

# **INDUSTRIAL DISPUTES TRIBUNAL**

**Dispute No: IDT 08/2023**

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## **SETTLEMENT OF DISPUTE**

**BETWEEN**

**LEWIN'S HARDWARE LIMITED**

**AND**

**MS. TANYA JOHNSON**

***AWARD***

**I.D.T. DIVISION**

**MR. ERROL MILLER, J.P. - CHAIRMAN**

**MR. LESLIE HALL, J.P. - MEMBER**

**MRS. CHELSIE SHELLIE-VERNON- MEMBER**

**NOVEMBER 16, 2023**

**IDT 08/2023**

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**LEWIN'S HARDWARE LIMITED  
(THE COMPANY)**

**AND**

**MRS. TANYA JOHNSON  
(THE AGGRIEVED WORKER)**

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**REFERENCE:**

By letter dated March 6, 2023, the Honorable 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, in accordance with the following Terms of Reference, the industrial dispute describe therein:-

The Terms of Reference were as follows:

*"To determine and settle the dispute between Lewin's Hardware Limited on the one hand, and Ms. Tanya Johnson on the other hand, over the termination of her 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 J.P.	-	Chairman
Mr. Leslie Hall J.P.	-	Member, Section 8 (2) (c) (ii)
Mrs. Shellie Chelsie Vernon	-	Member, Section 8 (2) (c) (iii)

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

**The Company** was not represented at the Sittings

The **Aggrieved Worker**, Mrs. Tanya Johnson was represented by:

Mr. Rudolph Thomas	-	Industrial Relations Consultant
Mr. Edward Williams	-	Industrial Relations Consultant

In attendance:

Ms. Tanya Johnson	-	the Aggrieved Worker
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### **SUBMISSIONS AND SITTINGS:**

Brief was submitted by Aggrieved, who made oral submissions during (2) sittings held on May 22, 2023 and June 26, 2023

### **BACKGROUND**

Lewin's Hardware Limited, which is situated at 28 Lyndhurst Road, Kingston 5, is a company that supplies hardware and building materials to customers.

Mrs. Tanya Johnson was employed to Lewin's Hardware in February 2020 as an Office Attendant. However, from time to time she performed other functions such as Janitor, Relief Telephone Operator and carried out clerical functions such as filing.



In December 2021, she became ill and, due to the nature of the illness, she had to recuperate at home on her doctor's orders.

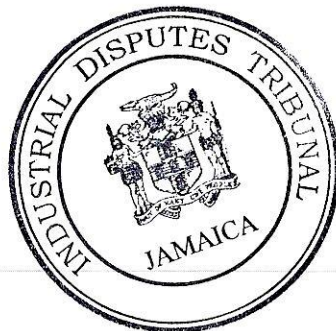
On Sunday January 16, 2022, the Aggrieved communicated with the Company's Chief Executive Officer (CEO) by WhatsApp, advising of her intention to return to work the next day. However, she was informed that she would not be allowed to return as she had walked off the job.

By letter dated March 15, 2022, the representative of the Aggrieved sought assistance from the Ministry of Labour and Social Security through its Conciliatory services to resolve the dispute. Invitations were extended to the parties to attend Conciliatory meetings at the Ministry on five separate dates, but from all indications the Company failed to attend any of these meetings. As a consequence, the matter was referred to the Industrial Disputes Tribunal for determination and settlement under **Section 11A (1) (a) (i)** of the Labour Relations and Industrial Disputes Act.

The Tribunal, having received the reference, wrote to the Company by letter dated March 7, 2023, advising it of the Terms of Reference and requesting six (6) copies of a Brief. By letter dated March 16, 2023, the Company was again written to, indicating that the Tribunal intends to start hearing the dispute between the Company and Mrs. Tanya Johnson on May 22, 2023.

At the Sitting of the Tribunal on May 22, 2023, the Company was not represented. The Secretary to the Division of the Tribunal made contact by telephone with the Company and was advised that the Company's representative was unable to attend the Tribunal as that person had just returned to the Island after receiving medical treatment abroad. The Company was, therefore, informed by letter dated May 22, 2023, that the Tribunal will hear the matter on June 26, 2023. The parties were also advised that if one party failed to attend on the June 26, 2023, the matter would be heard *ex parte* as provided under Section 16 (A) of the LRIDA.

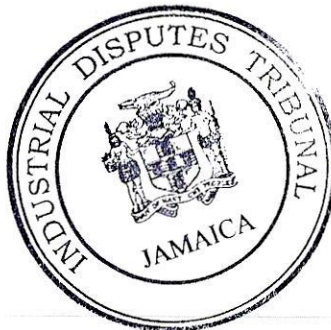
The Company was not represented at the Sitting of the Tribunal on June 26, 2023, neither was any information provided regarding its absence. The matter was therefore heard by the Tribunal *ex parte*.





## **THE AGGRIEVED CASE**

1. Mrs. Tanya Johnson, the aggrieved worker, gave evidence that she attended work with a headache on Thursday, December 30, 2021 and her condition got worse as the day progressed. Some of the symptoms she displayed were associated with those of the virus named COVID-19. As a result of her illness, she was given permission to go home by the Chief Executive Officer of the Company, Mr. Owen Lewin. Prior to the start of business the following day, Friday, December 31, 2021, she said she reported via WhatsApp (the customary form of communication) to Mrs. Lewin, wife of the CEO, that she was still feeling sick. She said that she was advised by Mrs. Lewin to seek medical attention.
2. Mrs. Johnson stated that she visited the doctor on Sunday January 2, 2022, and was tested positive for COVID-19. As a result, she had to remain quarantined for two weeks. Copy of the proof of the positive COVID-19 test with the doctor's signature attached was shared with Mrs. Lewin, using the WhatsApp communication method. She was advised by her employer that she was still required to present a medical certificate.
3. The fourteen days quarantine period was slated to end on January 17, 2022, and Mrs. Johnson again attended her doctor on Friday January 14, 2022, where she got a medical certificate indicating that she was absent from work from January 2, 2022 as a result of her positive test for COVID-19. She stated that Mrs. Lewin was sent a copy of this medical certificate. A copy was also tendered in evidence to the Tribunal as Exhibit # 2.
4. Mrs. Johnson stated that she was still not feeling well, so on Sunday January 16, 2022, she went back to the doctor who examined her and declared her unfit to resume work. He gave her an additional five days sick leave effective January 17, 2022 to recuperate. She also got the appropriate medical certificate to cover the period from January 17 - 21, 2022. Again, she sent a copy of this certificate to Mrs. Lewin, a copy of which was presented to the Tribunal as Exhibit # 3.



5. On Sunday January 23, 2022, Mrs. Johnson contacted Mrs. Lewin by WhatsApp, advising her that she will be resuming work on the following day, Monday January 24, 2022. Mrs. Johnson said that she was advised that “*he (Mr. Lewin) is not going to use you because you walked of the job*”. She said that she recognized that her services were being terminated and she wrote to Mrs. Lewin by letter dated January 28, 2022 appealing the termination of her employment to Lewin’s Hardware. She however received no reply.
6. The Aggrieved contends that at no time did she abandon her job as she was in constant communication with the management of the Company via WhatsApp. She said she kept the Company up to date on the progress of her recovery from the COVID-19 illness by providing the necessary medical documents. The Aggrieved further contends that she was unjustly dismissed without due process, as she was denied the right to a disciplinary hearing and the right to be accompanied to such hearing by a representative of her choice and be given a chance to be heard in her own defence.
7. Mrs. Johnson stated that she has sought employment without success since her dismissal from Lewin’s Hardware Ltd. Although unemployed she does not wish to be reinstated.

### **TRIBUNAL’S DELIBERATIONS**

8. In its deliberations, the Tribunal had no choice but to rely on the evidence of the Aggrieved, as the Company chose not to accept the invitation for it to present its case before the Tribunal.
9. In examining the evidence presented, the Tribunal had to decide whether or not Mrs. Johnson had abandoned her job as she was told on January 16, 2022 by the Company’s management, or if her employment was otherwise terminated.
10. The Tribunal recognized that during the period of the pandemic, persons who contracted the virus had to be quarantined for an initial period of fourteen days. Mrs. Johnson provided evidence that she had contracted the virus and was initially quarantined for fourteen days.

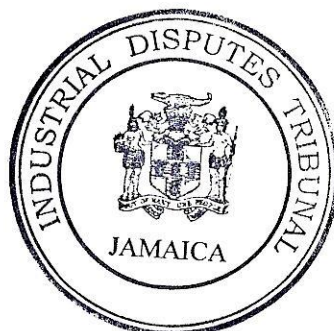


She submitted a copy of the test results to her employer, Lewin's Hardware, and having received it, the Company requested additional proof of her absence from work which she also submitted through a medical certificate.

11. The Tribunal notes that it was Mr Lewin, the CEO, who had initially authorised Mrs. Johnson to leave work due to her illness.
12. The Tribunal had no choice but to accept Mrs. Johnson's testimony that the Company was provided with all the evidence indicating that she contracted COVID-19 and was provided with the requisite sick leave as evidenced by the medical certificates. Unfortunately, the Company, by its own choice to be absent from the Tribunal, was unable to indicate whether or not it had received the documents that authorised Mrs. Johnson's absence from work.

### **TRIBUNAL'S FINDINGS**

13. The evidence presented indicated that the Management of Lewin's Hardware Limited at all material times, from December 30, 2021 to January 16, 2022, was aware that Mrs. Tanya Johnson had not abandoned her job, but was in fact quarantined at home recuperating from COVID-19, which was a pandemic. It has also been noted that the Company completely disregarded the established industrial relations process in the settlement of this matter.
14. The Labour Relations Code provides that **".....work is a social right and obligation, it is not a commodity; it should be respected and dignity be accorded to those who perform it, ensuring continuity of employment, security of earnings and job satisfaction.** The Company did not treat Mrs. Johnson with the required dignity nor did they accord her the security of her employment.
15. As a result, the Tribunal finds that Mrs. Tanya Johnson's employment was unjustifiably terminated.

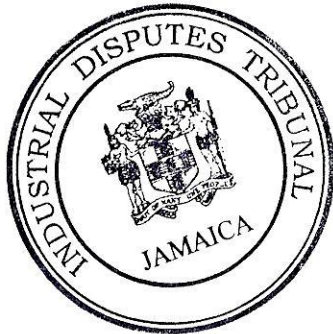




**AWARD**

The Tribunal awards that Mrs. Tanya Johnson be paid One Million, Three Hundred Thousand Dollars (\$1.3M) by November 30, 2023 with an additional Forty Eight Thousand Dollars (\$48,000) per month until the award is honoured.

**DATED THIS 16<sup>th</sup> DAY OF NOVEMBER 2023**



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

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

.....  
**Mrs. Chelsie Shellie-Vernon**  
**Member**

**Witness:**

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**Mrs. Nicola Smith Marriott**  
**Secretary of the Division**