

4 Ellesmere Road  
Kingston 10

**IDT 52/2016**

November 2, 2023

Mrs. Colette Roberts Ridsen  
Permanent Secretary  
Ministry of Labour  
1F North Street  
Kingston

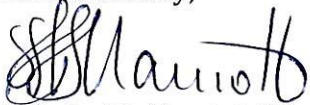
Dear Mrs. Roberts Ridsen,

**Re: Dispute between Caymanas Track Limited and the Union of Technical  
Administrative & Supervisory Personnel over the termination of the employment  
of the workers listed at Appendix A**

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Enclosed please see copy of Award handed down by the Industrial Disputes Tribunal  
in connection with the above dispute.

Yours faithfully,



Nicola Smith-Marriott (Mrs.)  
For Secretary/Director

Similar letters sent to:

Hon. Minister of Labour	
Ms. Gillian Corrods	- Director, Industrial Relations & Allied Services
Mr. Michael Kennedy	- Chief Director, Industrial Relations
Mr. Wentworth Charles	- Attorney-at-Law
Mr. Lemar Neale	- Attorney-at-Law

Encl.

# **INDUSTRIAL DISPUTES TRIBUNAL**

Dispute No: IDT 52/2016

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## **SETTLEMENT OF DISPUTE**

**BETWEEN**

**CAYMANAS TRACK LIMITED**

**AND**

**UNION OF TECHNICAL ADMINISTRATIVE &**

**SUPERVISORY PERSONNEL**

***AWARD***

### **I.D.T. DIVISION**

**MR. ERROL MILLER, J.P. - CHAIRMAN**

**MR. LESLIE HALL, J.P. - MEMBER**

**MRS. CHELSIE SHELLIE-VERNON- MEMBER**

**NOVEMBER 2, 2023**

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**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**CAYMANAS TRACK LIMITED  
(THE COMPANY)**

**AND**

**UNION OF TECHNICAL ADMINISTRATIVE & SUPERVISORY PERSONNEL  
(THE UNION)**

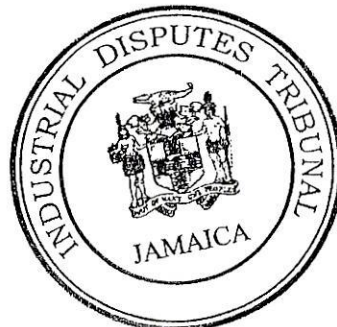
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**REFERENCE:**

By letter dated October 6, 2016, the Honourable Minister of Labour and Social Security in accordance with Section 11A (1)(a)(i) of the Labour Relations and Industrial Disputes Act (hereinafter called “ the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute describe therein:-

The Terms of Reference were as follows:

*“To determine and settle the dispute between Caymanas Track Limited on the one hand and the Union of Technical Administrative and Supervisory Personnel on the other hand over the termination of the employment of the workers listed at Appendix A.”*



**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. Errol Miller J.P. - Chairman
- Mr. Leslie Hall J.P. - Member, Section 8 (2) (c) (ii)
- Mrs. Shellie Chelsie-Vernon - Member, Section 8 (2) (c) (iii)

**REPRESENTATIVES OF THE PARTIES:**

**The Company** was represented by

- Mr. Wentworth Charles - Attorney-at-Law
- Mrs. Georgia Henry Samuels - Attorney-at-Law
- Mr. Errol Robinson - Chief Executive Officer

The **Union** was represented by:

- Mr. Lemar Neale - Attorney-at-Law

In attendance were:

- Mr. Leighton Pryce - Chief Delegate
- Mr. Mark Shepherd - Delegate
- Mr. Kevin Wallace - Delegate
- Mr. Kevin Simpson - Delegate
- Other Delegates/Workers



The original division selected, which began to hear the dispute, comprised:

- Mr. Charles Jones, CD, JP - Chairman
- Mr. Leslie Hall, JP - Member
- Mr. D. Trevor McNish - Member

On the passing of Mr. D. Trevor McNish, after the hearing was completed but before the Award was handed down, Mr. Clinton Lewis was selected to replace him and the matter begun *de novo* in accordance with Section 8(4) of the Act. When the matter started and up to the hearing being completed, St Patrice Ennis represented the Union, however, when the matter begun *de novo*, it was represented by Mr. Lemar Neale.

After the 3<sup>rd</sup> Sitting, Mr. Charles Jones appointment ended and Mr. Errol Miller was selected to chair the division and again the matter begun *de novo* in accordance with Section 8(4) of the Act.

On the passing of Mr. Clinton Lewis, just before the hearing was completed, Mrs. Chelsie Shellie-Vernon was selected to replace him.

### **SUBMISSIONS AND SITTINGS**

Briefs were submitted by both parties who made oral submissions during thirty-one (31) sittings held between September 15, 2021 and April 14, 2023.

### **BACKGROUND**

Caymanas Track Limited (CTL) is a public company owned by the Government of Jamaica (GOJ) and located at Caymanas Park, Gregory Park in St Catherine. CTL began operations for the sole purpose of both local and simulcast thoroughbred racing and wagering. As a benchmark of the GOJ's agreement with the International Monetary Fund (IMF), CTL was to be divested by March 2017. Supreme Ventures LTD (SVL) was chosen as the preferred bidder and was expected to take over the operations once the divestment exercise was completed.

The Union of Technical Administrative and Supervisory Personnel (UTASP) was established in 1967 as a registered trade union with offices situated at Suite #8, 3 Beechwood Avenue, Kingston 5. The union has bargaining rights for workers employed to Caymanas Track Limited.

The services of sixteen workers from the Engineering Department at CTL were terminated on August 22, 2016, following a dispute over allegations of a missing computer file. The parties were unable to settle the matter and the dispute was reported to the Ministry of Labour and Social Security. However, following unsuccessful attempts at the conciliatory level, the dispute was referred to the Tribunal for determination and settlement.



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## COMPANY'S CASE

1. Caymanas Track Ltd (CTL) contends that the relationship between Management and the workers in the Engineering Department had been strained particularly over the implementation of a Pay Plan developed by the Ministry of Finance and the Public Service (MFPS) in December 2014. The Pay Plan was questioned by members of the Engineering Department on the basis that other categories of employees within the Company came on par with them in salary and they demanded a review. Following threats of industrial action, a meeting was held with representatives of the MFPS after which a review of the process was done. The results did not appease the workers and between June and July 2016, the Company met with them with a view to resolving the matter.
2. The proposed divestment of CTL to Supreme Ventures Ltd (SVL) resulted in CTL instituting a training programme to train both its staff as well as personnel from SVL. The introduction of this programme resulted in restiveness among the workers in the Engineering Department. This unrest eventually led to the separation of the sixteen workers in August 2016. Which the Company claims was justified.
3. The Company called four witnesses to provide evidence in support of its case. Mr. Danville Walker, former Chairman of CTL in 2016, who also supplied a witness statement, testified that on his appointment, the divestment of the Company to SVL was in progress. Mr. Walker gave evidence that after the appointment of the new Board around May 2016, a meeting was held with all members of staff and they were informed of the financial state of the Company and the process of divestment, among other pertinent issues. He said that the first deadline for completion of the divestment process was September 2016.
4. He testified that a subsequent request was made by the Engineering Department to meet with the Board and among the concerns raised at the meeting was a reclassification exercise carried out by the Ministry of Finance and the Public Service (MFPS). The issue was that the workers were unhappy with the results. Consultations were done with the MFPS who advised that a reclassification was not done but a pay structure, which was absent from CTL, was developed and implemented. The dissatisfaction persisted and meetings were held internally and with the MFPS with the hope of resolving the matter. Eventually, in or



around June 2016, a proposal was introduced by the Company which was generally agreed except by two employees whose cases were referred to the MFPS.

5. Mr. Walker also testified that in 2016 there was an agreement on a training exercise for persons to operate the Totalisator (tote system). He said that training was to take place for employees of the Company before the divestment to ensure that they would be in a position to be rehired by SVL. He said that the tote system was an old system, often breaking down and said that only one person knew how to get it back up. As a consequence, he said, it was decided to train more than one person to operate and fix the system. A representative from United Tote in the USA was expected to arrive in the island to carry out the training exercise.
6. On Saturday August 6, 2016, Mr. Walker said that Mr. Shane Dalling, the CEO of CTL, advised him that he, Dalling, anticipated industrial action by the workers based on a call he received from Mr. Leighton Pryce, Computer Room Supervisor and Chief Delegate for UTASP. Mr. Walker said that he instructed Mr. Dalling to convene a meeting for Thursday August 11, 2016, but he, Walker, was unable to attend due to illness. However, he was advised that the workers took industrial action on that day, August 11, 2016.
7. Mr. Walker said that in spite of not being fully recovered from illness, he invited the workers from the Engineering Department to a meeting on August 12, 2016 at 11:00am. At this meeting, he sought an explanation for the industrial action and was informed that it had to do with the training exercise being undertaken by the Company. He said that he informed them that the training would not stop because the money was already expended to bring the team from overseas to train the managers and members from other departments. He said that he requested the workers to return to work but they insisted that the training would first have to be brought to a halt.
8. Mr. Walker testified that the United Tote representative, Mr. Jason Beard, arrived early on the morning (August 12, 2016) and was instructed to proceed with the training. He said that it was later brought to his attention that a critical master file which contained the historical results of the previous day's races and upon which the system was required to restart for the next race day, was missing. He discussed the matter with Mr. Beard, the expert, and although he gave an assurance that he could recreate the file, Mr. Beard said



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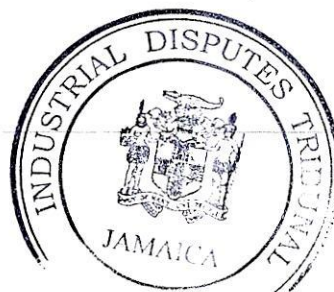
that it would take some time and there was no guarantee. Mr. Walker said that he was advised that the history of all the races was erased. Based on the lost data, he said no invoices could be generated by the Off-Track Betting to pay CTL and this had serious financial implications for the Company.

9. Mr. Walker further testified that Mr. Beard advised him that the missing file from the Totalisator **was calculated and deliberate on the part of the employees of the Engineering Department, resulting in severe economic loss to the Company.** He was also advised by Mr. Beard that the file could not be deleted by merely turning off the Totalisator. Mr. Walker said that he convened a meeting with Mr. Pryce on that Friday afternoon (August 12, 2016), informed him of the missing file and asked if he was willing to assist in recovering it, to which Mr. Pryce agreed. Mr. Walker said that Mr. Pryce left his office but later returned and confirmed that the file was missing.
10. He said that this uncertainty over the availability of the employees who were on strike and a non-functional tote system resulted in the Board deciding to cancel the Race Day for Saturday August 13, 2016. He stated that there were a number of critical activities in preparation for a race day which involved other industry stakeholders. He said that all media houses and off-track betting sites had to be advised of the cancellation of races. This cancellation resulted in the loss of revenue in excess of J\$30M to the Company.
11. Mr. Walker testified that he needed to prevent any further damage to the system that could result in the divested entity being jeopardized. In those circumstances, he was not prepared to allow the workers of the Engineering Department to return to their offices and that this quarantine was necessary to protect the assets of the Company and secure the room for further investigations. He said that he believed that at the time, **maybe some exuberance would have caused someone to do this, and if they were attempting to go and correct the situation, and let's get on with the races, then that would be fine, and I would let the matter stay there, but they were not prepared to do that.** He said that the Police Cybercrime Unit was therefore called that evening, August 12, 2016, to conduct an investigation into the matter. Mr. Walker said the Police came as requested and that he was later advised by Mr. Beard and Det. Corporal Kezan Wright of the Cybercrime Unit, that the missing file was located.





12. Mr. Shane Dalling provided a witness statement and also gave viva voce evidence. In his testimony, he said that he was appointed as Managing Director in May 2016 to complete the divestment process of CTL. He said on taking office, he was approached by the workers in the Engineering Department regarding their dissatisfaction over the salary issue. He reiterated the steps taken to settle the matter as outlined by Mr. Walker, including the Company's proposal.
13. Mr. Dalling said that on August 4, 2016, Mr. Pryce sent him an email, outlining some issues with the salary proposal. He said he advised Mr. Pryce that he could not make any changes without consulting the Chairman and obtaining approval from the MFPS.
14. Mr. Dalling said that Saturday August 6, 2016, Independence Day, was a major race day when increased numbers of punters attended the Track and several dignitaries, Government officials and diplomats are hosted by Management. He said that revenue from that race day would be approximately \$50M; an increase over that of the normal race day. At about 2:00 p.m. that Saturday, Mr. Dalling said he was in the Directors' Box, hosting the dignitaries, when he received a telephone call from Mr. Pryce requesting an immediate meeting with the Engineering Department staff. He said that following an exchange, Mr. Pryce issued an ultimatum with the threat of the meeting 'or else'. He said he interpreted the 'or else' to mean an impending industrial action. He consulted the Chairman and agreed to convene a meeting for August 11, 2016, which was conveyed to Mr. Pryce.
15. Mr. Dalling further testified that in the absence of the Chairman due to illness, he met with the Engineering Department staff. He said he advised them that care should be exercised in dealing with the matter as it could become disruptive if the other members of staff discovered that the Engineering Department was receiving special treatment on salaries. He also advised them that United Tote would be conducting training of managers and employees of the Engineering Department. This was in keeping with an assurance to SVL that staff members would be able to operate the system upon completion of the divestment process. He said that the workers objected to the proposed training by United Tote and the meeting became very boisterous. He left the meeting with the assurance from Mr. Pryce and the workers that there would be no further issues. However, he was later advised that the workers had taken industrial action.



16. Mr. Dalling said that a second meeting was convened with the workers that afternoon August 11, 2016 and he asked Mr. Pryce if the workers were taking industrial action and he responded in the affirmative. He said that Mr. Pryce informed him that the workers in the Engineering Department were aggrieved that management had engaged **external persons to train outside staff** without discussion with the Union. Mr. Dalling said he then learnt that this was the basis for the industrial action and not the salary adjustment. During the discussions, he said that he pleaded with them to return to work and they eventually agreed.
17. On that same evening, August 11, 2016, he received information that the media was on the premises to report on a strike that was taking place. He said he indicated to the media representatives that there was a misunderstanding and assured them that the matter had been settled. However, Mr. Dalling said that he was surprised when he received information that no activity was taking place on the tote system for the Off-Track Stations to conduct betting. The effect of this action, he said, was panic by the owners of Off-Track Betting as there was an interruption of signal to the 69 Off Track Betting Terminals impacting simulcast betting. At 6:30 p.m., Mr. Dalling said he decided to suspend the Simulcast as the Company could not continue to operate because the system was down; an action that resulted in a loss of \$2M to CTL. During the 7:00 p.m. TVJ Prime Time News, he said he observed on camera, workers of the Engineering Department led by Mr. Pryce, while still in the department, stating that they were on strike and will not return to work.
18. Mr. Dalling, in his evidence, said that on the morning of August 12, 2016, the other employees who are also represented by the UTASP, arrived at work but did not support the industrial action of the sixteen employees from the Engineering Department. He said that the Chairman had a meeting with the striking workers at 11:00 a.m. and requested that they return to work, but they refused, unless the training was brought to a halt. Following the meeting with the workers, he said that it was revealed that a critical file, needed to operationalize the system, was missing. He confirmed that the Board subsequently cancelled the race day scheduled for Saturday August 13, 2016 and called in the Police Cybercrime Unit to investigate the missing file.



19. Mr. Dalling testified that on Monday August 15, 2016, due to the ongoing investigation, letters were issued for the workers to stay off the job at full pay as the Board felt that further tampering would render the Company completely exposed. He confirmed that the missing file was subsequently found.
20. On Monday August 22, 2016, Mr. Dalling said sixteen employees from the Engineering Department were dismissed in accordance with their contracts of employment and paid in keeping with the provisions of the Employment (Termination and Redundancy Payments) Act (ETRPA). He said that the divestment of CTL began in September 2016 and was concluded in March 2017, when all the other workers at CTL were made redundant.
21. Mr. Kezan Wright, a former Detective Corporal at the Communication Forensics and Cybercrime Unit (CFCU), also gave evidence on behalf of the Company. Mr. Wright said that he has training, both locally and internationally in forensics from jurisdictions to include Canada, UK, India and the Caribbean and that his duties involved the recovering of data from technological systems.
22. Mr. Wright testified that on August 12, 2016, he accompanied a team including Inspector Dwayne Daley, his Officer in Charge, to CTL from which a report was received of a suspected breach of The Cybercrimes Act. He said that they met with the CTL Management team and were briefed and advised about an important file that was missing.
23. He said that he returned to CTL the following day, August 13, 2016, to carry out forensic investigations into the missing file. His evidence was that he visited the Engineering Room and met Mr. Jason Beard, the Totalisator Technician, who allowed him access to the system. Mr. Wright said he carried out forensic imaging, **a process of creating an exact duplicate of the hard drive system contained in the computer.** This process was done on three computer systems; the main Tote Application, the Tote Share and the Tote Backup. He said that he returned to CFCU where the images were documented and analysed using the EnCase Forensic Suite. This, he said, allowed him to identify data files such as text files, document files, images and metadata files. He tendered into evidence a copy of his Digital Forensic Report dated January 12, 2017 (Exhibit 12).
24. Mr. Wright testified that his investigations indicated that the system was powered on at 7:51:42 a.m. on August 11, 2016 and remained in operation until 7:03:52.p.m. on that day



when it was shut down. He said that an analysis of the Tote Backup shared computer revealed that numerous folders and files were created during the day. He said that there was evidence that during the course of the day, several off track racetracks were added to the log file between 12:00 noon and 6:05 pm such as Gulfstream Park, Evangeline Down, Saratoga, Delmar and Charles Town. This, he said, confirms that the system was operational.

25. However, he also testified that in the evening, three folders were created on the Tote Backup Share at 6:58:41 pm, 6:59:29 pm and 7:00:04 pm respectively bearing the name 11-11-14, 11-11-14s and 11-11-14m. These contained several sub-folders and files with the same naming convention, all created on August 11, 2016. He said that the suspected compromise therefore took place at about 7:00pm on the evening of August 11, 2016 and this was discovered on the following morning, August 12, 2016.

26. He said further that based on the naming convention, the file folder 11-11-14 would have been created on November 11, 2014. However, when analysed, the information was not created on November 11, 2014 but was actually made on August 11, 2016 as revealed by the time stamp. He concluded that the **naming convention was basically done as a symbol of hiding the information from the system itself. Because following the naming convention this shows that this (is) completely different from what should have been there and without you knowing this information or having the technical expertise to view this analysis, a regular user could have never found this information on the system.**

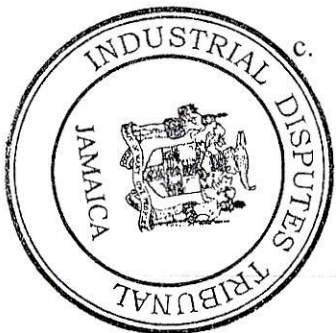
27. Mr. Wright further stated that **'On the conclusion of my investigation it would have shown that without this information being found or present on the system rendered the system being crippled from working properly as it should,..., for each event is used to continue the next event of each day. So what would occurred (sic) on say today is the 15<sup>th</sup> of February what occurred on February 14 is needed also for February 15, and this information not being present and the contents not being present would cripple the system from working'.**

28. Mr. Wright said that after he copied the data from the system and analysed them, he again visited CTL and together with Woman Detective Sergeant Janice Brown from the Fraud

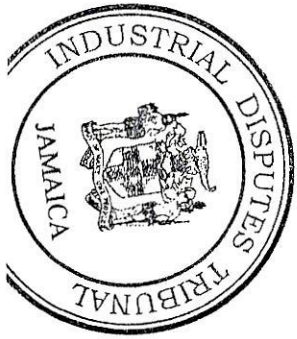


Squad met with Mr. Dalling and the Pari-mutuel Manager, Mr. Maurice Robertson and advised them of the findings which were contained on a thumb drive. He said the information was uploaded to the CTL system which was validated to be true and correct.

29. Mr. Maurice Robertson gave evidence that he was employed to CTL in 2001 as Pari-Mutuel Manager. His job entails ensuring that betting is in full compliance with the Pari-Mutuel Rules of 2009, which is governed by the Betting, Gaming and Lotteries Commission, as well as to give account for all pari-mutuel sales each day. He said he manages a staff of approximately one hundred persons. In his testimony, he described the role and relationships between the Pari-Mutuel operations and the Computer Room.
30. Mr. Robertson said that on August 11, 2016, regular activities took place until about 2:30pm when he was informed that the Computer Operators had left their stations. He also gave evidence that he heard Mr. Pryce instructing Mr. Craig McLaughlin to stop working. Mr. McLaughlin complied and left the Computer Room, at which time the system was fully functioning.
31. He testified further that on August 12, 2016, he was invited to the Computer Room by Mr. Dalling who asked him to inform Mr. Jason Beard about the rules and policies governing betting activities at CTL. He said that in an attempt to operationalize the Tote system, Mr. Beard discovered that the data for August 11, 2016 was missing and he, Mr. Robertson, was unable to log onto the Tote system. On investigation, it was discovered that the connection cord from his server to the tote server was unplugged. He said that Mr. Dalling thereafter instructed all staff members of the Engineering Department to leave the room.
32. The Company submits that:
  - a. There was no “industrial dispute” within the meaning of Section 2 of the LRIDA;
  - b. The employees withdrawal of services were misconceived and unlawful and amounted to a repudiation of their contract of employment, entitling CTL to lawfully dismiss them;
  - c. The unauthorized removal of critical computer files was a serious breach of misconduct and/or The Cybercrimes Act. Such criminal conduct was incompatible with the due and faithful discharge of duties by the dismissed employees and in the circumstances their summary dismissal was justifiable;



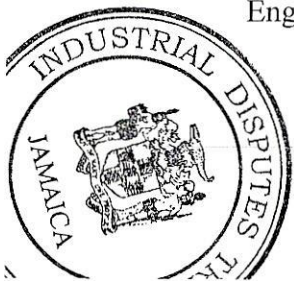
- d. Caymanas Track Ltd acted with procedural fairness in its investigations against the dismissed employees; its actions were neither arbitrary nor capricious or in violation of natural justice having regard to the material facts and circumstances of this case. On the other hand, the employees demonstrated little regard for national interest and co-employees who were never party to their withdrawal of services.
- e. Caymanas Track Ltd. response in dismissing the employees was not unreasonable; having regard to the serious financial and economic consequences of their actions; and
- f. The dismissed employees ought not to be reinstated as the employer has divested its operations to Supreme Ventures Ltd. and has demonstrated persuasive and convincing proof that it had just cause to dismiss them.



### **THE CASE FOR THE UNION**

33. The Union submitted that the Engineering Department is considered to be the brainchild of CTL providing the software and personnel required to input, maintain and service all technical, electrical and software related components of the Company. It facilitates the wagering and generation of odds related to betting and is responsible for the distribution of audio and video signals to accommodate wagering for both local and overseas horse racing. The Department consisted of twenty-four workers including the Chief Engineer. On August 22, 2016, sixteen workers from the Department were dismissed. The Union called five witnesses to provide evidence in support of its case.
34. Mr. Mark Shepherd, the first witness, said that he was employed to CTL in June 1992 and that at the time of the termination of his services he was the supervisor for eight Technicians in the Engineering Department. His duties included audio/visual and track machinery maintenance.
35. He testified that he was on day off on August 11, 2016 and that Mr. Pryce called him to attend a meeting at CTL relating to remuneration. However, he arrived after the meeting and was told that a disagreement between Mr. Dalling and Mr. Pryce had taken place and the workers had stopped working. He returned to work the following day August 12, 2016 and saw a number of police and security personnel present. He said that Mr. Dalling asked the workers to leave the Department and they subsequently left the compound.

36. Mr. Shepherd said that he was advised by memo that due to the strike, he should return to work on Monday August 15, 2016. At a meeting with Mr. Dalling on that day, the workers were accused of sabotage and deleting critical data files from the computer system. He said they were told to report to work on Tuesday, 16<sup>th</sup> August, when they were given letters to proceed on administrative leave. Based on a call from the Human Resources Department, he attended a meeting on August 22, 2016, which was his last day at CTL. He said he received a letter of dismissal and was not aware of the reason for his dismissal although he later learnt that the Company said it was a loss of confidence. Mr. Shepherd said that he is seeking to be reinstated in his job.
37. Mr. Phillip Coubrie also gave evidence for the Union. He said that he was employed to CTL on October 1, 2004 and was a Senior Technician in the Engineering Department. His responsibilities included servicing and maintaining betting terminals in the Pool Houses.
38. On August 11, 2016, he was at home on vacation leave when Mr. Pryce called him and advised him that the long-awaited meeting regarding the salary adjustment was about to take place. He went to CTL and awaited the arrival of Messrs. Walker and Dalling. They were advised that Mr. Walker was sick and the meeting was postponed. He said eventually the security escorted them off the compound.
39. Mr. Coubrie said that although he was still on vacation, he visited CTL on August 12, 2016, and noticed that the workers from the Engineering Department were locked out of the Department. He subsequently learnt that racing scheduled for Saturday August 13, 2016, was cancelled as the Engineering Department workers had withdrawn their services. He corroborated the evidence of Mr. Shepherd as it relates to the subsequent series of events. He said that when he received his letter of dismissal on August 22, 2016, he had discussions with Mr. Dalling about the fact that he was on vacation leave. He said Mr. Dalling told him that he did not think he would be a part of the persons being dismissed and that he should hold on. However, Mr. Dalling did not speak with him further. Mr. Coubrie is also seeking reinstatement or to be engaged by SVL.
40. Mr. Ricardo Harrison was employed to CTL in 1999 and was a Technician in the Engineering Department. He was responsible for operating the video camera in the parade



ring on race days as well as the installation of the dish at off-track sites, run video cables and service the terminals and video equipment.

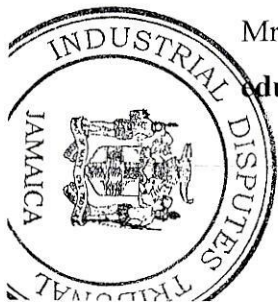
41. He said that on August 11, 2016, he was also at home on vacation leave and was scheduled to return to work on Sunday August 14, 2016. He subsequently received a call that there would be no work on Saturday, August 13, 2016, due to the unavailability of the workers of the Engineering Department who had an issue with the training exercise. He returned to work on Monday August 15, 2016 and in a general staff meeting, Mr. Dalling spoke about the issues that took place on Thursday August 11, 2016. He returned to work on Tuesday August 16, 2016, at which time he received a letter to proceed on administrative leave.
42. Mr. Harrison said that he was called to attend a meeting on August 22, 2016, at which time he was issued with a letter of dismissal. He said that he was hurt by the letter and he felt that he was “tried, convicted and sentenced without being given a chance to state his case”. He said he does not know the reason for his dismissal and was seeking reinstatement with payment for all the years since his dismissal.
43. Mr. Leighton Pryce said that he began working at CTL in August 1998 as a Computer Operator in the Engineering Department. At the time of his termination in August 2016, he was the Supervisor of the Computer Room reporting to the Chief Engineer. He received this promotion as Supervisor in 2005 and was also appointed as the Chief Union Delegate for UTASP. He said that among his responsibilities, was the training of persons who came to work in the Computer Room. He also set procedures for the generation of reports which include step by step procedures for the closing off operations for the day’s racing activities. In outlining further duties, he said he made copies of the data each day, make backups, store them and pass them to the Manager of the Information Technology and Engineering Departments for uploading to an offsite backup. He gave a layout of the Engineering Department which had four sections – the computer room, technical department, electrical department and information technology. He said that he supervised five persons in the Computer Room.
44. Mr. Pryce said that the Computer Room was the hub of the operations and the staff worked on varying rotating shifts between 6:00am and 11:00pm. He said that as the Chief Union Delegate, he had frequent interactions with the Managing Director/CEO and he gave a





history of what he described as the 2006 job classification, the issues with which the Union had a contention and the proposal made to settle the matter.

45. He said that at the beginning of August 2016, Mr. Dalling emailed him a proposal and he responded on August 4, 2016, with a counter proposal. He said Mr. Dalling had promised a response by 5<sup>th</sup> August, but it was not received so he attempted to contact Mr Dalling on 6<sup>th</sup> August. At about 2:00pm, he discovered that Mr. Dalling was in the Directors' Box with other dignitaries including Minister Audley Shaw, who was there to present the Prime Minister's Trophy for the special Independence Day racing. Mr. Pryce said he asked Mr. Dalling about the response and he indicated that he would discuss it with the Chairman, who was ill at the time, and would meet with him, Mr. Pryce, on August 11, 2016.
46. At about 1:45pm on Thursday August 11, 2016, Mr. Dalling advised him that the meeting would be held at 2:00pm. Mr. Pryce said that he informed Mr. Dalling that the notice was short and that it was not a good day for the meeting, as only a skeleton staff was in place for various reasons. He said that Mr. Dalling told him that the meeting would still be held. Mr. Pryce said he called some of the workers who lived close to the track including Mark Shepherd and Phillip Coubrie to attend the meeting. He said that the meeting that took place consisted of five workers from the Engineering Department as well as three members of management.
47. Mr. Pryce said that Mr. Dalling apologized for Mr. Walker who was ill and outlined three items for discussion; the issue regarding the pay, signing the Attendance Register and training. In respect of training, Mr. Pryce testified that Mr. Dalling said the management of CTL was in discussion with SVL and agreed to have a visiting representative from overseas who was already in the island, to carry out the training beginning 9:00am on August 12, 2016.
48. Mr. Pryce said this was the first time he was hearing about someone from overseas to do training and as the Chief Union Delegate and Supervisor of the Department, he queried what the training was about. He said Mr. Dalling told him that based on discussions between SVL and CTL, a representative of United Tote was invited to conduct the training. Mr. Pryce said in a previous staff meeting they were told **about persons been (sic) given educational training at institutions such as HEART Trust to better prepare some of**



**the staff for life after CTL which was set to undergo a divestment shortly.** He said that he asked Mr. Dalling a number of questions including whether there was a set date for the divestment to take place but Mr. Dalling's response was that it was a management decision that was already made and the training would take place.

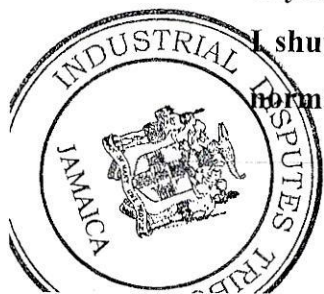
49. Mr. Pryce said that during the discussions the management team left the room briefly. Upon their return it was stated that the training would take place and the meeting terminated. Mr. Pryce said **I clearly saw it from the outset as an attempt to dislodge (sic) the workers.**

50. Mr. Pryce said that Mr. Dalling returned to the Engineering Department at about 4:30 pm and the group was joined by other persons on both sides. He said he raised concerns to include the reason a representative from United Tote would be doing the training when he, Mr. Pryce, was the person who trained everyone that came into the Department. He said that Mr. Dalling again evaded the questions with responses that they were decisions of management.

51. Mr. Pryce said that contrary to Mr. Dalling's assertion that the workers had taken strike action, he advised that **in the interest of what was happening the work was slowed but we were not on strike.** He said that Mr. Dalling asked, **'would the persons who were on duty go back so the work that was slowed up because they were involved in the meeting' and I said to him I wasn't adverse doing that but the matters were still not clarified for us.**

Mr. Pryce said that he told Mr. Dalling that the Union Officer, Mr. Litchmore, was on his way to have discussions with Management, but Mr. Dalling became upset and retorted that **if we don't go back to work we would pay.** He described the meeting as **not being a real cordial meeting.** Mr. Pryce said that Mr. Litchmore arrived and that within about half an hour of talking to the workers, the security team advised them that Mr. Dalling gave instructions for the workers to leave the compound.

52. Mr. Pryce testified that **...we could not leave the Tote System up and running lest anything happen to that Tote System. I went in there, I deactivated the Terminals and I shut the Tote System off.** He detailed the closing down operations and said that **it normally takes you an hour to an hour and 20 minutes to get all the reports out of the**

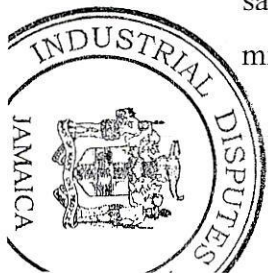


**way, the backup done, the different steps at the end of the day, clean up and then the System is shut down.** He said those things have to be done in order to guarantee the safety of the information on the System but admitted that he had not taken the necessary steps and that he had shut down the system within a minute. He said the Security then escorted them from the room and off the compound.

53. It is Mr. Pryce's evidence that operations at CTL were disrupted because while the meeting was in progress, simulcast races were taking place and information on the results of the races, the calculation of dividends, etc., were not being communicated. He said that following the meeting, some members of the computer room staff returned to answer the telephones and to reassure the operators of the Off-Track stations that discussions were being held with management so that **we can get back to normal operations later this evening or at the earliest point in the morning.**

54. Mr. Pryce said that on Friday August 12, 2016, Ms. Sashauna Walker called and informed him that she was at CTL but unable to enter the work area. He said he hurriedly left home and upon arrival at CTL he saw a number of police and private security personnel at the entrance to the Club Stand. He described his journey to the entrance of the Engineering Department and the route he used to enter the Computer Room due to added security measures. He said members of the Engineering Department were on the compound that morning (12<sup>th</sup> August) with the intention to work but that they were locked out. He was advised that Mr. Dalling gave instructions that no one should be allowed in the computer room but he, Mr. Pryce, was only allowed to enter the room to retrieve his spectacles.

55. He stated that on that same morning, the Union attended a meeting chaired by Mr. Walker who enquired what issue led to the events of Thursday 11<sup>th</sup> August. Mr. Pryce said he told Mr. Walker that it was the training that was scheduled to take place that morning and he further said **we saw it clearly as an attempt to replace the workers at the Engineering Department.** He said that during the meeting, accusations were levelled at the Engineering Department about a missing file in the Computer Room. He said that Mr. Walker threatened to dismiss all nineteen members of the Department if the file was not located. Mr. Pryce said the accusation was denied and he told the meeting that he knew nothing about any missing file and that he was part of the group that was there the previous evening. He stated



that the workers enquired what was missing and sought ...**permission to go back to the Computer Room to check to see what was happening, when we reached the Computer Room the system was up and running as normal.**

56. Mr. Pryce said that arising from the meeting, there was an agreement that **CTL would call the Cybercrimes Unit to investigate and while the investigation was going on the Department would be sterile, none of us from the Engineering Department would be allowed in but we would be allowed to come into the Company and carry on other duties in other Departments until the investigation was done.** He said the meeting ended after 3:00pm but the workers were not allowed inside the workstation.

57. A letter dated August 13, 2016, from UTASP, addressed to the Company was also tendered into evidence [Exhibit 20]

**This is to advise the Management that arising out of the meeting on Friday 12<sup>th</sup> August 2016, between the Union of Technical Administrative and Supervisory Personnel and Chairman Mr. Danville Walker, the issues were discussed leading to an agreement. The Engineering Staff has been made aware. Their strike action has ended and they have returned to work. However, due to instructions from you they will report to work on Monday and await instructions from their Head of Department.**

Sincerely

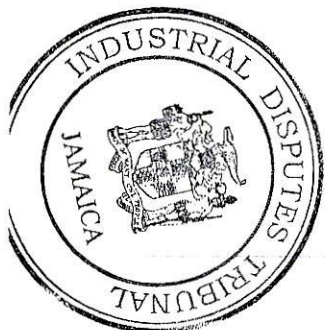
**Howard Litchmore  
Negotiating Officer**

58. Mr. Pryce said the strike action being referred to by Mr. Litchmore was on the afternoon of Thursday August 11, 2016 and testified that ... **there were persons who withheld their services that afternoon, I am not denying that.** The following is an exchange during his examination-in chief:

**Q Just so I am clear; there was strike action on the Thursday the 11<sup>th</sup>?**

**A Yes, the Thursday, the 11<sup>th</sup>...**

**Q Friday morning now, you gone back to work, you are locked out, so there was no strike action on your part on the Friday?**



A No

59. Mr. Pryce said that members of the Engineering Department reported to work on Monday August 15, 2023 and attended a general staff meeting after which they were allowed to sign the register and return home. He said that Mr. Dalling made it clear to other staff members that the Engineering Department should be considered **radioactive** and painted a picture that they were **villains**. When they reported for work on Tuesday August 16, 2023, they were handed letters for them to go on administrative leave to facilitate the investigation.
60. He said that the Union subsequently reported the matter to the Ministry of Labour and Social Security. Mr. Pryce said that on August 22, 2016, sixteen members of the Engineering Department were issued termination letters by CTL. He described the effect of the termination on his health and his economic circumstances and indicated that he is seeking to be reinstated.
61. Ms. Sashauna Walker was a Computer Operator employed to CTL for just over nine years. She worked on shift and her duties depended on which shift she was on. When she was on the morning shift, her duties included starting the Totalisator system. On the afternoon shift, she would give support to the operator on the morning shift and she would shut down the tote system.
62. Ms. Walker testified that it was her scheduled day off on Thursday August 11, 2016. She said that on her return to work on August 12, 2016, she described what took place when she entered the computer room. Four persons were in the room and she was told not to touch anything. She testified that Mr. Beard was working on the Master Computer, but he seemed to be having challenges. She was therefore asked to assist him.
63. In trying to assist, she said Mr. Beard explained that **he wanted to bring the system up** and that he was looking for the 'Global Folder' which would contain data for August 11, 2016. He asked if the "Dump" was done, the terminology used for the end of day process. Ms. Walker said she advised him that she was not at work the previous day but based on what she was seeing no Dump was done. She said that they were unable to find the Folder. This was followed by a huddle by management representatives after which all staff members from the Computer Room, Switch Room and Workshop were instructed to leave the building.



64. Ms. Walker explained the End of Day process and indicated that the evening shift Computer Operator would carry out a multi-tiered process to close down the operation. She outlined the process as follows:

- After the last race, whether local or simulcast, it would be established that all the terminal operators had completed their operations, that is they had finished paying bets, balancing their tickets for the day's transactions and switched off their terminals.
- Having ascertained that all terminals are off, the Computer Operator does a mass termination of all terminals, runs and distributes the final Commission Reports for all the day's races to the Betting, Gaming and Lotteries Commission (BGLC) Inspectors and Pari-Mutuel. The accuracy of the Reports would be verified and after the 'all clear' the shutting down process begins.
- This involves shutting down and restarting the computer to do the 'Settlement'; a process that establishes the payouts, identifies unpaid tickets and calculates the commissions for OTB Operators. She explained that before the system is closed down, the Computer Operator must indicate that the End of Day procedure was completed.
- Having completed that process, the system generates a folder with the date on both the Master as well as the Slave terminal which denotes the data that was just completed. The data folder contains the 'Run and Global' among other drivers and folders. If the Dump is not carried out, the data folder will become corrupted and all the information will be lost for the particular day. A winning ticket presented any time after the close of the race day could not be encashed as the data would not be available.

65. Ms. Walker said that a regular Windows shutdown would not affect the system and the information would still be available and there would be no negative implications. While the End of Day process is normally done at night, there are occasions when it is done in the morning. She said that the evening Operator would normally leave a note for the person assuming duties the following day to indicate that the Dump needs to be done before operations begin.



66. Ms. Walker corroborated the events leading to the letters of dismissal being issued. She said that she would wish to be reinstated but she does believe it would not happen and she was therefore seeking adequate compensation for the time lost.

67. The Union contended that:

- a. The summary dismissal of the sixteen workers, none of whom were the subject of any disciplinary action and without providing justification for the termination, must be construed as unjust, unfair and unreasonable; and
- b. The workers were never charged for any violation of the Company's rules nor has the Union been advised of any breaches by the employees. The decision of dismissal/termination demands a procedure. There was no due process involving a hearing prior to dismissal, which represents a violation of the principles of procedural fairness and the rules of natural justice.

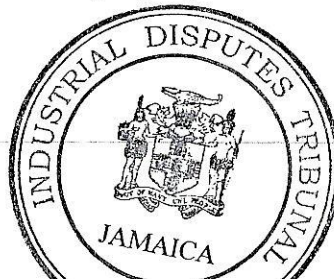
#### **ANALYSIS BY THE TRIBUNAL**

68. Having heard the evidence, the Tribunal must ask the following questions:

- a. What were the circumstances giving rise to the unrest among the staff of the Engineering Department at CTL?
- b. Was industrial action taken by the workers of the Engineering Department at Caymanas Track Limited on August 11 and 12, 2016?
- c. Was anyone culpable for the missing file and what impact did the absence of the file have on the operations of CTL?
- d. Was the Company justified in terminating the services of the sixteen workers?

#### **A. CIRCUMSTANCES GIVING RISE TO THE UNREST**

69. The workers in the Engineering Department had an issue with the salary adjustments that were approved by the Ministry of Finance and the Public Service. However, the evidence is that following a series of discussions, a proposal was made by the management to resolve the matter.



70. Mr. Dalling testified that the proposals were accepted. He said that **there was agreement among the employees of the Engineering Department and Human Resources to carry out the necessary action to effect same**. However, he also stated that Mr. Pryce emailed him on August 4, 2016, **outlining certain issues he had with the proposal** and made a number of counter proposals which primarily involved incremental adjustments to compensate incumbents for their seniority. Mr. Pryce subsequently gave the management an ultimatum to respond.

71. What followed was a meeting between the workers and CTL on August 11, 2016, to discuss this matter, but management broadened the agenda to include a pre-arranged training programme set to begin the following day. The workers became incensed over the announcement of the training programme to the extent that discussions regarding the salary adjustment appeared to have been abandoned.

72. According to Mr. Pryce, among his responsibilities was the training of persons who came to work in the Computer Room and it is clear from his evidence that he felt threatened by the decision of Management to have this training programme conducted by an external agent. In fact, he said that **we saw it clearly as an attempt to replace the workers at the Engineering Department**. He also said that the workers were aggrieved that management had **engaged external persons to train outside staff** without discussion with the Union. Mr. Pryce, in his evidence said that he sought to obtain responses to certain questions from Mr. Dalling but that the answers were not forthcoming:

**What was the training about? Who were the persons to be trained? Were there members from our Department that would be trained? Were there outsiders, because we were uncertain of the new workers because we have not had any employees in our Department so we were unsure of the new workers aspect of it.**

73. However, under cross examination, Mr. Pryce admitted that Mr. Dalling informed the workers that the persons to be trained were members of staff, managers and personnel from Supreme Ventures Limited. In fact, the Union's Brief reiterates this information (Para 11). They were all aware that SVL was to take over the divested CTL.



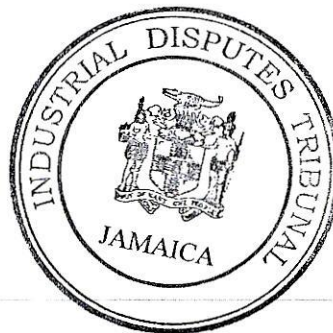


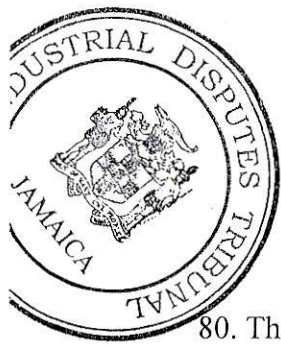
74. Despite the meetings between the Management and the Union on August 11, 2016, the workers in the Engineering Department resorted to industrial action and refused to resume duties in spite of pleas from Management. They insisted that the training must be brought to a halt, but, it is difficult to imagine that the strike action by the workers was triggered by a training programme being instituted by Management. It appears that the situation was more complex.
75. Clearly, tensions existed between the Management and the workers in the Engineering Department and that may have started with the salary adjustments. It is also noteworthy that these activities were confined to the unionised workers within the Engineering Department and despite their strike action, there is no evidence that they were supported by the broader unionised workforce in the Company. It is also of some note, that most of the workers who testified said they were either on vacation leave or day off when the industrial action began. The testimonies that they were on leave/day off could not be substantiated as the evidence is that the Engineering Department staff, who are required to sign an Attendance Register, decline to do so for the most part. However, Mr. Dalling, under cross examination, said that the names of the 16 workers were checked and they were all at work and that others who were not dismissed and were not at work received redundancy payments in March 2017.
76. It is quite unusual and unconventional that a section of a bargaining unit could resort to industrial action without gaining the sympathy and solidarity of the other unionised workers within the same bargaining unit. It is all the more interesting that this group of workers was being led by the Chief Delegate of the Union who indicated that the Engineering Department was the hub of the operations. It is therefore apparent that these key employees used their power and influence to hold as hostage, the entire operations at CTL.



**B. WAS INDUSTRIAL ACTION TAKEN BY THE WORKERS OF THE  
ENGINEERING DEPARTMENT AT CAYMANAS TRACK LIMITED  
ON AUGUST 11 AND 12, 2016.**

77. During their evidence, Mr. Pryce and other witnesses for the Union either stated or alluded that they knew of no industrial action being undertaken by workers in the Engineering Department on August 11 -12, 2016. For example, during cross examination, Ms. S. Walker said that she was not aware of the Engineering Department being on strike. But she said she heard that Management said that they were on strike. The Chief Delegate, Mr. Pryce, during cross examination, said that only he and another employee, Mr. Gregory Hamilton, had taken strike action.
78. The Company contends that the workers in the Engineering Department withdrew their services after a meeting with Mr. Dalling on August 11, 2016. A second meeting was convened that afternoon where the workers were asked to go back to work, but they did not comply. The Company stated that the Chief Delegate, Mr. Pryce and other workers were seen later that evening on the television news, stating that the workers were on strike. The Company said that because of the strike action which began on August 11, 2016 and the missing file, races had to be abandoned on Saturday, August 13, 2016, costing it approximately Thirty Million Dollars (\$30M) loss in revenue.
79. The evidence presented, including the letter from Union Officer, Mr. Howard Litchmore, (Exhibit 20), which stated that "*the strike action has ended*" leaves the Tribunal to conclude that there was industrial action by the workers of the Engineering Department. It cannot be overstated that the workers in the Engineering Department constituted only a fraction of the Bargaining Unit at CTL.





### C. CULPABILITY FOR MISSING FILE AND IMPACT ON CTL OPERATIONS

80. The day after the strike action commenced by members of the Engineering Department, the training programme was scheduled to start. Mr. Beard, in his witness statement, said that on arriving at CTL, he was advised that the Track's Tote Operators had walked off the job. He said that Mr. Dalling needed him to get the tote system up, both to start the daily operations and to commence the training. He said the system failed to start and he discovered that a critical master file containing historical data for previous races was missing, which prevented the application from starting. Despite Mr. Beard's expertise and consultations with his office in the USA, he had difficulty resolving the problem. He outlined that after logging on to the system, he did not observe any anomalies other than the missing data/file to the tote server and the server appeared to be in good working condition.
81. Mr. Wright, the witness from the Cybercrimes Unit, in his evidence, said that his investigations revealed that someone tried to hide the file from the system itself by changing the file date from August 11, 2016 to November 11, 2014. He said further that based on the naming convention, the file folder 11-11-14 should have been created on November 11, 2014. However, when analyzed, the time stamp revealed that the information was not created on November 11, 2014 but was actually done on August 11, 2016. This seems to demonstrate why Mr. Beard was unable to resolve the problem. Mr. Wright stated that without this information, the system would be rendered crippled and would not be working properly.
82. Mr. Dalling, during cross examination, said that the Cybercrime Unit confirmed that the file was carefully hidden in the underbelly of the system and that the system by itself could not have done that. He said that it took human intervention to put and name the file in the way it was done and only the staff of the Engineering Unit knows how to operate the system.
83. Mr. Walker, in his testimony said that Mr. Beard advised him that the missing file from the Totalisator **was calculated and deliberate on the part of the employees of the**

Engineering Department resulting in severe economic loss to the Company. Mr. Walker re-emphasized the point during cross examination:

Q And consequent on that, Mr. Walker, the decision was taken to separate these persons from CTL, do you agree?

A Yes, that's correct.

Q Thank you. Because you deemed what was done, in relation to the file, an act of sabotage, is that right?

A Yes, I came to the conclusion in my judgement that this was not accidental, it was a deliberate act, I still have that view.

84. But he was even more direct during further cross examination:

Q You said earlier in your evidence, Mr. Walker, that you met with Mr. Pryce separately and you were asked "what came out of that", you said it was rejected and rebut, what we are talking about?

A I was asked if I met with him separately and I said yes, we met and I told him what was happening, and I asked him to go fix the situation in terms of putting back the file and to get the workers back to work. That's what I recall.

Q Were you supposing that he knew what happened to the file?

A He is the leader, he is a leader, and I felt they were following him and that he knew why the file was moved or how it was moved and that – Yes, I felt that way, or I wouldn't be speaking to him. I didn't think he was just in the dark like the rest of us.

85. Mr. Pryce admitted in evidence that he was the last person to interface with the system on August 11, 2016. After the instructions from Mr. Dalling for the workers to leave the Computer Room, Mr. Pryce said ...**we could not leave the Tote System up and running lest anything happen to that Tote System. I went in there, I deactivated the Terminals and I shut the Tote System off.** He admitted that he did not go through the normal routine in shutting down the system.

86. Despite the Police investigations that the problem was created by an individual(s), it did not assign culpability to anyone. Mr. Pryce was the most experienced person who knew



how to operate this old tote system at CTL. He was in charge of training new persons to the Computer Room. Mr. Walker alluded to the fact that only one person could get the system up and running when it broke down. Mr. Pryce received training at the United Tote Head Office in the USA and he seemed to be the only person who was so familiar with the tote system that he could detect the problems to restart it when it broke down.

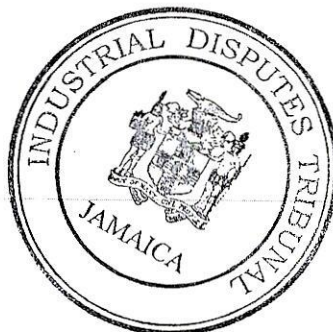
87. Did anyone in particular have a motive to disable the system? Mr. Pryce did. His evidence indicated that he was quite upset when he learnt that an external person was engaged to carry out the training exercise and felt that his position was threatened. He admitted in evidence that he was the last person to interact with the system on the evening of August 11, 2016. As the Chief Delegate, he no doubt influenced the other workers to take strike action over a matter that seems so easy to resolve. But he had a larger motive to disable the system and the evidence suggests that he was responsible for the missing file.
88. There is no doubt that the disruptions caused by the withdrawal of the services of the Engineering Department staff and the subsequent missing file had a severe effect on the operations of CTL. It not only resulted in inconvenience but caused serious revenue loss to the Company. Among the impact of the missing file is that punters would not be able to encash outstanding bets. Additionally, off-track betting stations could not be invoiced for outstanding payments and data from the previous day's activities were needed to commence current operations.
89. Mr. Walker, in his evidence, outlined that the uncertainty and the associated risks, both from the unavailability of the Engineering Department workers and the inability to have the system operational, resulted in the decision by the Board to cancel the Race Day for Saturday, August 13, 2016. He stated that there were a number of critical activities in preparation for a race day which involved industry stakeholders, media houses and off-track betting sites and the cancellation of races not only posed challenges to these stakeholders but had financial implications. In fact, he said that the loss of revenue for the day from this activity was in excess of J\$30M to the Company.
90. The unrest of the workers and the consequences of the missing file were critical to the operations of CTL and resulted not only in inconveniences to the industry players but economic losses to the Company.



**D. WAS THE DECISION BY THE COMPANY TO DISMISS THE WORKERS JUSTIFIED?**

91. Mr. Dalling, in his evidence, said that the realization by the Company that a critical document required to start the tote system was missing and that on the advice of both the representatives of United Tote and the Cybercrime Investigation Unit of the JCF, the management lost confidence in the workers going forward. The services of sixteen members of staff of the Engineering Department were therefore terminated on August 22, 2016, as provided for in their contracts of employment and paid in accordance with the Employment (Termination and Redundancy Payments) Act. The Union contends that they were unjustifiably dismissed and that natural justice was not accorded to them. During cross examination, Mr. Dalling explained that his understanding of the concept of natural justice was **that if there are allegations against persons they may be made aware of it, hear it, and where they are aware of such allegations that they are to respond to such allegations.**
92. The view that a person's job is no longer a purely contractual right terminable by the appropriate contractual notice has been sanctioned by the Court of Appeal. This is the view of Rattray P in the case of Village Resorts Limited v Industrial Disputes Tribunal (1988) 35 JLR. Rattray explained:-

**“The law of employment provides clear evidence of a developing movement in this field from contract to status. For the majority of us in the Caribbean, the inheritors of a slave society, the movements have been cyclical, - first from the status of slaves to the strictness of contract, and now to an accommodating coalescence of both status and contract, in which the contract is still very relevant though the rigidity of its enforcement has been ameliorated. To achieve this Parliament has legislated a distinct environment including the creation of a specialized forum, not for the trial of actions but for the settlement of disputes”**



It is the considered opinion of the Tribunal that the termination clause in the workers' contracts of employment was not enough to set aside the provisions created to settle disputes. The Tribunal will therefore seek to settle this dispute according to the principles set out in the Labour Relations and Industrial Disputes Act.

93. The Labour Relations and Industrial Disputes Act makes provision for the Labour Relations Code and Section 3(4) of the Act specifies that:

**A failure on the part of any person to observe any provision of a labour relations code which is for the time being in operation shall not of itself render him liable to any proceedings; but in any proceedings before the Tribunal or a Board any provision of such code which appears to the Tribunal or Board to be relevant to any question arising in the proceedings shall be taken into account by the Tribunal or Board in determining that question.**

In light of that provision and the reason and manner given for the dismissal of the workers, the Tribunal must determine whether due process was followed as provided for in Paragraph 22 of the Code.

94. Mr. Dalling said events leading up to the termination, including the staff walking off the job and despite management's insistence on them returning and meetings held with the Union head and the delegates of the Union to have the workers resume duties, these all proved futile. He provided the following exchange during cross examination:

**Q What would you say is the main reason for the termination of the 16 members of the Engineering Department?**

**A Mr. Chairman, the Company had lost confidence in the workers, and the Management therefore exercised the provisions as outlined in the terms of the contract of Employment of the workers.**

95. Mr. Dalling further testified under cross examination that the information from United Tote and Cybercrime Unit were serious allegations and that it amounted to gross misconduct. He said a meeting was convened with the workers led by Union Officer, Mr. Litchmore, and Mr. Walker, and they discussed the reports from United Tote and the Police. He said that Mr. Pryce stated that the file was not missing and offered to assist United Tote to locate it. He, however, returned and said that the file was missing. Mr. Dalling said that based on the seriousness of the report of gross misconduct, he had further discussions with Mr. St

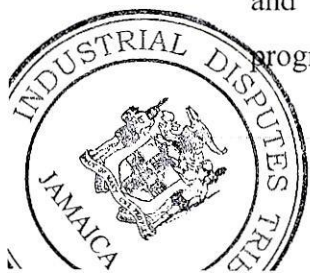


Patrice Ennis, head of the Union, and the workers and advised them of the Management's decision. He said Mr. Ennis sought a break to meet the affected workers and upon his return he advised the Company to proceed with its decision. Consequently, the letters of dismissal were issued.

96. However, there was no evidence that the decision to dismiss the workers was arrived at following observance of the procedure under the Code where the workers would have been charged with breaches of their contract, that a formal hearing was established where they got the opportunity to defend themselves before the decision to dismiss was taken. During cross examination, Mr. Walker said that he was not aware that charges were levelled against the workers with a view to a disciplinary hearing. He said once the investigation was completed, he would have been prepared to address the employees being given an opportunity to be heard but the investigations had not been concluded even up to the time of the divestment of the Company in March 2017. He said a preliminary report from the Police and Mr. Beard informed the view that there was sabotage and he was not sure if that information was put to the employees as that was a function of Management. However, he said that Management recommended the termination of the workers to the Board and it was accepted despite the Board not carrying out an independent investigation.
97. CTL has, therefore, not followed due process in dismissing the workers nor were they afforded natural justice. Paragraph 22 of the Labour Code outlines the process that should be adopted in respect of Disciplinary Procedure. The Company failed to follow that procedure. Natural justice also requires that people must be allowed an opportunity to present their case where their interests and rights may be affected by a decision maker. It also requires that administrative decisions must be based on logical proof or evidence. These ingredients were missing prior to the decision to dismiss the workers.

## **FINDINGS**

98. We find that the workers were engaged in a wild cat strike resulting in disruptions to the racing industry and economic losses to the Company over what appeared to be a practical and relevant training programme. We believe that the introduction of the training programme was the prerogative of Management and that they had a right to introduce it.





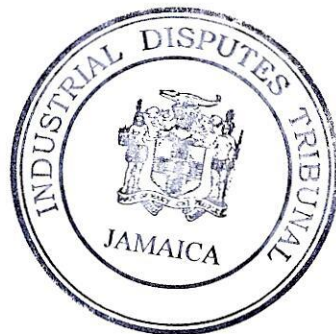
The workers were, therefore, not innocent bystanders. We also find that Mr. Pryce played a major role in creating the unrest at CTL which led to the dismissal of the workers. He apparently had so much to lose and therefore seemed to skillfully orchestrate the support of the workers in the Engineering Department for the subsequent unrest at CTL. The workers were, therefore, party to their own dismissal.


99. Considering all the circumstances, we find that the dismissal of the workers by CTL was unjustifiable. However, the racing operations of CTL were divested in 2017 and as a consequence none of the workers can be reinstated.


**AWARD**

The Tribunal awards that each of the sixteen dismissed worker be paid five months basic pay to be calculated at the rates paid to each person at the date of the termination of their employment in August 2016.

**DATED THIS 2nd DAY OF NOVEMBER 2023.**




  
.....  
Mr. Errol Miller, JP  
Chairman

  
.....  
Mr. Leslie Hall, JP  
Member

  
.....  
Mrs. Chelsie Shellie Vernon  
Member

Witness:

  
.....  
Nicola Smith Marriott (Mrs.)  
Secretary to the Division

**NAMES OF ENGINEERING STAFF – CAYMANAS TRACK LIMITED****APPENDIX "A"**

<b><u>NAMES</u></b>	<b><u>JOB TITLE</u></b>	<b><u>YEARS OF SERVICE</u></b>
Mr. Leighton Pryce	Sup. Computer Operator	18
Mrs. Marie Williams- Frith	Computer Operator	18
Mr. Kevin Wallace	Technician	12
Mr. Leroy Fagan	Sup. Electrician	18
Mr. Gregory Hamilton	Computer Operator	6
Ms. Florence Samuels	Executive Secretary	25
Mr. Craig McLaughlin	Computer Operator	19
Mr. Jamar McFarlane	Technician	3
Mr. Mark Shepherd	Sup. Technician	24
Mr. Phillip Coubrie	Technician	12
Mr. Balewa Briscoe	Technician	15
Ms. Sashauna Walker	Computer Operator	9
Mr. Charlton Cooper	Technician	15
Mr. Ryan White	Electrician	13
Mr. Kevin Simpson	Technician	9
Mr. Ricardo Harrison	Technician	18

