INDUSTRIAL DISPUTES TRIBUNAL
Dispute No.: IDT 18/2017

SETTLEMENT OF DISPUTE

BETWEEN

BANK OF JAMAICA

AND

BUSTAMANTE INDUSTRIAL TRADE UNION

AND THE

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, CD, JP	-	**CHAIRMAN**
MR. ERROL BECKFORD	-	**MEMBER**
MR. CLINTON LEWIS	-	**MEMBER**

MAY 5 , 2020

INDUSTRIAL DISPUTES TRIBUNAL JAMAICA

IDT 18/2017

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

BANK OF JAMAICA
(THE COMPANY)
AND

THE BUSTAMANTE INDUSTRIAL TRADE UNION
(THE UNION)

REFERENCE:

By letter dated April 4, 2017, the Honourable Minister of Labour and Social Security pursuant to Section 9 (3) of the Labour Relations and Industrial Disputes Act of 1975 (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement in accordance with the Terms of Reference, the industrial dispute described therein.

The Terms of Reference were as follows:

> ***"To determine and settle the dispute between the Bank of Jamaica on the one hand and the Bustamante Industrial Trade Union on the other hand over the adjustments made to the vacation leave policy of the Bank."***

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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:

Mr. Charles Jones, CD, JP	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2) (c) (ii)
Mr. Clinton Lewis	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF PARTIES:

The **Company** was represented by:

Mr. Patrick Foster	-	Attorney-at Law
Ms. Ayana Thomas	-	Attorney-at-Law

In attendance were:

Ms. Avalana Johnson	-	Deputy General Counsel
Mr. Calvin Brown	-	Division Chief, Administration & Technical Services
Mr. Dane Lazarus	-	Industrial Relations Manager

The **Union** was represented by:

Mr. Rudolph Thomas	-	Vice President

In attendance were:

Mr. Oniel Rufus	-	Chief Delegate
Mrs. Jennifer O'Mally-Johnson	-	Deputy Chief Delegate

SUBMISSIONS AND SITTINGS:

Briefs were submitted by the parties and oral submissions made during eighteen (18) sittings held between September 18, 2017 and March 18, 2019.

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:

Mr. Charles Jones, CD, JP	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2) (c) (ii)
Mr. D. Trevor McNish	-	Member, Section 8(2) (c) (iii)

HEARING OF THE DISPUTE

Subsequent to the last sitting by the Tribunal in the hearing of this matter, Mr. D. Trevor McNish, member died before the finalization of the award.

The parties agreed in writing to the appointment of Mr Clinton Lewis as member of the division to complete the determination of this matter. This was in keeping with the provisions of Section 8(4) of the Labour Relations and Industrial Act which states as follows:

> *(4) Where three members of the Tribunal constitute a division thereof and any one of those members dies or is incapacitated or ceases to be a member thereof for any other reason after the division begins to deal with the industrial dispute in relation to which it was constituted but before it has made its award, another person shall be selected in accordance with the provisions of paragraph (c) of subsection (2) to fill the vacancy; thereafter the proceedings of the division shall be begun de novo unless all the parties to the dispute agree in writing that those proceedings may be continued as if they had not been interrupted by reason of such death or incapacity or cessation*

BACKGROUND TO THE DISPUTE:

1. The Bank of Jamaica (the Bank) is the Central Bank of Jamaica established by the Bank of Jamaica Act (1960). The Bank commenced operations in May 1961 with responsibility for the country's monetary policy.
2. The Bustamante Industrial Trade Union (The Union) is a registered Trade Union established in 1938 by National Hero, the Right Honourable Sir Alexander Bustamante.
3. In 2015 adjustments were made to the Bank's vacation leave policy. The Union objected to the changes and the matter was referred to the Ministry of Labour & Social Security for conciliation. Conciliatory efforts failed and consequently the Honourable Minister of Labour & Social Security referred the matter to the Industrial Disputes Tribunal for settlement in accordance with Section 9(3) of the Labour Relations and Industrial Disputes Act.

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THE UNION'S CASE:

4. Mr. Rudolph Thomas, Vice President of the Union, presented the case. In his opening submission, he drew attention to the Terms of Reference of the dispute and stated that during 2015, the Bank's management was engaged in discussion

with the Union on a number of issues relating to leave. During the period of those discussions, the Bank invited members of the Combined Delegates' Council (CDC) to a presentation entitled "Proposed Change Accumulation of Vacation Leave". He further stated that the Delegates raised concerns about the proposal to reduce the maximum accumulated vacation leave, the monetary value of which, employees were able to use to meet payments such as mortgage and insurance. He also stated that at the point of instituting the change, the workers had voiced their disagreement.

He requested the Tribunal to carefully examine the facts that would be presented and make a determination with regard to the following:

1. *Was the Vacation Leave Policy adjusted?*
2. *Was there a requirement on the part of the Bank, to observe the guidance of the Ministry of Finance*
3. *Was there a requirement to engage and pursue consultation with the Bargaining Agent and was this fulfilled?*
4. *Have the workers been left in a less fortunate position as a result of the Bank's action?*

5. The Union contended that:

    1. *The Vacation Leave Policy was adjusted, and significantly so.*
    2. *There was a requirement on the part of the Bank, to observe the guidance of the Ministry of Finance [and Planning].*
    3. *There was a requirement [on the part of the Bank] to engage and pursue consultation with the Union and this was not fulfilled.*
    4. *The workers have been left in a less fortunate position as a result of the Bank's action, and to make it worse, there has been evidence that the change was not desired by the workforce.*

6. Mr. Thomas called the following persons as witnesses:

Mr. O'Neil L Rufus	-	Bank Examiner, Chief Delegate
Miss Jennifer O'Mally Johnson	-	Application Specialist,

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IT Department

Miss Audrey M. Elvey - Assistant Director, Financial Institutions

Mr. Omar Whyte - Financial Analyst

Mr. Dave Dilon - Senior Procurement Officer, Accounting Services Department

Mr. O'Neil L Rufus - Bank Examiner

7. Mr. Rufus testified that he was the Chief Delegate of the Union that represented three Bargaining Units encompassing the various classification levels in the Bank. When asked what had led to the dispute, he stated that it was on account of the change in the vacation leave policy in relation to entitlement and accumulation of vacation leave. He further stated that the CDC was invited to a meeting in September 2015, where a presentation was made by Mr. Livingstone Morrison, Deputy Governor of the Bank, who gave a background of the policy and in which he outlined some guiding principles for vacation leave, one such being *"...vacation leave is felt to decrease psychological and behavioural strains"*. It became clear to the CDC that the proposal was to change the vacation leave policy. Following the presentation certain concerns were raised. He stated that the presentation of the proposal was made without consultation with the CDC, and that members were merely invited to a meeting.
8. He testified that on October 29, 2015, he had received an email from Mr Calvin Brown, Division Chief, Administration and Technical Services. The email made reference to the meeting with the CDC at which the presentation was made concerning the review of the Bank's vacation leave policy. Attached to the email was the amended policy which was to be submitted for approval.
9. He said *"... this is the proposed Policy, Vacation Leave Policy, that the Bank has submitted for approval and subsequently approved, which we have from the initial presentation made and raised some concerns that we had on it"*. In answer to a follow up question, Mr. Rufus stated that the concerns were raised by the CDC.
10. He answered that between September 17, 2015 (the date on which the presentation was made to the CDC) and October 29, 2015, there were no exchanges between the Bank and the Union in relation to the objections that were raised.

11. He stated that on October 30, 2015, he had responded to Mr. Brown's email registering objection to the proposed amendment to the vacation leave policy, citing that a change in such policy without the involvement of the Union was a breach of the staff members' bargaining rights, and recommended that a meeting be arranged with the Management team and the BITU/CDC before undertaking any change to the policy. No response was received.

12. He testified that Senator Kavan Gayle, President of the Union by letter of November 25, 2015, had written to Mr. Brown (copied to Mr. Brian Wynter, Governor of the Bank, Mr. Wayne Jones, Deputy Financial Secretary, et al) advising that it was the Union's firm position that *"... any adjustment to a 'leave benefit', whether seeking to increase, decrease or introduce same, must be addressed within the context of Public Sector Leave Reform".*

13. By letter dated December 2, 2015, Mr. Brown responded to Senator Gayle advising that *"... I wish to remind you that the BOJ, has, already, undertaken a major reform of its leave arrangements with the support of staff and the Union, resulting in the current leave provisions in the Bank being significantly different from the rest of the Public Sector".* Mr. Rufus agreed that *"... previously there was arrangement, there was full consultation with the staff."*

14. In response to a question by the Chairman Mr. Rufus stated that the proposed changes were contrary to what had previously obtained.

15. Following on Senator Gayle's letter referred to above, Mr. Rufus further testified regarding a letter dated December 3, 2015, addressed to Mr. Brian Wynter, CD, Governor of the Bank, from Mr. Wayne Jones, Deputy Financial Secretary. The letter stated "... This Ministry, with its portfolio responsibility for the Public Sector conditions of employment and service, is conducting the Leave Reform through the Public sector Monitoring Committee .... In light of the foregoing, the Bank is advised to defer any attempt to revise the leave entitlement of the staff at this time and be guided by the overall reform initiative underway here ....".

16. Mr. Rufus was shown a document which he identified *" ...... as the amended Vacation Leave Policy as stamped here by the Management Committee, stamped the 7th of December 2015, and this is a stamp of approval as it is there on it and signed and dated the 14th of December 2015".*

17. In response to a question he agreed that it was subsequent to the letter from the Ministry of Finance and Planning [2015].

18. Senator Gayle by letter dated April 8, 2016, had written to Mr. Brown referring to his previous letter to him of November 25, 2015. At that time, he had advised that the Bank should defer any attempts to revise the leave entitlements of the staff. He was now stating that the Bank should ".... *Be guided that we have advised our members that the Union does not support this unfortunate decision taken by the Bank which defies the previously mentioned explicit directives and have suggested that they do not comply with same".*

19. In response to the question whether he could advise the Panel if any consultation was held with the Union or the CDC subsequent to the objections raised, Mr. Rufus reiterated that there was no consultation.

20. In response to a question as to whether the section of the Bank's Staff Manual containing the wording which read *"... This period of absence is intended to facilitate rest and recuperation of staff members and to contribute to their overall health and well-being ...."* was in the original policy, Mr. Rufus stated that he did not recall the policy being that explicit, where it makes reference to facilitate rest and recuperation of staff members. It was his thinking that that statement was part of the Bank's current strategic management proposals.

21. During cross examination by Mr. Foster, Mr. Rufus stated that he recalled that seven (7) members of the CDC and himself were at the Presentation made by Mr. Livingstone Morrison on September 17, 2015 and agreed that consultation between parties involved the exchange of ideas and views.

22. Mr. Rufus, after being asked to look at Exhibit 1 which was a document entitled Proposed Change Accumulation of Vacation, was asked whether the word proposed in the header suggested that it was a proposal for discussion, to which he replied - *"Yes it would".* He however strongly disagreed with Mr. Foster's suggestion that the discussion with the Union representatives referred to in the document, was the actual presentation and discussion held between the members of the Combined Delegates Council and Mr. Livingstone Morrison on September 17, 2015.

23. During further cross examination, Mr. Rufus did not agree that some of the concerns raised at the presentation were "taken on board" and did not agree that the amendments to the Policy after September 17, were a direct response to the concerns raised by members of the Combined Delegates Council, since it had not captured the essence of the concerns.

24. Mr. Rufus admitted that moving the 15-day minimum consecutive working days leave back to 10 days had addressed a concern. He further agreed that the amendment was to keep the 10 days but to encourage workers to take 15.

25. Mr. Foster suggested that at the meeting of September 17, 2015 there were three (3) concerns raised by the CDC regarding the changes that were being made to the vacation leave policy. He then asked Mr. Rufus whether after the meeting on September 17, 2015, the CDC or the Union had advanced any counter proposals to the Bank's Management, to which Mr. Rufus replied "No".
26. In response to a question by the Chairman as to whether the leave entitlement was changed, Mr. Rufus replied *"No"*. To a follow-up question as to whether it was only the policy relating to the accumulation of leave that was changed, Mr. Rufus replied *"Yes"*.

Mrs. Jennifer O'Mally Johnson - Application Specialist, IT Department

27. Mrs. O'Mally Johnson testified that she was employed to the Bank for twenty-eight (28) years and was the Deputy Chief of the Combined Delegates Council. She further testified that rumours were circulating regarding changes to the accumulation of vacation leave policy, and as a result the matter was referred to the B.I.T.U. for their intervention.
28. Members of the CDC were invited to a presentation made by Mr. Livingstone Morrison on September 17, 2015, at which time their attention was directed to a document which outlined a proposed plan of action which she did not consider was a draft.
29. During cross examination, Mrs. O'Mally Johnson agreed that the amended proposal contained in Mr. Brown's email of October 29, 2015 was different from the proposal made by Mr. Morrison at the presentation on September 17, 2015.

Miss Audrey M Elvey – Assistant Director, Financial Institutions, Supervisory Division

30. Miss Elvey testified that she was employed to the Bank for nineteen (19) years and that in 2016 changes were made to the vacation leave policy, with which workers were not in agreement and consequently the matter was reported to the Union. She further testified that an email was sent advising of the change to the policy and that she had responded stating that the staff was not interested in getting paid for leave in excess of forty-five (45) days as ninety (90) days was the entitlement.

Mr. Omar Whyte - Financial Analyst

31. Mr. Whyte testified that in 2016, the Bank sent out an email informing staff of changes in leave entitlement.

32. During cross examination, Mr. Whyte testified that there were about five hundred (500) workers at the Bank and that the Delegates Council interfaced with Management on issues concerning workers. He testified that he was not in a position to agree or disagree that there were consultations between the Bank's management and the CDC regarding the proposed changes.

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Mr. Dave Dilon - Senior Procurement Officer

33. Mr. Dilon stated that he was a Union Delegate and a member of the Combined Delegates Council. He testified that the CDC was invited to a presentation which was led by Mr. Morrison and that no questions were raised as Mr. Morrison had advised that the matter was not a subject for negotiation or discussion and that questions would not be entertained. He further testified that the Union had rejected the Bank's position on the matter.

34. During cross examination, Mr. Dilon stated that he had come into the presentation after it had started and that the CDC members were there in a representative capacity.

35. In response to the protracted questioning as to whether there were any meetings of the members of the CDC and the employees to discuss the presentation by Mr. Morrison, Mr. Dilon answered yes.

36. The cross examination reverted to the matter of the presentation on September 17, and in final response to the numerous questions posed as to whether Mr. Rufus had asked questions and raised concerns, Mr. Dilon responded that while members had spoken he could not recall who had asked the questions or what were the questions. He stated that on the day of the presentation no discussion or exchanges were allowed. In a follow-up question as to whether concerns and objections were expressed by CDC members to Mr. Morrison, Mr. Dilon responded that *".... I was stopped, it was rejected"*.

37. Mr. Dilon agreed that there were subsequent changes to the proposals put forward by Mr. Morrison at his presentation on September 17, in that accumulation of

vacation leave could be in excess of forty-five (45) days if permission were granted, as also to the number of vacation leave days to be taken annually.

38. He however rejected the suggestion that the two changes made to the draft policy sent under cover of the email from Mr. Calvin Brown were in response to the concerns and objections raised by CDC members at the presentation on September 17, 2015 and also disagreed that members resisted the process of consultations embarked on by the Bank.

<u>THE BANK'S CASE:</u>

39. In his opening submission, Mr. Patrick Foster, QC, Attorney-at-Law who represented the Bank, argued that the dispute between the parties essentially related to the process by which adjustments were made to the leave accumulation component of the Leave Policy, and whether there was a process of consultation undertaken by the Bank before the decision was taken.

    He submitted that the following consultations, based on the law, would have had three components:

    1) The setting-out to the workers and their representatives the proposal to change the Policy before a final decision was taken.
    2) The soliciting of views and feedback from the workers and their delegates.
    3) Genuinely taking into account the views and concerns of the workers before making any change to the Policy

40. Mr. Foster also submitted that the case for the Bank was that it had the right to make the adjustments after going through the consultative process, and that the Bank was not under the jurisdiction of Central Government, or more particularly the Ministry of Finance and Planning.

41. Mr. Foster further submitted that:

    "The Bank's policies as they relate to administration and staff are different from the Public Sector and we should not perceive the Bank as being some Department falling under the Ministry of Finance. The evidence will show that it has its own Pension Scheme, as one example; and it has its own Vacation Leave Policy"

42. He called Mr. Calvin Brown, Division Chief, Administration and Technical Services with responsibility for Human Resource Management, to give evidence.

43. Mr. Brown commenced his testimony by addressing the leave accumulation entitlement which he stated was as follows:

> "5(1) *After the first 12 months of the year of service each employee must take a minimum of ten consecutive working days each year,* and
>
> 5(2) An *employee will not be allowed to carry forward leave in excess of ninety days. The Bank will pay for leave in excess of ninety days."*

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44. He testified that the leave year ended in December and that there would be an automatic payment for leave accumulated in excess of ninety days. This would be done on the application of the staff member.
    - In 2015 research was done on vacation leave balances and an analysis of the data undertaken. The analysis showed that vacation leave balances at that time amounted to what he thought was 16,000-man days with a cash value of $1.69 Billion. This assessment covered Four Hundred and Sixty-Five (465) to Four Hundred and Seventy (470) permanent staff.
    - Nine percent (9%) of staff members had accumulated vacation leave balances of over 90 days. Accumulated leave was valued at the employee's existing salary.
    - The leave balances and the current practice were not consistent with the Policy objective of the Bank and this resulted in the formulation of a proposed policy to effect changes to the section of the leave policy pertaining to leave accumulation.

45. In response to the questions as to how the Management of the Bank dealt with that proposal in terms of examination and analysis, Mr. Brown responded:

> T*he Bank as a Regulator of the financial system, has to ensure that there are sound governance arrangements in place, and as a consequence, separate and apart from the day-to-day Managers who have direct portfolio responsibilities, there are Committees*

which have been established to ensure that the governance arrangements are properly carried out. So, there is a Committee of Administration, which treats with the general administration of the Bank, and then there is the Management Committee, which is the highest level internal Committee.

46. In response to the question regarding the composition of the Committee of Administration (COA) and the Management Committee (MC), Mr. Brown explained that the COA comprised all the Division Chiefs including himself; while the MC was chaired by the Governor and comprised the Senior Deputy Governor and the Deputy Governors.

47. Mr. Brown then testified that with regard to the proposal to change the accumulation of leave, there was a Plan of Action which included the submission of the policy to the COA and the MC. Having done this, it was cleared for discussion with the Union representatives. He said that the proposed Plan of Action had comprised:

    - Consideration/approval of the COA
    - Consideration/approval of the MC
    - Discussion with Union Representatives
    - Amendment of the Vacation Leave Policy to reflect the agreed positions
    - Implementation of the amended policy position.

48. Mr. Brown testified that the proposal was disseminated to the CDC/Union first by way of a presentation followed by discussion. There was an exchange of emails first of which was from Mr. Rudolph Thomas dated September 15, 2016, which stated:

> *"We have been informed by what we consider to be a credible source of information within the Bank that without as much as mentioning it to the Union, the Bank's management team has made a presentation to its Committee of Administration to reduce the prescribed maximum allotment of accumulated leave from 90 days, as well as to increase the mandatory leave amount from 10 days [with effect from] January 1, 2016.*
> *Please confirm explicitly if this is so."*

49. Mr. Brown in response to the question as to whether the presentation referred to in the email had taken place, he said *"Yes"*. He further stated that the following email was sent by him to Mr. Thomas.

> *"This acknowledges receipt of your email. I wish to advise that a proposal in relation to the accumulation of vacation leave was considered and approved at both the Committee of Administration and the Management Committee. As part of the approved Plan of Action of the presentation scheduled to be made to the Combined Delegates Council and discussions held on any matter of concern."*

50. Mr. Brown at the request of Mr. Foster then read from Page 11 of Exhibit 1 headed **"Proposal for Change of Policy – Vacation Leave Accumulation"**

> *"Number (1)*
>
> *Reduce the maximum number of accumulated vacation leave days that can be carried forward at the end of each year to forty five (45) days with effect from 31 December 2015. Acceptance of this recommendation would require that payment be made for days in excess of 45 days in December of each year.*
>
> *Number (2)-*
>
> *Increase the minimum number of vacation leave days to be taken in any one year from ten days to 15 days with effect from 2016; subject to the requirement that vacation leave taken in each Calendar year must include a minimum of ten consecutive days."*

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51. In response to the question regarding the underlying reason or purpose of the two proposals Mr. Brown stated that:

> *"[They were] consistent with the Bank's wellness objective and also to treat with the uncontrollable value of leave balances on the Bank's Books."*

52. He was then asked what, if any effect the proposals would have on the right of the worker to leave entitlement. He stated that this had nothing to do with leave entitlement, as leave entitlement of all categories of staff remained the same.

The only effect would be the automatic encashment of leave at an earlier point and the requirement to take 15 days instead of 10 days' vacation leave within the year.

53. Mr. Brown said that a presentation was made on September 17, 2015 to the Combined Delegates Council by Mr. Livingstone Morrison, Deputy Governor. The meeting lasted for approximately one hour and a half during which time concerns were expressed by the Union Members. He refuted Mr. Dilon's statement in evidence that *"... no questions were entertained, and there was no exchange or anything"*.

54. The Management of the Bank had held internal discussions and took on board the considerations and concerns raised by the Union and acceded to the suggestion that the vacation leave to be taken annually would remain at 10 days.

55. Arising from the process of consultation, adjustments were made to the Policy in keeping with suggestions made by the Delegates. Before it was submitted for approval, it was shared with the Delegates in the email sent to Mr. Rufus;

> Q: *"Further to our meeting with members of the Combined Delegates' Council at which a presentation was made on the results of the review of the Bank's Vacation Leave Policy, we forward for information, the amended policy which will be submitted for approval".*

56. Mr. Brown testified that the following changes were made to the original proposal:

4.1 under Mandatory Leave - Page 16.

> *After the first twelve months of service, each employee must take a minimum of ten consecutive working days leave each year. Members of Staff are however encouraged to take a minimum of 15 days each year.*

57. With respect to the question whether that was one of the changes made as a consequence of the discussions with the delegates, Mr. Brown responded in the affirmative.

5.1. Accumulation of Leave

An employee will not be allowed to carry forward leave *in excess of 45 days. The Bank will pay for leave in excess of 45 days in December of each year.*

5.2. Accumulation of leave in excess of 45 days may be permitted in certain circumstances (e.g. to facilitate Study Leave or extended Maternity Leave) with the written approval of the Deputy Governor with responsibility for Administration. Requests for permission to accumulate leave beyond 45 days must be made in writing through the respective Divisional Heads. Requests will be assessed on a case-by-case basis."

58. Mr. Brown testified that the response was received in a letter dated October 30, 2015 from Mr. Rufus stating:

> *"Thank you for sharing the draft amended policy.*
>
> *Whilst we share the view that staff well-being is of utmost importance, we would like to advise the Management of the Bank that a change in such policy without the involvement of the Union is a breach of the staff member's bargaining rights. We are therefore recommending that a meeting be arranged with the management team and the BITU/CDC, before undertaking any change to this policy."*

59. When asked to comment on the statement *"... without the involvement of the Union ... "*, Mr. Brown responded that he was unsure what that meant because the Delegates were staff representatives of the Union and that there were no outright objections by the Delegates at the meeting of September 17. At that meeting no delegates had requested the opportunity to present any counter proposals to the ones presented. Neither was any correspondence received from them at that time.

60. Mr. Brown stated that at the meeting concerns were raised on specific items which were discussed and were embodied in the then revised draft which was submitted to the Chief Delegate.

61. Mr. Brown in response to a question admitted that he had received a letter from Senator Kavan Gayle, President of the Bustamante Industrial Trade Union which stated in part:

> *"To be clear it is our understanding and firm position that any adjustment to a 'leave benefit', whether seeking to increase, decrees or introduce same, must be addressed within the context of Public Sector Leave reform."*

62. In response to the question whether the issue of the amendment to the leave policy under the auspices of the Public Sector leave reform was ever raised before, Mr. Brown stated *"No"*.

63. Mr. Brown further stated that Senator Gayle was responded to by letter dated December 2, 2015 which stated in part as follows:

> *"In relation to your "understanding" that this policy review must be addressed in the "context of Public Sector Leave reform", I wish to remind you that BOJ has already undertaken a major reform of its leave arrangements with the support of staff and the Union, resulting in the current leave provisions in the Bank being significantly different from the rest of the Public Sector. A review of existing BOJ policies cannot be directly linked to the Public Sector Leave Reform."*

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64. Mr. Brown stated that the review referred to in this letter to Senator Gayle was not done with the involvement of the Ministry of Finance and Planning, and it was his understanding that discussions and negotiations only involved the management of the Bank, the Union and Staff.

65. In response to a question with regard to the Ministry and the Bank, he further stated that the Governor of the Bank reported directly to the Minister of Finance, generally on macroeconomic policies, and that as far as administration was concerned outside of broad wage guidelines, the Bank was free to negotiate with the Union on terms and conditions. He further testified that the current leave arrangements in the Bank were completely different from what existed in the Public Sector.

66. Mr. Brown further testified that the Bank did not adhere to the Staff Orders for the Public Service, since it had its own Personnel Policy Manual, Rules and Orders and Disciplinary Code.

67. He said that no meeting was held with Senator Gayle but that there was a follow-up meeting with delegates in 2016 to advise of the approval of the changes.

68. He said that there was no change to the leave entitlement, but to the administrative arrangements in relation to accumulation of vacation leave. The maximum accumulation was reduced from 90 days to 45 days. He stated that the proposed policy was again considered by the Management Committee at a meeting on December 7, 2015 at which time it was approved.

69. During Cross Examination by Mr. Thomas, Mr. Brown testified in response to the question relating to how earned vacation leave was reflected in the Bank's books he said that he was not speaking from his personal knowledge of the balance sheet but was advised that earned vacation leave was *"reflected as a liability that is to be discharged"*.

70. He further stated that there would be greater exposure to the Bank were staff to carry accumulated vacation leave over ninety days and would result in a greater liability.

71. With respect to the question of whether he agreed that facilitation for the use of vacation leave was established and supported by the Bank's Policy, his response was:

> *"No, I wouldn't agree with you, and if I may go back to what I said: Initially it started for some things like insurance premium, for mortgage, insurance for motor vehicle, and in those instances the applications had to be made to the Governor. That changed where the applications were then sent to the Deputy Governor. Where we are now, applications are even approved by the Financial Controller who reports to the Deputy Governor, and in most instances the staff members do not have to give a reason for the request for the sale."*

72. Mr. Brown further testified that delegates of the Union were invited to the presentation on September 17, 2015 and that the Bank did not see the members of the CDC as different from the Union, but as representatives of the Union.

73. Mr. Brown was asked if he had recalled suggesting that the Presentation of September 17, 2015 was how intended changes were presented to the Committee of Administration and the Management Committee, and responded that *" as far as I am aware, this was the document that was tabled at COA and MC."* Mr. Foster

interjected that the word "intended changes" came from Mr. Thomas, and that Mr. Brown's evidence was that it was a "proposal" approved by the COA and MC that was presented. Following further exchanges Mr. Brown said that he could only speak to the proposed Plan of Action and the process to deliver an approval, because an acceptance of the Plan was not what would result in a change of policy, as "*... there was a clear governance arrangement and approval process to deliver a change in policy*".

74. Mr. Brown stated that he disagreed that the entire proposal was rejected by the delegates, as while the delegates raised concerns, he would not agree that they raised objections, and that it was after the consultation with the Union at which time concerns were raised, the draft policy was revised to reflect the areas of concern.
75. He disagreed with the suggestion that "... in not engaging the CDC as they begged, pleaded they were denied the opportunity to present counter proposals".

<u>Closing Arguments on behalf of the Bank:</u>

76. Mr. Foster, Attorney for the Bank, in concluding his closing arguments stated inter alia:

> *"The Union's contention that there was no consultation with the staff before the Bank's policy in relation to the accumulation of vacation leave was amended is untenable and is not supported by the evidence."*
>
> *"The evidence clearly shows that there was consultation with union delegates who are charged with the responsibility of communicating the proposals from management to the staff. The consultation took place at the presentation of Mr. Morrison on the 17th of September 2015 and after which there was an exchange of emails between the parties. Subsequent correspondence by the Bank which included an amended draft of the policy proposal sent to the delegates showed that the Bank was responsive to the concerns raised by the delegates at the presentation by Mr. Morrison."*
>
> *"In the circumstances it is submitted that this panel should find that the consultation satisfied the provisions of the Labour Code ......"*

"The position of the Union that the amendments to the policy must await the Public Sector reform was unreasonable having regard to the fact that the Bank's vacation leave policy was independent of and different from the Public Sector's Vacation Leave Policies. There was no oral evidence advanced by the BITU which challenged or disputed the Bank's assertions in this regard."

The Union's contention that the staff has been left in a worse position ought to be rejected. The evidence advanced by the Union and on behalf of the management of the Bank clearly shows that the workers can still monetize/sell vacation leave to pay for various expenses such as insurance premiums etc. Members of staff have clearly utilized this facility after the policy was amended."

"The Unions request that the vacation leave policy should revert to that which existed before the policy was amended by the Bank and that going forward any changes to the policy should be done in consultation with the Union and under the guidance of the Ministry of Finance is unreasonable and unfair. It disregards the clear evidence of meaningful and reasonable consultations that were done by the Bank before making the amendments to the policy."

Closing Arguments by the Union

77. Mr. Thomas, Vice President of the Union in his closing arguments submitted inter alia:

"Our opening comments as well as our Brief would have suggested that among other considerations, this Tribunal must ask itself and carefully examine to make a determination as to the following:

1. *Was the Vacation Leave Policy adjusted?*
2. *Was there a requirement on the part of the Bank, to observe the guidance of the Ministry of Finance & Planning?*

3. Was there a requirement to engage and pursue Consultation with the Bargaining Agent and was this fulfilled?

4. Have the workers been left in a less fortunate position as a result of the Bank's action?"

A comparison of the previously existing Policy against the adjustments reflected in the subsequent Policy would immediately reveal that, amongst other things:

1. The recognition of accumulation as an entitlement is being removed totally.

2. The maximum normally existing limit of ninety (90) days is being unceremoniously slashed by fifty per cent to forty-five days.

***3.** Unprecedented highly subjective parameters to access any additional accumulation were introduced."*

"It is our suggestion that the following points must be considered in the context of the above definition as well as this experienced panel's appreciation for the elements which are usually present in an 'undertaking of consultation':

1. *There was no invitation to engage in a consultative process; the delegates were invited to a presentation*
2. *There was no mention of 'consultation' in the Presentation;*
3. *There were no Minutes of the meeting; persons joined at varied times and no doubt made utterances in relation to the Presentation, maybe some in support and some against, but this was not recorded. Consultation requires formal accounts for what is shared and what is said.*
4. *There is neither a request for, nor a list of objections from the Delegates against which there could reasonably have been discussions among the Bank's Management team so as to effect changes. If you have not requested or formed a comprehensive record, how can you really even suggest that*

you were in consultations? As defined "If it is embarked upon it must be carried out properly".

5. *There was no formal report or even a common suggestion that any address of the Presentation was made as a result of any objection from the Delegates"*

TRIBUNAL'S DELIBERATION:

78. The Tribunal in its deliberation first of all examined the circumstances that had led to the dispute.

79. The position was that prior to December 2015, the Bank's policy with regard to the accumulation of vacation leave was as set out at Clauses 5.1 and 5.2 of the original policy document and provided as follows:

   a. After the first twelve months of service, each employee must take a minimum of ten consecutive working days leave each year.

   b. An employee is not allowed to carry forward leave in excess of 90 days. The Bank will pay for leave in excess of 90 days.

80. The Bank decided to conduct a research of the policy governing the accumulation of vacation leave. The result of the research showed inter alia that as of May 2015

   i. The Liability of the Bank for vacation leave was approximately $1.69B, and

   ii. The aggregate leave balance for 476 permanent members of staff was 16,626 vacation leave days.

81. Consequent on the findings of the research the Management of the Bank proposed adjustments to the policy as follows:

   a) Reduce the maximum number of accumulated vacation leave days that can be carried forward at the end of each year to forty-five (45) days with effect from 31st December 2015. The Bank would therefore pay for days in excess of 45 days in December of each year.

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b) Increase the minimum number of vacation leave days to be taken in any one year from 10 days to 15 days with effect from 2016, subject to the requirement that vacation leave taken in each calendar year must include a minimum of 10 consecutive days.

82. These findings were presented to the Committee of Administration and the Management Committee on August 31, 2015. The proposed changes to the policy were presented to the Combined Delegates Council (CDC) on Thursday, September 17, 2015 by Mr. Livingstone Morrison, Deputy Governor.
83. Mr. Brown, Division Chief, Administration and Technical Services testified that at the presentation concerns were raised on specific items. These were discussed and resulted in the draft policy which was communicated to the CDC as an attachment to an email on October 29, 2015. The Policy then read:

4.0 Mandatory Leave

4.1 *After the first twelve months of service, each employee must take a minimum of 10 consecutive working days leave each year. Members of Staff are however, encouraged to take a minimum of 15 days each year.*

5.0 Accumulation of Leave

5.1 An employee will not be allowed to carry forward leave in excess of 45 days. The Bank will pay for leave in excess of 45 days in December of each year.

5.2 Accumulation of leave in excess of 45 days may be permitted in certain circumstances (e.g. to facilitate study leave or extended maternity leave) with the written approval of the Deputy Governor with responsibility for Administration. Request for permission to accumulate leave beyond 45 days must be made in writing through the respective Divisional Heads. Requests will be assessed on a case by case basis.

The proposed changes were rejected by the CDC in a letter addressed to Mr. Brown dated October 30, 2015.

84. The changes to the Accumulation of Vacation Leave Policy were approved by the Management Committee on December 7, 2015.
85. The Tribunal in its deliberation paid strict attention to all the points raised.

i. Whether there was reasonable consultation as required by the Labour Code and the law generally with the bargaining agent of the Bank in respect of adjustments to the policy before the changes were made.

   a. Would consultation require that an agreement should be arrived at or

   b. Would consultation require discussion and genuine exchange of ideas/concerns after which the Bank would make a decision.

ii. Whether there was a requirement on the part of the Bank to adjust the leave policy in the context of Public Sector Reform and therefore seek the approval of the Ministry of Finance before implementing changes to the policy.

   a. If there was no requirement on the part of the Bank to adjust the policy in the context of public sector leave reform, was the objection to the policy changes by the BITU by letter dated the 25th of November 2015, reasonable.

iii. Would the workers at the Bank of Jamaica been left in a less fortunate position as a result of the adjustments made to the Bank of Jamaica's vacation leave policy?

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<u>TRIBUNAL'S RESPONSE/FINDINGS:</u>

86. The Tribunal carefully considered the questions raised by the representatives of the Bank and the Union and responded as follows:

1. Was there a requirement to engage and pursue consultation as required by the Labour Law?

87. Mr. Brown, Division Chief, Administration and Technical Services in his evidence stated that members of the Union were invited to a meeting on September 17, 2015 where there was a presentation on the proposal for a change in the maximum vacation leave accumulation and arising from the process of consultation the Management of the Bank held internal discussions and took on board the considerations and concerns raised by the Union, and acceded to the suggestion that the vacation leave to be taken annually would remain at 10 consecutive days.

88. The Tribunal recalled that Mr. Rufus, Chief Union Delegate in his testimony stated that there was no consultation with the CDC as members were invited to a meeting at which a presentation was made. Under cross examination he said that that presentation lasted two hours and that the substance of the presentation was contained in a document entitled "Proposed Change to Vacation Leave Policy", and that he admitted that questions were posed, and concerns were raised.

89. The Tribunal found informative, the following exchange between Mr. Foster and Mr. Rufus during cross examination.

> *Q. You said that there were no amendments to the Policy, but you are saying that there were changes. You remember those words?*
>
> *A. Yes I remember them*
>
> *Q. All I am asking now is to explain the difference between changes and amendments to the policy proposal*
>
> *A: At the presentation they put forward some proposed changes to the policy which we raised concerns about.*
>
> *Q: With you on that. So, some [persons] proposed changes at the presentation?*
>
> *A: Yes. And you are saying...*
>
> *Q: Let's pause there. And I am saying to you that those proposed changes put forward at the presentation, and I am using your words, those proposed changes were changed after the presentation. In other words, the proposed changes were modified, they were changed after the presentation?*
>
> *A: Not entirely.*
>
> *Q: But to some degree, wouldn't you agree with me, Mr. Rufus?*
>
> *A: Minimum Degree.*
>
> *Q: So you are now agreeing with me?*
>
> *A: Not holistically, so I can't put them all in a barrel and say there were changes.*
>
> *Q: but you are agreeing that there were changes to the proposal?*
>
> *A: A few, I have to be specific there were a few.*
>
> *Q: So when I said that there were amendments, you can't really disagree with me, Mr. Rufus?*

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A: Not Totally

90. The Tribunal agreed that there was a requirement to pursue consultation and from the evidence presented concluded that there were consultations. It was also the Tribunal's thinking that consultation didn't necessarily result in agreement between the parties.

2. Was the Vacation Leave Policy Adjusted?

91. The Tribunal noted that there was no change in the annual vacation leave **entitlement**, but that it was the policy regarding the **accumulation** of vacation leave days which was changed.

92. Mr. Brown in his evidence had that this change had come about after the Bank conducted an evaluation of the policy specifically relating to the accumulation of vacation leave which showed inter alia, that the liability of the Bank in respect of vacation leave earned totalled approximately $1.69B.

93. The Tribunal noted the statement made by Mr. Calvin Brown in his evidence that the proposal was consistent with the Bank's wellness objectives and the uncontrollable value of leave balances on the Bank's books.

3. Was there a requirement on the part of the Bank to observe the guidelines of the Ministry of Finance and Planning?

94. The Tribunal also noted the letter from the Ministry of Finance and Planning dated December 3, 2015 addressed to Mr. Bryan Wynter, CD, Governor, which read in part:

"Re Attempts to Amend Vacation Leave Entitlements"

...... In light of the foregoing, the Bank is advised to defer any attempts to revise the leave entitlement of the Staff at this time and be guided by the overall reform initiative underway here….."

95. The Tribunal concluded that there was no change to the leave entitlement, that is, the amount of days for which the employee is entitled. The Tribunal was not presented with any evidence to show that the Bank was in breach of any of the guidelines of the Ministry of Finance and Planning as it relates to leave entitlement.

4. Have workers been left in a less fortunate position?

96. The Tribunal reminded itself that the rationale posited by the Bank for the grant of vacation leave was for the purpose of rest and rejuvenation and also noted the following guiding principles as enunciated in the presentation made on September 17, 2015:

"Vacation relief is first to decrease psychological and behavioural strains caused by job stress

Vacation/respite makes an important contribution to occupational health psychology"

97. The Tribunal agreed that a certain privilege that was granted to workers over the years had been adjusted and again carefully examined the Bank's reason for effecting this change, the principal one being the extent of the liability which was being incurred by the Bank in this regard.

98. The Tribunal did not support the Union's contention that the staff had been left in a worse position as there was no reduction in their leave entitlement, or the emoluments of their respective positions.

99. The Tribunal noted Mr. Foster's statement in his closing submission that members of staff continued to monetize/sell vacation leave after the policy was amended.

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AWARD:

100. The Tribunal's Award is that the adjustments made in 2015 by the Bank of Jamaica to its Vacation Leave Policy with regard to the accumulation of vacation leave should stand.

DATED THIS 5th **DAY OF MAY 2020**

....

Mr. Charles Jones, CD, JP

Chairman

....

Mr. Errol Beckford

Member

....

Mr. Clinton Lewis

Member

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Witness:

....

Mrs. Nicola Smith Marriott

Secretary to the Division