

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 46/2019

SETTLEMENT OF DISPUTE

BETWEEN

JAMAICAN REDEVELOPMENT FOUNDATION, INC

AND

MS. MARGARET CURTIS

AWARD

I.D.T. DIVISION

MR. ERROL MILLER, JP.	-	CHAIRMAN
MR. LESLIE HALL, JP.	-	MEMBER
MR. CLINTON LEWIS	-	MEMBER

NOVEMBER /4 , 2022

**INDUSTRIAL DISPUTES TRIBUNAL AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
JAMAICAN REDEVELOPMENT FOUNDATION, INC.
(THE COMPANY)
AND
MS. MARGARET CURTIS
(THE AGGRIEVED)**

REFERENCE

By letter dated November 25, 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 described therein:

“To determine and settle the dispute between Jamaica Redevelopment Foundation Inc. on the one hand, and Miss Margaret Curtis on the other hand, over the termination of her contract of employment”.

By letter dated November 30, 2021, the Ministry amended the Terms of Reference to read as follows:

“To determine and settle the dispute between Jamaican Redevelopment Foundation, Inc. on the one hand and Margaret Curtis on the other hand, over the termination of her contract of employment”.



DIVISION

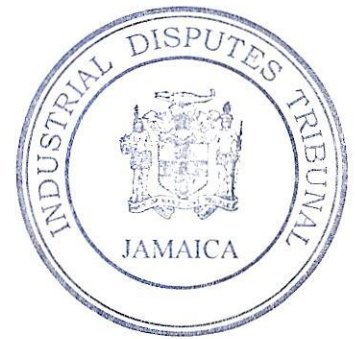
The division of the Tribunal selected in accordance with Section 8(2)(c) of the Act to deal with the matter comprised:

Mr. 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. Gavin Goffe	-	Attorney-at-law
Mr. Matthew Royal	-	Attorney-at-law



The **Aggrieved** was represented by:

Senator Lambert Brown	-	Industrial Relations Consultant
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In attendance:

Ms. Margaret Curtis	-	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)

The Company took the matter to Court, however, the Tribunal was not obligated to stay the proceedings pending the outcome of the Court ruling. Consequent on the resignation of Miss Marsha Smith, subsequent to the 3rd 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.

Brief was submitted by the Aggrieved and oral submissions made during sixteen (16) sittings held between February 16, 2021 and August 23, 2022.

BACKGROUND

1. The Jamaican Redevelopment Foundation, Inc. (JRFI) is a company incorporated in the United States of America. The Company purchased the FINSAC portfolio and appointed Joslin Jamaica Limited as service provider for the portfolio.
2. Miss Margaret Curtis was employed to Jamaican Redevelopment Foundation, Inc. for sixteen (16) years. Her services were terminated on August 31, 2018 with eight weeks' notice. Ms. Curtis took issue with her dismissal and retained the services of Industrial Relations Consultant Mr. Granville Valentine to represent her in the matter. The dispute remained unresolved both at the local level and the conciliatory level and as a consequence, by letter dated November 25, 2019, it was referred to the Industrial Disputes Tribunal. Mr. Valentine, the representative for Ms. Curtis, was also replaced by Senator Lambert Brown.
3. After the matter begun de novo, the Tribunal granted leave for the parties to attempt to settle the matter at the local level, however, during the 4th Sitting on May 31, 2021, it became apparent that those discussions were unsuccessful. The Company also advised that it had filed an action in the Supreme Court challenging the constitutionality, independence and impartiality of the Tribunal and sought a stay of the proceedings.
4. The Tribunal deliberated on these new developments and in the absence of an Order from the Court decided that it would continue to hear the matter. However, at the 8th Sitting, the Company raised objections to the Terms of Reference (as had been done at the 2nd Sitting before the matter begun de novo). As a consequence, the Minister of Labour and Social Security was advised of the objections. The Terms of Reference were subsequently returned to the Tribunal with a minor amendment as stated above.
5. At the 11th Sitting the Company was invited to make its opening submission and to call its first witness. However, the Attorney for the Company indicated that **"...as it stands now**



we have no instructions to present any opening statement, or to prepare a Brief - or submit a Brief. We have no instructions to call any witnesses at this time”.

6. The Panel took a break to deliberate on the matter and on resumption made the following ruling:

“We note that the Company is not prepared for an opening or to invite any witnesses. In that regard we are going to be inviting the aggrieved to start the case. We will allow the Company to cross-examine any witnesses that appear for the aggrieved but will not allow the Company to make any submissions, give any evidence thereafter, given that you have decided not to open with your submissions this morning.”

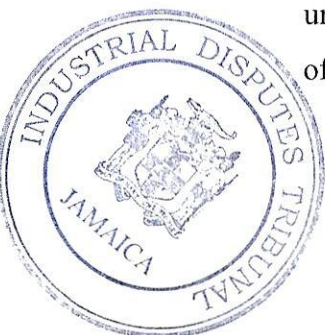
As a consequence, the aggrieved was invited to commence her case.

CASE OF THE AGGRIEVED

7. Miss Curtis, in her testimony, said that prior to her employment with JRFI she worked with Life of Jamaica and was subsequently engaged by Joslin Jamaica Ltd as Credit Officer on April 2, 2002. Having completed her probationary period, she was confirmed on the staff of Joslin Jamaica Ltd effective May 1, 2002 as Loan Recovery Officer. Her contract indicated that she would be paid basic annual salary in US dollars. Among other benefits, she would be paid an annual gratuity calculated at 25% of her basic salary and paid at the end of November.
8. On May 19, 2005, her services were terminated with Joslin Jamaica Ltd. on the understanding that Jamaican Redevelopment Foundation, Inc. would offer her a contract of employment. By letter dated May 19, 2005, the Company advised Ms. Curtis that:

This letter serves as notice of termination in accordance with your employment contract. As such we are hereby giving you four weeks' notice from the date of this letter. The effective date of termination will be June 17, 2005 (the Termination Date). As of that date, we understand that the Jamaica Redevelopment Foundation, Inc. (JRF) will be making a suitable offer of employment to you.

9. The offer was made and accepted by Ms. Curtis. By letter dated May 19, 2005, the JRFI advised Ms. Curtis of the terms of the offer of employment commencing June 19, 2005. It also indicated that her employment with Joslin Jamaica Ltd. shall count as the period of

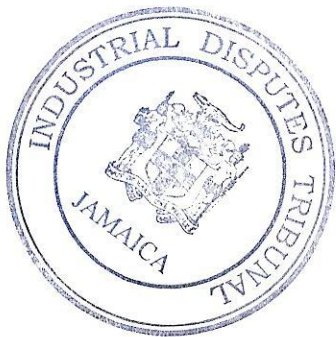


employment with the Company. She was also advised that her employment was in the capacity of Property Officer with basic annual salary quoted in US Dollars. She was further advised in the letter that:

"The Company pays an annual bonus on or before December 15th of each year, which will be calculated at 10% of your basic salary provided that you have completed twelve (12) months service. In the event your service is less than twelve (12) months, the bonus will be pro-rated. In addition, the Company may include a discretionary bonus....."

Please note that the period of your employment with Joslin Jamaica Limited shall count as the period of employment with the Company".

10. Ms. Curtis' functions included the selling of properties which Jamaican Redevelopment Foundation, Inc. acquired from the FINSAC portfolio.
11. By letter dated May 23, 2005, Miss Curtis was advised of an amendment to the previous offer of employment letter dated May 19, 2005 from JRFI. The letter said, in part, that:



"....in the event that your post is made redundant prior to 31st December, 2005, your redundancy pay shall be no less than the amount that should have been due you had you continued to have been employed by Joslin Jamaica Limited through the date of such redundancy. For the avoidance of doubt, and in the event your job is made redundant after 31st December, 2005 you will only be entitled to redundancy payment under the law". (Exhibit 7)

12. Ms. Curtis testified that she received no increase on her salary since August 1, 2009 and up to the termination of her employment in August 2018. Despite the payment of a discretionary bonus being a condition of her employment, no payment was made in 2016 and it was only paid in January 2017, after her representation. Mr. Jason Rudd, the Chief Executive Officer (CEO) for JRFI, advised that the non-payment was "not attributable to anyone's job performance". Mr. Rudd, again by email, advised that no payment would be made for 2017 and there was no indication whether it would have been paid in 2018.
13. She said that the non-payment of discretionary bonus was a major area of dissatisfaction by the staff at JRFI. On October 2, 2017, the President of the company, Mr. Joe Gibson, sent an email to the JRFI Unit (Exhibit 11) regarding the non-payment of discretionary

bonus. Ms. Curtis said she was unhappy about the email and she protested. Again, on March 1, 2018, another email, this time from Mr. Jason Rudd, indicated the non-payment of discretionary bonus. Ms. Curtis, in a weekly meeting attended by both Joe Gibson and Jason Rudd, again protested the non-payment of the discretionary bonus. Ms. Curtis stated that she got no positive or meaningful response from her protest.

14. Ms. Curtis gave evidence that by letter dated August 31, 2018, she was advised of the termination of her services as Manager of the Property Department. The following is a reproduction of the letter:

“As we discussed, due to the continued trend of decreasing sales and overall performance of our property department, we have decided to terminate your services as Manager of our Property Department. Please note that this is not a termination by reason of redundancy. The success of our business hinges largely on the performance of our property department, and we have no intention of scaling back our property sales and services.

Pursuant to the terms of your employment agreement and the terms of the Employment (Termination and Redundancy Payments) Act, we are required to provide you with eight (8) weeks’ notice of your termination. This letter will serve as such notice. During the notice period, you will not maintain regular office hours. However, you will be required to be available for consultation with any staff members of the JRF for purposes of assisting in this transition. Assuming your cooperation, you will continue to be paid during the notice period on the regularly scheduled payroll dates. Failure to assist in the manner, will result in immediate termination without further notice and salary payments will be prorated to such date of termination.

You are required to immediately return keys or any other property of JRF presently in your possession. Kindly be advised that you will be covered under the Company’s Group Health until October 31, 2018”.



15. Ms. Curtis testified that she saw an advertisement in the Sunday Gleaner of September 16, 2018, in which JRFI advertised for a suitable qualified candidate to fill the position of Real Estate Sales Agent. She contended that at the time of the advertisement, she was still employed to the Company, as the letter of termination said that during the eight weeks’ notice, if she was not cooperative with the Company’s representatives, her employment would cease immediately. This assertion was based on the fact that the Company’s representative objected to the advertisement being accepted as evidence, on the basis that it took place after her termination letter of August 31, 2018.

16. Ms. Curtis further contended that her letter of termination made it clear that there was no scaling back of the operations in her department. It said;

“The success of our business hinges largely on the performance of our property department and we have no intention of scaling back our property sales or services”

She added that her employer never complained about her performance, neither was there any complaint about her conduct, nor any disciplinary action taken against her.

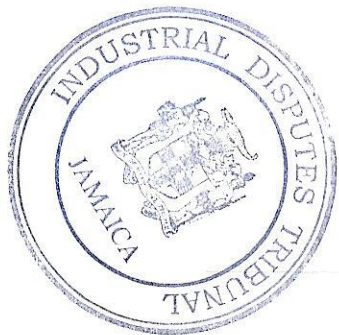
17. To Ms. Curtis, it was obvious that the termination of her services was not for breach of her contract. She was not terminated for poor performance. She was not terminated for misconduct. There was no performance evaluation or discussion of any failing on her part. She was not employed on a fixed term contract which had expired. She was employed on an indefinite basis and was entitled not to be unfairly terminated from her employment.

18. Ms. Curtis said that she wrote to the Company by letter dated September 19, 2018, challenging its decision to terminate her services and advising that she had retained the services of Mr. Granville Valentine, Industrial Relations Consultant, to act on her behalf. She also referred to a letter from her representative to the management of the Company, which was unanswered and the subsequent referral of the matter to the Ministry of Labour and Social Security.

19. She said that she loved her job and did not mind going back if she was fully compensated for the period she has been out. However, she said that the environment was not very conducive, but really toxic. When her services were terminated at the end of October 2018, her salary was US\$42,000 per annum with gratuity of 10%. However, she was not paid any portion of the gratuity.

20. The following are Ms. Curtis’ contentions:

- a. Her dismissal was unjustified and unfair.
- b. The conduct of the JRFI is a breach of the Labour Relations Code.
- c. There was no consultation with her prior to her termination.
- d. Her right to the principles of natural justice were denied.
- e. No charges or allegations were made against her and if there was any, she was not given a chance to be heard.
- f. JRFI eventually advertised for and did recruit a Real Estate Sales Agent, either as replacement or to facilitate the work she was performing.



- g. Her unfair and unjustified dismissal caused great hardship and stress due to the loss of her job and income.

21. She is therefore asking the Tribunal to find that her dismissal was unjustified and she is seeking compensation for the loss of her job as well as future earnings.

CROSS EXAMINATION OF THE AGGRIEVED

22. As was previously stated, the Company advised that it was not presenting an opening statement nor was it submitting a Brief. However, its representative sought to solicit evidence through cross examination of the Aggrieved, who was the sole witness.

23. During cross examination, Ms. Curtis agreed that she received her letter of termination on August 31, 2018 and that based on the eight weeks' notice, her effective date of termination was October 26, 2018.

24. She said that Mr. Jason Rudd spoke with her on Thursday, August 30, 2018, informing her that 'he is terminating her services as Property Manager'. When she asked him why, he only told her that "sales are declining". She said that she did not speak to Mr. Rudd any further on the matter but informed the staff that she had received her termination letter.

25. She was asked about her letter to Mr. Jason Rudd dated September 19, 2018, over the termination of her employment and what was meant by **"Therefore your decision to terminate my employment with two months' notice and no more is baseless"**. She was asked to explain **"and no more"** and she responded that **"you are sending me of (sic) my job not explaining to me why you are making me jobless, you dismissed my services and you are not paying me nothing – so don't even consider redundancy – that's what I get from this"**. The Panel, sought clarification on **"and no more"**. She said it means **"no further settlement, monetary settlement"**.

26. She was asked if she had spoken to several staff members about expecting a 'redundancy settlement'. Her response was that she could not tell anyone she was expecting a redundancy settlement when the letter said the termination of her employment was not a matter of redundancy. She said she never spoke about redundancy but about 'compensation' for her years of service going back to 2002.



27. Ms. Curtis agreed that the Company's revenue was on the decline between 2016 and 2018 and that the cost cutting measure implemented was not to pay the bonus. She subsequently wrote the Company about the bonus and it was paid in January 2017. She said that one or two persons were made redundant sometime between 2016 and 2018. She said that she was not fearful that her position was going to be made redundant as the Company was coming to the end of its season.
28. It was put to her by the Company's Attorney that during the conciliation process and at the beginning of the Tribunal's hearing, her representative argued that her position should have been made redundant. To this Ms. Curtis responded that it was not so, as the termination letter clearly stated that it was not a matter of redundancy.
29. She was asked whether or not a Real Estate Sales Agent and a Property Manager could be considered one and the same at JRFI. In responding, Ms. Curtis agreed that they perform similar functions. As to whether she thought the advertisement for a Real Estate Sales Agent was advertising her job, Ms. Curtis said the functions are the same. She, therefore, maintained that it was the position from which she was dismissed that was advertised.
30. She was asked if she was saying that while still employed to JRFI, her position was advertised, why she had not included this in her complaints to the Company or to the Ministry of Labour and Social Security. At first, she said she cannot recall. However, her attention was drawn to Exhibit 14 and she confirmed that the letter complaining of the dispute never mentioned the advertisement.
31. She said that if in 2018 she had been compensated for her years of service, it would have been acceptable and that this would have compensated for her unjustified dismissal. She said that her unjustified dismissal related to her being fired.

ANALYSIS BY THE TRIBUNAL

32. The Tribunal must determine the basis for the termination of Ms. Curtis' employment. The letter of termination by the Company makes it clear that this was **"not termination by reason of redundancy"**. As a consequence, her terminal benefits were limited to eight



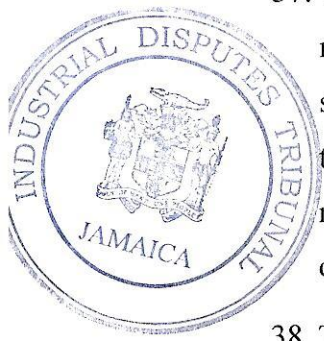
weeks' notice. Ms. Curtis has contended that after serving the Company for over sixteen years, her termination with **"two months' notice and no more, is baseless"**.

33. With the Company, having not presented any evidence or called any witnesses, the Tribunal has no choice but to rely on the evidence presented by the Aggrieved, in its deliberations.
34. On the other hand, the Tribunal will seek to analyze the process of cross examination of the Aggrieved by the Company's representative, to deduce any evidence to allow for a sense of balance in its deliberations.
35. The letter of termination specifically stated that the termination was not by reason of redundancy. She was also not placed on retirement. She therefore contends that the only other reason is that she was fired and she further contends that her record was spotless and therefore, her dismissal was unjustified. The Company suggests that **"due to the continued trend of decreasing sales and the overall performance of our property department"**, it had to dispense with her services. On the face of it, it appears that the action of the Company could be justified, if it were a case of redundancy.
36. The Tribunal will have to look into the situation leading up to the termination for possible reasons which stimulated the termination, since there were no indications of poor performance by the Aggrieved and the termination letter stated that, *"The success of our business hinges largely on the performance of our property department, and we have no intention of scaling back our property sales or services."*

TRIBUNAL'S FINDINGS AND AWARD

37. The Tribunal agrees that with the absence of any evidence from the Company to point to a reason or reasons for the termination of Ms. Curtis' service, and since the termination letter stated that it was not by reason of redundancy, means that the declining business was not the issue. Neither could the termination be on the basis of non-performance, as there was no evidence in the termination letter or alluded to in the cross examination by the Company, of any poor performance by Ms. Curtis.

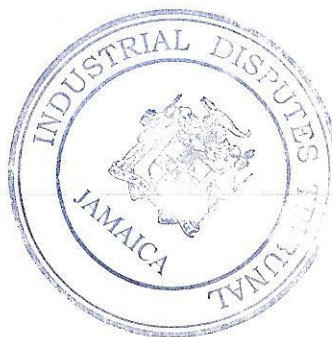
38. The Labour Relations Code provides that:



Recognition is given to the fact that management in the exercise of its function needs to use its resources (material and human) efficiently. Recognition is also given to the fact that work is a social right and obligation, it is not a commodity; it is to be respected and dignity must be accorded to those who perform it, ensuring continuity of employment, security of earnings and job satisfaction.

It does not appear that this provision of the Code was observed by the Company in the termination of the services of Ms. Curtis.

39. The termination letter stated clearly, ***“The success of our business hinges largely on the performance of our property department, and we have no intention of scaling back our property sales or services”***. The Tribunal finds that this is a clear contradiction, since the letter was in fact permanently removing an important member of that department but this was neither on the grounds of redundancy, or for poor performance or for any disciplinary reason.
40. Ms. Curtis, in her evidence, indicated that the job advertised in the Sunday Gleaner, September 16, 2018, by JRFI, under the caption “Real Estate Sales Agent” and presented to the Tribunal as Exhibit 14, represented her job functions at JRFI, advertised under another title. The Company has not provided evidence to prove otherwise, nor was it proven through cross examination.
41. The argument of the Aggrieved is that her leadership role in confronting Management on behalf of the staff on more than one occasion over the non-payment of the “discretionary bonus” was the reason for the termination of her services. The Tribunal accepted this as the likely reason for the termination, given that the Company has not availed itself of the opportunity to present evidence to the contrary.
42. The Tribunal, therefore, concludes that Ms. Margaret Curtis’ employment to JRFI was unjustifiably terminated. However, despite Ms. Curtis testifying that **“the environment was not very conducive but really toxic,”** she also indicated that she loved her job and wanted to be reinstated.



AWARD

43. The Tribunal finds that Ms. Margaret Curtis was unjustifiably terminated and in accordance with Section 12(5) (c) (iii) of the Labour Relations and Industrial Disputes Act, awards that:

- a. Ms. Curtis be reinstated as Manager, Property Department, by December 1, 2022 and paid the sum of Two Hundred and Three Thousand Two Hundred and Eighty United States Dollars (US\$203,280.00); or
- b. Failure to reinstate her as stipulated at (a) above, pay her compensation in the sum of Two Hundred and Twenty Three Thousand Six Hundred United States Dollars (US\$223,600.00).

DATED THIS 14th DAY OF NOVEMBER, 2022.



Mr. Errol Miller, JP
Chairman

Mr. Leslie Hall, JP
Member

Mr. Clinton Lewis
Member

Witness:

Nicola Smith Marriott (Mrs.)
Secretary to the Division