

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 13/2014

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SETTLEMENT OF DISPUTE

BETWEEN

CEMEX JAMAICA LIMITED

AND

MR. LOREL SAPPLETON

AND THE

***AWARD***

I.D.T. DIVISION

MR. CHARLES JONES, CD, JP	-	CHAIRMAN
MR. TREVOR GRAHAM, JP	-	MEMBER
MR. CLINTON LEWIS	-	MEMBER

JANUARY 29, 2015

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

***IN RESPECT OF***

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**CEMEX JAMAICA LIMITED  
(THE COMPANY)**

**AND**

**MR. LOREL SAPPLETON  
(THE AGGRIEVED)**

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**REFERENCE:**

By letter dated March 4, 2014, the Honourable Minister of Labour and Social Security in accordance with Section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

*“To determine and settle the dispute between Cemex Jamaica Limited on the one hand, and Mr. Lorel Sappleton on the other hand over the termination of his employment on the grounds of redundancy.”*

**DIVISION:**

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

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

**REPRESENTATIVES OF THE PARTIES:**

The **Company** was represented by:

- Ms. Gavin Goffe - Attorney-at-law
- Mrs. Jermaine Case - Attorney-at-law
- Mrs. Heather Walcott - Human Resource Manager
- Mr. Raphael Villalona - General Manager

The **Aggrieved** was represented by:

- Mr. Howard Duncan - Industrial Relations Consultant

**In attendance:**

- Mr. Lorel Sappleton - Aggrieved worker

**SUBMISSIONS AND SITTINGS:**

Briefs were submitted by both parties who made oral submissions during six (6) sittings held between May 27, 2014 and November 12, 2014.

**BACKGROUND TO DISPUTE**

CEMEX Jamaica Limited (CEMEX) (the Company) was incorporated in 1998. The Company has been engaged mainly in the production and sale of quicklime to the alumina industry, and the production and commercialization of aggregates and concrete. Both lime plants are located in the central parish of Clarendon, inside the Jamalco refinery in Halse Hall.

Mr Lorel Sappleton was employed to CEMEX as Raw Materials Co-ordinator and was dismissed by reason of redundancy with effect from July 18, 2013. The matter was reported to the Ministry of Labour and Social Security but the conciliatory efforts at the Ministry failed to achieve a settlement. Consequently, the Honourable Minister of Labour and Social Security referred the dispute to the Industrial Dispute Tribunal for settlement in accordance with Section 11(A)(a)(i) of the Labour Relations and Industrial Disputes Act of 1975.

### **COMPANY'S CASE**

The Company's Attorney stated that the dispute as framed is an abuse of the process of the Tribunal. He further stated that the letter terminating Mr Sappleton's employment, which was signed by Mr Sappleton, had a release clause and at that point there was no dispute except whether there was a genuine redundancy.

The Company's position was that this was a case of genuine redundancy which involved three (3) employees and that appropriate consultation had taken place. It was stated that the Company held quarterly staff meetings where information concerning all aspects of the Company's operations and the financial status was shared with the staff.

One such meeting was held on April 15, 2013 during which it was brought to the staff's attention that the Company had been operating at a loss for a number of years and a decision had been made to review the operational efficiency which could result in a cost-cutting exercise.

The Company then engaged the services of specialists from their overseas plants to examine the local operations. While there were cost savings the required level was not achieved, so the decision was taken to determine what job functions could be amalgamated. Subsequently three (3) positions were made redundant, one of which was Mr Sappleton's post of Raw Materials Co-ordinator, and the job functions were overtaken by the Supervisor, Environmental Health and Safety. The post of Raw Materials Co-ordinator was abolished and no longer reflected on the Company's organisational chart.

It was stated that because of safety and security concerns due to the nature of CEMEX's operations Mr Sappleton was not notified of the decision to terminate his employment before

July 18, 2013, and the Attorney stated that “he [Mr Sappleton] received the full amount owed to him by law consequent on his dismissal.”

### **CASE OF THE AGGRIEVED WORKER**

The Industrial Relations Consultant representing Mr Sappleton contended that Mr Sappleton was not adequately advised prior to the redundancy exercise, and that the Company had breached several sections of the Labour Relations Code, in particular Sections 2, 5, 6(2), 11, 19 and 22. In addition there had been no consultation with regard to the Company’s intention to restructure its operations and that consequently he had challenged the termination within a reasonable time.

It was stated that the Company held quarterly staff meetings which Mr Sappleton did not always attend, and that he had never heard that the Company would have been engaged in cost-cutting.

The Consultant also stated that the duties performed by Mr Sappleton were assigned to another employee so no legal redundancy exists and that there were other positions to which Mr Sappleton could have been appointed, and that it was his view that he was being victimized and that none of the positions held by expatriates were made redundant. Mr Sappleton’s appeal was denied.

### **FINDINGS**

By letter dated July 18, 2013 Mr Sappleton’s employment was terminated by the Company with immediate effect, due to the fact that the post of Raw Materials Co-ordinator, which he held, was made redundant. The Tribunal noted the reason given by the Company as to why Mr Sappleton was not given notice of his dismissal.

The Tribunal agreed that the Company was in fact engaged in a redundancy exercise and that one of the positions made redundant was that of Raw Materials Co-ordinator held by Mr Sappleton.

The matter for determination therefore, was whether the normal industrial relations policies, which included consultation, were followed.

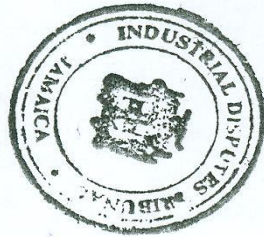
In this connection, the Tribunal noted that while the Company had taken steps to advise its employees of the necessity to reduce expenditure, no consultations was held with Mr Sappleton, nor had the Company advised him of the proposal to dismiss him on the grounds of redundancy.

Nonetheless the Tribunal accepted the Company's statement that due to the nature of the operations at CEMEX their action in this matter was guided by safety and security concerns. The Tribunal after careful deliberation agreed that in all the circumstances of this case, the dismissal of Mr Sappleton on grounds of redundancy was justifiable.

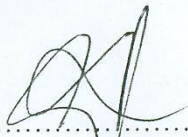
**AWARD**

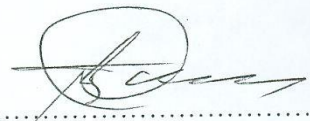
The Tribunal awards, therefore that the termination of Mr Lorel Sappleton's employment on the grounds of redundancy was justifiable.

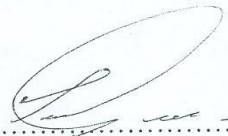
DATED THIS 29 DAY OF JANUARY, 2015

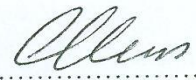


Witness:

  
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Gary Lediard  
Secretary to the Division

  
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Charles Jones, C.D, J.P  
Chairman

  
.....  
Trevor Graham JP.  
Member

  
.....  
Clinton Lewis  
Member