

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 28/2020

SETTLEMENT OF DISPUTE

BETWEEN

LIFESPAN COMPANY LIMITED

AND

MR. DWIGHT FRANCIS

AWARD

I.D.T. DIVISION

MR. ERROL MILLER, J.P. - CHAIRMAN

MR. LESLIE HALL, J.P. - MEMBER

MRS. CHELSIE SHELLIE-VERNON- MEMBER

OCTOBER ¹⁸ 2024

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**LIFESPAN COMPANY LIMITED
(THE COMPANY)**

AND

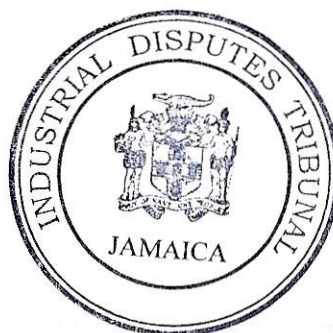
**MR. DWIGHT FRANCIS
(THE AGGRIEVED WORKER)**

REFERENCE:

By letter dated December 11, 2020 the Honourable Minister of Labour and Social Security in accordance with Section 11 (1) 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 Lifespan Company Limited on the one hand, and Mr. Dwight Francis 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 J.P.	-	Chairman
Mr. Leslie Hall J.P.	-	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:

Miss. Julie-Ann S. Bailey	-	Attorney-at-Law
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In attendance:

Mrs. Nayana Williams	-	Chief Executive Officer
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Aggrieved Worker was represented by:

Senator Lambert Brown	-	Industrial Relations Consultant
Miss Beatrice Rhoden	-	Industrial Relations Consultant

In attendance:

Mr. Dwight Francis	-	the Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties which made oral submissions during twenty-three (23) Sittings held between March 15, 2021 and May 17, 2024.

BACKGROUND:

Lifespan Company Limited was incorporated in January 2005. The Company operates a manufacturing plant in Spring Garden, Buff Bay, Portland. It employs approximately 200 persons and bottles and distributes alkaline water to retailers across the island.

Mr. Dwight Francis was employed to Lifespan Company Ltd., as Logistics Manager, effective June 3, 2019 and was subsequently appointed to the position of Commercial and Marketing Manager on November 1, 2019. He was separated from the Company on March 31, 2020.

CASE FOR THE COMPANY:

1. After an opening statement by the Company's Attorney, Miss Julie-Ann Bailey, the Chief Executive Officer (CEO), Mrs. Nayana Williams, was called as the Company's first witness. She testified that since January 2005, she has been in charge of the daily operations of the Company, including the hiring of employees. She said that Mr. Dwight Francis was introduced to her as someone who was well versed in sales, logistics and marketing and that he was quite impressive at the interview. Mr. Francis was therefore hired as Commercial and Logistics Manager overseeing the Sales Department and Logistics Process. He commenced his employment on June 3, 2019, reporting directly to her. He remained in that position until October 2019.
2. Mrs. Williams said that Mr. Francis was not effective in his role and as part of a restructuring process, his job title was revised to Commercial and Marketing Manager and the logistics responsibility was removed. This change became effective November 1, 2019 and he was advised by letter dated December 27, 2019. He was issued with a letter of appointment, a job description and a refresher on the Code of Conduct.
3. Mrs. Williams said that Mr. Francis was made aware that he had to serve a probationary period; both when he was hired initially and again when he was assigned the new position of Commercial and Marketing Manager.
4. The CEO, during re-examination, made it clear that although there was a difference in the gross salary paid to Mr. Francis from November 1, 2019, this was an increase over the period June to October 2019. This increase was not the result of a promotion, but adjustment in salary as the allowance for the gas card was eliminated and the amount included in the basic salary. She further explained that there was an overall increase for the different items such as fuel and travelling and with the inclusion of the amount for the gas card, the salary would have been increased.
5. In January 2020, the recently appointed General Manager (GM) , Mr. Rodney Davis, brought to her attention Mr. Francis' performance evaluation report. This was a 360 Performance Evaluation Review. The areas being evaluated were the job role for which he had responsibility, the key performance indicators which included sales and how he communicated and collaborated with the team. The evaluation questionnaire would have been sent randomly to various team members from management to internal team members to be populated. The responses would be collected, collated, reviewed and

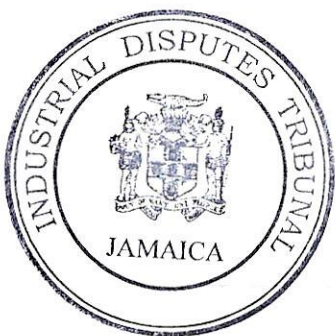


analyzed by the Human Resources (HR) Manager. He would calculate the points, examine the comments and discuss the document with the employee. Mr. Francis' completed Performance Evaluation Report dated January 13, 2020 was submitted as Exhibit 2.

6. Mrs. Williams' evidence is that Mr. Francis did a self-evaluation which he graded with an average score of 3.0. However, the collation done by his supervisor resulted in an overall evaluation result of 2.75 but Mr. Francis refused to sign the document. His reason was that the HR Manager was biased but she explained that it was from feedback of the answers given to the questions.
7. Mrs. Williams further testified that in March 2020, she was part of a meeting involving Mr. Davis, Mr. Marlon Simpson, the HR Manager, and Mr. Francis, to discuss the evaluation. She said that in a previous meeting in January 2020, to which she was not a party, she was advised that Mr. Francis refused to take responsibility for performance gaps, and it was felt that another meeting should be convened to involve her. The responsibilities, she said, that Mr. Francis failed to accept, were those relating to a decline in the level of sales and being in poor relationships with team members who reported to him.
8. In the meeting on March 2, 2020, in which she was involved, Mr. Francis was verbally warned of termination due to his poor performance. Mrs. Williams said he took responsibility for the shortcomings. **Mr. Francis suggested that we give him until the end of March and if at the end of March he did not correct the current decline, he would hand in his resignation.** She said she agreed to give him an opportunity to make corrections as she felt he did not want to be terminated for it to be on his record. Mr. Francis was still on probation.
9. During cross examination, Mrs. Williams agreed that after the meeting of March 2, 2020, an email (Exhibit 3) was sent by Mr. Marlon Simpson to Mr. Francis which stated:

"Good Evening Dwight,

Further to our conversation held this morning at 10:00am in Mrs. Williams' office, I write to remind you of the points raised today and the commitments you have made. In addition to being on one (1) months' probation, you were required to complete the following tasks agreed on, on or before Tuesday March 31, 2020. The tasks are as follows:





- Sell 60,000 cases of Lifespan water by the proposed date, via direct sales, which includes the amount sold prior to this up to the end of February 2020
- Provide a weekly sales forecast and status report for the month of March, 2020, to be compared against
- The provided weekly status report of actual sales for the month of March 2020
- Set hard targets for your Department and each staff member in the Department
- Fix the broken relationships with the team members in your department, namely the shortfalls in performance for your merchandizers and sales staff.

If you meet the set goals as highlighted above, you will be allowed to resume regular duties as the Sales and Marketing Management (sic) for Lifespan Company Limited. However, failure to complete these tasks by March 31, 2020, as requested, you will tender your resign (sic) with immediate effect, surrendering all particulars owned by the Company”

Sincerely,

Marlon Simpson
Human Resources Manager

10. On March 9, 2020, there was a meeting of the Strategic Development Group (SDG), which was attended by the management team and supervisors. At this meeting all departments reported on their performance for the previous month, and discussed challenges, outcomes and the way forward. Mr. Francis did a presentation on his operational area, but Mrs. Williams said that before he did so, he made an announcement. She said that **the announcement was that he would resign from the company effective the end of March.** Her evidence is that the effective date was the last business day in March which would have been March 31, 2020. This statement was made orally by Mr. Francis and was never placed in writing.
11. Mrs. Williams said that the Minutes of the SDG meeting held on March 9, 2020 were circulated and eventually confirmed.
12. In her examination in chief, the following exchange occurred:
 - Q. **And this oral resignation was accepted by the company, was it?**
 - A. **Well, because he did it in front of so many persons, we had no alternative but to accept it.**
13. Mrs. Williams testified that when the Company realized that Mr. Francis had resigned, it began the process of recruiting a replacement and in fact a suitable person was found

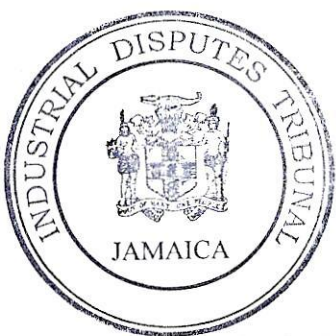
and engaged by the Company in the latter part of March 2020. She said Mr. Francis was still employed to the Company but that he was absent as he neither reported to the Spring Garden nor the Kingston Offices.

14. Mrs. Williams's evidence was that after Mr. Francis made the announcement in the meeting of the SDG on March 9, 2020, she did not see him at work. She said she enquired if he was at the Kingston office and was told he was not. She said that the General Manager informed her that he was unaware of the whereabouts of Mr. Francis.
15. Mrs. Williams stated that she was advised by the HR Manager that Mr. Francis visited the Spring Garden Office and had a discussion with him and as a consequence she asked Mr. Francis to come and see her. At a meeting with him on March 31, 2020, **she asked him to clarify what he had discussed with the HR Manager and he said that he was rescinding his resignation, that is what he told the HR Manager, so he no longer wanted to resign.** She said the rescission of his resignation was not accepted by the Company and Mr. Francis was informed that there was a cost to hiring persons and that he could not just change his decision to resign. She said she believed he understood because he had made plans based on his earlier decision to resign and he left the office. She also said that she had asked Mr. Francis if he had submitted his written resignation, and he said that he was not going to do so.
16. Mrs. Williams said that Mr. Francis was paid all his salaries upon his resignation from the Company. However, she said that the General Manager (GM) advised her that he was unsuccessful in having Mr. Francis return the Company's property, i.e. a cell phone, a laptop and the Company's ID items. She testified that Mr. Francis told the HR Manager that **he will not be returning the items until he get a letter of termination.** As a consequence, the General Manager issued Mr. Francis with a letter of termination dated April 3, 2020. This letter was admitted into evidence as Exhibit 4 and is reproduced hereunder:

Dear Mr. Francis,

On March 2, 2020 at 10:00am, you were called to a meeting in the Chief Executive Office. In attendance were Nayana Williams (Chief Executive Officer), Marlon Simpson (Human Resource Manager) and myself.

In that meeting you were informed that your services will be terminated due to the low confidence that Lifespan had in your abilities, as evidenced by your performance review and sales numbers in which you have yet to make any month's target.



You asked that Lifespan allow you to tender your resignation as you wish not to have the letter of termination on your file. You also asked that you be placed on probation up to the end of March 2020 with the conditions as below, all of which if not met, would result in you tendering your resignation effective immediately, surrendering all Company' property.

- Sell a total of 60,000 cases of Lifespan's water via direct sales by end of March 2020
- Provide a weekly sales forecast and month to date status report for the month
- Provide a weekly status report of actual sales against the targeted 60,000 cases
- Set KPIs and firm targets for each member in your Business Unit
- Mend the broken relationship between you and your team members

These were confirmed to you via email dated March 2, 2020 captioned "Probation Period", and sent by Marlon Simpson.

To date, none of the above has been met or fulfilled.

At our March 10, 2020 SDG Meeting during your sales presentation, you unexpectedly announced that you will be resigning at the end of the month.

On March 31, 2020 you met with our HRM Marlon Simpson advising him that you were rescinding your resignation and "you must do what you have to do".

It is regrettable that you have decided not to honour your commitments and that I must now remind you in keeping with our arrangement, effective March 31, 2020, you are no longer employed to Lifespan Company Limited.

From March 31, 2020 on, you will not be eligible for any compensation or benefits associated with your position. Please return the laptop, cellular phone and Company ID by Friday, April 3, 2020.

You are entitled to your salary up until March 2020 and we will also compensate you for your remaining vacation days.

Please keep in mind that you

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.....

Regards
Rodney O. Davis
General Manager



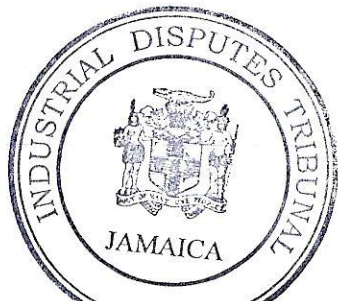
17. She was asked if as a result of his refusal to return the Company's property, the police were called to intervene, but she said that was not done. She said that as far as she was

concerned as the CEO of Lifespan Company, Mr. Francis was not an employee of the Company after March 31, 2020.

18. Mrs. Williams said that after the letter from the Company dated April 3, 2020, to Mr. Francis which was delivered to him at the Kingston offices by Mr. Rodney Davis, GM, and the return of the Company's property, they had not seen him again. She said the Company subsequently received a letter from Rhobeat Consultancy dated June 11, 2020 (Exhibit 6) seeking a withdrawal of the termination of Mr. Francis' employment. The matter was subsequently referred to the Ministry of Labour and Social Security but was unresolved.
19. Mrs. Jessica Hartley-Jackson, the Executive Assistant in the Company, also gave evidence. She testified that she has been employed to Lifespan Company for three and a half years and that she reports to the CEO, Mrs. Williams. She said that she has been the scribe for the SDG meetings and that she carried out that function at the meeting on March 9, 2020. She recounted that Mr. Francis made his presentation on the activities for his operational areas and then announced that he would resign from the Company effective March 31, 2020. She said that no one had asked him in the meeting to resign and that she cannot recall anyone commenting on his decision to resign.
20. Mrs. Hartley-Jackson said that she records the matters of significance discussed in the meeting, prepares the Minutes of the meeting and circulates them to the participants by email as in Exhibit 5. These Minutes, she said, would be confirmed at the subsequent meeting. She said that Mr. Francis would have been included as one of the persons who was sent the Minutes of the meeting.
21. She said that she would normally speak to Mr. Francis, particularly when he visits the office to see Mrs. Williams. However, after March 9, 2020, she did not see him return to the office nor has she received any communication from him.
22. Ms. Mellissa Fagan, the Chief Financial Officer for the Company, also testified on behalf of the Company. She said that she has been in that position between November 2019 and March 2023. She said that she attended the SDG meeting on March 9, 2020 and testified that Mr. Francis announced that he would be leaving the Company at the end of March 2020 and that as far as she is aware, no one asked him to make that announcement.



23. She confirmed that there were Minutes of the meeting taken by Mrs. Hartley-Jackson and that she received a copy of those Minutes by email in May 2020, which recorded what took place at the meeting. At the time she received the Minutes, Mr. Francis was no longer employed to Lifespan Company Limited.
24. She said that after March 9, 2020, she did not see Mr. Francis at the Portland office until March 31, 2020. She said that he would normally visit the Portland office 2-3 days per week and that he would be in the Kingston office for the other days. She said that she had not seen him since the new Manager was hired and that efforts to contact him in the Kingston office, revealed that he was not in that office either. She expected that he would return to work until the date of his resignation unless he was on vacation leave.
25. The Company advised its employees through an email dated March 20, 2020 (Exhibit 12), that Mr. David Walton would assume responsibility as Commercial Manager for Lifespan, on Monday March 23, 2020. It said that he would operate out of the Kingston office and report directly to the General Manager.
26. The Company contends that Mr. Dwight Francis publicly announced his resignation at the SDG meeting attended by its executives on March 9, 2020, without any coercion, and that it would have been effective at the end of March 2020. The official record of the meeting captured his resignation, and this was also confirmed through viva voce evidence by three participants at the meeting. His resignation was not in writing, but since it was declared in the presence of others at a business meeting, it was accepted by the Company. Mr. Francis had been asked to put his resignation in writing, but he refused.
27. The Company further contends that the General Manager's letter of April 3, 2020, (Exhibit 4), was requested by Mr. Francis in return for the Company's equipment he was holding. This letter, therefore, indicates that Mr. Francis' termination of employment from Lifespan Company Limited was by his own resignation and not through the instrumentality of the Company by way of dismissal.
28. The Company also contends that its use of the word termination in relation to this matter pertaining to Mr. Dwight Francis, means separation or separated and not dismissal.

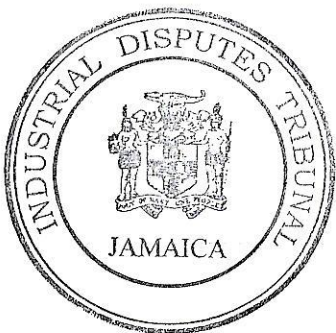


CASE FOR THE AGGRIEVED:

29. Mr. Dwight Francis is certified in logistics and sales and has several years of experience in the field. He was employed to Lifespan Co. Ltd. on June 3, 2019, in the position of Commercial and Logistics Manager. He was subsequently appointed as Commercial and Marketing Manager effective November 1, 2019. By letter dated April 3, 2020, the Company advised him that effective March 31, 2020, he was no longer employed to the Company.
30. Mr. Francis gave evidence in support of his case. He testified that he received a termination letter from the Company's General Manager dated April 3, 2020 (Exhibit 4), the contents which are contained at Paragraph 16 above. He said that he did not resign and therefore he could not rescind his resignation.
31. Mr. Francis said he worked out of the Portland as well as the Kingston office and was supervised by Mrs. Williams, the CEO. He said that he was not always in office as he operated between both locations. He said that during his 90-day probationary period, he was not aware of any complaints about his performance.
32. Mr. Francis indicated that Mr. Rodney Davis joined the Company as General Manager in late August or early September 2019 and became his supervisor. He said that he was Mr. Davis' chaperone by showing him the '**ropes**' when he came to the company. He said there were also no complaints about his performance by Mr. Davis, his supervisor at the time.
33. He stated that he was a '**Jack of all Trades**' at Lifespan and basically did almost everything to include production. He said there were relationship problems at the senior levels which affected production and as a consequence Mrs. Williams would always ask him to do things in production. He was also called '**Mr. Fix it**' as he was everywhere doing everything.
34. Mr. Francis said that when he joined the Company in 2019, his job description never included sales. In response to a question during examination in chief about sales he said:

Q: In June 2019 when you were employed, did your job description include direct sales?

A: It never included, nor ever included.



He said that his role was coordinating, not selling. He declared that although he worked out of both the Portland and Kingston (Ardenne Road) offices, and because of his coordinating role, he was often not in office.

35. Mr. Francis said he received a letter in January 2020 indicating that his basic salary moved from \$150,000 to \$210,000 monthly and in which Mr. Davis congratulated him on his new position as Commercial and Marketing Manager. (Exhibit 13).

36. He said that although Marketing was part of his new responsibility, the function was run by outside persons. He said he had a major concern about the distributorship and how they were managing it as a Company. He stated that he had discussions with both Rodney Davis and Nayana Williams on solving the marketing issues, however, soon some doubts began to creep in, and he started losing faith and trust. He said he was told one thing and something else happened. He testified that he eventually had to tell Mrs. Williams that he would have to start recording the conversations he had, as he felt that his word was his bond, but it was not so with everyone.

37. During examination in chief, Mr. Francis was asked:



Q: So you started to email....

A: I started to back-up myself when I realized that it was not everything that you say you stand by.

Q: Not everything 'they' say they stand by?

A: Yes.

Q: So you put in a system?

A: Where I copied myself on everything that I did.

39. He also stated that he was not happy with the result he received from the 360 Evaluation and sought to have discussions to review the results. He sought the help of the HR Manager, Mr. Simpson, to have an official discussion. Although he had off-the-record discussions, he never had any official response to his request.

40. He stated that on March 2, 2020, he was called to a meeting. This meeting was not to discuss the Performance Evaluation, but to discuss the termination of his employment from Lifespan Company Limited. It had nothing to do with the 360 Performance Evaluation, as this topic was not discussed. He said there was no talk of probation, nor did he make any commitments.

41. As it relates to the Company's argument that he resigned his employment, the following discourse took place during examination in chief:

Q: *Did you tell anybody in 2020 March, that you were rescinding your resignation from the Company, Sir?*

A: **I did not resign, Sir, so I could not have made such a statement.**

42. Mr. Francis made it clear that he did not see the Minutes of the Meeting of March 9, 2020 and the memo regarding Mr. Watson's appointment. He was also asked in examination in chief if he saw the Company's Brief before, that is, in 2022. He said he saw it in 2022 and he browsed through it. He was then asked:

Q: **In that Brief, did you see a copy of the minutes, Exhibit 5?**

A: **Yes, it was in the Brief.**

Q: **And did you see the email Exhibit 12, about Mr. Watson's appointment?**

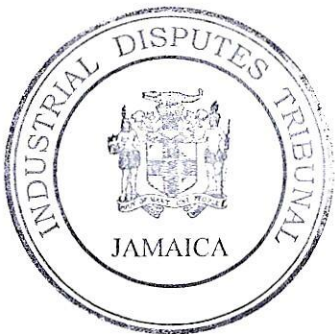
A: **Yes.**

Q: **And would that be the first time you saw these documents?**

A: **Those were the first in terms of knowing of the documents, yes.**

43. The Aggrieved contends that:

- He was unjustifiably dismissed, and the process of natural justice was not followed.
- He was not written to, indicating the charges for which his employment was terminated.
- There was no disciplinary hearing, in which he was afforded the opportunity of a representative to put forward arguments in his defense.
- He was not given the chance to confront his accusers.
- Neither was he given an opportunity to appeal the decision made to terminate his employment.



Mr. Dwight Francis wishes to be reinstated in his job.

THE TRIBUNAL'S RESPONSE:

44. In determining how the employment of Mr. Dwight Francis was terminated from Lifespan Company Ltd, the Tribunal asks the following questions:



- a. Whether or not Mr. Francis' Contract of Employment was terminated by Lifespan Company Limited;
- b. Whether or not Mr. Francis' Contract of Employment was terminated by constructive dismissal;
- c. Was Mr. Francis' Contract of Employment terminated by his resignation?

a. WHETHER OR NOT MR. FRANCIS' CONTRACT OF EMPLOYMENT WAS TERMINATED BY LIFESPAN COMPANY LIMITED

45. On the question of whether or not Mr. Francis' contract of employment was terminated by virtue of being dismissed by Lifespan Company Limited, the Aggrieved stated that the letter of the April 3, 2020, was the instrument used by the Company to terminate his employment.
46. Mr. Francis, during his testimony, asserted that his services were considered almost impeccable. His evidence is that during the first three months, while reporting to Mrs. Williams, there were no verbal or written complaints against him. Similarly, when Mr. Rodney Davis became his supervisor, there were no complaints. Not only did Mr. Francis claim that he worked well, but he also said that he was often used as a trouble shooter in other departments, so much so that he was often referred to as 'Mr. Fix It'. He claimed he was rewarded by letter dated December 27, 2019, changing his position to Marketing and Sales Manager with a salary increase.
47. The evidence from the Company, on the other hand, speaks to his lack of performance resulting in the re-organization of the department as well as adjustments to his salary.
48. Mr. Francis took issue with the 360 Evaluation process, believing it was unfair to him. He scored himself on the self-evaluation with 3 out of 5 while the average of the scores from other persons was 2.75. The other persons highlighted poor scores in sales and marketing and in his relationship with team members who reported to him. He complained that he considered his role as coordinator of the sales team with no direct sales responsibility. In terms of Marketing, he said that other persons outside of the Company were doing that role and he was just the contact person inside the Company. He therefore sought a meeting through the HR Manager to discuss the issues he had with the 360 Evaluation process.

49. The Company provided evidence that the job description assigned to Mr. Francis' position included sales and marketing, but Mr. Francis denied any knowledge of the document and was quite evasive in his answers to questions posed by the Company's Attorney in cross examination.
50. The Company spent a considerable amount of time trying to prove that Mr. Francis participated and knew how the 360 Evaluation process worked. During cross examination, Mr. Francis declared that he had not submitted the self-assessment form electronically.



Q: And you would have submitted this self evaluation by email, am I correct?

A: The self evaluation was not submitted by email.

Q: It wasn't?

A: It was given to me to be done manually, I did that manually, I did that manually, and then I re-submitted that, a rough copy of it, yes.

Q: So you want to tell this Panel here that you never submitted a copy of your self evaluation by email?

However, while still being cross examined this transpired,

Q: You would agree with me, Mr. Francis, that at the top of that document is an email sent by you on Tuesday, January 7, 2020, to Mr. Rodney Davis?

A: Yes.

Q: Do you agree?

A: Yes.

Q: And in that email you typed: "Please find attached *Self Evaluation*. Best regards. Dwight Francis".

Am I correct?

A: You are correct.

Q: Good.....

This is evidence that Mr. Francis made conflicting responses on the same issue suggesting that he was not a witness of truth.

51. On March 2, 2020, he was called to a meeting, involving the Managing Director, the General Manager, his supervisor and the HR Manager. This meeting he argued did not discuss the 360 Evaluation. He said that in the meeting he was met with threats to terminate his employment. He asserted that the meeting was more a prelude to the decision to terminate his employment.
52. However, the Company in its submission, said that the meeting was in response to his request for discussions of his 360 Evaluation results and his overall poor performance, which they pointed out, could lead to his employment being terminated. The Company stated that in order to dispel any consideration for the termination of his employment, Mr. Francis made some proposals to improve his performance. These proposals were later confirmed by email to Mr. Francis, by the HR Manager (Exhibit 3). He, however, denied that he made any proposal at the meeting of March 2, 2020 and that he did not receive the email (Exhibit 3) from HR.
53. The Company contends that after the announcement of his resignation on March 9, 2020, Mr. Francis did not make himself available to be reached by the Company. The three witnesses testified that they had not seen him nor was there any evidence of him being at work. The next time he was seen at work or at least in the Headquarters in Portland was on March 31, 2020, when he came seeking to rescind his resignation.
54. Mr. Francis, in his defence, said that during the period, he was at work and was out in the community as was the norm doing the Company's work. He made reference to doing business during this period with an establishment in St. Thomas. He also stated that he was in communication with someone in the Ardenne Road office. Unfortunately, Mr. Francis did not present as evidence a negotiated agreement with another company, a letter of undertaking, an email, a WhatsApp message or a witness in person to authenticate his whereabouts in this period. This again leaves the Tribunal with doubts about Mr. Francis as a witness of truth.
55. Parnell, J in the case of R v the IDT, ex parte Palace Amusement Company Ltd (Suit No M43 of 1981) said **"If...an advocate is allowed to rely on facts in support of his case which were not proven and which the applicant had no opportunity to challenge then a breach of natural justice may flow"**. Mr. Francis made a number of statements, but the Tribunal has not seen any evidence to substantiate those statements.



56. Mr. Francis sought to rely on the letter dated April 3, 2020, that he received, as evidence that his employment was terminated by the Company. However, on close examination, the letter does not indicate that it was to terminate Mr. Francis' employment but that it was satisfying a request from him so that the items he held for the Company could be released.
57. In the second paragraph, mention was made of a meeting where Mr. Francis was told that his services will be terminated due to low productivity. This was followed by some negotiation and agreement to forego any immediate termination. However, his verbal resignation in the SDG meeting changed the conditions of negotiations and his resignation was effective March 31, 2020. The Company contends that this letter of April 3, 2020, was only given to Mr. Francis on his request, in return for the Company's equipment he was holding
58. The letter outlines the activities that led to Mr. Francis' verbal resignation effective March 31, 2020. There was a threat of termination on March 2, 2020, but a threat is not actual termination and Mr. Francis was still employed and paid until March 31, 2020. His resignation was effective before the alleged termination letter dated April 3, 2020. The Tribunal sees no evidence that Lifespan Company Limited terminated the employment of Mr. Dwight Francis.

b. WHETHER OR NOT MR. FRANCIS' CONTRACT OF EMPLOYMENT WAS TERMINATED BY CONSTRUCTIVE DISMISSAL.

59. Constructive dismissal occurs where an employee leaves his employment as a result of his employer's conduct. Lord Denning explained that "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."[Severin Alba v Minister of Labour and others [2020] JMSC Civ 133; para 16]

60. At no time during the Tribunal's sittings, did Mr. Francis say why his employment was terminated. He only alluded to the letter dated April 3, 2020, which the Company said was provided to him upon his request. He has not indicated a breach of his contract



cited by the Company and despite being told about his poor performance, there is no evidence that the Company took any punitive action leading to his dismissal.

61. On the other hand, the Company stated that Mr. Francis was told at the meeting of March 2, 2020, that his performance was at a level that deserves to be terminated, and that Mr. Francis said he would not want his record to be tainted by virtue of him being dismissed and therefore he negotiated the implementation of certain proposals with the Company, contained at Exhibit 3.
62. If there are negotiations to stave off a termination of employment and the employee subsequently resigned, a reasonable conclusion could be inferred that the agreement was not satisfied, but it would be unreasonable to conclude that it resulted from a breach of contract or any other action of the company.
63. Mr. Francis' argument throughout the sitting of the Tribunal was that the Company unjustifiably terminated his employment and not that he resigned because of undue pressure from the Company or the breach of his contract of employment. No evidence was put before the Tribunal by Mr. Francis that the termination of his employment from the Company was a case of constructive dismissal. The Tribunal therefore rules out any indication that Mr. Francis' employment to Lifespan Company Limited was terminated as a result of constructive dismissal.

c. WAS MR. FRANCIS' CONTRACT OF EMPLOYMENT TERMINATED BY HIS RESIGNATION?

64. As it relates to this question, the three witnesses for the Company presented evidence that on March 9, 2020, in a Strategic Development Group (SDG) meeting attended by thirteen members of the Company's management team, Mr. Dwight Francis stated that he will be resigning from the Company effective March 31, 2020. This was also confirmed by the Minutes of the meeting, which, while not recorded verbatim, captured the important points of the meeting.
65. The witnesses stated that this announcement by Mr. Francis of his resignation was unexpected and came during the presentation of his report. They stated that there were no discussions, during the meeting, of Mr. Francis' intention to resign.



66. During cross examination, Mr. Francis provided curt responses to the questions. He was asked about the evidence given by the three witnesses from the Company regarding his alleged resignation. He said Ms. Fagan lied if she said he announced his resignation in the SDG meeting. When asked if she would have a reason to lie, his response was, **“A whole lot”**.

67. He was asked if he agreed with the evidence of Mrs. Nayana Williams, who said that she heard him say at the meeting of March 9, 2020, that he was resigning effective March 31, 2020. His response was, **“Absolutely not, I have not resigned”**. When he was asked if he was saying that Mrs. Williams lied under oath to the Tribunal, his response was, **“I would say there were inconsistencies in that statement because at the end of the day I did not resign.”** When he was asked again if she lied, he said; **“It has to be a strong yes.”**

68. Relating to Mrs. Hartley-Jackson’s evidence and the Minutes of the meeting of March 9, 2020, the undermentioned exchange took place during the cross examination of Mr. Francis:

Q: Okay. So then are you able to confirm or deny whether the Minutes for March 9, 2020, Exhibit 5, would have been a true account by Mrs. Hartley-Jackson?

A: They (sic) were errors in it.

Q: Have you by now read Exhibit 5?

A: I have gone through it since it was presented here to me, yes.

Q: Can you list, if there is a list, those inaccuracies that you referred to?

A: No, not on top off my head ma’am, I would have to refresh my memory.

69. The responses suggest that Mr. Francis had no disagreements with the account of the Minutes of the meeting of March 9, 2020, which indicated that he resigned. The Tribunal, therefore, is left with the impression that Mr. Francis was not being truthful in his answers.

70. During cross examination of Mrs. Williams, the questions focused on termination and not on the issue of resignation. The focus was more about when the statement was made, rather than if the statement was made, as seen in questions to Mrs. Williams:



Q: You did not terminate him?

A: No, we did not, Mr. Francis resigned from his job.

.....

.....

Q: And you told this Tribunal that Mr. Francis before his presentation indicated...

A: Before everyone

Q: ... before his presentation indicated to the meeting that he would be resigning, you recall saying that to the Tribunal?

A: I don't recall if I said if it was at the beginning of presentation or it could be at the beginning of the SDG meeting, I don't recall how I worded it, but he did announce that he was resigning at the SDG meeting.

Q: And I am trying to get from you the timing of that announcement.

A: Honestly, this was two years ago, I cannot say exactly at what point or at exactly what time of the meeting he said it.

71. Whether it was at the beginning or in the middle or end of his report, is immaterial, what is important was whether that declaration was made.

72. Although the alleged resignation was a major area of focus in the Company's presentation, the Aggrieved, Mr. Francis, spent little time challenging the Company's case. During examination in chief of the Aggrieved, this was what transpired, in relation to the alleged statement of resignation done on March 9, 2020:

Q: *Did you tell anybody in 2020 March, that you were rescinding your resignation from the Company, Sir?*

A: I did not resign, Sir, so I could not have made such a statement.



73. After the conclusion of the re-examination, the Tribunal had the following dialogue with Mr. Francis:

Q: Some of the questions that I am going to ask, you might have answered them before, but we just want to reconfirm. You said you had a meeting and during that meeting did you mention that if certain things were not in place, you would have resigned, did you mention that in the meeting?

A: I did make some indications as such, yes.

Q: You made some indication that you would, and what happened after that?

A: Well, later on during the meeting, some of these submissions I would have used to allow me to make up mind, where that is concerned was addressed.

Q: Okay.

A: Some to my surprise.....

Q: So that transpired in the meeting, the meeting however didn't end there, it went on, certain conditions were met, did you at any time acknowledge or say that having these things put in place, that you would be rescinding on...

.....

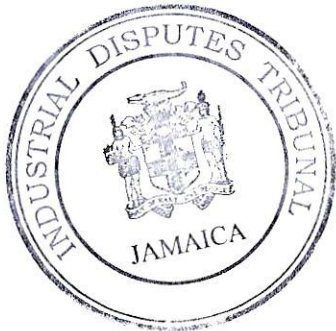
Q: ...the comment?

A: Rescinding the comment, I did speak to the HR Manager and I did have an informal conversation with Rodney Davis as such, that considering that the major issue that I had was the Distributor and that would have been rectified, then there would be no need for me to have that kind of consideration.

Q: And that was on the same day of the meeting?

A: If my memory serves me well, it's been a while now, but I don't remember if it was in the same time, I doubt it though based on the nature of how SDG would have gone, I doubt it.

Q: It was not on the same day?



A: I doubt it.

Q: Okay, so the meeting is over, what happened after that?

A: I don't remember definitively, but I am almost sure that informal conversation with Rodney Davis was had somewhere around, and if I remember well, but as it relates to the meeting and wrapping up-- usually SDG goes until late so it's usually separation at the end of the meeting in terms of leaving the compound going home.

74. The Tribunal notes from Mr. Francis' responses that:

- During the meeting of March 9, 2020, he announced that he would be resigning at the end of March 2020, if some specific conditions were not met by the Company. He admitted that **I did make some indications as such, yes**
- As the meeting progressed, some of these conditions were met. Not all were met, but he felt that he would be able to work with the conditions that were met.
- The meeting went late and at the end of the meeting there was no time for him to rescind his statement of resignation.
- Later on that day or at a later date, he tried rescinding his resignation in informal meetings with Mr. Rodney Davis.

75. The Tribunal agrees that the normal procedure for a resignation should be in writing.

However, an acceptable resignation can be verbal, especially when it is made in the Company's business meeting, before twelve other senior officers. Just as a contract can be oral or written, so can a resignation. Likewise, many dismissals have been done verbally although this could be considered a breach of natural justice.

76. Given the above responses from Mr. Francis, the Tribunal is convinced that he announced his resignation from the Company on March 9, 2020 and tried to rescind that resignation on the day it was to become effective.



TRIBUNAL’S FINDINGS:

77. The Tribunal, having examined all the circumstances surrounding the termination of Mr. Francis’ employment, finds that:

- a. He was not dismissed by Lifespan Company Ltd. and the letter to him dated April 3, 2020 (Exhibit 3) was issued on his request as a basis to return the Company’s assets.
- b. His employment was not terminated based on constructive dismissal.
- c. Lifespan Company Ltd. acted on the notice of resignation orally announced by Mr. Francis at the Strategic Development Group Meeting on March 9, 2020, that he would resign from the Company effective March 31, 2020.

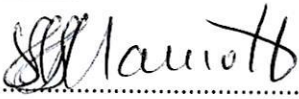
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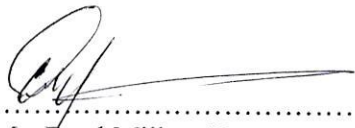
The Tribunal awards that the termination of the employment of Mr. Dwight Francis was as a result of his resignation from the Company.


DATED THIS 18th DAY OF OCTOBER 2024.



Witness:


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


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


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


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