

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 12/2022

SETTLEMENT OF DISPUTE

BETWEEN

GLOBAL MEDIA SERVICES

AND

MS. LAURIE-ANN HARVEY

AWARD

I.D.T. DIVISION

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

AUGUST 9 , 2022

DISPUTE NO. IDT 12/2022

INDUSTRIAL DISPUTES TRIBUNAL

AWARDS

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

GLOBAL MEDIA SERVICES

(THE COMPANY)

AND

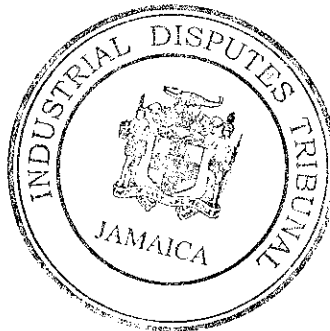
MS. LAURIE-ANN HARVEY

(AGGRIEVED WORKER)

REFERENCE

By letter dated January 14, 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 **Global Media Services and Ms. Laurie-Ann Harvey** with the following Terms of Reference: -

"To determine and settle the dispute between Global Media Services on the one hand, and Ms. Laurie-Ann Harvey on the other hand, over the termination of her employment"



DIVISION

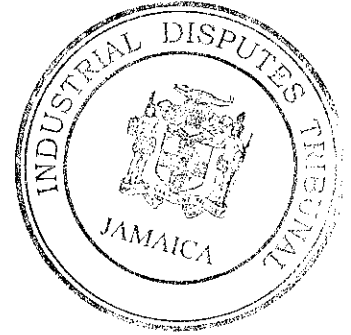
The division of the Tribunal selected in accordance with Section 8(2)(c) of the Act to deal with the matter comprised:

Mr. Donald Roberts, CD, 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. Hadrian R. Christie	-	Attorney-at-law
Mr. Alwyn Scott	-	Managing Director



The **Aggrieved** was represented by:

Mr. Howard Duncan	-	Industrial Relations Consultant
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In attendance:

Ms. Laurie-Ann Harvey	-	Aggrieved worker
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SUBMISSIONS AND SITTINGS

The parties submitted briefs to the Tribunal and made oral presentations over four (4) sittings covering the period April 29, 2022, through to June 27, 2022. Over the course of the sittings, the Tribunal, in addition to the oral evidence also examined seven (7) exhibits.

BACKGROUND TO THE DISPUTE

1. The employer, Global Media Services, is an out-of-home media Company, providing media solutions for local companies wanting to have innovative exposure in Jamaica. Its registered offices are at 13 Cargill Avenue, Kingston 10. The employee, Ms. Laurie-Ann Harvey, was employed by Global Media Services as a Client Services Executive from January 30, 2017. She was to report directly to the Accountant and had a net monthly compensation of One Hundred Thousand Dollars (\$100,000.00) as stated in her employment contract.

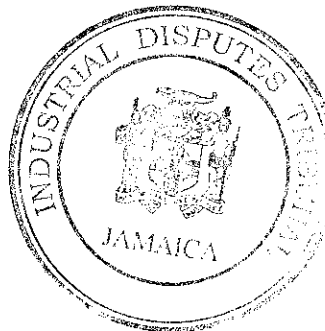
2. On October 10, 2017, Ms. Harvey was issued with a letter of termination by the General Manager, Ms. Althea Sinclair. The letter mentioned the numerous discussions held with her regarding her performance, which had not met the standards of the Company, and as a consequence, her services were terminated with immediate effect.
3. Ms. Harvey sought the advice of Mr. Howard Duncan, Industrial Relations Consultant. Mr. Duncan forwarded an email to Ms. Sinclair dated October 11, 2017, contesting the termination on the grounds that it was unjustifiable, and requested an appeal hearing within ten (10) days. Ms. Sinclair responded on the same day, outlining the circumstances under which the termination took place, but never addressed the issue of the appeal hearing.
4. The matter was referred to the Ministry of Labour and Social Security for conciliation. The efforts were unsuccessful, and by letter dated January 14, 2022, the Minister of Labour and Social Security, pursuant to his powers under section 11 of the Labour Relations and Industrial Disputes Act (LRIDA), referred the matter to the Industrial Disputes Tribunal (IDT) for determination and settlement.

GLOBAL MEDIA SERVICES' CASE

5. The Company acknowledged that there were some missteps with regards to Ms. Harvey's termination and would therefore be arguing for adequate compensation that is just and reasonable based on the particular circumstances.
6. The Company's first witness was its founder and Managing Director, Mr. Alwyn Scott. Mr. Scott told the Tribunal that the Company has been in existence since 1998. He retired from his position as Managing Director in 2015 and returned to the Company in 2019. He became aware of Ms. Harvey's issue by perusing the files when he returned.
7. He said Ms. Harvey was with the Company for eight (8) months and was dismissed by the then General Manager, Ms. Althea Sinclair. Mr. Scott said he saw no evidence of a formal hearing being held to deal with her termination. He noted that Ms. Sinclair's background does not give her the experience to deal with labour laws and besides, Global Media Services is a small company that facilitates informal discussions.

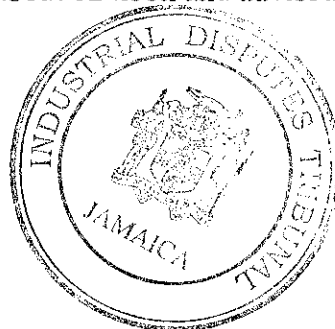


8. Mr. Scott explained that from the notes he reviewed, the position held by Ms. Harvey as Client Services Executive required a command of the English Language. He said that grammatical errors and feedback from clients seemed to have been an issue, as well as challenges with the quality of her performance. On the file, he noted as well, were comments about punctuality and absenteeism.
9. Ms. Harvey was privy to information regarding the salary of a former team member, which she attempted to use to negotiate a salary increase. He asserted that it was against the Company's policy to divulge information regarding person's salary. He added that the Company had tried to look at other areas to transfer Ms. Harvey, including the Accounts Department, however, she was not qualified.
10. Mr. Scott admitted under cross-examination that Ms. Harvey had been performing the payroll functions around February 2017 but was not employed as a payroll clerk. He said he is not aware of who was performing the accounting duties for the Company at the time as he was no longer there.
11. The Company's second witness was Ms. Sherica Samuels, who has been employed as the production co-ordinator since March 2015. She said her job demanded that she be in constant dialogue with Ms. Harvey regarding contracts and other jobs relating to clients.
12. Ms. Samuels pointed out that the department had weekly meetings where it was disclosed that Ms. Harvey's performance was below par, particularly where it relates to invoicing. Her poor performance came up on more than one occasion at these weekly meetings where the despatching of the invoices would not always meet the deadlines set, and this negatively impacted the Company's financial flows. She said she was not aware of any other issues regarding Ms. Harvey's performance.
13. Under cross-examination, Ms. Samuels admitted that these weekly meetings were not called specific to Ms. Harvey's performance and that almost everyone had shortcomings that would be addressed at the meeting.

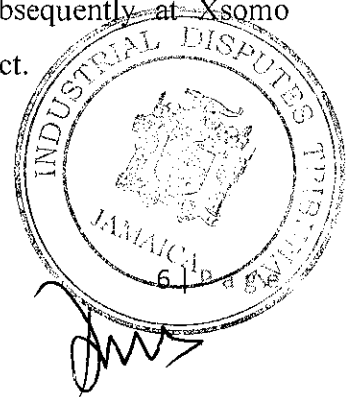


THE AGGRIEVED WORKER'S CASE

14. Mr. Duncan in his opening submission pointed out that the Company had accepted that the dismissal was unjustifiable and did not conform to the procedures of the Labour Relations Code, referencing paragraphs 7 and 8 of the Company's brief as confirmation.
15. He said that Ms. Harvey had taken over the functions in the accounts department consequent on the departure of the accountant and she will provide evidence of the functions she was contracted to perform as set out in her job description. She will also provide, in her own words, evidence relating to the appeal, the non-compliance of the appeal, the subsequent attempt at a negotiated settlement, and how the termination has affected her mentally and financially.
16. Mr. Duncan argued that Ms. Harvey need not defend herself as the Company did not make out a case against her.
17. Ms. Harvey informed the Tribunal that she was employed at Global Media Services on January 30, 2017, as a Client Services Executive. The position was a permanent one, and the functions entailed dealing with the clients, including matters relating to contracts, liaising, preparing and despatching contracts relative to the assigned tasks.
18. She said in addition to those functions she had other duties assisting Ms. Baker, the Accountant, but took on additional accounting functions when Ms. Baker left the employ on May 2, 2017. She informed the Tribunal that the additional functions were assigned to her by Ms. Tracean Miller, the Print Manager. Ms. Sinclair was in agreement and would issue instructions to her through Ms. Miller.
19. Ms. Harvey informed the Tribunal that when she arrived at work at approximately 9am on October 10, 2017, she was unable to log into the system. She made enquiries with the IT Department and was told they got instructions to either disable her from the system or restrict her access. Ms. Miller came to the office at about 12 noon and advised her that Ms. Sinclair would be having a meeting with her.



20. At about 2pm on the same day she attended a meeting with Ms. Sinclair and Ms. Miller. Ms. Sinclair told her that the Company was going in a different direction and would no longer require her services. She was handed a letter at the end of the meeting, dated October 10, 2017. She noted that it was a letter of dismissal relating to her performance, an issue which, she said, did not arise during the meeting with Misses Sinclair and Miller. She left the office and subsequently wrote a letter, addressed to Ms. Miller, denying the allegations contained in her termination letter, dropped it at the office the following day and thereafter contacted Mr. Duncan, an IR consultant.
21. Ms. Harvey said she assumed the duties of Ms. Baker, the Accountant when she left in May 2017, and was told in a meeting with Misses Miller and Sinclair that an accountant would have been hired shortly. When she realised that the hiring of an accountant had not taken place, she emailed Ms. Miller and copied Ms. Sinclair on October 6, reminding them of the promise made in a previous discussion to consider an increase in her salary in light of the additional work she was undertaking.
22. Under cross-examination she remained somewhat ambivalent as to whether it was Ms. Miller who had asked her to carry out the additional duties consequent on the departure of the Accountant. She later agreed that she had put herself forward to assist with the accounting functions and that Ms Miller and Ms Sinclair agreed to have her perform those duties.
23. She accepted that her contract of employment required her to report to the Accountant and that some of the duties under the contract required that she **“assist[ing] the accountant with various tasks, including preparing budgets, records, and statements.”**
24. Ms. Harvey said it was Ms. Miller who had suggested that she would consider compensation for the additional work, and that notwithstanding the additional tasks, there were no issues with her meeting the deadlines for the despatching of invoices.
25. Since leaving Global Media Services, Ms. Harvey told the Tribunal that she started working at the National Irrigation Commission in October 2018 and subsequently at Xsomo International Limited, where she is on a six-months renewable contract.

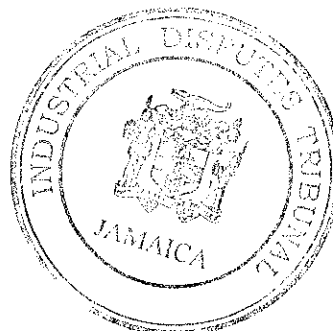


ISSUES

26. It is important at the outset to remind ourselves that Global Media Services have accepted that they are the party in default, and that Ms. Harvey's termination was unjustifiable. The issue therefore before the Tribunal is the making of an award that satisfies the provisions as contemplated in section 12(5)(c) of the LRIDA, and the common law analogous with the statutory provisions.
27. The issues considered are:
- (i) Did Ms. Harvey's conduct provided reasonable grounds for termination, and whether there were contributory or mitigation factors which the Tribunal must take into account?
 - (ii) What are the factors the Tribunal would need to weigh in determining whether to award reinstatement or provide compensation or grant such other relief as determined?

EVIDENCE

28. The finding of facts from the evidence clearly demonstrates that the manner in which Ms. Harvey was terminated was patently wrong. The reason for her dismissal has been anything but confusing. The letter of termination from the General Manager, Ms. Sinclair, mentioned **"numerous discussions"** about her performance, which **"has not met the standards of the Company."**
29. Mr. Scott, who was not there at the time of her employment and could only reference what he saw on the file, told the Tribunal that there were complaints about her command of the English Language from clients. He then went on to speak of her breach of the Company's policy in divulging information regarding the salary of a former employee. Ms. Samuels, a participant observer at the weekly team meetings, said there were problems with Ms. Harvey complying with the scheduling deadlines for invoicing for the clients.



30. There was also the issue of Ms. Harvey's right of appeal, a right which was largely ignored by the Company even when it was brought to their attention by Mr. Duncan.
31. Ms. Harvey has mitigated her loss by finding a job one year after her termination. From the evidence, her present job at Xsomo is precarious and based on a fixed-term six months' contract.

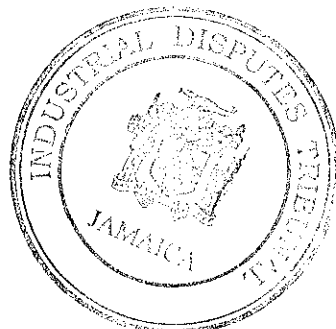
ANALYSIS AND FINDINGS

32. It is imperative for us to establish the relevant legal principles recognised by statute and the common law, which squarely foreclose the Tribunal's consideration in applying the facts when coming to its decision. In providing the appropriate context, we must begin by noting that the manner in which the Company went about terminating the services of Ms. Harvey is a clear breach of the principles of natural justice and violates the provisions of the Labour Relations Code. It is what makes a dismissal unfair, even if carried out in a lawful manner; and the unfair practices meted out to workers, especially where it infringes their right to dignity and respect, are too deeply rooted in our history and tradition to be ignored.
33. The Code embodies the principle of cooperation between workers and management and the need to develop and maintain –

“...good personnel management techniques designed to secure effective co-operation between workers and employers and to protect workers and employers against unfair labour practices.”

34. In the Court of Appeal ruling in the case of Village Resorts v. IDT and Grand Lido Village Staff Association, Rattray, P in his judgement opined that –

“Essentially... the Code is a road map to both employers and workers towards the destination of a co-operative working environment for the maximisation of production and mutually beneficial human relationships.”



35. A much more putative assertion is set out in paragraph 2 of the Code under the heading **'purpose'**. It states –

“Recognition is given to the fact that management in the exercise of its function needs to use its resources (material and human) efficiently. Recognition is also given to the fact that work is a social right and obligation, it is not a commodity; it is to be respected and dignity must be accorded to those who perform it, ensuring continuity of employment, security of earnings and job satisfaction.”

36. Paragraph 3 of the Code, not only declares that its provisions are to set out guidelines for the conduct of good industrial relations practices, but goes on to make the following declaration:

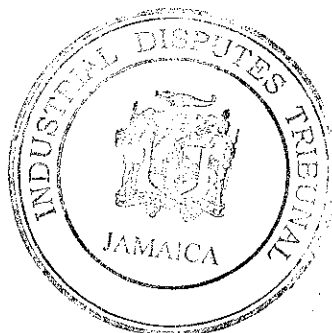
“Save where the Constitution provides otherwise, the code applies to all employers and all workers and organisations representing workers in determining their conduct one with the other, and industrial relations should be carried out within the spirit and intent of the code... an infringement of the Code does not of itself render anyone liable to legal proceedings; however, its provisions may be relevant in deciding any question before a tribunal or board.”

37. In the Privy Council judgement on the matter of the **Jamaica Flour Mills v. the Industrial Disputes Tribunal**, Their Lordships **“respectfully accept as correct the view of the Code and its functions as expressed...”** not only by the Jamaican courts but as set out in the IDT award which stated that the Code was **“as near to law as you can get.”**

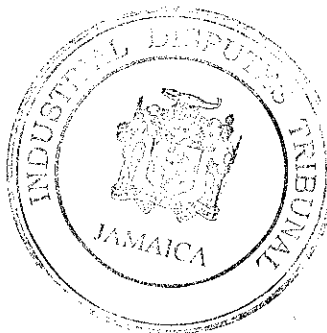
Did Ms. Harvey’s conduct provided reasonable grounds for termination, and whether there were contributory or mitigation factors which the Tribunal must take into account?

38. In his judgement in the case of **The Industrial Disputes Tribunal v. The University of Technology, Jamaica**, Brooks, JA advocated that –

“In my view, the IDT is entitled to take a fully objective view of the entire circumstances of the case before it, rather than concentrate on the reasons given by the employer. It is to consider matters that existed at the time of dismissal, even if those matters were not considered by, or even known to, the employer at that time.”



39. In so doing and in order to make specific findings of facts based on the evidence, the Tribunal took an “objective view” of the circumstances of the case. The letter of termination had raised **“numerous discussions”** allegedly held with Ms. Harvey regarding her performance. Although it was said that she did not meet the standards of performance set by Global Media Services, they were however willing **“to find suitable alternative employment within the company.”** She performed the functions of the accountant for just over five (5) months – with no evidence of poor performance raised – however, the Company did not see her as a suitable candidate for that position, as, in the words of Mr. Scott, **“she was not qualified.”**
40. Ms. Harvey’s employment contract provided for **“a six month trial period during which [the] this agreement may be terminated by either party with two weeks’ notice. During this process assessments will be done monthly.”** [Tribunal’s emphasis]. It is clear on the findings that no assessment of Ms. Harvey’s performance was carried out during the six months’ trial period, and Ms. Harvey’s alleged problem with the English Language was certainly not evident in her testimony before the Tribunal.
41. The Tribunal places no weight on Ms. Samuels’ evidence since she was not put in a position to supervise and oversee the work of Ms. Harvey and moreso, the problems raised at the weekly meetings were not peculiar to her. In Ms. Samuels’ own words **“almost everyone would have shortcomings and those would be discussed at the meetings.”**
42. What is most curious however, is Ms. Sinclair’s response of October 11, 2017, to Mr. Duncan’s email appealing the unjustifiable termination of Ms. Harvey. She referred to a meeting held on July 7, 2017, to discuss Ms. Harvey’s performance and the decision to assign Ms. Samuels to assist her **“to minimise errors and oversee the conversation with clients to ensure proper grammar...”** and added that she was also **“...given additional tools to assist with her writing skills and daily communication with clients.”** None of this was brought out in evidence.



43. In relation to Mr. Duncan's point that a hearing should have been held, Ms. Sinclair responded by saying that –

“Unfortunately the post was made redundant. Ms Harvey was informed that the Company was still restructuring and I was trying to find another post that would be suitable for her skill however there was no vacancy.”

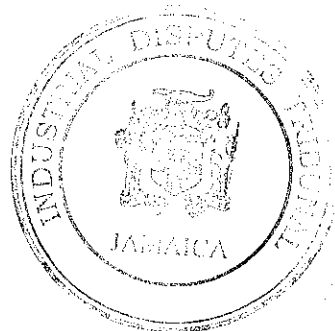
44. The final piece of the puzzle in examining the arguments is the claim that Ms. Harvey breached the Company's policy by divulging the salary of a former team member. Ms. Sinclair's email (supra) said the following:

“The email Ms Harvey sent to Ms Miller on October 6th outlined salaries, making comparison which is breach of the Company's confidentiality policy which is grounds for immediate dismissal...”

45. It would have been extremely helpful if the Company had submitted the policy as evidence; and Ms. Sinclair was not called upon to give evidence, as she certainly would have been the person to speak authoritatively on the matter.

46. The issue which confounded the Tribunal was the construct and meaning of Ms. Sinclair's email which left us to wonder how could 'the making of salary comparison' constitute a breach of the confidentiality policy of the Company? Or even more alarming, is the claim that confidentiality was breached because the information regarding salary comparison was 'disclosed' to Ms. Harvey's manager and no one else. The fact is that she was acting as payroll clerk, which was not in her original job description.

47. The flippant manner in which the Company went about terminating the services of Ms. Harvey brings into sharp focus the Code's assertion that one's job is a social right and obligation, and not a commodity. The Courts have sought to 'ameliorate the harshness of the common law practice' embodied in the master-servant relationship which 'commoditized' labour and in turn, has given the Code the effect to regard the right to one's job as akin to his or her property.



2011/05/05
[Signature]

48. When one ponders the several reasons offered for Ms. Harvey's termination, we are left with very little to conclude on what might have been the *ratio decidendi*. The explanations suffered from a number of infirmities and fallacies and the Tribunal is simply unimpressed by the attempts to conjure up arguments in a whimsical effort to justify the separation of Ms. Harvey from her job.
49. We cannot accept Counsel's assertion that we should reject Ms. Harvey's evidence that the reason given at the meeting with Ms. Sinclair as to the grounds for her termination were different from that which was stated in her letter. In fact, the evidence contained in Ms. Sinclair's response to Mr. Duncan's email regarding the right of appeal speaks about the post being made redundant and that **"Ms Harvey was informed that the company was still restructuring..."** We believe this was what was said to Ms. Harvey at the meeting and why the argument, in the email correspondence to Mr. Duncan, and Mr. Scott's testimony, spoke of seeking a suitable position to which to transfer her. Counsel may well be reminded that **'he who comes to equity must come with clean hands.'**
50. In a 'fully objective' view of all the circumstances, therefore, we find no evidence to support the claim that Miss Harvey's conduct provided any reasonable grounds for her termination.

What are the factors the Tribunal would need to weigh in determining whether to award reinstatement or provide compensation or grant such other relief as determined?

51. The Tribunal must give due consideration to section 12(5)(c) of the LRIDA. It relevant section states as follows:

"if the dispute relates to the dismissal of a worker the Tribunal, in making its decision or award –

- (i) may, if it finds that the dismissal was unjustifiable and that the worker wishes to be reinstated... order the employer to reinstate him, with payment of so much wages, if any, as the Tribunal may determine;**
- (ii) shall, if it finds that the dismissal was unjustifiable and that the worker does not wish to be reinstated, order the employer to pay the worker such compensation or to grant him such other relief as the Tribunal may determine;**



(iii) may in any other case, if it considers the circumstances appropriate, order that unless the worker is reinstated by the employer within such period as the Tribunal may specify the employer shall, at the end of that period, pay the worker such compensation or grant him such other relief as the Tribunal may determine...”

52. There is no limit on the Tribunal’s jurisdiction to award compensation. The Court, in its judgement in the case of **Garnett Francis v. IDT and Private Power Operators**, [2012] JMSC Civil 55, opined that there exists -

“...a discretion entrusted to the Tribunal where the level of quantum of compensation is concerned; and it is a wide and extensive discretion... reveals no limit or restriction placed on the exercise of the discretion and no formula, scheme or other means of binding or guiding the Tribunal in its determination of what might be a level of compensation or other relief it may arrive at as being appropriate.”
[page 21]

53. We contend, however, that the Tribunal has and will always bear in mind the Wednesbury principle, a concept elucidated by Lord Diplock, referencing an irrational decision which he stated is -

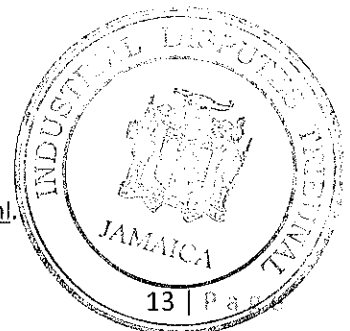
“so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”¹

54. In making an award of compensation to be paid by the employer to a dismissed worker, Halsbury’s Law of England, 4th Edition provides four (4) headings for consideration, these include: (i) immediate loss of earnings; (ii) the manner of dismissal; (iii) future loss of wages; and (iv) loss of protection in respect of unfair dismissal.² The authors in Commonwealth Caribbean: Employment and Law (2014), page 257, cited the following:

55. “...It should also be noted that exemplary damages are available in appropriate cases, as was illustrated in **Stanford Financial Group Ltd v. Hoffman**, where the sum of US\$30,000.00 was awarded to the employee in consideration of the harsh and crude manner of dismissal which the court thought was meant to humiliate her...”

¹ Retrieved on July 4, 2022 from: <https://www.bailii.org/uk/cases/UKHL/1984/9.html>.

² See Halsbury’s Law of England, Fourth Edition (1976), volume 16, page 421

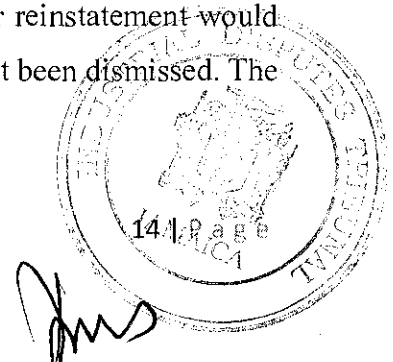


56. We, however, concur with Counsel's view that the Tribunal should not contemplate an award that is either gratuitous to the worker or punitive to the employer. We are obliged to ensure that proportionality is maintained and that the award is manifestly just and equitable in the circumstances.
57. The steps required by the Code to bring a dismissal within the realm of natural justice were recklessly abandoned. It is certainly of no practical significance whether or not Ms. Sinclair's background familiarised her with labour laws, the fact is that she was the General Manager at the time. That is a matter that the Code addresses, and Global Media would do well to be mindful of in the future. The responsibilities of employers, individual worker, trade unions and employers' associations are set out in Part II of the Code. Employers should, among other things, ensure that –

“all supervisory staff have clearly defined responsibilities in the organisational structure, are in charge of manageable work groups, understand their responsibilities and have the necessary qualities, and industrial relations training and exposure to do the job;”
[Tribunal's emphasis]

58. Ms. Harvey was not provided in writing with the matter(s) which would give rise to disciplinary action against her; was not given an opportunity to state her case in defence of those charges and was not provided with the right to be represented at a hearing. Even where Mr. Duncan, in his email correspondence to Ms. Sinclair, requested a right of appeal this was ignored.
59. We pause to ponder the juxtaposition of Ms. Harvey's email requesting a review of her compensation and rightly so, for additional work and her immediate termination. We are not bothered by Counsel's argument over the apparent confusion of Ms. Harvey in respect to her reinstatement, and whether she would seek to return to a lower paying job with guaranteed stability. The Company ought to bear in mind that on general principles **“the onus lies upon the employer to prove failure to mitigate.”**³ This was not done.
60. Ms. Harvey has expressed a desire to be reinstated, and the Tribunal may, if it finds the dismissal unjustifiable, order the employer to do so. The remedy for reinstatement would require the employer to treat Ms. Harvey in all aspects as if she had not been dismissed. The

³ Smith and Wood's Employment Law, 15th Edition, 2021, page 566.

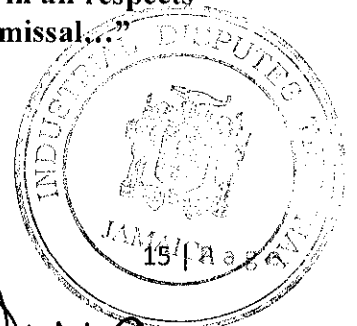


authors of Commonwealth Caribbean: Employment and Labour Law [supra], noted that this not only means the employee should be put back in his or her “substantive job”, but also –

“... to pay his salary, together with emoluments and pension, for the period since the dismissal...” that “...reinstatement is generally considered to be the primary mode of redress for unfair dismissals from the international standpoint, as ILO Convention 158 indicates...” and further “... (T)his is no doubt related to the fact that the protection being offered to workers is in relation to the retention of the job itself, and not necessarily compensation for its removal...” (page 253)

61. We are hereby reminded that the Code not only regards work **“is a social right and obligation”** but that it must ensure continuity of employment in addition to the satisfaction of the job and guaranteed earnings. **“The need for workers to be secure in their employment...”** is a condition specified under Part III, ‘Security of Workers’, paragraph 11 of the Code.
62. Ms. Harvey admitted that her present employment situation is not permanent, she is on a rotating six-month contract which need not be renewed at the end of the period. As much as her salary in her present job is higher than at Global Media Services, she would, for all intents and purposes, have earned her status as a permanent employee, having completed her six-month trial period with no evidence of any adverse report regarding her performance. She should therefore be entitled to the full benefits set out in her employment contract.
63. However, if ‘reinstatement’ is taken to mean that the employee must be treated as if she has not been dismissed, the circumstances of Ms. Harvey’s case would have to be viewed differently in light of the mitigating factor associated with her subsequent employment.
64. The Tribunal accepts the fact that ‘reinstatement’ is a genus term covers both reinstatement and re-engagement. We find refuge for this in the Privy Council’s landmark ruling in **‘The Flour Mills Case’**(supra) in which Their Lordships argued that –

“... the concept of reinstatement has some flexibility about it. Reinstatement does not necessarily require that the employee be placed at the same desk or machine or be given the same work in all respects as he or she had been given prior to the unjustifiable dismissal...”

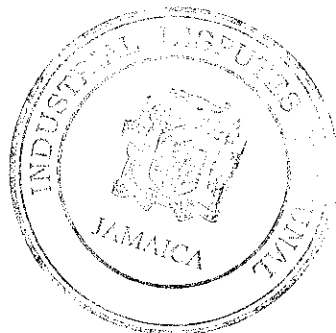


65. In arriving at our decision, the Tribunal took into account the following: (a) the expressed wish of Ms. Harvey for reinstatement; (b) whether it is practicable for the employer to comply with an order of re-instatement; and (c) whether Ms. Harvey caused or contributed to her dismissal.
66. We are obliged, as well, to consider the point of view on reinstatement which places the burden on the employer to discharge the onus of proving impracticability as the most pressing option against reinstating Ms. Harvey. This was clearly not done as no evidence was led for the Tribunal to consider whether there was opposition to Ms. Harvey's return among the staff; or that it would lead to a breakdown of trust and confidence between the parties.
67. Where the employee is not reinstated at the end of the period specified, the "level of compensation or other relief" could reasonably include 'additional compensation'. The discretion of the Tribunal to so consider is a matter upon which the Courts have already pronounced. Williams, J. in the Garnett Francis case (supra), opined that –

"... There is no basis...on which to conclude that the level of compensation to be determined by the Tribunal must be exactly proportionate to the period for which the employee has been out of work or that some other similar benchmark should be used...The Tribunal was free to determine what compensation was best; and did so having regard to the existence of both mitigating and aggravating factors on both the employer's side and the employee's side..." [p. 21]

68. While the LRIDA and its Regulations make no reference to the assessment of compensation, Halsbury's Fourth Edition, (supra, p. 421), provides the general principles which, having regard to the dictum of Williams, J., the Tribunal can take into account -

The Tribunal must increase the amount of the award to the extent it considers just and equitable in the circumstances where it has made a recommendation for re-engagement and the employer has unreasonably refused or failed to make an offer." (Tribunal's emphasis)



AWARD

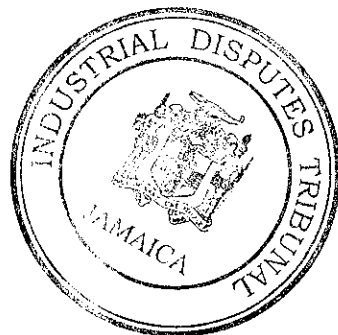
69. Accordingly, in exercise of the powers conferred by Section 12(5)(c) of the Act, the Tribunal finds as follows:

- (a) Ms. Laurie-Ann Harvey was unjustifiably dismissed by her employer.
- (b) Ms. Harvey is to receive compensation covering the period from the date of her termination to October 10, 2018, in the amount of One Million Six Hundred Thousand Dollars (\$1,600,000.00).
- (c) Taking into account the period of her employment, order the re-engagement of Ms. Harvey with effect from September 5, 2022, in a post that is not disadvantageous to her in terms of remuneration or rank.

Or

- (d) Failure to meet the condition stipulated in (c) above, the employer be ordered to pay Ms. Harvey, in addition to (b) above, further compensation in the amount of Eight Hundred Thousand Dollars (\$800,000.00).

DATED THIS 9th DAY OF AUGUST, 2022.



.....
Mr. Donald Roberts, CD, JP
Chairman

.....
Mrs. Jacqueline Irons, JP
Member

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

Witness:

.....
Mrs. Maureen Kennedy
Secretary/Director