

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 23/2019

SETTLEMENT OF DISPUTE

BETWEEN

JAMAICA DAIRY DEVELOPMENT BOARD

AND

MR. HUGH GRAHAM

AWARD

I.D.T. DIVISION

MR. ERROL MILLER, J.P. - CHAIRMAN

MR. LESLIE HALL, J.P. - MEMBER

MR. CLINTON LEWIS - MEMBER

FEBRUARY 22, 2022

IDT 23/2019

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**JAMAICA DAIRY DEVELOPMENT BOARD
(THE COMPANY)**

AND

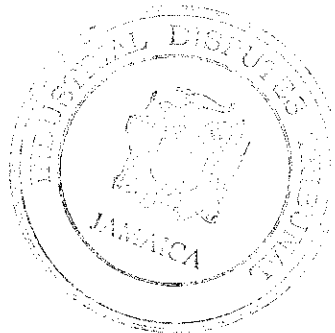
**MR. HUGH GRAHAM
(THE AGGRIEVED WORKER)**

REFERENCE:

By letter dated July 4, 2019, the Honourable Minister of Labour and Social Security in accordance with 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, the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

"To determine and settle the dispute between Jamaica Dairy Development Board on the one hand and Mr. Hugh Graham on the other hand over the termination of his 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:

Mr. Errol Miller, 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:

Mr. Nickardo Lawson	-	Attorney-at-Law
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In attendance:

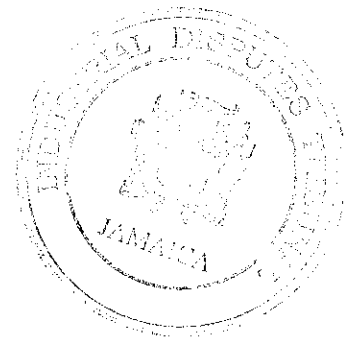
Dr. Derrick Deslandes-	Chairman of the Board
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The **Aggrieved Worker** was represented by:

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

Mr. Hugh Graham	-	Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

The original division selected to hear the dispute comprised:

Ms. Marsha Smith	-	Chairman
Mr. Leslie Hall, JP	-	Member, Section 8(2) (c) (ii)
Mr. Clinton Lewis	-	Member, Section 8(2) (c) (iii)

Consequent on the resignation of Miss Marsha Smith, subsequent to the 2nd Sitting, Mr. Errol Miller JP, was selected to chair the division.

In light of the change to the original division of the Tribunal, the matter begun *de novo* in accordance with Section 8(4) of the Act.

Briefs were submitted by both parties and oral and written presentations made during fourteen (14) sittings held from November 24, 2020, to October 19, 2021.

THE CASE OF JAMAICA DAIRY DEVELOPMENT BOARD:

1. The Jamaica Dairy Development Board (JDDDB, the Board), in its submission, indicated that there were two issues to be determined:

- a. The power of the Board to appoint a Chief Executive Officer which any other Officer purporting to do would be null and void and would constitute an unlawful usurpation of the functions of the Board of Directors;
- b. The appointment of Mr. Graham by the Board under a fixed term contract starting May 15, 2013 and which expired on May 14, 2016 by the effluxion of time and in accordance with the terms of contract.

2. It submitted that at the time the contract of Mr. Hugh Graham was scheduled to expire, there was no Board in place and so Mr. Graham was allowed to continue on a month-to-month basis. A Board was subsequently constituted and approved the possibility of Mr. Graham being given a new contract of employment and permanent employment and considered it appropriate to offer him a salary in excess of the prescribed scale but the request was denied. The Board then determined not to renew Mr. Graham's contract. Upon separation, he was paid an enhanced lump sum which he accepted without objection and which sum was not returned.

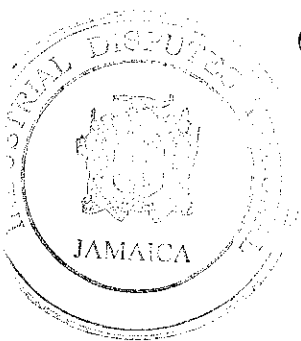
3. Dr. Derrick Deslandes was the sole witness called by the Jamaica Dairy Development Board. Dr. Deslandes, who has been Chairman of the Jamaica Dairy Development Board since May 2019, submitted a Witness Statement and also gave viva voce evidence concerning what he saw from the records of the Company relating to the matter involving Mr. Hugh Graham.

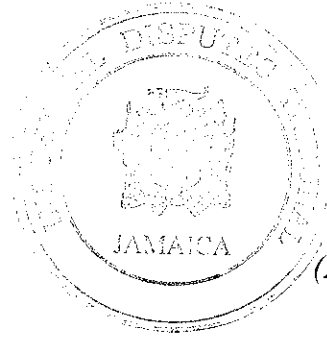
4. He testified that Mr. Hugh Graham was employed to the JDDDB in the capacity of Chief Executive Officer (CEO) engaged on a fixed term contract for three years, commencing May 15, 2013. The contract ended by the effluxion of time on May 14, 2016.

5. On May 4, 2016, Mr. Graham wrote to the Permanent Secretary in the Ministry of Industry, Commerce, Agriculture and Fisheries (MICAF) advising that his contract was due to expire on May 14, 2016 and indicated his availability to continue as CEO. He also indicated that "*a new Board of Directors for the JDDDB is not in place and there is a risk that same may not be gazetted before May 14, 2016. There would not be enough time to convene a meeting with the*

new Board of Directors before contract expiration". As a consequence, he sought the approval of the Permanent Secretary to continue serving in the capacity as CEO.

6. On June 1, 2016, the Permanent Secretary communicated to Mr. Graham that MICAF approved his continued employment as CEO with effect from May 15, 2016, until a new Board was appointed for the JDDB. Mr. Graham continued to work in the capacity of CEO.
7. A new Board was subsequently appointed. On July 7, 2016, the Board held a meeting, discussed the re-engagement of the CEO and took the view that Mr. Graham should continue in his role. The terms of his proposed re-engagement were not tabled for discussion nor did the Board pass any resolutions to give effect to his re-engagement. Generally, for a decision of the Board to take effect, a resolution must be passed to give effect to the decision.
8. By letter dated October 27, 2016, the Board wrote to the Permanent Secretary, recommending that Mr. Graham be permanently appointed retroactive to May 15, 2016, on terms and conditions that involved an increase in salary to the 7th point on the GMG/CTD scale, together with an Entertainment Allowance. The letter also sought to obtain Ministerial approval for Mr. Graham's new remuneration package as it was considered more than the "prescribed rate".
9. A submission was made to the Ministry of Finance and the Public Service (MFPS) which, in response said it did not support the request to pay the Executive Director in the GMG/CTD salary scale as the position was not classified at that level but based on the submission, approval was given for an adjustment to the salary of the Executive Director to \$5,608,000 p.a. with effect from March 1, 2017.
10. Section 7 of the JDDB Act specifies that:
 - (1) *The Board shall appoint and employ, at such remuneration and on such terms and conditions as it thinks fit, a Chief Executive Officer and such other officers and employees as the Board deems necessary for the proper carrying out of its functions: Provided that –*
 - (a) *no salary in excess of the prescribed rate shall be assigned to any post without the prior approval of the Minister; and*





(b) no appointment shall be made to any post to which salary in excess of the prescribed rate is assigned without the prior approval of the Minister.

(2) For the purposes of subsection (1) the "prescribed rate" means such rate as the Minister may, by order, prescribe.

11. The Ministry did not approve the recommendation that Mr. Graham be appointed within the parameters set out in the JDDDB's letter dated October 27, 2016. Consequently, Mr. Graham was not given an employment contract as this prerequisite to his appointment into permanent position was not completed.
12. In May 2017, the Board communicated to Mr. Graham that it will not be renewing his contract. There was no "termination" of the employment contract as there was no employment contract in place.
13. Upon Mr. Graham's departure, he was provided with an enhanced gratuity lump sum payment for the period of service in the amount of Four Million Eight Hundred and Forty One Thousand Six hundred and Twenty Seven Dollars and Seventy Seven Cents (\$4,841,627.77) representing gratuity at 25% for salary beyond May 15, 2016, up to May 5, 2017. Mr. Graham was presented with a letter on May 15, 2017, outlining the terminal payments as well as a detailed audited statement of earnings. The funds were lodged to Mr. Graham's bank account. He, however, failed to return any unearned sum or to register a complaint relating to his 'termination' within a reasonable window that would allow for the creation of a dispute while the employer/employee relationship existed.
14. The Company submitted that the Board did not treat Mr. Graham unfairly in relation to his employment with the JDDDB and his severance from the Board after the end of his fixed term contract.

THE CASE OF MR. HUGH GRAHAM - THE AGGRIEVED:

15. Mr. Hugh Graham, the aggrieved, submitted a Witness Statement from which he was examined and was subject to cross examination.

16. Mr. Graham gave evidence that he was engaged by the Jamaica Dairy Development Board as Chief Executive Officer (CEO) on a three-year fixed term contract effective May 15, 2013. He said that he reported to the Chairman of the Board and was responsible for managing all positions falling below the Chief Executive Officer.
17. In February 2016, there was a general election resulting in a change in political administration and a dissolution of the existing Board of Directors. In May 2016, he wrote the following letter to the Permanent Secretary in the Ministry of Industry, Commerce, Agriculture and Fisheries (MICAF):

THE JAMAICA DAIRY DEVELOPMENT BOARD

MEMORANDUM

*To : Mr. Donovan Stanberry
Permanent Secretary*

*From : Hugh L. Graham
Chief Executive Officer*

Date : May 4, 2016

Subject : Request for Continuity – Hugh Graham



Please note that my three-year employment contract expires May 14, 2016. A copy of said contract is attached for ease of reference. I am available to continue serving in the capacity of CEO should you so require.

Please also note that a new Board of Directors for the JDDB is not yet in place, and there is a risk that same may not be gazetted before May 14, 2016. There would not be enough time to convene a meeting with the new Board of Directors before contract expiration.

There are no alternate management arrangements in place for the JDDB and am keen to see the progress being made, especially on dairy farms, continue.

Your approval is herein sought.

Thank you.

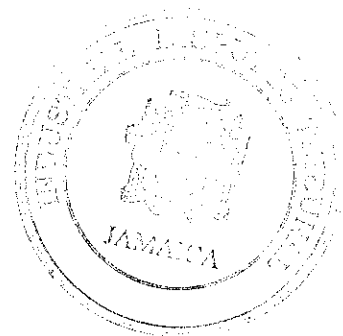
18. He said that on that same day the Permanent Secretary responded to him and wrote on the Memorandum which was followed by the undermentioned letter:

MINISTRY OF INDUSTRY, COMMERCE, AGRICULTURE & FISHERIES

Ref. No. P/GX 181

June 1, 2016

*Mr. Hugh Graham
Chief Executive Officer
Jamaica Dairy Development Board
Hope Gardens
Kingston 6*



Dear Mr. Graham,

I am directed to inform you that the Permanent Secretary has granted approval for you to continue in your employment as Chief Executive Officer, with effect from May 15, 2016 until the Board of Management for Jamaica Dairy Development Board is in place.

Sincerely yours,

*Deidre Latibeaudiere (Miss)
Senior Director
Human Resource Management & Development
for Permanent Secretary*

19. A new Board of Directors was named by letter dated May 24, 2016 and Mr. Graham said that as CEO, he was also appointed as a Director for three years, May 16, 2016 to May 15, 2019. The new Board convened its first meeting on July 7, 2016, at which he was present. Mr.

Graham said that when the matter of the re-engagement of the CEO came up for discussion, he was asked to leave the room. When he rejoined, he was informed that the Board had voted unanimously to re-engage his services as CEO and it had also voted for him to be permanently appointed as CEO retroactive to May 15, 2016, the day after his three year fixed term contract had expired. He said he also received commendations for the work he and his team had done over the past three years.

20. Mr. Graham said that after the meeting, he was informed that the terms and conditions of his appointment as CEO in a permanent capacity were drafted in the meeting in the presence of and with the approval of the Minister Without Portfolio in the Ministry of Industry, Commerce, Agriculture and Fisheries. The Board, he said, also agreed to expand the responsibilities for the position of CEO and as a result agreed to increase the salary for the position.
21. Consequently, the following letter was sent by the Chairman of the Board to the Permanent Secretary, MICAF:

JAMAICA DAIRY DEVELOPMENT BOARD

October 27, 2016

Mr. Reginald Budhan

Permanent Secretary (Acting)

Ministry of Industry, Commerce, Agriculture and Fisheries

Hope Gardens

Kingston 6

Attention: Miss Deidre Latibeaudiere

Dear Mr. Budhan,

The Board of Directors of the Jamaica Dairy Development Board (JDDB) at its meeting of July 7, 2016 made the decision for Mr. Hugh Graham to continue in the post of Chief Executive Officer (CEO). The following terms and conditions apply:



A handwritten signature in dark ink, appearing to be "H. Graham", is located at the bottom right of the page.

1. *That employment cease to be on contract as at May 15, 2016 and that he be permanently appointed.*

2. *That the salary be changed to the 7th point on the GMG/CTD scale (\$5,667,429.00) justified as follows:*

- *The candidate is duly qualified with extensive experience relevant to the post and strategic repositioning of the JDDB.*
- *The magnitude of responsibilities given the Government's targets to increase national milk production to 20 million litres by fiscal year 2019/20.*
- *Expanded scope of work:*
 - i. *To facilitate the process of the JDDB's transformation to a Livestock Development Board;*
 - ii. *To facilitate the development of existing developmental programmes and actions that foster the growth and development of Jamaica's dairy industry;*
 - iii. ...
 - iv. ...
 - v. ...
 - vi. ...
 - vii. ...

3. *An entertainment allowance appropriate to the post of CEO is being recommended in accordance with Section 6.7.10 of the Government of Jamaica Staff Orders for the Public Sector. The post requires that the officer regularly incur expenses in the performance of his duties in relation to the entertainment of executives and guests of local, regional and international organisations on behalf of the JDDB.*

4. *That any other allowances appropriate to the candidate's post in the execution of his duties as CEO be granted.*

Sincerely,

THE JAMAICA DAIRY DEVELOPMENT BOARD



Mr. Donald Elvey

Chairman

22. He said that his permanent appointment as CEO did not have to await the approval for increased salary from the Ministry of Finance and Public Service (MFPS) or any reclassification of the salary scale on the JDDDB's establishment. He said that he was already in receipt of the *prescribed* and approved salary for the post which was listed on the establishment. He testified that all posts from CEO and below on the establishment are permanently established posts at the JDDDB. There was therefore no need to reclassify the post from contract to permanent. Mr. Graham said that in February 2017, he was informed by the Human Resources Director, MICAF, that the MFPS had approved an increase of his salary just \$59,429 p.a. short of the 7th point of the GMG/CTD. He said he continued receiving salary at the *prescribed* rate until March 2017 when he began receiving the increased salary, however, it was not retroactive. He continued to perform his responsibilities inclusive of the expanded duties consequent on his permanent appointment.
23. After his permanent appointment in May 2016, the only outstanding matter as a permanent employee, was pension contributions by the JDDDB. The Board established an Audit Committee which was required to make recommendations concerning an approved pension scheme for permanent employees; at the time for himself and two other employees. The Audit Committee subsequently recommended the FHC Retirement Scheme operated by FHC Investments, to the Board. In the interim, all three permanent staff members were given the go ahead by the Board and the Ministry to open individual pension accounts at FHC Retirement Scheme and to make contributions to the account pending the Board's approval of the Scheme. However, at the time of his dismissal approval of the Scheme by the Board was being awaited.
24. On May 2, 2017, Mr. Graham said he received an email from a Consultant/Advisor to the Board with a settlement proposal in exchange for his resignation, but he refused to accept the proposal. On the same day, he received an invitation to an emergency Board meeting set for May 3, 2017, which he attended. He was excused from the meeting after prayers were offered but was never recalled to the meeting.



25. On May 5, 2017, Mr. Graham wrote to the Chairman indicating that based on the recent series of events, he formed the impression that there was an issue relating to his employment as CEO of the JDDDB. An extract from the letter is as follows:

“Re: Employment Dispute between Hugh Graham and the Jamaica Dairy Development Board (Ministry of Industry, Commerce, Agriculture and Fisheries)”

Reference is made to the captioned matter.

Based on recent events and discussions, I have formed the impression that there is an issue relating to my employment as Chief Executive Officer of the Jamaica Dairy Development Board. The impression I formed is based on the following events among other things:

1. ...
2. ...
3. ...
4. ...

I am very interested in my job and I am willing to do whatever is necessary to save it. I am also ready, willing and able to work in the interest of the organization.

I am therefore willing to meet to resolve any issue that gives rise to any concern relating to my employment including responding to any specific concerns that the Board may have. If there is no issue, I will be happy for clarification to that effect. I await your response in relation to the proposed discussions in an effort to resolve any issues.”

26. On the same day, May 5, 2017, he received the following letter from the Chairman:



JAMAICA DAIRY DEVELOPMENT BOARD

May 5, 2017

Mr. Hugh Graham

Chief Executive Officer

Jamaica Dairy Development Board

Ministry of Industry Commerce Agriculture and Fisheries(MICAF)

Hope Gardens

Kingston 6



Dear Mr. Graham,

***Re: Non-renewal of Contract of Employment for the position of Chief
Executive Officer at the Jamaica Dairy Development Board***

As you are aware your Contract of Employment which commenced on May 15, 2013 for a period of three years came to an end on May 15, 2016. As you are also aware there was a change in administration on February 25, 2017, however, prior to this the tenure for the appointed members of the previous Jamaica Dairy Development Board ("The Board"), had expired. Consequently and for administrative expediency, you were requested to continue to remain as Chief Executive Officer for the Board until the appointment of a new Board by the Honourable Minister.

The new Board having been appointed since 2016 is legally required under the Jamaica Dairy Development Board Act to appoint a Chief Executive Officer. Please be advised that the Board on May 3, 2017, in a special Board meeting, has decided not to retain you as the Chief Executive Officer and accordingly, your Contract of Employment in this regard will not be renewed.

In light of the foregoing, we kindly ask, with immediate effect, that you demit the office of Chief Executive Officer and return all property belonging to the Board.

Please be advised that the Board will honour all its legal commitments to you. The Board also extends its gratitude to you for your service since its appointment and wishes you all the best in your future endeavours.

Respectfully,

Donald L. Elvey

Chairman

27. Mr. Graham said that this termination letter was in stark contrast to the Chairman's letter on October 27, 2016, which indicated the decision of the Board to permanently appoint him as Chief Executive Officer retroactive to May 15, 2016. He said that he was not informed of any issues which the Board had with his employment which may have led to the termination of his services as no accusations or charges of misconduct were laid against him. He also testified that he was not given an opportunity to address any concerns the Board had or to defend himself against any allegations.
28. In his evidence, he said that there were certain circumstances that led to the termination of his employment. He cited that in 2015, WISYNCO (company) had applied for a permit to import milk powder into the island from Colombia; a matter that was discussed at several meetings of the Board in 2017. On the advice of the Veterinary Services Division of the Ministry, the application was denied for reasons of standard, health and public safety. The refusal was appealed and on review, it was upheld by the Minister. In February 2017, the company made an application for a new permit. Following the usual protocol of consulting with the Chief Veterinary Officer, he was advised that Colombia was still not an approved country for which importation was allowed. As a consequence, he refused the grant of the permit. The company, however, appealed to the Minister. He said that he advised the Minister that he had acted on advice from the Veterinary Division in dealing with the permit. However, he was advised that the Ministry was unhappy with his decision to deny the permit and the issue became the source of tension between himself, the Board and the Ministry.



A handwritten signature in black ink, appearing to be "CP", is located to the right of the seal.

29. Mr. Graham said that he was distressed and disappointed over the termination of his permanent employment and the nonpayment of sums owed to him and that he engaged the services of an Attorney who wrote challenging the dismissal. He subsequently received the outstanding payments which were his legal entitlements.
30. He described what he referred to as *“a flurry of interviews on various media houses with the then Chairman of the JDDB, Mr. Donald Elvey during which Mr. Elvey stated and/or implied that I was dismissed for cause”*. He said in several interviews the Chairman specified several causes for his termination including *“mismanagement of the Hay project, me being fired for millions of dollars of poor people’s money being wasted during my tenure as CEO of the JDDB and breaches of trust”*.
31. In his witness statement he referred to a transcript of one such interview given by Mr. Elvey on ‘Nationwide News at 5’ on May 19, 2017, where he confirmed that Mr. Graham was fired for cause, and implied that his *‘head rolled’* because of wasting of millions of dollars at the JDDB and that based on *‘the evidence’* they had no choice but to terminate his services.
32. Mr. Graham said that the interview by the Chairman *“significantly affected my ability to find work”* as the information presented was all false and were never raised with him prior to the termination of his services. The utterances published in the press and which still appear on websites have brought his character and reputation into question and disrepute and implied that *“I am not trustworthy and that there was financial impropriety on my part”*. He said that he was publicly disgraced and humiliated which damaged future job prospects and created emotional and psychological distress to the point where he had to access counselling support.
33. Mr. Graham said that he was unfairly dismissed from the JDDB and sought reinstatement in the position of CEO in a permanent capacity or compensation in lieu of reinstatement. He stated that he gained probationary employment in July 2021 on a fixed term contract and that the salary he receives is way below that which he was in receipt of in May 2017. He calculated the emoluments lost to be \$39,366,569.10 (Exhibit 34).



A handwritten signature in black ink, appearing to be "P. J. J.", is written over the page number.

ANALYSIS AND FINDINGS OF THE TRIBUNAL:

34. The issues before the Tribunal were:

- a. Was Mr. Graham permanently appointed by the Board at the time of his separation?
- b. Did his fixed term contract expire or were his services terminated by the Board for cause?
- c. Did the Board follow the proper procedure in terminating the employment contract of Mr. Graham?
- d. If his services were terminated, was the action of the Board justified?

35. The unchallenged evidence is that:

- Mr. Graham was appointed by the Jamaica Dairy Development Board as Chief Executive Officer on a three year fixed term contract effective May 15, 2013;
- By Memo dated May 4, 2016, Mr. Graham wrote to the Permanent Secretary, MICAF, indicating that his contract was due to expire on May 14, 2016 and that he was available to continue serving as CEO. He also indicated that a Board was not yet in place;
- By letter dated June 1, 2016, the Permanent Secretary granted approval for Mr. Graham to continue as CEO with effect from May 15, 2016 until a Board is in place;
- The new Board of Directors which was appointed in 2016 met on July 7, 2016 and at that meeting unanimously voted to re-engage the services of Mr. Graham as CEO;
- Under Section 7(1) of the JDDDB Act, the Board shall appoint and employ a CEO and other officers and employees with salary within the prescribed rate;
- The Board again met on October 27, 2016. By letter of the same date, the Chairman wrote to the Permanent Secretary, MICAF, advising him that at a meeting of the Board on July 7, 2016, the decision was made for Mr. Graham to continue in the position of CEO, that his employment cease to be on contract as at May 15, 2016 and that he be permanently appointed. He also proposed that the salary be changed to the 7th point on the GMG/CTD scale (Please see para 21 above);



- The Ministry of Finance, by letter dated February 28, 2017, approved salary adjustment to the CEO to \$5,608,000 per annum with effect from March 1, 2017 which Mr. Graham began receiving in March 2017 until the termination of his employment;
- On May 2, 2017, he received an email from Omer Thomas, Consultant to the Board with a settlement proposal in exchange for his resignation;
- He was invited to and attended an Emergency Board Meeting on May 3, 2017 but was asked to step outside and was not re-admitted to the meeting;
- By letter dated May 5, 2017, he wrote to the Chairman expressing concerns about his employment and indicating a willingness to meet to clarify/resolve any issues;
- By letter of the same date, the Chairman wrote advising him that with immediate effect, the Board would not be retaining his services;
- There was no meeting or discussion involving Mr. Graham prior to receipt of the letter;
- Subsequent to Mr. Graham's separation from the Board, there were a number of media interviews with the Chairman as well as the publication of newspaper articles giving reasons for Mr. Graham's termination; those reasons included issues of mismanagement, financial impropriety and loss of trust and that he was 'fired for cause'.



36. Was Mr. Graham permanently appointed by the Board at the time of separation? The Board contends that after Mr. Graham's three year fixed term contract expired on May 14, 2016, he was engaged on a month to month basis and that his contract ended by the effluxion of time. However, in his letter dated October 27, 2016, to the Permanent Secretary, the Chairman said that at a meeting of the Board on July 7, 2016, a decision was made that the employment of Mr. Graham **cease to be on contract as at May 15, 2016 and that he be permanently appointed.**

37. Mr. Graham asserts that he was advised by the Chairman in the Board meeting on July 7, 2016, of the decision to permanently appoint him as CEO. His evidence is that *"I was orally informed by the Chairman of the Board, Mr. Elvey, in the meeting after I rejoined, that the Board had unanimously voted for me to be permanently appointed as CEO with retroactive effect from*

15th May 2016, which was the day after my fixed term contract ended". His evidence is corroborated by the letter dated 27th October 2016, from the Chairman.

38. Dr. Deslandes, in his evidence said that *"what surprised me is that I have seen no evidence of that approval in the Minutes of any of the Board meetings. I saw a letter from the Chairman,but there is no evidence to say that is the case. So, I guess the Chairman would have been acting on behalf of the Board"*

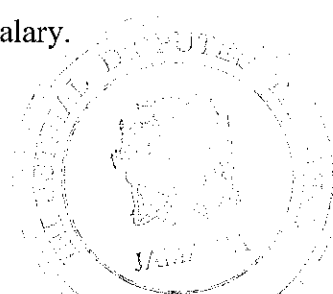
39. Paragraph 10(2) of the Schedule to the JDDB Act specifies that:

All documents, other than those required by law to be under the seal, made by and all decisions of, the Board may be signified under the hand of the chairman or any member or officer of the Board authorized to act in that behalf.

It stands to reason therefore, that based on that provision of the Act, the action of the Chairman would constitute a decision of the Board.

40. Dr. Deslandes also said that the Board wrote to the Permanent Secretary to obtain Ministerial approval for Mr. Graham's new tenure and remuneration package with the Board. This is in contrast to his Witness Statement in which he said that *"No other person, body or entity can lawfully hire Mr. Graham to the post of Chief Executive Officer of the JDDB. This includes the Minister"*. The term *hire* and *appoint* may be used interchangeably. This confirms that the JDDB is empowered by the Act and is the only entity that can employ and appoint the CEO at the prescribed salary and that the approval of the Minister, for Mr. Graham's appointment, would be ultra vires to the Board's authority.

41. The Act empowers the Board to appoint and employ staff on such terms and conditions as it sees fit. The JDDB has a structure with established positions and has the power to appoint as it sees fit; whether temporary, permanently or on fixed term contract. The only limitation is that it needs Ministerial approval to pay salary beyond the prescribed rate. This was not a condition of Mr. Graham's permanent appointment. At the time of the Chairman's letter, Mr. Graham was already in receipt of the prescribed salary. In keeping with the statute and the justification for the expanded role of the CEO, approval was being sought for an adjustment to the salary. The MFPS acted on the proposal and adjusted the salary.



[Signature]
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42. Dr. Deslandes in his evidence, stated that Mr. Graham was not in receipt of a new contract of employment to confirm his permanent status. However, the fact that he was orally advised at the Board meeting, of his new status and confirmed by the Chairman's letter to the Permanent Secretary seems to be sufficient evidence of an oral contract. Under the Labour Relations and Industrial Disputes Act, contract of employment "*means a contract of service or of apprenticeship, whether it is express or implied, and (if it is express) whether it is oral or in writing*". The three year fixed term contract had expired and Mr. Graham was approved to continue in the position until a new Board was appointed. The new Board endorsed the stewardship of Mr. Graham and appointed him permanently. He, therefore, was no longer on a fixed term contract. In any case, that contract had expired one year prior to the time of separation and therefore it could not have ended with the effluxion of time.

43. During cross examination, Dr. Deslandes admitted that there was no provision in the JDDDB Act that mandates employees to be employed on fixed term contracts but that it was a custom and practice. He said that there are two employees, who were neither on fixed term contract nor were they permanent but rather they were in limbo. He said that a meeting was planned to secure the Ministers' approval to convert the positions to permanent.

44. It could be argued that Mr. Graham, having been advised in a Board meeting that he was being permanently appointed instead of being retained on a fixed term contract and having seen the matter reduced to writing in the letter to the Permanent Secretary, MICAF, a copy of which he received, he had a reasonable expectation that such a decision would be honoured by the Board. As a consequence of the expanded role he was given, he began to carry out the added responsibilities. This was uncontested evidence which was contained in his witness statement:-

I continued to work in my capacity as CEO at the JDDDB with increased responsibilities in keeping with the letter of October 27, 2016 on the understanding that I was permanently employed with retroactive effect from May 15, 2016.

45. The reason given by the Board for Mr. Graham's separation was that his contract had expired with the effluxion of time. However, the evidence strongly suggests otherwise. Mr. Graham's three year fixed term contract had expired but approval was given for him to continue, purportedly on the same conditions until a new Board is appointed. The new Board, having

been appointed, changed Mr. Graham's employment status from a fixed term contract to permanent appointment. The question therefore is, since he was permanently appointed, was he dismissed for cause? The reason given in the separation letter is that his contract "would not be renewed". However, media interviews given by the Chairman makes it absolutely clear that Mr. Graham was dismissed for cause. He was accused of mismanagement, financial impropriety and breach of trust.

46. The unchallenged evidence is that the Chairman, Mr. Elvey, in an interview on "Nationwide News at 5" on May 19, 2017, said:

Well I do understand the issuesand I'm very happy that article came out because at least it moved from an area of speculation to why the general public would understand why the Jamaica Dairy Development Board would take a decision not to renew the CEO's contract. Now we have 14 million dollars of money that was wasted..... and as someone said, "Of poor people's money". The Board could not sit back and unload [sic] (allow) that and other breaches of court [sic] (trust) without acting. Yes you're right with that because we have made it clear that one of the considerations is whether or not if heads should roll, and as unpleasant as it is the CEO is no longer with us.Well based on the internal auditor report it pointed to the CEO and his management of that project. I do not know of any other person that it pointed to.

47. There is no evidence that any charges were formally preferred against Mr. Graham for the alleged breaches nor was he afforded the opportunity to state his case. He was therefore denied the process of natural justice.

48. The following exchange took place between a member of the Panel and Dr. Deslandes


Q There was a Special Meeting of the Board on 3rd May 2017, do you know whether or not after that meeting any discussions were held with Mr. Graham and the Chairman and/or the Board with respect to the decision not to renew his contract?

A Not to my knowledge. I mean it is common practice in the public service that if you are not going to renew then you have to engage. Historically mistakes are made and usually you pay for that at some other point. But the point is that I have not seen anything that indicates..... I am being frank ... there is nothing to indicate



essentially that there was a discussion. Mr. Graham had reached out to the Chair to discuss whatever issues the Board had with him and I have not seen that a response was provided, or any meetings were set up in that regard.

49. Natural justice requires that a person receive a fair and unbiased hearing before a decision is made that will negatively affect him. It is therefore essential that in such a matter, a disciplinary procedure be established and followed. Section 22(1) of the Labour Relations Code specifies that *the disciplinary procedure should be in writing and should:*

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- (a) *Specify who has the authority;*
 - (b) *Indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;*
 - (c) *Give the worker the opportunity to state his case and the right to be accompanied by his representatives;*
 - (d) *Provide for a right of appeal, wherever practicable, to a level of management not previously involved;*
 - (e) *Be simple and rapid in operation.*

50. According to the evidence, Mr. Graham, who between July and October 2016, was “*duly qualified with extensive experience relevant to the post and strategic repositioning of the JDDB*” and who was positively evaluated by the Chairman and recommended for permanent employment, suddenly lost favour with the Board in May 2017 and was asked to “*immediately demit office as CEO*”. This coincidentally took place after he refused to approve the permit for a company to import milk powder from Colombia on 17th February 2017.

51. The services of Mr. Graham were terminated by the Board for cause as indicated by the Chairman but without advising him of the reasons or allowing him the opportunity to state his case.

52. The Tribunal therefore finds that the action of the Board was unjustified in the termination of the services of Mr. Hugh Graham. We note that his desire is for reinstatement or compensation in lieu of reinstatement.

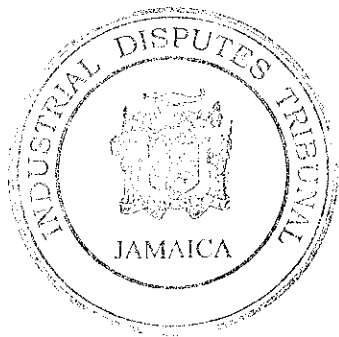



AWARD:

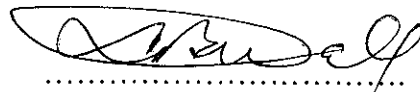
The Tribunal, in keeping with the finding and in accordance with Section 12(5)(c)(iii) of the Labour Relations and Industrial Disputes Act, awards that:


- a. Mr. Hugh Graham be reinstated as the Chief Executive Officer of the Jamaica Dairy Development Board by April 1, 2022 and be paid the sum of \$27.2M; or
- b. failure to reinstate him as stipulated at (a) above, pay him compensation in the sum of \$35.1M.

DATED THIS 22nd DAY OF FEBRUARY 2022.





.....
Mr. Errol Miller, JP
Chairman


.....
Mr. Leslie Hall, JP
Member


.....
Mr. Clinton Lewis
Member

Witness:


.....
Nicola Smith Marriott (Mrs.)
Secretary to the Division