INDUSTRIAL DISPUTES TRIBUNAL
Dispute No: IDT 59/2024

SETTLEMENT OF DISPUTE

BETWEEN

CARRERAS LIMITED

AND

MS. YANIQUE SCOTT

AWARD

I.D.T. DIVISION

MR. DONALD ROBERTS, C.D., J.P.-		CHAIRMAN
MR. ERROL BECKFORD	-	MEMBER
DR. DENESE MORRISON, J.P.	-	MEMBER

DECEMBER 18, 2025

DISPUTE NO. IDT 59/2024

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

CARRERAS LIMITED
(THE COMPANY)

AND

YANIQUE SCOTT
(AGGRIEVED WORKER)

REFERENCE

By letter dated October 15, 2024, the Hon. Minister of Labour and Social Security, pursuant to Section 11A (1)(a)(i) of the Labour Relations and Industrial Disputes Act, 1975 ("the Act") referred to the Industrial Disputes Tribunal ("the Tribunal") for settlement, the dispute between **Carreras Limited and Yanique Scott** with the following Terms of Reference: -

> **"To determine and settle the dispute between Carreras Limited on the one hand, and Yanique Scott on the other hand, over the termination of her employment".**

DIVISION

The division of the Tribunal selected in accordance with Section 8(2)(c) of the Act to hear the dispute comprised:

Mr. Donald Roberts, C.D., J.P.	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2)(c)(ii)
Dr. Denese Morrison, J.P.	-	Member, Section 8(2)(c)(iii)

INDUSTRIAL DISPUTES TRIBUNAL JAMAICA

REPRESENTATIVES OF THE PARTIES

The **Company** was represented by:

Mr. Gavin Goffe	-	Attorney-at-law
Ms. Nicole Taylor	-	Attorney-at-law
Ms. Adalia Nembhard	-	Attorney-at-law

In attendance:

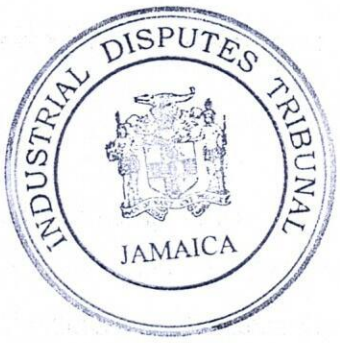
Ms. Daidrey Miller	-	HR Business Partner

The **Aggrieved** was represented by:

Mrs. Carla-Ann Roper	-	Attorney-at-law
Mr. Mark Greyson	-	Attorney-at-law

In attendance:

Ms. Yanique Scott	-	Aggrieved Worker



SUBMISSIONS AND SITTINGS

The parties submitted briefs to the Tribunal and made oral presentations over thirteen (13) sittings during the period January 21, 2025 to November 13, 2025. Over the course of the sittings the Tribunal reviewed fourteen (14) exhibits along with testimonies by way of oral evidence.

FACTUAL BACKGROUND

1. Ms. Yanique Scott (**"the Aggrieved Worker"**) was employed from July 2016 until April 30, 2022 by Carreras Limited (**"the Company"**), a marketer and distributor of cigarettes and tobacco related products in Jamaica, as part of the British American Tobacco Group. Its Corporate Office is located at 13A Ripon Road in Kingston, and its Sales and Distribution Office at 35 Hagley Park Road in Kingston. The Aggrieved Worker was at all material times employed by the Company as a Trade Marketing Representative.

2. The Aggrieved Worker was placed on a Performance Improvement Plan (PIP) on March 11, 2022, based on what the Company deemed her 'sub optimal performance.' Subsequent reviews were conducted and on April 25, 2022, the Company wrote to Ms. Scott terminating her services with effect from April 30, 2022, for poor performance. Ms. Scott appealed her termination, however, the decision to terminate was upheld.

3. The dispute was subsequently referred to the Ministry of Labour & Social Security but remained unresolved after several efforts at conciliation. By way of a letter dated October 15, 2024, the Minister of Labour and Social Security, pursuant to his powers under Section 11 of the Labour Relations & Industrial Disputes Act (LRIDA), referred the matter to the IDT for determination and settlement.

THE COMPANY'S CASE

4. Mr. Goffe informed the Tribunal that Ms. Scott's appraisal score for 2021 showed that her performance was 'sub-optimal'. She, however, disagreed and lodged an appeal, but this was done outside of the timeframe allotted. She was placed on a PIP in March 2022 for two (2) months and was cautioned that her services would be terminated if there was no improvement in her performance. He said there was no direct connection between her 2021 performance and her dismissal in 2022, as the 2022 PIP was a "*self-contained tool*" which means it need not rely on poor performance in the previous year.

5. Counsel argued that Section 22 of the Labour Relations Code **("the Code")** is inadmissible, and further stated that he is unaware of any authority which mandates that a third-party has to do the appeal. He concluded that Ms. Scott's dismissal was justifiable and consistent with good industrial relations practice and procedures.

6. Ms. Daidrey Miller, the Company's HR Business Partner was its sole witness. She stated that she joined the Company in August 2022 and was therefore not involved in the matter relating to the termination of Ms. Scott. She, however, testified as to having reviewed several documents regarding the case and was able to identify correspondences pertinent to the PIP; feedback on Ms. Scott's performance; coaching follow-ups; progress reports; the letter of termination to Ms. Scott; her letter of appeal, and the Company's response to the appeal.

7. Under cross-examination Ms. Miller said she was not sure if Ms. Scott's 2021 performance appraisal was actually finalized in 2022, and neither was she aware of the completion of her mid-year review for 2021. She agreed that regular feedbacks would be fair in a performance review process, and admitted that the PIP required fortnightly meetings as

stated in paragraph 2 of the March 11, 2022 letter from Ms. Tashane Grizzle, the Customer Manager, to Ms. Scott regarding 'performance feedback.' Ms. Miller conceded that although the PIP was scheduled for two (2) months, Ms. Scott's termination took place prior to the expiration date.

THE AGGRIEVED WORKER'S CASE

8. Mr. Greyson, Counsel representing the Aggrieved Worker, asserted that the case would prove how Ms. Scott was 'set up' to fail beginning with her re-assignment to the central region of the island and the push to relocate her without the adequate financial support, despite her objection. He said she faced 'inconsistent' and 'discriminatory' treatments and was forced to seek medical attention as a result.

9. Counsel said there is no evidence to show that there was a mid-year review of her performance in 2021, and that her end-of-year ratings for 2021 - which formed the basis of the PIP - was done in 2022 without her input. He said that her testimony would prove that no proper guidance, coaching or support was provided, and that her services were terminated four (4) weeks into the PIP. Further, he noted that she appealed her dismissal in April but did not hear from the Company until August.

10. Ms. Scott testified on her own behalf. She said she joined the Company as a Trade Marketing Representative in July 2016 assigned to the Western Region, which includes St James, Hanover and Westmoreland. She was living in Montego Bay at that time. Her annual reviews over the years were 'good' based on feedbacks she received from her supervisor. The 2017 review, she averred, had indicated that her performance 'required **improvements**' which she appealed. Ms. Scott stated that as a result of her appeal to the Managing Director her scores were adjusted to '**meet expectations**'. She said that where employees receive a score 'requiring improvements' they are usually placed on a PIP and would receive 50 percent of their bonus payments.

11. The Aggrieved Worker's evidence was that at the start of her employment the working environment was good and that the staff was allowed to provide feedback. She said there were improvements in her Trade Marketing Universe (TMU) that is, the outlets (hotels and

bars) that fell within the region which she would have the responsibility to monitor. She was given one day to do administrative work, which she said, provided a proper work-life balance.

12. Further in her testimony, Ms. Scott averred that the 'environment changed' when she was transferred in 2019 to the Eastern Region, which included the parishes of St Mary, Portland, St Thomas and Kingston. The transfer she said meant that she had to relocate to Portmore and that the new head of department, Mr. Dwayne Williams, had reduced the time for administrative work from one day to four (4) hours resulting in her having to spend time outside of the working hours to do administrative work. She added that there were changes to the TMU, which included the management of all the chain stores (gas stations and supermarkets). Because of the magnitude of the changes, Ms. Scott noted that she expressed her concerns in writing to the Company and the response from the management, she noted, was a willingness to address them.

13. In January 2022, Ms. Scott attested that she was again transferred, this time to the Central Region (Clarendon, Manchester and St Elizabeth), noting that Carreras' operations were by then 'severely impacted' by the COVID pandemic as most of the hotels and bars in the region were closed, and the shelf-life of cigarettes had to be extended. She said that she had to travel from Portmore to the parishes in the Central Region although admitting that she received One Hundred & Sixty Eight Thousand Dollars ($168,000.00) from the Company to assist in relocating.

14. Ms. Scott informed the Tribunal that normally an employee would have completed a mid-year and an end-of-year review of his/her performance. She said that Key Performance Indicators (KPIs) would normally be posted online by the employee before the end of the first quarter of each year, covering 'operational development'; 'leadership'; and 'personal development'; the KPIs are reviewed by the supervisor and signed off by the parties online and on paper.

15. Ms. Scott testified that her performance appraisal was done for 2020, and that she can recall writing up KPIs for 2021, that the KPIs were signed off by her supervisor, but no mid-year or end-of-year review was done. She cannot recall posting any KPIs for 2022,

however, she was told at the meeting on March 11, 2022, that her 2021 performance was below expectations and she would be placed on a PIP. She claimed that at the meeting she was told that the completion of 'weekly reports' was one of the KPIs she did not meet.

16. Ms. Scott said she was not aware of the "*identified gaps*" 'requiring improvements' as stated in the March 11, 2022 letter to her from Ms. Grizzle, and in her hand-written notation, where she was asked to sign indicating that she has "*read and understood the contents of this letter*", she noted as follows: "*Still not agreeing with R.I; strongly feel it was maliciously given*". She contended that because there was no mid-year or final review of her performance for 2021 (which she believed formed the basis of the PIP) she was unaware of the scores under the KPIs. She had lodged an appeal with the Human Resource Manager and the Security Manager at British American Tobacco (BAT) but was informed by the HR Department that her appeal was made outside of the stipulated time-frame. She believed the PIP was put on hold pending the appeal.

17. It was Ms. Scott's submission that it was just over one month after her re-assignment to the Central Region that the PIP was introduced, and considered that she was still learning the job and developing a relationship with clients. Ms. Scott informed the Tribunal that she was not involved in the development of the PIP although she had no difficulty with some of the 'actions to improve performance' and the 'targeted date for improvement'. She stated, however, that she voiced her concerns at the March 11, 2022, meeting on other areas of the PIP, which she considered 'unreasonable', including the targeted date for improvement on the 'Portfolio Coverage' which she could not be expected to meet in the time-frame established. The impact of COVID, in her view, resulted in low supplies of certain cigarettes brands in some location, while others had brands that were not being sold.

18. In her testimony the Aggrieved Worker stated that her performance for 2021 was "excellent", despite the excess work pressure which affected her, which led to her making the claim that she was depressed, and accounted for her frequent absence from work during the last quarter of 2021.

ISSUES

19. We have identified two salient issues to be addressed, but before doing so, the consideration of a number of common law precepts, we believe, would be useful in helping us to determine and settle the dispute in a manner consistent with fairness and the substantial merits of the case. As we understand it, common law principles are not to be regarded as an inexorable command to the Tribunal. Rattray, P. opined in **Village Resorts Limited v. the Industrial Disputes Tribunal and Uton Green [1998] 35 JLR 282** that:

> *"The Labour Relations and Industrial Disputes Act is not a consolidation of existing common law principles in the field of employment. It creates a new regime with new rights, obligations and remedies in a dynamic social environment radically charged, particularly with respect to the employer/employee relationship at the workplace, from the pre-industrial context of the common law. The mandate to the Tribunal, if it finds the dismissal "unjustifiable" is the provision of remedies unknown to the common law."*

20. However, as experts trained in the "fine art" of industrial relations, where congruity subsists between notions of fairness and equity and existing common law principles, we feel obliged to rely on them in making our case concerning the justifiability or otherwise of the dismissal. Specifically, as in this case, whether the employer followed a fair procedure in dismissing Ms. Scott; whether the employer's decision to dismiss was reasonable in the circumstances; whether the policies and procedures were applied consistently; and whether decision to dismiss was based on reasonable grounds.

21. The general concept in dismissal cases is for the employer to prove to the Tribunal that its action in terminating the services of an employee met all the benchmark standards for a fair dismissal claim. This entitles the Tribunal to look at all the background circumstances and not just the reason immediately precipitating the dismissal. This, in our view, quite often goes beyond the perfunctory approach of tendering documents into evidence as proof of the correctness of action and compliance with procedures without any reliance on opinion-based testimonies and/or witnesses of facts. To the extent that the bare minimum of facts are presented, the Tribunal is left to rely on the dictum of Sykes, J. (as he then was) in **National Commercial Bank v The Industrial Disputes Tribunal and** Peter

Jennings [2016] JMCA Civ 24. for guidance. The Learned Judge opined that the Labour Relations & Industrial Disputes Act has vested the IDT with certain rights, notable the right to draw its own conclusions from the facts presented. He stated thus -

> *"questions of facts and their interpretation and not for the court...no court has the authority to say that the IDT should have found one fact as opposed to another once there is evidence to support the facts found by the IDT... [and] no court can tell the IDT what weight to give to any fact or inference drawn from a fact."*

22. A second precept is to acknowledge that we cannot substitute our views or opinions for that of the employer. The generally held view adopted by the Court is that –

> *"... an industrial tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the industrial tribunal) consider the dismissal to be fair; in judging the reasonableness of the employer's conduct an industrial tribunal must not substitute its decision as to what was the right course to adopt for that of the employer... the function of the industrial tribunal... is to determine whether in the particular circumstance of each case the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted..."*[1]

23. This conformed with a similar decision in the **NCB case** [supra] where the Court of Appeal ruled that the Tribunal's role is not to impose its own judgement but to assess whether – as in this case - Carreras' decision to dismiss Ms. Scott was reasonable in all the circumstances. So, despite Mr. Greyson praying upon the Tribunal to do otherwise, we cannot, for example, attribute any more or less weight to the management's assessment of the 'weekly reports' as part of its key performance metrics.

24. A third precept is to be found in the dictum of Brooks, JA. (as he then was) in what has been commonly referred to as the **University of Technology case,** where he opined that –

> *"The IDT was not restricted to examining the evidence that was before Utech's disciplinary tribunal. The IDT was carrying out its own enquiry. It was not an appellate body, it was not a review body, but had its own original jurisdiction where it was a finder of fact. That is*

INDUSTRIAL DISPUTES TRIBUNAL JAMAICA

[1] See *Iceland Frozen Foods Ltd v Jones [1983] ICR 17 (EAT) 24-25 (Browne-Wilkinson J)*

implicit in section 12(4)(c) of the LRIDA which speaks to the IDT's decisions being unimpeachable, except on a point of law."

25. Against that background, the two (2) issues identified for determination are:

    a. Whether the dismissal of Ms. Yanique Scott was for conduct, precipitated by her unwillingness or failure to perform, or that her poor performance was based primarily on her inability to carry out the tasks assigned; and

    b. Whether the termination of Ms. Scott's services was consistent with procedural fairness as well as the letter and spirit of the Labour Relations Code.

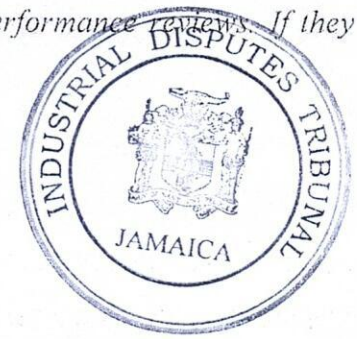
ANALYSIS

a. **Whether the dismissal of Ms. Yanique Scott was for conduct, precipitated by her unwillingness or failure to perform, or that her poor performance was based primarily on her inability to carry out the tasks assigned**

26. The employer's contention is that the dismissal was related to capability and not conduct and that Ms. Scott was unable to meet the required standards set out in the PIP. In that regard, it was their case to prove that:

- Ms. Scott was well aware of her poor performance
- There were documented evidence of performance issues leading to the PIP
- The employer, in introducing the PIP, had worked constructively with the employee on agreed objectives and timelines for improvement
- The necessary guidance and support was provided to the employee to assist her in the improvement of her performance
- The employer provided regular, frequent performance discussions

27. We would further want to assess the employer's action in the context of a 2024 article on ***"Best Practices for Firing an Employee for Poor Performance"***, published by the Society for Human Resource Management (SHRM). In it the author noted that *"it is crucial to document poor performance when it occurs..."* She observed that *"some companies make the mistake of only having annual performance reviews. If they want to make employees*



aware of performance issues and foster dialogue and transparency, they'll need to communicate more often than that."

28. In the alternative, Counsel submitted on behalf of the Aggrieved Worker that the nub of the dispute surrounds her dismissal for conduct and not performance. In closing submission he stated that –

> *"... I respectfully submit that the non-provision of weekly reports was not a performance issue, as the company has treated it, but rather a conduct-based issue. This is so notwithstanding the fact that the evidence shows it should not have qualified as an issue at all, as the requirement had long been stripped of its mandatory status having lain (sic) dormant throughout 2021 but was later arbitrarily revived by the company and weaponized as a means to justify Ms. Scott's termination."*

29. Counsel concluded that *"Ms. Scott was entitled to the holding of a disciplinary hearing, per Paragraph* ***22 of the Labour Relations Code****, which was never provided, thereby rendering the dismissal unjustifiable."* He cited the IDT Award of Supreme Chemical Ltd. v. Mrs. Maydene Chambers in support of his contention.

30. In determining whether the Aggrieved Worker's dismissal was based on conduct versus poor performance, we have to rely on the ruling in the case of ***ZA One (Pty) Ltd t/a Naartjie Clothing v Goldman No and Others (2013) 34 ILJ 2347 (LC)***, where the court made the following declaration:

> *"... what is then the difference then between negligence (misconduct) and poor work performance? The distinction can be found in the concept of wilfulness or deliberateness. In the case of negligence, it must be present, whilst in the case of poor performance, it must be absent. ...'*
>
> *...'In my view, the distinction between poor performance and misconduct (negligence) can be established by the asking of two simple questions when it has been established that an employee indeed failed. The first question is 'Did the employee try but could not?' and the second question is 'Could the employee do it, but did not?' If the first question is answered in the affirmative, then it has to be poor performance, because an employee that honestly (for the want of a better word) seeks to achieve what is expected of him or her but is unable to do so is incapacitated and*

would not behave wilfully or indifferently or fail to apply the necessary care. If the second question is answered in the affirmative, then it has to be misconduct, as this would be a situation where the employee is fully able to do what is required not to fail, and such failure could therefore only be because of indifference or wilfulness or a failure to take care. ...'

31. Another important qualification is to satisfy the tests outlined in the Law of Unfair Dismissal, and that is: (a) whether *"the employee's incapacity as it existed at the time of dismissal was of such a nature and quality as to justify dismissal"*; (b) *"whether as a matter of fact the employer made reasonable efforts to warn the employee and ascertain whether he or she was capable of improvement"*; and (c) that *"the employer acted reasonably in deciding that employee's incapacity justified dismissal in all the relevant circumstances..."*[2]

32. Another relevant consideration, we believe, would be derived from the case **Alidair Ltd v. Taylor**, where the Court stated a condition to be satisfied and that is –

"whether the employer honestly and reasonably held the belief that the employee was not competent and whether there was a reasonable ground for that belief."

33. The Company's sole witness was largely unhelpful as she could not provide a factual narrative regarding the performance issues leading up to the PIP, or provide any evidence in support of Mrs. Grizzle's assertion, as stated in her March 11, 2022 letter (*appendix 1*) that the PIP was introduced because of Ms. Scott's

"... recurring sub optimal performance, despite multiple conversations related to a variety of issues... ".

34. Having regard to the foregoing and the adoption of a reason-based approach, it is the considered view of the Tribunal that there are sufficient evidence which entitles us to infer on a balance of probabilities, that the principal reason for Ms. Scott's dismissal was due to conduct and not poor performance. The following facts led to that inference:

INDUSTRIAL DISPUTES TRIBUNAL JAMAICA

[2] See Steven D. Anderman (2001) 'The Law of Unfair Dismissal, 3rd edition, chapter 7, page 225.

a) The PIP was set for two (2) months covering the period March 11, 2022 to May 11, 2022, with the understanding that *"as of May 11, 2022 your [Ms. Scott's] performance will be re-evaluated to determine whether there is visible improvement in line with the markers for success as outlined in the PIP."* This was not done as the PIP ended prematurely on April 26, 2022, and her services were terminated by letter dated April 25, 2022. She was advised to serve the period between April 26, 2022 and 30, 2022 *"away from the office."* **[exhibit 6]**

b) The 'coaching follow-up & PIP – check in: April 12, 2022' **[exhibit 3]** showed that the submission of *"weekly reports are an integral part of the process and is also a requirement on several points in her [your] Performance Improvement Plan. As such the continued failure to produce same severely impacts the KPIs as there are no documented evidence of the items being completed."* In that regard, with the weekly reports seen as *"an integral part of the process"* and her continued failure to produce them likely to *"severely impact the KPIs"*, we believed that this prompted the Company to terminate her services, and consequently the PIP two (2) weeks before its expiration date of May 11, 2022.

c) Counsel's treatment of the weekly reports from his cross examination of Ms. Scott bears out the significance of its impact on the KPIs, and Ms. Scott admitted that no training in this area was needed. In fact, Mr. Raoul Glynn, the Managing Director never thought she needed further training to carry out her tasks. Some six (6) months after she lodged an appeal against her termination, he provided a response to the grounds of appeal. In his letter of November 7, 2022, he expressed the view that –

> *"As the longest serving Trade Marketing Representative at the time, Yanique already possessed all the knowledge, skills and experience required for efficiently and expertly executing her duties. In fact, based on the most recent training done, Yanique attained a score of 98.17%., which is evidently indicative of her having the requisite knowledge regarding her role, duties and responsibilities. Therefore, to now claim that Yanique was untrained despite having been in the same role for six years seems. disingenuous."* ***[exhibit 10]***

d) The argument set out in **Taylor** [supra] would be taken to mean that the Company 'honestly' and 'reasonably' held the belief that Ms. Scott was competent, and Mr. Glynn's "*detailed response*" of November 7, 2022, provided reasonable grounds for that belief.

e) Based on the above, we contend that this was a case where Ms. Scott was not pleased with the reduction in the administrative period from one day to 4 hours for the completion of the weekly report; that '**she could do it, but did not**' as it would require her doing so *"outside of working hours"*

f) In the termination letter to her the following was stated:

> *"As you are aware, your 2021 performance was below the standard required of a Trade Marketing Representative. In an effort to improve your work performance, you are placed on a two (2) month Performance Improvement Plan (PIP) effective March 11, 2022."*

Miss Scott, in her footnote to the March 11, 2022 'Performance Feedback' stated that she was not aware that her 2021 performance was below par; was *"still not agreeing with R.I. (required improvements)" and that she "strongly feel it was maliciously given."* She made an appeal for the actual performance scores to be shared with her. Her appeal was denied as it was said to have been done outside of the time-frame.

g) Wielding '*Occam's razor*' as often required to do in determining matters, we, therefore, formed the view that Ms. Scott was -

(i) upset about her 'required improvement' score on her 2021 performance review, which she believed was 'maliciously given';

(ii) disappointed because her appeal to have the 2021 score shared with her was denied; and

(iii) felt pressured by the fact that she believed her workload has intensified and was now required to do administrative work in 4 hours instead of the usual one day.

INDUSTRIAL DISPUTES TRIBUNAL JAMAICA

(iv) Her failure to do the weekly report was, therefore, *"because of indifference or wilfulness or a failure to take care"*, and not because she 'honestly' sought *"to achieve what is expected of her, but [was] unable to do so."*

h) In that regard, with the weekly reports seen as *"an integral part of the process"* and her continued failure to produce them likely to *"severely impact the KPIs"*, we believed that this prompted the Company to terminate her services, and consequently the PIP two (2) weeks before its expiration date of May 11, 2022.

i) The Company had committed in its March 11, 2022 'Performance Feedback.' that *"as of May 11, 2022, your [Ms. Scott's] performance will be re-evaluated to determine whether there is visible improvement in line with the markers for success as outlined in the PIP."* One crucial **'marker for success'** was the **'targeted dates for improvements'**, and the **"stipulated timelines"** for nine (9) of the twelve (12) KPIs were scheduled to be completed on May 11, 2022.

b. Whether the termination of Ms. Scott's services was consistent with procedural fairness as well as the letter and spirit of the Labour Relations Code

35. Beyond the inferences drawn from the facts presented in respect of the reason for the dismissal, issues of procedural fairness would have emerged even if this were a case of capability. We feel obliged to briefly address these.

36. It is clear on the evidence that Ms. Scott's 2021 performance was the primary reason for the establishment of the PIP. The letter of dismissal indicated that she was aware that this was so. and the 'Performance Feedback' letter of March 11, 2022, spoke of *"recurring sub optimal performance"* and *"multiple conversations"* held with her. Ms. Scott in her testimony, contended that she had no prior knowledge that her performance was 'sub-optimal', that it was 'recurring' and denied having 'multiple conversations' preceding the March 2022 letter. She had, albeit late, indicated that she had expressed her disagreement with the 2021 assessment and formally requested a review.

INDUSTRIAL DISPUTES TRIBUNAL JAMAICA

37. Ms. Scott's 2021 Annual Performance Review Cycle was put into evidence. It states the following:

> *"During the Annual Performance Review, the Line Manager and employee review progress against defined objectives and measures of success. A performance rating is given to reflect results achieved during the year.*
>
> *Line Managers provide an overall assessment of an employee's performance, taking into consideration the following:*
>
> 1. *Observations and progress against agreed success measures*
> 2. *Feedback from peers and relevant stakeholders*
> 3. *Regular review and feedback meeting between employees and line managers"*

38. Ms. Scott's performance ratings were to be *"treated as provisional until after the Performance Calibration session..."* We also know, from Ms. Miller's testimony, that the Company's Annual Performance Review Cycle requires a mid-year review although she could not speak definitively on whether this was done for Ms. Scott during 2021. Her 2021 annual performance rating was said to require improvement

39. The justifiability of Ms. Scott's dismissal is, therefore, forged in the crucible of procedural fairness, with the onus, as we have averted, on the employer to demonstrate that the proper procedures were observed in terms of its own policies and procedures, standard best practices in HR and the Labour Relations Code. In that regard, the Tribunal seeks only the strictest fidelity to fairness.

40. Having said that, and taking into account all the circumstances, it has not been shown to the Tribunal's satisfaction that the Company observed its own procedures as set out in the Annual Performance Review Cycle in respect of the following:

a) A 2021 mid-year review of Ms. Scott's performance was completed.

b) That there were regular review and feedback meetings between Ms. Scott and her Line Manager during the year.

c) That there was feedback from peers and regular stakeholders.

41. The tenets of good industrial relations praxis and by extension human resource management is governed by the Code. One of its principal purposes is to establish good human resource management techniques that are *"designed to secure effective co-operation between workers and employers and to protect workers and employers from unfair labour practices"* Equally important to note is that human resource management is "*not confined to procedural matters*", as declared by the Code, but must include *"in its scope human relations..."* which brings empathy and understanding to the workplace. Paragraph 6 of the Code places a responsibility on the worker "*to perform his contract of service to the best of his ability."*

42. The need for communication and consultation, as set out in paragraph 19 of the Code, are seen as quintessential to effective human resource management practice. Communication must be two-way, and consultation must represent *"joint examination"* and "*genuine exchange of views."* These ideals form the tapestry of what would constitute fair performance management or disciplinary procedures. They are captured in the SHRM's article on 'Best Practices for Firing Employee for Poor Performance', cited in paragraph 27. IR/HR workplace practices are governed by procedures, where the practitioners – as in law, medicine, engineering and accounting – are expected to act in compliance with those corporate standards and adhere to the laws and code of practice governing the profession.

43. Against this background, it has not been shown to the Tribunal's satisfaction that:

    a) There was any formal documented poor performance on the part of Ms. Scott when it occurred prior to the introduction of the PIP.

    b) Even in the absence of the mid-year review, there were evidence to indicate regular and frequent performance discussions to ensure *"fairness and providing chances for improvement while preparing for any eventualities,"* or that "*conversations were [should be] held throughout the year which inform the employee what the issues are, together with co-creating action plans to help the employee move in a positive direction."*[3]

[3] **See SHRM February 2024 article, op. cit**

c) Even during the PIP, clear examples were provided to Ms. Scott or clarification given in respect of her failure to meet some of the KPIs. The following exchange during cross examination showed a gap in that regard:

Q. *"So again the question is do you agree with me Ms. Scott that there was nothing preventing you from meeting those KPIs in the first place?*

A. *Time and knowledge, yes."*

d) The 'time and knowledge' required for a fair procedure were satisfied. The letter of April 13, 2022, from Mrs. Nicole Clarke, the HR Analyst, after the first and only performance review, stated that Ms. Scott must *"provide a detailed account of why the KPIs are not being met and there has been no improvement after four (4) weeks of being on the PIP."* Her initial response by way of a memorandum dated April 20, 2022, highlighted the need for 'time' and 'knowledge'. The memo is reproduced in full below:

"Hi Nicole,
I hope you're doing well.
As it relates to letter attached, as discussed yesterday I only saw same yesterday after opening my computer as my phone did not show the email. That being said I went ahead and listened to the recording of the meeting held April 13th, twice. I also reread the objectives of the PIP and do not see or understand where I am currently failing 11 of 12 objectives or 92%. Firstly, only 1 objective spoke to the weekly report thus the lack of same cannot be used for failure of all other objectives. Secondly, which are the 11 objectives that I am currently failing and how exactly? I cannot be expected to answer such an ambiguous question that, to my understanding, is lacking in merit.

Sincere regards

Yanique Scott"

44. The next day, April 21, 2022, she provided a detailed response covering the 12 objectives. Her comments on some of these are worth highlighting. For example, on the portfolio coverage in TMU she stated as follows: *"... I have already started the conversation to rectify same and keep the business informed of progress with weekly reports."* Under communication coverage in TMU she noted that *"65% of TMU has price poster and I am*

on my way to achieving the required 85%..." In respect of volume performance, her comments were: *"Noted that SKS affected ability to meet March's target it should also be noted that we didn't get said target until April. So this should not be considered to be a gap as it was unattainable."* In the final paragraph of her response she declared that –

> *"As state earlier, the supporting documents needed for the PIP meeting were not forthcoming because I was unaware of meeting until same day. Also the lack of weekly reports, which I am now recognizing the importance. All these gaps except price posters will be closed by next PIP set for Monday April 25. Unable to close price poster gap as these have just been made available to me today April 21st due to amendments that had to be made to make the posters workable."* (***Emphasis added***).

45. Instead of the scheduled PIP meeting set for April 25, 2022, to address the issues raised in her April 20, 2022 email, and an opportunity for the management to comment on her detailed response to the 12 objectives, she received a letter of termination from Mr. Dwaine Williams, Marketing Deployment Manager, dated April 25, 2022. This was two weeks before nine (9) of the twelve (120 objectives timelines were due, and her response indicating her intention to meet some of the targets by April 25, 2025. She was not given the opportunity to do so, and *"the necessary tools, resources and support"* were never extended beyond that date.

46. Ms. Scott filed an appeal to her dismissal within the five (5) days as stipulated in her termination letter. The delay in response to her appeal was inordinate and inexplicable, some one hundred and ninety (190) days after, with no reasonable explanation, making it inexcusable, contrary to the spirit and intent of the Code and thus, a poor reflection on the Company's human resource management practice and procedures. The ironical twist to this was that Ms. Scott was denied an earlier appeal against her 2021 performance review because she failed to do so within the stipulated time limit. It is to be noted that the expeditious settlement of grievances/disputes represents an important principle embodied in the *"orderly procedures"* which employers must develop and maintain as prescribed by the Code.

INDUSTRIAL DISPUTES TRIBUNAL JAMAICA

47. This, to our mind, means that delays could conceivably be seen as an ingredient to a fair hearing. The Court, in a recent ruling, noted that answers to the following questions could help in determining procedural fairness. That is: *"(i) How long has the delay been? (ii) What are the reasons provided for the delay? (iii) Is the delay reasonable in light of the particular circumstances of the case such its complexity and the conduct of the parties? (iv)Has the Claimant contributed to the delay, or has he done anything to assert his rights? (v) What is at stake for the Claimant, or what does he stand to lose? (vi)Has there been any prejudice occasioned to the Claimant resulting from the delay?"*[4]

48. The Tribunal, having enquired into the facts on their merits, has concluded that the Company had not met the standard of proof required to justify that the cause of Ms. Scott's dismissal was for poor performance and not conduct; the threshold of substantiality was not made out, and even if we were wrong on this score, we were unable to adduce sufficient evidence to justify that the Company adopted a fair procedure in terminating the contract of Ms. Scott for poor performance.

49. In deference to Counsel, we are obliged to respond to the three (3) cases cited in support of the Company's case, namely: **Supreme Chemicals Limited and Mrs. Maydene Chambers, IDT No. 41/2016; Nestle Jamaica Limited and Mr. Marlon Parnell, IDT No. 58/2017; and Carreras Limited and Mr. Renardo Rowe, IDT 48/2024.** While previous awards by the Tribunal do not provide an unending adherence to precedents, these cases to our mind are distinguishable based on factual backgrounds and could not be relied upon to support Counsel's pleadings.

50. We, therefore, reiterate that the probable cause of dismissal was for conduct, and in that regard the Company failed to rely upon the provisions of paragraph 22 of the Code. For reasons of conduct, the Code stipulates that:

a. The matter giving rise to the disciplinary action should clearly be stated and communicated to Ms. Scott in writing

INDUSTRIAL DISPUTES TRIBUNAL JAMAICA

[4] See judgement by Simone Wolfe-Reese, J. in the matter **Outsourcing Management International Inc. Ltd (t/as Alliance One) and Industrial Disputes Tribunal [2024] JMs.C Civ. 12**

b. She should be given the opportunity to state her case and to be accompanied by a representative of her choice at a disciplinary hearing
c. Where the verdict is a dismissal, she should be given the right of appeal
d. The disciplinary procedure should be simple and rapid, including timely response to an appeal.

51. A copy of the Company's Policies and Procedures was never tendered into evidence, and so the policy on handling grievances and the approach to dealing with them were not evident. From the evidence, however, we do know that Ms. Scott had five (5) days within which to formally raise a grievance, whether it is with her dissatisfaction with the 2021 performance review, or her challenge to the termination of her services.

52. As Armstrong's Handbook of Human Resource Management Practice, 11th Edition [2009], directs, *"the aim of the procedure is to settle the grievance as near as possible to its point of origin."* ***[emphasis added].*** The literatures on human resource management are replete with two of the key responsibilities of employers when it comes to grievance handling, namely: (a) treating the parties with respect, and ensuring consistency in handling the issues; and (b) dealing with grievances quickly, and avoiding unreasonable delays in making decisions.

53. From all accounts, the response to the appeal extended beyond six (6) months, and no reason was provided for the delay. There was no evidence to suggest any 'particular circumstances' giving rise to complexities, or that Ms. Scott contributed to the delay; and as a consequence, we were left to argue that Ms. Scott was prejudiced as a result of the delay.

54. A basic intrinsic level of common law fairness must be evident to ensure that the dismissal meets the threshold of procedural fairness in keeping with the principles of natural justice and due process. This was not evident. The decision to terminate the services of Ms. Scott was, therefore, reached without the elementary rules of fairness and natural justice being complied with.

INDUSTRIAL DISPUTES TRIBUNAL JAMAICA

55. Ms. Scott mitigated her loss when she obtained a job at Paramount Trading, approximately one year after her dismissal. In determining the quantum of an award the courts have ruled that there is –

> *"a discretion entrusted to the Tribunal where the level of the quantum of compensation is concerned; and it is a wide and extensive discretion... [which] reveals no limit or restriction placed on the exercise of the discretion and no formula, scheme or other means of binding or guiding the Tribunal in its determination of what might be a level of compensation or other relief it may arrive at as being appropriate."*[5]

56. But that discretion has to be bound by reasonableness as Wint-Blair, J. in her ruling on **Island Jamaica v. Industrial Disputes Tribunal,** opined when she said:

> *"While there is no formula set down for the approach to compensation and it is not for this court to decide what weight should have been given to the various factors considered by the IDT, the absence of any evidence that it considered parity means it did not subject its decision making to the criterion of reasonableness as directed by Morrison, JA in the case of Branch Developments."*

57. In that regard, the Tribunal's statutory powers extend to granting remedies specified in the Act, and the compensation will therefore cover both basic and compensatory components.

[5] See Garnett Francis v IDT and Private Power Operators [2012] JMs.C Civ. 55.

AWARD

58. In accordance with Section 12(5)(c) of the Act, the Tribunal finds that the dismissal of Ms. Yanique Scott was unjustifiable and order the Company to compensate her in the amount of Five Million Dollars ($5,000,000.00) for her unjustifiable termination.

Dated this 18th day of December, 2025

.....
Mr. Donald Roberts, C.D., J.P.
Chairman

.....
Mr. Errol Beckford
Member

.....
Dr. Denese Morrison, J.P.
Member

Witness:

Pearce
.....
Ms. Tasha Pearce
Secretary of the Division (Actg.)