

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 1/2021

SETTLEMENT OF DISPUTE

BETWEEN

**NATIONAL PEOPLE'S CO-OPERATIVE BANK OF
JAMAICA LIMITED**

AND

**JULETTE TAYLOR
*AWARD***

I.D.T. DIVISION

MR. DONALD ROBERTS, CD., JP.	-	CHAIRMAN
MR. ERROL BECKFORD	-	MEMBER
MRS. CHELSIE SHELLIE -VERNON	-	MEMBER

NOVEMBER 8, 2022

INDUSTRIAL DISPUTES TRIBUNAL
AWARDS
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
NATIONAL PEOPLE'S CO-OPERATIVE BANK OF JAMAICA LIMITED
(THE COMPANY)
AND
MS. JULETTE TAYLOR
(AGGRIEVED WORKER)

REFERENCE

By letter dated February 9, 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 **National People's Co-operative Bank of Jamaica Limited and Ms. Juliet Taylor** with the following Terms of Reference: -

"To determine and settle the dispute between the National People's Co-operative Bank of Jamaica Limited on the one hand, and Juliet Taylor on the other hand, over the termination of her employment".



DIVISION

The division of the Tribunal which settled the dispute was appointed in accordance with Section 8(4) of the Act. The members comprised:

Mr. Donald Roberts, CD, JP	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2)(c)(ii)
Mrs. Chelsie Shellie-Vernon	-	Member, Section 8(2)(c)(iii)

REPRESENTATIVES OF THE PARTIES

The **Company** was represented by:

Mr. Donald A. Gittens	-	Attorney-at-law
Miss Crystal Anderson	-	Human Resource Manager

The **Aggrieved** was represented by:

Mr. Howard Duncan	-	Industrial Relations Consultant
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In attendance:

Ms. Julette Taylor	-	Aggrieved worker
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SUBMISSIONS AND SITTINGS

The panel first selected to hear the dispute in accordance with section 8(2) of the Act, comprised:

Hon. Justice M. Cole Smith	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2)(c)(ii)
Mr. Fedrick Evans	-	Member, Section 8(2)(c)(iii)

Mrs. Chelsie Shellie-Vernon was later appointed to replace Mr. Evans.

At the first sitting held on March 18, 2021, it was noted that the Christian name of Ms. Taylor was wrongly spelt, and that it should be corrected to read '**Julette**' instead of '**Juliet**'. Counsel also raised objections to the Terms of Reference, as a consequence the Tribunal referred the matter back to the Ministry of Labour for consideration.

By letter dated October 28, 2021 the Ministry of Labour advised of an amendment to the Terms of Reference which read:

“To determine and settle the dispute between the National People’s Co-operative Bank of Jamaica Limited on the one hand, and Julette Taylor on the other hand, over the termination of her employment”

The parties were advised by letter dated May 5, 2022 that the Hon. Mrs. Justice Marjorie Cole-Smith had demitted office and that the dispute has been re-assigned to a panel consisting of **Mr. Donald Roberts, chairman; Mr. Errol Beckford and Mrs. Chelsie Shellie-Vernon.** Accordingly, the matter would begin *de novo* unless the parties, pursuant to section 8(4) of the Labour Relations and Industrial Disputes Act, indicated to the Tribunal in writing their willingness to continue as if the proceedings were not interrupted.

On May 5 and May 11, 2022 respectively, Messrs. Duncan and Gittens responded to confirm their willingness to have the sittings continue under the new chairman.

The Tribunal held a total of twelve (12) sittings covering the period March 18, 2021 to October 4, 2022, and carefully examined the eighteen (18) exhibits tendered by the parties.

BACKGROUND TO THE DISPUTE

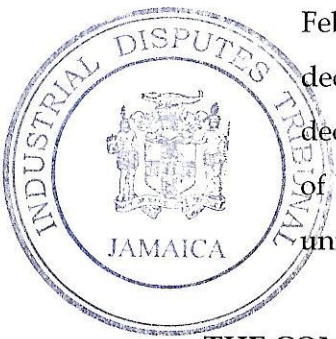
1. The National People’s Co-operative Bank of Jamaica (hereinafter referred to as “the Bank”) is regarded as a ‘community bank’ for rural agricultural and community development in Jamaica, providing a range of services to micro, small and medium-sized enterprises. Ms. Julette Taylor was employed to the Bank since February 2007 and at the time of her termination held the position of Senior Parish Manager, Old Harbour Branch.
2. Ms. Taylor was written to on July 14, 2016 by Mr. Milton E. Collins, Assistant General Manager, Human Resource & Administration, informing her that she should proceed on fourteen (14) days’ vacation leave effective July 18, 2016, pending the conclusion of an audit report.



3. On August 5, 2016, Mr. Collins wrote to Ms. Taylor temporarily assigning her to the Debt Collection Department at the Bank's head office, without any change to her remuneration and appropriately compensating her for travelling.
4. On September 1, 2016 Ms. Taylor was again written to by Mr. Collins indicating that *"several notable breaches with the disbursement of loans"* were identified from an assessment of a sample of loans from the Old Harbour Branch. She was asked to provide an explanation to twenty-one (21) listed breaches contained in the letter, and *"to attend a hearing in keeping with the Labour Relations Code."* The letter further advised of her *"right to be accompanied at the hearing by a work colleague or your attorney"*
5. Ms. Taylor provided a detailed reply to the allegations by way of a letter to the Bank dated September 9, 2016.
6. An independent disciplinary panel was set up to *"hear and consider the involvement if any of Ms. Juliette Taylor in relation to the audit findings and to make recommendations to the NPCB's management."* The Panel handed in its report on December 22, 2016 and recommended her dismissal from the Bank.
7. Ms. Taylor's services were terminated with immediate effect by way of a letter dated February 14, 2017, signed by Mr. Collins. An appeal was lodged against the Bank's decision and as is apparent (whether or not an appeal hearing was held) the Bank's decision remained unchanged. The matter was subsequently referred to the Ministry of Labour & Social Security for conciliation, and as a result of the dispute remaining unresolved, was referred to the Industrial Disputes Tribunal for settlement.

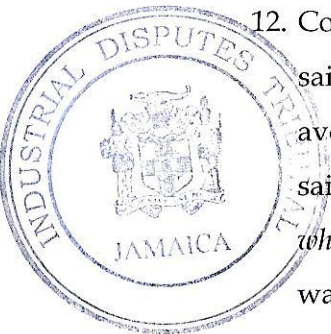
THE COMPANY'S CASE

8. The submission from the company is that on September 1, 2016, the Bank wrote to Ms. Taylor alleging twenty-one (21) breaches of the policy governing loans, and requested a response from her to the allegations. Ms. Taylor provided a detailed response to the allegations in a letter dated September 9, 2016.
9. An independent panel was constituted to hear and determine the matter and make recommendations to the Bank on the allegations raised. The panel held sittings on



October 20 and 27, 2016. Arising from the panel's recommendation Ms. Taylor was dismissed by the Bank by way of a letter dated February 14, 2017.

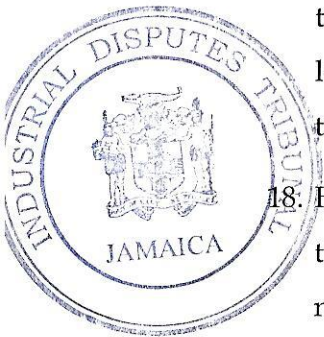
10. Mr. Howard Duncan contested the decision to terminate Ms. Taylor in an email dated February 20, 2017 to Mr. Collins, the Assistant General Manager, Human Resource and Administration, and requested that an appeal hearing be held. From the company's brief, it was stated that *"on or about February 11, 2020, the Human Resource Manager... Mr. Donovan Cunningham, referred the dispute to an independent appeal panel..."*
11. The company's sole witness was Miss Crystal Anderson, the acting Human Resource Manager. Mr. Gittens argued that although she was not involved in the dispute her testimony would be important *"...for the purpose in her capacity as the custodian of the records, especially the personnel records of the employer to identify and put the documents in evidence."*
12. Counsel in his pleadings pointed to section 22 of the Labour Relations Code, which he said *"provides the framework upon which the Tribunal must hang its decision..."* and avouched that in the opinion of the company, no breach of the Code had occurred. He said that the evidence before the Tribunal clearly shows in great detail *"the matters which gave rise to the disciplinary hearing..."*, and that at all material times the worker was given the opportunity to state her case, and she did.
13. He raised the concerns expressed repeatedly by Mr. Duncan of the multiple roles Mr. Collins played which might have compromised his fairness, but contended that Mr. Collins' interventions were merely to provide *"administrative smoothness to assist the smooth running of the process..."*, and that neither Mr. Collins nor the panel harboured any *animus* towards Ms. Taylor.
14. Mr. Gittens said that there is no evidence to suggest that Ms. Taylor or her legal representative expressed dissatisfaction with the hearing itself and that an examination of the notes of the disciplinary hearing will show no occasion in which *"her lawyer [was] being brow-beaten by anyone, being interrupted, outspoken or out-shouted by anyone."* Ms. Taylor's dismissal was justifiable and fair under the circumstances.



15. Counsel questioned the sincerity of Ms. Taylor in not being able to recall the appeal hearing which was held in Kingston, nor recall any of the names of the members of the appeal panel put to her. He said the letter of termination notified her of her right to an appeal and argued that *"nothing showed that Ms. Taylor did anything to pursue such a right."* The Tribunal should accept that the company did facilitate an appeal hearing.
16. Finally, counsel opined that Ms. Taylor did very little to mitigate her loss, and that it is *"beyond reasonable belief"* that with her qualification and experience she could not find a job with *"diligent effort in the financial sector."*

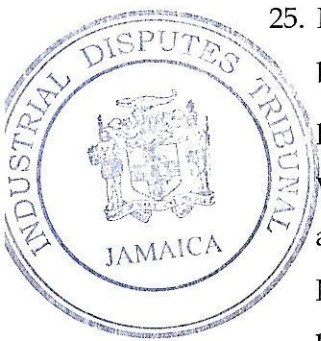
THE AGGRIEVED WORKER'S CASE

17. Mr. Duncan, in presenting the case on behalf of the aggrieved worker said that prior to the letter of September 1, 2016, Mr. Collins had re-assigned Ms. Taylor temporarily to the Debt Collections Department at the Head Office. He said the September 1, 2016 letter from Mr. Collins indicated certain notable 'breaches' from samples taken from the loan portfolio at the Old Harbour branch, but laid no 'charges'.



18. He said Ms. Taylor, in a letter dated September 9, 2016, had requested an extension of time to respond to the alleged breaches, and this was granted by Mr. Collins with the new deadline of September 30, 2016. Mr. Collins' letter also invited her to attend a disciplinary hearing.
19. Mr. Duncan asserted that no charges were ever proffered against Ms. Taylor and that prior to the hearing all she was asked for was an explanation regarding the twenty-one (21) alleged breaches arising from an audit report.
20. He questioned why the hearing was held prior to an investigation, whether it had been determined beforehand that there was a case for Ms. Taylor to answer and when would Ms. Taylor be provided with the time to prepare and defend herself against any charge(s) which may arise.
21. Mr. Duncan argued that Mr. Collins played multiple roles which showed a case of bias, and that the principles of natural justice and the Labour Relations Code were not observed. He further contended that the right to appeal was not afforded to Ms. Taylor.

22. Ms. Taylor was called in her own defence. She said she was employed at the Morant Bay branch of the Bank in February 2007, where her duties included enhancing the growth of both savings and the loan portfolio. The Bank later diversified its operations, and under her watch at the branch the loan portfolio increased by approximately 130 percent.
23. Ms. Taylor told the Tribunal the parish board had promoted her, having recognised the possibilities and potential in the growth of business in the parish, coupled with the extraordinary work that she had been doing. She said that the growth experienced by the Bank resulted in increasing workload which led to her requesting additional staff. Ms. Taylor said that during the two years prior to her termination, she made the request for additional staff through the Human Resource Manager, however, this did not happen.
24. She pointed to her performance review done in June 2013 in which her overall rating was 3.5 out of 4, and the comments made by her supervisor that *"...any support or assistance to make her job easier or enhance her professional/personal development will be greatly appreciated."*
25. Ms. Taylor outlined the procedure for loan approvals, which includes the applicant being provided with a check-list outlining the various documentation required for the processing of the loan. She said that once the conditions are satisfied the Loans Officer would forward the file to her as the Parish Manager. She informed the Tribunal that applications for loans of up to \$1.5 million could be approved by her as Parish Manager but would have to be ratified by the board. Loans in excess of the \$1.5 million has to be approved by the board.
26. Ms. Taylor averred that when she got the letter of September 1, 2016 setting out the alleged breaches, she did not receive a copy of the audit report. After her response to the allegations she was notified by Mr. Collins to attend a disciplinary hearing on October 12, 2016, but was not charged for any particular offence, and was not subject to any investigation prior to the hearing.
27. Ms. Taylor alleged that at the hearing she was not able *"to participate fully or fairly in the process."* She accused the panel of deciding from whom they wish to receive



information and denied her request to have the Acting General Manager present at the hearing. Her lawyer, Ms. Joan Thomas, had also indicated that the hearing was pre-mature.

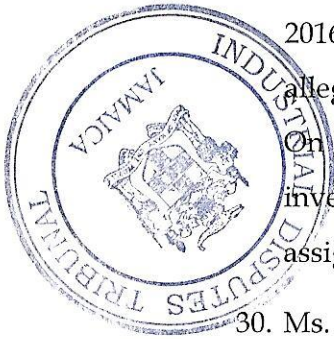
28. In her evidence-in-chief, it was Ms. Taylor's contention that her termination had to do with the rejection of a loan application presented to her by the then general manager and one of the National Directors of the Bank. Her disapproval of the loan was based on the fact that the capacity for the repayment was not satisfied, a decision which was subsequently ratified by the parish board. She was informed that the loan application was later sent to the Stony Hill branch where it was approved.

29. She said that a couple of months after that incident, which would have been early in 2016, she received a call from the same National Director of the bank in which she alleges he asked her to resign and was told that it was based on her rejecting the loan. On July 16, 2016 she was sent on vacation leave by Mr. Collins pending an investigation into alleged breaches and on her return on August 5, 2016 was re-assigned to the Debt Collection Department at the head office.

30. Ms. Taylor said she attended two sessions for the disciplinary hearing, and that although her legal representative called to say that she would be late at the second hearing, the panel nevertheless began the proceedings without her being present.

31. She contended that during the hearing she was asked questions by the chairman of the panel, the bank's auditor (Mrs. Yolanda Wint), Mr. Collins and Mrs. McClymont, along with other panel members. On several occasions, she said, both Mr. Collins and Ms. Wint responded on her behalf when she was asked questions, and at times interrupted her answers, despite the efforts of her representative to prevent this from happening.

32. She received a letter from Mr. Collins dated February 14, 2017 terminating her services. On February 20, 2017, her representative, Mr. Duncan, emailed Mr. Collins appealing her unjustifiable termination. She said "*reference was made to charges in paragraph 2*" of Mr. Collins' letter, but she did not receive any charges in writing from the Bank. A further letter dated April 12, 2017 was received by her from Mr. Collins seeking to clarify the reasons for her termination.



33. Ms. Taylor maintained that her termination was unjustifiable and expressed her wish to be reinstated in her job without any loss of benefits.

ISSUES

34. From the foregoing, the Tribunal determined the following as the issues for consideration:

- a. Whether the employer acted fairly in all circumstances having regard to the procedural rights governing the Labour Relations Code and the fundamental principles of natural justice
- b. Whether the 'multiple roles' of Mr. Collins raised the issue of apparent bias and rendered the termination of Ms. Taylor in breach of procedural fairness

EVIDENCE

35. It is necessary in examining the issues to ensure that we apply the relevant legal principles to the facts presented before the Tribunal. While this is always the applied standard required of us, we are obliged to take due consideration of that fact to avoid falling into error, particularly where, as in the case under consideration, the onus on the company to show proof that the dismissal was on all counts fair, was not satisfactorily discharged.
36. The letter of September 1, 2016 from Mr. Milton Collins, the Assistant General Manager, HR & Administration, to Ms. Taylor requested that she provides an explanation for certain breaches which occurred under her watch at the Old Harbour Branch. The full contents of the letter are disclosed for ease of reference below:

September 1, 2016

*Ms. Julette A. Taylor
Wakefield District
Buxton Town
Linstead, St. Catherine*

Dear Ms. Taylor:



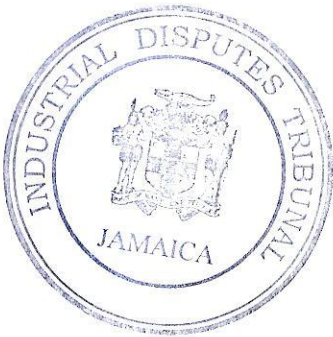
Arising from an assessment of a sample of the Old Harbour Branch loan portfolio, certain notable breaches were observed.

The table and supporting documents attached details the findings which reveal several notable breaches with the disbursement of loans.

You are required to provide explanations as to your actions in the matter as you will be asked to attend a hearing in keeping with the Labour Relations Code. You have 10 working days from September 6, 2016 in which to reply.

At the hearing the following Breaches will be discussed.

- No Evidence of Customer's ability to repay loan.
- Inadequate or lack of project appraisals.
- No evidence of the required equity.
- Inadequate or no action against delinquent customers
- Loans granted to Delinquent Customers.
- Granting of loans in excess of the Qualified amount/Repayment Period to Customer.
- Loan Granted contrary to Loan Officer's Recommendation.
- Customer changed use of Motor Vehicle subsequent to purchase
- Loan as Guarantee for stock credited from LASCO
- Lack of segregation of duty in the loan writing and approving process
- Waiver of Bailiff action requested
- False information on the loan disbursement checklist
- Moratorium Granted contrary to policy
- Incorrect loan protection fees
- Grace period incorrectly or not accounted for on the MBWIN System
- Purpose of some loans were stated as personal
- No evidence that site visit was conducted for some loans
- Incomplete loan application forms
- In-house valuation for accumulated loan amount in excess of \$500,000.00
- No evidence of Rada Registration
- Booking of a loan two years in excess of the approved Repayment Period



We will consider the documents as per the attachments, together with any evidence and submission from you, during the hearing.

You have the right to be accompanied at the hearing by a work colleague or your Attorney.

I would be grateful if you would provide explanations and indicate who will accompany you as your representative **no later than 12 noon, September 19, 2016** also, if you would like to submit any other information for consideration at the hearing, please let us have copies, **no later than 12 noon on September 20th, 2016**.

If you have any questions regarding any of the statement or other evidence, please direct them to the Assistant General Manager – Human Resource & Administration, Mr. M. E. Collins.

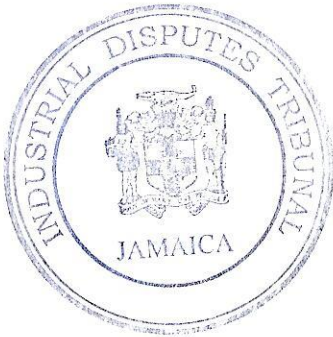
The meeting will be chaired by an independent party to be identified. Other persons present will include Mr. M. E. Collins – Assistant General Manager, Ms. Kemilee McClymont – Attorney-At-Law Representative, of the Audit Department and a note-taker.

If you wish clarification on any of the details in this letter or anything else around this subject, please do not hesitate to contact the Assistant General Manager, Human Resource & Administration at Mobile # 322 6269.

This matter is strictly confidential and should only be discussed with your representative.

Yours Sincerely

*[signed]
Milton E. Collins
Assistant General Manager HR & Administration
National People's Cooperative Bank of Jamaica Ltd."*



37. It is noteworthy that none of the documents cited in the letter, *"as per attachments"*, was submitted into evidence before the Tribunal. It would appear, however, that Ms. Taylor was provided with the attachments, from which she provided her response. The letter further does not indicate whether the alleged breaches were uncovered during the audit exercise, although a letter of July 14, 2016, from Mr. Collins, did indicate that the *"disbursement of a loan to a Customer at the Old Harbour.... [was] the subject of an investigation..."*, and that Ms. Taylor should proceed on vacation leave *"...pending conclusion of the Audit report and other matter / s."*
38. Ms. Taylor responded to what she describes as *"the allegations of negligence, mismanagement or lack of due diligence"* on her part. The letter, in part, makes the following observation:

"...I will seek to address each of the said breaches identified in turn. Further, I will rely on the following evidence:

NPCB Credit Policy and amendments;

NPCB Loan Brochures;

Client files and documents therein;

Performance Appraisal Reports.

No evidence of Customers' ability to repay loan

A limited review of the files identified in this category was conducted by me during the week of September 12, 2016, however, I was not able to do my own investigation on MBWIN. Since receiving your letter under reference, I was informed by Mr. T White that I am barred from accessing information from the Old Harbour Branch. Further to that, I was not allowed in the said premises of the Old Harbour Branch. Be that as it may, I have sought to address each of the loan application in turn. As you are aware the Credit Policy of the Bank has been amended over the years, therefore in looking/analyzing the alleged breaches identified on each file this would have to be done according to each individual Loan application."

39. Neither the Credit Policy, Loan Brochures nor the Disciplinary Policy were tendered into evidence, and so the Tribunal had to rely on (not necessarily to accept) the evidence provided by Ms. Taylor in her oral testimony, and the detailed report of December 22, 2016 from the Independent Panel which conducted the disciplinary hearing [See exhibit 4].
40. From the report of the independent panel the 'independent panelists' were identified as: Mrs. Sharon Brown, chairperson; Mrs. Shelly-Ann Beckford-Louden, note taker; and Mr. Lloyd Beadle. The representatives from both sides were clearly identified, namely: Ms. Yolanda Wint, Chief Investigating Officer; Mrs. Kemilee McClymont, Attorney-At-Law and Mr. Milton Collins, Assistant General Manager HR & Administration, all representing the Bank; and Ms. Joan Thomas, Attorney-At-Law for the aggrieved worker, and Ms. Juliette Taylor, the aggrieved worker. The signatures on page 37 of the report appear to be those of the three independent members.
41. All the correspondences surrounding the dismissal of Ms. Taylor emanated from Mr. Collins, the AGM, HR & Administration, including the letter of suspension pending the investigation, the letter of September 1, 2016 and the letter of termination of February 14, 2017.



ANALYSIS AND FINDINGS

Whether the employer acted fairly in all circumstances having regard to the procedural rights governing the Labour Relations Code and the fundamental principles of natural justice

42. The Labour Relations Code, under paragraph 22(i), states that in matters of discipline the arrangements in place should be “*fair and effective*”, that a disciplinary procedure should exist in writing and should –

“(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 representative;

(d) provide for a right of appeal, wherever practicable, to a level of management not previously involved;

(e) be simple and rapid in operation.”



43. Since the Code makes no express reference to the prior steps to be followed in ensuring that the process governing the disciplinary procedures is **fair**, we must turn for guidance to either the common law or other sources of authority on matters of labour and industrial relations.

44. In the first place, we have to remind ourselves of the guiding principles, laid out not by statute, but by the common law, which define the jurisdiction of the Tribunal in matter of this nature. It is generally the dictum of Rattray, P, in **Village Resorts Limited v. IDT** to which we turn for such guidance. In his judgement he had this to say about the role of the IDT:

“[That it is] vested with a jurisdiction relating to the settlement of 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’

45. 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. In the IDT's interpretation of the LRC, fairness required the attendance of the accused employee and his representative at the disciplinary hearing for its entire duration. If the submissions of learned Queen's Counsel were to be accepted, the principles of fairness established by the common law would hold sway over the decisions of the IDT. With all due respect, that would be a quantum leap backwards into a time and space that the new employment law regime made a decisive break with."

[page 41]

44. Therefore, in reviewing the case we need to make it clear that we are neither an appellate nor review body to determine whether or not the management made the right decision in terminating the services of Ms. Taylor, but rather to act within our original jurisdiction as a 'finder of fact.'
45. The letter of September 1, 2016 purports to open an investigation by asking Ms. Taylor to provide explanations as to her actions regarding *"several notable breaches with the disbursement of loans."* It is critical for an investigation into potential misconduct to take place prior to the employer deciding whether or not disciplinary charges should be laid against the employee. In the United Kingdom, the ACAS Guide, which is somewhat similar to our Code, clearly states, under the heading: 'Discipline and Grievance at Work', that *"where the facts are in dispute, no disciplinary penalty is imposed until the case has been carefully investigated, and there is a reasonably held belief that the employee committed the act in question."*¹
46. We therefore must scrutinise the Bank's action to determine whether the decision to terminate Ms. Taylor was reached without the elementary rules of natural justice being complied with. The Burchell Test provides safe harbour for our consideration of the unjustifiability or otherwise of such an action; that is: (a) whether the Bank actually believed Ms. Taylor was guilty of misconduct; (b) whether the Bank had reasonable grounds on which to base that belief; and (c) whether they had carried out as much investigation as was reasonable in the circumstances.
47. The question as to whether the Bank actually believed Ms. Taylor was guilty of misconduct cannot conceivably come before the completion of an investigation.

¹ See ACAS Guide, July 2020, page 13

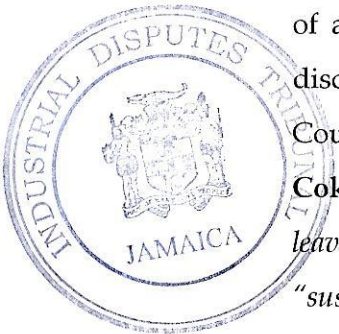
Simply put, the letter of September 1, 2016 betrayed the state of mind of the management beyond a reasonable suspicion of Ms. Taylor's guilt, to one which amounts to a certain belief in her guilt and therefore a requirement for her to answer to her actions before the completion of the report by Ms. Yolanda Wint, the Chief Investigative Officer. Ms. Wint, in fact, led the response to the alleged misconduct on behalf of the Bank at the first sitting of the disciplinary panel on October 20, 2016.

48. In the instant case, the letter, seemingly part of an investigative process, requested from her explanations as to her actions regarding certain matters under her portfolio. In the same breath, indeed, the same sentence, Ms. Taylor was told that she "will be asked to attend a hearing..." on the matter, and of her right to be represented [Tribunal's emphasis]. It also named the members of the independent panel, with the exception of the chairperson.

49. Given the plain meaning of the term, the use of the word "*will*" rather than "*may*" is determinative. A letter inviting Ms. Taylor to participate in an investigation should clearly be separate and distinct from the letter alleging misconduct and inviting her to attend a hearing. To conflate the two is an egregious wrong, which has clearly prejudiced Ms. Taylor's chance to a fair hearing.

50. From the evidence, Ms. Taylor was also sent on vacation leave pending the completion of an audit. The granting of vacation leave in the obvious circumstance where a disciplinary or potential disciplinary matter is at hand, has been frowned upon by the Court. Justice Jones, in his judgement in the matter: **Lackston Robinson v. Daisy Coke, et. al.**, ruled that "*...there can be no lawful grant of leave without an application for leave. A grant of leave must mean there was a prior application for leave.*" He noted that "*suspension for disciplinary reasons and vacation leave are horses of a different colour.*" No evidence was led to suggest that Ms. Taylor had applied for her vacation leave.

51. In the letter of dismissal of February 14, 2017, Mr. Collins had informed Ms. Taylor of her right to appeal the dismissal within seven (7) working days. We are satisfied that the requirements of section 22(i)(d) of the Code was met. We are equally satisfied that the right of appeal was acted upon within the timeline outlined in Mr. Collin's letter, by way of an email to him from Mr. Duncan, dated February 20, 2017.



52. Beyond the hint in Counsel's brief that steps were being taken to hold an appeal hearing, the Tribunal was left bereft of any evidence to conclude one way or another whether in fact this was held. The findings, however, would have no material impact on the decision of the Tribunal.

53. The LRIDA and the Code mandate that an employer, even where he has reasonable cause to dismiss an employee, should nevertheless implement and scrupulously follow procedures adhering to natural justice². The employer therefore fell into error in the construct of the September 1, 2016 letter which represented both an investigative process and an attempt to lay out the charges against Ms. Taylor.

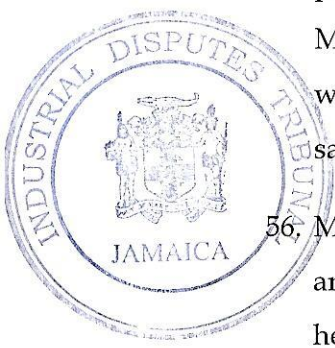
54. On the evidence, the unlawful granting of vacation leave, and the presumption that a *prima facie* case against Ms. Taylor had been made out before the completion of the investigation, caused the disciplinary process to be fatally flawed, as the employer had unreasonably failed to follow a fair procedure, resulting in a clear breach of the principles of fairness established by case law.

Whether the 'multiple roles' of Mr. Collins raise the issue of apparent bias and render the termination of Ms. Taylor in breach of procedural fairness

55. Mr. Collins, at the time of the dismissal, was the Bank's Assistant General Manager, HR & Administration. He was the one who wrote to Ms. Taylor on July 14, 2016 advising her to proceed on vacation leave based on an investigation into matters pertinent to her branch. On September 1, 2016, Mr. Collins signed the letter to Ms. Taylor which requested 'explanations for her actions' in respect to certain matters, while at the same time advising her that "*she will be asked to attend a hearing*" on the said matters.

56. Mr. Collins' involvement did not stop there as he attended the hearings of October 20 and 27, 2016, and signed the letter of termination. There is no evidence to suggest that he was part of the investigation.

² See 2016 article on "Natural Justice: The bane of Employer's existence", by Trudy-Ann Dixon-Firth, Dunn Cox. Retrieved from: <https://dunncox.com/articles/natural-justice-bane-employers-existence/>

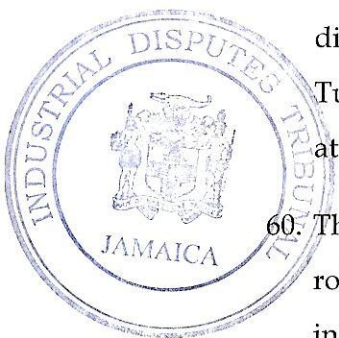


57. It was Ms. Taylor's evidence that Mr. Collins not only questioned her during the hearing, but intervened to answer questions on her behalf. These were damning accusations which went unchallenged by the Bank's counsel. To be clear, there was neither evidence nor allegation that Mr. Collins was biased towards Ms. Taylor. We accept Counsel's pleadings that neither Mr. Collins, nor members of the independent panel harboured any *animus* towards Ms. Taylor. Counsel's contention was that Mr. Collins' role was to provide "*administrative smoothness*" to the proceedings. The allegation of bias is rooted in the multiple role of Mr. Collins and its likely impact on the decision to terminate Ms. Taylor.

58. In reviewing the evidence, the Tribunal was guided by the judgements in two previous court cases, namely, *Bank of Jamaica v. Industrial Disputes Tribunal and Bustamante Industrial Trade Union* [[2017] JMSC Civ 173 and *National Commercial Bank Jamaica Ltd v. The Industrial Disputes Tribunal and Peter Jennings* [2016] JMCA Civ 24. The issue was for us to determine, with reference to facts and circumstances of the case at bar, whether Mr. Collins in his multiple roles, breached one of the cardinal rules of natural justice, which asserts that '**no man should be a judge in his own cause**'.

59. We do not believe that the judgements in both cases however are on all fours with the present case. In the **Bank of Jamaica's** case, the multiple role of Mrs. Novelette Panton, Senior Director of Human Resources, which led to the dismissal of Mr. Frank Johnson, included her being part of the investigation, recommending that a hearing be held, wrote the charges and presided at the disciplinary hearing. A similar situation arose in the **Peter Jennings'** case where Mrs. Tugwell-Henry of NCB, signed the letter containing the charges as well as presiding at the hearing.

60. The Tribunal had little by way of evidence to substantiate the extent of Mr. Collins' role at the two hearing sessions. The minutes of the hearings, which were tendered into evidence, provided no proof of Mr. Collins' unwarranted interference in the proceedings. We find it difficult to accept Ms. Taylor's testimony that her signing of the minutes was to indicate her mere presence, where this would normally be done at



the beginning of a meeting, and unattached to the actual minutes. Her signature, along with that of her representative, appeared at the end of the minutes, suggesting that an opportunity would have been provided for them to read and endorse, if accurate. We would at least expect no less from counsel.

61. The evidence before us is that Mr. Collins did not preside at the hearing, and in fact was not a member of the independent panel and did not sign the final report. For those reasons the Tribunal respectfully cannot conclude that his multiple roles in the circumstances was perverse.

DECISION

62. It is clear from the findings that while the Bank may have had probable cause to base its belief that Ms. Taylor had questions to answer regarding her stewardship at the Branch, the procedure adopted to effect discipline denied her the right to natural justice. At that point, the defects in natural justice could not have been cured by an appeal process.
63. The fact is, like any other worker, Ms. Taylor has a right not to be unfairly dismissed by her employer. The conflation of the investigative process with what is tantamount to 'charges' in the September 1, 2016 letter had *a fortiori* betrayed a prejudice, and established no reasonable grounds through an investigative process on which to initiate a disciplinary hearing.
64. On the facts of the case the Tribunal therefore finds that Ms. Taylor was unjustifiable dismissed.
65. In determining the amount of compensation to be paid to Ms. Taylor, the Tribunal took into account her efforts in trying to mitigate her losses arising from the unjustifiable dismissal, her age, and the circumstances surrounding her dismissal.
66. In so doing, the Tribunal, consistent with section 12(5)(c)(ii) and (iii) of the Labour Relations and Industrial Disputes Act, order the following:



- a. The reinstatement of Ms. Juliette Taylor by November 30, 2022, with full pay and all other benefits and entitlements, including vacation leave, and the restoration of her pension status.
- b. In the event that Ms. Juliette Taylor is not reinstated by November 30, 2022, she should be paid the amount of twelve million dollars (\$12,000,000.00) as compensation for her unjustifiable dismissal.

DATED THIS 8th DAY OF NOVEMBER, 2022



Mr. Donald Roberts, CD, JP
Chairman

Mr. Errol Beckford
Member

Mrs. Chelsie Shellie-Vernon
Member

Witness:

Mr. Mario Ling
Acting Secretary of the Division