

**INDUSTRIAL DISPUTES TRIBUNAL**

**Dispute No: IDT 33/2018**

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**SETTLEMENT OF DISPUTE**

**BETWEEN**

**FINANCIAL SERVICES COMMISSION**

**AND**

**MRS. JANET JOHNSON-HAUGHTON**

***AWARD***

**I.D.T. DIVISION**



|                            |          |                 |
|----------------------------|----------|-----------------|
| <b>MISS MARSHA SMITH</b>   | <b>-</b> | <b>CHAIRMAN</b> |
| <b>MR. LESLIE HALL, JP</b> | <b>-</b> | <b>MEMBER</b>   |
| <b>MR. CLINTON LEWIS</b>   | <b>-</b> | <b>MEMBER</b>   |

**AUGUST 13, 2020**

*MS*

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

FINANCIAL SERVICES COMMISSION  
(THE COMPANY)

AND

MRS. JANET JOHNSON-HAUGHTON  
(THE AGGRIEVED WORKER)

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**REFERENCE**

By letter dated September 17, 2018 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 the Financial Services Commission (FSC) on the one hand, and Mrs. Janet Johnson-Haughton on the other hand, over the termination of her employment"*



*Ms*

## **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:

|                       |   |                                |
|-----------------------|---|--------------------------------|
| Ms. Marsha Smith      | - | Chairman                       |
| Mr. Leslie Hall, 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:

|                          |   |                         |
|--------------------------|---|-------------------------|
| Mr. Ransford Braham Q.C. | - | Attorney-at-Law         |
| Ms. Angela Robertson     | - | Attorney-at-Law         |
| Ms. Kimberley Morris     | - | Attorney-at-Law         |
| Ms. Ingrid Pusey         | - | General Counsel         |
| Mr. Wayne Robinson       | - | Human Resources Manager |

**In attendance was:**

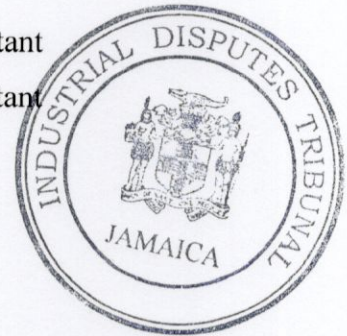
|                       |   |                                                               |
|-----------------------|---|---------------------------------------------------------------|
| Ms. Katherine Francis | - | Commissioner of the Board of<br>Financial Services Commission |
|-----------------------|---|---------------------------------------------------------------|

The **Aggrieved Worker** was represented by:

|                  |   |                                 |
|------------------|---|---------------------------------|
| Mr. Dillon Doyle | - | Industrial Relations Consultant |
| Mr. Lauren Marsh | - | Industrial Relations Consultant |

**In attendance was:**

|                              |                  |
|------------------------------|------------------|
| Mrs. Janet Johnson-Haughton- | Aggrieved Worker |
|------------------------------|------------------|



## **SUBMISSIONS AND SITTINGS:**

Briefs were submitted by both parties who made oral submissions during eighteen (18) sittings held between November 26, 2018 and November 25, 2019.

**BACKGROUND TO THE DISPUTE:**

1. The Financial Services Commission (*hereinafter referred to as the Company*) is a statutory body established under the Financial Services Commission Act, with its office at 39-43 Barbados Avenue, Kington 5. Mrs. Janet Johnson-Haughton (*hereinafter referred to as the Aggrieved Worker*) was employed to the Company in November 1, 2001. In July 2017 the Aggrieved Worker was the Senior Director Compliance and Internal Control. The Aggrieved Worker commenced acting as the Deputy Executive Director in January 2015. By way of letter dated July 10, 2017, the employment of Mrs. Janet Johnson-Haughton was terminated by reason of failing to accept offer of contract of employment. The letter is set out below: -

*" July 10, 2017*

*Mrs. Janet Johnson-Haughton  
Belfast District  
Morant Bay  
P.O. Box 102  
St. Thomas*



*Dear Mrs. Johnson- Haughton*

*Due to your failure to accept the offer of a contract of employment with the Financial Services Commission (FSC) the Board wishes to inform you that your employment with the FSC will end effective July 11, 2017.*

*You will receive payments amounting to Four Million, Five Hundred and Eighty Five Thousand, Two Hundred and Forty Four Dollars and Fifty Five Cents (\$4,585,244.55 net) which are due to you, pertaining the following:*

- (a) Outstanding amounts payable under your contract of employment for salaries and emoluments up to July 10, 2017*

*MS*

- (b) Three (3) months' pay in lieu of notice*
- (c) Payment for thirty two (32) days unused vacation*

*Details are on the sheet and pay slip attached.*

*You will receive an incentive payment for the period April 1, 2016 to March 31, 2017, which will be computed and paid to you when your Divisions' and the FSC's achievement of the organization objectives is known.*

*Your health insurance coverage will continue for a period of three (3) months. You will be eligible to convert your existing group life to individual life coverage within thirty (30) days of the date of your separation from the FSC. If you wish to pursue this action, kindly contact a Guardian Life Insurance Company representative of your choice.*

*Please contact the Human Resources and Administration Manager by July 11, 2017 to make arrangements to collect any personal belongings that may be in your office and hand over any FSC property in your possession: the Human Resources Manager will supply with you further details.*

*We extend to you best wishes in your future endeavours.*

*Sincerely,*

*Howard Mitchell*

*Chairman, Financial Services Commission*



*Copy: Mrs G. Gail Kamicka – Human Resources and Administration Manager*

*Ms. Katherine Francis – Chairperson, HRA Committee of the Board*

2. Mrs. Janet Johnson-Haughton protested her termination and sought the assistance and intervention of the Ministry of Labour and Social Security in the dispute between herself

and the Company. No resolution was reached, and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

**THE COMPANY'S CASE:**

3. In the presentation of its case the Company called a sole witness Miss Katherine Francis, an Attorney at Law and a member of the Company's Board. She became a board member in September 2016, under the Chairmanship of Mr. Howard Mitchell.
4. The Aggrieved Worker was appointed to act as Deputy Executive Director (DED) with effect from January 1, 2015. At the time of her acting, her substantive position was that of Senior Director, Compliance and Internal Controls. There was no confirmation of the Aggrieved Worker in the position of Deputy Executive Director after six months because the Aggrieved Worker had some personal difficulties and the then Board of Commission took the decision advertise the position. During the period of May /June 2015 to November 2016 several things affected the filling of the post of Deputy Executive Director (DED); such as personal problems being experienced by the Aggrieved Worker; a general elections and a letter from Ministry of Finance, prior to the general elections, that no new appointment should be made and a change of the Board of Commissioner arising from a change of administration after the general elections. The outgoing board before it demitted office adopted the position that the position of DED should be advertised. The new board was constituted in November 2016.
5. The incoming Board was advised on March 30, 2017, by the Executive Director, of the position taken by the old Board to advertise the position of DED. The new Board accepted the position of the old Board as seen in an excerpt from minutes of Board meeting of Thursday March 30, 2017, which reads:

*"After duly considering the circumstances, the Board of Commissioners confirmed the decision made by the previous members of the board, that the position of Deputy Executive Director should be advertised and the acting incumbent should be invited to apply for the post. In the interim, she would be asked to sign a revised contract in respect of her substantive position"*



6. The position of Deputy Executive Director was duly advertised. There were invitations to Mrs. Janet Johnson-Haughton to apply for the position. But despite several invitations, by representatives of FSC, Mrs. Johnson-Haughton failed to apply.
7. On April 13, 2017, some Executive Managers including Janet Johnson-Haughton were given letters referring to revised contract, re their substantive posts. The letter to Janet Johnson-Haughton points to a contract period from November 1, 2015 - October 31, 2018. Despite several attempts to have Mrs. Johnson-Haughton to sign the contract of employment for her substantive post, she failed to do so. The other affected Executive Managers signed their contracts. But despite the Board extending the time on several occasions, Mrs. Johnson-Haughton refused to sign.
8. On July 10, 2017, the Board subsequently wrote to Mrs. Janet Johnson-Haughton, stating that consequent on her failure to sign the contract of employment, her employment with FSC will end effective July 11, 2017.

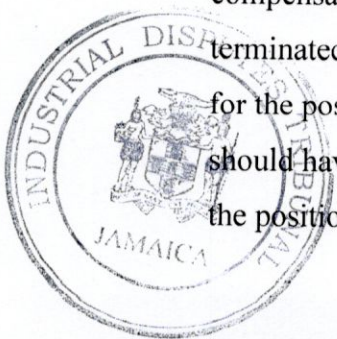
**THE COMPANY'S CONTENTIONS:**

9. The Aggrieved Worker's claim that her dismissal was unjustified is untenable based on the facts:
  - (i) She failed to engage in an administrative process required of all senior managers when she did not respond to any of the directives of the Board. That is, without justifiable reason she did not apply for the position of Deputy Executive Director neither did she sign the requisite contract of employment for her substantive position in circumstances where some had applied for the position Deputy Executive Director and all other persons at her level had signed a contract;
  - (ii) She was not summarily dismissed.
  - (iii) Both the Labour Relations and Industrial Disputes Act and the Labour Relations Code would not apply in these circumstances.



**THE AGGRIEVED WORKER'S CASE:**

10. The Aggrieved Worker was her sole witness. She gave a history of her employment contracts with the Company.
11. She stated that in 2015 she was promoted to the position of Deputy Executive Director (DED) as she was paid the same salary as the person whom she replaced and her pay slip never indicated that she was acting. She further argued that she should have been confirmed in the position as DED as she was working in the position for over thirty (30) months and her appraisal score was 92%.
12. Mrs. Haughton indicated that the position of DED was a clear vacancy and referred to the Ministry of Finance Circulation number 21, which states that where persons have been employed or are acting in a clear vacancy for more than six (6) months such person should be evaluated with a view to appointment unless valid reasons exist why such persons should not be appointed. She also pointed to section 1.8 (ii) of the Staff Orders for The Public Service.
13. Mrs. Haughton indicated that she noticed that her Performance Appraisal was incomplete as there was no recommendation for confirmation of which the Executive Director said it was for the purview of the Chairman. She then sought to get a meeting with the chairman. A meeting was held along with two other executives as it related to their contract of employments. The Chairman committed to another meeting after discussions with the Board.
14. She further argued that the follow up meeting promised by the Chairman never materialized. She later learned that the position in which she was the incumbent has been advertised as a vacancy in the newspaper and there was no communication with her.
15. On July 3, 2017, the Aggrieved Worker's representative requested a meeting with the Chairman of the Company. The Company's response was a letter of termination and advising her to proceed on five days casual leave, during which time a letter detailing her compensation for prior services will be provided. Thereafter her employment was terminated. She viewed the Company's request that she sign the contract of employment for the position of Senior Director, Compliance and Internal Control as a demotion as she should have been confirmed to the position of Deputy Executive Director, having acted in the position for over six (6) months.



### **AGGRIEVED WORKER'S CONTENTIONS:**

16. She contended that her dismissal was unjustified and breached her right to work. Her dismissal was a breach of:

- the Company's policies
- procedures as set out in the Staff Orders for the Public Service Orders
- procedures of Ministry of Finance Circular # 21
- and the Labour Code.
- She was never given a hearing
- Was never advised of any infraction after 17 years of service.
- Her dismissal was a summary dismissal



### **THE TRIBUNAL'S FINDINGS & RESPONSE:**

1. The issues related to the Aggrieved Worker's non appointment to the position of Deputy Executive Director, a position in which she had acted in excess of six months, are outside the scope of the Terms of Reference. The Terms of Reference relate to termination of employment not to appointment. The Tribunal therefore declines to comment on issues extraneous to the Terms of Reference, such as the Ministry of Finance & Planning Circular 21 dated September 9, 2013, the Staff Orders for the Public Service and the Company's decision to fill the position of Deputy Executive Director through competition.
2. At the time of the termination of the Aggrieved Worker's contract of employment, her substantive position was Senior Director, Compliance and Internal Control Division. She was acting in the position of Deputy Executive Director. She was never confirmed as Deputy Executive Director.
3. Section 6 of the Labour Relations Code speaks to the legal relationship between the employer and the employee being determined by the individual contract of employment. The Aggrieved Worker's contract of employment for her substantive position had been unsettled for over two years. The position was not unique to the Aggrieved Worker, as the contracts of two other senior managers were not settled. In 2017 the Board of the FSC met with all senior managers including the Aggrieved Worker with references to grievances in relation to the contracts. The grievances were addressed by way of

adjustments to the contracts of employment. This course of action on the Company's part was a fulfillment of its obligation under Section 5 (iv) of the Labour Relations Code to ensure that there was adequate and effective procedure for negotiation, communication and consultation to settle the grievance. Once the terms of the contract were settled it was incumbent on both employer and employee to give effect to the contract by signing same. The failure of the Aggrieved Worker to sign her contract of employment despite several requests from the Company shown an unwillingness of her part to be remain in a contractual relationship with the Company. This was an act on repudiation on Aggrieved Worker's part. Her failure to sign her contract of employment amounted to an intimation of an intention to refuse performance of the contract. The Company's letter of July 10, 2017 to the Aggrieved Worker was its acceptance of her repudiatory conduct and brought the contractual relationship to an end.

4. The termination of the Aggrieved Worker's employment was not as a result of a matter of discipline. Section 22 of the Code does not apply.
5. For those reasons stated above, the Tribunal find that the Aggrieved Worker's employment was justifiably terminated.



**AWARD:**

In accordance with Section 12 of the Labour Relations and Industrial Disputes Act, the Tribunal awards that Mrs. Janet Johnson-Haughton was justifiably dismissed by her employer.

DATED THIS 13<sup>th</sup> DAY OF AUGUST 2020



Witness:

.....  
Mr. Gary Lediard  
Secretary to the Division

.....  
Marsha Smith

Miss Marsha Smith  
Chairman

.....  
Leslie Hall

Mr. Leslie Hall, J.P.  
Member

.....  
Clinton Lewis

Mr. Clinton Lewis  
Member

Ms