

INDUSTRIAL DISPUTES TRIBUNAL
Dispute No: IDT 8/2020

SETTLEMENT OF DISPUTE

BETWEEN

IMCA JAMAICA LIMITED

AND

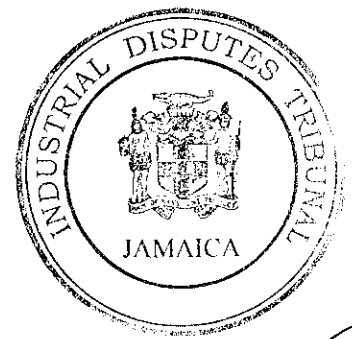
MISS SUZETTE RAYMOND

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, CD, JP	-	CHAIRMAN
MR. LESLIE HALL, JP	-	MEMBER
MR. CLINTON LEWIS	-	MEMBER

NOVEMBER 29, 2021



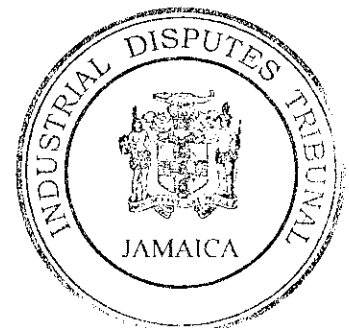
INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
IMCA JAMAICA LIMITED
(THE COMPANY)
AND
MISS SUZETTE RAYMOND
(THE AGGRIEVED)

REFERENCE:

By letter dated May 6, 2020, the Honourable Minister of Labour and Social Security, in accordance with Section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act of 1975 (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein: -

The Terms of Reference were:

"To determine and settle the dispute between IMCA Jamaica Limited on the one hand, and Miss Suzette Raymond on the other hand, over the termination of her Contract of Employment."



DIVISION:

The Division of the Tribunal which was selected in accordance with Section 8(2) (c) of the Act to hear the matter comprised:

Mr Charles Jones, CD, JP	-	Chairman
Mr Leslie Hall, JP	-	Member, Section 8(2) (c) (ii)
Mr Clinton Lewis	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The Company was represented by:

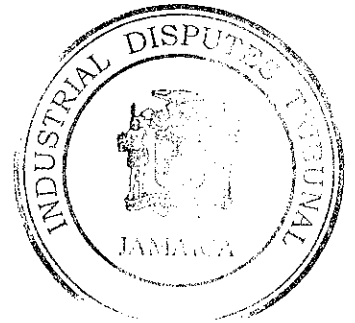
Senator Lambert Brown CD	-	Industrial Relations Consultant
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The Aggrieved was represented by:

Ms Ayana Thomas	-	Attorney-at-Law
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In attendance was:

Miss Suzette Raymond	-	Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties and oral submissions made during fifteen (15) sittings held between November 30, 2020 and July 22, 2021.

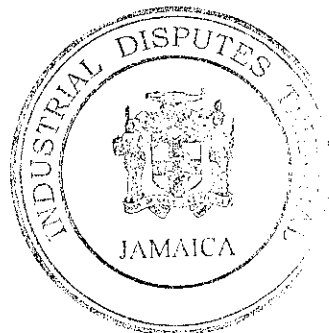
BACKGROUND TO DISPUTE:

1. IMCA Jamaica Limited is a company distributing construction heavy duty equipment, power generators and mechanized agricultural equipment. The Jamaican company is a Subsidiary of *Implementos y Maquinarias C por A e Dominican Republic* (IMCA).
2. Miss Suzette Raymond was employed as an Accounts Receivables Officer and by letter dated September 21, 2018 was advised that “.... given your job abandonment, the Company has decided to accept the repudiation of your employment contract and to bring your contractual obligation to IMCA Jamaica Limited to an end effective the day following the 5th day of your unexplained, unauthorized absence from work ...”

3. In an effort to seek redress Miss Raymond engaged the services of an industrial relations consultant and later the law firm of Nunes, Scholefield, DeLeon & Company. Conciliatory meetings were held at the Ministry of Labour & Social Security but the parties failed to arrive at a settlement. Consequently, the Honourable Minister of Labour & Social Security referred the matter to the Industrial Disputes Tribunal for determination and settlement.

CASE FOR THE COMPANY:

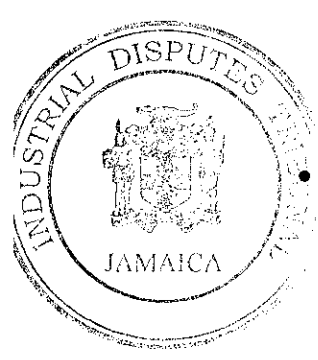
4. Senator Lambert Brown, Industrial Relations Consultant, the representative of the Company, in his opening remarks submitted, inter alia, that the dispute was a simple one. He said that the issue that the employee had failed to honour the terms of the contract, and given opportunities to provide an explanation, had not seized the opportunity given her, therefore the Company was justified to conclude that the employee had repudiated her contract of employment. Consequently, the employee having not provided an explanation, the Company exercised its rights and dismissed Miss Raymond on September 21, 2018.
5. Senator Brown also submitted that the employee's performance was "*.... less than desirable, and that less than desirable performance negatively impacted IMCA as well as its customers.*"
6. The Company called two witnesses in support of its case - Mrs Sherene Salmon-Watson, Accountant, and Mrs Kadian Lumbley-Davis, Human Resource Specialist, employees of IMCA.
7. Miss Salmon-Watson testified as follows:
 - IMCA is a company with its Headquarters in the Dominican Republic, to which the Jamaican arm of the Company reported. The persons senior to her in the staffing hierarchy were the Manager, Finance and Administration, the Regional Finance Director and the Vice President of Finance. The Jamaican office was required to report on its financial affairs to the Head Office within five (5) working days, after the end of each month.



- She supervised Miss Raymond whose core responsibilities were to monitor the customers' accounts which included their credit limits and the reconciliation of these accounts. She had reason to speak to Miss Raymond with respect to her performance and had also written to her in this regard.
- Miss Raymond, was issued a letter dated July 27, 2018, in which was stated "...this is a formal written warning because of your failure to reconcile accounts as required of you in your position as Credit and Receivable Officer..."
- By letter dated August 16, 2018, Miss Raymond was suspended for seven (7) days without pay commencing on August 17, 2018, to allow the Company to undertake a detailed review and reconciliation of customers' accounts for which she had responsibility.
- She was advised in the letter that she is invited on her return to work on August 28, 2018, to attend a disciplinary hearing with a representative of her choice. She was further informed that the hearing would be at the Company's Office, 217 Spanish Town Road, commencing at 8:30 a.m. to discuss the matter of un-reconciled accounts for which she had responsibility.
- In response to a question as to whether she recalled Miss Raymond attending her department on September 17, 2018, and had done any work, she said not to her knowledge. She further testified that between the date of her suspension on August 16, 2018 and September 17, 2018, she was not aware of Miss Raymond performing any duty for which she was employed.

8. In Cross Examination by Miss Ayana Thomas, Attorney representing Miss Raymond, Miss Salmon-Watson testified as follows:

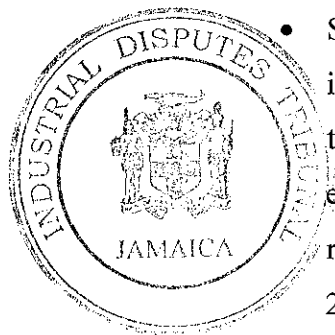
- She had joined the Company on March 8, 2018. She was not aware that Miss Raymond had been on sick leave from March 5, 2018; neither was she aware that during this period Miss Raymond's supervisor, Mr Cranston Ewan, Manager, Finance and Administration had been dismissed; and also that a new accounting system was implemented by the Company.
- She was not initially aware that Miss Raymond had protested the letter of March 8, 2018 which had conveyed a written warning to her.



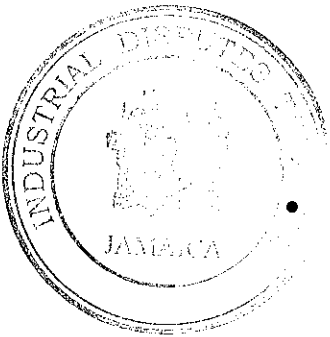
- She had no knowledge of discussions in which Miss Raymond had raised the issue about reconciling the accounts in circumstances where she had received no complaints from customers to say they were experiencing issues.
- She agreed with the question put to her that even if Miss Raymond had reported to work on August 28, 2018 as was indicated in the letter of suspension, it would have been to either Mr Cranston Ewan or the Human Resource Specialist.
- She could confirm that Miss Raymond had not seen Mr Ewan on September 17, 2018; but could not confirm whether Miss Raymond had seen Mr Angel Gomez, Country Manager or Mrs Lumbley-Davis.
- She was not aware of the date on which a salary payment was made to Miss Raymond for the period of suspension, that is, from August 17 to August 30, 2018; but agreed that no disciplinary hearing was held.

9. The Company then called Mrs Kadian Lumbley-Davis, Human Resource Specialist. Mrs Lumbley-Davis testified as follows:

- The Company's Human Resource Policy Manual was a part of the documentation that each employee received during orientation. The Policy Manual was available on the G Drive of the Company's computer system.
- Miss Raymond's suspension would have commenced on August 17, 2018 and she was expected to return to work on August 28, 2018. A disciplinary hearing was scheduled to be held on that date, but it was not held.
- She had received a call from Miss Raymond on August 28, 2018, in which she had indicated that she was on the property. She however, had notified her (Miss Raymond) that she had sent her an email the day before advising that there was a two-day extension to her suspension and the end-date would have been August 29, 2018. As a result, the disciplinary hearing would have been held instead on Thursday, August 30, 2018, at 8:30 a.m.
- Miss Raymond had received salary for the period that she had been suspended.
- Miss Raymond was advised that the reason for the extension of her suspension and the change in the date of the hearing was that the Company had to bring in temporary staff to assist with reconciliations and they had requested additional time.



- On August 28, 2018, while Miss Raymond was on the property she had told her that her suspension had been extended by two days. Miss Raymond had not indicated at that time that there were any issues. However, on the following day, Miss Raymond had told her that her representative would not have been available on August 30, 2018 due to a previous engagement and that she would advise of a possible date. Miss Raymond did not attend work on September 30, 2018.
- Miss Raymond had made no further communication with the Company with respect to the availability of her representative, and she had not attended work on August 30 and August 31, 2018; September 3 – 7, 2018; and had not applied for leave. She had not entered the premises during the week of September 6 -15, 2018. She did however, come on to the property on September 17 and had remained there during the hours of 10:07 a.m. to 2:14 p.m.
- During the period August 30 to September 7, 2018 no communication had been received from Miss Raymond pertaining to her absence from work.
- The Human Resource Policy Manual made provision for guidelines for disciplinary measures. **“Type of Offence: Item 2 - Absence without leave or permission for five (5) consecutive working days: 1st Offence – dismissal.”** Miss Raymond was aware of this policy and made no application for leave.
- Miss Raymond was informed by email of September 11, 2018, as follows “*...failure to attend work without notice or explanation and without any form of contact whatsoever with the Company since the 30th, your expected date of return to work, amounts to an abandonment of your job. You will receive further formal communication from the Company in short order.*”
- Miss Raymond responded by email dated September 12, 2018, which advised as follows: “*... please be advised that your allegations of job abandonment is false, I indicated to you verbally on several occasions that I have no intention of leaving her job... ”.*
- By email of September 14, 2018, Miss Raymond had advised that she had not abandoned her job and that she was ready and prepared to return to work and asked for confirmation as to whether her services had been terminated.



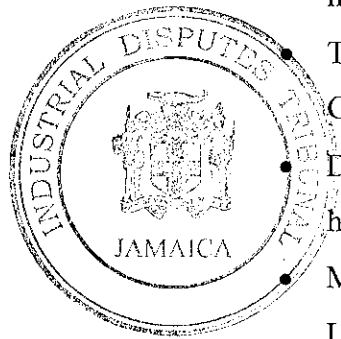
- Miss Raymond was advised by email from Mrs Lumbley-Davis dated September 17, 2018, which stated: *"Dear Ms Raymond, Have you received any communication terminating your services? I am also not aware of any decision by the Company to terminate your services"*
- On the same day, September 17, 2018 at some minutes after 10:00 a.m. she had seen Miss Raymond at the offices of IMCA, and had assumed that she was there to pick up her pay stub which she had requested. Miss Raymond had visited her office and they had spoken briefly and arising from the conversation she had printed and given her a copy of the Human Resource Policy. Up to that time, to the best of her knowledge Miss Raymond's services had not been terminated.
- She was not of the view that Miss Raymond had turned up for work as she was not dressed in the Company's uniform contrary to the dress code of which she was aware.
- On September 17, 2018, Mr Angel Gomez, Country Manager had visited her office and advised her that Miss Raymond was in his office and he needed her to be present.
- She later received an email from Miss Raymond on that same day stating that she had turned up for work but was advised by both Mr Gomez and herself that she was not expected to attend work and should leave the premises.

• The statement was a misrepresentation of their conversation, as neither she nor Mr Gomez had instructed Miss Raymond to leave the premises.

• During the period in which Miss Raymond had spent in the office she had not explained her absence from work nor had she indicated that she had come to work that day.

• Miss Raymond had been invited by email dated September 19, 2018 from Mrs Lumbley-Davis, to attend a meeting with Mr Gomez and herself at the offices of IMCA on Thursday, September 20, 2018 at 3:00 p.m. regarding her employment; and if she was unable to attend, she would be advised further by email.

- As at September 19, 2018 Miss Raymond was still employed to the Company.
- She confirmed that she had seen a copy of a letter dated September 19, 2018, addressed to the Director, Industrial Relations and Allied Services, Ministry of Labour & Social Security, from the law firm, Nunes, Scholefield, DeLeon & Company in which it was stated inter alia, that without prior notice to Miss Raymond and her representative, the hearing scheduled for August 28, 2018, was cancelled by

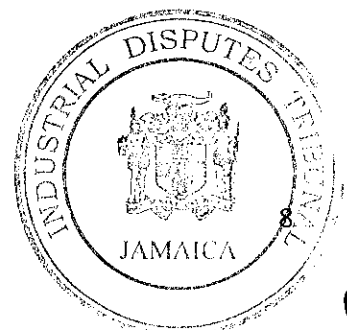


IMCA. Additionally, that Miss Raymond who was barred from the office was under the impression that her suspension would have continued in effect until the disciplinary hearing. The letter further stated that Miss Raymond was not given a directive to return to work.

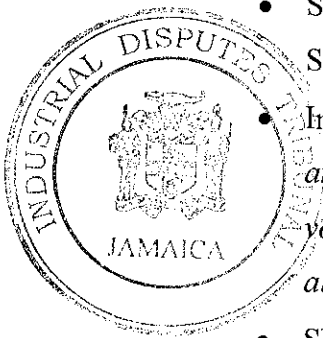
- Miss Raymond was not barred from communicating with the Company
- Miss Raymond had not applied for leave and no communication was received from her to state that her absence during the period August 30, 2018 to September 20, 2018 was due to illness.
- She confirmed that by letter dated September 21, 2018, signed jointly by Mr Angel Gomez and herself, Miss Raymond was advised as follows “...*This letter is to inform you that given your job abandonment the company has decided to accept the repudiation of your employment contract and to bring your contractual obligations to IMCA Jamaica Limited to an end effective the day following the 5th day of your unexplained unauthorized absence from work. The abandonment of your job is considered a voluntary resignation as of the relevant date.*”
- Miss Raymond had not appealed the decision to dismiss her, but had requested her Income Tax P45 form and her last pay slip, which were sent to the Law Firm of Nunes, Scholefield, DeLeon & Company.

10. Mrs Lumbley-Davis on Cross Examination testified as follows:

- Mr Ewan had held the position of Financial Administration Manager in the Company, a position which was senior to hers.
- She was aware of but was not present in the meeting held on August 16, 2018 at which time Mr Ewan had presented Miss Raymond with a letter. However, she was not aware that at that meeting Miss Raymond was informed that she was being suspended pending the outcome of a disciplinary hearing.
- She agreed that there were no customers’ accounts with irregularities listed in the letter of August 16, 2018. Nor could she identify any correspondence between August 15 and 30, 2018 setting out findings of any investigations.



- She could not identify any correspondence from the Company between August 17 and 28 regarding a draft agenda to guide the disciplinary hearing, nor was a draft agenda provided to Miss Raymond.
- She agreed that suspension without pay, as stipulated in the Company's manual, was the disciplinary action normally imposed after an employee had been found guilty of an offence.
- She agreed that it was subsequent to the receipt of the letter dated September 10, 2018, from Nunes, Scholefield, DeLeon and Company that Miss Raymond was paid salary for the period of her suspension.
- She confirmed that Miss Raymond was instructed not to attend the workplace during the period of her suspension and was also instructed not to dialogue with other employees unless authorized in writings by Human Resources to do so.
- She also confirmed that the date of the disciplinary hearing would have been the day after Miss Raymond's suspension had expired.
- She did not agree that the Company's intention was to suspend the employee until the disciplinary hearing was held and neither did she agree that the Company had indicated that the suspension was not a disciplinary sanction, but was only imposed pending the convening of the disciplinary hearing.
- She agreed that the letter of September 14, 2018 signed by Mr Cranston Ewan had stated inter alia, "*... the suspension is not and was never intended to be a disciplinary sanction and is a temporary measure pending the outcome of the matter.*"
- She could not verify that the meeting to which Miss Raymond was invited on September 20, 2018, was a disciplinary hearing.
- In response to the question "*... where does it expressly say in the manual that if you are absent from work it is treated as job abandonment and you are deemed to have voluntarily resigned?*" she stated that the actual words "*voluntary resignation*" and "*job abandonment*" were not in the manual.
- She agreed that the employee was entitled to have a disciplinary hearing in relation to all offences listed in the Company's manual
- She agreed that Miss Raymond had sent emails on September 12, 2018, advising that she had no intention of leaving her job and one on September 14, 2018 stating that "*I*

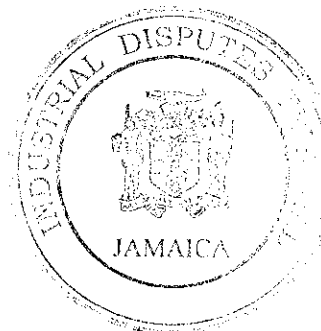


have not abandoned my job. I am ready and prepared to return to work. Please confirm if my services have been terminated.” which was reiterated in a follow-up mail on September 15, 2018.

- She had confirmed to Miss Raymond in an email of September 17, 2018, that she had not been terminated.
- She agreed that in all the circumstances it would have been fair to have had a hearing before formally terminating Miss Raymond’s services.

CASE FOR THE AGGRIEVED:

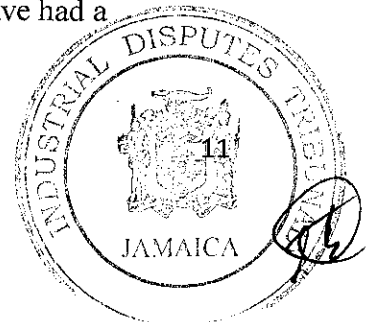
11. Miss Ayana Thomas, Attorney-at-Law representing Miss Raymond in her opening arguments submitted inter alia.
12. The employer had alleged job abandonment on the part of its employee, Miss Raymond. The Company had claimed that it was in keeping with its policies and procedures, and that Miss Raymond’s conduct amounted to voluntary resignation, although there was no such expressed policy of the Company.
13. The Company’s policy was clear, pursuant to the Labour Code; it was their duty that wherever employees committed themselves it could give rise to the employee being charged for such an offence, and a disciplinary hearing should be held to provide the employee an opportunity to explain him or herself with the assistance of a representative.
14. Miss Thomas reviewed and commented on the evidence heard and concluded as follows:
“I believe the inescapable conclusion must be that Miss Raymond was at all times interested in her job. She was under the impression based on oral communications to her by Mr Ewan that she was suspended pending a disciplinary hearing, which was never held. This is not an employee who has been absent from work or is known for repeated absences.



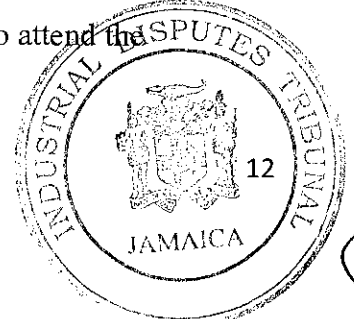
This is an employee who was punctual up to the time of all of this suspension issue, so the evidence will clearly show that there was no job abandonment and there was all the procedural steps which the Company ought to have taken pursuant to the Labour Code to ensure or to show that there was indeed this abandonment and to give the employee a fair opportunity to be heard with the presence of her representative [this] was not done."

15. Miss Thomas then called Miss Suzette Raymond to testify on her own behalf. Miss Raymond testified as follows:

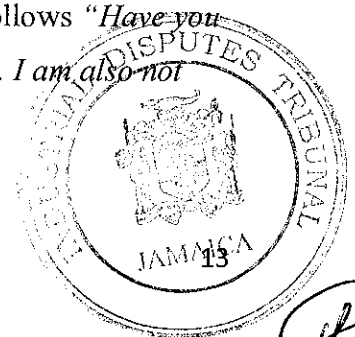
- She had been employed to IMCA in the position of Receivables Officer on a permanent basis and had been so engaged for approximately three (3) years and a few months.
- Prior to March 2018, she had never received warning letters from the Company; she was never suspended prior to August 2018 and had never attended a disciplinary hearing at the Company prior to her termination.
- During the period January to March 2018, she had never received complaints from her supervisor that had originated from customers, and no issues were raised with her by Mr Ewan prior to March 2018 regarding lodgements not being posted or checked
- She had received a letter dated March 8, 2018, signed by Mr Ewan, which was a first warning letter and there was no discussion with her prior to its receipt and she had taken issue with the contents of the letter, as the allegations were not correct
- She had received a letter from the Company dated July 27, 2018 which had indicated that it was a formal warning because of her failure to reconcile accounts, a requirement of her position as Receivables Officer. The letter had stated that more than fifteen (15) customers had indicated that they had either not received a statement or had not received any at all for several months. She had not been provided with any statements or complaints from customers nor was she given an opportunity to defend herself.
- On August 16, 2018, she had been asked to attend Mr Ewan's office after office hours and was asked to take her laptop. Mrs Watson was present in that meeting, Mr Ewan had given a summary of his account of what had taken place and had advised her that based on the severity of what had transpired he would have placed her on suspension without pay pending the outcome of a hearing. He had told her that she could have had a representative of her choice.



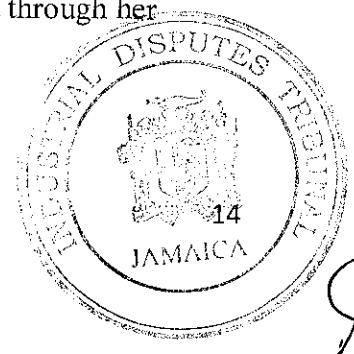
- The letter suspending her had stated as follows: *"Based on the magnitude of the anomalies uncovered, whether due to inaccurate or outstanding reconciliations or otherwise, further investigations are needed and a verification exercise must now be undertaken."* She had never been provided with the result of any investigations or verifications undertaken.
- She had been advised that during the period of suspension she would have been bound by the conditions of her employment and that she should not have been in touch with anyone in the organization unless authorized by the Human Resources Department. She had not received a draft agenda that would have guided the procedure of the disciplinary hearing.
- She had attended the Company's office on August 28, 2018. She had advised Mrs Lumbley-Davis that her representative would have been late and was told by her that the disciplinary hearing was postponed and that there would have been an extension of her suspension. This information she had been told had been outlined in an email which she had not seen. When she had reached home, she had seen the email from Mrs Lumbley-Davis in which she had been informed that the hearing had been postponed to August 30, 2018 at 8:30 a.m.
- On August 28, 2018 when her representative had arrived and following discussions with him, he had encouraged her to seek the services of an attorney.
- After she had received the first warning letter, she noted that some of the documents were missing from her desk; and at one time, she had seen some of these documents on Mr Ewan's desk. Based on reports from co-workers and customers, she had formed the opinion that Mr Ewan was seeking reason to dismiss her.
- The letter of August 15, 2018, would have been the first time that she would have been charged with an offence.
- When she had seen the email which had been sent by Mrs Lumbley Davis on August 27, 2018, it had been her understanding that she would have remained on suspension pending the holding of a disciplinary hearing.
- In keeping with the advice received, she had engaged the law firm of Nunes, Scholefield, DeLeon and Company. She had informed the Company by email on August 29, 2018 that the attorney dealing with the matter would not have been available to attend the disciplinary hearing on August 30, 2018.



- She had attended the office on August 30, 2018, but not to work, because she was still on suspension without pay pending the hearing. No hearing had been held and she had felt that she was still on suspension having been told by Mr. Ewan that she would have been on suspension pending the convening of a hearing.
- The Company had at no time notified her that she had been required to come to work; nor had she received any calls from her supervisor, Mrs. Salmon-Watson, Mr. Cranston Ewan, or Mrs. Lumbley-Davis. Usually, whenever she had been absent from work, someone would have called to enquire as to the reason for her absence.
- Her attorney, by letter dated September 10, 2018, had written to the Company to bring to attention the fact that the sanction of suspension without pay had been imposed without a hearing and was in breach of the Labour Code. Also, that IMCA's policies and procedures manual had provided that the maximum penalty which could be imposed for refusal to comply with a reasonable instruction was seven days' suspension for a third offence.
- The statement that had been made by Mrs. Lumbley-Davis to the effect that *"I have not heard back from you since your email of August 29, 2018..."* was not correct because while she had not personally contacted Mrs. Lumbley-Davis, her attorney had written to the Company on September 10, 2018.
- In response to the statement contained in Mrs. Lumbley-Davis' email that *"you will receive formal communication from the Company in short order"* she replied that she had been expecting a letter from the Company with a formal charge of job abandonment.
- She had replied to Mrs. Lumbley-Davis email of September 12, 2018 advising her that her allegations of job abandonment were false, as she had indicated to her verbally on several occasions that she had had no intention of leaving her job.
- By email dated September 14, 2018 she had written to Mrs. Lumbley-Davis advising *"I have not abandoned my job. I am ready and prepared to return to work. Please confirm if my services have been terminated"*.
- Mrs. Lumbley-Davis by email of September 17, 2018, had advised as follows *"Have you received any communication terminating your services? Please confirm. I am also not aware of any decision by the Company to terminate your services."*



- Having got this email, she had gone to the office on Monday, September 17, 2018 to obtain clarification, as Mrs Lumbley-Davis' mail had stated that she was not aware of any decision to terminate her services. She had arrived shortly after 10:00 a.m. and had gone to Mrs Lumbley-Davis' office.
- She had not been aware of any company policy which had stated that absence without notification for more than five (5) days constituted job abandonment and voluntary resignation
- Mrs Lumbley-Davis had printed a copy of the page in the manual that had referred to absence without leave or permission and had given it to her. After that she had gone to her desk and had observed that Mr Ewan and Mrs Salmon-Watson were in what appeared to have been a meeting.
- Mr Gomez had come into an office in which she had gone and had invited her to his office. Mrs Lumbley-Davis had been invited also. Mr Gomez had then told her that he had wanted to know why she had come to the office, as she was not expected to be there that day. He had expected that she would have come back for the hearing, at which time they would have talked; but that instead she had enlisted an attorney, so the attorneys would instead deal with the matter. He then advised her that "*.... I was no longer employed to the Company and asked me to leave*".
- By letter dated September 19, 2018 her attorney had referred the matter to the Ministry of Labour and Social Security and a copy had been sent to IMCA, which was received on September 20, 2018. This was the second letter written by her attorney on this matter.
- On September 20, 2018, in a telephone call Mrs Lumbley-Davis had advised that she had sent her an email on September 19, 2021 inviting her to a meeting with herself and Mr Gomez at 3:00 p.m. on September 20, regarding her employment.
- She had not accessed this mail until after 3:00 p.m. on September 20, 2018 as she had been on the road when she had got the call. The mail had not stated the purpose of the meeting nor had she been advised to bring a representative to the meeting.
- She had responded to Mrs Lumbley-Davis's email of September 19, 2018 stating that based on her instructions all correspondence should have been directed through her attorneys



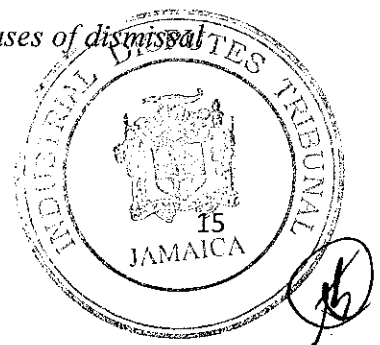
- On September 21, 2018 she had read another email from Mrs Lumbley-Davis also dated September 19, 2021. The message was urging her to respond to the earlier email of September 19, 2018, in which she had been invited to attend the meeting on September 20, 2018. On the same day (September 21) she had received a letter from IMCA terminating her service. The termination letter had not advised her that she had a right of appeal.
- IMCA's procedures manual did not have a provision for the right to appeal, but it had contained a grievance procedure.

16. Miss Raymond during Cross Examination testified as follows:

- Meetings were held with Mr Ewan prior to July 9, 2018, the date on which she had received the letter of suspension. Mrs Salmon-Watson had written the letter but it was handed to her by Mr Cranston.
- When asked the question, *"Up to September 11 at 4:05 p.m. when the letter from your lawyer got to IMCA, neither you nor your lawyer communicated to IMCA the reason for your absence?"* She responded that she had not communicated with IMCA.
- In response to the question, *"And up to September 11, 2018, you were absent for nine consecutive working days?"* She responded that she hadn't considered herself as being absent, as she was on suspension pending the outcome of a hearing.
- In response to the question as to whether she had received any correspondence from IMCA advising that her suspension would have gone beyond August 29, 2018, she responded in the affirmative and made reference to the email from Mrs Lumbley-Davis in which her suspension was extended and the hearing postponed from the original date of August 28, 2018.

17. Miss Raymond was asked to read the section in the Company's manual concerning rules and regulations; and she read as follows:

"Disciplinary action taken under the Disciplinary Code must be notified in writing to the employee by the Department Manager except in cases of dismissal when a letter will be issued by the General Manager or his ..."



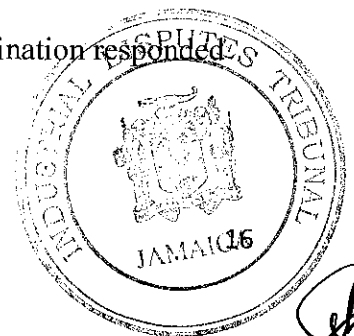
18. In continuing Cross Examination, she testified as follows:

- She had never before September 11, 2018 indicated to IMCA that Nunes Scholefield and DeLeon were her representatives and she had not received communication terminating her service on September 17, 2018
- In response to the question regarding the statement her Brief that her services had been terminated on September 17, 2018, she stated that she had received verbal communication from Mr Gomez to that effect and agreed that her contract with the Company required that any termination should be in writing.
- She had returned to work on August 28, 2018 for the disciplinary hearing. She had had no contact with Mr Ewan or Mrs Lumbley-Davis during the period of suspension
- She had not applied for leave from August 30, 2018 as she was on suspension and would not have returned to work without instructions from the Company to do so.
- She could not have made herself available for a meeting on September 20, 2018, having been told of the meeting on the same day. Also, she was not expecting to receive communication from the Company as she was told that all communication would be done through the lawyers
- She had not asked the Company to allow an appeal as the option was not offered
- She agreed that her termination was on September 21, 2018 and not on September 17, and that she had received two documents relating to her suspension covering the period, August 17 – 29, 2018.

19. In response to questions by a Member of the Tribunal, Miss Raymond said that the HR Manager had been in Mr Gomez's office on September 17, 2018 and would have heard when Mr Gomez had told her that she no longer worked at IMCA.

20. Miss Raymond also testified that she had received an email on September 11, 2018, advising her that she had abandoned her job.

21. Miss Raymond in answer to a question from her attorney, during re-examination responded that she had not voluntarily resigned from IMCA.



CLOSING SUBMISSION ON BEHALF OF THE COMPANY:

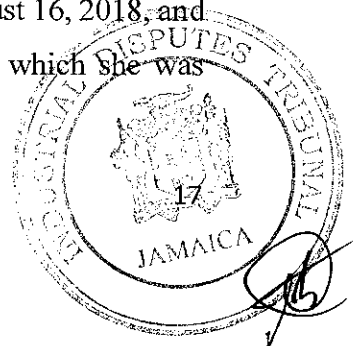
22. Senator Brown, Industrial Relations Consultant representing the Company contended as follows:

- The Company's position was that the period of Miss Raymond's suspension was not a sanction but was intended to allow for a reconciliation exercise and to investigate irregularities in customers' accounts.
- Miss Raymond was not terminated for matters relating to that investigation.
- If the hearing scheduled for August 28 or 30, 2018 had been held, Miss Raymond's representative could have requested that formal charges be made against her, and bring to attention that a draft hearing agenda had not been provided
- There was a clause in the Company's policies and procedures manual relating to absence from work for five (5) consecutive working days. IMCA had proven that Miss Raymond had absented herself from work between August 30, 2018 and September 21, 2018 – for more than five (5) consecutive working days - without leave or permission.
- The only letter of dismissal to Miss Raymond was that of September 21, 2018
- IMCA had not only met the evidentiary burden of proof, but had also acted in accordance with the law relating to a repudiation of contract in the case of unauthorised absence from work.
- In keeping with Clause 6(1) of the Labour Relations Code Miss Raymond had a responsibility to her employer which she failed to discharge
- Miss Raymond had not lived up to her contractual obligations to IMCA and her dismissal was justified.

CLOSING SUBMISSION ON BEHALF OF THE AGGRIEVED:

23. Miss Ayana Thomas, Attorney-at-Law representing Miss Raymond contended as follows:

- Miss Raymond was placed on suspension without pay by letter dated August 16, 2018, and a disciplinary hearing was scheduled for August 28, 2018, the date on which she was scheduled to return to work.



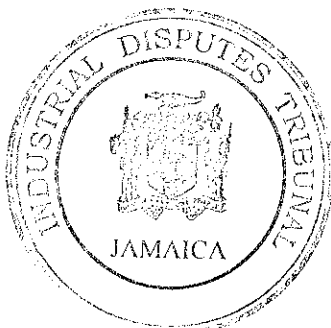
- The letter advised Miss Raymond not to attend office during the period of suspension or to have dialogue with employees of the Company except with the written permission of Mrs Lumbley-Davis, Human Resources Specialist.
- She had returned to work on August 28, 2018, for the scheduled disciplinary hearing but it was postponed to August 30, 2018.
- Miss Raymond's representative was unavailable to attend the hearing scheduled for August 30, 2018.
- She had not received a directive from Human Resources to attend work on August 30, 2018 and during the period of August 30 to September 10, 2018, she was not contacted by the Company, nor was she advised to return to work.

24. Miss Raymond contends that the following specific breaches of natural justice and due process were made by IMCA Jamaica Limited:

- 1) *Miss Raymond was terminated orally on the 17th of September 2018 by the Country Manager, Mr Gomez without being charged with any offence or misconduct. Her termination was confirmed by letter dated the 21st of September 2018.*
- 2) *She was not given a hearing and the right to a representative before her oral termination on the 17th of September 2018 or before receipt of the letter confirming termination on the 21st of September 2018.*

a) *The emails of the 19th of September 2018 inviting Miss Raymond to a "meeting" were sent after she was orally told she was no longer employed to the Company and cannot be seen as an opportunity to be heard. The emails also did not state that Miss Raymond had a right to a representative at the "meeting". Miss Raymond in her response clearly requested in keeping with the earlier directive of the Company that all communications should be sent to her known legal representative. The communication regarding the meeting was not sent to her known legal representative as requested.*

b) *She would not have known what this meeting was about as no charges or information whatsoever was set out in the said email to let her know what she would be called upon to respond to in the meeting.*



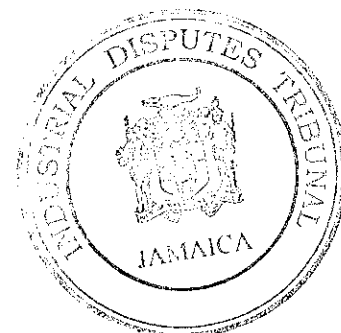
- c) *The time frame for the meeting was also unreasonably short – less than 24 hours. The email was sent on the 19th of September 2018 at 3:55 p.m. for a meeting on the 20th of September at 3pm. Miss Raymond was orally alerted to the email on September 20th at 12pm but not told of the time. She accessed the email after 3pm.*
- 3) *Miss Raymond was purportedly terminated in the written letter dated the 21st of September 2018 pursuant to a provision in IMCA's policies and procedure manual which does not exist. There is absolutely no provision in IMCA's manual which states that absence from work without authorization for 5 or more days constitutes job abandonment or a voluntary resignation. This provision does not exist and is fictitious.*
- 4) *Miss Raymond was not offered the right to appeal the decision to terminate her. She was never advised of this right either at the time of the termination or the written termination. In breach of the Labour Code IMCA's policies and procedures do not contain a right to appeal and accordingly it was incumbent on the employer to set out this right and the steps/procedures for exercising this right at the time of terminating the employee.*

25. It was also Miss Raymond's contention that she was unfairly dismissed from her employment with IMCA Jamaica Limited without due process and accordingly her dismissal was unjustifiable and in breach of:

- a) The principles of natural justice
- b) IMCA Jamaica Limited's policies and procedures manual
- c) The Labour Code of Jamaica

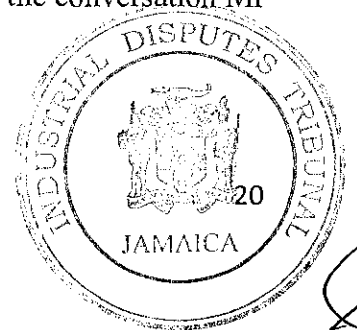
26. Miss Raymond's claim was to be compensated as follows:

The total loss in basic salary, lunch allowance, overtime income, medical expenses, loans and vacation leave in the sum of Three Million Five Hundred and Fifty-eight Thousand, Nine Hundred and Fifty-three Dollars Twelve Cents (\$3, 558,953.12) plus an additional One Million Dollars (\$1,000,000.00) for the humiliation and embarrassment caused to the worker.



TRIBUNAL'S DELIBERATIONS:

27. The Tribunal in its deliberations noted the following sequence of events in this matter.
28. By letter dated August 16, 2018, signed by Mr Cranston Ewan, IMCA's Finance and Administration Manager, Miss Raymond was placed on seven (7) days suspension commencing on August 17, 2018, for her failure to follow job instructions (verbal and written) as well as her refusal to comply with reasonable instructions given by her supervising officer.
29. The letter also stated that on her return to work on August 28, 2018 Miss Raymond was invited to attend a disciplinary hearing at the Company's office, with a representative of her choice.
30. Miss Raymond attended IMCA's office on August 28, 2018 and was advised that there was a two day extension of her suspension that would have ended on August 29, 2018, and that as a result the disciplinary hearing would have been held on Thursday, August 30, 2018. Miss Raymond did not attend the office on August 30 and informed IMCA that her representative was not available on that day and that she would have provided a possible alternative date.
31. Miss Raymond was informed by email September 11, 2018 that her failure to attend work without an explanation or contact with the Company since August 30, 2018 was an abandonment of her job. Miss Raymond by email of September 12, 2018 replied stating that she had not abandoned her job and was ready and prepared to return to work and also enquired whether her services had been terminated. She had followed this up with another email of September 14, 2018 again stating "*I have not abandoned my job*". By email dated September 17, 2018 Mrs Lumbley-Davis informed her that she (Mrs Lumbley-Davis) was not aware of any decision by the Company to terminate her (Miss Raymond's) services.
32. Miss Raymond testified that she had attended at the office for work on September 17, 2018 and met with Mr Angel Gomez and Mrs Kadian Lumbley-Davis. During the conversation Mr Gomez had told her that she was no longer employed to the Company.



33. Miss Raymond stated that she was invited to attend a meeting with Mr Gomez and Mrs Lumbley-Davis on September 20, 2018. She had not attended the meeting as she had received notification around the same time that the meeting should have been held. Miss Raymond's attorney had addressed a letter to the Director of Industrial Relations and Allied Services in the Ministry of Labour and Social Security regarding this matter.

34. By letter dated September 21, 2018 signed jointly by Mr Gomez and Mrs Lumbley-Davis, Miss Raymond was informed as follows:

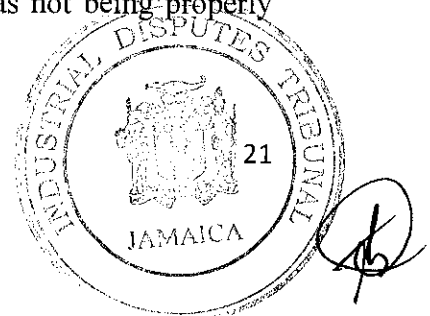
"This letter is to inform you that given your job abandonment, the Company has decided to accept your repudiation of your employment contract and to bring your contractual obligations to IMCA Jamaica Limited to an end, effective the day following the fifth day of your unexplained unauthorised absence from work. The abandonment of your job is considered a voluntary resignation as of the relevant date."

35. Members of the Tribunal in their considerations noted as follows:

Miss Raymond had testified that it was her understanding that she was not to return to work until a disciplinary hearing was held. Members noted that this was the condition stated in the letter of August 26, 2018 suspending her from work, and that no evidence was submitted to show that the Company had altered its position in this regard

36. Members noted that on more than one occasion, the Company had written to Miss Raymond advising her that her unauthorised absence from work constituted an abandonment of her job. Miss Raymond, by email dated September 12, 2018 had advised the Company that she had not abandoned her job. It was therefore the opinion of Members that Miss Raymond, having so informed the Company, it was incumbent on the Company to instruct her to return to work on or before a named date, failing which, the Company would have no alternative but to dismiss her.

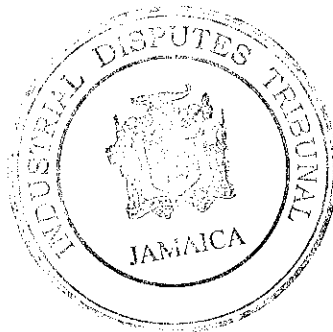
37. Miss Raymond had testified that she had attended the offices of IMCA for work on September 17, 2018, but for the fact that she was not in uniform, was regarded as not being properly attired for work and therefore not at work.



38. The Tribunal noted the reasons given by the Company for Miss Raymond's dismissal which primarily was her abandonment of her job, despite Miss Raymond's testimony that she had informed Mrs Lumbley-Davis that she had not abandoned her job.
39. Members also noted that Miss Raymond had been in contact with the Company by electronic means up to September 20, 2018 – the day before receipt of the letter of dismissal and that she had also been invited to a meeting at the Company's office on that date.
40. The Tribunal further noted that Miss Raymond's effective date of dismissal as was stated in the letter of September 21, 2018 would have been the day following the fifth day of her unexplained unauthorised absence from work, which date would have been September 5, 2018. It was the opinion of Members that the Company, having been in communication with Miss Raymond up to September 20, 2018, had still regarded her as an employee up to that date. This makes the September 5, 2018 date of her dismissal puzzling.

FINDINGS:

41. It is based on these considerations and the fact that the Office was in contact with Miss Raymond, and she had advised that she had not abandoned her job that the Tribunal did not agree with the Company's decision to dismiss Miss Raymond on the grounds stated and therefore concluded that her dismissal in the circumstances of this case is unjustifiable.



AWARD:

42. In accordance with Section 12(5)(c)(ii) of the Labour Relations and Industrial Disputes Act,
the Tribunal orders that Miss Raymond be paid compensation for her unjustified dismissal in
the amount of Two Million, One Hundred and Twenty-five Thousand Dollars
(\$2,125,000.00)

DATED THIS 29th DAY OF NOVEMBER 2021.



Mr. Charles Jones, C.D. J.P.
Chairman

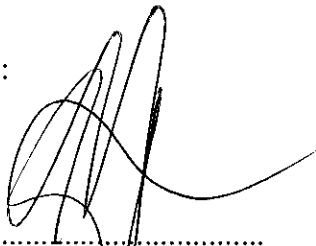


Mr. Leslie Hall, J.P.
Member



Mr. Clinton Lewis
Member

Witness:



Mr. Gary Lediard, J.P.
Secretary to the Division