

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 28/2019

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## SETTLEMENT OF DISPUTE

BETWEEN

JN BANK

AND

MR. OMAR HAYE

AND THE

***AWARD***

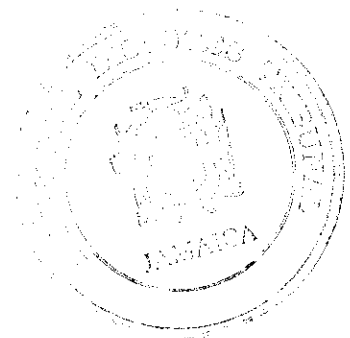
I.D.T. DIVISION

HON. MRS. JUSTICE MARJORIE COLE-SMITH (Retd.) - CHAIRMAN

MR. ERROL BECKFORD - MEMBER

MRS. CHELSIE SHELLIE-VERNON - MEMBER

FEBRUARY 22, 2022



**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

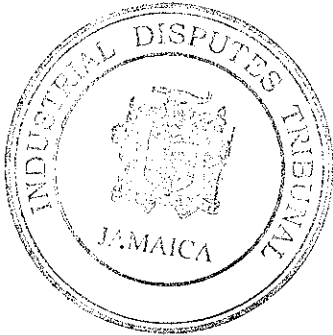
**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**JN BANK  
(THE COMPANY)**

**AND**

**MR. OMAR HAYE  
(THE DISMISSED WORKER)**



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**REFERENCE:**

By letter dated July 24, 2019 the Honourable Minister of Labour and Social Security pursuant to Section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act of 1975 (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

***“To determine and settle the dispute between Jamaica National Bank on the one hand and Mr. Omar Haye on the other hand over the termination of his employment.”***

By letter dated February 21, 2020 the Hon. Minister of Labour and Social Security amended the Terms of Reference to read as follows:

***“To determine and settle the dispute between JN Bank on the one hand and Mr. Omar Haye 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:

- |   |   |                                |
|---|---|--------------------------------|
| Hon. Mrs. Justice Marjorie Cole-Smith (Retd.) | - | Chairman                       |
| Mr. Errol Beckford                            | - | Member, Section 8(2) (c) (ii)  |
| Mrs. Chelsie Shellie-Vernon                   | - | Member, Section 8(2) (c) (iii) |

### **REPRESENTATIVES OF THE PARTIES:**

The **Company** was represented by:

- |                       |   |   |
|-----------------------|---|---|
| Ms. Angela Robertson  | - | Attorney-at-Law                         |
| Mr. Christopher Cowan | - | Attorney-at-Law                         |
| Mr. Godfrey Latty     | - | Executive in charge of Group HR         |
| Ms. Mitzie Samuels    | - | Senior Manager Human Resource Services  |
| Mr. Hilret Hanson     | - | Group Industrial Relations Executive    |
| Mr. Joscelyn Campbell | - | Snr. Manager – Corporate Integrity Unit |

The **Dismissed Worker** was represented by:

- |                       |   |                 |
|-----------------------|---|-----------------|
| Mr. Vincent Wellesley | - | Attorney-at-Law |
|-----------------------|---|-----------------|

### **In attendance**

- |               |   |                  |
|---------------|---|------------------|
| Mr. Omar Haye | - | Dismissed worker |
|---------------|---|------------------|



### **SUBMISSIONS AND SITTINGS:**

Briefs were submitted by both parties who made oral submissions during thirty five (35) sittings held between November 21, 2019 and November 25, 2021.

### **BACKGROUND TO THE DISPUTE:**

JN Bank was originally established as a collection of Building Societies, starting with the Westmoreland Building Society and then expanded by way of merger and association with other Building Societies island wide and became formally known as the Jamaica National Building Society (JNBS). Branches were also established external to Jamaica in the United Kingdom, United States of America, Canada and Cayman Islands.

In 2017, JNBS acquired a commercial banking licence and began operating as such. The entity formally changed its name to JN Bank in 2017.

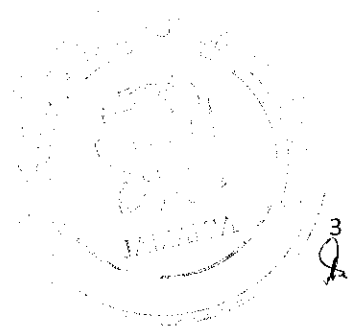
Mr. Omar Haye was employed permanently on September 1, 1999 initially as a Teller/Clerk at the Santa Cruz Branch. Mr. Haye occupied several positions during his employment with the Bank. His final position was that of Business Relationship and Sales Manager for the Ocho Rios and Port Maria Branches.

On December 5, 2016 Officers from the JN Corporate Integrity Unit (CIU) met with Mr. Haye to discuss certain irregularities surrounding his savings account at JN Bank. Following the meeting, Mr. Haye was suspended pending an investigation. The investigation resulted in Mr. Haye's termination by way of letter dated February 10, 2017.

Mr. Haye disputed his termination and the matter was referred to the Ministry of Labour and Social Security for its intervention. No resolution was reached and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

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

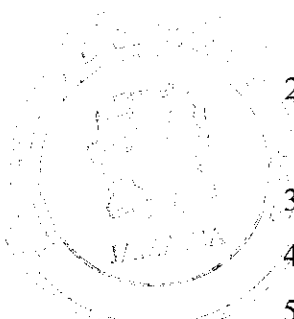
1. The Bank called four (4) witnesses in support of its case; Mr. Joscelyn Campbell, Senior Manager, Corporate Integrity Unit (CIU), Ms. Mitizie Samuels, Senior Manager for Human Resource Services, Mr. Hilret Hanson, JN Group Industrial Relations Executive and Mr. Godfrey Latty, Group Executive in charge of Human Resources.
2. It is the Bank's case that on December 5, 2016, Officers from the Corporate Integrity Unit (CIU) met with Mr. Haye to discuss certain financial transactions carried out by him on savings accounts maintained with the Bank. These gave rise to concerns that they formed part of a money laundering scheme involving him and which were in breach of the Bank's policy. At the meeting, Mr. Haye was reminded of his responsibilities as Business Relationship and Sales Manager as well as the Bank's duty to comply with the guidelines of its regulators, the Bank of Jamaica (BOJ). Mr. Haye was made aware that the meeting was not an investigation or an interrogation but merely a discussion pertaining to the financial transactions.



3. After the meeting with Mr. Haye, he was advised by letter dated December 5, 2016 that the Bank was made aware of certain financial transactions carried out by him, which raised concerns as to their suspicious nature as well as the possible regulatory risks. Mr. Haye was informed that the Bank would investigate the claims to ascertain their validity and determine whether he was in breach of the terms and conditions of his contract of employment. He was further informed that he would be suspended with pay effective December 5, 2016 pending the outcome and this was in keeping with the position of the Group Human Resource Department (GHRD).
4. The evidence of Mr. Campbell is that on December 6, 2016, Mr. Haye was interviewed by officers from the CIU for him to explain certain financial transactions effected and maintained by him on his Savings Account during the period August 2015 to November 2016.
5. Mr. Haye admitted to lending money to staff, customers and friends. This is in direct competition with the Bank which constitutes a gross breach of his implied terms and conditions of employment. He also admitted to engaging in authorising transactions in relation to a customer's account. These transactions involved money passing between Mr. Haye's and a customer's account with no evidence to support the transactions. However, at the conclusion of the interview, he was advised by Mr. Campbell to provide evidence in support of his explanations regarding the large cheque and cash transactions on his Savings account.
6. On December 15, 2016, Mr. Haye attended another interview in which he purported to provide the requisite evidence to support his explanations which he previously gave at the first interview. It is the evidence of Mr. Campbell that this was insufficient and that he needed to produce suitable evidence to support his contention that the transactions were valid.
7. By letter dated January 6, 2017 the Bank wrote to Mr. Haye over his failure to provide the evidence to support the transactions, although he had committed to provide same on December 16, 2016. He was given until January 11, 2017 to provide the evidence, and if it was not forthcoming, there would be no alternative but to conclude the investigations.



8. The Bank was advised that on January 19, 2017 an authorized officer of the Financial Investigation Division (FID) executed a search warrant on an apartment occupied by Mr. Haye and owned by the Bank. Mr. Haye did not advise the Bank about this search, the purpose of which was to locate, seize and detain evidence relevant to money laundering.
9. It is the evidence of Ms. Mitzie Samuels that by way of letter dated January 26, 2017 Mr. Haye was advised that the Bank had completed its investigations into the matter. Based on its findings, and the pending investigation by the FID, the Bank had formed the view that there was sufficient cause to require that he attend a disciplinary hearing scheduled for January 31, 2017 at 10:00 a.m. in order to state his case and respond to the specific charges set out here-under:

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1. Breach of regulatory policies and procedures e.g. POCA, BOJ Guidance Notes and Operating Directives.
  2. Deliberate or implied action which brings the Company's name and image into disrepute including unethical and unprofessional conduct.
  3. Aiding and abetting money laundering.
  4. Engaging in business that conflicts with the products of the JN Group.
  5. Engaging in any breach of Company procedures, dishonesty or other criminal acts

10. Mr. Haye was also informed that notwithstanding the fact that the investigations were completed, no conclusions would be reached regarding these matters until the hearing is completed. Furthermore, he was requested to provide an explanation or justification for his actions or lack thereof. However, the Bank considered the actions to be serious which, if proven, may warrant disciplinary action including termination of his contract of employment. In addition, Mr. Haye was also informed he had a right to be accompanied by a JN Group staff member or a representative of his choice and he should indicate in writing the name and position of the individual by Monday, January 30, 2017. If there were any documents to be considered at the disciplinary hearing or if he intended to call any witnesses on his behalf he should provide the name of such and copies of all relevant documents by Monday, January 30, 2017.

11. An Investigative Report was prepared and provided to Mr. Haye which detailed a chronology of

meetings and discussions held between himself and Officers from the CIU which outlined in detail the specific concerns and the response by Mr. Haye.

12. Mr. Vincent A. Wellesley, Attorney-at-Law responded by letter dated January 28, 2017 indicating that he was retained by Mr. Haye to represent him at the foregoing hearing but at a date and time convenient to all parties concerned notwithstanding the scheduled date. He also indicated that his client had not been given sufficient time to prepare his case and so they anticipated an adjournment. Additionally, he requested that JN provide him with all statements/documents upon which they intend to rely.
13. The Bank responded by way of letter dated January 30, 2017, reiterating that given its obligations as a financial institution it was imperative that a disciplinary hearing be held to determine the way forward. The Bank stated that it would provide the relevant documents while noting that some of the documents would have already been in Mr. Haye's possession since the first interview.
14. On January 31, 2017, the disciplinary hearing was convened to allow Mr. Haye to state his case. Mr. Wellesley enquired whether witnesses would be giving evidence on behalf of the Bank to substantiate the charges. The Bank's response was that action was taken pursuant to Section 22 of the Labour Relations Code. It said this followed an investigation which revealed that there were reasonable grounds to suspect that Mr. Haye was involved in, or was being used as a conduit for money laundering, and if proven, would warrant disciplinary action being taken against him. The Bank's legal obligation was to invite the employee along with a representative of his choice to provide an explanation and state his case in relation to the issues. As a result of the Bank stating that they would not be calling any witnesses, Mr. Wellesley indicated that he and his client would not participate and the hearing ending prematurely.
15. Notwithstanding the refusal of Mr. Haye and his representative to participate in the disciplinary hearing, the Bank by letter dated February 1, 2017 wrote to Mr. Haye inviting him to a second hearing along with his representative. Mr. Haye was further advised that should he fail to attend, the disciplinary panel would review all the documentary evidence before it and indicate whether or

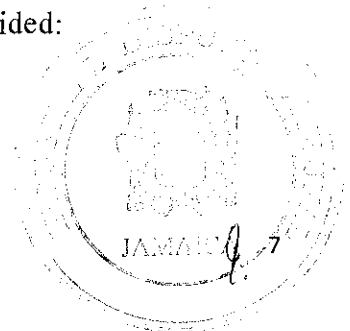


not they are of the opinion that the issues raised are satisfied by the documentary evidence and thereafter management would take whatever disciplinary action it deemed appropriate in the circumstances. Neither Mr. Haye nor his representative attended. Mr. Hanson testified that there was enough documentary evidence on which the Bank could make a determination. The panel after considering the documentary evidence found that Mr. Haye had committed breaches in relation to four (4) of the charges laid against him and recommended that his services be terminated as soon as possible.

16. Following the recommendation from the Disciplinary Panel, the Bank made the decision to terminate Mr. Haye's contract of employment with immediate effect, citing gross misconduct. He was advised by way of letter dated February 10, 2017.
17. It is the Bank's case that Contracts of Employment in Jamaica are governed by the common law as well as Statute. Both common law and statute recognise that an employer has the right to terminate the contract of employment of an employee without notice in circumstances where the employee has committed acts of serious or gross misconduct. **Halsbury's Laws of England 5<sup>th</sup> Edition, Vol. 40 para 700 states as follows:**

*"Gross misconduct justifying summary dismissal may be seen as conduct so undermining the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment."*
18. One of the cases cited by the Bank was **Neary and Neary v. Dean of Westminster (1999) IRLR 288** where **Lord Jauncery of Tullichettle** considered the question of what degree of misconduct justifies summary dismissal. At page 291 of the judgement he stated that:

*"...conduct amounting to gross misconduct justifying dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the master should no longer be required to retain the servant in his employment."*
19. The Bank contends that the Labour Relations Code in Section 6 (iii) recognizes that certain workers have special obligations arising from the nature of their work as provided:






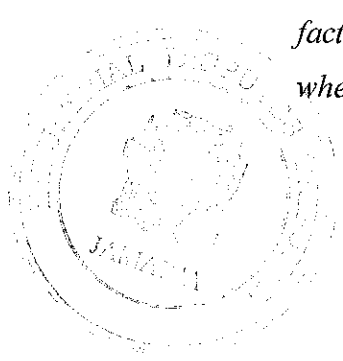
*“some workers have special obligations arising out of the nature of their employment. Such worker when acting in the course of his employment should be mindful of those obligations and should refrain from action which conflicts with them.”*

20. The Bank further contends that Mr. Haye was employed in a management role and because of his position, would be under a special obligation to have integrity, honesty and professionalism in both his public and private life. Furthermore, as a Manager, staff and members of the public would have placed their trust and confidence in him. Mr. Haye on account of his position with the Bank was under a fiduciary obligation to both the Bank and its customers. Mr. Haye breached those obligations further eroding the trust and confidence which must be maintained between employer and employee for the employment relationship to subsist. In addition, the fiduciary obligation must extend to not engaging in any activity which places the institution or its customers at risk of regulatory breach or criminal sanction.
21. The conduct of Mr. Haye created a risk under the Banking Services Act 2014, Proceeds of Crime Act 2007, Proceeds of Crime (Money Laundering Prevention) Regulations 2007; and BOJ Guidance Notes for the Detection and Prevention of Money Laundering Activities.

***The Bank contended that:***

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1. the value of the transactions reflected on Mr. Haye's account did not correspond with the salary earned by him and that as a consequence an explanation for the same was required. Mr. Campbell indicated that lodgements to the account totalled thirty one million four hundred and sixty eight thousand five hundred and sixty seven dollars sixty cents (\$31, 468, 567.60). His withdrawals totalled twenty two million dollars (\$22m) between August 2015 and November 2016. At the time of Mr. Haye's dismissal he was earning less than nine million dollars (\$9m) per year.
  2. In relation to cheque deposits, not only were the amounts and frequency of the transactions of concern, but it was also noticed that the cheques from banks other than JN were in breach of the Bank's policy.
  3. There were concerns in relation to transactions conducted by Mr. Haye with other members of staff and customers of JN. The transactions involved members of staff that he managed directly.

4. There was no proper written authorization giving Mr. Haye permission to transact business on a customer's account, thereby exposing the Bank to possible serious liability including but not limited to breaches of regulations necessary to maintain a banking license, should the customer claim that he provided no written authorisation for him to access his account.
  5. The standing order purporting to bear the signature of the customer did not match the signature on the copy of the member's passport on file.
  6. The explanation given by Mr. Haye as it relates to the buying and selling of foreign currency did not seem realistic to generate that type of funds within such a short space of time.
22. Mr. Haye was accused of being involved in and/or facilitating money laundering. This is a serious offence which if determined by the regulated financial institution could result in the revocation of its commercial banking licence. It is important to note that it is not required that an individual be convicted of any offense so as not be regarded as fit and proper, it is sufficient if there is reasonable cause for the supervisory committee to believe that the individual carried out any act which involved dishonesty or impropriety in the engagement of banking business. It is the duty of the Licensee to ensure that the relevant persons involved in the oversight, management and execution of the functions of the Bank are *'fit and proper persons.'* It is the evidence of Mr. Hanson that Mr. Haye was not a *fit and proper person* and that his actions have brought him in conflict with several provisions contained in the Bank's Disciplinary Code.
23. The Bank's position is that the allegations made against Mr. Haye rendered the continuation of his employment untenable, given the policies, procedures and statutory regulations which govern the Bank.
24. It is the Bank's submission that if the Tribunal finds that Mr. Haye was unjustifiably dismissed, re-instatement is not a correct remedy. In determining whether re-instatement is appropriate, the case of *Alcoa Minerals of Jamaica v. Industrial Disputes Tribunal* is instructive where Edwards J. at paragraph 135 states:
- "In exercising its discretion whether to reinstate, the IDT must consider, among other factors, whether the employee wishes to be reinstated, whether the posts still exists or whether there is one comparable in existence and whether the reason for dismissal was such*



*as to make the order for re-instatement impracticable. The IDT in exercising this discretion is required to act fairly balancing the interest of the employer and the employee and saying in whose favour the scales of justice are tipped."*

25. The Bank further submitted that having regard to the above factors the breaches committed by Mr. Haye disqualified him as a fit and proper person suitable for employment in a financial institution.

**THE DISMISSED WORKER'S CASE:**

26. The Dismissed Worker, Mr. Omar Haye was the sole witness called in support of his case. Mr. Haye started working with JN Bank in 1999 as a Teller/Clerk and was promoted several times during his tenure. At the time of his dismissal he was the Business Relationship and Sales Manager for the Ocho Rios and Port Maria Branches. He was also the Chief Union Delegate for the bargaining unit represented by the Bustamante Industrial Trade Union (BITU).
27. On December 5, 2016, a meeting was convened at JN Bank between Mr. Haye and Mr. Latty. They were later joined by three persons from the JN Compliance Team. The Bank raised issues as to activities on his JN accounts. The activities mentioned were characterized as suspicious in nature. Mr. Haye disclosed that he held other accounts with Scotia Bank, Sagicor Bank, National Commercial Bank and Jamaica Money Market Brokers. He was therefore suspended via letter dated December 5, 2016 with full pay pending the outcome of an investigation.
28. After the suspension, he communicated with Mr. Hanson, his immediate supervisor at the time. Mr. Hanson informed him that he was not aware of the investigation but he did get a call from Mr. Campbell to say that they "*were doing something on him*". He however, did not go into details.
29. Mr. Haye, having received the letter of suspension, remonstrated and requested a meeting, as he was of the view that the suspension was unwarranted. He was not afforded a meeting and hence he communicated with his Union Representative and updated him on the issue.
30. On December 6, 2016, Mr. Haye was invited to another meeting by the Bank where he was interrogated about his account activities and also his personal life. He was instructed to provide the



Bank with supporting documents to verify the responses that he had provided.

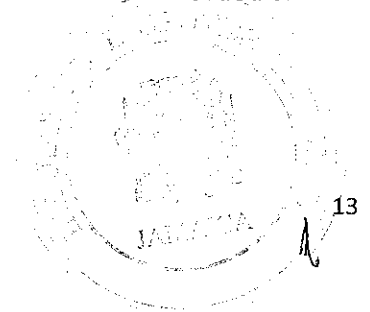
31. On December 8, 2016, Mr. Haye returned to the Bank with some of the original documents as promised. He subsequently telephoned the Compliance Manager, Mr. Campbell on December 14, 2016 and provided additional documents requested via email. Mr. Haye met with Mr. Campbell on December 15, 2016, and handed him the original receipts and documents he had earlier emailed to him. Included in the documents was a statement from Mr. Haye providing responses to issues raised by the Bank during the meeting held on December 6, 2016.
32. On January 10, 2017, Mr. Haye received a letter from the Group Human Resources Department requesting that outstanding documents be sent to the Compliance Department no later than January 11, 2017. It is his evidence that he complied with all requests made by the Bank to facilitate the investigation and made himself available at all times.
33. On January 19, 2017 at approximately 5:30 a.m., police officers who identified themselves as officers of the Financial Investigation Division (FID) produced a search warrant and searched his home located at Lot 22 Longwood Estate, St. Elizabeth. As it related to the property owned by JN and occupied by him, he said that, he was not present when the search was carried out. He did however, allow his fellow employee to stay there as he lived in Trelawny and it was difficult for him to travel home and the accommodation had two (2) rooms. He was never advised that the Bank prohibited any one from staying as his guest. When the search was conducted and he learnt about it, he communicated with his Union Representative who advised that he communicate with Mr. Latty. He had no idea what the F.I.D. took from the premises and has never been questioned by the police in relation to the search. He also testified that he did not speak to any JN representative after the search. A third property situated in Montego Bay and jointly owned by himself and Ms. Khadene Small was also searched. He testified that to the best of his knowledge the FID did not find anything illegal or suspicious hence, to date, no criminal investigation was conducted against him. In view of the searches that were conducted there was no evidence detained by the FID to corroborate the Bank's suspicion of money laundering.



34. On January 27, 2017, Mr. Haye received a letter dated January 26, 2017 via Tara Courier from the Bank outlining the allegations against him and invited him to a hearing scheduled for January 31, 2017. Mr. Haye, on January 28, 2017, retained the services of Attorney-at-Law, Mr. Vincent A. Wellesley to represent him. In order to enable him to properly prepare his case Mr. Wellesley requested an adjournment as well as statements/documents upon which the Bank intended to rely.
35. The Bank communicated with Mr. Haye's Representative regarding the information requested, however, he was only provided with banking details of Mr. Haye's various accounts and a statement from Mr. Haye. Notwithstanding not receiving the documents requested, Mr. Haye and his Representative attended the hearing on January 31, 2017. Mr. Wellesley raised objections as the requested statements of witnesses upon which the Bank was relying at the hearing were still outstanding. As a result, the hearing was adjourned and by letter dated February 1, 2017, the hearing was rescheduled for February 3, 2017.
36. On February 2, 2017, Mr. Haye wrote to the Bank reiterating his position which he had previously taken at the premature disciplinary hearing. The Bank responded on the said date in which its attitude towards Mr. Haye did not change. Mr. Haye on February 3, 2017 wrote to the Bank and again requested an opportunity to confront his accuser, the Bank.
37. Mr. Haye in his evidence referred to the Bank's concerns as it relates to a large sum of money in his account and explained that in August 2015, the Bank was selling US Dollars cash at a discounted rate. He said he began purchasing US cash at the lower rate. On August 8, 2015 he withdrew JA\$1, 140,230.00 from his savings account and made a purchase of US\$9, 800.00 cash at an exchange rate of JA\$116.35. He opened US accounts at NCB, Sagicor, JMMB and BNS whereby he deposited the cash daily at their prescribed limits per day to avoid paying the cash handling fees. These funds he said would then be withdrawn as a cheque, the first from NCB on September 2, 2015 for US \$7,500.00, which he then converted at Gem Palace Cambio to Jamaican dollars at a higher rate of \$118.10. The cheque he received from the Cambio for the US conversion would then be redeposited to his account. This type of transaction he said is characterized as a "*arbitrage*" which involves taking advantage of price differences/anomalies with risk free returns. As a result

of these transactions he performed approximately forty eight (48) withdrawals from his JN Savings account ranging between JA\$120, 000 and JA\$1, 140, 000.00 on each occasion that totaled over \$30 million between August 2015 and November 2016.

38. Mr. Haye said that he received receipts from the teller at JN who processed the transaction and for the transactions at Americana he would send a WhatsApp message to the CEO of the Company who in turn would confirm in a returned WhatsApp message. The encashment of the cheques was done at Gem Palace where he also received receipts. These receipts were some of the documentation requested by JN and they were sent to Mr. Campbell. The accusation by the Bank that by buying and selling US currency amounted to money laundering was not true, as it was a process that was not unique to him.
39. As it relates to the accusation regarding a customer, he said that he met the customer when he visited the Ocho Rios Branch to conduct business. It is Mr. Haye's evidence that the customer became boisterous because of the waiting time to complete the transaction. He took the customer to his office and in trying to assist, he discovered that the client wanted to make a withdrawal from his account but his signature on file was not matching the document he signed for the withdrawal. He completed the transaction for the customer and gave him his business card telling him that any problem he had going forward, he was to "*give me a call.*" A formal authorization was provided to him (Haye) for same to be done.
40. On one occasion the customer contacted him and indicated that he wished to withdraw a large sum of cash and he accommodated him. Mr. Haye said because of the sum being withdrawn, he questioned him as to the purpose and from his response he discovered that the customer was the CEO of a Foundation that operates a charity event in the Greenwich Farm area on an annual basis. The Foundation also sponsors several basic schools in the area. The customer provided him with a list of the schools, the amounts in sponsorship and he assisted him by disseminating cheques and transfer payments to the beneficiary schools.
41. On another occasion, the customer communicated with him via cell phone and advised him that he had some unfinished business that was supposed to be done prior to the event and he needed to



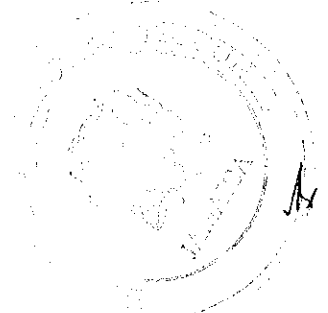
make a further withdrawal from his account. The customer was at the time of the call in a hotel in Kingston. Mr. Haye advised him that some JN Money Shops were opened on Saturdays and his branch in Ocho Rios was not a money shop. The customer explained the urgency of the transaction and requested his assistance. In order to assist, Mr. Haye said, he called the person in charge of the money shop and apprised him of the situation and also explained the potential of the client and requested of him to allow the withdrawal at the Portmore Money Shop Branch. The request was accepted and the supervisor of the said money shop advised that he, Mr. Haye and another member of staff should attend the branch to have the transaction completed. The voucher relating to the withdrawal was to be signed by the customer and returned to the Branch. Mr. Haye testified that when the transaction was completed, he left one voucher with his signature at the bottom of the document authorizing the transaction and took the other to the client. The customer signed and the document was taken to the Ocho Rios Branch, as the Portmore Branch was closed. He then sent back the voucher to the Portmore Pines Money Shop for their records via courier on the Monday after the transaction was processed.

42. The customer also had a recording label where he had signed an artist who was to receive four hundred British Pounds (£400.00) per month. Mr. Haye advised the customer to allow the artist to open both a Jamaican dollar and British Pound Sterling accounts with the Bank in order to do direct transfers via standing order from his (customer's) account. This enabled the transfer using the phoenix AP as the standing order form was not yet returned. Mr. Haye testified that he took responsibility to perform the customer's request as he was a large investor which influenced the preferential treatment afforded to him. JN, including Mr. Hanson was aware of the relationship. The customer was termed an *'Elite Customer'* as the Bank had this policy in place which allows for the top fifty customers to be given special privileges. Mr. Haye testified that at no time did he forge the customer's signature nor cause anyone to do the same. He also said that he received no financial benefit from this relationship.
43. Mr. Haye further testified that he made personal loans to members of staff as well as to existing JN customers who he knew for a long time and who were considered his friends. He did not consider his actions as amounting to competing with the Bank as they would not qualify for loans from JN. There was, he said, no breach of Bank's policy as he absolutely received no interest or benefits.

44. On February 10, 2017 Mr. Haye received a letter from the Bank terminating his contract of employment with immediate effect. He was instructed to return the Company's I.D., uniform, laptop and cell phone which were by then in the possession of the F.I.D. He returned the other items.

***The Dismissed worker contended that:***

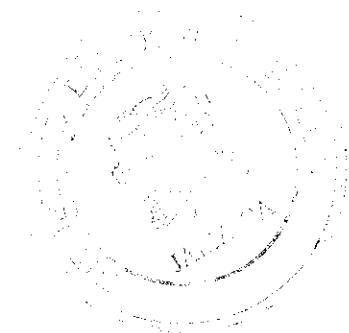
1. There was no allegation of fraud or forgery with respect to the customer's signature, as at no time did the Bank verify that the signature did not belong to the customer
  2. Mr. Campbell, the investigator ought to have had dialogue with representatives of both Gem Palace and Americana both of which were no strangers to JN Bank
  3. At all material times Mr. Haye's salary went directly to his JN Account which was the said account that he withdrew \$1.5 million from and then transferred to another JN account and so there was no doubt as to the source of funds
  4. Despite the fact that JN deemed Haye's transactions as suspicious, there is no evidence that the activities carried out by him were inconsistent with the practice of arbitrage
  5. He was not given enough time to prepare his defence
  6. There was no statement from anyone to rebut or contradict his explanation concerning the loans he provided to employees and customers of JN
  7. There was nothing in the transactions concerning his accounts which revealed any money laundering activities
  8. His conduct was neither dishonest nor in breach of any policy
  9. He was not afforded the right to appeal.
45. Mr. Haye testified that after his dismissal from JN he had not applied elsewhere for employment as, based on his dismissal, he would not have gotten a favourable recommendation from JN. His evidence is that since his dismissal, he operated a bar which he said was not doing well due to the pandemic.
46. His tenure with JN over the many years was very good based on his achievements and loyalty to JN. His standards as set out in his appraisal were also positive.
47. Mr. Haye, through his Representative asked that the Tribunal finds that he was unjustifiably dismissed.





## **THE TRIBUNAL'S FINDINGS:**

48. The material facts of this case as presented in oral evidence and statements have led the Tribunal to seek answers to the following questions:
1. Is the worker, Mr. Omar Haye guilty of the charges brought against him by the Bank
  2. Did the Bank, in arriving at the decision to terminate the worker, observe the rules of natural justice and the statutory requirements?
49. The Tribunal finds that Mr. Haye, by virtue of his actions violated the Bank's Disciplinary Code, *Section 7 – Breach of regulatory policies and procedures e.g. POCA, BOJ Guidance Notes and Operating Directives the sanction for which the 1<sup>st</sup> offence is formal verbal warning, 2<sup>nd</sup> offence, written warning, 3<sup>rd</sup> offence, suspension and 4<sup>th</sup> offence, dismissal. Section 31 – Deliberate or implied action which brings the Company's name and image into disrepute including unethical or unprofessional conduct, the sanction for which the 1<sup>st</sup> offence is suspension or dismissal depending on the severity of the offence, 2<sup>nd</sup> offence is dismissal. Section 45 – Engaging in business that conflicts with the products of the JN Group, the sanction for which is dismissal.*
50. *Section 41 – Aiding and abetting money laundering*, is a criminal offence. However, no evidence was detained by the FID to corroborate the Bank's suspicion of money laundering.
51. Mr. Haye admitted that he made loans to members of JN staff and customers. He did not consider his action as amounting to competing with the Bank as these persons would not have qualified for a loan from JN. There was not sufficient evidence by the Bank to prove that Mr. Haye benefitted from the transactions.
52. Mr. Haye also admitted to engaging in unauthorised transactions on a customer's account. Mr. Haye authorised the withdrawals of large sums of money on a customer's account without the prior signature of the customer. His evidence is that based on the customer banker relationship, the customer would sign after the completion of the transaction. The Tribunal, however, has accepted the evidence of Mr. Hanson that if the customer were to deny giving him such instructions, the Bank could have landed itself in serious problem.



53. There was also the allegation of the forging of the customer's signature, however, this was not proven by the Bank. The Bank could have called a handwriting expert to give evidence in this regard but they failed to do so. Of note also is the unchallenged evidence of Mr. Haye that the first time he came in contact with the customer was to assist him, as his signature was not matching that on the signature card.

54. Mr. Haye also admitted to the buying and selling of US dollars. His explanation was that he was getting it at a discounted rate from JN. However, the Tribunal finds the explanation given by Mr. Haye as to how he arrived at the amount he made from August 2015 to November 2016 wanting. In Mr. Haye's position as a Bank Manager, his intentions and integrity must be beyond reproach and must leave no doubt in the minds of his employer that he is a *"fit and proper person."*

55. Based on the facts gleaned, the Tribunal is in agreement with the Bank that Mr. Haye breached Section 6 (iii) of the Labour Relations Code which states:

*"Some workers have special obligations 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."*

56. Mr. Haye served the Bank for eighteen (18) years and so, it has not escaped the attention of the Tribunal that the conduct displayed by Mr. Haye, a Senior Member of Staff was unethical and unprofessional.

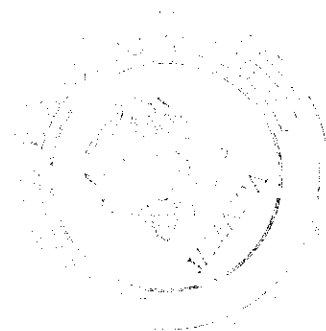
57. The Tribunal, however, has difficulty in accepting that Mr. Haye who was faced with complex charges which eventually led to his dismissal was denied the right to a proper hearing. The reason given by the Bank was that there was sufficient documentary evidence presented to the disciplinary panel and hence there was no need to call any witness. Notwithstanding the fact that JN may have had cogent reasons to terminate the contract of employment of Mr. Haye, the Tribunal being a creature of statute must take into consideration the statutory requirement and the principles of natural justice. In commenting on the principles of natural justice, we refer to Osborn's Concise Law Dictionary 8<sup>th</sup> edition 1993.

*"Natural Justice"*

*The courts in the interest of fairness impose certain obligations upon those with power to take*

*decisions affecting other people. These obligations arose from the rules of natural justice which, although 'sadly lacking in precision' have generally been subsumed under two heads: audi alteram partem (q.v.) rule; (hear the other side) and the nemo iudex in re sua rule (a judge is disqualified from determining any case in which he may fairly be suspected to be biased). By virtue of these rules, decision makers must act fairly, in good faith and without bias and must afford each party the opportunity to adequately state his case."*

58. It is therefore fundamental that both sides should be heard. The Tribunal finds that the request of Mr. Haye for JN and Mr. Campbell to be present at the disciplinary hearing was a reasonable one. A man's job is at stake and there is evidence that is being used to determine Mr. Haye's fate. JN Bank's Personnel should have been present at the disciplinary hearing to put forward its case and to answer questions so as to defend the information emanating from Mr. Campbell's report, upon which significant reliance was placed. Instead, the disciplinary panel chaired by Mr. Hanson relied on Mr. Campbell's report without hearing from JN. Mr. Hanson when asked by Mr. Wellesley in Cross-examination about the absence of Mr. Campbell stated that there was enough documentary evidence that could be relied on. Of importance to note is that the persons at the 1<sup>st</sup> disciplinary hearing was the Disciplinary Panel which consisted of two (2) JN employees, JN's Legal Representative, Mr. Haye and his Representative. At the 2<sup>nd</sup> and last sitting of the disciplinary hearing where the recommendation was made for Mr. Haye's contract of employment to be terminated, it was only the two (2) Panel Members and the Bank's Legal Representative that were present.
59. There is no general rule that excludes employees from presiding over disciplinary procedures in the organization. However, there are instances where justice and fairness dictates that an independent person/body should conduct the disciplinary hearing or appeals to avoid procedural unfairness. The Tribunal has also taken note that Mr. Hanson was Mr. Haye's supervisor who was transitioning to a higher position at the time the accusations were made. The panel made the recommendation for the dismissal. The Tribunal finds that this could be perceived as unfair and unjust as he had also made the decision for the non-attendance of Mr. Campbell neither did he see it fit for the Bank to be represented.



60. Mr. Omar Haye saw the sanction of termination as being unfair. The Tribunal will seek guidance from the following authority:

***Halsbury on Employment at page 483 see also IDT Award 16/2007.***

*Procedural Fairness*

*"The overall test of fairness includes the concept of procedural fairness so that a dismissal may be unfair because an unfair procedure was adopted, even though the employer had a sound and substantive reason for the dismissal. There is no statutory obligation on an employer to have a formal disciplinary procedure but the existence of such a procedure is highly desirable and in any event certain minimum standards are likely to be expected of the employer even in the absence of a written procedure.*

*Although the rules of natural justice do not apply directly to form an independent ground on which a decision to dismiss maybe attached, a breach maybe an important matter when an employment tribunal is considering the overall fairness of a dismissal.*

*A breach in procedure is merely one of the factors to be taken into account, but the House of Lords has placed renewed emphasis on procedural fairness so that it is likely that breach of procedure will make a dismissal unfair; and the former rule that, if the breach of procedure in fact made no difference, then the actual dismissal could be held to have been fair has been disapproved.*

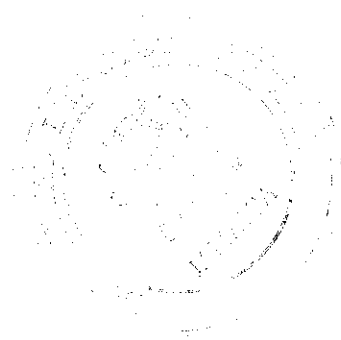
*Ultimately, however, the overall fairness of the dismissal including any procedural matter, remains a question of facts for the employment tribunal."*

61. Mr. Campbell, the investigator/complainant, played an integral role in the process. The role he played made him the accuser an important tenet in adhering to the Principles of Natural Justice. Mr. Campbell identified the breaches committed by Mr. Haye and he escalated same when he reported it to Group Human Resource Development Department. He collected a statement and other documents from Mr. Haye and he also submitted/provided a report.

62. On January 27, 2017, Mr. Haye received a letter dated January 26, 2017 outlining the charges and inviting him to attend a disciplinary hearing on January 31, 2017. By letter dated January 28, 2017,

Mr. Wellesley wrote to the Bank requesting sufficient time to prepare his case. He also requested statements/documents that the Bank intended to rely on. The Bank on January 30, 2017 submitted a listing of the documents that they intended to rely on. The hearing was convened on January 31, 2017 but adjourned as Mr. Haye and his Representative claimed that they were still not in receipt of all the documentations and that they needed sufficient time to prepare its case.

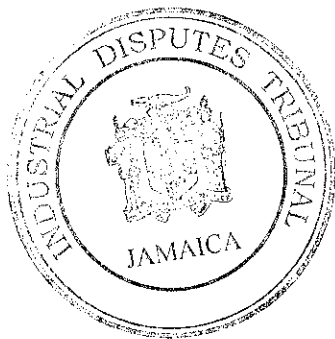
63. Mr. Haye responded to the invitation that his request for additional information from the Bank was not forthcoming and as a result choose not to attend. The meeting was held in his absence and the Company based on the evidence they had against him terminated his contract of employment by letter dated February 14, 2017 with immediate effective.
64. The Principle of Natural Justice states that a person who is being charged must be given a reasonable time to prepare their defence. The Tribunal is mindful of Section 22 (i) (c) of the Labour Relations Code that proceedings should be 'simple and rapid'. However, the charges were serious in nature and if proven would lead to his termination and possible an end to his career. The Tribunal therefore agrees with Mr. Wellesley that the time given to Mr. Haye to prepare his defence was inadequate.
65. While we note the evidence of the Bank that Mr. Haye being a Chief Delegate ought to have known that he could have appealed the decision of the Bank to terminate his employment, however the Bank also had an obligation to advise Mr. Haye of his right to appeal.
66. The conduct displayed by Mr. Haye made him liable for dismissal under the Bank's Disciplinary Code. However, having examined all the evidence before it and taking into account all the circumstances the Tribunal has concluded that the Bank did not follow the proper procedure in dismissing Mr. Haye, and as such, cannot ignore the procedural blemishes attributable to the Bank in the handling of this matter, which therefore rendered the dismissal unjustified.



**THE AWARD:**

67. The Tribunal hereby awards that Mr. Omar Haye be compensated in the amount of seven million seven hundred thousand dollars (\$7, 700,000.00) for his unjustifiable dismissal.

<sup>nd</sup>  
**DATED THIS 22 DAY OF FEBRUARY 2022**



Justice Marjorie Cole-Smith (Retd.)  
Chairman

Errol Beckford  
Member

Chelsie Shellie-Vernon  
Member

Witness:

Royette Creary (Miss)  
Secretary to the Division