

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 5/2024

SETTLEMENT OF DISPUTE

BETWEEN

ELEPHANT GROUP JAMAICA LIMITED
(T/A CENTERFIELD JAMAICA)

AND

MS. KASIEANN MORRISON

AWARD

I.D.T. DIVISION

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

MARCH 13, 2025

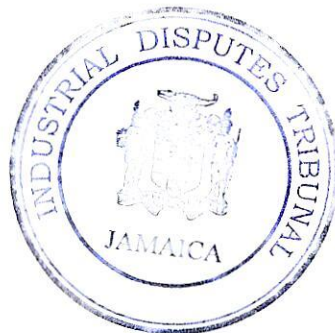
DISPUTE NO. IDT 5/2024

INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
ELEPHANT GROUP JAMAICA LIMITED
(T/A CENTERFIELD JAMAICA)
AND
MS. KASIEANN MORRISON
(AGGRIEVED WORKER)

REFERENCE

By letter dated February 6, 2024, the Hon. Minister of Labour and Social Security, pursuant to Section 11A (1)(a)(i) of the Labour Relations and Industrial Disputes Act, 1975 (“**the Act**”) referred to the Industrial Disputes Tribunal (“**the Tribunal**”) for settlement, the dispute between **Centerfield Jamaica and Ms. Kasieann Morrison** with the following Terms of Reference: -

“To determine and settle the dispute between Centerfield Jamaica on the one hand and Ms. Kasieann Morrison on the other hand over the termination of her employment”.



DIVISION

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

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

REPRESENTATIVES OF THE PARTIES

The **Company** was represented by:

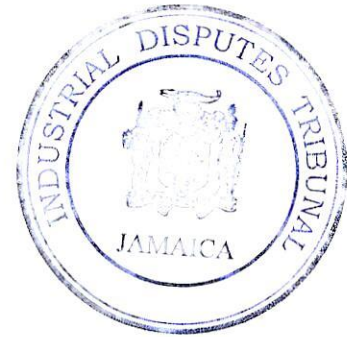
- Mr. Stuart L. Stimpson - Attorney-at-law
- Miss Sashara Eccleston - Attorney-at-law
- Miss Sydoney Brackett - Senior Industrial Relations Officer

The **Aggrieved** was represented by:

- Mr. Robert Moore - Attorney-at-law

In attendance:

- Miss Kasieann Morrison - Aggrieved worker



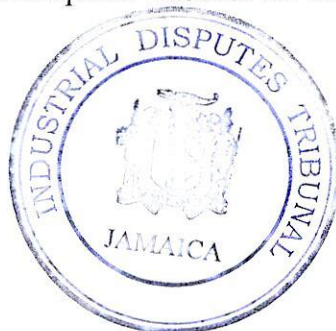
SUBMISSIONS AND SITTINGS

The parties submitted briefs to the Tribunal prior to the commencement of the sitting. The Tribunal held nineteen (19) sittings between April 30, 2024 and February 13, 2025, and reviewed eighteen (18) exhibits as well as oral presentations from both sides. During the first sitting on April 30, 2024, the Company raised objection to the Terms of Reference, indicating that the Company should be identified by its registered name, Elephant Group Jamaica Limited. The Minister, by way of a letter dated August 28, 2024, advised the Tribunal of the amended Terms of Reference as follows:

“To determine and settle the dispute between Elephant Group Jamaica Limited (trading as Centerfield Jamaica) on the one hand, and Ms Kasieann Morrison on the other hand, over the termination of her employment.”

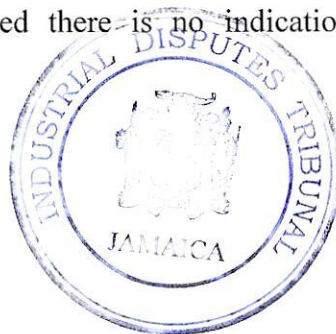
BACKGROUND TO THE DISPUTE

1. Elephant Group Jamaica Limited (*hereinafter called "the Company"*), is a Digital Marketing and Sales Technology Company. Miss Kasieann Morrison (*hereinafter called the "aggrieved worker"*), began working with the Company as a Sales Agent on December 13, 2018 and during her tenure was promoted at least on two occasions before her termination on June 24, 2020.
2. Arising from an incident on 19 March 2020 involving a co-worker, Miss Tanicka Skeen, Miss Morrison was accused of breaching the Company's standards of professionalism. The incident occurred on Knutsford Boulevard in New Kingston, away from the Company's premises located on Trinidad Terrace. She was suspended with full pay on the same day, pending an investigation.
3. On 9 April 2020, Miss Morrison received a letter setting out the charges and inviting her to a Disciplinary Hearing scheduled for April 16, 2020. The Hearing was postponed and a subsequent letter despatched, rescheduling the hearing to June 10, 2020. Both letters informed Miss Morrison of her right to representation, which she duly waived at the first Disciplinary Hearing.
4. Following on the Hearing on June 12, 2020 (and not June 10 as previously stated), Miss Morrison was advised by Ms. Samantha Lynch, the Human Resource Manager, by letter dated June 24, 2020, that her services would be terminated, although the effective date of the termination was not specified. She was informed of her right to appeal the decision.
5. Miss Morrison appealed the decision, again waiving her right to representation. The Appeal Hearing was held on July 7, 2020 and Miss Morrison was subsequently informed by Ms Lynch, in a letter to her dated July 23, 2020, that the appeal upheld the disciplinary chairperson's recommendation that her services should be terminated.
6. The matter was referred to the Ministry of Labour and Social Security by her Attorney, Mr. Robert Moore, however, the conciliatory efforts did not produce a resolution. It was subsequently referred to the Industrial Disputes Tribunal for determination and settlement.



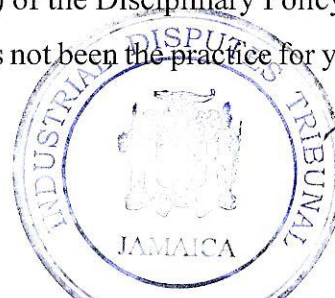
THE COMPANY'S CASE

7. Counsel for the Company averred that Miss Morrison breached the Company's standard of professionalism, and while admitting to the breach, she argued that the incident did not occur 'within the four walls of the Company's premises,' and therefore, would fall outside of the authority of management.
8. The Company's first witness was Miss Kereen Johnson, the Senior Human Resource Manager. She said that as HR Manager she had to oversee disciplinary proceedings at the Company, although having more interactions with the Montego Bay offices. She, however, recalled the incident involving Miss Morrison through a review of the files, having perused several correspondences, including, but not limited to reports of the incidents from Miss Morrison and Miss Skeen, report of the Disciplinary Hearing, the notes from Miss Morrison waiving her right to representation, the letter of termination, and the decision of the Appeal Chairman to uphold the decision to terminate her services.
9. Further in her testimony, Miss Johnson indicated that she saw payslips showing that payments were made to Miss Morrison, including the payslip showing the final payment, which was captured in exhibit 14A.
10. Miss Johnson said she is aware that Miss Morrison gained employment subsequent to her termination. She said the information was obtained through Services Solutions Consultants Limited (SSCL), a Company specialising in background checks and employee screening, and it revealed that Miss Morrison began employment with the Company, Advantage Communications in July 2020.
11. Under cross examination, Miss Johnson said that she is aware of section 5.2 of the Company's Disciplinary Policy stating that the Human Resources Department should convene hearings and that the hearing should be chaired by a member of the management team. She agreed that the Company did not comply with the provisions of section 5.2, but did not agree that it should result in a nullity.
12. She testified that the Policy contained a section: Attestation and Acknowledgement – Disciplinary Policy, and admitted there is no indication that Miss Morrison signed



acknowledging that she had received and understood the Policy. She again insisted that the breach did not amount to the invalidation of the disciplinary process.

13. Further in her testimony, Miss Johnson noted that she was aware of an investigation being conducted into the incident involving Miss Morrison, but found no investigative report on file. In relation to the non-payment of bonus to Miss Morrison, Miss Johnson agreed that this would deprive her of some benefits.
14. Miss Johnson said that one of the charges levelled against Miss Morrison was her 'Lack of Professionalism' as set out under clause 36 of the Disciplinary Policy, and based upon its description, she did not agree that it was only limited to incidents at the workplace.
15. Miss Johnson testified that the letter of April 9, 2020, inviting Miss Morrison to a Hearing did not clearly set out the particulars regarding the alleged incident, but could not agree that it did not conform with the provisions of paragraph 22 of the Labour Relations Code.
16. Miss Johnson informed the Tribunal that Miss Morrison was dismissed for 'lack of professionalism.' She disagreed with Counsel's assertion that Miss Morrison was dismissed, not on the findings of the Hearing Manager, Ms Teresa Martinez [see exhibit 8], but on the findings of Ms Samantha Lynch, the Human Resource Manager, based on the contents of the June 24, 2020 letter of termination.
17. The Company's second witness was Ms Samantha Lynch who was the Human Resource Manager from 2020 to 2023. She began in the Company as a Recruiter and one year later became the Recruiting Manager before her appointment as HR Manager. She said that as HR Manager her duties included managing the people operations of the business, updating the Company's policies and overseeing the disciplinary process.
18. She admitted to signing both the letter of termination to Miss Morrison and the letter to her arising from the Appeal Hearing to say that the dismissal was upheld. She offered as an explanation as to why her dismissal letter contained the clause "*my notes and findings*", the fact that a template existed for hearing letters, and in the 'cut and paste' the phrase was inadvertently picked up.
19. Ms Lynch testified that although section 5(2) of the Disciplinary Policy requires hearings to be chaired by management personnel, this has not been the practice for years, as the Company

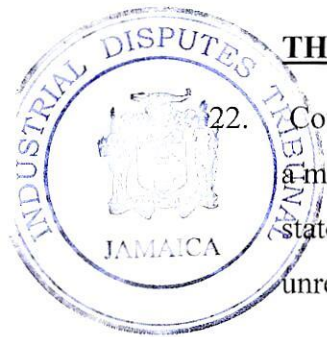


has been hiring external persons to conduct Disciplinary Hearings because they believed it provided “*a higher standard*” and “*reduced the possibility of bias.*”

20. Under cross examination, Ms Lynch told the Tribunal that the decision to terminate Miss Morrison was made at a higher level in the Company and she merely carried out the instruction. She agreed that she did not disclose the full notes and findings of the Disciplinary Hearing to the Appeal Hearing Chairman as she did not believe it would have added any further transparency or objectivity to the matter.
21. It was Ms Lynch’s contention that the decision to terminate Miss Morrison should not be annulled although the Company departed from the provisions of section 5.2 of its Disciplinary Policy by using Ms Martinez, who was not an employee of the Company. She, however, admitted that a copy of the Hearing Chairman’s notes and findings was not provided to Miss Morrison and believed that it would have been fair to do so.

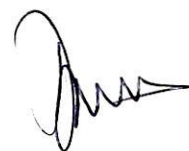
THE AGGRIEVED WORKER’S CASE

22. Counsel for the aggrieved averred that at the time of Miss Morrison’s dismissal she was in a managerial position and that evidence will show that her rights were breached. He further stated that the Company had no jurisdiction to deal with a matter that was off-premises and unrelated to the work situation.
23. Miss Morrison gave testimony on her own behalf. She stated that she was employed to the Company since December 2018 as an Agent, was promoted in December 2019 to the position of a Subject Matter Expert, and a few months later became a Team Lead, the equivalent of a Sales Manager.
24. Miss Morrison said that although the March 19, 2020 letter putting her on ‘non-disciplinary suspension’ for alleged gross misconduct, referred to an investigation, she was never interviewed as part of the investigative process, and was never provided with a copy of an investigation report on the matter. She further stated that she never threatened anyone or displayed a lack of professionalism at the workplace.
25. Miss Morrison testified that she received a letter dated April 9, 2020, inviting her to a “Hearing Meeting”, and although it identified the alleged breach of the Company’s Policy, she was not able to understand the charges as it was not clearly specified in the letter. She



further stated that she was not aware of who the chairperson would be and was not advised of the possible sanctions associated with the charges.

26. Miss Morrison said that at the Disciplinary Hearing held on June 12, 2020, the chairperson, Ms Martinez, conducted the hearing via telephone. She said that she was present in a room at the Company's Kingston offices with three other persons, namely: Mrs. Racquel Maxwell-Nelson, the Secretary; Miss Tanicka Skeen (the complainant); and Mr. Trevon Clarke, a witness. She noted that statements were read by Miss Skeen, Mr. Clarke and herself, and the chairperson asked her a number of questions before adjourning the meeting.
27. Miss Morrison said she subsequently received a letter from Ms Lynch, the HR Manager, dated June 24, 2020, terminating her services, and indicating to her that she has a right to appeal the decision, which she did.
28. The Appeal Hearing Chairman was Mr. Dillon Doyle, who also conducted the Appeal via telephone. Miss Morrison said that the recording Secretary and herself were the only persons in the room. She said she was asked to read the letter of appeal and questioned as to the reason for the appeal. No enquiry, she said, was made about the Disciplinary Hearing Report, however, she stated that her Supervisor, Miss Massey had informed her that she should have been reinstated based on the findings of the Disciplinary Hearing. She added that she considered the matter unfair since she was the only person suspended and disciplined from the verbal altercation.
29. Miss Morrison said that her financial situation had been negatively affected by the dismissal, and although she gained employment at Advantage Communications some two (2) weeks after her termination, the earnings were "*substantially less*" than at Centerfield. She was told by the Human Resource Manager at Advantage Communications that persons from SSCL were making enquiries about her. Her last day of employment with Advantage Communications was May 1, 2024. Miss Morrison is requesting reinstatement.
30. Under cross-examination, Miss Morrison said she was not angry when she confronted Tanicka, and denied that the altercation was a fight over a man. She denied using the F-word and may have said "frig". She stated that the incident occurred after her shift was completed at 4:00 p.m. and on Knutsford Boulevard which was off-site. She admitted that at both the Disciplinary and Appeal Hearings she waived her right to representation.



ISSUES

31. The Tribunal has adduced the following matters for its determination:

- (a) To establish if an off-duty conduct warrants the Company's intervention and if so, under what circumstances
- (b) Whether the nature of the alleged breach committed by Miss Morrison rises to the level of 'gross misconduct,' and was the Company's reputation likely to be impacted by such conduct
- (c) Whether the procedures resulting in the termination of Miss Morrison was carried out in a fair and equitable manner and conformed to the tenets of good industrial relations practices as referenced in the Labour Relations Code.

To establish if an off-duty conduct warrants the company's intervention and if so, under what circumstances

32. The general understanding regarding 'off-duty conduct' refers to the decision taken by an employer to institute disciplinary action against an employee for behaviour that occurred outside of work hours. In a January 1988 edition of the Harvard Business Review, entitled: "*When Can You Fire for Off-Duty Conduct?*" Terry L. Leap, then Professor of Management at Clemson University, USA, argued that the outcome of these cases "...depends a lot on the circumstances and the nature of the business. That is certainly true when an employee's behaviour affects job performance and the favorable public image that the organisation enjoys." He cited cases to show where the decision to terminate will be upheld by a tribunal because "... the connection between the off-duty behaviour and performance on the job is obvious." He agreed that "an employer naturally has a vital interest in protecting its good name...", but that "egregious behaviour itself is not usually enough to demonstrate damage to reputation". "The employee's work record", he argued, "often weighs heavily with arbitrators."
33. Legal experts have argued that disciplining an employee for off-duty conduct should not be taken lightly. There must be established a clear nexus between the conduct and the employee's ability to perform his or her job, and that "any discipline that is taken needs to be proportionate to the conduct that has occurred and should follow an appropriate



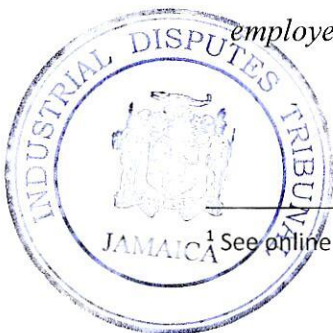
investigation by the employer. The standard for off-duty conduct warranting discipline will be higher than if the same behaviour had occurred at the workplace... ”¹

34. An unusual case on the matter of off-duty conduct was decided by the U.S. Court of Appeals for the Federal Circuit in 2009, involving **Doe v. Department of Justice**, where the majority overturned the decision of a Review Board that an FBI Agent should not have been dismissed for secretly taping his sexual encounters with three women, including two co-workers, even where two of the tapings was done secretly. The two arguments advanced by the Courts were that: (a) *“the Board [has] failed to articulate a meaningful standard as to when private dishonesty rises to the level of misconduct that adversely affects the “efficiency of the service.”*”; and (b) *“the Board has failed to address the fact that the FBI’s decision to sustain the charge impose the penalty of removal was influenced at least in part by the assumed criminality of the behaviour.”*

35. The underlying question, therefore, in cases involving off-duty conduct is whether the conduct is of such gravity or importance as to indicate a rejection or repudiation of the employment contract by the employee. In a 2020 Australian Business Law Review, Giuseppe Carabetta from the University of Sydney, in an article on **‘Off-Duty Misconduct and the Employment Relationship: A Review of the Case-Law’**, enumerated some of the conditions which must be satisfied, namely:

- *“the conduct must be such that, viewed objectively, it is likely to cause serious damage to the relationship between the employer and employee; or*
- *The conduct damages the employer’s interests; or*
- *The conduct is incompatible with the employee’s duty as an employee”*

36. The conclusion from the article is that notwithstanding the post master-servant era, where *“...the employer’s capacity to regulate employees’ off-duty conduct is necessarily limited”*, it should, however, be noted that there is *“...an increase willingness by the courts to allow employers to control employees’ off-duty activities, particularly where the employer can*



¹ See online publication reference mcleod-law.com/resource/duty-conduct/ Date downloaded March 3, 2025

point to a behavioural policy that is legitimately connected with the employment and the employer's business interests."

37. The employer's authority to discipline employees for off-duty conduct having been well established, means, therefore, that we cannot find favour with Counsel's argument that the employer "*did not have the jurisdiction to raise a matter that did not occur on its premises.*" The Supreme Court case cited by counsel, **Saneth White and The Victoria Mutual Building Society and Leslie Hall** is unhelpful to us both in factual circumstances and in law. The matter before this Tribunal is one of unfair and not unlawful dismissal.

Whether the nature of the alleged breach committed by Miss Morrison rises to the level of 'gross misconduct,' and was the company's reputation likely to be impacted by such conduct

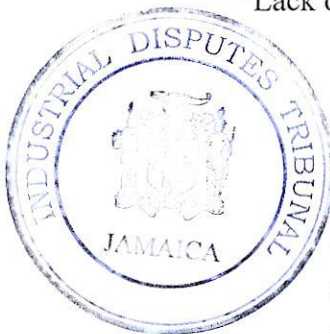
38. We would like to first examine whether Miss Morrison committed an offence tantamount to 'gross misconduct', before determining whether such conduct was prejudicial to the Company's interest.
39. We take our cue from the definition provided by Parnell, J. as to what 'gross misconduct' could reasonably be in his judgement on **Regina v Industrial Disputes Tribunal ex parte Egbert Dawes**, where he expressed the views thus –

"Behaviour or conduct so outrageous, flagrant, shocking or unseemly so that it would affect or disturb or it is likely to affect or disturb the mind or feeling of an ordinary and reasonable person who is an observer or listener to the narrative."

40. Miss Morrison was charged under No. 36 of Centerfield Disciplinary Policy (Jamaica), for "Lack of Professionalism: Gross Misconduct." The definition is set out hereunder:

"Gross disregard for standards of professional conduct. For example Actions, behaviour, verbal utterances or non-verbal (offensive gestures 'the middle finger' or any other known offensive gesture, action, use of derogatory references, etcetera) that display flagrant disregard for reasonably accepted standards of professional conduct or otherwise actions and behaviour that is generally considered rude or unacceptable in the workplace (such as shouting or arguing)".

41. There is a subsequent reference in the Policy to a "Lack of Professionalism", categorised only as 'Misconduct,' no. 37, where the definition states –



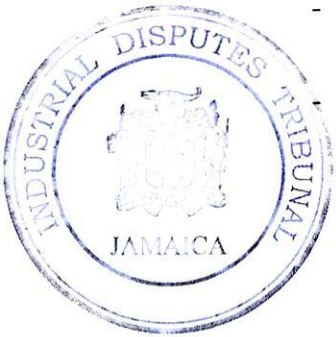
“Instances of behaviour that do not align with professional standards that are not meant to display flagrant or obvious or public disregard for standards of conduct. Actions that fall into this category include muttering rude comments not meant to be heard by others, conversations caught on recording when it is clear that customer is on hold or has hung up, obviously private conversations with a single other team member.”

42. The March 19, 2020 letter to Miss Morrison placing her on ‘non-disciplinary suspension’, stated that she accosted an Agent while she was **“at work”**. This was contradicted in Miss Skeen’s statement which clearly indicated that the incident occurred on the *“stretch leading to Emancipation Park,”* and Mr. Clarke’s which intimated that the incident took place on the road and not at the workplace. Although both the notes from the Disciplinary and Appeal Hearings quoted her as saying she was on lunch break, Miss Morrison was insistent that her shift had ended at 4:00 p.m. on that day and this statement was not controverted.
43. The extent of Miss Skeen’s claim against Miss Morrison is that she pointed *“her finger in my face. Then she said “weh di fuck u an’ Trevon inna.”* Mr. Clarke’s statement stated that he saw Kasieann (Miss Morrison) *“rushing around the corner passing me, flying in Tanicka’s face saying “what you and Trevon inna gal”,* a statement he said was uttered at least on three occasions. In her statement, Miss Morrison made the following declaration.

- While she was at work *“Tanika started throwing words stating a push up on man weh nuh want them”*

“After exiting building I there she was again throwing words, I then watched her and the other female along with Trevon cross the road and walking down to the road that lead to Pegasus. I then went over to her and said weh you and Trevon Inna followed by the f”word why everytime u see me you throw u words, calling my phone and tex it, she said ask yuh man and walk, I then said to her a nuh me man girl it’s my fren hence the reason I want to know why u doing what you doing...”

44. There was no evidence led to suggest that this confrontation was witnessed by anybody else outside of the persons providing witness statements. There is nothing in Miss Skeen’s statement that could reasonably lead us to conclude that there was “shouting” or “arguing”, and Mr. Clarke’s statement made no reference to Miss Morrison pointing her finger in Miss Skeen’s face. The Tribunal did not have an opportunity, except in the case of Miss Morrison,

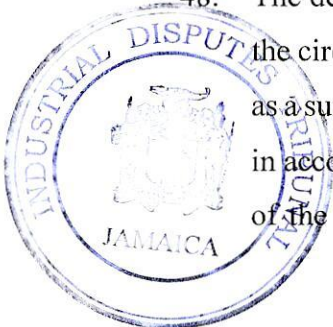


to interrogate either Mr. Clarke or Miss Skeen, as the Company did not put them up as witnesses.

45. Based on a careful reading of the three statements, in particular, that of Miss Skeen the complainant, there was nothing to remotely suggest that Miss Morrison's behaviour was "outrageous, flagrant, shocking or unseemly ...to disturb the mind or feeling" of anybody who may have been a witness to the 'confrontation.' And even where we accept that Mr. Clarke was a witness to the confrontation, although not a neutral party, his statement could not reasonably lead us to conclude that the conduct of Miss Morrison could rise to the level of "gross misconduct" as defined by Parnell, J.
46. The Company treated from the initial report that Miss Morrison had allegedly committed an act of 'gross misconduct' as the rush to suspend her was formed from the erroneous conclusion that the incident took place at work and that it resulted in a physical confrontation. This would undoubtedly explain why immediately after the report, Miss Morrison was put on non-disciplinary suspension, to avoid "any further physical confrontation."
47. The impact of the incident on the Company's reputation was neither pleaded nor contested. No nexus was established between Miss Morrison's behaviour and its effect on her "job performance and the favourable public image that the organisation enjoys." Where on the evidence, and applying the 'higher standard' for off-duty offence; and where the incident clearly did not rise to the level of an affray, and, taking into account the employee's work record - the rapid promotion she received in a short period of time - the Tribunal is of the opinion that there is no just cause for Miss Morrison's behaviour to be classified as "gross misconduct."

Whether the procedures resulting in the termination of Miss Morrison was carried out in a fair and equitable manner and conformed to the tenets of good industrial relations practices as referenced in the Labour Relations Code

48. The determination of the fairness of a dismissal, we well know, is dependent on whether in the circumstances the employer acted reasonably or unreasonably in treating the misconduct as a sufficient reason for dismissing the employee; and that question is essentially determined in accordance with equity and the substantial merits of the case. The intentions and conduct of the parties, therefore, will have to be scrutinized, moreso, that of the employer, in the



instant case where the burden rest upon them to justify that their action was reasonable and fair.

49. In that regard, the role of Human Resource Management (HRM) is crucial, and Ms. Lynch, in her testimony before this Tribunal was unmistakable in her comments that the role of HR was ultimately aimed at upholding a fair and transparent process for both the employee and the employer in overseeing the disciplinary procedure.

50. With respect to the Labour Relations Code (“the Code”), it promotes inclusivity, recognising work as “*a social right and obligation*” and advocating for “*joint responsibility*” between employers and workers in the pursuit of a co-operative working relationship. It indicates as one of management’s major objectives, good management practices and industrial relations policies which have the confidence of employers and employees. It mandates that –

“the development of such practices and policies are a joint responsibility of employers and all workers and trade unions representing them, but the primary responsibility for their initiation rests with employers.”

51. When it comes to disciplinary matters, the Code stipulates that the procedures to be adopted 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;*

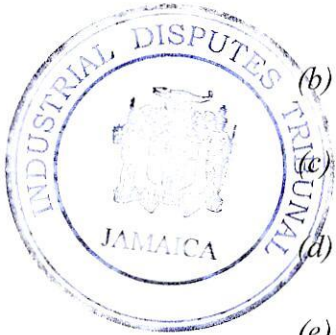
(c) *give the worker the opportunity to state his case and the right to be accompanied by his representatives;*

(d) *provide for a right of appeal, wherever practicable, to a level of management not previously involved;*

(e) *be simple and rapid in operation.”*

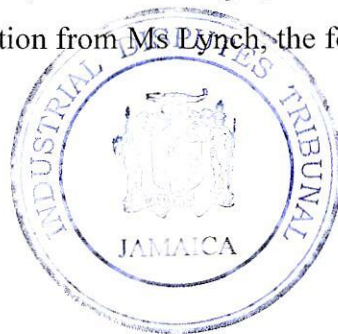
52. In a word, the process needs to be “fair”, and that fairness has to be judged in the context of Smith, CJ’s dicta that the provisions of section 12(5)(c) of the Act compels the Tribunal to examine “*the reason for the dismissal and not the dismissal itself..*” [See *West Indies Yeast Case*]. He went on to say that –

“it is not that the employer abides by the contract, if he terminates it in breach of the Act, even if it is a lawful termination at common law, the



dismissal will be unfair. So the Act questions the exercise of managerial prerogative in a far more fundamental way than the common law could do.”

53. We can now move to examine the case at hand to determine the fairness of Miss Morrison’s dismissal. Miss Morrison was first sent off on a ‘non-disciplinary’ suspension in a letter to her dated March 19, 2020 (noting that the incident occurred sometime around 4:15 p.m. on the same day). The letter contained two factually misleading assertions; the first is what amounts to a fallacy that the incident took place “at work” when the indisputable facts are that the confrontation occurred along Knutsford Boulevard; and the second is what the Senior Human Resource Manager stated as the primary cause of Miss Morrison’s suspension “*to mitigate against any further physical confrontation.*” Reference to ‘physical confrontation’ generally refers to ‘any act of violence where an individual expresses anger by hitting, pushing or otherwise physically assaulting another person.’ As this was never the basis of the complaint made by Miss Skeen, we are drawn to believe that the decision to terminate Miss Morrison’s services “*was influenced at least in part by the assumed*” “physical confrontation” which on the evidence, never took place.
54. This is indeed troubling, as the contents of the suspension letter appears deliberately false, and not a mere mistake or error of some kind. What further gives some degree of validity to this claim is Miss Morrison’s assertion in her April 3, 2020 statement that Miss Skeen said: “*gal me have HR in my corner you must get fired me hate you long time and now me get the chance I’m going to make use of it...*” Surprisingly, there is no evidence to show that this extremely damaging accusation, which goes to the heart of the role of HR in resolving conflicts and fostering a positive work culture, was ever challenged, even when repeated at the Disciplinary Hearing on June 12, 2020.
55. In her testimony, Miss Johnson said that the hearing chairperson would have made the recommendation to terminate the services of Miss Morrison based on her findings, and that the HR Manager would ultimately have made the decision on whether to accept that recommendation. She further disagreed with Counsel’s assertion that Miss Morrison was dismissed on the findings of Ms Lynch, the HR Manager, and not the hearing chairperson. In the June 24, 2020 letter of termination from Ms Lynch, the following extracts have been reproduced:

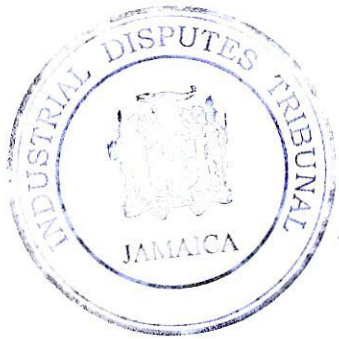


*”Further to Hearing held on Friday, June 12, 2020, concerning the allegation of Breach of # 36 of the Disciplinary Policy, with Miss Morrison where she waived her right to representation. Below enumerated one (i) through three (iii) **my notes and findings**: [Tribunal’s emphasis]*

- i. On March 19, 2020, Tanicka Skeen and Trevon Clarke were walking towards the bus stop on Knutsford Boulevard when Kasieann Morrison approached Tanicka Skeen asking questions about her relationship with Trevon Clarke in a hostile manner and used curse words.*
- ii. Ms Morrison admitted to cursing at Ms Skeen, however the altercation did not get physical*
- iii. Witnesses T. Clarke and T. Skeen confirmed that Ms. Morrison cursed [sic] at Ms. Skeen however the altercation did not get physical.*

Based on the finding outlined above, Miss Morrison’s encounter with Ms Skeen, though off premise was inappropriate and unprofessional and constitutes a breach of the Code of Conduct. Her actions and use of derogatory words during her altercation with Ms Skeen displayed a disregard for reasonably accepted standards and constitutes Gross Misconduct as defined in the Disciplinary Policy.

Aligned to the Disciplinary Policy the disciplinary action will be termination...”



56. A careful reading of the hearing notes showed that no recommendation was made by the Hearing chairperson; and in fact, no conclusion was evident. [see exhibit 8]. There were simply no findings. A similar situation arose in respect of the notes from the Appeal Hearing held on July 7, 2020, where again, no recommendation was made, nor conclusion drawn. However, on July 23, 2020, Ms Lynch wrote to Miss Morrison stating that the Appeal Hearing upheld the decision to terminate her services, which merely betrayed the startling incongruity between the notes and Ms Lynch’s letters. Given the sequence of events (outlined in paragraphs 53 – 55 above), the role of HR in this matter appeared to have been severely compromised and in its wake, casting doubt on the credibility of the Company’s witnesses.
57. The charge letter of April 9, 2020, spoke of the “*allegation of Breach of the Disciplinary Policy, # 36 of the Code of Conduct*”, attached to the letter were a copy of the Disciplinary Policy, report from the witness and the reports of Miss Morrison and Miss Skeen. No

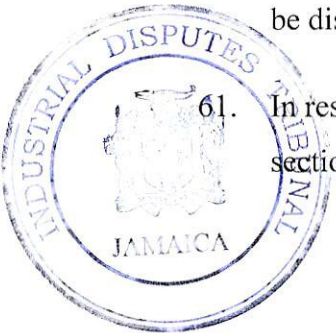
investigation report was mentioned. Miss Morrison was told of her right to be accompanied by a representative of her choice, but she waived her right to be represented.

58. The Code stipulates that the employer should advise the employee in advance of the precise charge or charges they are required to answer. This requirement flows from the need for adequate preparation. The charge should be formulated in precise and simple terms. We had earlier set out the description attached to #36 of the Disciplinary Policy (see paragraph 40), which need not be repeated, save to say that the examples of ‘lack of professional conduct’, and the “*flagrant disregard for reasonably accepted standards of professional conduct...*” all seem to relate to incidents occurring “*in the workplace,*” and there is no reason to believe it should apply to a situation outside the workplace.
59. At the time of Miss Morrison’s suspension, the Company had already concluded that the allegation constituted “*gross misconduct*”, that it took place “*at work*” and that “*further physical confrontation*” had to be avoided. In fact, the very subject matter in the March 19, 2020 letter was – “**Non-Disciplinary Suspension – Allegation of Gross Misconduct – Lack of Professionalism and Treat of Arm** (sic), which may have been intended to read ‘**threat of harm.**’
60. Miss Johnson agreed that the charge letter was vague, and we concur. In the circumstances, we believe (and Labour Courts have upheld the general thrust of our argument) that ‘the lack of professional misconduct’, for which Miss Morrison was charged, was merely a consequence of an aberrant act on her part, and not a discrete offence for which she should be disciplined.

61. In respect of section 5.2 of the Disciplinary Code, the question was raised as to whether this section was breached. The section reads –

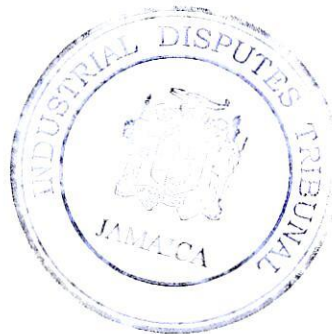
“Where a disciplinary hearing is necessary it shall be convened by the HR Department and shall be conducted by a Management Personnel who was not involved in the matter at any stage...”

62. The substance of section 5.2 is clothed in its language, and we are obliged to accept that every word is there for a purpose and should be given its due consideration. Thus, if we are to apply the principal canon of linguistic construction, it means that the words of section 5.2 must be given their ordinary meaning. In that regard, “**shall**” in the sentence has to be seen



as imposing a duty on the Company; it is mandatory. It is imperative, therefore, for the management to treat with the disciplinary hearing in the manner set out in its own Policy. Even where it has been using outside experts for years, it has been wrong, and the Tribunal has no obligation to give a pass to its permissiveness. A departure from it, in the opinion of the Tribunal, would render the disciplinary proceedings a nullity.

63. Provisions are made in the Disciplinary Policy for employees to sign as proof that they are fully aware of its contents. This was not done in the case of Miss Morrison, a clear departure from the purpose and intent of the Code for management in consultation with workers, to “*establish and publicise arrangements for the settling of such grievances*” which may arise from time to time. When looked at in its totality, the disciplinary process had been fatally flawed.
64. From the evidence, the conclusion to dismiss Miss Morrison showed a gap in logic, a lack of consistency, and a failure to take account of some material factor which undermines the cogency of the conclusion. Even if this were not so, the manner in which the matter was handled by the HR Department would have vitiated *ab initio* their role in objectively and fairly ‘overseeing the Disciplinary Hearing process.’

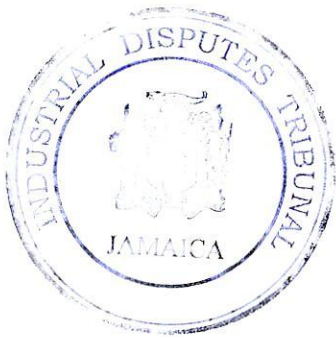


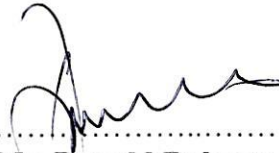
AWARD


65. Accordingly, in exercise of the powers conferred by Section 12(5)(c) of the Act, the Tribunal finds as follows:

- (a) Miss Kasieann Morrison was unjustifiable dismissed by her employer
- (b) Miss Morrison shall receive compensation in the amount of Two Million Two Hundred Thousand Dollars (\$2,200,000.00) from the date of her termination (excluding the period of her employment where she mitigated her loss) to the period stipulated for her reinstatement.
- (c) Miss Morrison is to be reinstated with effect from April 1, 2025.
- (d) Failure to meet the condition stipulated in (c) above, the employer be ordered to pay Ms. Morrison, in addition to (b) above, further compensation in the amount of One Million Dollars (\$1,000,000.00).

Dated this 13th day of March, 2025




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Mr. Donald Roberts, CD, JP
Chairman


.....
Mr. Errol Beckford
Member


.....
Dr. Denese Morrison, JP
Member

Witness:

.....
Miss Tasha Pearce
Acting Secretary of the Division