

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 20/2014

SETTLEMENT OF DISPUTE

BETWEEN

CITIBANK

AND

MRS. SOPHIA CAMPBELL

AND THE

AWARD

I.D.T. DIVISION

| | | |
|-------------------------|---|----------|
| MR. DONOVAN HUNTER | - | CHAIRMAN |
| MR. TREVOR GRAHAM, J.P. | - | MEMBER |
| MR. CLINTON LEWIS | - | MEMBER |

AUGUST 26 2015

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**CITIBANK
(THE COMPANY)**

AND

**MRS. SOPHIA CAMPBELL
(THE DISMISSED WORKER)**

REFERENCE:

By letter dated April 14, 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 Citibank N.A. on the one hand and Mrs. Sophia Campbell 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:

- Mr. Donovan Hunter - Chairman
- Mr. Trevor Graham, J.P. - Member, Section 8(2) (c) (ii)
- Mr. Clinton Lewis - Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

- Miss Simone Mayhew - Attorney-at-Law
- Mr. Jerome Spencer - Attorney-at-Law

The **dismissed worker**, Mrs. Sophia Campbell was represented by:

- Senator Lambert Brown - Industrial Relations Consultant
- Mr. Garfield Harvey - Industrial Relations Consultant
- Mr. Raymond Campbell - Consultant

In attendance:

- Mrs. Sophia Campbell - The Dismissed Worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during twenty-one (21) sittings held between September 29, 2014 and June 10, 2015.

BACKGROUND:

Citi Bank N.A. (hereinafter called the Bank) is a limited liability Company incorporated in the United States of America. It is registered as a commercial bank in Jamaica. It operates a 'Jamaican Branch' specializing in corporate banking with registered office at 19 Hilcrest Avenue, Kingston 6, Jamaica.

Mrs. Sophia Campbell was employed to Citi Bank as a Human Resources Generalist by letter dated March 15, 2010.

Among her various responsibilities as a Human Resources Generalist is her required attention to the rules of the Bank in order to assure the principle of confidentiality and the application of 'due diligence' in seeing to it that the Bank operates with the utmost integrity.

In the opinion of the Bank these principles were not honoured. Hence, by letter dated December 4, 2013, Mrs. Campbell's service was terminated as follows:-

“Your Failure to critically review the BOJ Fit Proper Questionnaire which was submitted for Jerome Williams. The questionnaire contained several inaccurate answers which should be readily apparent to you if you had carefully reviewed it.

You violated staff confidentiality by sharing sensitive, personal information of officers to at least one person who was not a part of the Bank's Human Resources Department. As the HR Generalist you should have realized this was highly inappropriate.”

Mrs. Campbell disagrees with the Bank's decision to dismiss her on the basis that it was capricious and unjustifiable.

THE BANK'S CASE:

Mrs. Sophia Campbell was initially employed on September 1, 2009 and following a probationary period ending March 15, 2010 she was permanently employed as Human Resources Generalist. She signed an **Intellectual Property and Confidential Information Agreement** dated September 1, 2009. In this case, disciplinary action could be taken against an employee if he/she divulged confidential information to an unauthorized person.

On November 20, 2013 it came to management's attention that a questionnaire was submitted to the Bank of Jamaica (BOJ) on Mr. Jerome Williams' behalf in July 2013 through an employee of Citi Bank, to support an application for him to be certified as being fit and proper to hold a managerial position in a deposit taking institution.

This application was not favourably received by Bank of Jamaica based on the information given by Citi Bank. Further inquiry revealed that Mrs. Sophia Campbell, Country Human Resources

Generalist was responsible to **critically review** the questionnaire so as to confirm the integrity of the document.

The investigation into the incident also revealed that Mrs. Campbell had sought **the assistance of other persons outside the Human Resources Department** in February 2013 to review questionnaires similar to that which was submitted on Mr. Williams' behalf. This was unacceptable as those questionnaires were to be reviewed within the Human Resources Department and not with persons outside the department.

Being the person responsible for the preparation and submission of the questionnaire, Mrs. Campbell was advised that she was being required to provide a written response to the matters set out above and to make any written representation she deem fit, such representation may be made on her behalf.

Mrs. Campbell's responses by Memorandum dated December 2, 2013 were as follows:

- (a) Mr. Williams having completed the questionnaire, her sole responsibility was to review the questionnaire based on how she was taught by the former Country Human Resources Officer, Miss Donna Miller. On completion of the review she submitted the questionnaire along with supporting documents to the Citi Country Office (CCO), Mr. Peter Moses for his signature,
- (b) She admitted asking a senior member of staff, Mr. Dennis Gray, Citi Finance Officer (CFO) to assist her in reviewing the questionnaires because her immediate supervisor was out of office on sick leave. However, she did not explain why the Citi Country Officer was not asked to review the questionnaire.

Mrs. Campbell's response was considered unacceptable, hence, the Bank considered her termination to be an appropriate option.

In fulfilling the requirement of a fair and proper hearing on behalf of Mrs. Campbell, the Bank submitted 'that there is no requirement for an employee to give oral evidence (viva voce) unless there are established rules within the organization that requires an oral hearing, all that is

required is that the employee be informed of the allegations being made, the basis of the allegations and be provided with the right to respond to the allegations.' In the case of Mrs. Campbell, this was done.

On December 4, 2013, Mrs. Campbell was invited to a meeting when a decision to terminate her services was communicated to her.

MRS. SOPHIA CAMPBELL'S CASE:

Mrs. Sophia Campbell holds a Masters Degree in Human Resources Management. She commenced employment with the on Bank September 1, 2009 in the position of Human Resources Generalist.

As Human Resources Generalist, she reported directly to the Country Human Resources Officer (CHRO) and Vice President of the Bank, Miss Donna Miller. In April 2013 Miss Miller was replaced as (CHRO) and Vice President by Mrs. Magalys Camacho-La-Luz who is based in Puerto Rico. The Head of the operation in Jamaica is Mr. Peter Moses, Citi Country Officer (CCO).

The Bank operates a performance evaluation system which requires both midyear and year end evaluation of the performance of its employees. In the case of Mrs. Campbell both the CHRO, Mrs. Magalys Camacho La Luz and Mr. Peter Moses CCO are required to evaluate her performance.

In midyear 2013, Mrs. Magalys Camacho-La-Luz had the following to say of Mrs. Campbell:

'with my appointment as CHRO for Jamaica since April 2013, I need to recognize your contribution and commitment to take over important responsibilities in the Country. I fully understand that the unit is transitioning a lot of processes, including the adaptation of new ways to do things.

Your support to the business to accomplish with the pension plan deliverables was key to comply with our regulatory responsibility. In general I need to say that in only three (3)

months we have accomplished more than I expected. I recognized your time and additional efforts during this period to accommodate my management style and to give me the opportunity to share my experience and point of views. I encourage you to this the opportunity to grow, develop and to become the Country HR. You have a lot to contribute and I know that you can do it.'

Mr. Peter Moses in his 2013 evaluation said the following:

'Since the appointment of the new CHRO and the implementation of the HR Transition project I have noted a higher sense of motivation in Sophia's approach to her job. She is responding positively to the demands and opportunities that have arisen and must continue to work at improving work organization, delegation and balance of home versus office responsibilities. Continuing on this track will enhance Sophia's reputation and by extension her career.'

It should be noted that Mrs. Campbell had no disciplinary issues with the Bank during her employment.

On November 20, 2013, Mr. Moses visited the Human Resources Department and produced a letter from the Bank of Jamaica declining to approve as being a 'fit and proper' an employee who the Bank had promoted on April 1, 2013 to the position of Risk Treasury Manager. The letter was in response to a fit and proper questionnaire submitted to BOJ by Citi Bank.

On November 25, 2013, Mr. Moses requested from the Human Resources Department a copy of the employee's BOJ Fit and Proper Personal Questionnaire as well as a copy of the individual's Resume that was submitted with the questionnaire. On reading the questionnaire, Mr. Moses became visibly incensed with what he had read and asked Mrs. Campbell **"how the hell could she not have picked this up."**

During the said meeting, Mrs. Campbell mentioned that there could have been an oversight on her part in relation to the individual's questionnaire which was submitted in July 2013, since there was no written procedure in the Bank relating to the review of BOJ Fit and Proper

Questionnaire. It is the duty of the person filling out the questionnaire to exercise due diligence with respect to accuracy and truthfulness.

There is no requirement for persons in HR to do a due diligence check on the form. Secondly, the questionnaires were usually handled by the Bank's CHRO and not by the HR Generalist.

In describing the process, Mrs. Campbell opined that in January – February 2013 the then CHRO, Mrs. Donna Miller was on extended sick leave. Mrs. Campbell collected fourteen (14) questionnaires from persons in the Bank who were due to make reports to BOJ. Based on prior discussions with Miss Miller, Mrs. Campbell understood her role as checking to make sure all the questions were answered. The issue of truthfulness or otherwise was the duty of the employees filling them out.

There were only two (2) officers at the Bank who were authorised to sign the cover letter submitting questionnaires to BOJ following their final review and approval. Those were Mr. Peter Moses, CCO and Ms. Donna Miller, CHRO and Vice President.

In the absence of Miss Miller, Mrs. Campbell asked Mr. Dennis Gray, Citi Finance Officer (CFO) to assist her in checking for completeness in this regard. In addition to being CFO, Mr. Dennis Gray is the Human Resource Risk Control and Self Assessment (RCSA) Tester for Human Resources. This gives Mr. Gray the authority to request and be privy to confidential information on employees. This includes being privy to personnel files, salaries, benefits, background checks, reports, pension etc.

The questionnaires were given to Miss Donna Miller on her return from sick leave together with her final review and approval, Miss Miller was advised by Mrs. Campbell that she sought the assistance from Mr. Dennis Gray. Miss Miller raised no objections, indicated it was ok and signed the cover letter transmitting the questionnaires to BOJ.

The fact that Mr. Gray assisted Mrs. Campbell in early 2013 in the absence of Miss Donna Miller to review the questionnaires to ensure that all the questions were answered was

communicated to Mr. Moses by Mrs. Campbell during the meeting on the morning of November 25, 2013. Later that day Mrs. Campbell received another telephone call from Mr. Peter Moses. He was obviously enraged and asked her who gave her the right to review personal questionnaires with Dennis. Mrs. Campbell responded that she had fourteen (14) questionnaires to review and she wanted to ensure that they were completed properly to avoid any from being returned to the Bank by BOJ.

In July 2013, Mrs. Campbell submitted to Mr. Peter Moses for his final review and approval, the Fit and Proper Questionnaire received from Mr. Jerome Williams for submission to BOJ together with other supporting documentation with respect to the said submission, including a copy of the employee's resume. Mrs. Campbell also submitted to Mr. Moses a cover letter along with a note requesting to **review and sign**. Mrs. Campbell heard nothing about these documents until November 2013 when BOJ replied to Mr. Moses' letter. This particular BOJ Fit and Proper Questionnaire was never shown nor discussed with any other officer of the Bank before submission to Mr. Moses for his review and signature.

The fact that Mrs. Campbell had requested the assistance of Mr. Dennis Gray in reviewing the questionnaire in March 2013 caused Mr. Moses to ask for her resignation to which she refused.

On November 26, 2013, Mrs. Campbell received an email from the CHRO, Mrs. Magalys Camacho La-Luz requesting that she provide a written response to the issues raised. On November 28, 2013 Mrs. Campbell received another email requesting her to respond to some additional questions by December 2, 2013. On December 4, 2013, Mrs. Sophia Campbell was handed a letter of termination.

Mrs. Campbell refuted the allegation contained in the letter of termination that it was her duty to critically review the BOJ Fit and Proper Questionnaire. She also refuted the allegation that she violated staff confidentiality. It should be noted that these specific allegations were not put to Mrs. Campbell as accusations against her and thus be allowed to respond to them specifically and be accompanied by a representative of her choice.

TRIBUNAL'S RESPONSE:

The Bank accused Mrs. Sophia Campbell of failing to critically review the questionnaire filled out by Mr. Jerome Williams which led to her dismissal.

Before responding to the reasons for Mrs. Sophia Campbell's dismissal, it is only appropriate that the purpose and the application of the questionnaire be understood. The questionnaire attempts to give a qualitative indication of the character traits of the person seeking coverage from the Bank of Jamaica. The outcome from the responses of the questions answered will determine whether or not the individual filling out the questionnaire is a fit and proper person for a senior post in a financial institution.

Exhibit 32 Bank of Jamaica booklet titled "Standards of Sound Business Practises," S.S.B.P No. 11, **Guidelines to Fit and Proper Assessments** refers to the Application and Purpose of the fit and proper test.

(c.1) *"By definition a "fit and proper test" is the statutory basis for evaluating the probity, expertise base, competence, diligence and sound judgement of board members, management and major shareholders to effectively discharge their fiduciary responsibility. In order to be deemed a "fit and proper" person therefore, an individual must satisfy minimum **integrity, solvency and competence** standards pursuant to the abovementioned statutory provisions."*

Paragraph E of the booklet gives a description of "fit and proper principles," that determine a person's fitness and propriety which are integrity, financial soundness and competence.

In reference to integrity E.1.3 is instructive.

'An individual's failure to act with probity and/or lack of condour in his/her disclosures and general interface with the Central Bank/Regulatory Authority will impinge on the latter's assessment of an individual's integrity. Deceitful, oppressive and/or improper conduct will militate against an individual.'

In filling out the questionnaire the response to each question must reflect the **personal knowledge of the applicant as it relates to the specific question**. Nowhere in the questionnaire does it allow latitude for external opinions in answering the question. Assurance of this approach requires the applicant to sign a declaration page committing himself/herself that either is the sole author of the questionnaire. Any breach in this respect could be in contention with E.1.3 above. This is why the declaration page of the questionnaire requires the applicant to sign the following:

“I ... declare that the answers to the above questions are true and that I am fully aware that proceeding to act, knowing that I am not fit and proper or submitting false or misleading information or withholding information which if submitted would most likely render me unfit, will constitute a breach of the Banking Act, Financial Institutions Act or Bank of Jamaica ...”

Other than the author of the questionnaire and the Bank of Jamaica, there is no room for a critical analysis of the questionnaire. The author is required to do his/her own due diligence.

Mrs. Sophia Campbell's termination letter reflected two issues:

The first issue was Mrs. Campbell's failure to critically review the Bank of Jamaica Fit and Proper Questionnaire which was submitted for Mr. Jerome Williams. The questionnaire contained several inaccurate answers which should have been readily apparent to her if she had carefully reviewed.

Paragraph 34 of Miss Mayhew's closing submission made the point that when Mr. Williams completed his Fit and Proper Questionnaire he indicated **no** to a series of questions at number 39 on the questionnaire. A Resume had been submitted along with the questionnaire which indicated that Mr. Williams had worked as a Manager at Cash Plus. Accordingly, some of the answers given to the questions at 39 ought to have been **yes** and, as completed was misleading and inconsistent with the Resume submitted. This, Miss Mayhew said was acknowledged by Mrs. Campbell in her Memoranda explaining her oversight.

The Tribunal will begin its response by pointing out that a copy of the filled out questionnaire by Jerome Williams was never submitted in evidence. Hence pertinent questions that may have arisen in search of the facts could not appropriately be treated as reliable evidence. The Bank considered the questionnaire of Mr. Jerome Williams confidential with the exception of the declaration page (Exhibit 33 and 34).

The Tribunal considers Mrs. Campbell's explanation in her Memo to Mrs. Magalys Camacho La-Luz that if she missed anything in Mr. Williams' questionnaire it would be due to an **oversight**. She was referring to the process she employed in reviewing for completeness.

Mrs. Campbell did not consider it her duty to critically review the personal questionnaire other than to review it for completeness that is to ensure that all questions were answered as she was taught by her supervisor, Miss Donna Miller then Vice President of Human Resources. In order to ensure thoroughness the questionnaire should be reviewed by two persons, hence, Miss Miller and herself would review all questionnaires. Note at the bottom of the declaration page it states clearly what is expected of the applicant.

"Please answer all questions, where not applicable, please indicate N/A. If all questions are not answered, the personal questionnaire will be returned."

Neither was there any written procedure as to how a review of the questionnaire ought to be done. Mrs. Campbell opined that each time a questionnaire goes out to a person in a covered position an email is sent with specific instructions that they must practise due diligence to ensure accuracy of the personal questionnaire because the personal questionnaire is theirs. Her evidence remains unassailable.

If the Bank had expected Mrs. Campbell to have told Mr. Williams what would have been an appropriate response to the questions it would have compromised the integrity of the questionnaire. What could be considered an appropriate response could be interpreted as a deceptive response in that the true intention of the applicant would be shaded, (see E 1.3 above).

The second issue, was there a red flag?

BOJ found no fault with the way the Fit & Proper Questionnaire was filled out. The problem they (BOJ) found is that Mr. Williams worked at Cash Plus in a managerial position.

Exhibit 11, Memoranda to Mrs. Sophia Campbell from Mrs. Magalys Camacho La Luz, the memo states:

' that the Bank received a letter from Bank of Jamaica denying the approval for the appointment of Jerome Williams to the post of Manager. This is based on his prior employment with Cash Plus Limited in a managerial capacity. Upon review it has been substantiated that Jerome Williams was in fact employed to Cash Plus Limited in a managerial capacity as stated on his resume which was attached to his Fit and Proper questionnaire. As the person responsible for the review and submission of these questionnaires to the Bank of Jamaica please provide the reason for such significant oversight. '

Through the eyes of Mrs. Campbell there was no red flag with respect to Mr. Williams' previous employment with Cash Plus Limited in a managerial capacity. There are several reasons for this:

- Mr. Jerome Williams was employed by Citibank and the Bank was fully aware that he had worked at Cash Plus in managerial position from the inception of his employment with the Bank
- Jerome Williams was appointed to a covered position of Security Trader with the blessing of the Financial Security Commission
- There is no evidence to suggest that those responsible for appointing Mr. Williams to the covered position as Risk Treasury Manager had endeavoured to check out his background before making the appointment.

Finally, in confirmation of the above, by letter dated December 2, 2013 from Mr. Moses to BOJ makes the idea of questioning the competence of Mrs. Campbell in not

identifying Mr. Williams' previous employment with Cash Plus as a manager a clear "red Flag" was baseless.

The relevant portions of the letter read as follows (Exhibit 35):

2nd December 2013

Re: Proposed Managerial Appointment – Jerome Williams

Further to yours of 18th November 2013, we now respond as follows:

*Jerome Williams was employed to Citibank on 31 December, 2008 in the clerical position of Money Market clerk. At the time of his employment his prior association with Cash Plus Limited was discussed and it was determined that he worked in the operations area of this company and at no time was he engaged in any area of financial responsibility. **Subsequent to his employment at Citibank Mr. Williams' career advanced in line with his performance and in 2010 he was appointed to a managerial position in CitiFinance, our securities trading affiliate. This appointment was subject to approval by the Financial Services Commission, which approval was granted on 1st April 2010 after discussion by the Financial Services Commission with both Mr. Williams and one of our senior officers at the time, Mr. Lucio Romero. A copy of the Certificate of Registration as Dealer's Representative granted to Jerome Williams by the Financial Services Commission is attached.***

Considering the prior association of Mr. Williams with Cash Plus Limited, we regret that we did not provide further information regarding the circumstances of his earlier employment with Citibank and his subsequent career advancement. Please advice if under the circumstances outlined it is possible for the Bank of Jamaica to reconsider his application, If not, then as advised in your aforementioned letter we will then make a formal request to the Minister of Finance & Planning for a waiver of debarment' (Our emphasis).

Mr. Moses advocacy on behalf of Mr. Williams to the BOJ was noteworthy. He sought forgiveness on the applicant's behalf with subtle compliments. However, in spite of what one might have seen as a reprieve for Mrs. Campbell, peculiarly she was terminated from her employment on December 4, 2013 two (2) days after this letter was sent to BOJ.

The Tribunal concludes:

1. that Mrs. Sophia Campbell carried out her responsibilities correctly in checking the Fit and Proper Questionnaire for completeness as she was taught by her then supervisor, Citi Vice President of Human Resources, Miss Donna Miller.
2. that it would be unfair to blame Mrs. Sophia Campbell for not indentifying a "red flag" with respect to Mr. Jerome Williams previous employment at Cash Plus Limited in the capacity of a Manager.

Did Mrs. Campbell violate staff confidentiality by having sensitive personal information of officers to at least one person who was not a part of the Bank's Human Resources Department?

In resolving this issue, it requires the Tribunal to consider two components and these are the intent of Mrs. Campbell when she allegedly committed the infraction of exposing the Questionnaire to Mr. Dennis Gray and there is the infraction itself.

In examining the intent, a look at her employment history with the Bank is appropriate. Mrs. Campbell was employed to the Bank, September 2009 and served her probationary period when she was permanently employed March 2010.

She has never had a disciplinary issue throughout her employment history with the Bank. Her performance record of up to 4-5 months prior to her termination was exemplary, this is confirm by the commendable remarks she received from her immediate supervisor, Mrs. Magalys Camacho-La-Luz, Country Human Resources Officer and Mr. Peter Moses, Citi Country Office.

Mrs. Campbell was welcome into the Bank's Service Excellent Committee and served as one of the Deputy Governor of the committee up until the time of her dismissal. Given a Brief history of her employment with the Bank one can easily infer that Mrs. Campbell had established herself as a competent person.

In February 2013, Mrs. Campbell was responsible for the handing out of fourteen (14) Fit and Proper Questionnaire required by Bank of Jamaica for covered positions. Upon receiving the filled out questionnaires she checked all for completeness. This means seeing to it that all the questions are answered. The job of reviewing the questionnaire had always been executed by Ms. Donna Miller, former Country Human Resource Officer (CHRO) for Human Resources, her immediate supervisor and herself. However, Miss Miller had been on extended sick leave. Hence, she needed someone to take the place of Miss Donna Miller in reviewing the questionnaires. She made a judgement call and requested Mr. Dennis Gray's assistance.

As the RCSA Tester for HR, Mr. Gray is responsible for ensuring that matters dealing with policies and procedures of the Human Resources Department are followed. He can review personal files, pension files, health benefits and salaries. He is among the Senior Managers that sit in **Citi Senior Personal Committee Policy, C.C.S.P.C./Policy Committee**.

On Ms. Donna Miller's return to work from extended sick leave, Mrs. Campbell informed her that she had processed the fourteen (14) questionnaires and told her she had asked Mr. Dennis Gray to assist in the review for completeness. Ms. Miller made no objections. This evidence remains unassailable.

Clearly Ms. Donna Miller, CHRO and the supervisor of Mrs. Campbell had no problem with Mr. Gray assisting her with checking the questionnaire for completeness.

There was **no** evidence to suggest that Mr. Gray who had been the RCSA Tester for Human Resource which gave him the authority to monitor the policies and procedures for the Human Resource Department found it necessary to caution Mrs. Campbell that she could not share the

information on the questionnaire with him because this would be in breach of the confidentiality clause.

Questioned by Mr. Brown in Examination in Chief, Mrs. Campbell responses were as follows:-

Question: Was there any position in the Bank that you are aware of that prohibited the RCSA Tester from checking to see if the people in H.R. who check for completeness of those forms had done their job?

Answer: No Sir

Question: So let me ask it again was there any written guideline or policy as to what the RCSA Tester could see or not be allowed to see

Answer: No Sir

The Tribunal concludes that there is no evidence to neither suggest nor indicate that Mr. Dennis Gray had no authority as RCSA Tester to access the Personal Questionnaire. Hence, Mrs. Campbell had not breached **Intellectual Property and Confidential Information Agreement** (See Exhibit 1B) when she requested his assistance in reviewing the questionnaire for completeness.

One can deduce truth in the evidence of Mrs. Campbell with respect to requesting Mr. Dennis Gray, RCSA Tester to assist her in reviewing the questionnaires for completeness in February 2013.

In July 2013 she reviewed the questionnaire of the applicant by herself and when asked under cross examination why she changed the procedure her response confirmed her credibility in selecting Dennis Gray to assist her.

In cross examination of Mrs. Campbell by Miss Mayhew the following response is instructive:

Question: "Very well, the Memorandum (Exhibit 2c) from Sophia Campbell to Magalys Camacho La-Luz said that at paragraph 2 of this Memorandum you stated the last two (2) sentences. "I did not consult with anyone with respect to Mr. Williams' Questionnaire." You will agree with me

therefore Mrs. Campbell that this would have been different; you not consulting with anyone would be a different procedure you adapted than you had previously done with previous questionnaire?

Answer: Yes and that is because Mr. Gray was no longer the RCSA Tester of the HR Department. The RCSA Tester was changed from Management Control Asset System of which each Department was responsible for doing their own internal checking of their policy and procedure."

Mrs. Campbell could not request Mr. Gray's assistance again because he was no longer an RCSA Tester for HR. This required her to review Mr. William's questionnaire on her own. She did and sent it to Mr. Moses with a cover letter to BOJ to be signed along with a stick note saying '**review and sign.**'

The cross examination of Mrs. Campbell showed that she placed much weight to Mr. Gray being a RCSA Tester for HR Department when requesting his assistance. The Tribunal does not consider her answer a convenient response.

Mr. Moses in evidence conceded that he didn't review Mr. Williams' questionnaire due to time constraint. He opined that he has to depend on the competence of his staff to do things correctly or else he would spend an enormous amount of time reviewing documents when there are other things to do.

While the Tribunal appreciates Mr. Moses dilemma, in the final analysis he failed to review the questionnaire as he was requested to do by Mrs. Campbell. The Tribunal concludes the following:

1. Mrs. Campbell's intention of requesting Mr. Dennis Gray the RCSA Tester to review the questionnaires along with her was done in the interest of the Bank and not for any devious or deceptive reasons.
2. As the RCSA Tester for the HR Department, the evidence shows Mr. Gray has a relatively large degree of responsibility in auditing the various components of the HR

Department. There is no convincing evidence to suggest that Mr. Gray did not have the authority to audit the Personal Questionnaire for completeness.

It would have been remiss of the Tribunal not to have mentioned its disappointment in not hearing from Mr. Dennis Gray and Miss Donna Miller. In all probability their contribution could have been substantial.

Was Mrs. Sophia Campbell given a fair and proper hearing prior to her termination?

In its submission the Bank opined that an employee does not have to be given an oral hearing unless there are established rules of procedures within the relevant organization. All that is required is the employee be informed of the allegations being made, the basis of the allegation and be provided with the right to respond to the allegation.

In keeping with the Bank's submission the Tribunal will have to ascertain whether there was an established Disciplinary Procedure within the Bank to accommodate an oral hearing and if there was a procedure, was it operative at the time of Mrs. Campbell's termination.

The Bank does not deny the existence of a **Global Disciplinary Review Policy** but in evidence through Mr. Moses, he submitted that it would not be operative until there was a hundred percent (100%) attestation to the procedure by all the employees.

The Tribunal cannot accept this position taken by the Bank as there is no evidence to support it. In fact evidence exists to support the contrary. The evidence showed that the principle of attestation came out of a Policy Committee meeting when Mrs. Sophia Campbell mentioned she had attended a breakfast seminar at Myers Fletcher and Gordon and Mr. Gavin Goff in dealing with Disciplinary Procedures recommend not only should employees be aware of a policy but they should attest to it in writing. Mrs. Campbell tabled the suggestion in a meeting and Mr. Moses accepted the principle and instructed her and Christopher Pryce to develop an attestation form.

Mrs. Campbell denied in evidence that any condition was set in its implementation that required all the employees to attest to the procedure before it was implemented. More so the evidence pointed to an effective date of January 1, 2013 for implementation (see page 2 under the heading **Owner**). It states the following:-

“This policy is owned by the Head of Human Resources. Any amendment to this policy must be approved by the Head of Human Resources.”

The Bank has presented no evidence that the date of implementation has been changed nor amended so as to allow a hundred percent attestation by its employees. The Tribunal has concluded that the Bank had a Disciplinary Procedure available and a Global Disciplinary Review Policy. Hence, there was no need for Mrs. Campbell to have been given a written hearing that limited her ability to exercise her rights under the circumstances.

The Bank’s decision not to have recognized a Disciplinary Review under Clause 2 of the Global Disciplinary Review Policy contravened the Labour Relations Code which is supplemental to the **Labour Relations and Industrial Disputes Act (LRIDA) 1975:**

Section 3 (1) of the LRIDA states:

The Minister shall prepare and lay before the Senate and the House of Representatives, before the end of the period for one year beginning with the 8th April, 1975, the draft of the Labour Relations Code, containing such practical guidance as in the opinion of the Minister would be helpful for the purpose of promoting good labour relations in accordance with-

(a)...

(b)...

(c) the principle of developing and maintaining good personnel management techniques designed to secure effective co-operation between workers and their employers and to protect workers and employers against unfair labour practices.

Section 3 (4) of the LRIDA requires the Tribunal to recognize and preserve these principles, it states the following:-

“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 a Board in determining that question.”

Shall being the operative word. The fact that the Bank implemented a written hearing in place of the Global Disciplinary Review Policy and Disciplinary Procedure that requires a viva voce (oral hearing) drew protest from Mrs. Campbell.

Section 22 of the Labour Relations Code, Disciplinary Procedure:-

“(1) Disciplinary Procedures should be agreed on 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) specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;*
- (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 the right 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.”*

Comments

The entire procedure followed in the termination of Mrs. Sophia Campbell was in breach of the principles of natural justice. This could have been avoided had the Bank's Global Disciplinary Policy been followed. The end result of this improper approach in terminating the employment of Mrs. Sophia Campbell did not afford her a fair and proper hearing.

1(b) above was not carried out, no charges nor accusations were made available to Mrs. Campbell in writing that required her to respond. The clause presupposes that the matter giving rise to disciplinary action must be specified in writing, this would be expected to be structured in a charge or accusation

1(c) an opportunity was not given to Mrs. Campbell to state her case, to be accompanied by a representative and to prepare and present evidence so as to respond to arguments presented by the other side.

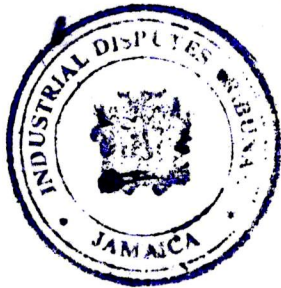
There was no proper investigation. The investigation did not even attempt to ascertain from Miss Donna Miller, the then CHRO and Mr. Dennis Gray, CFO and RCSA Tester for HR, their sides of the issue. The point must be made that investigators and decision makers must act without bias so as to avoid making bad and questionable decisions. Mrs. Campbell was not given an opportunity to confront Mr. Jerome Williams, her accuser, who said in his memo to Ms. Stacy Belnavis that Mrs. Campbell assisted him in filling out the Personal Questionnaire which she denied apart from three (3) answers provided by the compliance officer.

The Tribunal has concluded that considering all the circumstances, Mrs. Sophia Campbell was unjustifiably dismissed.

AWARDS:

In accordance with Section 12 (5) (c) (ii) of the Labour Relations and Industrial Dispute Act, 1975, the Tribunal awards Ten Million five hundred Thousand Dollars (\$10,500,000.00) to Mrs. Sophia Campbell

DATED THIS ⁴26 DAY OF AUGUST 2015.



Donovan Hunter
.....
Donovan Hunter
Chairman

Trevor Graham
.....
Trevor Graham
Member

Clinton Lewis
.....
Clinton Lewis
Member

Witness:

Royette Creary
.....
Royette Creary
Secretary to the Division