

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 5/2023

SETTLEMENT OF DISPUTE

BETWEEN

MD COURIERS JAMAICA LIMITED

AND

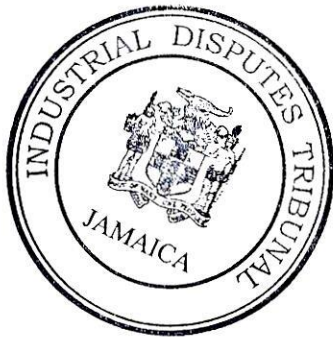
CHANIECE MARTIN

AWARD

I.D.T. DIVISION

MR. DONALD ROBERTS, CD., JP.	-	CHAIRMAN
MR. ERROL BECKFORD	-	MEMBER
DR. DENESE MORRISON, JP	-	MEMBER

SEPTEMBER 28th, 2023



INDUSTRIAL DISPUTES TRIBUNAL

AWARDS

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

MD COURIERS JAMAICA LIMITED

(THE COMPANY)

AND

MS. CHANIECE MARTIN

(AGGRIEVED WORKER)

REFERENCE

By letter dated January 26, 2023, the Hon. Minister of Labour and Social Security, pursuant to Section 11A (1)(a)(i) of the Labour Relations and Industrial Disputes Act, 1975 ("the Act") referred to the Industrial Disputes Tribunal ("Tribunal") for settlement, the dispute between **MD Couriers Ja. Limited and Ms. Chaniece Martin** with the following Terms of Reference: -

"To determine and settle the dispute between MD Couriers Jamaica Limited on the one hand and Ms. Chaniece Martin on the other hand over the termination of her employment"

DIVISION

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

Mr. Donald Roberts, CD, JP	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2)(c)(ii)
Dr. Denese Morrison, JP	-	Member, Section 8(2)(c)(iii)

REPRESENTATIVES OF THE PARTIES

The **Company** was represented by:

Mr. Clayton H. Lawrence

- Attorney-at-law

The **Aggrieved** was represented by:

Mr. Vincent Morrison

- Industrial Relations Consultant

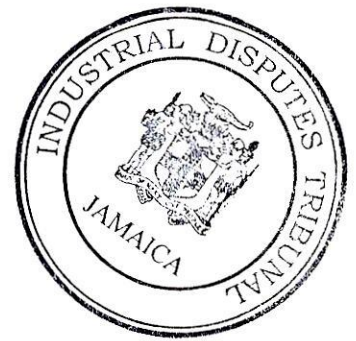
Mr. Santaj Lawson

- Negotiating Officer, UCASE

In attendance:

Ms. Chaniece Martin

- Aggrieved worker



SUBMISSIONS AND SITTINGS

The parties submitted briefs to the Tribunal and made oral presentations over nine (9) sittings covering the period April 24, 2023 through to August 17, 2023. Over the course of the sittings, the Tribunal, in addition to the oral evidence also examined six (6) exhibits.

BACKGROUND TO THE DISPUTE

1. The employer, MD Courier Ja. Limited was incorporated under the Companies Act as a Limited Company on the 22nd March 2019. The company facilitates the general importation of goods and merchandise as well as provide a web based solution to online shoppers. Ms. Chaniece Martin was employed to the company, MD Courier Ja., a sole trader, as a customer service representative in May 2018. Consequent on the incorporation of the company in March 2019 she was given a one-year contract for the period March 22, 2019 to March 22, 2020. Mrs. Martin's services were terminated on November 9, 2019.
2. Ms. Martin was approached by the Managing Director, Mr. Mickel Dawkins on Friday, November 8, 2019 at about mid-day alleging complaints about her conduct. She was said to have been invited to a meeting later that afternoon, but did not turn up for the meeting and was subsequently given a letter of termination signed by Ms Amanda Robinson, Director. The effective date of the termination was November 9, 2019.

3. On Monday, November 11, 2019, Ms Robinson emailed Ms. Martin inviting her to a meeting on Tuesday, November 12, 2019 at 10:00 am, and requested her to confirm her availability by 2:00pm. Ms. Martin's response was that arising from the letter of termination, "*a meeting at this time would be imprudent to cure any ill intense caused or suffered*".
4. The matter was referred to the Ministry of Labour and Social Security for conciliation. The efforts were unsuccessful, and by letter dated January 26, 2023, the Minister of Labour and Social Security, pursuant to his powers under section 11 of the Labour Relations and Industrial Disputes Act (LRIDA), referred the matter to the IDT for determination and settlement.

MD COURIER JA. LIMITED'S CASE

5. Counsel for the company said there were concerns about Ms. Martin's poor performance, poor work ethics, breaches of company's policy and acts of insubordination. These concerns were expressed to her over time by her supervisor and the Managing Director.
6. The company called Mr. Mickel Dawkins, the Managing Director as a witness to give evidence. In his testimony Mr. Dawkins said he spoke to Ms Martin and told her he wanted to have a meeting with her about 3:00pm or 3:15pm. Sometime after the scheduled meeting he was told by the HR Manager that she had left and attempts to reach her were unsuccessful as her phone went to voice mail.
7. Mr. Dawkins said he later received a copy of an email from the HR department, dated November 9, 2019, terminating Ms. Martin's services. He immediately called the HR Manager and advised that it was not his intention that she be dismissed. He instructed that the letter be rescinded and that Ms. Martin be asked to attend a meeting. He said to the best of his knowledge Ms Martin was communicated with via email rescinding the letter of termination, and therefore interpreted her email response of November 11 as indicating she is "*no longer interested in working with MD Courier.*"



8. Further in his testimony, Mr. Dawkins said that there were issues of breach of policy as Ms. Martin was importing personal items and removing them without paying. He also said that she was disrespectful to customers and always late for work. Her supervisor, he said, raised these concerns with him. Mr. Dawkins said that Ms. Martin was written to about these issues, but the company has not been able to locate the correspondences as they were given to a representative of the company who previously held brief on the matter. He further added that as a result of these complaints from customers he had to remove her from the front office, but later put her back as Revenue Collection Officer or cashier. At no time, Mr. Dawkins contended, had he ever disrespected or slandered Miss Martin.
9. Under cross examination, Mr. Dawkins denied that Ms. Martin's performed credibly during the time of her employment and disagreed with the assertion that the company provided transportation for staff to and from work on a daily basis. He said, however, that transportation would be provided where workers worked late in the evenings. He also confirmed that she was paid upon termination for the duration of the week of her termination.
10. The company's second witness was Mr. Otal Carruthers, who was the supervisor of Ms. Martin for most of the time during her employment at MD Courier Ja. Limited. Mr. Carruthers said that Ms. Martin's work ethics declined during the period of her employment and he has had occasion to speak to her about her general behaviour. He also attested to her breaking the company's rule by paying for a customer's package. He noted that there were times when she shipped personal packages the contents of the packages would be missing although the container would still be evident.
11. While admitting under cross examination that the workers are authorised to open an account at the company and bring in packages for personal use, in the case of Ms. Martin, the packages were opened and the contents removed without the required payment made. It was Mr. Carruthers' contention that the company had carried out an investigation into Ms. Martin's conduct and found that she was operating her own shipping company, which was in breach of the company's policy.



Mr. Carruthers said he reported the problems he was having with Ms Martin to Mr. Dawkins. He said he also had several meetings with her and had sent her emails regarding her behaviour, but there are no records he can reference to confirm his assertions.

THE AGGRIEVED WORKER'S CASE

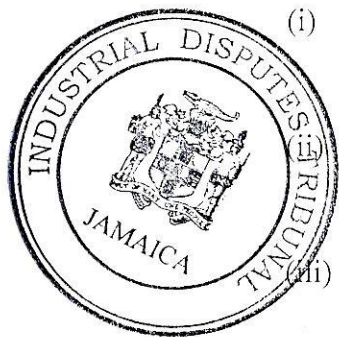
13. Mr. Morrison asserted that Ms Martin's termination was unjustifiable. He noted that the charges are not true, and in any event there is no evidence provided by the company to substantiate any of the reasons advanced for her termination.
14. Ms. Martin was called as the only witness. She denied that she did anything to warrant her termination. According to her evidence at no time during her employed at MD Courier Ja. Ltd was any question raised about her performance, work ethics, breach of the company's policy or insubordination.
15. She said on Friday, November 8, 2019 Mr. Dawkins asked Mr. Carruthers to replace her at the front desk and proceeded to ask her about unpaid packages leaving the premises. She said Mr. Dawkins was upset and spoke to her "*on top of his voice*", accusing her of being the one taking packages from the warehouse without paying for it, which she denied. She suggested that he should speak with the cashier as this was not possible as packages could not leave the premises unless the invoice indicate that it has been paid for. She said Mr. Dawkins told her not to come to work the following day.
16. Ms. Martin testified that she felt embarrassed when Mr. Dawkins' shouted at her in the presence of customers and staff. At the end of the shift on Friday she again spoke with Mr. Dawkins in the parking lot, and he told her to call Amanda (Robinson), which she did, and Amanda said she would discuss the matter with her the following day, which would be Saturday, November 9.
17. According to Ms. Martin, she did not receive a call from Amanda at any time on the Saturday and left the office minutes after 4pm. She said she did not have a conversation with Mr. Dawkins on November 9.
18. Miss Martin in further evidence informed the Tribunal that she was not or ever was involved in any act of thievery at the company, and she did not abandon her job as stated by Mr. Dawkins. She declared that while she had an idea as to the purpose of the meeting set for Saturday, November 9, and had an interest in the meeting, she made no enquiries before she left at about 4pm even though she did not receive a phone call from Ms. Amanda Robinson about it.



19. In relation to the meeting called on November 9, Ms. Martin said she had no idea what the meeting was about and gave conflicting answers as to whether she had an interest in the meeting.
20. Under cross-examination she stated that she had reasonable expectation that her contract would have been renewed as she had never been warned about any breach of company policy or acts of misconduct. She contended that she was not paid her fortnightly salary after her termination and was not paid for her outstanding vacation leave. She said her termination from MD Courier Ja. Limited affected her financially and emotionally and she was given notice by her landlord and had to relocate to St. Elizabeth to live with her mother. She was able to gain employment in August 2020 at TrackMaster JA.

ISSUES

21. In reviewing the evidence, the Tribunal deliberated on the following issues in arriving at its findings:



- (i) Whether probable reason or reasons existed for MD Courier Ja. Limited to have taken disciplinary action against Ms. Martin
If so, were the proper procedures adopted in accordance with the rules of natural justice and the Labour Relations Code
- (ii) In the event that the facts lead to a conclusion of unjustifiable dismissal, what considerations, if any, should be taken into account regarding the outstanding period of her contract.

ANALYSIS AND FINDINGS

22. Ms. Martin's termination took place by way of a letter from Ms. Robinson, a director of the company, with effect from November 9, 2019. The Tribunal is therefore obliged to examine the reason or reasons offered for the termination, including determining whether, under the circumstances, sufficient regard was given to equity and the substantial merits of the case.
23. It is also important to remind ourselves that the traditional attitude of the common law to an employer's right to terminate has long been subordinate to the employee's right to be heard before he or she is dismissed. The Labour Relations Code, which sets out the statutory code

for fair labour practices is admissible in evidence, and its provisions, in this case, primarily relating to disciplinary procedures, will be taken into account in determining the justifiability or otherwise of the employer's action.

Whether probable reason or reasons existed for MD Courier Ja. Limited to have taken disciplinary action against Ms. Martin

24. On the evidence, it is unclear as to why Ms Martin's services were terminated. Was it because, in the minds of the employer, she failed to attend a meeting set for the afternoon of Saturday, November 9? Was it because of the series of infractions allegedly referenced by the managing director during his testimony, or was it for some other reason?
25. The testimonies of Messrs. Dawkins and Carruthers centered on the issue alleging dishonesty on the part of Ms. Martin. The evidence was that contents of packages, bought in her name, were being removed by Ms. Martin from the warehouse without the appropriate payment. There was also the allegation that she was paying for packages for other clients, in contravention of the company's policy, and was operating her own shipping company.
26. There were other allegations made about her general conduct, poor relationship with clients and late arrivals at work. All these, of course, surfaced through the company's two witnesses, Mr. Dawkins, the managing director and Mr. Carruthers, who was at some point Ms. Martin's supervisor. There were issues regarding her generally poor attitude over time for which Mr. Carruthers claimed he had several conversations with her, matters, which he said, were brought to the attention of Mr. Dawkins.
27. These are incidents, according to their testimonies, which have occurred for months, but not a single documentary evidence was provided as proof of the claims being made. The seriousness of some of these allegations, and the fact that, in particular, the one alleging dishonesty was the subject of an investigation, would warrant, at least, some evidentiary proof beyond the verbal testimony of the company's witness.
28. The Tribunal would be loathe to assent to the view that all the documents relating to Ms. Martin's conduct were handed over to an external party and could not be recovered, and not a single copy retained by the company.





29. It is trite law, that in such circumstances, the employer has to show just cause for dismissing the worker, and in the case of Ms. Martin the dismissal was summary which would constitute an act tantamount to 'gross' misconduct entitling the employer to so act. In that regard, the proof, in the opinion of the Tribunal, must go beyond the oral evidence to more substantive indicia that are strict and persuasive. According to the **Halsbury's Law of England Fourth Edition, Vol. 16, para. 628**, the employer is obligated to:

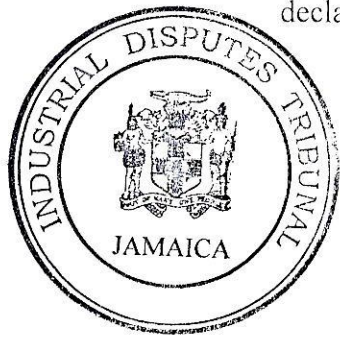
"show what was the reason (or, if there is more than one reason, the principal reason) for the dismissal, and he must show that it was a reason which the law regards as acceptable, and that in the circumstances, having regard to equity and the substantial merits of the case, he acted reasonably in treating it as a sufficient reason for dismissing the employee."

30. We have conflicting evidence as to whether Ms. Martin was notified by Ms. Robinson about the meeting of Saturday, November 9. Ms. Martin knew or ought to have known that the meeting would be about the issues raised by Mr. Dawkins with her on Friday in the office, and subsequently continued, on her initiative, in the car park the Friday afternoon. There is no dispute as to what was discussed on that Friday, it was about Mr. Dawkins' allegation that Ms. Martin was involved in dishonest acts by removing the contents of packages without payment. It was about this that the meeting with Ms. Robinson was to be arranged for the Saturday.
31. According to the company's evidence Ms. Martin did not turn up for the meeting scheduled for the Saturday afternoon, and within hours of her no-show was sent a letter terminating her services. The letter of termination provided no indication as to the reason for her summary dismissal, and offered no further explanation as to the circumstances leading up to that decision.
32. This is simply very poor and unacceptable, and makes the dismissal harsh and oppressive. The Labour Relations Code sets out guidelines to avoid such unsavoury practice. Mr. Dawkins was well aware that the termination of Ms. Martin was wrong and sought to have it corrected. There was no evidence to suggest that his directive to have the termination letter withdrawn was, in fact, carried out by Ms. Robinson. Her email of November 11 inviting Ms. Martin to a meeting three days after may very well infer a reversal of the decision, for there would be no consistent logic to inviting an ex-employee to a meeting.

33. But this was patently wrong and shows neither respect nor regard for the employee. Carr J. in the **Melisa Donalds v. Industrial Disputes Tribunal** ([2023] JMSC Civ.90) case, made the point that *"it is settled law that a contract of employment once terminated cannot be unilaterally restored"*. An employee whose service has been terminated will be entitled to insist on the employment termination.
34. Further, the code recognises that *"work is a social right and obligation, it is not a commodity; it is to be respected and dignity must be accorded to those who perform it, ensuring continuity of employment, security of earnings and job satisfaction."*
35. Employers need to appreciate the fact that the code embodies the principle of cooperation between workers and management and the need to develop and maintain –

"good personnel management techniques designed to secure effective co-operation between workers and employers and to protect workers and employers against unfair labour practices."

36. Paragraph 3 of the Code, not only declares that its provisions are to set out guidelines for the conduct of good industrial relations practices, but goes on to make the following declaration:



"Save where the Constitution provides otherwise, the code applies to all employers and all workers and organisations representing workers in determining their conduct one with the other, and industrial relations should be carried out within the spirit and intent of the code... an infringement of the Code does not of itself render anyone liable to legal proceedings, however, its provisions may be relevant in deciding any question before a tribunal or board."

37. As a final act of denouement we advert to the dicta of Rattray P, in one of his seminal contributions to the development of the common law set out in the Grand Lido case, where he said:

"The relationship between employer and employee confers a status on both the person employed and the person employing. Even by virtue of the modern change of nomenclature from master and servant to employer and employee there is a clear indication that the rigidities of the former relationship have been ameliorated by the infusion of a more satisfactory balance between the contributors in the production process and the creation of wealth in the society."

The need for justice in the development of law has tested the ingenuity of those who administer law to humanize the harshness of the common law by the development of the concept of equity."

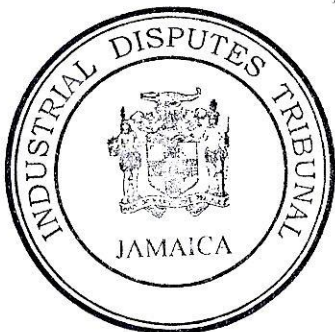
38. MD Courier Ja. Limited failed to discharge the burden imposed upon it, and therefore reached the decision to terminate Ms. Martin without the elementary rules of natural justice being complied with.
39. We need to make it abundantly clear that this is not an attempt to interfere with management's rights and freedom to take disciplinary action against a worker, but simply to point out that such right and freedom - as the employer is entitled to exercise - must, on all account, be deferential to the rules of natural justice.

If so, was the proper procedures adopted in accordance with the rules of natural justice and the Labour Relations Code

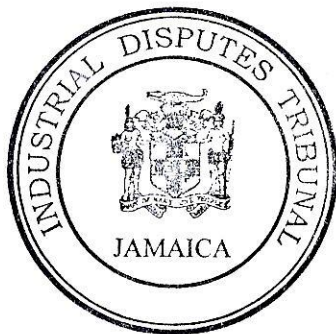
40. In determining the fairness of the employer's action, we are guided by the dicta of Rattray, P, in the previously cited Grand Lido case, where he said:

"The Act, the Code and the Regulations ... provide the comprehensive and discreet regime for the settlement of industrial disputes in Jamaica...", [and that the Act itself] "is not a consolidation of existing common law principles in the field of employment. It creates a new regime with new rights, obligations and remedies in a dynamic social environment radically changed, particularly with respect to the employer/employee relationship at the workplace, from the pre-industrial context of the common law."

41. In the absence of any evidence to support an act of misconduct on the part of Ms. Martin, the Tribunal is left to speculate what, then, could be the reason for her summary dismissal. Misconduct which is inconsistent with an employee's proper charge of the duties to which he or she may have been engaged, is sufficient cause for one's termination. The literature makes the distinction between 'gross' misconduct, which allows for the employer to summarily dismiss an employee, and other less egregious forms of conduct in which notice must be provided.



42. The most serious of the allegations made against Ms. Martin during the hearing was possible dishonesty on her part, relating to the removal of items from the packages without prior payment. That was the issue Mr. Dawkins spoke to her about on the Friday, and requested that she meet with Miss Robinson on the Saturday (Nov. 9) on the matter.
43. Whether or not Miss Martin was aware of the time for the meeting on November 9 is disputed. The fact is, within hours after the purported time for the meeting, she was summarily dismissed. This was indeed very harsh and oppressive. Over the years, the nature of the employment contract has been transformed. The common law has adapted itself to recognising that a person's employment is seen as one of the most important happenings in his entire life. Lord Hoffman's dicta captures the jurisdictional relevance to this Tribunal when he said that one's employment "*gives not only a livelihood but an occupation, an identity and a sense of self-esteem*"¹, and certainly in our case, the statute recognise this social reality. The British economist Adam Smith once said that "*the property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable.*"
44. One's job is therefore akin to one's property, this means that every employee by virtue of the statute, has a right not to be dismissed unfairly by his or her employer. The code provides the guidelines by which the Tribunal will assess the action of the employer by way of the following procedures:



- "(a) specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;*
- (b) indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;*
- (c) give the worker the opportunity to state his case and the right to be accompanied by his representatives;*
- (d)"*

45. The company failed to mount the first hurdle in relation to (a) above, sufficient for the Tribunal to consider it a fatal breach and therefore deem the dismissal as 'unjustifiable'. As

¹ See Johnson (A.P.) v. Unisys Limited. Retrieved from:
<https://publications.parliament.uk/pa/ld200001/ldjudgmt/jd010322/johnso-2.htm>

Smith, CJ, as he then was, stated in *R. v. Ministry of Labour and Employment, Industrial Disputes Tribunal, Devon Barrett et al ex parte West Indies Yeast Co. Ltd* [1985] 22 J.L.R.:



"...that even if a dismissal is justifiable at common law, it is not necessarily justified under the statute [LRIDA], it is possible for an employee to succeed in a complaint of unfair dismissal even if he would lose in an action for wrongful dismissal. [The statute therefore] permits tribunals to review the reason for the dismissal. It is not enough that the employer abides by the contract, if he terminates it in breach of the Act, even if it is a lawful termination at common law, the dismissal will be unfair. So the Act questions the exercise of managerial prerogative in a far more fundamental way than the common law could do."

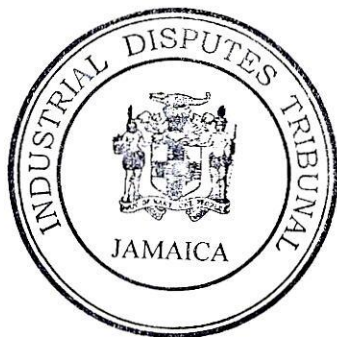
46. Even if we were to accept as the principal reason for the dismissal questions relating to Ms. Martin's conduct regarding the missing articles from the packages, she was entitled to give an account of what transpired. The meeting of Saturday could not fulfill that purpose. Ms. Martin would need to have been advised, *a priori*, that an investigation is to be conducted, and the findings from the investigation presented to her.
47. Paragraph 22 of the Code would have to be complied with before a decision can be made in respect of any disciplinary action. Failure to do so was a clear breach of the principles of natural justice.

In the event that the facts lead a conclusion of unjustifiable dismissal, what considerations, if any, should be taken into account regarding the outstanding period of her contract.

48. Both the Act and, by extension, the interpretation of the provision by the Court, offer a potential home for the Tribunal's thinking. Section 12(5)(c)(ii) states that where the Tribunal-

"...finds that the dismissal was unjustifiable and that the worker does not wish to be reinstated, order the employer to pay the worker such compensation or to grant him such relief as the Tribunal may determine."

49. In **Garnett Francis v. Industrial Disputes Tribunal and the Private Power Operators Limited** ([2012] JMSC Civil 55, the claimant challenged the compensation awarded by the Tribunal for relief for his unjustifiable dismissal. The learned judge opined that the Tribunal has a wide remit in respect of determining what that sum should be:



"...there is a discretion entrusted to the Tribunal where the level or quantum of compensation is concerned; and it is a wide and extensive discretion. A reading of the particular sub-paragraph reveals no limit or restriction placed on the exercise of this discretion and no formula, scheme or other means of binding or guiding the Tribunal in its determination of what might be the level of compensation or other relief it may arrive at as being appropriate. There is no basis, therefore, on which to conclude that the level of compensation to be determined by the Tribunal must be exactly proportionate to the period for which the employee has been out of work or that some other similar benchmark should be used. There is no factual, legal or other foundation for saying that the Tribunal erred in that regard. The Tribunal was free to determine what compensation was best, and did so having regard to the existence of both mitigating and aggravating factors on both the employer's side and the employee's side..."

50. Ms. Martin's contract was set to expire on March 22, 2020, and she indicated that she had reasonable expectation that the contract would have been renewed. While we remain ambivalent about allegations raised against Ms. Martin, in the absence of any evidentiary proof, it would not be unreasonable to infer that Mr. Dawkins actually believed that Ms. Martin was guilty of misconduct, and that he had reasonable grounds on which to base that belief. It was the belief that she was complicit in removing unpaid packages from the company's warehouse, and this was the basis of his conversation with her on Friday, November 8, and requested that she meet with Ms. Robinson.
51. But these are mere allegations, and Ms. Martin remains innocent of any assertion that she misconducted herself. Of far more concern to this Tribunal is the dignity, respect and due process to which Ms Martin is entitled, and to which she was denied. The effect of the Code and Statute therefore oblige us to excoriate an employer who have failed to 'humanise the harshness' of the traditions and praxis associated with the master/servant relationship.
52. In the last three or more decades, the common law has adapted itself to the new attitudes analogous with statutory rights and codes of practices associated with a more cooperative employment relationship. Therefore, while a reasonable cause to terminate may exist, the manner in which such dismissal takes place will be seen as not only unfair, but could considered as part of the contributory relief to which the dismissed worker is entitled.

AWARD

53. The Tribunal, having enquired into the facts on their merits and whether in the circumstances M D Courier Ja. Limited was entitled to terminate Ms. Martin's contract, has concluded that her dismissal was in clear breach of the principles of natural justice and in contravention of the spirit of the Labour Relations Code.
54. The Tribunal therefore finds that Ms. Chaniece Martin was unjustifiably dismissed by M D Courier Ja. Limited and, in exercise of the powers conferred by Section 12(5)(c) of the Act, award that Miss Chaniece Martin be paid the sum of Five Hundred Thousand Dollars (\$500,000.00) as relief.

Dated this 28th day of September, 2023



Mr. Donald Roberts, CD, JP
Chairman

Mr. Errol Beckford
Member

Dr. Denese Morrison, JP
Member

Witness:

Mr. Mario Ling
Acting Secretary of the Division