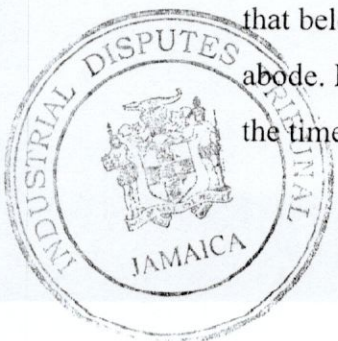
7. The restructuring exercise which resulted in the redundancy of the position of Engineering Services Manager which was held by the Aggrieved Worker was genuine and in all the circumstances, the appropriate consultations were done in accordance with the provisions of the Labour Relations Code.
8. However should the Tribunal find that there was no consultation in keeping with the meaning of the Labour Relations Code, the Tribunal is asked to be mindful of all the circumstances of this case inclusive of the statutory role and functions of the Bank as the Central Bank, the very real concerns which the Bank would have had and that the redundancy in question is consistent with operational efficiency. The Tribunal is urged to follow the principle in its decision in the Cemex Case and in so doing find for the Bank.

THE AGGRIEVED WORKER'S CASE:

37. The Aggrieved Worker gave evidence on his own behalf. He stated that he started working with the Bank in 2009. His duties and functions at the Bank were managing the engineering infrastructure of the Bank. When he was first employed by the Bank he reported to the Chief Engineer, who was the head of the Engineering Services Department. He later reported to Mr. Calvin Brown, the Division Chief, Human Resources & Administration. He then subsequently reported to Mr. Victor Henry, who was in 2016, the Senior Director Facilities Management Security & Project Management Subdivision. He said his department excelled and the only time concerns came up was during his appraisals. The electrical and mechanical engineers reported to him.



38. He recalled that on February 2, 2016 there was a general staff meeting in the Facilities Division to introduce the new organization structure. The presentation was done Ms. Andrea Clarke, Director of the Organizational Development Department. The senior managers present were Mr. Victor Henry (Senior Director Facilities Management, Security & Project Management), Mr. Calvin Brown (Divisional Chief Administration and Technical Services) and Mr. Livingston Morrison (Deputy Governor). All Staff part of Engineering Services, Office Services and Property Services were present. The Security Staff was not a part of the meeting. At the meeting there was no indication as to what was happening with his position. He decided to take it further and so he wrote to the Deputy Governor, Mr. Morrison to discuss his situation. He wrote to him that he had not heard from anybody. Mr. Morrison responded through his secretary and set a date for a meeting. The meeting was on February 14, 2017 and Mr. Calvin Brown and Mr. Victor Henry were also invited to the meeting. At the meeting he was told he should tell them why he requested the meeting. He told them he was not sure what happened to his job. Neither Mr. Brown nor Mr. Henry initiated the meeting. He did not agree with Bank's classification that the meeting on February 14, 2017 was a consultation meeting.
39. He was made redundant on April 21, 2017. On that day he reached work well before 8:30 am. He was going about the Bank's business when he received a call at about 3:00 p.m. to attend a meeting with Mr. Calvin Brown. He did not know what the meeting was about. The persons present were Mr. Calvin Brown, Mr. Victor Henry and Mr. Clarke the Acting HR Manager. Mr. Brown opened the meeting and said that he (the Aggrieved Worker) was being separated and that his position was made redundant. He was told that his letter of termination was being prepared and that he (the Aggrieved Worker) would have to wait for it. He finished work at 5:30 p.m. that day. The Banking Sector closes late on a Friday. He got the letter at about 6:30 p.m. It was dark by the time he got the letter. He was told to sit and wait until the letter was ready.
40. He felt bad being out of a job. Persons throughout the Bank called him. He felt embarrassed. He was told to hand over the motor vehicle, cell phone and all the things that belonged to the Bank. No arrangement was not made to take him to his place of abode. He was eventually allowed to keep the Bank's motor vehicle over the weekend. At the time of his termination his monthly mortgage payment was \$130,000.00. It is now



\$270,000.00. There was no discussion before he got the letter. The termination placed undue hardship on him. On the following Monday he contacted Mr. Vincent Morrison and sought his guidance.

41. He said he was not aware of a job description for the Team Leader Engineering Services. It was never discussed with him. That job would not pose a difficulty for him if he was given the opportunity to do it as he started as a technician. He said that based on his qualification he was able to work as either Team Leader or Head Facilities Management. He was prepared to go back to work at the Bank.

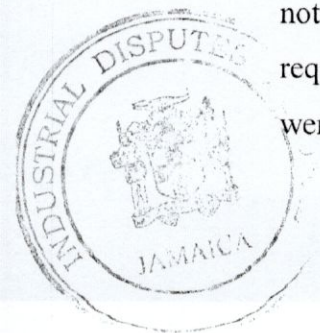
42. The Aggrieved Worker tendered a report dated June 29, 2017, (Exhibit 9a), which chronologized the events leading up to the termination of his employment as follows: -

- January 2016 meeting where Mr. Victor Henry announced that the proposed structure approved. Subsequent to meeting, Mr. Henry starts to address him as Team Leader. After writing to Mr. Calvin Brown the references to him as Team Leader ceases.
- January 2017 Mr. Victor Henry has a meeting where he announced that the new structure was ready for implementation. The Aggrieved Worker requests a meeting with Mr. Henry to discuss what impact the new structure would have on his job.
- Two weeks later in January 2017, the Bank announces the approval of the new structure in its weekly newsletter.
- One week later a general meeting is held to launch the new structure. The Aggrieved Worker sees the new organizational chart and realizes his job was not on the chart.
- The Aggrieved Worker requests a meeting with the Deputy Governor Mr. Livingstone Morrison.
- February 2017 meeting with Deputy Governor Morrison. Messrs Calvin Brown and Victor Henry are present at the meeting. He is told by the Deputy Governor that his job is made redundant and that all three of them would meet to discuss his future.

• April 2017 the Aggrieved Worker is handed a dismissal letter.



43. During cross examination he described his relationship with Mr. Victor Henry as toxic. He said he heard that Mr. Henry was now the Divisional Chief and that the Head Facilities Management reported to Mr. Henry. He said he was not the cause of the toxicity and so he would work even if it was toxic. He agreed that in 2016 he took umbrage to being referred to as Team Leader. He also agreed that the position of Team Leader was not an Assistant Director position in the Bank's Organizational Structure. He acted as Chief Engineer for four months. He reverted to his substantive post after. He was not promoted to Chief Engineer. He agreed that there was no Chief Engineer position at the Bank and he could not recall if that position was made redundant. He was told that the position no longer existed. It was put to him that the position of Engineering Services Manager no longer existed, and he disagreed with that suggestion.
44. He said prior to being made redundant he was employed at Level 16. He agreed that the Team Leader position was Level 15. He considered employment at Level 15 as a Team Leader to be a demotion, however, he would accept the position, even though no one was happy for a demotion. He was shown his employment profile and he said it was accurate up to the time it was done on February 28, 2017. He was shown his performance reviews. He said the reviews were inconsistent with his performance and he objected to its contents. He said prior to April 2017 he was aware of the organizational structure as it related to his subdivision. He was taken through the structure that existed prior to April 2017. He said that at the general staff meeting on February 2, 2017 there was a presentation by the Organizational Development Department. They spoke about the reorganization of the subdivision. He agreed that the posts of Engineering Services Manager, Property Services Manager and Project and Technical Manager were not on the new structure. He agreed that the three posts were made redundant. He also agreed with the suggestion that at the meeting of February 2, 2017 he was concerned when he did not see his post on the structure. He stood up in the meeting and enquired about his situation. His enquiries were not answered, and he was referred to his supervisors. His immediate supervisors, Mr. Victor Henry and Mr. Calvin Brown were in the meeting, but they did not answer. He sent an email after the meeting to Deputy Governor Mr. Morrison requesting a meeting to discuss his situation. Mr. Calvin Brown and Mr. Victor Henry were present at the meeting with Deputy Governor Morrison. The meeting was like a

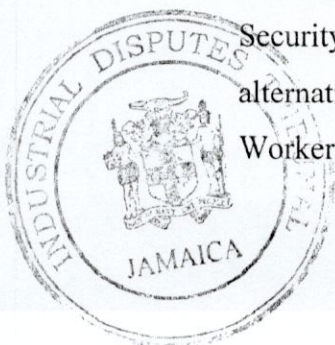


lecture. Arising out of the meeting it was clear to him that his post was redundant as the Deputy Governor told him in the meeting that his post was redundant.

45. He said he was paid all sums due to him on a redundancy. He agreed that he said that his work environment was toxic. He agreed also that it was correct to say that despite the exception and umbrage he took being termed Team Leader, he was now prepared to work as Team Leader if the job was offered to him.
46. He was re-examined and said that after he wrote the 2016 memo the references to him as Team Leader stopped almost immediately. He said he had no difficulty relating to Mr. Henry. He was able to do his work to the best of his ability. Mr. Henry created a difficult environment, but he was able to work in spite of it. Mr. Henry never expressed any difficulty with working with him to his face. At the time when Mr. Henry described him as Team Leader, there was no new organizational chart. He said no one occupied the post of Team Leader. The meeting on February 2, 2017 was a divisional staff meeting. The meeting on February 14, 2017 was a conversation with the Deputy Governor Mr. Morrison, Mr. Brown and Mr. Henry. It was not a consultation.

THE AGGRIEVED WORKER'S CONTENTIONS:

1. There was no consultation between the Bank and the Aggrieved Worker prior to his separation under the guise of redundancy. There is compelling evidence to refute the Bank's claim that it had consultation prior to the separation of the Aggrieved Worker from his job. No formal consultation took place.
2. There were two possible new roles that the Aggrieved Worker could have been offered. They are still vacant. The Bank did not offer any of the two jobs to the Aggrieved Worker. It made the determination that the Aggrieved Worker would not accept the Team Leader job and that he was not qualified for the post of Head of Facilities Management. They made this determination without making an offer in the first instance and allowing the employee to refuse the offer. Section 11 of the Labour Relations Code speaks to the Security of Workers. No effort was made to assist the Aggrieved Worker to gain alternative employment and the Bank did not take steps to ensure that the Aggrieved Worker did not face undue hardship.



3. The Labour Relations Code is very clear on the steps to be followed in the event a redundancy exercise is to be embarked on. The management of the Bank did not avail itself of the provisions of Section 11 of the Labour Relations Code prior to the issuance of the termination letter. No effort was made to ensure that the proper procedures were followed in keeping with the established principles and guidelines of the Labour Relations Code.
4. The meeting held with staff to outline changes to the Bank's structure was not consultation with the Aggrieved Worker. There is no evidence that the Aggrieved Worker was invited to any meeting to discuss matters concerning a pending redundancy which may have affected his job. On the contrary it was the Aggrieved Worker who initiated discussions with the Bank on the matter of his job status. There is difference between consultation and a general staff meeting. The Bank had an obligation to ensure that all proper steps were in place prior to effecting a dismissal on the ground of redundancy.
5. The job descriptions of the Team Leader and the Engineering Services Manager are not much different.
6. Ask that the Tribunal orders the reinstatement of the Aggrieved Worker's job status without any loss of salary and benefits.

THE TRIBUNAL'S FINDINGS:

1. The position of Engineering Services Manager (Level 16) is redundant as it was removed from the organizational structure of the Bank to achieve greater efficiency.
2. In January 2016, Mr. Victor Henry (the Aggrieved Worker's supervisor) told the Aggrieved Worker in a meeting, that there would be changes to the organizational structure of the Bank's Facilities Management Security & Project Management subdivision. Shortly after Mr Henry began addressing the Aggrieved Worker as Team Leader, a title to which the Aggrieved objected to. The Aggrieved Worker wrote a memorandum to Mr. Henry objecting to the practice and Mr. Henry ceased addressing him as Team Leader.



3. In January 2017 Mr. Victor Henry (the Aggrieved Worker's supervisor) told the Aggrieved Worker in a meeting, that the new organizational structure for the subdivision was approved and was ready for implementation.
4. In January 2017, the approval of the new organizational structure was announced in the Bank's weekly newsletter.
5. On February 2, 2017, the Aggrieved Worker was present at a general staff meeting for the Facilities Management Security & Project Management Subdivision, at which the new organization structure was introduced. This was the first time that the Aggrieved Worker became aware that his position was no longer on the organizational structure for the Facilities Management Security & Project Management subdivision. During the meeting the Aggrieved Worker enquired about his job situation. The presenter, Ms. Andrea Clarke, Director of the Organizational Development Department referred him to his supervisors present in the meeting. His supervisors, (Deputy Governor Livingstone Morrison, Mr. Victor Henry and Mr. Calvin Brown) did not address his concerns in the general staff meeting.
6. The Aggrieved Worker wrote to the Deputy Governor requesting a meeting. The Deputy Governor responded through his secretary and set a meeting date. This meeting was held on February 14, 2017. Present at the meeting to discuss what the new structure meant in terms of his employment, were the Aggrieved Worker, Deputy Governor Livingstone Morrison, Mr. Victor Henry and Mr. Calvin Brown. Deputy Governor Livingstone Morrison told the Aggrieved Worker in the meeting that his job was redundant and that a decision would be made about his future. The options discussed were termination of employment by way of redundancy and an assessment of his suitability for the Level 18 position of Head, Facilities Management and the Level 15 position of Team Leader.
7. Mr. Calvin Brown by Memorandum dated March 22, 2017 addressed to the Bank's Management Committee recommended that the Aggrieved Worker's employment be terminated by way of redundancy. In addition to the recommendation for termination by way of redundancy, the memorandum also stated of attempts at redeployment to other



department and an assessment of his suitability for reassignment within the Facilities Management Security & Project Management Subdivision. The Management Committee approved the redundancy termination on March 27, 2017.

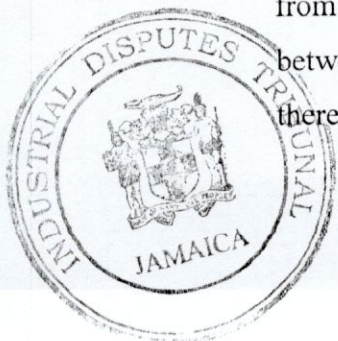
8. The Aggrieved Worker was not aware of attempts to redeploy him to other areas of the bank and he was not asked to submit formal applications for the two new positions within the Facilities Management Security & Project Management Subdivision.
9. On April 21, 2017 the Aggrieved Worker received a letter of even date that he was made redundant.
10. The Bank communicated its staff that there were to be organizational changes to the Facilities Management Security & Project Management Subdivision. The Aggrieved Worker's evidence, both oral and documentary illustrates that he was aware that an organizational review of his subdivision was taking place. The communication regarding the organizational review did not however include clear information that the restructuring consequent on the review would/or could result in redundancies.
11. The staff meeting for the Facilities Management Security & Project Management Subdivision on February 2, 2017 was not a consultation meeting. It was a meeting to introduce the staff to the approved organizational chart for the subdivision. It did not address how implementation of the change would affect the Aggrieved Worker. The Aggrieved Worker was not given any information in that meeting that a redundancy was likely from the restructuring.
12. The meeting on February 14, 2017 was a consultation meeting, requested by the Aggrieved Worker regarding how the organizational change would affect his employment and at which time he was told about the redundancy.



THE TRIBUNAL'S RESPONSE:

13. The issue for the Tribunal to determine is whether prior to the implementation of his redundancy termination, the Aggrieved Worker was consulted in conformity with the requirements of the Labour Relations Code. Section 11 of Labour Relations Code enjoins management, in so far as is consistent with operational efficiency, to provide for continuity of employment, to take all reasonable steps to avoid redundancies and to actively assist workers in securing alternative employment and facilitate them as far as is practicable. This responsibility under Section 11 of the Labour Relations Code is connected to management's responsibility under Section 19 of the Code dealing with communication and consultation.

14. It is the duty of management to communicate clearly and timely, matters of interest that will affect the operation and future prospects of the undertaking as they will affect the worker. It should also undertake to explain decisions which are likely to affect the situation of workers provided that such information is not damaging to either party. Communication is two way. At the general staff meeting when the new structure was presented, the Bank facilitated a question and answer session at the presentation. However, when the Aggrieved Worker enquired about the status on his job in light of the restructuring, his supervisors who were present failed to address the enquiry and in doing so, failed to communicate to the Aggrieved Worker that a redundancy situation was likely. It was only after the Aggrieved Worker asked to meet with the Deputy Governor, that he was told what the restructuring meant for his job. There was no evidence that the disclosure of a likely redundancy was damaging to either party. Mr. Calvin Brown indicated in his evidence that the Bank had to consider that the position of Engineering Services Manager had access to critical infrastructure including the servers on which sat the infrastructure for the entire financial sector. However, there was no evidence presented that the Aggrieved Worker was a security risk. In fact the inference to be drawn from the evidence is that he was not a security risk, as there was more than two months between the meeting on February 14, 2017 and the termination on April 21, 2020 and there was no evidence of interference with the Bank's infrastructure during that period.



15. The type of consultation envisioned under Section 19 of the Labour Relations Code is a joint examination and discussions of problems and matters affecting management and worker. Where a redundancy situation occurs, the consultation is much more than informing the staff why they are being made redundant. The consultation needs to give the worker an opportunity to put to the employer alternatives that may avoid the need for the redundancy or if it is a redundancy cannot be avoided, to find ways that an employee may be redeployed. The Bank fell below the required standard of consultation when it sought to implement the redundancy, as outside of the meeting of February 14, 2020, the Aggrieved Worker had no opportunity to advocate on his own behalf. It was the duty of the Bank to have made the Aggrieved Worker aware of all the options that were being considered and where possible to have given him an opportunity to make representation on his behalf as it related to all the options being considered. He was not invited to apply for the new positions in his subdivision (Team Leader or Head Facilities Management). He was not told of the enquiries made to place him the other areas of the Bank's operations. As a result, he was not meaningfully given an opportunity to be part of the process of redeployment whether within his subdivision or within other areas of the Bank's operations. The inadequate communication and consultation with the Aggrieved Worker on the options being discussed in relation to his future prospects meant that he was not given an opportunity to be heard. This was a breach of Section 11 of the Labour Relations Code that speaks to management's duty to assist the worker in securing alternative employment and facilitate him/her as far as is practicable.

16. Consultation is not just communication on what is about to happen, it includes providing the person with a bona fide opportunity to influence the decision maker. The lack of consultation by the bank rendered the termination of the Aggrieved Worker's employment by way of redundancy, unjustifiable.



AWARD:

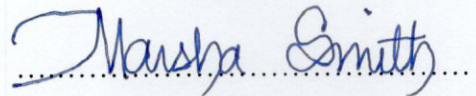
In accordance with Section 12 (5) (c) (iii) of the Labour Relations and Industrial Disputes (Act) the Tribunal orders that:-

- (1) The Bank reinstate Mr. Leon Marrett effective April 21st, 2017 on or before May 18th, 2020 with basic salary for the period up to May 18th, 2020 or up to the date which the Bank reinstates him whichever is earlier.
- (2) Failure to reinstate Mr. Leon Marrett as stipulated above, the Bank shall pay him as compensation an amount equivalent to 12 months' emoluments (inclusive basic salary, clothing allowance and travelling allowance) and in full and final settlement of his unjustifiable dismissal. The sum is not to be discounted nor set off by the redundancy payment made to the Aggrieved Worker at his termination on April 21st, 2017.

DATED THIS

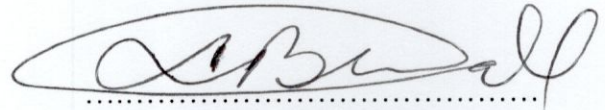
28th

DAY OF APRIL 2020



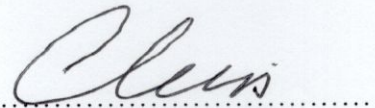
Miss Marsha Smith

Chairman



Mr. Leslie Hall, J.P.

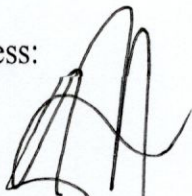
Member



Mr. Clinton Lewis

Member

Witness:



Gary Lediard
Secretary to the Division