

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 13/2022

SETTLEMENT OF DISPUTE

BETWEEN

GATEWAY COOPERATIVE CREDIT UNION (2017)

AND

MR. AIMESH FRANCIS

AWARD

I.D.T. DIVISION

MR. DONALD ROBERTS, CD., JP.	-	CHAIRMAN
MRS. JACQUELINE IRONS, J.P.	-	MEMBER
DR. DENESE MORRISON	-	MEMBER

FEBRUARY 21, 2023

IDT NO. 13/2022

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

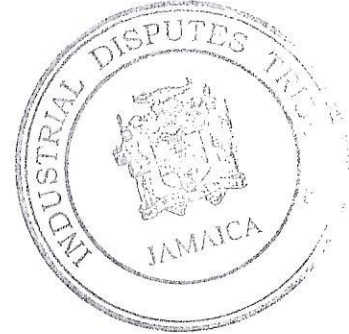
AN INDUSTRIAL DISPUTE

BETWEEN

GATEWAY COOPERATIVE CREDIT UNION (2017) LIMITED
(THE COMPANY)

AND

MR AIMESH FRANCIS
(THE AGGRIEVED WORKER)



REFERENCE

By letter dated March 7, 2022, 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 ("Tribunal") for settlement, the dispute between Gateway Cooperative Credit Union (2017) Limited and Mr. Aimesh Francis with the following Terms of Reference: -

"To determine and settle the dispute between Gateway Cooperative Credit Union (2017) Limited on the one hand and Mr. Aimesh Francis on the other hand, over the termination of his 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, JP - Chairman
Mrs. Jacqueline Irons, JP - Member, Section 8(2)(c)(ii)
Dr. Denese Morrison, JP - Member, Section 8(2)(c)(iii)

REPRESENTATIVES OF THE PARTIES

The **Company** was represented by:

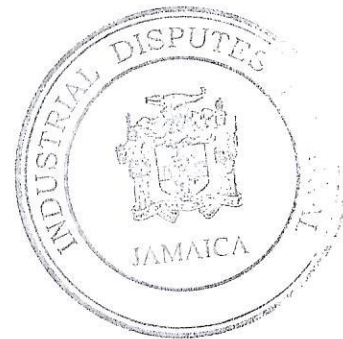
Mr. Jahmar Clarke - Attorney-at-law
Ms. Sandina Williams - Human Resource & Administration Manager

The **Aggrieved** was represented by:

Mr. Howard Duncan - Industrial Relations Consultant

In attendance:

Mr. Aimesh Francis - Aggrieved worker



SUBMISSIONS AND SITTINGS

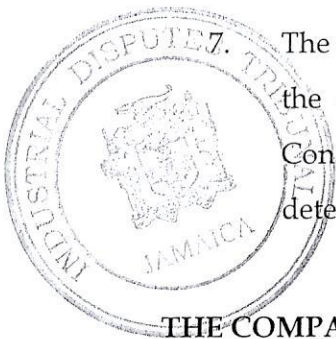
Both parties submitted briefs to the Tribunal and provided evidence through documentary and oral presentations over eleven (11) sittings covering the period June 15, 2022 to January 18, 2023.

BACKGROUND TO THE DISPUTE

1. Gateway Cooperative Credit Union (2017) Limited came about as a result of the merger between the Hanover and Montego Bay Credit Unions. Its registered offices are located at 20 Church Street, Montego Bay, and its mission is to empower its members through excellent service and sound financial guidance.

2. Mr. Aimesh Francis was employed at the Montego Bay Cooperative Credit Union as a Credit Clerk on November 30, 2015. His employment continued under Gateway Cooperative Credit Union (2017) Limited after the merger.
3. Mr. Francis received an internal memorandum dated January 8, 2020 from Mrs. Jennifer Taylor-Wilson, the General Manager Operations, setting out the preliminary findings from a December 2019 audit conducted by the Credit Union's Internal Auditor on the Loan Direct Services. Mr. Francis was asked to provide a written response to the audit findings.
4. Arising from his response, Mr. Francis was advised that the matter had been escalated to the Human Resource & Administrative Department, and he was subsequently charged for falsification of information, and dishonesty in respect of his request for additional compensation contrary to the Loan Direct Services Policy.
5. The organisation scheduled a disciplinary hearing for March 9, 2022, and for reasons which will later be explained, had to postpone this as well as subsequent attempts at convening a hearing. The first full hearing was held on May 19, 2020.
6. By letter dated May 26, 2020, Mr. Francis was informed that the charges laid against him were made out and his dismissal took place with immediate effect. He appealed the decision, and an independent panel found that Mr. Francis, having admitted to being aware of the Loan Direct Policy, nevertheless charged clients service fees contrary to the said Policy.

The dispute was referred to the Ministry of Labour and Social Security and despite the attempts at conciliation, the parties were unable to reach a settlement. Consequently, the matter was referred to the Industrial Disputes Tribunal for determination and settlement.



THE COMPANY'S SUBMISSION

8. Mr. Clarke in his submission contended that the credit union had observed paragraph 22 of the Labour Relations Code in dismissing Mr. Francis. He pointed

to the award of the Tribunal in the dispute between **Branch Development Limited and Mr. Trevor Beadle** (IDT No. 1/2019) as containing factual similarities to the case at bar.

9. Counsel averred that Mr. Francis' dismissal must be seen as justifiable based on documentary evidence, as well as the evidence from the organisation's witness. This, he said, will demonstrate that Mr. Francis was advised in writing of the charges against him; was well aware of the Credit Union's 'zero-tolerance' approach to the Loan Direct Services Policy; was given more than enough time to seek representation; had, and exercised the opportunity to state his case and cross examine witnesses; and was advised of his right to appeal and made full use of that right before an independent panel.
10. The Credit Union's sole witness was Mr. Bryce Grant, the vice president of Gateway Cooperative Credit Union (2017) Limited. Mr. Grant was asked to chair the disciplinary hearing, after the previously appointed chair, Mrs. Lorna Rampasard, had indicated that she was no longer available.
11. Mr. Grant pointed to the interoffice memorandum of January 8, 2020 from Mrs. Taylor-Wilson to Mr. Francis, contained the findings of the December 2019 audit which revealed that from a "a sample size of 14 members who paid loan direct service fee, all the members indicated that they came into the credit union's office to process loan, from application to disbursement." It further pointed out that Mr. Aimesh Francis was "one of the officers" who was compensated based on claims submitted.
12. Mr. Grant said that Mr. Francis was asked to provide a written report to the January 8 memorandum by January 14, 2020, with specific reference to the following:
 - a. *"Whether or not all members who received loan direct services received same without having to visit the credit union?"*
 - b. *If not, under what merit claims were made for instant(s) where the member visited the credit union to completed loan application.*
 - c. *Any other information necessary to assist us in understanding the findings above."*



13. Mr. Francis replied on January 14, 2020 stating, among other things, that “respectfully”, he had “...read and understood the Loan Direct Policy which was approved on December 10, 2019”, and that he had “... acted and made loan direct claims well within the Company Policies and would like to continue to do so...” He further made the following statement: “Kindly note, that merits for Loan Direct claims made in instances where some members came into office before successful disbursement of loans are explicitly explained in a petition made by said members who would have expounded on this in the attached document.” [Tribunal’s emphasis].
14. Mr. Grant said he was aware that Mrs. Taylor-Wilson, on January 29, 2020, advised Mr. Francis in an interoffice memorandum of the matter been “...forwarded to the Human Resource and Administrative Department for further due process.”
15. Mr. Grant said that he was also aware of the letter of February 28, 2020 signed on behalf of Miss Sandina Williams, the acting Human Resource Manager, to Mr. Francis with charges laid and notice of a disciplinary hearing. The full contents of the letter are set out below:

“February 28, 2020

*Mr. Aimish Francis
327 Carlton Crescent
Rosevale Estate
Montego Bay # 1 P.O.,
St. James.*

Dear Mr. Francis:

RE: NOTICE OF HEARING/CHARGE LETTER

Reference is made to correspondence dated January 8, 2020 in respect to Loan Direct Services Audit as well as your response dated January 14, 2020.

*Based on the investigation conducted, it has been decided that it is necessary to convene a Hearing. You are; therefore, invited to attend a Hearing on **Monday, March 9, 2020** at 10:00 am in the Conference Room at the Church Street Office. The Hearing will be convened before a Panel, consisting of the following persons:*

*Mrs. Lorna Rampasard - Chair
Mrs. Kadian Kerr-Shaw - Lucea Branch Manager*



Mrs. Tashica Watson

- Finance Manager

In this regard, we advise that you will be required to answer to the following charges:

Count 1

Statement of Offence

Falsifying information to obtain additional pay or other compensation, contrary to item #1 of the Zero Tolerance Breaches; and Dishonesty, contrary to item 2 – Zero Tolerance Breaches, of the Employee Disciplinary Code.

Particulars of Offence

The allegations are that from July to October 2019 you submitted claims and received payment for services contrary to the Loan Direct Services Policy.

In accordance with the labour laws, you have the right to be accompanied to the Hearing by a representative(s) of your choice. For security purposes, please provide written notification of your representative(s) at least one (1) day in advance of the said Hearing. Further, if for any reason you cannot make it for this Hearing, please advise us in writing.

Attached are the following documents for your attention:

- 1) Memorandum dated January 8, 2020 from the General Manager Operations
- 2) Response Letter dated January 14, 2020
- 3) Memorandum dated January 16, 2020 from the General Manager Operations

Please acknowledge receipt of this notice by signing and returning the attached copy.

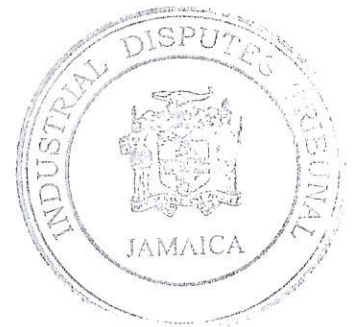
Yours co-operatively

GATEWAY CO-OPERATIVE CREDIT UNION (2017) LIMITED

.....
For Sandina Williams (Ms.)
Acting Human Resource Manager

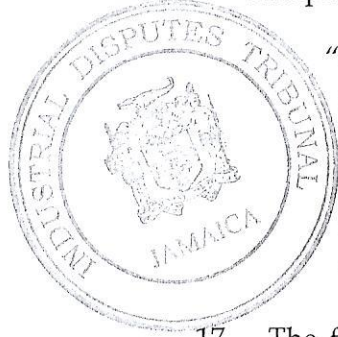
Copy to: Mr. Alexander Nicholson
Negotiating Officer – National Workers Union

Mr. Herman Needham – Senior Union Delegate"



16. Mr. Grant said he reviewed the minutes of the March 9 Disciplinary hearing, chaired by Mrs. Rampasard, where it was recorded the hearing was adjourned by the chair to

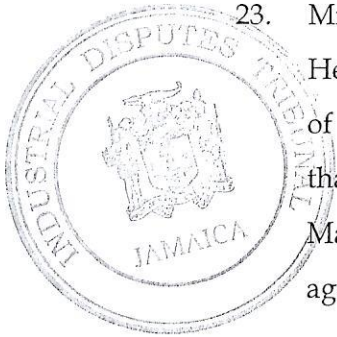
allow Mr. Francis time to obtain a representative. The exchange between Mrs. Rampasard and Mr. Francis, as recorded in the minutes, is set out below:



*“Chairman asked: “Do you have a representation”, Mr. Francis replied “no”
Chairman asked: “Do you want to seek representation” Mr. Francis stated that there was not enough time to seek representation based on the date for the meeting. He further stated that he is requesting that he be given some more time to seek representation to which he will have upon his return from present vacation which will end on March 23, 2020.”*

17. The following day after the March 9 aborted hearing, Mr. Francis wrote to Ms. Venetia Campbell requesting a further hearing date after the completion of his vacation leave on March 20, 2020, and at which time he said he would have a representative.
18. Mr. Grant pointed to a letter dated April 21, 2020 from Ms. Williams to Mr. Francis in which she acknowledged receipt of his email *“proposing a hearing date for Wednesday, April 22, 2020 at 1pm.”* In her response she indicated the unavailability of the panel on that date and proposed *“...a new date for Wednesday, April 29, 2020 at 12 noon.”* Ms. Williams’ letter also advised of new members of the panel, namely:
 - Mr. Bryce Grant - chair
 - Mrs. Kadian Kerr-Shaw - Lucea Branch Manager
 - Mrs. Tashica Watson - Finance Manager
19. Mr. Grant informed the Tribunal that a disciplinary hearing was convened on May 1, 2020 under his chairmanship. He said that Mr. Francis was still without a representative, but agreed to have the hearing continue. According to Mr. Grant, Mr. Francis advised the panel that he had no witness, and further, that he was not provided with a copy of the investigative report done by the Auditor, and that he was not privy to any of the witness statements.
20. Mr. Grant said he took the decision to postpone the hearing *“in the interest of natural justice”* until Mr. Francis is provided with copies of the audit investigative report and witness statements.

21. Mr. Grant advised that the Loan Direct Policy was amended in December 2019, and that the audit investigation was done for the period July to October 2019, prior to the introduction of the amended policy. He said the panel decided that both policies should be examined.
22. A Loan Direct Service Member Satisfaction Survey Summary Comments Table: Aimish Francis Members [exhibit 14] was tendered into evidence, showing that members came into the office to conduct transactions relating to their loans. The listed members were charged the 1 percent service charge under the Loan Direct Policy.
23. Mr. Grant said the panel concluded that charges were made out against Mr. Francis. He said from the questions and answers there were clear indications that breaches of the Loan Direct Policy occurred and that Mr. Francis, in his answers, admitted that the policy was breached. The panel subsequently sent a letter to the HR Manager stating that it found Mr. Francis guilty of the charges that were brought against him.
24. Mr. Grant noted said that it was Ms. Cindy Brown, the internal auditor, who in her testimony confirmed that she conducted the customer survey satisfaction of the members who were charged the commission under the Loan Direct Policy. It was her evidence that the entire process was done with the persons coming into the office.
25. Mr. Grant asserted that his understanding of the Loan Direct Policy is that anytime a member comes into the office in the processing of the loan, the additional charge has to be forfeited. He, however, acknowledged that the policy makes provision for 'exceptional circumstances' in which the member may have to come into the office without disqualifying the credit union agent from obtaining the additional sum.
26. During cross-examination, Mr. Grant said that from his perusal of the notes of the appeal hearing, although words to the effect that 'the charges were upheld' were not used, the conclusion from both the cover letter from the appeal panel and the notes of its proceedings was that the appeal did not succeed.



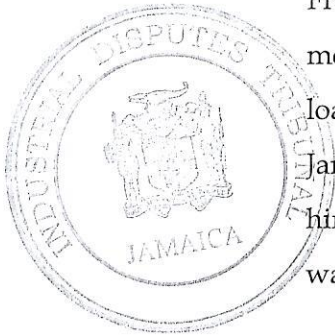
27. He confirmed that Ms. Janice Neathly, the Risk Compliance & Legal Services Manager was not a member of the panel but the person "*marshalling the evidence on behalf of the company.*" Mr. Grant said he had asked some questions of Mr. Francis "*but had no interest in the outcome.*"
28. He said he cannot recall Mr. Francis telling the panel that some of the members listed in the 'Member Satisfaction Survey Summary Comments Table' were "*on the outside waiting to come in*" to give evidence on his behalf, but do recall that sometime during the proceedings he made a request for them to be called. He recalled saying that the panel could not call a member as a witness "*as this would put the credit union in disrepute.*" He, however, said that this statement was not to deny Mr. Francis his right to call any witness on his behalf, but that the credit union could not do that for him.
29. Mr. Grant said he believed "*he and the panel acted fairly towards Mr. Francis on this matter*", and that he considered that the principles of natural justice were observed at all times. He further stated that Mr. Francis was made aware of his right to appeal, which he exercised, and was at all times represented at the appeal hearing.

THE AGGRIEVED WORKER'S SUBMISSION

30. Mr. Duncan, in his opening submission to the Tribunal said that the evidence will prove that Mr. Francis did not commit a breach of credit union's policy; that he faced an unfair panel; and that the requirements of natural justice were not met. He said the Tribunal should take careful note of the fact that Ms. Sandina Williams, the acting HR Manager who was fully involved in the case, was available at all times to be called as a witness, but was not called.
31. He said that evidence will be led to show that the chairman and members of the disciplinary panel acted as prosecutors and judges in the circumstances, that the notes of the hearings are not correct, and that the appeal hearing "*did not make any conclusive decision upholding the dismissal.*"

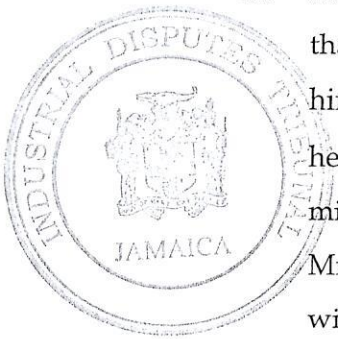


32. Mr. Francis testified on his behalf, stating that he was first employed to the Montego Bay Cooperative Credit Union in November 2015 in the capacity as Credit Clerk, and was promoted to Marketing and Sales Officer in January 2017, and subsequently absorbed in the merger under Gateway Cooperative Credit Union (2017) Limited.
33. In response to Mrs. Haughton-Johnson's memorandum of January 8, 2020, Mr. Francis said he prepared a petition to which the majority of the fourteen (14) members affixed their signatures to say under what conditions he processed their loans. He further said that his response to the Loan Direct Audit was done on January 14, 2020 and the letter from Ms. Williams laying out the charges and inviting him to a hearing was dated February 28, 2020. He said between those two dates he was never interviewed as part of any investigation.
34. Mr. Francis asserted that none of the members came in to do any loan transaction with him; he said he did not know when they came in, and expressed his disagreement with the contents of the February 28 letter as he did not act contrary to the loan direct policy. Mr. Francis maintained that he met the members "*at their business place, work place and on the road*", that none of them came to him at the office regarding the loan, and if they came to the office he was "*not aware of their presence.*"
35. Mr. Francis said that Ms. Williams never indicated to him whether or not she spoke to any of the members in relation to the Loan Direct, he was not told who those members were, but based on the timeframe covered by the audit he was able to identify the 14 persons and submitted their names. He specifically denied that Princess Alexander, who was named in the Member Satisfaction Survey [exhibit 14], had her loan processed in the office.
36. Mr. Francis asserted that the minutes of the May 1, 2020 disciplinary hearing were not accurate in stating that he said "no" in response to the chairman's enquiry as to whether he had any witness. He said he told the chairman that he had witnesses who were the members set out in his petition.
37. At the hearing on May 19, 2020, Mr. Francis admitted to telling the chairman he would proceed without a representative based, he said, on communication between



Ms. Williams and himself. During their conversation Ms. Williams told him that the credit union wanted to have the disciplinary hearing completed forthwith because she would soon be proceeding on vacation leave, and the chairman was pressed for time. He said it was always his intention to be represented.

38. During cross-examination Mr. Francis said he asked Mr. Reid if he had called any of the members listed in the petition to which Mr. Grant interjected and advised him not to answer the question. Mr. Grant, he said, *"was being very boisterous and was talking over me, and at that point I decided not go any further with the questioning."*
39. Mr. Francis said he did not question Mrs. Haughton-Johnson because he did not believe it would *"make any sense based on the behaviour of Mr. Grant as chairman."* He was not able to speak freely, he felt lost and asked the chairman if it was possible to stop the hearing so that he could get a representative. The request, he said, was denied.
40. Mr. Francis further testified that Mr. Grant *"was the dominant person in the room"*, and that he presented the case on behalf of the credit union. He said Mr. Grant stopped him when he was asking Ms. Cindy Brown about the Loan Direct Policy at the hearing held on Friday, May 22, 2020, but this was not reflected in the minutes. The minutes, he said, were not presented to him prior to any of the disciplinary hearings. Mr. Francis held that he was not given an opportunity to state his case, or called his witnesses.
41. Mr. Francis commented on the financial and psychological difficulties he has had to endure since his termination, and that during the several attempts he made to obtain a job the process was always aborted and he was told by the companies they would have to await the outcome of the disciplinary proceedings.
42. In response to questions under cross-examination from Mr. Clarke, Mr. Francis agreed that the policy of December 10, 2019 was not pertinent to the issue at hand. He also agreed that he was prepared to proceed at the May 1, 2020 hearing without a representative, and that he was present during the testimony of Ms. Cindy Brown



where she stated that she interviewed eight (8) members who gave her information about visiting the office.

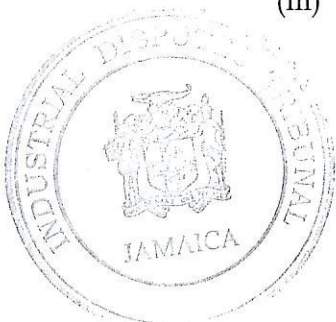
43. When asked if he had an opportunity to question Mrs. Haughton-Johnson, Mr. Danovan Reid and Ms. Cindy Brown, he responded in the affirmative. He said at the end of the questioning he was given an opportunity to respond, and agreed that he gave a detailed response. He conceded that at some time during the May 19 hearing he requested an adjournment to seek legal representative.
44. During re-examination Mr. Francis said that one of the members, Mr. Richard Brown, came to the office because he was anxious and wanted to fast-track his loan application.

ISSUES

45. In reviewing the submissions and evidence from both parties, a number of issues were identified which, we believe, would compel unending adherence to the tenets of natural justice, the provisions of the Labour Relations Code and the principles and practices of good industrial relations.

The issues of consideration are therefore set out below:

- a Enquire into the cause for the dismissal of Mr. Francis and determine whether or not there were reasonable grounds on which the credit union acted.
- b Determine what weight and consideration ought to be given to:
 - (i) the fact that the investigative report by the Auditor was not provided to Mr. Francis;
 - (ii) the role played by Mr. Bryce Grant as chairman in the conduct of the hearing proceedings; and
 - (iii) whether the discretion of the disciplinary panel needed to have been deferential to the asserted right of Mr. Francis to representation, notwithstanding the commencement of the disciplinary hearing.



ANALYSIS AND FINDINGS

Enquire into the cause for the dismissal and determine whether or not there were reasonable grounds on which the credit union acted

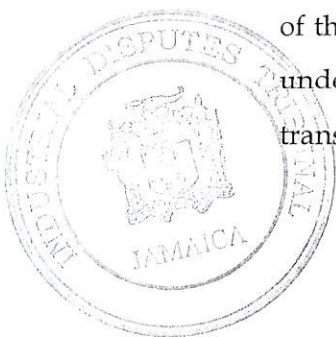
46. From the evidence, it is clear that the management of the credit union had reasonable grounds to believe that Mr. Francis had a case to answer in respect of the alleged breach of the Loan Direct Policy. The memorandum of January 8, 2020 provided a summary of the initial findings from the December 2019 audit. It made reference to 14 members who were said to have *"paid loan direct service fees"*, although *"they came into the credit union's office to process loan, from application to disbursement."* The audit revealed that Mr. Francis was *"one of the officers who were (sic) paid as per claim made..."* from the members audited.
47. It was clearly established that the management afforded Mr. Francis an opportunity to respond in writing to the allegations within a reasonable time. While the memorandum of January 8, 2020 provided no names or indicated the period of the audit review, it is to be noted that Mr. Francis did not seek clarification in his response on January 14. Instead, he was emphatic that he had always *"...acted and made loan direct claims well within the Company Policies and would like to continue to do so..."*
48. His reference was to the revised December 10, 2019 policy, which he said he *"read and understood"*, and not the January 29, 2015 policy that was in existence at the time of the audit. The Tribunal is nonetheless satisfied that the 2019 revision bears no effect on the intent, application or procedure of the applicable policy, except that it carries an exclusionary clause which recognises that *"there may be situations that will require that the member visits the office before the cheque disbursement phase."*
49. Mr. Francis, in his January 14 reply, made the following admission:

"Kindly note, that merits for Loan Direct claims made in instances where some members came into office before successful disbursement of loans are explicitly explained in a petition made by said members who would have expounded on this in the attachment."

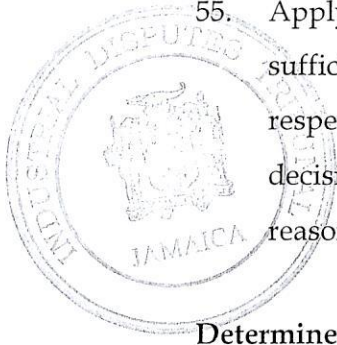


'exceptional circumstances' under which office visits could be considered in the processing of the loan. Even so, upon careful examination of the petition, and despite Mr. Francis' avowal, no 'explicit explanation' was provided as to why "...some members came into office before successful disbursement of loans..." The petition, purportedly signed by the members, said "...we may or may not have come in the office on a one-off basis before successful disbursement of loans by choice...", and made reference to their understanding of the December 10, 2019 policy, and the 'exceptional clause', which we have already said is not relevant to the case.

51. It follows therefore from the audit that the management had reasonable grounds on which to base their belief that Mr. Francis was allegedly in breach of the Loan Direct Policy. This was confirmed in the witness statement of the internal auditor, Ms. Cindy Brown, dated May 4, 2020, in which she said that "in December 2019, a special audit request was received by the Internal Department for the auditing of the loan product "Loan Direct Services..." as a consequence of which "an investigation was launched into the administration of the Load Direct Service product to members."
52. Extracts from the Human Resource & Administration Policy regarding the 'Zero Tolerance Breaches' as well as the Employee Disciplinary Code were also tendered into evidence, indicating that "falsifying information to obtain employment, additional pay or other compensation" attracts dismissal as a first offence.
53. The Tribunal therefore finds less than persuasive Mr. Duncan's argument inferring that Mr. Francis did not breach the policy and therefore should have no case to answer. The circumstances which gave rise to reasonable grounds on which the management of the credit union based its charges against Mr. Francis, was seen as necessary, but not sufficient for us to interpret that he was guilty of the offence.
54. On the evidence we have formed a reasonable belief that the inconsistencies in Mr. Francis' testimony did not give support to his case. He consistently denied that any of the members came into the office before the cheque disbursement. His evidence under examination-in-chief was that none of the members came in to do any loan transaction with him, and if they did come to the office he would not have known,



or have any recollection. However, he conceded under re-examination that Mr. Richard Brown "came into the office because he was anxious and wanted to fast-track his loan application." A similar answer was expressed by him as reflected in the May 22 minutes of the disciplinary hearing.



55. Applying the balance of probability standard, we are satisfied that there were sufficient grounds for the management to have laid a charge against Mr. Francis in respect of the loan direct policy and its alleged breach. We further contend that the decision to dismiss Mr. Francis could not be seen as falling outside the bounds of reasonableness.

Determine what weight and consideration ought to be given to:

- A) the fact that the investigative report by the Auditor was not provided to Mr. Francis;
- B) the role played by Mr. Bryce Grant as chairman in the conduct of the hearing proceedings; and
- C) whether the discretion of the disciplinary panel needed to have been deferential to the asserted right of Mr. Francis to representation, notwithstanding the commencement of the disciplinary hearing.

56. The other plank on which we have to determine the case is whether in the conduct of the hearing due regard was paid to the principles of natural justice and the provisions of the Labour Relations Code. We are mindful that the courts have long argued that the perception of justice has to be placed on 'a lofty pedestal' to ensure that its integrity remains always squarely foreclosed from 'public opprobrium'. We have borne this in mind in examining the three (3) headings listed above.

57. (A) In his examination-in chief, Mr. Grant said that it was Mr. Francis who told him that he did not receive a copy of the investigative report and the witness statements. However, the minutes of May 1, 2020 disciplinary hearing only made reference to the fact that "...it was established that the relevant witness statements were not provided..." to Mr. Francis. No mention was made of the investigative report.

58. In setting out what took place at the May 1, 2020 hearing, the following responses during the examination-in-chief of Mr. Grant was noteworthy:

“Mr. Grant: “... I asked him if he was privy to documents that were pertinent to his charge and to all of the investigation, he said he was not given any information in relation to the charges that was brought to him, so I said that was unfortunate because he should have received these documents so that he can prepare his defence.

Q: *When you say these documents what documents are you talking about?*

A: *Like the investigative documents, the documents that were used to identify what the charge was and the investigation that was taking place, all the documents. So he said he was not privy to those information and due to natural justice you shouldn't be asked to answer questions on that you are not privy, so I asked that the hearing be adjourned so that the be given the documents of the investigation, everything, the statements and all of these things so that he can prepare.*

Chairman: *What is all of these things?*

A: *That is like, for example, the investigation that was done by the auditor which would indicate the names of the people who were asked questions and what their responses were and so on...”*

59. Mr. Francis said he did not receive a copy of the investigative report up to the time of the May 19 and May 22 meetings, and there is no evidence that an enquiry was made if he had. However, the hearings continued without him having the benefit of the document. While neither the statute nor the code make any express reference to procedural details, the dictum of Langrin, J. offers some guidance as to the consideration and weight the Tribunal ought to give matters of this nature. In his summation Langrin, J. commented as such:

“The ingredients of a fair hearing may be divided into three (3) categories:

- (1) Advanced notice of charges of accusations*
- (2) Right to see factual evidence in the possession of the decision-maker.”*
- (3) Right to make representations...”¹*

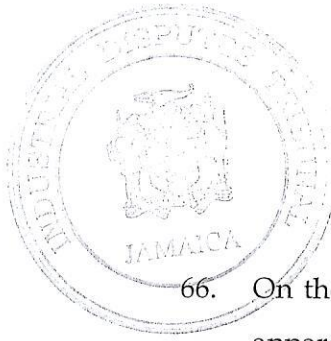
¹ Pickering, Keith A. v. Jamaica Constabulary Force Order 2442, No. 10 and 27, page 6.



60. The provision of the documents related to the investigation was seen, in the minds of the panel, as necessary and sufficient for the adherence to natural justice. Justice Langrin opined that the right to evidence in the possession of management must be shared with the other side as an important ingredient to a fair hearing. The common law entitles the Tribunal to exercise its discretion in respect of the standards to be applied in determining what is fair in the conduct of a disciplinary hearing.
61. In taking all these factors into consideration, the Tribunal concludes that Mr. Francis was entitled to disclosure of the investigative report as such report was relevant to and relied upon in the presentation before the panel. In the absence of the investigative report, we therefore see a fatal flaw in the process to guarantee Mr. Francis a fair hearing.
62. (B) In respect of the role played by Mr. Grant as chairman of the disciplinary proceedings, it is important to review his own testimony. Mr. Grant was emphatic that Miss Janice Neathly, the Risk Compliance & Legal Services Manager, who was not a member of the panel, was the person who "*marshalled the evidence*" on behalf of the credit union. He said that as chairman he had "*asked some questions of Mr. Francis but had no interest in the outcome.*"
63. From the evidence garnered at the first full hearing of the disciplinary panel on May 19, 2020, the credit union called two witnesses, namely; Mr. Danovan Reid, the Credit Manager, and Mrs. Nicole Haughton-Johnson, Marketing & Sales Manager. It was clear that the proceedings were dominated by the chairman with 43 of the 47 questions to Mr. Reid coming from him, the remaining four from Mrs. Kerr-Shaw, a member of the panel. Similarly, the vast majority of the questions to Mrs. Haughton-Johnson came from the chairman, with only one question from Mrs. Neathly during the entire proceedings.
64. The sitting of May 22, 2020 showed a similar pattern with the questioning of Ms. Cindy Brown. In fact, the minutes quoted the chairman as making the following statement to Ms. Brown: "*We reserve the right to redirect, thank you and we reserve the right to call you back.*" [See exhibit 15B, page 9].



65. Evan Brown, J. in the Frank Johnson case opined that on general principles --



"... a person who hold an inquiry must be seen to be impartial, that justice must not only be done but must be seen to be done, and if an observer with full knowledge of the facts would conclude that the hearing might not be impartial, that is enough..." [para. 90]

66. On the strength of the evidence Mr. Grant's role undoubtedly raised the issue of apparent bias, which could conceivably run afoul of the rules of natural justice. We have concluded as such, that the dominance of the proceedings by Mr. Grant would cause a reasonable tribunal to conclude the that hearing was not impartial; and we so conclude.

67. (C) It is to be noted that a number of hearings were put off to allow Mr. Francis the right to representation, and that he agreed to proceed without. However, the right to representation is asserted in the Labour Relations Code and therefore must be seen as imperative rather than permissive. Clause 22(i)(c), states that the worker should be given *"the opportunity to state his case and the right to be accompanied by his representatives."* Such a right, according to the distinguished Labour Law scholar, Sir Otto Kahn-Freund, *"... is a positive right which [a worker] cannot bargain away."*

68. We therefore reject the notion that a right can be annulled and as such, Mr. Francis was entitled to exercise that right particularly where the chairman's behaviour made him felt uncomfortable during the May 22 disciplinary hearing.

69. To have denied Mr. Francis the right to representation under the circumstances was patently wrong and cannot be justified on the grounds of the effluxion of time.

DECISION

70. We have concluded on specific findings of facts and upon a careful examination of all the circumstances surrounding this case that:

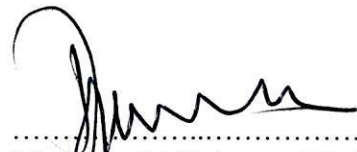
- a. The management had substantial reasons on which to have acted in terminating the services of Mr. Francis;

- b. Although Mr. Francis had agreed throughout the hearings to proceed without representation, the denial of his request to be represented in a subsequent hearing violated his right to representation;
- c. Mr. Grant, as chairman of the disciplinary panel, conducted the proceedings in a manner which was prejudicial to a fair hearing;
- d. The ruling of the appeal panel substantially upheld the decision of the disciplinary committee, however, the misconceived grounds of the appeal did not afford the distinguished panel an opportunity to cure the defects in natural justice;
- e. The termination of Mr. Aimesh Francis was unjustifiable under the circumstances.

71. Having regard to the foregoing the Tribunal therefore order that Mr. Aimish Francis be paid sixty percent (60%) of his basic salary from the time of his dismissal to the date of the award.

Dated this 21st February, 2023





 Mr. Donald Roberts, CD, JP
 Chairman

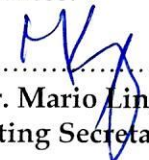


 Mrs. Jacqueline Ifons, JP
 Member



 Dr. Denese Morrison, JP
 Member

Witness:



 Mr. Mario Ling
 Acting Secretary of the Division