

4 Ellesmere Road  
Kingston 4

IDT 7/2022- 8/2022- 9/2022

December 18, 2024

Mrs. Dione Jennings  
Permanent Secretary (acting)  
Ministry of Labour  
1F North Street  
Kingston

Dear Mrs. Jennings,

Re: Dispute between Hieroglyphics Limited and Val Lutas, Jonathan Rowe and Kamal Buddoo  
over the termination of their employment

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Enclosed please see copies of Awards and Minority Award handed down by the Industrial  
Disputes Tribunal in connection with the above disputes.

Yours faithfully,



Mario Lint  
For Secretary/Director

Similar letters sent to:

|                         |  |
|-------------------------|--|
| Hon. Minister of Labour |  |
| Ms. Gillian Corrods     | - Director, Industrial Relations & Allied Services |
| Mr. Michael Kennedy     | - Chief Director, Industrial Relations             |
| Mr. Mikhail Jackson     | - Attorney-at-Law                                  |
| Mr. Jerome Santoni, PMP | - VP of Business Operation                         |

Encl.

ML/tp

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 8/2022

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SETTLEMENT OF DISPUTE

BETWEEN

HIEROGLYPHICS LIMITED

AND

JONATHAN ROWE

*AWARD*

I.D.T. DIVISION

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

DECEMBER 18, 2024

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

HIEROGLYPHICS LIMITED

(THE COMPANY)

AND

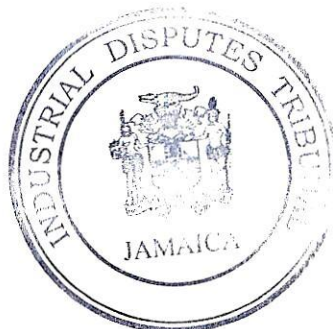
JONATHAN ROWE  
(AGGRIEVED WORKER)

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REFERENCE

By letter dated January 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 Hieroglyphics Limited and Mr. Jonathan Rowe with the following Terms of Reference: -

"To determine and settle the dispute between Hieroglyphics Limited on the one hand, and Jonathan Rowe 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. Radcliffe Antoine   | - | Managing Director   |
| Mr. Jerome Santoni, PMP | - | Vice President of Business<br>Operations, Posterity Group |

The **Aggrieved** was represented by:

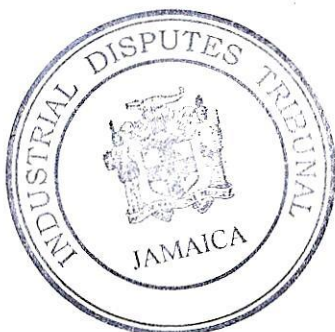
- |                       |   |                 |
|-----------------------|---|-----------------|
| Mr Mikhail C. Jackson | - | Attorney-at-Law |
|-----------------------|---|-----------------|

**In attendance:**

- |                   |   |                  |
|-------------------|---|------------------|
| Mr. Jonathan Rowe | - | Aggrieved Worker |
| Mr. Val Lutas     |   |                  |
| Mr. Kamal Buddoo  |   |                  |

## SUBMISSIONS AND SITTINGS

Both parties submitted briefs to the Tribunal and made oral presentations over thirty-one (31) sittings covering the period April 26, 2022 through to July 31, 2024.



## BACKGROUND TO THE DISPUTE

1. Hieroglyphics Limited is a registered company located at 14 Ballater Avenue, Kingston 10 in the parish of St. Andrew. The Company provides experienced, dedicated and skillful talent in areas of consultation, design, printing, print application, fabrication, installation, branding multi-media and much more.
2. Mr. Jonathan Rowe was employed to Hieroglyphics Limited on a full-time basis in the position of IT Personnel with effect from October 1, 2019. His services were terminated on April 27, 2020.
3. Mr Rowe was present at the weekly general staff meeting on Monday, April 27, 2020, presided over by Mr. Antoine. At the meeting Mr. Antoine, who joined the meeting virtually, reported that there was evidence of an attempt to defraud the Company of sums of money through the use of a fraudulent email address. Upon outlining the alleged attempt at fraud, two persons entered the meeting, introduced themselves as police officers and indicated that they would be questioning staff members. The staff was advised to leave the meeting with the exception of Mr. Rowe, and some members of the management team.
4. Mr. Rowe was questioned about the fraudulent email, which he initially denied knowing anything about. He subsequently confessed to doing it and implicated Messrs. Kamal Buddoo, Val Lutas, Tajae Green and Miss Donna Rie Graham.
5. After the interrogation by the police, Mr. Rowe was advised that his employment would be terminated immediately and was escorted off the premises by the officers.



6. A copy of a letter dated April 30, 2020, was sent to him, signed by Mr. Radcliffe Antoine, the CEO, terminating his services with effect from

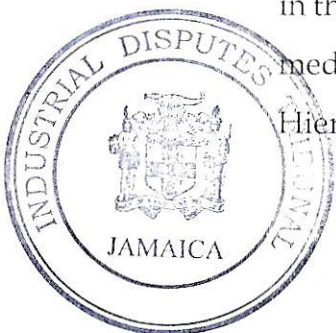


April 27, 2020. On May 22, 2020, attorneys representing Mr. Rowe contested the dismissal on the grounds that both the Labour Relations & Industrial Disputes Act (the Act) and the Labour Relations Code (the Code) were breached.

7. In the absence of a response from the Company, Mr. Rowe's attorneys wrote to the Ministry of Labour and Social Security requesting conciliation assistance. After several meetings which failed to resolve the dispute, the matter was referred to the Industrial Disputes Tribunal for settlement.

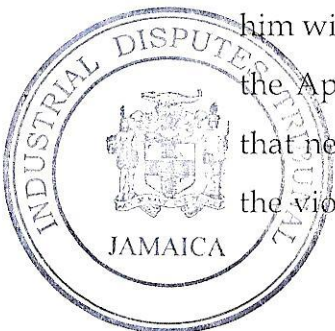
#### THE COMPANY'S CASE

8. Mr. Antoine, in response to the Tribunal's enquiry about representation, advised that both himself and Mr. Santoni would be acting on behalf of the Company. In his opening submission, Mr. Antoine admitted that the Company did not follow Jamaica's labour laws; he however, said that the Company would provide evidence to show that Mr. Rowe was involved in the attempt to defraud the Company of US\$25,000.00, and in fact, admitted it.
9. In addition, he said the Company will provide evidence to further highlight where Mr. Rowe violated the Standard Information Technology Best Practices and Procedures, and inappropriately and without authorization made changes to sensitive security notification protocols.
10. Mr. Radcliffe Antoine gave evidence on behalf of the Company. He acknowledged that he managed Hieroglyphics remotely since he was based in the United States and ran a company, the Posterity Group, which provided medical supplies to the United States' Government, and also owned Hieroglyphics. Because of his absence, he installed video cameras in the



offices at Hieroglyphics and on numerous occasions observed Mr. Lutas and Mr. Rowe leaving the premises.

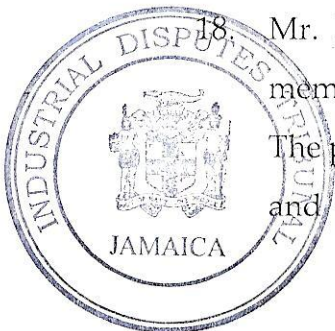
11. Mr. Antoine indicated that based on investigations carried out by Microsoft and Mr. Omar Mullings, a Software Engineer and Technological Consultant with Hieroglyphics Limited, it was revealed that the fraudulent account was created from a Virtual Private Network (VPN), operated by Mr. Rowe. The fraudulent email was used to request the wire transfer in the sum of US\$25,000.00 to an account under the name 'Mark Anderson'.
12. He said Mr. Rowe had 'administrative privilege' which would have given him access to creating the fraudulent account. On hearing about the transfer request from the Secretary, Miss Griffiths, Mr. Antoine said he told her he was highly suspicious as this was not the policy of the Company. He said he started to investigate the matter and using his 'global administrative privilege' blocked access to the email platforms of Messrs. Lutas, Rowe and Buddoo. He acknowledged that the primary reason for Mr. Rowe's termination was the fraudulent email.
13. He stated that Mr. Rowe initially denied his involvement in the alleged fraud at the meeting of April 27, but would later confess when questioned by the police officers, and identified Messrs. Lutas and Buddoo, among others, as being part of the scheme. He vehemently disagreed that Mr. Rowe confessed to the fraud under duress, and Mr. Rowe only acknowledged his involvement only after the Microsoft evidence was shown to him.
14. Mr. Antoine confessed that he did not issue a letter to Mr. Rowe charging him with allegedly attempting to defraud the Company prior to or even after the April 27 meeting before signing the letter of termination. He admitted that neither before, during nor subsequent to the meeting was the matter of the violation of Standard Information Technology Best Practices raised, nor



at any time was Mr. Rowe informed about making changes to sensitive security protocols without the approved authority. In fact, Mr. Antoine told the Tribunal that the principal reason for Mr. Rowe's termination was the *"violation of Standard Information Technology Best Practices and procedures."*

15. He agreed with Counsel that he did not follow the Jamaican labour law in respect of the dismissal and that he had made several changes to the Handbook since Mr. Rowe's termination.
16. Mr. Omar Mullings was also called as a witness. He said he is a Software Engineer and currently does technology consultancy for Hieroglyphics and the Posterity Group. He said he has been working with the Posterity Group from about 2011-2012 and with Hieroglyphics from 2020. He testified that Hieroglyphics had put in place certain protective measures and precautionary steps to prevent or minimize the possibility of cybercrime, which he said was quite prevalent.
17. Mr. Mullings testified that on Friday, April 24, 2020, he got a call from Mr. Antoine who told him that a fraudulent email account was set up, using the Company's server, with an additional "e" added to the name of 'Antoine'. He declared that the subtle change was done by someone with administrative privilege and was therefore seen as *"an insider attack"*. He said Mr. Antoine told him that the fraudulent email was sent to Miss Sachoy Taylor requesting a payment of US\$25,000.00. Microsoft was immediately informed of the problem and provided a report the following Monday.

18. Mr. Mullings said that a Teams Meeting was called with Mr. Antoine, members of staff and personnel from the Jamaica Constabulary Force (JCF). The purpose of the meeting, he declared, was to find out what had transpired and to discuss the matter with the parties. Mr. Johnathan Rowe, the IT





person, initially denied creating the false account, but confessed to it after the audit log was displayed at the April 27 meeting. Mr. Rowe, he said, implicated Mr. Lutas among others in the alleged fraud.

19. Mr. Mullings admitted that the preliminary report from the investigation was not shared with Mr. Rowe who was implicated in the alleged fraud before the April 27 meeting, and conceded that the investigation was still ongoing at the time of his dismissal.


#### **THE AGGRIEVED WORKER'S CASE**

20. Counsel for the Aggrieved Worker said that the genesis of the matter is the fraudulent email address to direct funds to a third party without authorization. He said the case surrounding the fraud is not in dispute, neither is the meeting held on April 27, 2020 nor the termination of Mr. Rowe on April 30.

21. The Aggrieved Worker was called upon to testify on his behalf. Mr. Rowe said he was employed on a full-time basis to Hieroglyphics on October 1, 2019, as the IT Personnel. At the time he was pursuing a degree in Information Technology at the University Council of the Caribbean (UCC) but only completed two of the four years.

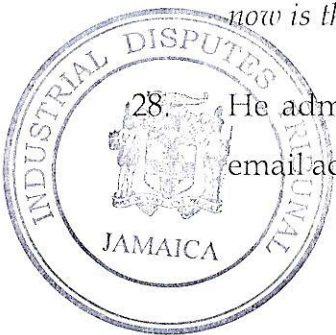
22. He observed that the position was more of maintenance, which included him having to maintain the Microsoft-365 email platform for the Company. The platform, he said, was web based which meant that anyone could access it from anywhere. Mr. Rowe said the only privilege given to him was that of an administrator, and the 'global administrative' functions resided with Messrs. Antoine and Mullings. He said while his administrative oversight of the Microsoft-365 allowed him to reset passwords and set up certain applications, including emails, and it was not impossible for an outside person to have access in setting up a fraudulent account.

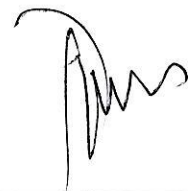


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23. He further explained that someone other than himself could have utilized his user account to carry out various online activities. He said an audit trail could be done to determine the person but one would first have to find the person's Internet Protocol (IP) address.
24. Mr. Rowe said he was on his day-off on Thursday, April 23, 2020, working on a project at home, and advised Miss Donna Rie Graham that he would be in office the following day. He also received calls from Miss Nicole Facey, the sales manager and Mr. Antoine.
25. On Saturday, April 25 he got another call from Mr. Antoine enquiring about the creation of a false email address using his name but adding an "e" to the end. He said he told him "no" that he knew nothing about it. However, he was called again on Sunday by Mr. Antoine who advised him that the Federal Government was getting involved in the fraudulent email scheme and that the matter would be dealt with "*at the full extent of the law.*" He said he again told Mr. Antoine that he knew nothing about the fraudulent email.
26. Mr. Rowe testified that during the regular weekly staff meeting held on Monday, April 27, 2020, two police officers walked in and were introduced as member of the Counter Terrorism and Organised Crime Investigation Branch (CTOC). He said Mr. Antoine wanted for members of staff to be interrogated individually by the two officers.
27. Mr. Rowe explained that when he was being interviewed by the officers, both Messrs. Antoine and Mullings were on the Teams platform. He said he was nervous and did not know what to do. Mr. Antoine, he said, told him "*that now is the time to come clean*", and suggested that he could end up in prison.

28. He admitted that the evidence produced by the Company showed that his email account was used to create the fraudulent email address on April 8, 2020,



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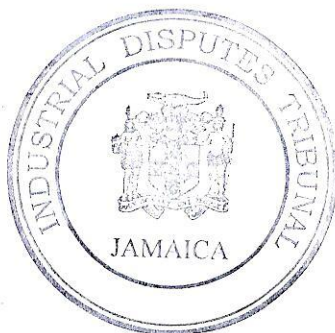
that one of the police officers thereafter wanted to handcuff him, and he began crying and said if it was his email account which created the false email then that was not something he could dispute.

## ISSUES

29. The issues which are germane to the findings of the Tribunal and upon which a full examination of all the circumstances of the case has to take place, are:
- (i) whether the employer had reasonable grounds on which to form the belief that Mr. Jonathan Rowe had misconducted himself
  - (ii) whether the employer, in terminating the services of Mr. Rowe acted in accordance with the provisions of the Labour Relations Code and the principles of natural justice?
  - (iii) where the Tribunal, based on the evidence, finds that the dismissal was 'unjustifiable', what considerations should be taken into account in arriving at an award.

### Whether the employer had reasonable grounds on which to form the belief that Mr. Jonathan Rowe had misconducted himself

30. It is necessary in examining the issues to ensure that the relevant legal principles are applied to the facts of the case presented before the Tribunal. This is the required standard we are obligated to follow if we are to avoid falling into errors of illegality. While the onus is on the employer to show proof that the dismissal of Mr. Rowe was on all counts fair, it has, however, to be consistent with the common law principles of fairness in the Jamaican jurisdiction.





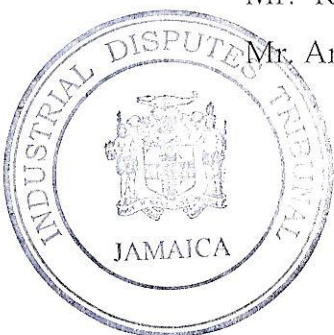
31. It is important to emphasise that the matter of the lawfulness or unlawfulness of the employee's actions cannot properly come before us for adjudication; these are matters that fall within the jurisdiction of the superior courts of the land. We are to focus on the issue of fairness in the dismissal, and, in doing so, are circumscribed by statute and the common law.

32. In all cases the burden lies upon the employer to show that the dismissal was fair. According to Halsbury's Law of England, Fourth Edition, this means that the employer –

*“must show what was the reason (or, if there is more than one, the principal reason) for the dismissal; and he must also show that it was a reason which the law regards as acceptable; and that in the circumstances, having regard to equity and the substantial merits of the case, he acted reasonably in treating it as a sufficient reason for dismissing the employee.” [Page 413].*

33. The letter of dismissal of Mr. Rowe, signed by Mr. Antoine and dated April 30, 2020, sets out three (3) reasons for his termination. The first was that he was *“implicated in attempts to defraud the Company of US\$25,000.00”*; the second reason had to do with the *“violation of Standard Information Technology Best Practices and Procedures”*; and the third was to *“Inappropriately and without authorization made changes to sensitive security notification protocols to the detriment of the Company's Information Systems.”*

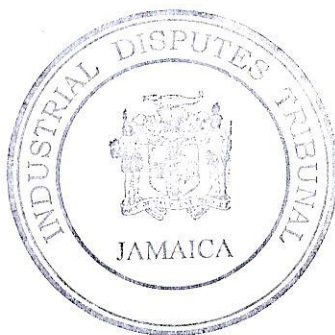
34. The parties were *ad idem* that an attempt at defrauding the Company was uncovered and that the domain of Mr. Jonathan Rowe, was used to create the fictitious email address. There is further evidence that when confronted, Mr. Rowe implicated other co-workers in the fraudulent scheme. From Mr. Antoine's testimony we are convinced that he actually believed Mr. Rowe





was involved in the attempt to defraud the Company, a consequence of which both the second and third charges would have had to bear some connection.

35. There must, however, be sufficient grounds to form the basis for a reasonable belief of misconduct, and a very important element in that regard was the need to conduct an investigation before coming to a conclusion. Both Messrs. Mullings and Antoine admitted this was not done, the investigation had indeed commenced, but in Mr. Mullings' own words was still "ongoing" even at the time the charges were set out in Mr. Rowe's letter of termination. Needless to say, while the standard of proof in cases of this nature are based on balance of probabilities, and not criminal standards, the standard of proof must, however, be responsive to the gravity of the facts at hand and the consequences of the ultimate decision.
36. Nevertheless, we believe reasonable grounds existed from which Mr. Antoine was entitled to form the view that Mr. Rowe may have been guilty of misconduct. And while the Tribunal has no license to substitute its own views for that of the employer, the employer is obliged to provide sufficient evidence to affirm the arguments made out on its behalf if the standards of proof are to be met.
37. We can therefore take no issue with Mr. Antoine's belief (which we accept as genuine) in Mr. Rowe's alleged misconduct. However, in all circumstances the employee should be treated fairly, and therefore the gravamen of the employer's case rest ultimately in proving that a fair procedure was adopted before deciding on Mr. Rowe's dismissal.



Whether the employer, in terminating the services of Mr. Rowe, acted in accordance with the provisions of the Labour Relations Code and the principles of natural justice.

38. The Labour Relations Code is central to the principles of natural justice and fairness. Its purpose is to promote "*...effective co-operation between workers and employers and to protect workers and employers against unfair labour practices.*"

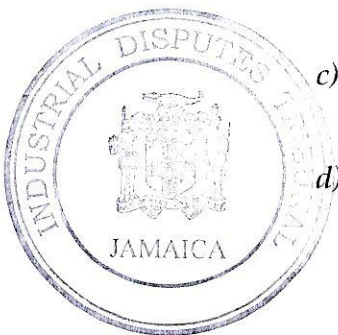
39. The Code further states that it-

*"...Recognizes the dynamic nature of industrial relations and interprets it in its widest sense. It is not confined to procedural matters but includes in its scope human relations...*

*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..."*

40. In order to achieve its purpose the Code outlines what it considers to be the adopted disciplinary procedures that would achieve "*fair and effective arrangement*" for dealing with disciplinary matters. The written procedure should, as set out in Paragraph 22(i):

- " 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;*



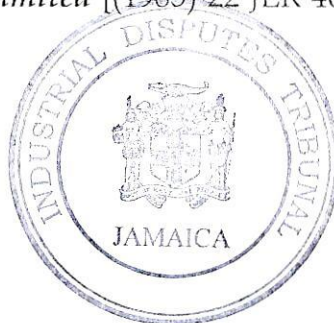
e) *be simple and rapid in operation."*

41. In deliberating on the case, these are the crucial issues which will be weighing on the minds of the Tribunal. Where the Company admitted that none of the relevant provisions of Paragraph 22(i) was observed, these are considered fatal flaws that the Tribunal simply cannot ignore. In fact, the very Act and Code were set up, as Sykes, J. (as he then was) in the **NCB v. Peter Jennings** case eloquently argued, to give the Tribunal the power to put -

*"...labour relations on a footing of respect for employees, respect for employers... in a post-colonial society bread [sic] on over three hundred years of human trafficking, economic exploitation, racial segregation, socio-economic oppression, violence, torture, sexual abuse, unequal power structure, the culture of master/slave, master/servant."*

42. It is in this regard that one has to understand the Tribunal's emphasis on 'fairness', not to be "**conformable to law**", but to give primacy to notions of justice, fairness and equity. Sykes, J., in signalling the quintessential role of the Tribunal in the previously cited case, stated "*that there is no carve-out to the effect that certain kinds of conduct by employees are not subject to notions of justice, fairness and equity if the conduct of the employee is considered too egregious.*"

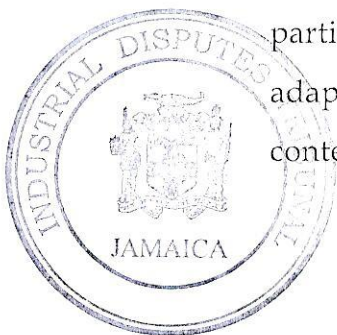
43. The Tribunal is therefore bound to take a broad view of 'fairness' in dealing with 'equity and the substantial merits of the case.' The attitude of the common law is to regard a dismissal as 'unfair' if the worker was not given an opportunity to defend himself. This was borne out in the case of **R. v The Ministry of Labour, the Industrial Disputes Tribunal, et al ex Parte West Indies Yeast Company Limited** [(1985) 22 JLR 407], where Smith, CJ opined that -





*"It is not enough that the employer abides by the contract. If he terminates it is 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 would do."*

44. Mr. Antoine, in his opening submission, alluded to the Employment Law in California as the basis for his actions. It is known that within the State of California employment may be terminated 'at the will' of either party; this means that it can be done without cause or prior notice. In that jurisdiction 'cause' is defined as *"a fair and honest cause or reason, regulated by good faith on the part of the employer,"* and employers are not burdened to prove that they acted *"fairly"* and *"in good faith"*.
45. In the United States, unlike Jamaica, there is no developed consistent system of law protecting employees against unfair dismissal, except in cases of violation of federal, state and local discrimination or anti-retaliation laws. The general practice of At-Will Employment in the US where the employer can terminate the relationship at any time, for any lawful reason and without notice, sharply contrasts with the common law principle that a worker has a right not to be unfairly dismissed in the Commonwealth jurisdiction.
46. In a 2008 article on **'The Future of Labor and Employment Law in the United States'**, the author, Kathrine V. Stone, Professor of Law at the UCLA School of Law lamented *"the serious problem with the labor and employment law system in the United States..."* and how much *"the changing nature of work has rendered much of the [US] legal framework obsolete."* By contrast, we have seen the evolution of the common law across the Commonwealth (and particularly in Jamaica where Tribunal awards have been challenged) adapting itself, albeit slowly, to the new attitudes analogous with contemporary statutory rights.





47. In respect to the Act, where the 'unjustifiability' (or unfairness) of the dismissal is determined, the Tribunal is empowered to take one of the following courses of action as set out in Section 12(5)(c) of the Act.

*"If a dispute relates to the dismissal of a worker the Tribunal, in making its decision or award -*

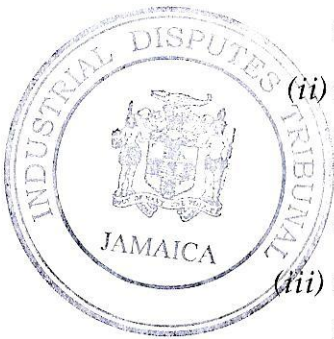
*(i) may, if it finds that the dismissal was unjustifiable and that the worker wishes to be reinstated... order the employer to reinstate him, with payment of such much wages, if any, as the Tribunal may determine;*

*(ii) shall, if it finds 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 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;*

*(iv) -----"*

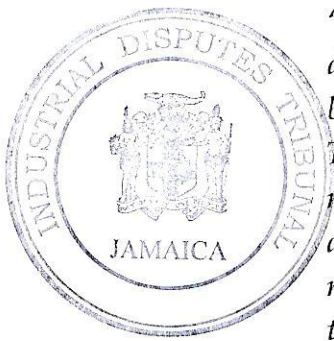
64. On the evidence it is pellucid and beyond peradventure that Mr. Rowe was not written to in respect of any of the acts of misconduct he allegedly committed prior to his dismissal; was not informed in writing of the charges; was not given an opportunity to defend himself against these charges, and to be accompanied by a representative; and was not informed of his right to appeal in his dismissal letter. On these grounds it is axiomatic that the dismissal cannot stand.
65. Further, the Tribunal in examining all the circumstances surrounding the case, has to determine whether Mr. Antoine acted judicially in arriving at his decision. It appears not, for Mr. Antoine's involvement at the investigative stage in respect to the fraud, and being the person to terminate the services of Mr. Rowe raises the question of imputed bias. The natural justice principle,



'*nemo judex in causa sua*', that is, 'no one should be a judge in his own cause', was flagrantly ignored. A second principle of natural justice, that is, Mr. Rowe's right to be heard was denied, making the decision to terminate arrived at without the elementary rules of natural justice being complied with.

Where the Tribunal, based on the evidence, finds that the dismissal was 'unjustifiable', what considerations should be taken into account in arriving at an award?

66. The matter of unfair dismissal was addressed in the case of Edwards v. Chesterfield Royal Hospital NHS Foundation, where the learned judge opined that:



*"... a dismissal may be unfair because it is substantively unfair to dismiss the employee in the circumstances of the case and/or because the manner in which the dismissal was effected was unfair. The manner may be unfair because it was done in a humiliating manner or because the procedure adopted was unfair.... [and] defamatory findings were made which damage the employee's reputation and which, following a dismissal, make it difficult for the employee to find further employment..."*

67. The manner of dismissal, although lawfully correct, has also come in for some scrutiny by the Courts, including the Privy Council. In the seminal case of Jamaica Flour Mills vs. the NWU, their Lordships endorsed the Tribunal's view that the employer's dismissals of three of its workers, were "**unfair, unreasonable and unconscionable**" in the way it was effected, and concluded that it showed "**...very little of any concern for the dignity and human feelings of the workers...**"
68. This could well be a consideration in Mr. Rowe's case as the involvement of police officers in a manner we deemed intimidatory, the threat of handcuff and detention, and the denial of Mr. Rowe's basic right to be heard in accordance

with the Code, on all accounts, 'showed little of any concern for the dignity and human feelings' of Mr. Rowe. These are contentions too deeply rooted in our history to be ignored. To be clear, it is not about believing the truth of Mr. Rowe's testimony as it is in believing in the validity of the employer's right to act fairly, justly and with dignity and respect.

69. The circumstances of this case bring to the fore considerations as to whether the dismissal could be seen as harsh and oppressive and contrary to principles and practices of good industrial relations. The Industrial Court in Trinidad and Tobago, in a 2013 ruling in the case Transport and Industrial Workers' Union and Public Transport Service Corporation argued that the dismissal of a worker was "*harsh and oppressive and not in accordance with the principles of natural justice and good industrial relations...*" because the Corporation had "*...not conducted a proper and fair inquiry and/or investigation of the matter...*"
70. Based on the facts of the case if such a determination is made, the Tribunal can, in accordance with the Act, decide that the employer either "*pay the worker such compensation or grant him such other relief...*" that could include compensatory award for the manner of the dismissal.
71. The employer's action was manifestly unfair and in breach of every known provision of Section 22 of the Code. Even where they have conceded, the wrongfulness of their action does not shield justice away from public opprobrium.
72. In summary, the Tribunal is of the view that Section 12(5)(c)(ii), in its proper construct, allows for the making of an award that does not violate the Wednesbury principle of reasonableness. Williams, J, in his judgement in the case of Garnett Francis v. IDT and Private Power Operators, [2012] JMSC Civil 55, noted that there exists –



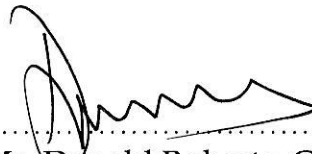


*"...a discretion entrusted to the Tribunal where the level of quantum of compensation is concerned; and it is a wide and extensive discretion... reveals no limit or restriction placed on the exercise of the discretion and no formula, scheme or other means of binding or guiding the Tribunal in its determination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


### AWARD


73. In taking into account all the factors surrounding the dismissal, the Tribunal rules that the dismissal of Mr. Jonathan Rowe by Hieroglyphics Limited, his employer, was unjustifiable. Consequently, consistent with Section 12(5)(c)(ii) of the **Labour Relations and Industrial Disputes Act**, award Mr. Rowe compensation in the amount of Two Million Three Hundred Dollars (\$2,300,000.00).
74. It is to be noted that the Member appointed under Section 8 (2)(c)(ii) is not in agreement with this Award and her opinion is appended hereto.

Dated this 18 December, 2024.

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



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

Witness:  
  
.....  
Mr. Mario Ling  
Secretary to the Panel



INDUSTRIAL DISPUTES TRIBUNAL

MINORITY AWARD

IN RESPECT OF

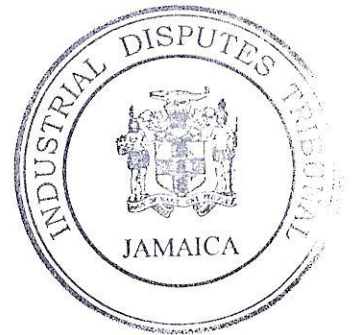
AN INDUSTRIAL DISPUTE

BETWEEN

HIEROGLYPHICS LIMITED  
(THE COMPANY)

AND

JONATHAN ROWE  
(AGGRIEVED WORKER)



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REFERENCE

By letter dated January 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 ("the Tribunal") for settlement, the dispute between **Hieroglyphics Limited and Mr. Jonathan Rowe** with the following Terms of Reference: -

**"To determine and settle the dispute between Hieroglyphics Limited on the one hand, and Jonathan Rowe on the other hand, over the termination of his employment".**

OPINION

I have read the Award of the Chairman and consenting Member very carefully and am in full agreement with the issues identified, the analyses in support of the issues, and the conclusion reached in respect of the unjustifiable dismissal of Mr. Jonathan Rowe.

The "Employment-At-Will" which the Employer relied on from the United States does not apply in Jamaica, as we are governed by the Act which incorporates the Labour Relations Code.

### AWARD

The majority Award, consistent with Section 12(5)(c)(ii) of the Labour Relations and Industrial Disputes Act, ordered the employer to compensate Mr. Rowe in the amount of Two Million Three Hundred Thousand Dollars (\$2,300,000.00) for his unjustifiable dismissal.

Respectfully, I disagree with the quantum.

The reasons for the dissenting opinion are set out below, along with the amount I believe should constitute the Award:


1. Mr. Rowe was employed for a period of less than seven (7) months as the only IT Specialist prior to his termination, the amount of his compensation should therefore not exceed six months which includes payment for the manner of his dismissal
2. consideration must be given to the fact that Microsoft confirmed that the email came from his email address although the investigations continued and were not conclusive.
3. he named some of his co-workers as being a part of the fraudulent scheme.

When factored together, I have concluded that a reasonable compensation to be awarded to Mr. Rowe should be in the amount of Eight Hundred Thousand Dollars (\$800,000.00).

Dated this 18<sup>th</sup> day of December 2024

  
Jacqueline Irons  
Member

Witness:

  
.....  
Mario Ling  
Secretary to the Division

