

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: 50/2019

SETTLEMENT OF DISPUTE

BETWEEN

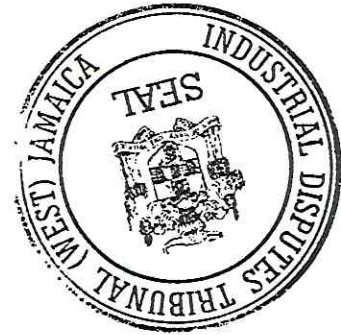
NORTH-EAST REGIONAL HEALTH AUTHORITY

AND

RENFORD SMITH

AND THE

AWARD



I.D.T. DIVISION

MS. SADEERA SHAW	-	CHAIRMAN
MR. RODCLIFFE ROBERTSON	-	MEMBER
MR. KEITH FAGAN	-	MEMBER

FEBRUARY 20, 2023

IDT 50/2019

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF AN INDUSTRIAL DISPUTE

BETWEEN

**NORTH-EAST REGIONAL HEALTH AUTHORITY
(THE COMPANY)**

AND

**RENFORD SMITH
(THE AGGRIEVED WORKER)**



REFERENCE:

By letter dated December 20, 2019 the Honourable Minister of Labour and Social Security pursuant to Section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute describe therein:-

The Terms of Reference were as follows:

"To determine and settle the dispute between North-East Regional Health Authority on the one hand and National Workers Union on the other hand over the termination of the employment of Mr. Renford Smith".

DIVISION

The division of the Tribunal which was selected in accordance with section 8(2)(c) of the Act and which dealt with the matter comprised:

Ms Sadeera Shaw	-	Chairman
Mr. Rodcliffe Robertson	-	Member, Section 8(2)(c)(ii)
Mr. Keith Fagan	-	Member, Section 8(2)(c)(iii)

REPRESENTATIVES OF THE PARTIES:

The **Authority** was represented by:

Mrs. Natalie Irwin-Carby	-	Legal Officer
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Also in attendance:

Ms. Nyekah Adams	-	Director of Human Resources Management
Miss. Sejae Burey	-	Manager, IR & Staff Welfare

The **Aggrieved Worker** was represented by:

Mr. Alexi Hull	-	Negotiating Officer National Workers Union
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In attendance:

Mr. Renford Smith	-	Aggrieved Worker
Mr. Alexander Nicholson	-	Negotiating Officer National Workers Union

SUBMISSIONS AND SITTINGS

Briefs were submitted by both parties who made written and oral submissions during eleven (11) sittings from March 9, 2021, and November 8, 2021.



BACKGROUND TO THE DISPUTE:

1. The North-East Regional Health Authority (NERHA), *hereinafter referred to as "the Authority"*, is one of four (4) semi-autonomous bodies known as Regional Health Authorities formed out of the National Health Services Act of 1997 and the Government of Jamaica's Health Reform Programme. The Authority is under the portfolio of the Ministry of Health and Wellness and is governed by a Board of Management and headed by a Regional Director. The Authority operates a decentralized management structure to facilitate the provision of health care services in an acceptable standard to the people of St. Ann, St. Mary and Portland.
2. The National Worker's Union (NWU), *hereinafter referred to as "the Union"*, is a trade union duly registered under the Trade Union Act having its registered office at 130-132 East Street, Kingston.
3. Mr. Renford Smith, *hereinafter referred to as "the Aggrieved Worker"*, was seconded from the Ministry of Education where he worked at Islington High School to the Authority for a period of two (2) years. He was employed at the Authority in the capacity Maintenance Supervisor effective December 2, 2013. At the end of his secondment, the Aggrieved Worker was offered a six (6) months contract at the Authority. He accepted the offer and resigned from his substantive post at Islington High School. At the end of the contract period, the Aggrieved Worker was informed that his contract of employment would not be renewed.
4. On July 7, 2016, the Union wrote to the Authority enquiring about the status of the Aggrieved Worker's employment. The Union then sought the assistance and intervention of the Ministry of Labour and Social Security. No resolution was reached, and consequently the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.



THE AUTHORITY'S CASE



5. In presenting its case, the Authority, through its representative Mrs. Natalie Irwin-Carby, called three (3) witnesses. The first witness was Ms. Nyekah Adams, Director of Human Resources Management and Industrial Relations, who testified that she has been with the Authority for thirteen (13) years in various positions but has been in her present position since 2018. She gave evidence that the Aggrieved Worker responded to an advertisement in the newspaper for the position of Maintenance Supervisor at the Annotto Bay Hospital located in the parish of St. Mary. It is her evidence that an interview was conducted and the Aggrieved Worker was the successful candidate for the said position.
6. She stated that the former Director of Human Resources and Industrial Relations, Mrs. Gloria Fenton-Rose, wrote to the Ministry of Education (hereinafter referred to as "MOE") where the Aggrieved Worker was employed as a teacher at the Islington High School, to advise them of his success in the interview and requested that he be seconded to the Authority for two (2) years. The MOE responded by letter dated November 14, 2013 with an approval of a one (1) year secondment for the period December 1, 2013-November 30, 2014. It is her evidence that as a result of being seconded, the Aggrieved Worker was employed to the Authority as a Maintenance Supervisor effective December 2, 2013.
7. Ms. Adams testified that close to the end of the one (1) year contract period, the Aggrieved Worker expressed his desire in writing to MOE and Mrs. Fenton-Rose at the Authority for an additional year of secondment in order to continue working for the Authority. She gave evidence that Mrs. Fenton-Rose wrote to the MOE requesting same by letter dated November 24, 2014. She further gave evidence that the additional one (1) year period was granted by the MOE by letter dated December 23, 2014 for the period December 1, 2014 - November 30, 2015. She stated that in the approval letter from the MOE, it indicated that it was the final approval and no further extension would be granted.
8. She stated that towards the end of the second contract period, the Aggrieved Worker wrote to the Authority where he requested a contract renewal. It is her evidence that the Aggrieved Worker completed the maximum period of secondment, being two (2) years,

from the MOE. It is also her evidence that Mrs. Fenton-Rose called a meeting with the Aggrieved Worker to discuss same. She testified that in the meeting, the Aggrieved Worker was again informed that the position of Maintenance Supervisor at the Annotto Bay Hospital was not an established post and that any further employment would be on a temporary basis as it has always operated and continues to. She stated that the Aggrieved Worker was informed that the Authority would offer him a six (6) months contract effective December 1, 2015- May 31, 2016 and that it was going to be his final employment offer from the Authority. The outcome of the meeting was further explained in letter dated November 11, 2015.

9. It is her evidence that a performance evaluation was conducted for the six (6) months contract period and the report was placed in the Aggrieved Worker's file. She testified that there wasn't any information that precluded the Aggrieved Worker's contract being extended. She further testified that there were two (2) factors which were considered. The first factor was the contract period was six (6) months. The second factor was the comments on the said evaluation. She stated that although the evaluation stated that there was improvement, the report didn't state that the improvement was adequate to support an extension. She further stated that one would need to look at the other evaluations conducted and not just the one pertaining to the six (6) months contract period. In addition, the grades given on the six (6) months evaluation were mostly Bs, Cs and Ds which were not attractive scores. Ms. Adams later agreed that one of the reasons for the non-renewal of the Aggrieved Worker's contract was that the employment contract came to a natural end.
10. She explained the difference between a post and a position by stating that a post is what the Ministry of Finance and Planning approved for the Regional Health Authority. While a position is what the Regional Health Authority, within its remit, require based on its operations and Maintenance Supervisor is one of such positions. Ms. Adams gave evidence that Circular 21 from the Ministry of Finance and Planning was not applicable because the Aggrieved Worker was not employed for a period over six (6) months and Maintenance Supervisor was not a vacant post.



11. She testified that the Aggrieved Worker didn't receive a letter informing him that his contract had come to an end and that the Authority was not interested in extending such. She gave evidence that upon offering the six (6) months contract, the Aggrieved Worker was informed that the offer was a temporary one. She stated that it was not the norm for the Authority to draft and issue such a letter. The contract ran its natural course and came to an end.

12. The Authority's second witness was Ms. Arlene Mighty who testified that she is currently the Acting Chief Executive Officer (CEO) for the Port Maria Hospital. She gave evidence that at the time of the Aggrieved Worker's employment with the Authority, she was the Chief Executive Officer (CEO) at the Annotto Bay Hospital from 2009-2014. She stated that her duties consisted of her being in charge of the day-to-day operations of the hospital. It is her evidence that the Aggrieved Worker was sometimes cooperative and other times adversarial which led to a few confrontations and arguments about work to be done. It is also her evidence that she had meetings with the Aggrieved Worker to discuss same and it was documented in his performance evaluation. Ms. Mighty testified that although she respected that a person may have an expectation of contract renewal; a contract is a contract.

13. The Authority's third witness was Ms. Marsha Lee who testified that she has been working for the Authority for twenty-five (25) years. She gave evidence that she currently holds the position of Chief Executive Officer (CEO) of the Annotto Bay Hospital. She stated that she knew the Aggrieved Worker as she worked with him at the said hospital. She further stated that she held the position of Human Resources Officer at the time when she worked with the Aggrieved Worker. It is her evidence that the Aggrieved Worker reported to the CEO and the Maintenance Director for the Region.

14. She described the Aggrieved Worker's employment history by testifying that he was on a two (2) years secondment from the Ministry of Education. She further testified that he (the Aggrieved Worker) was evaluated each year. After the period of secondment, he had to decide whether he was going back to the MOE or continue working for the Authority. It is her evidence that the Aggrieved Worker accepted a six (6) months contract with the



Authority. She gave evidence that the Aggrieved Worker was granted a six (6) months because there were gaps in his performance so he was given the six (6) months to improve. She later gave evidence that it was an end of contract which caused Mr. Smith's separation from the Authority. She further gave evidence that the Aggrieved Worker's separation from the Authority can be considered, to some extent, natural attrition.



THE AUTHORITY'S CONTENTIONS

The Authority contends that:

- a. Due process was observed as each secondment that was granted was agreed by both the Authority and the MOE;
- b. The six (6) months contract offered by the Authority and accepted by the Aggrieved Worker was a fixed term contract clearly stipulating a start and an end date. This contract was determined by the effluxion of time;
- c. The position of Maintenance Supervisor was not an established post by the Ministry of Finance and Public Service; and
- d. The Authority asked that the Tribunal finds that the Aggrieved Worker was not unjustifiably terminated and no consideration to be given to reinstatement.

THE AGGRIEVED WORKER'S CASE

15. The Aggrieved Worker testified in his examination-in-chief that he was employed to the MOE up until the end of 2013. He further testified that his employment was based at the Islington High School where he worked in Machine Shop Practice and Welding for eight (8) years. He gave evidence that he studied maintenance so when the position of Maintenance Supervisor at the Authority was advertised, he applied for it and was successful. He sought and obtained a one-year secondment from his substantive employer, the MOE, to assume the position at the Authority.

- c. Even though the position of Maintenance Supervisor is not a post on the establishment of the Annotto Bay Hospital, it does not negate the fact that the position exists;
- d. The Authority breached Circular 21 dated September 9, 2013 which were sent from the Ministry of Finance and Planning to Permanent Secretaries, Heads of Departments/Agencies and Chief Executive Officers;
- e. The procedural errors of the Authority made its decision to terminate his employment unfair and unjustified; and
- f. He asked that the Tribunal find that his separation was unfair and that he be reinstated to his post as of May 31, 2016. In addition, he asked that the Tribunal compensate him an amount equal to salaries and allowances that were lost from the period of his separation to the date of the award. This amount should reflect any incremental or negotiated increases applied in the public sector.

THE TRIBUNAL'S RESPONSE AND FINDINGS

- 19. The Tribunal, after careful consideration of the evidence presented, must determine how the Aggrieved Worker's employment with the Authority ended.
- 20. The evidence provided to the tribunal confirmed that Mr. Smith was seconded from the MOE to the Authority for an initial period of one (1) year which was extended for an additional year. The evidence also showed that the maximum period for secondment was two (2) years which was evident in Mr. Smith's final secondment approval letter dated December 23, 2014 from the MOE where it stated:

"Please be advised that no further extension will be granted at the expiration of this period. Therefore, Mr. Smith will either resign or return to his substantive post."



21. A few months before the expiration of his contract and the end of his secondment, Mr. Smith requested further employment with the Authority. The Tribunal accepts that a meeting was held with the Aggrieved Worker to discuss the matter and the outcome of the said meeting was expressed in letter dated November 11, 2015 (Exhibit 13) where it stated:

"1) Your secondment from Ministry of Education ends on November 30, 2015

2) You will be offered temporary employment for a period of six (6) months commencing on date to be agreed on between the facility and yourself.

3) Your performance will be reviewed at the end of this period and a decision made regarding the continuation of your employment with the North-East Regional Health Authority (NERHA).

4) The position of Maintenance Supervisor at the Annotto Bay Hospital is temporary, therefore, appointment at an early date will not be feasible."

22. The Tribunal accepts the evidence by both parties that Mr. Smith agreed to the terms of the fixed term offer of six (6) months in which he signed an employment contract dated November 30, 2015 (Exhibit 9) where it stated that the employment was temporary and for a fixed period.

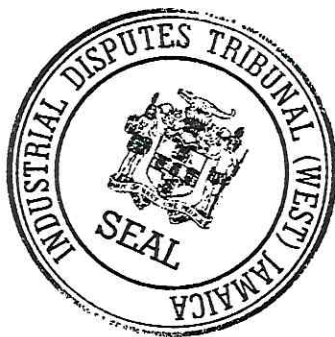
23. It was submitted by the Aggrieved Worker that he met the requirement for the three (3) performance evaluations conducted and that there was no disciplinary action brought against him during his tenure with the Authority. While the Tribunal notes that the Aggrieved Worker may have met the requirement, the Tribunal also notes that it's the Authority's position that they were still dissatisfied with certain aspects of his performance and a recommendation was made that no further employment be considered. After further discussions, the Authority offered Mr. Smith a six (6) months contract. There is no evidence that Mr. Smith was terminated for misconduct or poor performance. As such, section 21 of the Labour Relations Code does not apply.

24. The Tribunal finds that the Aggrieved Worker was aware of his employment status at every stage during his tenure. Specifically, he was aware that he was on a six (6) months contract



with an end date of May 31, 2016 as stated in his employment contract. The employment contract also stated that the employment was a temporary one.

25. The Tribunal also finds that the Aggrieved Worker was aware that the position of Maintenance Supervisor was not an established post approved by the Ministry of Finance and Planning. Thus, he was aware that the position was of a contractual basis. No evidence was provided to substantiate an automatic renewal of his employment contract nor the expectation of such.
26. It is the Tribunal's position that Circular 21 (Exhibit 14) is not applicable as 'separation' in item 4 of the document specifically referred to redundancies. No evidence was provided to the Tribunal that this matter was one of redundancy. As such, the Tribunal does not accept that there were procedural errors that made the termination of the Aggrieved Worker's employment unfair. The Tribunal finds that the Aggrieved Worker employment contract came to a natural end and the Authority informed him of their decision not to renew the said contract.
27. The Tribunal concludes that based on the evidence provided, Mr. Smith was not unjustifiably dismissed and as such no order is made for reinstatement.



AWARD

The Tribunal's Award is that the termination of Mr. Renford Smith's employment was justifiable.

DATED THIS 20TH DAY OF FEBRUARY 2023



Sadeera Shaw
Chairman

Rodcliffe Robertson
Member

Keith Fagan
Member

Witness

Jody-Ann Lindo (Ms)
Secretary to the Division