

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 45/2019

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SETTLEMENT OF DISPUTE

BETWEEN

CHAS E. RAMSON LIMITED

AND

MS. KEDEECH WALLACE

AND THE

*AWARD*

I.D.T. DIVISION

HON. MRS. JUSTICE MARJORIE COLE-SMITH - CHAIRMAN  
(Retd.)

MRS. JACQUELINE IRONS, J.P. - MEMBER

MRS. CHELSIE SHELLIE-VERNON - MEMBER

MARCH 5, 2021



**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**CHAS E. RAMSON LIMITED  
(THE COMPANY)**

**AND**

**MS. KEDEECH WALLACE  
(THE DISMISSED WORKER)**

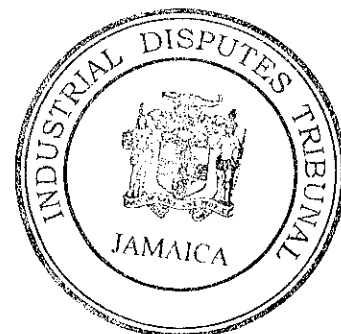
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**REFERENCE:**

By letter dated November 22, 2019 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 Chas E. Ramson Limited on the one hand, and Ms. Kedeech Wallace on the other hand, over the termination of her employment.”*



### **DIVISION:**

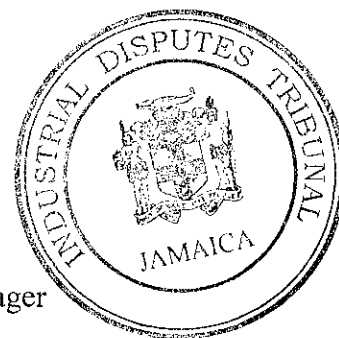
The Division of the Tribunal which was selected in accordance with Section 8(2) (c) of the Act and which dealt with the matter comprised:

Hon. Mrs. Justice Marjorie Cole-Smith (Retd.)	-	Chairman
Mrs. Jacqueline Irons, J.P.	-	Member, Section 8(2) (c) (ii)
Mrs. Chelsie Shellie-Vernon	-	Member, Section 8(2) (c) (iii)

### **REPRESENTATIVES OF THE PARTIES:**

The **Company** was represented by:

Mr. Phillip Bernard	-	Attorney-at-Law
Ms. Sean-Tay Williams	-	Attorney-at-Law
Mr. Kirk Hill	-	Human Resource Manager



The **Dismissed Worker** was represented by:

Mr. Howard Duncan	-	Industrial Relations Consultant
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#### **In attendance**

Ms. Kedeech Wallace	-	Dismissed Worker
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### **SUBMISSIONS AND SITTINGS:**

Briefs were submitted by both parties who made oral submissions during twelve (12) sittings held between March 2, 2020 and October 12, 2020.

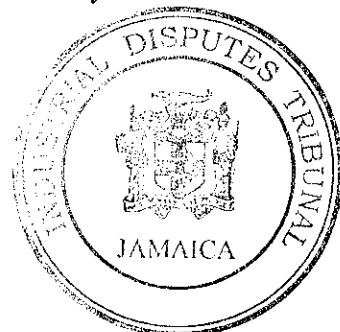
### **BACKGROUND TO DISPUTE:**

1. Chas E. Ramson Limited (hereafter referred to as "the Company") is a limited liability Company incorporated under the Laws of Jamaica with registered office located at 449 Spanish Town Road, Kingston. The Company is in the business of distribution and food manufacturing.
2. Ms. Kedeech Wallace, the Dismissed Worker was employed to the Company sometime in late 2010 as a Stenographer. On or about December 19, 2011, she worked as a Customer Service Representative and on February 1, 2013 she was promoted to the position of Cold Storage Clerk.
3. On November 1, 2016, Ms. Wallace received a letter from the Company terminating her employment on the grounds of poor job performance and lackadaisical attitude towards her job.

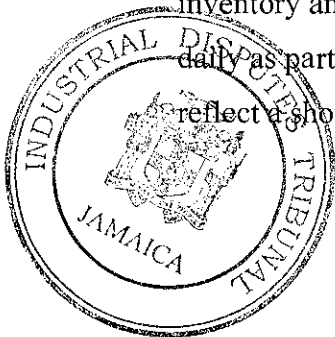
4. Ms. Wallace disputed her termination and consequently, the matter was referred to the Ministry of Labour and Social Security. No resolution was reached and hence the matter was referred to the Industrial Dispute Tribunal for determination and settlement.

**THE COMPANY'S CASE:**

5. The Company called two (2) witnesses in support of their case, Mr. Kirk Hill, Human Resource Manager and Mr. Christopher Ramson, Assistant General Manager. Mr. Kirk Hill's employment to the Company pre-dated the employment of Ms. Wallace hence, he could only speak to what was on record.
6. Ms. Wallace after being promoted to the position of Cold Storage Clerk reported to the Sales Manager and her duties required her to perform tasks including overseeing inventory in storage, maintaining and reconciling inventory level/records viz-a-viz inventory issued, superintending the filing of customer orders or returns and monitoring the temperature in the freezer units and warehouse.
7. During Ms. Wallace's tenure, several deficiencies in her performance were identified. The deficiencies were considered to be "high risk" considering their importance to the organization and customer generally.
8. Mr. Christopher Ramson, in evidence highlighted the risk the Company faced if products were not maintained at the correct temperature, these risk included both financial and also risks to customers, should they ingest tainted goods. The risks associated with tainted goods were pointed out continuously to Ms. Wallace. From time to time, he noticed that Ms. Wallace would have the freezer unit off when she was doing her daily check off and he inquired as to the reason and reminded her to always ensure that the unit remained on while she did her stock count.
9. This pattern continued and he (Mr. C. Ramson) had continuous discussions with her. He testified that he had a meeting with Ms. Wallace and Mr. Derrick Thompson, the Warehouse Manager to see if she was being intimidated because he realized that as a female she may have difficulty getting the truckers to cooperate but she told him she had no difficulty with the truckers cooperating.

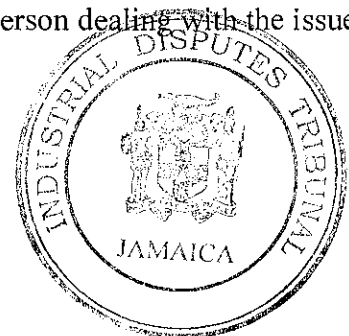


10. Despite several meetings and no improvement, Ms. Wallace was issued a written warning on November 8, 2013 for not having the freezer unit on. Mr. C. Ramson stated that the Company is a family business and as such only issue written warnings as a last resort. He said it was not the Company's culture of putting things in writing. Having issued her with the written warning, he started to check in with her a lot more and set short deadlines. The written warning was followed by an appraisal meeting giving her the opportunity to explain and consult with management about any challenges she may had. She raised as some of her challenges, the cold temperature, the fact that something would fall on her toes, she complained of lack of proper gears and that she had too much writing to do. The Company rectified the challenges by developing a computerized spreadsheet to record inventory, provided her with the requisite gears and a temperature gun to check the freezer unit in the trucks ensuring that they maintained the correct temperature when loading goods in the unit. Mr. C. Ramson, in Examination in Chief said that he tried as best as he could to provide her with the support she needed. He said that towards the latter part of her employment he moved Ms. Wallace and placed her right outside his office.
11. Daily checks were made with Ms. Wallace. It is Mr. C. Ramson's evidence that when the Cold Storage truck arrived at the warehouse he would show up to ensure that the freezer units were on, as well as other things. Mr. C. Ramson said that he trained Ms. Wallace and so she understood very well what her roles were.
12. Despite performance support given to Ms. Wallace it was discovered that on numerous occasions she was not using the temperature gun during the loading process and neglected to maintain adequate temperature in the freezer unit. She consistently failed to submit her inventory reconciliation report in a timely manner or any at all as required. Mr. C. Ramson said that he frequently met with Ms. Wallace to provide support and to discuss the continuing deficiency in her performance and gave her numerous opportunities to communicate any challenge she faced in performing her duties.
13. In or about May 2015, Mr. C. Ramson discovered that there were discrepancies with the yogurt inventory and immediately requested a reconciliation report which should have been maintained daily as part of Ms. Wallace's duties. This, however, was not produced until mid-June and did not reflect a shortage. At the end of July 2015 a physical inventory was conducted and it was



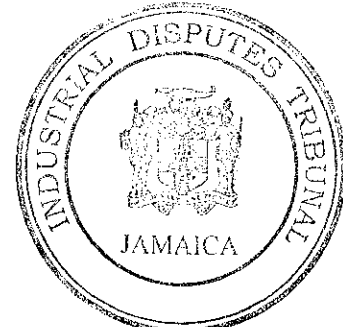
discovered that a significant amount of stock was missing. A meeting was held with the dismissed worker and there were discussions surrounding the discrepancies. The Company's internal investigation into the missing inventory revealed that the inventory for which Miss Wallace was responsible was being siphoned by employees. Part of the investigation was the administering of a polygraph test and Miss Wallace participated. She was, however, exonerated.

14. It is the Company's contention that, had Miss Wallace been maintaining proper records of the inventory, she would have been able to detect and communicate the discrepancies. The delay caused the illegal removal of goods without management knowledge for a prolonged period resulting in significant loss to the Company. Miss Wallace was verbally reprimanded for this incident and again reminded of the seriousness and importance of her work functions.
15. Ms. Wallace was again reprimanded in September 2016 by Mr. C. Ramson for her failure to ensure the freezer units were kept at the correct temperature and also her failure to update the inventory list on a monthly basis. After seeing no improvement in Miss Wallace's work, a meeting was again held with her on November 1, 2016 where she was issued a termination letter for her consistently poor performance and lackadaisical attitude towards her job.
16. The company contended that the failure of Miss Wallace to carry out her tasks as outlined in her contract of employment, on each occasion, jeopardized the quality of products, expose the Company to health risks, place the general public's safety at risk, caused additional financial burden on the Company and increased the risk of loss.
17. The consequences of Miss Wallace's inaction were so serious that each isolated instance of neglect would have empowered the Company to dismiss her. In the circumstances, the Company submitted that the dismissal of Miss Wallace was justified and maintained that the process followed in the dismissal of Ms. Wallace was fair and in keeping with natural justice.
18. The Company submits that all the Dismissed Worker would be entitled to, if anything is two (2) week's pay in lieu of notice and any outstanding vacation leave which was offered to her. It is Mr. C. Ramson's evidence that he did not respond to Mr. Duncan's letter of November 8, 2016 requesting an appeal of Ms. Wallace's dismissal as he was not the person dealing with the issue.



### **THE DISMISSED WORKER'S CASE:**

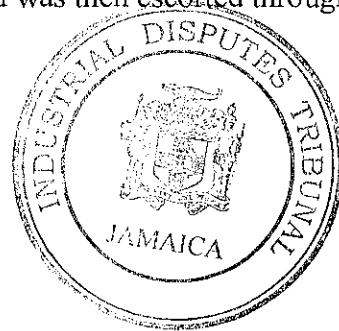
19. The Dismissed Worker's Representative, Mr. Howard Duncan called his sole witness, Miss Kedeech Wallace who testified that she was employed to Chas E. Ramson in 2010 as a Stenographer. She was promoted to Customer Service Representative on December 19, 2011 and then to Cold Storage Clerk in February 2013.
20. Her main duties as Cold Storage Clerk were to conduct manual inventory of the goods, check off contents in the cold storage truck, receive goods coming in the containers, receive cold storage items from the wharf and perform customer service duties. The span of her responsibility was for two (2) warehouses, one on Spanish Town Road, and the other Harbour Cold Storage in New Port West.
21. During her tenure, she was never accused of non-performance by anyone, neither was she monitored or given any help to improve her performance as she was aware of her duties as Cold Storage Clerk having assisted with those duties when she was a Customer Service Representative. She however, recalled getting a warning letter once, however, it was for something she did not do or was responsible to do. It is Miss Wallace's evidence that it was the Trucker's responsibility as well as Mr. Derrick Thompson, the Warehouse Manager responsibility to keep the unit on.
22. Miss Wallace testified that on November 8, 2013 she reported to work but was feeling ill. As a result, she requested time off from her supervisor, Mrs. Nickeisha Gordon-Brown to go home. Approval was granted by Mrs. Gordon-Brown who told her that she needed further approval from the Executive Secretary, Mrs. Yvonne Beckford which was granted. She received a call from the Warehouse Manager, Mr. Thompson, who advised her that the cold storage truck was at the Warehouse. She told him she was not feeling well and had gotten permission to leave. Mr. Thompson requested that she checked off the stock prior to leaving as they were short on staff. While she was in the truck, Mr. Christopher Ramson came up to the truck door and started to shout at her as to why the freezer unit in the truck was off. She responded that she was not aware that the unit was to be turned on while she was checking the stock. She told Mr. C. Ramson that she was ill and had gotten time off to go home, he responded that he did not care about her being ill, he cared about the goods in the truck. Later that day she was called to Mr. C. Ramson's office and on her arrival she was presented with a warning letter.



23. As Cold Storage Clerk, Miss Wallace said she was not familiar with the temperature at which the goods were to be kept as she was not trained in that area. The freezer units in the truck was always turned off when unloading as the truck would be open and she would check while this was in progress. It is her evidence that the pressure from the unit would be released so the goods would not be kept cold at that point.
24. Miss Wallace evidence was that she was not aware of any accusation of missing inventory and was never a part of any investigation or polygraph test relating to the issue. The issue of the missing inventory was never brought to her attention by the Company. She would sometimes stay after normal working hours to balance the inventory to ensure that what was recorded in the manual book matched what was in the system. The Warehouse Manager checked her balance at the end of each shift to ensure accuracy and there was never any occasion that her inventory did not balance.
25. Miss Wallace testified that on November 1, 2016 about 10:00 a.m. while at work and after completing her duties which entails checking off the cold storage truck and completing the inventory, she was asked by Samantha Scott, Coordinator to see Mr. C. Ramson in his office. On her arrival to his office, he asked if she had completed her tasks for the morning, and she responded that she had, and at that point he gave her a letter in an envelope and told her that her services were no longer needed. She went and picked up her bag and was then escorted through the gate by Mr. C. Ramson.

26. ***The Dismissed Worker's Contention:***

1. She was not provided with the right of representation
  2. She was not charged for any offence by the Company
  3. She was not provided with the right to face her accusers
  4. She was not provided with any evidence of any accusation
  5. The Company breached the Labour Relations Code and the Rules of Natural Justice
27. The Dismissed Worker's Representative asked that should the Tribunal find that Miss Wallace was unjustifiably terminated that she be reinstated in her job without any loss of pay from the date of termination to the date of the Award.





## **TRIBUNAL'S FINDING:**

28. After careful examination of the evidence adduced by both parties, the Tribunal is tasked with the responsibility of determining whether the Company was justified in the termination of the employment of Miss Wallace and was the termination in keeping with fair industrial relations practices.
29. The evidence presented showed that Miss Wallace was not forthcoming in her evidence as she outrightly denied seeing the document marked Consent for Administration of Polygraph Examination as well as doing a polygraph test. In cross examination, Miss Wallace when asked the following question had this to say:

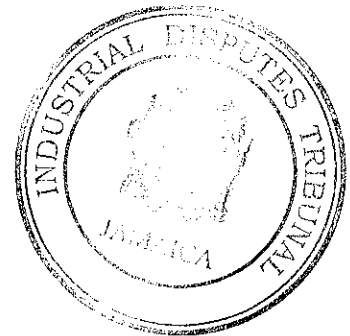
Q: Did you undergo a lie detector test in 2015?

A: No, I did not.

When asked by the Chairman:

Q: Are you saying you did not do a Polygraph Test?

A: I did not do a polygraph test



When further asked by Member Vernon the following question, she had this to say:

Q: ... have you ever signed any document at all agreeing to a polygraph test

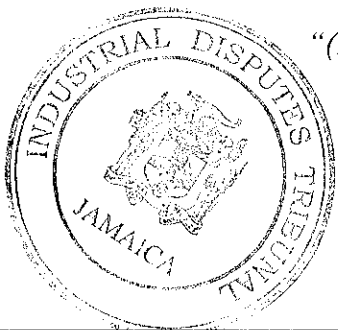
A: No, I have never.

30. Miss Wallace, however, after being crossed examined by the Company's Attorney admitted to doing the polygraph test. Her evidence is that the last time she was at the Tribunal she went home and spoke to a previous co-worker and was reminded that they did a polygraph test. Miss Wallace after being shown the Consent for Administration of Polygraph Examination document a second time finally admitted to recognizing the document. The Tribunal finds it very strange that Miss Wallace could not recall a process as intimidating as polygraph test.
31. The Tribunal has noted that even after receiving the warning letter dated November 8, 2013, Miss Wallace continued to leave the freezer units off. Miss Wallace when asked in cross examination by Miss Williams had this to say:
- Q: Miss Wallace, after you got the warning, it was clear to you that the freezer units were supposed to be on?
- A: No
- Q: And so you didn't ensure that they were on?

A: I was not responsible to keep the units on, that was not stipulated in my contract ...

32. The Tribunal finds it very interesting that eventhough Miss Wallace continued to flout the warning from 2013 - 2016, management did not take any subsequent disciplinary action against her continued failure to keep the units on, not until her termination.
33. It is Ms. Wallace's testimony that she did not secure employment after her dismissal and when asked specifically if she worked at BBG Management in December 2016, she denied same. She said that she applied for a position at BBG Management but did not get it as they required reference from Chas E. Ramson but they refused to give her. Several other entities were put to Ms. Wallace purported to be establishments that she worked and she denied same. However, the evidence clearly indicated that she was employed to four (4) entities since her dismissal and she is currently employed to Elephant Group Limited.
34. Notwithstanding the fact that she was not a credible witness, the Tribunal being a creature of statute must take into consideration the statutory requirements. The content of the dismissal letter clearly demonstrated that Miss Wallace was terminated for cause. There was no documentary evidence by the Company of any performance evaluation carried out on behalf of Miss Wallace.
35. In light of the above, the Tribunal must point out that under Section 3(4) of the Labour Relations and Industrial Disputes Act; it is obliged by statute to take this point into consideration, which states:
- "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 a 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."*
36. The Labour Relations Code will therefore become the Tribunal's source of reference to determine if the termination of Ms. Kedeech Wallace was properly executed in such way that conforms to fair Labour Relations practices. Section 22 of the Labour Relations Code, Disciplinary Procedure:-

*"(1) Disciplinary Procedures should be agreed between management and worker representatives and should ensure that fair and effective arrangements exist for*



*dealing with disciplinary matters. The procedure should be in writing and should:*

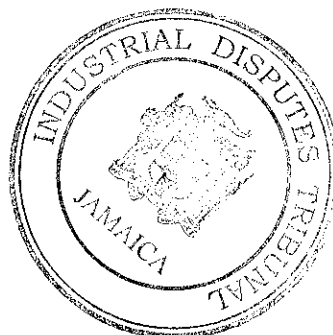
- (a) ...*
- (b) indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;*
- (c) give the worker the opportunity to state his case and the right to be accompanied by his representatives;*
- (d) provide for a right of appeal, wherever practicable, to a level of management not previously involved;*
- (e) ..."*

37. The evidence from the Dismissed Worker is that the Company breached the Rules of Natural Justice and the Labour Relations Code. The Rules of Natural Justice and the statutory requirement require that a person must be allowed adequate opportunity to present his/her case where certain interests and rights may be adversely affected by a decision-maker.

38. The Tribunal finds no evidence to contradict the contention of the Dismissed Worker in this regard as the Company failed to observe the provisions of Section 22 of the Labour Relations Code when Miss Wallace's contract of employment was terminated without:

- the Company informing her in writing of any charges against her
- affording her an opportunity of a hearing
- the right to be represented
- the right of an appeal

39. Therefore, we find the dismissal of Miss Wallace to be *unjustified*. However, the Tribunal having regard to all the evidence presented cannot ignore the fact that from as early as December 2016 Miss Wallace was employed and is still gainfully employed and would therefore have mitigated her loss to some extent.



**AWARD:**

40. In keeping with the provisions of Section 12 (5) (c) (iii) of the Labour Relations and Industrial Disputes Act (LRIDA), the Tribunal hereby orders that the Company:

a) reinstate Miss Kedeech Wallace effective April 19, 2021 with twenty-six (26) weeks' basic salary at the rate she was earning at the time of her dismissal

or

b) failure to reinstate as stipulated in (a) above Miss Wallace shall be compensated with forty-four (44) weeks' basic salary at the current rate she was earning at the time of her dismissal.

DATED THIS <sup>4<sup>th</sup></sup> DAY OF MARCH 2021

Justice Marjorie Cole-Smith (Retd.)  
Chairman

Jacqueline Irons, J.P.  
Member

Chelsie Shellie-Vernon  
Member

Witness:

Royette Creary (Miss)  
Secretary to the Division

