

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

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 Lima
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 7/2022

SETTLEMENT OF DISPUTE

BETWEEN

HIEROGLYPHICS LIMITED

AND

VAL LUTAS

AWARD

I.D.T. DIVISION

MR. DONALD ROBERTS, CD., JP.	-	CHAIRMAN
MRS. JACQUELINE IRONS, JP.	-	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

VAL LUTAS
(AGGRIEVED WORKER)

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. Val Lutas** with the following Terms of Reference: -

"To determine and settle the dispute between Hieroglyphics Limited on the one hand, and Val Lutas 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 Operations, Posterity Group

The **Aggrieved** was represented by:

Mr. Mikhail C. Jackson	-	Attorney-at-Law
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In attendance:

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

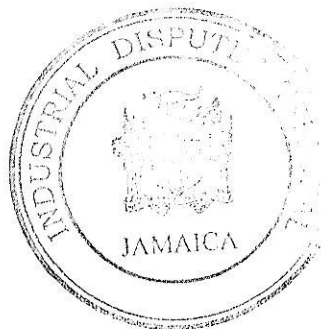
SUBMISSIONS AND SITTINGS

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

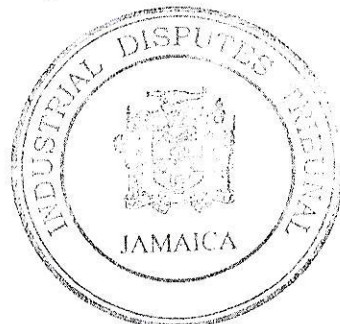
1. Hieroglyphics Limited is a registered company located at 14 Ballater Avenue, Kingston 10 in the parish of St Andrew. The Company provides experienced, dedicated and skillful talent in areas of consultation, design, printing, print application, fabrication, installation, branding multi-media and much more.
2. Mr. Val Lutas was employed to Hieroglyphics as the General Manager with effect from November 11, 2019 and remained in that position up to the time of his termination on April 27, 2020.
3. Mr. Lutas attended the weekly general staff meeting on Monday, April 27, 2020, presided over by Mr. Antoine. At the meeting Mr. Antoine 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, introducing themselves as police officers, entered the meeting and advised everyone that they would need to question some members of staff. Mr. Lutas was one of the workers questioned and he denied any involvement in an attempt to defraud the Company.
4. After the questioning of Mr. Lutas he was told by Mr. Antoine that his services would be terminated with immediate effect. He was escorted from the premises by the persons alleging to be Police Officers.
5. Mr. Lutas received a letter dated April 30, 2020, advising of his termination. Mr. Lutas' attorney challenged the dismissal in a letter to the Company dated May 22, 2020, on the grounds that it breached the provisions of the Labour Relations Code (the Code) and demanded the immediate withdrawal of the dismissal letter.



6. There was no response or action from the Company and as a consequence the matter was referred to the Ministry of Labour & Social Security for conciliation. Efforts at the Ministry proved futile and a referral was made to the Tribunal for determination and settlement. Efforts were made by the Tribunal to facilitate discussions between the parties with a view at arriving at a settlement, but this did not materialize.

THE COMPANY'S CASE

7. 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. Lutas was derelict in his duties, and that some of his failings as General Manager have proven to be problematic which, in turn, have negatively affected the Company.
8. In addition, he said the Company will provide evidence to highlight the numerous policies and procedures which were violated, and the neglect in the management of the Company's affairs resulting in a fraudulent scheme being perpetrated.
9. The Company's first witness was Mr. Ifeanyi Momah, who was employed to the Company as Sales Manager in April 2020. He said during his first week he observed that the female members of staff would do no work but sit in Mr. Lutas' office. He further observed that on occasion Mr. Lutas would leave the Company's compound with the female employees in his motor vehicle for extended hours leaving nobody behind to assist him in the work.



10. He said he spoke to Mr. Lutas about this as well as Mr. Antoine. Further in his testimony, Mr. Momah stated that on occasions he observed Mr. Lutas loading the Company's products in his vehicle and did not have them checked off at the gate as required by the Company's policy.
11. He also testified that Mr. Lutas did not intervene in a dispute between Mr. Buddoo and himself when Mr. Buddoo became boisterous and disrupted a meeting he had called with the sales representatives.
12. Mr. Momah testified that he was provided with the Company's handbook on his employment and was informed that this was the case with all new employees.
13. The Company's second witness was Mr. Radcliffe Antoine, the President/CEO of Hieroglyphics Limited. Mr. Antoine said he was introduced to Mr. Lutas by Mr. Buddoo and upon his employment he (Mr. Lutas) was provided with the Company's handbook. He said he spoke to Mr. Lutas about the Company's policies, his expectations of him as General Manager and the prospects for future promotion.
14. Mr. Antoine attested to have observed "*a serious fall in communication*" with Mr. Lutas and members of staff. Mr. Lutas was coming late to work, and wanted all communications directed to him.
15. Further in his testimony Mr. Antoine said that he met with Messrs Lutas and Buddoo about the likely impact of Covid-19 on the Company's operation and asked them to come up with a plan to deal with whatever eventuality may arise. During the Covid period, the management and production teams worked for two or three-day per week, while the sales team remained for a full five days.



16. Mr. Antoine asserted that Mr. Lutas was "*derelict in his duties*" and appeared to be ignorant of the policies. He said, in particular, he observed clear breaches of the commission policy over time. He further added that he uncovered an attempt to defraud the Company in April 2020, and lamented on the fact that the Company lost \$22 million in that same year.

17. Under cross examination, Mr. Antoine informed the Tribunal that Hieroglyphics was owned by a US based company, Posterity Group which is in the medical supply business in the United States. He said he managed Hieroglyphics remotely and that there were cameras installed in the office which allowed him to observe the happenings around the office on a day-to-day basis. He stated that he did observe on numerous occasions Mr. Lutas leaving the office with Mr. Rowe, but admitted that there was no written communication to Mr. Lutas regarding his behaviour. 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. Lutas' termination.

18. Mr. Antoine admitted that Mr. Lutas' employment letter made no reference to an Employee Handbook, which did not state that leaving the office was an offence, nor anything about a dress code.

19. He said a performance appraisal was done for Mr. Lutas at the end of his 90-day probationary period and that his overall rating was "3" which meant that he met the job standard and performance criteria.

20. He acknowledged that the main reason for Mr. Lutas' termination was the fraudulent scheme with the email regarding the wiring of US\$25,000.00 to a specified account. He noted that when he was informed by the Secretary, Miss Griffiths, of the wire transfer request he became suspicious as this was not consistent with the Company's policy.

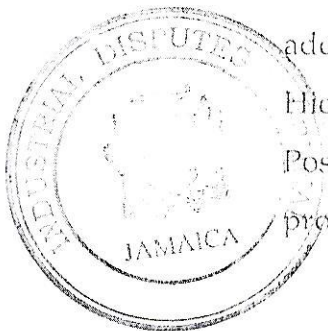


21. Mr. Antoine indicated that based on investigations carried out by Microsoft and Mr. Omar Mullings, a Software Engineer and technological consultant with Hieroglyphics, it was revealed that the fraudulent account was created from a Virtual Private Network (VPN). He stated that Mr. Lutas denied his involvement in the alleged fraud at the meeting of April 27, and accepted that this was the only issue raised at the meeting.
22. Mr. Antoine acknowledged that he did not issue a letter to Mr. Lutas charging him for attempting to allegedly defraud the Company prior to or even after the April 27 meeting before signing the letter of termination. He admitted that nowhere in the termination letter was any specific reference made regarding the charges of 'dereliction of duty' nor of his loss of trust and confidence in Mr. Lutas, nor was there any indication that Mr. Lutas had a right to appeal the dismissal.
23. The Company's third and fourth witnesses were Messrs. Martin Williams and Hugh Fross respectively. Both Messrs. Williams and Fross carried out part-time electrical work for the Company and were unable to offer any evidence as to the reasons set out by the Company for the termination of Mr. Lutas. The fifth witness for the Company was Mr. Kevin Lewis, a Security Officer at Guardsman's Limited who was stationed at Hieroglyphics at 14 Ballater Avenue. He admitted that he could not provide any evidence in support of the Company's claim that Mr. Lutas was derelict in his duties.
24. Mr. Omar Mullings was called as a witness. 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.

25. 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.
26. 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.
27. Mr. Mullings admitted that the preliminary report from the investigation was not shared with Mr. Lutas or any of the persons implicated in the alleged fraud before the April 27 meeting, and even up until that time the investigation was still ongoing.
28. Mrs. Nicole Antoine, Vice President and Chief Compliance Officer for the Posterity Group was the Company's final witness. Mrs. Antoine said that in addition to her work at the Posterity Group she has ownership interest in Hieroglyphics as part of the Group. She said her role is to ensure that Posterity and all its interests comply with all rules and regulations, and to provide oversight of the funds transferred from Posterity to Hieroglyphics.



29. She said the financial officer at Hieroglyphics has a reporting relationship to her and that she neither supervised Mr. Lutas nor is there any kind of reporting relationship directly or indirectly. She said she was aware of the investigation concerning the alleged fraud but did not participate in the investigation.

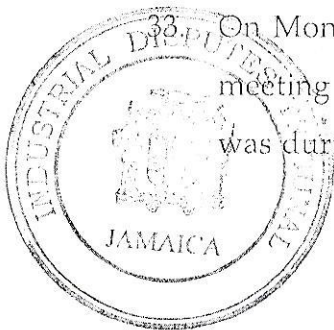
THE AGGRIEVED WORKER'S CASE

30. Counsel for the Aggrieved Worker said that the genesis of the matter is the fraudulent email address created to obtain 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. Lutas on April 30.

31. The Aggrieved Worker was called upon to testify on his behalf. He said he joined Hieroglyphics in August or September 2019; prior to that he was employed to National Outdoor Advertising Company as the Production Manager. He admitted to having no professional qualification, and started out in the profession in 2004 as a Graphic Artist, and subsequently the Production Supervisor/Technician at Image One Jamaica Limited.

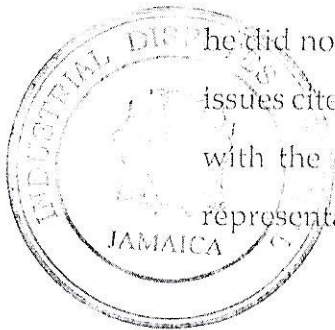
32. He testified that on Friday, April 24, 2020, sometime between 12 p.m. and 3p.m., he received a call from Mr. Buddoo to say that he could not access his email. Mr. Buddoo, he said, enquired if Mr. Johnathan Rowe, the IT personnel, could assist, but he too was unable to access his account. He said that for the entire weekend he had no correspondence from the Company and was not advised of anything he needed to address.

33. On Monday, April 27 he arrived at work and went immediately to the staff meeting held in the conference room with Mr. Antoine attending virtually. It was during the meeting that he was made aware by Miss Winsome Griffiths,



the Accountant, about an email which was sent purportedly by Mr. Antoine requesting funds transfer to an unknown third party. It was then that he said he was made aware by Mr. Antoine that the email was fraudulent and that he had called in the police to investigate. Mr. Lutas said he "*was upbeat*" as he wanted to know who was involved in the fraud.

34. Mr. Lutas said that when the police arrived he was asked to leave the meeting room, and shortly after one of the officers approached him asking him "*what he had to say.*" He was further asked about commission claims before being escorted back to the conference room. The persons present in the room at that time were two police officers and Mr. Rowe, with Mr. Antoine and Mr. Mullings, the IT specialist online.
35. It was then he held that one of the officers told him Mr. Rowe had implicated him in the fraudulent scheme saying that it was he (Lutas) who told him (Mr. Rowe) to create the fictitious email address. He was asked by the officer if he intends to resign, and he said no. He alleged that Mr. Antoine then said to him "*OK, see you in court.*"
36. Mr. Lutas stated that he was escorted by the Police Officer back to his office, was told to remove his belongings and then escorted off the premises. During his departure from his office the staff meeting was still in progress and he overheard Mr. Antoine referring to Messrs Rowe, Buddoo and himself as "*thieves*" and 'they' would be prosecuted at the highest level.
37. He informed the Tribunal that the termination letter was emailed to him at the end of the week of April 27, and that prior to receiving the termination letter he did not receive any correspondence from the Company regarding the three issues cited in the letter as grounds for his termination. He was never provided with the opportunity to answer to the charges and to be accompanied by a representative.



A handwritten signature in black ink, consisting of a stylized, cursive script.

38. Mr. Lutas said he left the premises "*confused, angry and a little bit depressed.*" He added that it was difficult to get a job during the Covid period despite the several applications, and one company told him he would not be considered for hiring until the case is completed.
39. Under cross-examination, Mr. Lutas admitted that he was told by Mr. Antoine about the expectations from him as General Manager, about the importance of proper record keeping, and that he was provided with a copy of his job description. He further admitted to forming a new company, Fusion Allied, on May 20, 2020, less than a month after he was dismissed.
40. He acknowledged receiving the Company's Non-Disclosure and Non-Compete Agreement, but did not sign it because he viewed it as "*unreasonable*", particularly paragraphs 3 and 6 [*exhibit 12*]. He, however, did not share the concerns he had regarding the document with Mr. Antoine.
41. Mr. Lutas accused Mr. Antoine of micro-managing and said that if he were to make a decision on his own he would be chastised. During Covid, the Company wanted to shift its focus to medical supplies, but said he did not have the knowledge to go about seeking vendors for medical supplies as his background and experience was in graphics.
42. He said he could not access his email from Friday, April 24 and so could not be seen deleting any emails. He further stated all performance-based assessments were done by Mr. Antoine, and he was never advised that he was being demoted and was never issued with a revised contract of employment.



A handwritten signature in black ink, consisting of a stylized 'X' followed by a series of loops and a final flourish.

ISSUES

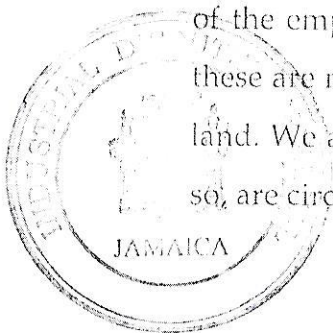
43. The issues which are germane to the findings of the Tribunal and upon which, *a priori*, a full examination of all the circumstances of the case has to take place, are:

- (i) Whether the employer had reasonable grounds on which to form the belief that Mr. Val Lutas had misconducted himself
- (ii) Whether the employer, in terminating the services of Mr. Lutas, 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 a decision or award.

Whether the employer had reasonable grounds on which to form the belief that Mr. Val Lutas had misconducted himself

44. 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. Lutas was on all counts fair, it has to be consistent with the common law principles of fairness in the Jamaican jurisdiction.

45. 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.



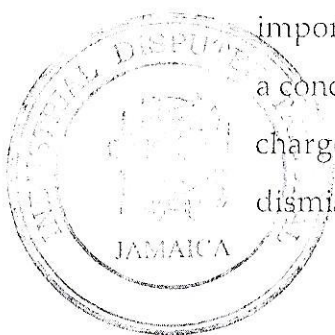
46. In all cases the burden lies upon the employer to show that the dismissal was fair. According to Halsbury's Law of England, Fourth Edition, this means that the employer –

"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].

47. The letter of dismissal of Mr. Lutas, 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 *"dereliction of his [your] duties as a General Manager"*; and the third was the *"multiple actions resulting in the loss of trust for a leader serving in a critical position."*

48. The parties are *ad idem* that an attempt at defrauding the Company was uncovered and that the domain of one of the employees, Mr. Johnathan Rowe, was used to create the fictitious email address. There is further evidence that when confronted, Mr. Rowe implicated Mr. Lutas in the fraudulent scheme. From Mr. Antoine's testimony we are convinced that he actually believed Mr. Lutas was derelict in his duties and we accept that he may have had reasonable grounds on which to base that belief.

49. Both the act of attempting to defraud and the implication of Mr. Lutas in the scheme provide a necessary though not sufficient grounds to form the basis for a reasonable belief of misconduct on his part. But a third and very important element was the need to conduct an investigation before coming to a conclusion, and this, from the evidence, was not done in respect of the three charges laid against Mr. Lutas. While the standard of proof in cases of dismissal are based on balance of probabilities and not criminal standards, the



standard of proof, in as serious a matter as this was, has to be responsive to the gravity of the facts at hand and the consequences of the ultimate decision.

50. In that regard, the Tribunal is of the view that there were reasonable grounds on which Mr. Antoine was entitled to form the view that Mr. Lutas may have been guilty of misconduct. And while we have no licence to substitute our views for that of the employer, the employer is, however, obliged to provide sufficient evidence to affirm the arguments made out on its behalf if the standard of proof is to be met.

51. We therefore in conclusion, can take no issue with the belief formed by Mr. Antoine which led to his suspicion that Mr. Lutas may have been guilty of an offence. However, in all circumstances the employee should be treated fairly, and the employer is burdened with the task of proving that a fair procedure was adopted before deciding on the employee's fate.

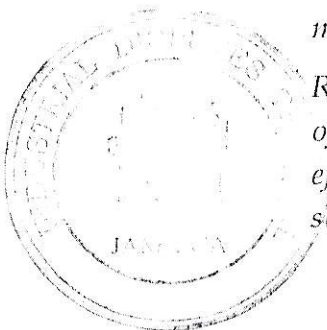
Whether the employer, in terminating the services of Mr. Lutas, acted in accordance with the provisions of the Labour Relations Code and the principles of natural justice.

52. 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.*"

53. 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..."

54. 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."*

55. In deliberating on the case, these are the crucial issues which will be weighing on the minds of the Tribunal. Where testimonies from four witnesses for the Company prove to be of no probity value, we are constrained to apply the *'de minimis principle'*, for the Code has established the threshold for our consideration, and in all our *"intellectual might and procedural majesty,"* of *'small things'* we will not deign to concern ourselves.

56. The Company admitted that none of the relevant provisions of paragraph 22(i) were observed. These are fatal flaws that the Tribunal simply cannot ignore. In fact, the very Act and Code was 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."

57. 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 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."*

58. The Tribunal, therefore, is 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."

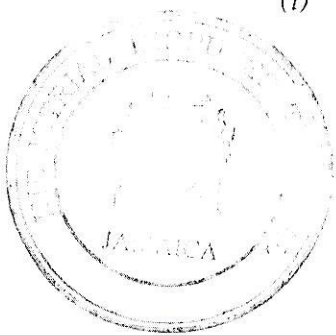
59. Mr. Antoine, in his opening submission, alluded to the Employment Law in California as the basis for his actions. It is known that within the State of California employment may be terminated 'at the will' of either party; this means that it can be done without cause or prior notice. In that jurisdiction '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*".

60. 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.
61. 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 the Tribunal's awards have been challenged) adapting itself, albeit slowly, to the new attitudes analogous with contemporary statutory rights.
62. 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.

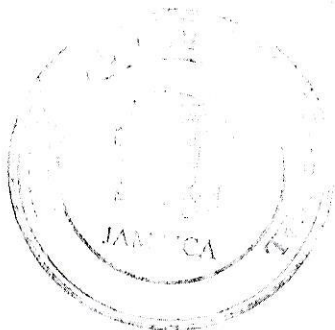
"If a dispute relates to the dismissal of a worker the Tribunal, in making its decision or award -

- (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;*



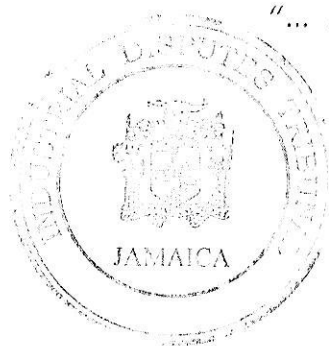
- (ii) *shall, if it finds the dismissal was unjustifiable and that the worker does not wish to be reinstated, order the employer to pay the worker such compensation or to grant him such other relief as the Tribunal may determine;*
- (iii) *may in other case, if it considers the circumstances appropriate, 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) -----"

63. On the evidence it is pellucid and beyond peradventure that Mr. Lutas 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. It is therefore axiomatic that the dismissal of Mr. Lutas can find no room for justification, and, thus, cannot stand.
64. 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. Lutas 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. Lutas' 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 a decision or award?

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

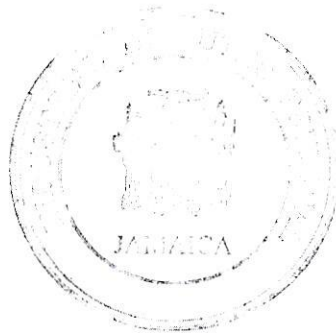


"... a dismissal may be unfair because it is substantively unfair to dismiss the employee in the circumstances of the case and/or because the manner in which the dismissal was effected was unfair. The manner may be unfair because it was done in a humiliating manner or because the procedure adopted was 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..."

66. As well, the manner of dismissal, although could be viewed as 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..."
67. Mr. Lutas admitted to setting up a company, in the same line of business as Hieroglyphics, shortly after his termination. From his evidence the business provided a source of income which would mitigate his loss. The fact that the employer's action was manifestly unfair and in breach of every known provision of Section 22 of the Code, has to be, from the standpoint of equity and fairness, balanced against the efforts of the Aggrieved Worker to limit the harm he could potentially suffer as a result of his dismissal.

68. In that regard, the Tribunal is of the view that Section 12(5)(c)(ii), in its proper construction, 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 exist -

"...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)

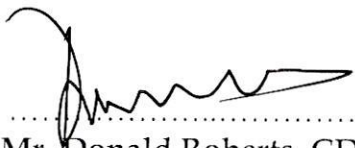



AWARD


69. In taking into account all the factors surrounding the dismissal, the Tribunal rules that the dismissal of Mr. Val Lutas by Hieroglyphics Limited, his employer, was unjustifiable. Consequently the Tribunal, consistent with Section 12(5)(c)(ii) of the **Labour Relations and Industrial Disputes Act**, awards Mr. Val Lutas compensation in the amount of Five Million and Five Hundred Thousand Dollars (\$5,500,000.00).

70. 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 Division



INDUSTRIAL DISPUTES TRIBUNAL

MINORITY AWARD

IN RESPECT OF

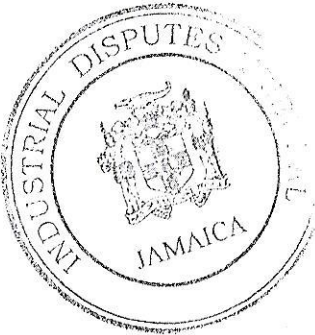
AN INDUSTRIAL DISPUTE

BETWEEN

HIEROGLYPHICS LIMITED
(THE COMPANY)

AND

VAL LUTAS
(AGGRIEVED WORKER)



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. Val Lutas with the following Terms of Reference: -

"To determine and settle the dispute between Hieroglyphics Limited on the one hand, and Val Lutas 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. Val Lutas.

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.

MINORITY DECISION:

The majority Award, consistent with Section 12(5)(c)(ii) of the Labour Relations and Industrial Disputes Act, ordered the employer to compensate Mr. Lutas in the amount of Five Million Five Hundred Thousand Dollars (\$5,500,000.00) 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:

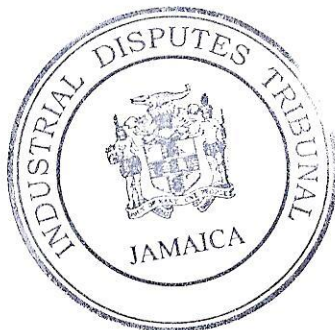
1. Mr. Lutas was employed for a period of less than six (6) months as the General Manager prior to his termination, the amount of his compensation should therefore not exceed six months which includes payment for the manner of his dismissal
2. the full extent of his six (6) months' compensation should be mitigated since Mr. Lutas had registered a new company in direct competition with Hieroglyphics two months after his termination.


When factored together, I have concluded that a reasonable compensation to be awarded to Mr. Lutas should be in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00).

Dated this 18th day of December 2024

Witness:


.....
Mario Ling
Secretary to the Division




.....
Jacqueline Irons
Member