

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: 51/2019

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SETTLEMENT OF DISPUTE

BETWEEN

ISLAND JAMAICA LIMITED

AND

MR. ERIC EVERING

*AWARD*

## I.D.T. DIVISION

MS. SADEERA SHAW	-	CHAIRMAN
MR. RODCLIFFE ROBERTSON, JP.	-	MEMBER
MR. KEITH FAGAN	-	MEMBER

MAY 30, 2024



**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF AN INDUSTRIAL DISPUTE**

**BETWEEN**

**ISLAND JAMAICA LIMITED  
(THE COMPANY)**

**AND**

**MR. ERIC EVERING  
(THE AGGRIEVED WORKER)**

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**REFERENCE:**

By letter dated September 18, 2019 the Honourable Minister of Labour and Social Security pursuant to Section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute describe therein:-

The Terms of Reference were as follows:

*"To determine and settle the dispute between Island Jamaica Limited on the one hand, and Mr. Eric Evering on the other hand over the termination of his contract of employment".*

## **DIVISION**

The division of the Tribunal which was selected in accordance with section 8(2)(c) of the Act and which dealt with the matter comprised:

Ms. Sadeera Shaw	-	Chairman
Mr. Rodcliffe Robertson, JP.	-	Member, Section 8(2)(c)(ii)
Mr. Keith Fagan	-	Member, Section 8(2)(c)(iii)

## **REPRESENTATIVES OF THE PARTIES:**

The **Company** was represented by:

Mr. Gavin Goffe	-	Attorney-at-Law
Mr. Matthew Royal	-	Attorney-at-Law
Judith Grant-Sewell	-	Group of Human Resource Director



The **Aggrieved Worker** was represented by:

Mr. Howard Duncan	-	Industrial Relations Consultant
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In attendance:

Mr. Eric Evering	-	Aggrieved Worker
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## **SUBMISSIONS AND SITTINGS**

Briefs were submitted by both parties who made written and oral submissions during twenty (20) sittings from November 18, 2020 and October 3, 2023.

## **BACKGROUND TO THE DISPUTE**

1. Island Jamaica Limited, *herein referred to as the "Company"*, owns and operates several establishments within the tourism and hospitality industry. One such establishment is Golden Eye Villas and Spa ("Golden Eye") located in Oracabessa in the parish of Saint Mary.
2. Mr. Eric Evering, *herein referred to as the "Aggrieved Worker"*, was employed on or about Mach 1, 1994 in the capacity of Group Financial Controller. By way of letter dated August

20, 2018, the Aggrieved Worker was informed that his services were terminated effective November 12, 2018.

3. The Aggrieved Worker engaged the services of Mr. Howard Duncan, Industrial Relations Consultant, who contested his termination and sought the intervention of the Ministry of Labour and Social Security. No resolution was reached and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

### **THE COMPANY'S CASE**

4. The Company's sole witness was Mrs. Judith Sewell Grant who testified that she is the Company's Group Human Resources Manager since November 2016. She also testified that she was based at Golden Eye. She explained that the Company was a parent company with sub-entities such as Golden Eye and Strawberry Hill. She further explained that her position entailed overall oversight for the Human Resources functions at all the local entities.
5. She gave evidence that she knew the Aggrieved Worker as he was the sitting Group Financial Controller based at Golden Eye when she began working at the Company. She stated that the Aggrieved Worker reported to Mr. Sean Anthony, the then Chief Financial Officer. It is her evidence that even though the Aggrieved Worker was based at Golden Eye, his position, as Group Financial Controller, entailed responsibilities for more than one of the other sub-entities which was detailed in his job description.
6. She testified that the Aggrieved Worker earned a yearly income of \$30,000 USD. She gave evidence that she was made aware that the Aggrieved Worker earned an additional sum of \$35,000 USD per annum from a company known as Island Trading Company INC, a company registered in Delaware, USA and operated in New York, USA. This payment was made upon the submission of invoices.
7. She stated that the Aggrieved Worker had several positions reporting to him, including the Finance/Accounting Department comprising of Payables, Payroll, General Cashier,



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Income Auditor, Stores Manager, Purchasing Manager, Cost Control, Store Clerk and Cost Clerk.

8. It is her evidence that the Aggrieved Worker's service was terminated in November 2018 based on charges of poor performance and negligence in the execution of his duties. She later testified that the Employee's Handbook didn't provide an exhaustive list of offences but a guideline as it was impossible to specify all offences. She gave evidence that the charges were as a result of an internal audit that was commissioned by the Company. She stated that the said audit was conducted by an independent entity at the Golden Eye location at the time.
9. Mrs. Sewell-Grant explained that apart from the findings of the Audit, it was not the first time that the Aggrieved Worker was cited for poor performance. She recalled the Aggrieved Worker being cited for his performance from 2016. She went on to state that based on the Audit Report and the warnings issued to the Aggrieved Worker, the charges were appropriate. She later indicated that she didn't recall any documented performance evaluation conducted for the Aggrieved Worker but the Company relied on the Audit Report which referenced his inability and/or lack of performance in his role.
10. It is her evidence that even before the audit was completed Mr. Blackwell (CEO) received preliminary reports of the audit in which he engaged affected employees including the Aggrieved Worker. She testified that Mr. Blackwell engaged in discussions with the Aggrieved Worker in respect of realigning his position in November 2017 and January 2018. She gave evidence that the Aggrieved Worker was placed on paid administrative leave after he rejected the Company's offer for repositioning/realigning so as to avert any business interruption or tension. This was communicated to him by letter dated January 12, 2018. She explained that the Aggrieved Worker was not paid gratuity during the administrative leave as one was required to be at work in order to earn gratuity.



11. She stated that the Aggrieved Worker returned to work on January 26, 2018. Upon receiving the final audit report, it is her evidence that the Aggrieved Worker was placed on another paid administrative leave so as to allow further independent reviews. This was communicated to him by way of letter dated February 2, 2018.
12. It is her evidence that apart from the above-mentioned preliminary meeting, investigative meetings were convened by Miss Debbie-Ann Gordon, the then Company's legal representative. She testified that formal correspondences were sent to the Aggrieved Worker on February 16, 2018 inviting him to the said meeting. She gave evidence that these meeting were considered fact finding meetings where the Aggrieved Worker was given the opportunity to respond to aspects of the audit as it became known to the Company.
13. She further stated that the above-mentioned letter indicated that based on the outcome of the meeting, the Company would conduct further investigations and if necessary take the appropriate disciplinary measures. The letter also stated that the Aggrieved Worker's leave was extended until further notice. It is her evidence that she was not sure if the audit report was shared with the Aggrieved Worker directly, but she is sure it was sent to his representative. It is also her evidence that it was her view that the audit report would be shared with him (Aggrieved Worker) by his representative.
14. She testified that the afore-mentioned investigative meeting was held on February 22, 2018 which was adjourned to facilitate the delivery of requested documents to the Aggrieved Worker's representative. The persons present at the said investigative meeting were the Aggrieved Worker, Mr. Sean Anthony (the then Chief Financial Officer and the Aggrieved Worker's supervisor), herself as Head of Human Resources along with Mr. Howard Duncan representing the Aggrieved Worker. She gave evidence that a summary of what transpired in the meeting on February 22, 2018 was communicated to the Aggrieved Worker's representative on April 17, 2018.



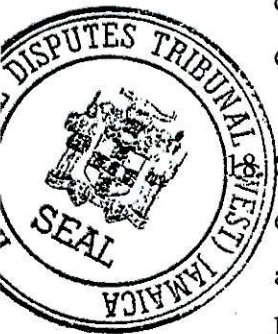
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15. She stated that the Aggrieved Worker was invited to a disciplinary hearing by the Company's attorney, Mr. Gavin Goffe who had taken over the matter. The invitation was addressed to Mr. Howard Duncan, the Aggrieved Worker's representative by way of email dated June 26, 2018. The email also set out the charges laid against the Aggrieved Worker, namely, poor performance and negligence. It is her evidence that a further correspondence was sent directly to the Aggrieved Worker setting out the same charges. She testified that the evidence and/or documents to be used against the Aggrieved Worker was sent to the Aggrieved Worker's representative by the Company's previous Attorney.

16. Mrs. Sewell-Grant gave evidence that a disciplinary hearing was held in which she was in attendance. She stated that the disciplinary hearing was chaired by Ms. Jeanine Tribley, who was the Acting Chief Executive Officer at the time. It is her evidence that Ms. Tribley asked the Aggrieved Worker multiple questions. Mrs. Sewell-Grant later clarified that when she said the Aggrieved Worker was asked multiple questions by Ms. Tribley, she meant that the Aggrieved Worker was given the opportunity to respond to the charges multiple times. She testified that the Aggrieved Worker's response was that he was not in agreement with the Audit.

17. She stated that Mr. Duncan made a submission at the disciplinary hearing where he aired his concern about the venue of the disciplinary hearing, being at the Company's legal representative's office and the presence of the Company's legal representative in the said disciplinary hearing. It is her evidence that Mr. Duncan didn't make any submissions concerning the charges nor the matters raised in the audit report.

18. She testified that the outcome of the hearing was that the Aggrieved Worker was terminated effective November 12, 2018. She gave evidence that the Aggrieved Worker remained on administrative leave until the effective date of the termination. This was communicated to him by letter dated August 20, 2018. She stated that the Aggrieved Worker was not the only member of the accounting department that was affected by the results of the Audit. It is her evidence that the Chief Financial Officer, Mr. Sean Anthony, to whom the Aggrieved Worker reported to, was also involved but he chose to tender his resignation.



19. She gave evidence that an appeal was held on November 5, 2018, which dealt with seven (7) grounds for the appeal. The appeal hearing was chaired by Mr. Richard King who was a contracted security consultant to the Company. She explained that the inclusion of Mr. King in the Company's organizational chart was to illustrate the reporting relationship in the security department where the Company had in its employ a Security Manager and team.
20. She stated that there was no one else at the senior level available to chair the appeal as the CEO and co-CEOs were involved in the matter at the early stages. In addition, Ms. Tribley, the Acting CEO at the time, chaired the disciplinary hearing. She continued to state that the Company decided to appoint Mr. King as a suitable person to chair the appeal as he was not an employee of the Company. It is her evidence that the outcome of the appeal was that the termination was upheld. This was communicated to the Aggrieved Worker by way of letter dated December 18, 2018.
21. She testified that she didn't influence the Company's decision to terminate the Aggrieved Worker because of her attendance at all of the meetings and hearings as she attended as an observer. She gave evidence that she didn't ask any questions nor chaired any of the said meetings and hearings.

### **THE COMPANY'S CONTENTIONS**

The Company contends that:

- a. The Company had valid reasons for terminating the Aggrieved Worker;
- b. The Aggrieved Worker was given the option to engage a representative of his choice;
- c. The charges against the Aggrieved Worker were set out to him in writing;
- d. The Aggrieved Worker was provided with all the documents it relied on to ground the charges;
- e. A disciplinary hearing was held and the Aggrieved Worker was given the opportunity to respond to the charges against him;



- f. The Aggrieved Worker was afforded the right to appeal the Company's decision to appeal its decision to terminate;
- g. The procedure adopted by the Company was compliant with the Labour Relations Code and the principles of natural justice; and
- h. The Company's representative asked that the Tribunal finds that the Aggrieved Worker was justifiably terminated and if the Tribunal finds that he was unjustifiably terminated that any compensation awarded to him should be nominal in the circumstances.

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

- 22. The Aggrieved Worker testified in examination-in-chief that he was employed to the Company in March 1994 when it was previously called Island Communications Limited as a Junior Accounting Clerk. He gave evidence that the Company was incorporated in 2006 and that all of the employees of Island Communications Limited were transferred to the Company. He stated that during his tenure he was promoted to Senior Accountant then to Financial Controller Hotels.
- 23. He gave evidence that the Company was the parent company for approximately 12-14 entities in the group in which the Company employed senior personnel whose responsibilities were shared across the companies in the group including his position. He noted that it was the Company which determined his duties as he explained that he had some responsibilities in inventory but he was not fully responsible for it. With the expansion of Golden Eye (one of the entities in the group of companies) in 2009, he stated that he had a meeting with Mr. Blackwell which covered assigning him additional duties and responsibilities for Golden Eye, Strawberry Hill, Island Caves, Boscobel Beach, Ocho Rios Beach and Oracabessa Foundation as Group Financial Controller. It is his evidence that after the meeting in July 2009 with Mr. Blackwell, his office was transferred to Golden Eye in St. Mary. It is also his evidence that during his employment, he had been based in three (3) locations namely, Kingston, Ocho Rios then St. Mary.



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24. He testified that his salary was paid in two (2) parts in which a portion was paid locally and the remainder paid overseas. He gave evidence that his salary was prepared by the Company but after the meeting in July 2009, his payment was made through Golden Eye and Island Outpost LLC. He stated that the salary in his employment contract which was paid through the payroll didn't reflect the full amount. It is his evidence that although not employed to Island Outpost LLC, he provided professional services to them and that he submitted an invoice to Island Outpost LLC to facilitate his payment for services rendered. He then explained that Island Outpost LLC, New York was the marketing and branding company for the hotels in the Island Jamaica Group, namely, Golden Eye Hotel, Strawberry Hill and The Caves. He noted that the said payment by Island Outpost LLC was the overseas portion of his salary and the said payment was outlined in his job description.
25. He gave evidence that he was invited to a meeting on November 28, 2017 to be held on November 29, 2017 via email by Mr. Blackwell. He recalled that the subject of the email was "*Re: Sinking Funds*". He testified that the meeting was held at Island Village in his office where he presented a requested report to Mr. Blackwell. He stated that they had a discussion unrelated to the reason why he was called to the meeting and at the end of the meeting Mr. Blackwell informed him that he (Mr. Blackwell) came to terminate his services and to take his laptop but he couldn't.
26. It is his evidence that he asked the reasons for him (Mr. Blackwell) wanting to terminate him. He testified that Mr. Blackwell told him that a new person was coming to replace him and that he (Mr. Blackwell) wanted him (the Aggrieved Worker) to be in charge of other entities in the group of companies. He gave evidence that he was in shock and requested the rest of the day after hearing what Mr. Blackwell said. He stated that when Mr. Blackwell informed him of the termination, he was locked out of all servers and the Company's email in which he asked the Group IT Manager about. He then indicated that the Group IT Manager informed him that he was instructed to do so and later instructed to re-activate them.



27. He testified that after the meeting he went home and discussed the matter with his family. He also testified that he called his supervisor, Mr. Sean Anthony and Mrs. Sewell-Grant to explain what occurred. He gave evidence that Mr. Anthony was in shock and Mrs. Sewell-Grant asked him if anyone else was in the meeting which he responded no. He stated that Mrs. Sewell-Grant responded to the effect that due to the fact that the meeting was between himself and Mr. Blackwell, she would speak to him and respond accordingly. It is his evidence that he returned to work the next day, November 30, 2017 when management approached him about the handover of his responsibilities for Golden Eye as the new person was scheduled to start on December 4, 2017.
28. He stated that he had another meeting with Mr. Blackwell on December 1, 2017 where they discussed the way forward. It is his evidence that Mr. Blackwell suggested making him redundant in his old role and offered a new role with new terms. It is also his evidence that he responded by requesting for the offer to be placed in writing before he made any decisions which Mr. Blackwell agreed. He testified that on December 6, 2017, Mr. Blackwell stopped by his office to inform him that he was still working on the redundancy and the new contract. He noted that Mr. Blackwell visited him by his office the next day, December 7, 2017 to let him know that he would receive the new contract by December 11, 2017 the latest. He also explained that while he was in office, he was in a transition period with the Company and wasn't performing any duties.
29. He gave evidence that on January 8, 2018, Mr. Blackwell called him while he was at home to apologize for not honouring his commitment of December 11, 2017. He stated that Mr. Blackwell asked to meet him on January 10, 2018 which he agreed. It is his evidence that Mr. Blackwell informed him that he was going to record the meeting before proceeding to discuss that he would no longer make him (the Aggrieved Worker) redundant and instead proposed a salary reduction which he refused. He testified that he asked the reason which Mr. Blackwell didn't explain.



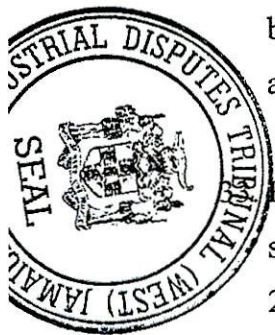
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30. He stated that when he was to return to work on January 12, 2018 and was on his way to his office he received a call from his supervisor, Mr. Anthony who informed him not to attend work for the day. It is his evidence that he asked the reason and Mr. Anthony responded that HR would contact him (the Aggrieved Worker). He testified that when he got to his office he noticed that his laptop was missing and was told that security took it. He also testified that he called Mr. Anthony about it and Mr. Anthony responded that he could not explain at that time and that the matter was out of his hands so he (the Aggrieved Worker) took up his briefcase and went home.

31. It is his evidence that the evening of January 12, 2018, he received an email with an attached letter from Mrs. Sewell-Grant which referred to his poor performance. The letter also indicated that he (the Aggrieved Worker) was placed on two (2) weeks paid leave. He testified that he returned to work on January 29, 2018 and reported to Mr. Anthony that he returned and required his tools to work. He gave evidence that Mr. Anthony told him to wait for HR to contact him. He also gave evidence that HR didn't contact him and he went to work every day for a week waiting for his tools to be returned.

32. He stated that on February 2, 2018, he received another letter from Mrs. Sewell-Grant where he was placed on an additional leave with pay due to the findings of an internal audit. The letter also indicated that he might be called to a meeting(s) with management and/or the Company's representative. It is his evidence that he responded to the letter on February 4, 2018 via email where he outlined his concerns about both administrative leaves he was placed on. He testified that on February 16, 2018 he was sent a letter which referred to a hearing. The said letter listed the specific findings of the Audit Report and stated that based on the outcome of the hearing, the Company would conduct further investigation and if necessary take the appropriate disciplinary measures.

He gave evidence that he took note of the contents of the said letter and he retained the services of a representative. He stated that the hearing date was confirmed for February 22, 2018 and his representative requested from the Company all of the evidence in anticipation of the hearing which was sent to his office. It is his evidence that an extract of the audit



report was sent to his representative the day before the hearing, February 21, 2018 at 5:15pm. He testified that also on February 21, 2018, he received a call from his supervisor, Mr. Anthony requesting for them to meet. He gave evidence that during the meeting, Mr. Anthony presented him with a redundancy package with a condition that he submitted his resignation by the end of February 2018. He stated that he didn't accept the redundancy package as he became suspicious.

34. It is his evidence that the hearing took place on the scheduled date of February 22, 2018 where his representative took issue with the disclosure of an extract of the Audit Report as opposed to the full report, the presence of Mrs. Sewell-Grant and Mr. Anthony and the hearing proceeding without the Aggrieved Worker being charged. He testified that his representative made a recommendation for him (the Aggrieved Worker) to be reinstated or paid compensation. He gave evidence that the Company's representative asked for his representative's submission to be placed in writing which was done on February 23, 2018 via email.

35. He testified that the Company responded by way of letter dated April 17, 2018 where the Company indicated that the hearing on February 22, 2018 was not a disciplinary hearing but an opportunity for the Aggrieved Worker to provide an explanation to the findings of the Audit Report. He gave evidence that the documents listed in April 17, 2018 letter were not enclosed except the extract from the Audit Report and the Employee's Handbook. He stated that he didn't know if his representative contacted the Company's representative concerning same.

36. It is his evidence that he realized he wasn't paid on February 25, 2018 in which contact was made to Mrs. Sewell-Grant. It is also his evidence that Mrs. Sewell-Grant responded that his (the Aggrieved Worker's) salary would be credited to his account on March 7, 2018 and gratuity would be prorated for the days he was present at work. He testified that upon receipt of his salary, he noticed that he was only paid the local portion of his salary.

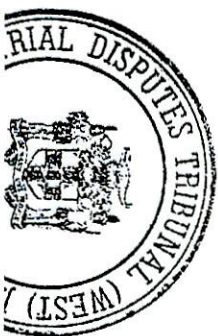


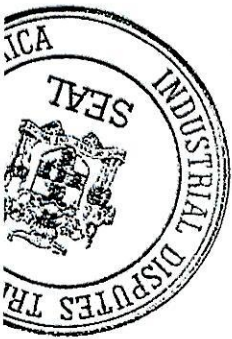
37. He gave evidence that he was invited to another hearing on May 15, 2018 where he was presented with the Employee Handbook. He stated that it was his 1<sup>st</sup> time seeing the document and that he never signed to it. It is his evidence that he and his representative objected again to the persons present at the hearing for the Company and made the same submission to the Company of reinstatement or compensation. It is also his evidence that there still weren't any charges laid against him.

38. He testified that on June 26, 2018 he received an email from Mr. Gavin Goffe, the Company's new legal representative, concerning a disciplinary hearing. He indicated how shocked he was upon receiving the said email as he was of the view that the matter had ended and was awaiting his resumption to work. He gave evidence that the email stated that he was invited to a disciplinary hearing to answer to the charges of poor performance and negligence in relation to the management of the storeroom that resulted in losses to the Company. He stated that an objection was raised to the charges and question raised as to whether it was the Company's representative who charged him and on what authority. It is his evidence that Mr. Goffe charged him with poor performance and negligence in his personal capacity and not as the Company's representative. He explained that he didn't inform the Company through his representative that he was not willing to attend the disciplinary hearing.

39. He testified that he received the full Audit Report on July 6, 2018 when it was sent by the Company's representative. He gave evidence that the Audit Report didn't speak to any fraudulent activity and he was of the view that the Audit Report looked at the effectiveness and efficiency of management in respect of the Company's mitigation against risk and how they were achieving the Company's objective. He stated that he shouldn't have been charged with negligence because it was not listed in the Employee Handbook.

40. It is his evidence that the disciplinary hearing was scheduled for July 19, 2018 to be held at the Company representative's office. He testified that the persons present were Ms. Tribley who chaired the disciplinary hearing, Mrs. Sewell-Grant, himself and both representatives. He gave evidence that during the said disciplinary hearing, he aired his





objection to the venue where the matter was being heard, the charges and possible penalties, the authority of the Company's legal representative to charge him, the presence of Mrs. Sewell-Grant and that the accusations be placed in writing. He stated that the time and date of the disciplinary hearing were agreed beforehand. He also stated that he was informed of the venue for the disciplinary hearing before the date of the hearing and he didn't recall if he or his representative aired an issue with it beforehand. He indicated that he also requested the evaluation that proved his poor performance.

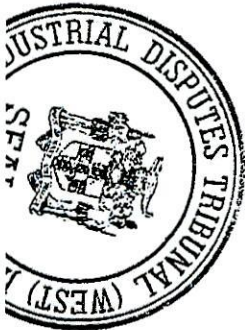
41. He gave evidence that during the disciplinary hearing, his representative outlined the matter in chronological order. He stated that his representative mentioned the two (2) previous hearings with the Company's previous legal representative where no charges were levied against the Aggrieved Worker. It is his evidence that he was given an opportunity to respond in which he stated that he was not in agreement with the Audit Report without stating the basis for his disagreement. He testified that questions were asked about the communication between himself and Mr. Anthony which he responded to. He noted that he was called to the disciplinary hearing to answer to an Audit Report which could not speak. He also confirmed that he, through his representative, requested a separation package using the redundancy formula as proposed by Mr. Blackwell and Mr. Anthony.
42. He testified that he was not presented with any evidence pertaining to poor performance nor negligence. He also gave evidence that he was not presented with his job description. He explained that he didn't have an issue with the contents of the job description as he was the one who wrote it but had an issue with the fact that he was not given a copy prior to the hearing. He stated that he was not given copies of the written warnings that the Company indicated that it would produce prior to the hearing. It is his evidence that the hearings on February 22, 2018, May 15, 2018 and July 19, 2018 were disciplinary hearings.
43. He testified that the Company's representative, Mrs. Sewell-Grant and Mr. Anthony prevented him from stating his case in the May and April hearings. He also gave evidence that the Company's representative, Mrs. Sewell-Grant and Ms. Tribley prevented him from stating his case in the July hearing. He stated that he agreed to state his case but there was

no invitation from Ms. Tribley to state it. It is his evidence that he was not given an opportunity to speak and that his representative was not told to stop speaking.

44. He stated that on August 20, 2018 he received an email with an attached letter from Mrs. Sewell-Grant. It is his evidence that the attached letter was a termination letter signed by Ms. Tribley which outlined the evidence used to make such determination. He testified that other than the Audit Report, he was not furnished with the other documents mentioned in the termination letter. He gave evidence that the Company's representative influenced the decision to terminate him. He testified that he was still employed to the Company because the termination letter was on the Golden Eye letterhead.

45. It is his evidence that on August 22, 2018 he requested an appeal via email which also set out the grounds for the appeal. He testified that the appeal hearing was held on November 5, 2018. The persons present at the appeal hearing were the Company's representative, Mr. Richard King, Mrs. Sewell-Grant, the Aggrieved Worker and his representative. He gave evidence that Mr. King chaired the hearing and that questions were asked about Mr. King's position in the Company in which Mr. King responded that he was not an employee but rather a consultant. He stated that his representative objected to Mr. King presiding over the appeal hearing but the objection was denied and Mr. King proceeded to hear the matter. He was of the view that although he received the termination letter on August 20, 2018, the termination letter didn't take effect and he was still employed to the Company up until the decision of the appeal which was delivered on December 18, 2018. He later gave evidence that he was dismissed by the Company on August 20, 2018 when he received the termination letter.

46. It is his evidence that he received an email on December 12, 2018 concerning his final payment. He testified that he responded on the same day to which Mrs. Sewell-Grant responded on December 18, 2018 with a breakdown of his final payment. He gave evidence that he then responded on December 19, 2018 to the effect that he hadn't received the decision of the appeal and he wanted to know the basis for the final payment. He stated that in response he received the decision of the appeal via email with a letter attached on



December 19, 2018 where the Company's decision to terminate was upheld. He then indicated that he didn't collect the cheque with his final salary from the Company.

47. He testified that he didn't make any effort to seek alternative employment as he was still employed to the Company. He gave evidence that by complaining against the Company for unjustifiable termination, it extended to all related entities such as Island Outpost LLC and Golden Eye as the Company is the parent company for those entities. He indicated that he filed a lawsuit against the Company for breach of contract but not with Golden Eye nor any other entity. It is his evidence that he isn't seeking compensation for unjustifiable termination but rather reinstatement.

### **THE AGGRIEVED WORKER'S CONTENTIONS**

The Aggrieved Worker contends that:

- a. He was charged with offences that were not included in the Employee Handbook;
- b. He was not guilty of the offences charged;
- c. The Company's legal representative played numerous roles throughout the disciplinary process where he charged him without authority, invited him to a disciplinary hearing, attended and participated in the disciplinary hearing as well as attended and participated in the appeal;
- d. He was terminated without due process as he was not given an opportunity to state his case and was not provided with the evidence prior to the said hearing;
- e. There was bias on the part of the Company legal representative who influenced the Company's decision to terminate;
- f. He was not terminated by his employer; and
- g. He asked the Tribunal to find that he was unjustifiably dismissed and that he wishes to be reinstated.



## **THE TRIBUNAL'S RESPONSE AND FINDINGS**

48. The Tribunal, after careful consideration of the evidence presented, must determine how the Aggrieved Worker's employment with the Company ended. From the evidence presented from both parties, it is accepted that the Aggrieved Worker was employed to the Company in the capacity of Group Financial Controller up to the date of his termination. It is also accepted that the Company is the parent company for a group of entities in which senior management, such as the Aggrieved Worker, were assigned group responsibilities and based at the various entities.
49. The Tribunal notes that the Company engaged an independent company to conduct an audit of one of the entities in the group of companies namely, Golden Eye, in 2017. It is the Company's evidence that based on the preliminary findings shared with the Company, the CEO of the Company arranged a meeting with the Aggrieved Worker on November 29, 2017 with the intention to reposition or realign his (the Aggrieved Worker's) position in the Company. While, it is the Aggrieved Worker's evidence that the CEO of the Company arranged the meeting with the intention to terminate him but instead offered him a new position in the group and informed him that someone else would be assigned the responsibilities concerning Golden Eye.
50. The Tribunal agrees with the Company's evidence that the reason for the meeting was due to the preliminary findings of the audit. The Tribunal also agrees with the Aggrieved Worker's evidence that due to the findings and what was discussed the Company informed the Aggrieved Worker that another person would be assigned his duties at Golden Eye and that the Aggrieved Worker would be reassigned. The Tribunal finds that the evidence of both parties with regards to the outcome of the meeting in November 2017 is similar in that an offer was made to the Aggrieved Worker to realign and/or reposition him to have responsibilities in other entities within the group in the companies.



51. From the evidence, the Tribunal finds that while the Aggrieved Worker was in his transition period, there were discussions between the Company and the Aggrieved Worker in an attempt to finalize the realignment and/or repositioning. The Tribunal accepts both parties' evidence that the final offer of the Company was rejected by the Aggrieved Worker in which the Company placed the Aggrieved Worker on two (2) weeks paid leave so as to avoid any tension and/or business interruption (*Exhibit 4a*).

52. The Tribunal accepts the Company's evidence that upon receipt of the final audit report and the findings from the report concerning the Aggrieved Worker, he was placed on an additional two (2) weeks paid leave to facilitate further investigations into the findings. This was communicated to the Aggrieved Worker by way of letter February 2, 2018 (*Exhibit 4b*).

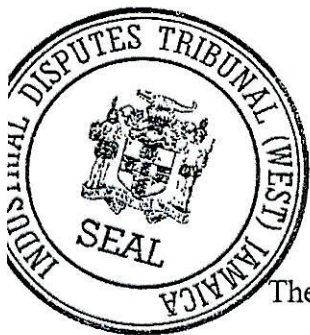
53. During that period, the Company, through its legal representative, invited the Aggrieved Worker and his representative to two (2) meetings. It is the Aggrieved Worker's argument that those meetings were disciplinary hearings which proceeded without him being charged. The Tribunal does not accept such argument as it was clear from letter dated February 2, 2018 (*Exhibit 4b*) that the Company had the intention to convene meetings with the Aggrieved Worker during his leave as well as letter dated April 17, 2018, (*Exhibit 6*) where the Company explained further that the meetings were not disciplinary hearings but an opportunity for the Aggrieved Worker to respond to the findings of the Audit Report. The letter also stated that based on the outcome of the meetings, the Company would then decide whether to take disciplinary action. Based on the findings of the Audit Report and other evidence provided, the Tribunal finds that the Company may have had cogent reasons to terminate the services of the Aggrieved Worker.

54. In considering the matter of procedural fairness during the disciplinary process, the Tribunal is tasked to look into the Company's dealings with the Aggrieved Worker during the said process. The Aggrieved Worker's employment was terminated for disciplinary reasons and therefore paragraph 22 of the Labour Relations Code is applicable.



55. From the evidence provided, the Company decided to take disciplinary action against the Aggrieved Worker where the Company's legal representative sent an email on June 26, 2018 inviting the Aggrieved Worker to a disciplinary hearing as well as setting out the charges laid against him. The Tribunal does not accept the Aggrieved Worker's argument that the Company's legal representative didn't have the authority to proffer charges on behalf of the Company as no evidence was provided to show that the Company's representative acted on his own volition.

56. The Tribunal noted the Aggrieved Worker's inconsistent evidence concerning the charges and the Employee's Handbook where he initially stated that he should not have been charged with poor performance and negligence because he wasn't aware of the Employee's Handbook and he didn't sign it. He later gave evidence that he shouldn't have been charged with negligence because it was not listed in the Employee's Handbook as an offence. The Tribunal takes his latter evidence as acceptance of the said handbook. The Tribunal also finds it noteworthy to highlight an aspect of the said handbook (*Exhibit 7*) where it states:



*"DISCIPLINE*

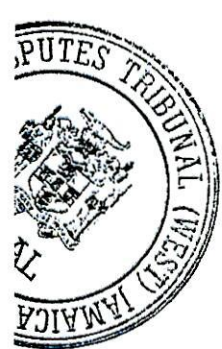
*6. It is impossible to specify all offences and therefore the following schedule has been confined to the more common occurrences. The Company reserves the right to treat any offence against Company rules and regulations on the merits of the case."*

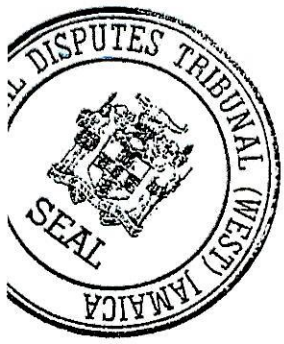
The Tribunal agrees that the schedule of offences in a company's handbook does not serve as an exhaustive listing of offences as it is impractical for the Company to specify all possible offences.

57. The Tribunal notes that a disciplinary hearing was held in which the Aggrieved Worker had an issue with the venue of the said disciplinary hearing. The Aggrieved Worker's argument with regards to the venue of the disciplinary hearing isn't accepted as the law does not specify the location(s) where a disciplinary hearing should be held and there was no evidence of bias and/or prejudice to the Aggrieved Worker. The Tribunal also didn't accept the Aggrieved Worker's argument regarding the presence of the Human Resources Manager, his supervisor and the Company's representative at the disciplinary hearing. The

Tribunal finds that no evidence was provided that either of those persons chaired the hearing or played an integral role in it. It is also the Aggrieved Worker's argument that he was not given an opportunity to state his case. The Tribunal does not agree and finds that based on his (the Aggrieved Worker's) evidence that he was given the opportunity to speak in which he stated that he was not in agreement with the Audit Report without stating the reasons. The Tribunal also notes that the Aggrieved Worker was represented in which his representative was also given an opportunity to state his client's case and was not stopped from doing so.

58. It is the Aggrieved Worker's argument that there was bias in the disciplinary process as the Company's representative influenced the decision of the Company to terminate him. No evidence was provided that the Company's representative participated in the hearing other than being present and no evidence was provided to illustrate how he (the Company's representative) influenced the Company's decision to terminate his services.
59. The Tribunal accepts that the Company's decision to terminate was communicated to the Aggrieved Worker by way of letter dated August 20, 2018. It was argued by the Aggrieved Worker that he was still employed to the Company after receipt of the termination letter as the termination letter was drafted on the letterhead of Golden Eye. The Tribunal does not agree with said argument and finds that the Aggrieved Worker was terminated by the Company after taking into consideration the evidence of both parties that there was an employment contract with the Company and that he was employed in a senior position where he had group responsibilities within the group of companies inclusive of Golden Eye. In addition, there was no evidence provided to the Tribunal to prove that an employment relationship existed with Golden Eye.
60. Further, the Tribunal considered the Aggrieved Worker's evidence that it was the Company who determined his duties. It was also the Company who paid him and decided where his office was based which was at Golden Eye at the time of his dismissal. Although the Golden Eye logo was printed on the cover of the Employee Handbook, the Tribunal notes its Introduction (*Exhibit 7*) where it states:





#### *"INTRODUCTION*

*This document represents a summary of the conditions of employment, benefits and entitlements for Island employees in Jamaica."*

61. It was argued by the Aggrieved Worker that his salary was later paid through Golden Eye and Island Outpost LLC but no evidence was provided to the Tribunal it. The evidence provided concerning payment from Island Outpost LLC resembles that of a contractor type of relationship where he (the Aggrieved Worker) was paid upon the submission of an invoice. Without such invoice for services rendered, he was not paid.
62. The Tribunal also notes that all of the persons involved in the disciplinary process were employees of the Company as well as the person who signed his termination letter. Thus, the Tribunal is of the view that the termination letter was drafted on Golden Eye's letterhead because that was the location he was based at the time of his termination and that he was terminated by the parent company (the Company) and by extension all the entities within the group of companies.
63. It is noted that an appeal was held in which the Company's decision to terminate was upheld. It was the Aggrieved Worker's argument that Mr. King was not suitable to chair the appeal. The Tribunal does not agree with this argument as paragraph 22 (d) of the Labour Relations Code stipulates that the appeal should be heard by senior management not previously involved in the matter. From the evidence presented, all of the Company's senior management were involved in the matter at some point. The Tribunal agrees with the Company's decision to source someone not employed to the Company and in this case a consultant was chosen to hear and determine the appeal.
64. It was also the Aggrieved Worker's argument that the Company's legal representative influenced the appeal but no evidence was provided to substantiate this argument. The Tribunal reiterates that the Company's representative being present in a hearing is not in of itself sufficient to prove bias as a company has the same right as an Aggrieved Worker to be represented.

65. It is important to refer to Part II Paragraph 6(iii) of the Labour Relations Code where it states:

*"Some workers have special obligation arising out of the nature of their employment. Such worker when acting in the course of his employment should be mindful of those obligations and should refrain from action which conflicts with them."*

As a senior manager with group responsibilities, specifically Group Financial Controller, such duties should not be exercised lightly as it can affect the profitability of the Company. Taking into consideration all of the evidence presented, the Tribunal finds that the Aggrieved Worker contributed to his termination. It is also noted that the Aggrieved Worker didn't make any concentrated effort to mitigate his loss in the circumstances.

66. The Tribunal finds that the Company adhered to the relevant provisions of the Labour Relations Code and the strict principles of natural justice. Thus, based on all of the evidence provided, the Tribunal concludes that Mr. Evering was justifiably terminated.



## AWARD

The Tribunal's Award is that the termination of Mr. Eric Evering's employment was justifiable.

DATED THIS 30th DAY OF MAY 2024



Sadeera Shaw  
Chairman

Rodcliffe Robertson  
Member

Keith Fagan  
Member

Witness

Jody-Ann Lindo (Miss.)  
Secretary to the Division