

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 24/2021

SETTLEMENT OF DISPUTE

BETWEEN

MEDIMPEX JAMAICA LIMITED

AND

MR. KARIM ELLIS

AWARD

I.D.T. DIVISION

MR. DONALD ROBERTS, CD., JP.	-	CHAIRMAN
MRS. JACQUELINE IRONS, JP.	-	MEMBER
DR. DENESE MORRISON, JP.	-	MEMBER

MAY 16, 2023

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DISPUTE NO. IDT 24/2021

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

MEDIMPEX JAMAICA LIMITED

(THE COMPANY)

AND

MR. KARIM ELLIS

(AGGRIEVED WORKER)

REFERENCE

By letter dated November 30, 2021, 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 **Medimpex Jamaica Limited and Karim Ellis** with the following Terms of Reference: -

"To determine and settle the dispute between Medimpex Jamaica Limited on the one hand, and Mr. Karim Ellis on the other hand, over the termination of his 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 |
| Mrs. Jacqueline Irons, JP | - | Member, Section 8(2)(c)(ii) |
| Mr. Clinton Lewis | - | Member, Section 8(2)(c)(iii) |

REPRESENTATIVES OF THE PARTIES

The **Company** was represented by:

- | | | |
|-------------------|---|---------------------------------|
| Mr. Robert Moore | - | Attorney-at-law |
| Mr. Robert Harris | - | Industrial Relations Consultant |



The **Aggrieved worker** was represented by:

- | | | |
|---------------------|---|---------------------------------|
| Mr. Garfield Harvey | - | Industrial Relations Consultant |
|---------------------|---|---------------------------------|

In attendance:

- | | | |
|-----------------|---|------------------|
| Mr. Karim Ellis | - | Aggrieved worker |
|-----------------|---|------------------|

SUBMISSIONS AND SITTINGS

The Tribunal witnessed the untimely death of Member Clinton Lewis before the end of the proceedings. The parties were informed that in accordance with section 8(4) of the Labour Relations and Industrial Disputes Act, the Tribunal is obliged to commence proceedings *de novo* unless the parties, in writing, advised that they wish the proceedings to continue as if it were not disrupted. Both parties wrote to the Tribunal advising of their intention to have the proceedings continue.

The new panel selected to continue the proceedings comprised of the following members:

- | | | |
|----------------------------|---|------------------------------|
| Mr. Donald Roberts, CD, JP | - | Chairman |
| Mrs. Jacqueline Irons, JP | - | Member, Section 8(2)(c)(ii) |
| Dr. Denese Morrison, JP | - | Member, Section 8(2)(c)(iii) |

Briefs were exchanged between the parties and the Tribunal held seventeen (17) sittings over the period January 5, 2022 to April 5, 2023. A total of twelve (12) exhibits were tendered into evidence and both parties made oral submissions in support of their case.

BACKGROUND TO THE DISPUTE

1. Medimpex Jamaica Limited, the employer, is one of the leading players in the pharmaceutical industry, providing a range of health care products to the public through their offices located at 21 Balmoral Avenue in Kingston. Their services also extend beyond the shores of Jamaica into the wider Caribbean. The aggrieved worker, Mr. Karim Ellis, was employed by the Company on May 1, 2016 as a sales representative, a position he held up to the time of his termination on October 22, 2020.
2. In a memorandum dated October 6, 2020, Mr. Ellis was informed about his ‘inconsistent reporting’ for the month of September 2020 by Mrs. Kasha Stephenson-Spence, the Sales Representative Supervisor. Reference was also made in the said memorandum to an October 2 email sent to him and the subsequent sharing of that email in the Sales Representatives’ WhatsApp group, along with his “inappropriate response.” Mrs. Stephenson-Spence advised that a copy of the October 6 memorandum would be placed on Mr. Ellis’ file for future reference.
3. On the same day, October 6, Mr. Ellis received a letter from Mrs. Michelle Allen Williams, the Secretary of the Company, inviting him to a disciplinary hearing on October 12 to answer to charges of gross misconduct and breach of contract.
4. The disciplinary hearing was held on October 12 and from the findings the recommendation was made to terminate the services of Mr. Ellis. Mr. Ellis was informed by way of a letter dated October 22, 2020 from Mr. Laszlo Bakon, Field Force Manager, that his services would be terminated with immediate effect, and advised of his right to appeal the decision.



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5. An appeal was lodged, but the decision was upheld and as a consequence the matter was referred to the Ministry of Labour and Social Security. By way of a letter dated November 30, 2021, the Minister of Labour and Social Security, pursuant to his powers under Section 11 of the Labour Relations & Industrial Disputes Act (LRIDA), referred the matter to the Industrial Disputes Tribunal for determination and settlement.

THE COMPANY'S CASE

6. Counsel for the Company, Mr. Moore, said that Mr. Ellis was dismissed for breach of contract and gross misconduct. Prior to his dismissal he was invited to a disciplinary hearing, provided with a letter setting out the alleged breaches and had a representative present at the hearing. According to Counsel, Mr. Ellis did not attend the full hearing, but left, along with his representative, during the proceedings. His withdrawal from the hearing, Mr. Moore said, contributed to his dismissal.

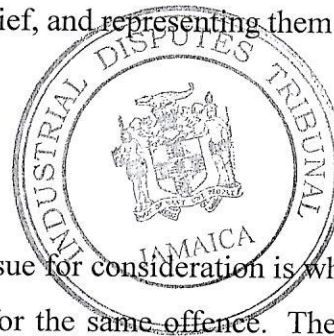
7. Mr. Moore advised that since he was the Chairman of the disciplinary hearing he would wish to take no further part as Counsel for the Company, but would stand as the Company's witness. Mr. Robert Harris, Industrial Relations Consultant, would represent the Company going forward.

8. Mr. Moore in providing evidence to the Tribunal said that he was the sole enquirer at the disciplinary hearing. He said that Mr. Harvey, the representative of the aggrieved worker, did not object to his chairmanship, but raised objection to the holding of a disciplinary hearing since it was his view that the matter was already settled by way of the warning letter issued to Mr. Ellis. Mr. Moore said that as Chairman he advised Mr. Harvey that "*the objection was a matter on which he would have to hear evidence*", and therefore could not forfeit the proceedings.
9. He said the memorandum of October 6, 2020 from Mrs. Stephenson-Spence was not considered by the Company as a warning letter and therefore not accepted as a form of disciplinary action.
10. He opined that as Chairman he found the posting of the email by Mr. Ellis in the WhatsApp group to constitute gross misconduct and served to undermine the position of



Mrs. Stephenson-Spence as his supervisor.

11. Mr. Moore in his testimony said that subsequent to Mr. Ellis' termination the Company found out that he was listed among the partners in a competing business known as MyArk Services, registered with the Companies Office of Jamaica. He said MyArk Services was incorporated in 2018 during the time of Mr. Ellis' employment at Medimpex but this was not disclosed to the Company.
12. Mr. Moore told the Tribunal that when Mr. Harvey raised the issue of 'double jeopardy' arising from the October 6 memorandum from Mrs. Stephenson-Spence and the subsequent charges, he advised himself during a fifteen minutes' adjournment, and decided that the hearing should continue and the objections of Mr. Harvey be ventilated during the proceedings.
13. Under cross-examination, Mr. Moore admitted that he previously assisted Medimpex in a restructuring exercise, but is not employed to or have a long-standing contractual relationship with the Company. He denied that his role as Chairman of the disciplinary hearing, assisting the Company in the preparation of the brief, and representing them at the Tribunal constitute a conflict of interest.

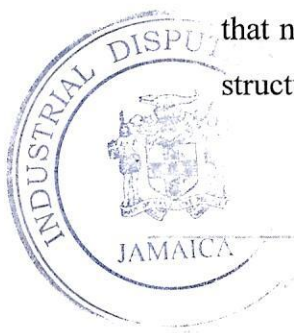


AGGRIEVED WORKER'S CASE

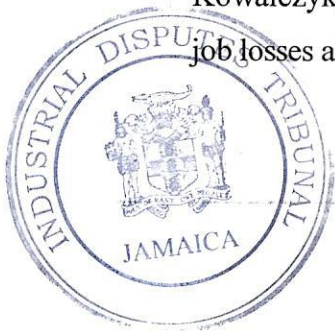
14. Mr. Harvey, for the aggrieved worker, said that the real issue for consideration is whether an employer can take action against an employee twice for the same offence. The only witness called was Mr. Ellis, who testified on his own behalf.
15. Mr. Ellis said that as a Sales Representative he was responsible for the *Western Region* which included Montego Bay, Falmouth, Hanover, Westmoreland and Black River. He said his performance had been "exceptional" over the years, and in addition to a basic salary, he received a commission from sales, along with a car upkeep and phone allowance.
16. He disputed the assertions made by Mrs. Stephenson-Spence in her memorandum to him of October 6, 2020 that he did not visit all the pharmacies highlighted by her. Mr. Ellis said schedules are prepared by him as the Sales Representative and forwarded to Mrs. Stephenson-Spence. He would visit the pharmacies on Thursdays to ascertain the level

of their stocks, and they would make new orders on Fridays for delivery on either Mondays or Tuesdays of the following week.

17. Further in his testimony, Mr. Ellis charged that Mrs. Stephenson-Spence, in enquiring from the pharmacies about the Prime Health vitamin products - which the Company introduced during the height of the Covid pandemic - did not speak to the persons responsible for making the decision about the product. He asserted Mrs. Stephenson-Spence did not know nor even met any of the "*decision-makers*" in the pharmacies "*since she was still in her probationary period.*"
18. Mrs. Stephenson-Spence claimed in the said memorandum that Mr. Ellis shared her October 2 email "*in the Sales Rep whatsapp group*" along with his "*inappropriate response*". Mr. Ellis testified that the email in essence was about his poor performance as a Sales Representative, and his integrity was being questioned about not working in the areas to which he was assigned. He admitted to posting his supervisor's email to the group as he claimed she "*was very dismissive*" towards him, had hung up the phone during their conversation, and the email "*made reference to his colleagues and also included some managers.*" He stressed that the Sales Representatives' Whatsapp group "*was not open to other members of staff or the public*", and generally discussed work-related matters.
19. Mr. Ellis said he had had no discussions with any member of management regarding any of the matters raised in Mrs. Stephenson-Spence's memorandum prior to the invitation to attend a disciplinary hearing on October 12, 2020. He asserted that his job was posted on the Company's social media platform with the deadline for application stated as October 12, the same day of the hearing.
20. In his attestation Mr. Ellis said he first met Mr. Moore in a meeting at Medimpex sometime in May or June of 2020 where he was introduced as a lawyer and consultant for the Company. He referred to a memorandum from Mr. Moore dated June 30, 2020 advising the management, supervisors and staff of a new structure at the Company, and emphasized that no meeting or consultation was held with the staff prior to the disclosure of the new structure.



21. In further evidence before the Tribunal, Mr. Ellis claimed that he had had no previous disciplinary action taken against him prior to October 6, 2020. He said that the other Sales Representatives held him "in high regards", and he was the person chosen by them to make contact with the University and Allied Workers Union (UAWU) in their bid to seek union representation.
22. Mr. Ellis acknowledged his membership with the UAWU effective July 17, 2020, along with other members of staff and that a bargaining rights claim was served on the Company on August 10, 2020 and a poll date set for September 4 of the same year. It is Mr. Ellis' contention that the Company was hostile to the bargaining rights claim based on their refusal to cooperate with the Ministry of Labour and Social Security on the matter.
23. Mr. Ellis said that he has had no "*formal employment*" since his services were terminated at Medimpex. He had sent out about fifty (50) job applications, including to pharmacies, but they were not employing due to the Covid pandemic. He had also sent applications to Canada. He denied being engaged in any competing activities during his employment at Medimpex. He said he is a partner in a company registered by his parents, which deals with micro-financing, but that he is not actively engaged in the company nor does he receive any form of remuneration.
24. He testified that he had had to sell his motor vehicle to meet his debt obligations, and migrated to Canada about January 2022. He now runs a podcast but the podcast does not generate an income.
25. Under cross-examination from Mr. Harris, Mr. Ellis said that he had abided by the terms of his contract which stated that he was not to be engaged in any other activities without written permission, and "*will [would] act in all respects according to the instructions or directions given to him by the company through the Marketing Manager/Sales Supervisor, or other duly authorised officer.*" The new organisational structure, he said, had removed the position of Human Resource Manager, and HR issues were to be handled by Mr. Lukasz Kowalczyk, the Managing Director and Mr. Robert Moore. He said he is not aware of any job losses arising from the restructuring.



26. Mr. Ellis said he did not receive any instructions from his representative not to participate in the hearing. He said he was present at the disciplinary hearing and would have stayed anytime between one to two hours. He was not asked any question, and after he left the sitting was not advised by the Company that the disciplinary hearing had concluded.
27. In response to questions about the company registered as Myark services, it is Mr. Ellis' contention that the company dealt with phone holders, as well as distributing medical products. He said he has not posted any medical supplies on the company's Instagram page or any social media platform. While his name appears on the registered document it was his father's business and only included his name for purposes of inheritance.
28. Mr. Ellis admitted to having a real estate license and is attached to a real estate brokerage registered in Canada. He said, however, that he does not receive any commission or fees from the brokerage, but would have to engage in the sale of a property to earn an income. Mr. Ellis said he has not sold any property since the acquisition of the license.
29. A second company to which he is associated is DoorDash meal delivery services. He admitted to starting the company about a year ago from which he has been receiving an income.

ISSUES

30. The Tribunal has concluded from the evidence provided by both parties that the issues to be considered include the following:
- Was the letter of October 6, 2020 from Mrs. Stephenson-Spence a disciplinary sanction, and was Mr. Ellis being punished twice for the same alleged misconduct?
 - Was the termination of Mr. Ellis for probable cause or as a result his involvement in seeking union representation on behalf of the Sales Representatives at Medimpex Limited?
 - Did the Aggrieved Worker and his representative, by withdrawing from the hearing, abandoned their right to complain about the proceedings?



Was the letter of October 6, 2020 from Mrs. Stephenson-Spence a disciplinary sanction, and was Mr. Ellis being punished twice for the same alleged misconduct?

31. This issue arises because of insufficient clarity regarding the reason or reasons for Mr. Ellis' dismissal. The letter of invitation to attend the hearing was dated October 6, 2020 and signed by Mrs. Michelle Allen Williams, the Company Secretary. It was the same date as the memorandum from Mrs. Stephenson-Spence, the Sales Representative Supervisor, under the subject heading: "**Inconsistent Reports**". We will address the contents of Mrs. Stephenson-Spence's memo later.
32. It is however important to set out the alleged charges made by the Company and to subject them to careful examination. Mrs. Williams' October 6 letter outlined the breaches/charges committed by Mr. Ellis as follows:

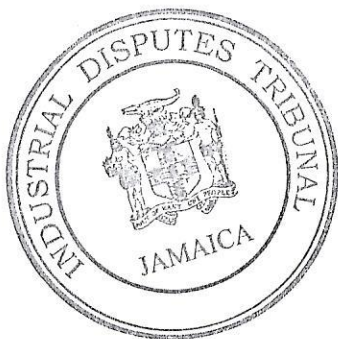
"1. Breach of Contract – Section 3

- *The duties of the Employee shall include those outlined in the attached as well as any other suitable duties the company may call upon him to perform.*
- *He shall devote his time and attention to the service of the company and shall use his skills and talents to promote the interest of the company.*
- *Inappropriate postings in any public forum that may include discriminatory remarks, harassment, and threats of violence or similar conduct will not be tolerated and may subject the Employee to disciplinary action up to and including termination.*

2. Gross misconduct

We want to hear your views in relation to the allegations and give you an opportunity to respond. In the meeting you will be able to give us any additional or clarifying information that you may believe is relevant in the consideration of the allegation."

33. Mrs. Williams' letter, in paragraph 2, said that "*the allegations are outlined in memo dated October 6, 2020 from Mrs. Kasha Stephenson-Spence – Sales Representative Supervisor.*" It is therefore to Mrs. Stephenson-Spence's memo we should turn to identify the two alleged breaches. Again, we set out the contents of the memo for ease of reference below:



"To: Mr. Karim Ellis

From: Mrs. Kasha Stephenson-Spence, Sales Rep. Supervisor

Cc: Mr. Lukasz Kowalczyk, Managing Director

Mr. Laszlo Bakon, Field Force Manager

Date: October 6, 2020

Re: Inconsistent Reports



On the 1st October in finalizing a spread sheet of Sales Representatives weekly visits, I observed you consistently had 57 customers as seen on your report; of concern there are sixty-six (66) customers on your Customer database. This would therefore be interpreted that some customers are not being seen.

I called you and inquired if your actual visit schedule was accurate as your numbers were consistently the same. You advised me that the same customers are visited every week and there is no need to change your records as that would be redundant.

*Upon reviewing your orders on Thursday October 1, 2020, I observed the orders submitted were not from the pharmacies you were scheduled to visit. While it is understandable that orders will be called from external areas, it is of concern that no orders were submitted from pharmacies such as **Fontana Sav, New Savlamar Rx, Pill Box #1, 9 Lewis Rx and Heritage** which were scheduled to be visited that day. You submitted orders for only three (3) pharmacies for that day for the area you were scheduled to work and the orders were very small.*

Furthermore, Fontana Sav, Heritage and Royale RX (when asked) all confirmed they were not aware of Prime Health vitamins. They all enquired where Prime Health vitamin was manufactured and requested to see the product. This is of serious concern as when you were asked about sales of this product line in that areas, you advised none of your pharmacies showed an interest in purchasing the vitamins.

As previously mentioned, for the month of September while you met your target your percentage reach was the lowest of the team (while you have some of the largest accounts). The feedback from three (3) pharmacies

regarding not knowing about a product that is in demand speaks to inadequacies in your execution as a Medimpex Sales representative.

After writing you on Friday October 2, 2020, you called me and in a boisterous, uncouth tone you read my email in disgust, you then resorted to sharing my email in the Sales Rep whatsapp group and shared your inappropriate response.



As a Medimpex Sales Representative you are expected to behave with a level of professionalism and if this action is repeated stringent measures will take effect.

Please note a copy of this letter will be placed on your file for future reference.

Kasha Stephenson-Spence Sales Rep. Supervisor

34. The question therefore is whether Mrs. Stephenson-Spence's October 6 memo, which addressed, among other things, the alleged failure of Mr. Ellis to devote time and attention to his work, was conclusive on how the matter was dealt with, or did it lay the foundation for the involvement of the Board Secretary to level charges against Mr. Ellis?
35. The construct of the relevant paragraphs of the October 6 memo, in the minds of the Tribunal, led to the proper conclusion that Mr. Ellis was being warned for the matters addressed by his supervisor. The last two paragraphs bear this out. In the penultimate paragraph Mrs. Stephenson-Spence noted that as a sales representative, Mr. Ellis was "expected to behave with a level of professionalism..." We juxtaposed this with the earlier paragraph alleging his "boisterous, uncouth tone..." to conclude that his expected behaviour was in clear reference to his 'inappropriate tone'. She then went on to say that "...if this action is repeated stringent measures will take effect."
36. It seems to us that the most egregious offence for Mrs. Stephenson-Spence was the manner in which she alleges Mr. Ellis spoke to her. The 'boisterous and uncouth tone', in her mind betrayed a lack of professionalism, and the final paragraph of her memo confirms in our mind that this was the issue which promoted her to indicate that "a copy of this letter will be placed on your file for future reference." [Tribunal's emphasis]. In any event, no further

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action was contemplated by Mrs. Stephenson-Spence on the other matters raised, based on the wording of her memorandum, and Mr. Ellis was not asked to respond to any of the allegations made.

37. For the board secretary to write Mr. Ellis on the same day alleging gross misconduct and breach of contract, and inviting him to a 'meeting' to answer to the charges contained in Mrs. Stephenson-Spence's memo would naturally raise questions regarding the 'double jeopardy' rule.
38. There is, however, a general principle supported by case law that not all cases where an employee has been disciplined twice for misconduct emanating from the same incident, will automatically qualify as double jeopardy. A 2023 ruling in a UK Tribunal matter regarding **Lyfar-Cissé and Western Sussex University Hospitals NHS Foundation Trust**, has brought to our attention the fact that there is case law authority to support the argument that the 'double jeopardy' rule may not even apply to disciplinary proceedings.
39. This may indeed be so, but any argument in support of this precedent will not be taken as an inexorable command intended to curb the hubris of the Tribunal. The Industrial Disputes Tribunal has been fashioned differently, and it is important to establish an understanding of that difference with reference to the common law. The former President of the Court of Appeal, the Hon. Justice Rattray, in the often cited **Grand Lido** case made it clear that the Tribunal is –



“vested with a jurisdiction relating to the settlement of industrial disputes completely at variance with basic common law concepts, with remedies including reinstatement for unjustifiable dismissal which were never available at common law and within a statutory regime constructed with concepts of fairness, reasonableness, co-operation and human relationships never contemplated by the common law...”

40. In that regard, the intended meaning and purpose of the Statute and Code provide the necessary guidance in deciding whether in all the circumstances of the case, the standard of 'fairness' would have been met in reopening the case, which to our mind, was settled by a plain interpretation of Mrs. Stephenson-Spence's October 6 memo.

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41. On the issue of 'fairness', which includes 'procedural fairness' in cases of dismissal, the judgement of Evan Brown, J. in **Bank of Jamaica v. IDT and BITU** offers a potential home for our implicit right to determine what is 'fair'. He opined that: *"...In this new dispensation the IDT, the specialized body set up under the LRIDA, must be allowed to set the standard of what is fair in the conduct of a disciplinary hearing..."*
42. The 2023 UK case cited above, warranted a re-opening of the case based on further investigation before a decision was made. This was not so in the case at bar, as the letter charging Mr. Ellis was issued on the same day - October 6 - as Mrs. Stephenson-Spence's memo, and furthermore, at no time was Mr. Ellis asked to provide a response to any of the allegations.

Was the termination of Mr. Ellis for probable cause or as a result his involvement in seeking union representation on behalf of the Sales Representatives at Medimpex Limited?


43. It was Mr. Harvey's pleadings that the tribunal should consider as the reason for Mr. Ellis' dismissal the role he played, along with his colleagues, in pursuing union representation on behalf of sales representatives. We are minded to consider this because of the close proximity between the attempt at unionization and the dismissal of Mr. Ellis.
44. Section 2 (and not section 3 as Mrs. Williams erroneously stated in her October 6 letter) sets out the duties and obligations of Mr. Ellis under the terms of his employment contract. Three (3) of those duties were identified in Mrs. Williams' letter as representing breaches by Mr. Ellis. As mentioned earlier, Mrs. Williams had stated in her letter that the allegations are outlined in Mrs. Stephenson-Spence's memo.
45. Mrs. Stephenson-Spence addressed issues regarding Mr. Ellis' performance in her memo that would speak specifically to matters contained in his employment contract regarding the *"time and attention to the service of the company"*, and the need for Mr. Ellis to use *"his skills and talents to promote the interest of the company,"* The allegations regarding the visits to pharmacies and the promotion of the prime health vitamins could reasonably be seen as a charge relevant to this clause.



46. The second charge under the heading 'breach of contract' was about "*inappropriate postings in any public forum that may include discriminatory remarks, harassment, and threats of violence or similar conduct...*" This is, indeed, a very serious allegation, with potential criminal implications, and therefore one expected that Mrs. Stephenson-Spence would have dealt with it far beyond the perfunctory manner in which it was addressed in her memo.
47. What Mrs. Stephenson-Spence seemed to be far more concerned with was the alleged "*boisterous, uncouth tone... [and]... inappropriate response*" of Mr. Ellis. It is clear from the memo that it was Mr. Ellis' 'response' and not the 'posting' that was deemed "*inappropriate*", and for which he was advised that if future action of this kind occurred it would result in "*stringent measures*" being taken against him.
48. The third charge laid against Mr. Ellis was for 'gross misconduct'. We are left to wonder what was the 'gross misconduct' being alleged by Mrs. Williams in her letter of October 6, and where is that outlined in Mrs. Stephenson-Spence's memo of the same date. The letter from Mrs. Williams never specified or elaborated on any action on the part of Mr. Ellis which would constitute 'gross misconduct', although it was identified as a separate charge under the heading. It merely stated that –

"We want to hear your views in relation to the allegations and give you an opportunity to respond. In the meeting you will be able to give us any additional or clarifying information that you may believe is relevant in the consideration of the allegation."

49. It is in Mrs. Williams' letter that we expect the specific nature of the gross misconduct to be identified. This was not the case, and the far more flagrant offence, the inappropriate posting in "*any public forum*", was of no moment in Mrs. Stephenson-Spence's consideration.
50. While the tribunal cannot substitute its thinking for that of the employer in dismissal matters, the employer, needless to say, has an obligation to prove that the dismissal was fair; and must clearly show what was the reason, or if there was more than one reason, the principal reason for the dismissal. It is thereafter for the Tribunal to examine the circumstances of the case, and, having regard to equity and the substantial merits, determine



whether the employer acted reasonably in providing sufficient reason for dismissing an employee.

51. Mr. Ellis was dismissed by Medimpex; prior to his dismissal he was entitled to be provided with clear reasons to attend a disciplinary hearing, an opportunity to defend himself, and to be represented. In the instant case, the charge constituting ‘gross misconduct’ was not specified in Mrs. Williams’ letter to Mr. Ellis; and the only relevant alleged offence under the ‘breach of contract’ would have been the ‘time and attention’ Mr. Ellis devoted to the service of the company.

52. Mrs. Williams’ asserted that the inappropriate postings by Mr. Ellis of Mrs. Stephenson-Spence’s email in the ‘public space’ was “*outlined in the memo dated October 6, 2020 from Mrs. Stephenson-Spence – Sales Representative Supervisor,*” While this was mentioned in the memo we cannot, however, accept that the confines of the Sales Representatives’ WhatsApp group could be considered as a ‘public forum.’ The ‘public’ consideration would be whether the posting was done, perceived or existed in open view to other members of staff; and it was not. We cannot comment upon what Mr. Ellis posted that was seen as “inappropriate” as there was no evidence in support of this claim.



53. In exercising our discretion and acting within due appreciation of our statutory responsibilities, we find only the second mentioned charge under ‘breach of contract’, that is, Mr. Ellis’ alleged failure to “*devote his time and attention to the service of the company...*” as clear and consistent with the provisions of the Labour Relations Code in dealing with disciplinary procedures.

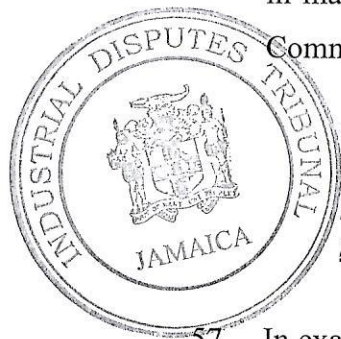
54. This was, however, not a matter Mrs. Stephenson-Spence invited the management to pursue. To write to Mr. Ellis on the same day that his supervisor ostensibly settled the matter, betrays an extremely high level of importance, if not desperation, not warranted by the charges. What is more, Mr. Ellis, in his unchallenged testimony, said that his job was advertised on the Company’s social media platform on October 5, 2020 with an application deadline the same day as the scheduled disciplinary hearing.

55. It is the indecent haste with which Medimpex dealt with Mr. Ellis’ termination that would reasonably raise the issue of union-busting. Workers are guaranteed a right, under Section

A handwritten signature in black ink, consisting of a large, stylized capital 'D' followed by several loops and a horizontal stroke.

4 of the Labour Relations and Industrial Disputes Act, to be a member of such trade union as they may choose. And any person who dismisses a worker, or otherwise penalises him or her for exercising that right, could face severe sanction under the Act, if found guilty. This, however, is a matter for the Parish Court to decide, not the Tribunal.

56. The learned authors in Commonwealth Caribbean Employment and Labour Law, page 230, in making reference to the 'automatically unfair dismissal provisions' adopted by some Commonwealth Caribbean countries through their legislations, noted the following:



"...employee should not be dismissed on certain specific bases which are manifestly illegitimate and do not constitute a valid or good and sufficient reason for dismissal or disciplinary action, once proved. The more common stipulations include trade union membership..." [Tribunal's emphasis]

57. In examining the circumstances surrounding Mr. Ellis' dismissal, including the posting of his job prior to the disciplinary hearing, we conclude, on a balance of probabilities, that the Company's actions were motivated by the pending representational rights claim - of which he was a principal advocate.

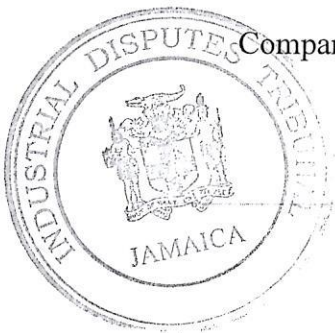
Did the Aggrieved Worker and his representative, by withdrawing from the hearing, abandoned their right to complain about the proceedings?

58. The issue of 'double jeopardy' was raised by Mr. Harvey at the commencement of the disciplinary hearing. The Chairman, Mr. Moore, took time out to address the concerns raised and told the Tribunal that he advised himself that the hearing should not be forfeited and advised Mr. Harvey to address the matter of the 'double jeopardy' during the proceedings.
59. We fully concur with Mr. Moore's decision that Mr. Harvey should have pleaded his case during the hearing; for him to have abandoned the hearing simply because he did not agree with the chairman's ruling is unacceptable. Moreso, it deprived his client of an opportunity, set out under the Code, to give his side of the story. Mrs. Stephenson-Spence's presence at the hearing, according to Mrs. Williams, was to allow Mr. Ellis to 'put questions to her.'

60. Mr. Moore was entitled to proceed with the hearing in *absentia*, in circumstances where the reason advanced for the abandonment of the hearing, to our mind, was not acceptable. While the fundamental legal principle is that the worker has a right to a hearing, Mr. Ellis, by his withdrawal from the proceedings, would have waived that right by his conduct.
61. On the other hand, the disciplinary hearing had a sole enquirer in Mr. Moore. In his testimony Mr. Moore said that Mrs. Stephenson-Spence was in attendance as a witness on behalf of the Company, and from the evidence, Mrs. Williams, who signed the charge letter, was present for the sole purpose of taking notes of the proceedings. We note further from the evidence that both Mr. Moore and the Managing Director had responsibilities for HR matters consequent on the restructuring exercise. The question therefore is who represented the Company at the hearing? We have concluded that Mr. Moore could not escape the role of putting forward the Company's case, which therefore give rise to a potential conflict of interest.

DECISION

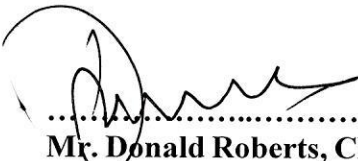
62. Having examined all the circumstances of the case, the Tribunal is of the view that it was unfair to have proceeded with a disciplinary hearing against Mr. Ellis without any new or fresh evidence to substantiate. Mrs. Stephenson-Spence's memo of October 6, 2020 equates to a written warning arising from the issues she raised. Mrs. Williams, on the same day, and in referencing Mrs. Stephenson-Spence's memo as the basis for the hearing, made a fatal blunder.
63. It is therefore clear to us on the findings that Medimpex acted unreasonably in terminating the services of Mr. Ellis. However, the Tribunal is forced to consider mitigating factors which arose during the proceedings.
64. Mr. Ellis is listed as a partner in the registered company MyArk Services. The circumstances of his inclusion are far less important to us than an obligation Mr. Ellis had to advised Medimpex of his involvement in another company. This was unknown to the Company at the time of the termination, but, according to Brook, J. –





“... the IDT is entitled to take a fully objective view of the entire circumstances of the case before it, rather than concentrate on the reasons given by the employer. It is to consider matters that existed at the time of the dismissal, even if those matters were not considered by, or even known to the employer at that time.” (Tribunal’s emphasis)

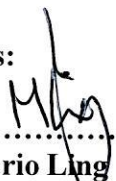
- 65. Mr. Ellis was less than candid in dealing with MyArk Services. The terms of his employment clearly stated that he “...shall not engage or be concerned in any other services or business or receive commissions or profits, except with the written permission of the company.” He failed to advise the Company.
- 66. Having taken into account all the circumstances surrounding his dismissal, including mitigating factors arising from subsequent employment, the Tribunal finds:
 - a. That Mr. Karim Ellis was unjustifiably dismissed by his employer; and order that
 - b. Mr. Karim Ellis be compensated in the sum of Six Million Three Hundred Thousand Dollars (\$6,300,000.00)

DATED THIS 16th DAY OF MAY 2023


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Mr. Donald Roberts, CD, JP
Chairman


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Mrs. Jacqueline Irons, JP
Member


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Dr. Denese Morrison, JP
Member

Witness: 
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Mr. Mario Ling
Acting Secretary of the Division