

**INDUSTRIAL DISPUTES TRIBUNAL**  
**Dispute No: IDT 22/2018**

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**SETTLEMENT OF DISPUTE**

**BETWEEN**

**SOS FOODS LIMITED**

**AND**

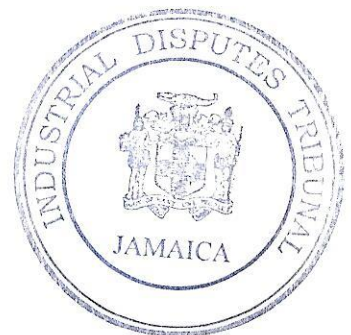
**DENISE ALLEN & TANA-LISA SMITH**

***AWARD***

**I.D.T. DIVISION**

<b>MR. ERROL MILLER, JP</b>	<b>- CHAIRMAN</b>
<b>MR. ERROL BECKFORD</b>	<b>- MEMBER</b>
<b>MRS. CHELSIE SHELLIE-VERNON-</b>	<b>MEMBER</b>

**OCTOBER 26, 2022**



**IDT22/2018**

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**SOS FOODS LIMITED  
(THE COMPANY)**

**AND**

**DENISE ALLEN & TANA-LISA SMITH  
(AGGRIEVED WORKERS)**

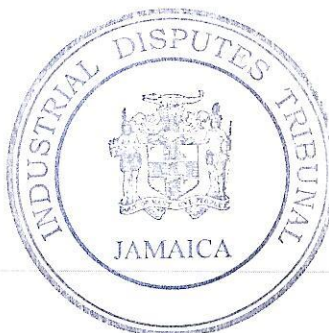
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**REFERENCE:**

By letter dated June 1, 2018, the Honourable Minister of Labour and Social Security in accordance with 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, the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

***"To determine and settle the dispute between SOS Foods Limited on the one hand and Denise Allen and Tana-Lisa Smith on the other hand over the termination of their employment."***



### **DIVISION:**

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

Mr. Errol Miller, 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. Ravil Golding	-	Attorney-at-Law
Mr. Gordon Woodstock	-	Industrial Relations Consultant
Mr. Orrett Stephenson	-	Managing Director
Ms. Moya Stephenson	-	General Manager

The **Aggrieved Workers** was represented by:

Mr. Howard Duncan	-	Industrial Relations Consultant
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### **In attendance:**

Ms. Tana-Lisa Smith	-	Aggrieved Worker
Ms. Denise Allen	-	Aggrieved Worker



### **SUBMISSIONS AND SITTINGS:**

Earlier in the matter, the division selected to hear the dispute comprised:

Mr. Charles Jones, C.D, J.P	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2) (c) (ii)
Mr. D. Trevor McNish	-	Member, Section 8(2) (c) (iii)

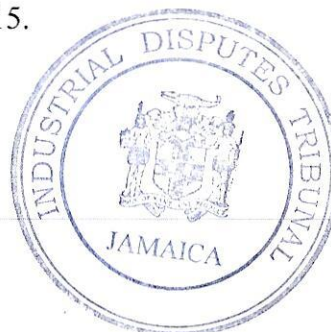
Consequent on the expiration of the contract of Mr. Charles Jones, the death of Mr. D. Trevor McNish and other changes, Mr. Errol Miller, was selected to chair the division and Mrs. Chelsie Shellie-Vernon was selected as a Member alongside Mr. Errol Beckford.

In light of the change to the original division of the Tribunal, the matter begun *de novo* in accordance with Section 8(4) of the Act.

Briefs were submitted by both parties and oral submissions made during fourteen (14) sittings held between February 2, 2021 and July 18, 2022.

### **BACKGROUND:**

1. SOS Foods Limited is a Limited Liability Company located at 23-25 Collins Green Avenue, Kingston 5. It is involved in the manufacturing and distribution of non-alcoholic beverages which are sold to and consumed by the public at large. The products are subject to the inspection and quality control regime of the Jamaica Bureau of Standards and the Ministry of Health.
2. Ms. Tana-Lisa Smith and Ms. Denise Allen were both employed to SOS Foods Ltd. as Production Workers. Their jobs essentially entailed safe guarding the integrity of the products by ensuring that foreign matters did not enter and contaminate the said products. This includes washing and sanitizing the mixing tanks and pipes, changing and cleaning filters each morning and ensuring that the bottles are washed and sanitized as well as assisting in running the production line.
3. The Company suspended Ms. Smith and Ms. Allen during the period May 12, 2015 to June 17, 2015 due to what it described as the carelessness of the team responsible for the production of a particular product. By letters dated October 8, 2015, the Company dismissed Ms. Smith and Ms. Allen. The workers challenged the dismissals and following consultations with the Ministry of Labour and Social Security, the Company advised the workers to return to work on October 20, 2015. However, they did not return but required that the Company sign a Heads of Agreement which, among other things, demanded payment for the period during which they were suspended in May 2015 as well as payment for the period October 8 - 20, 2015.





4. The Company disagreed with the proposed Heads of Agreement. As a result, the parties were unable to resolve the matter which was subsequently referred to the Ministry of Labour and Social Security for conciliatory talks. They again failed to settle and as a result, the dispute was referred to the Industrial Disputes Tribunal with the following Terms. of Reference:

“To determine and settle the dispute between SOS Foods Limited on the one hand and Denise Allen and Tana-Lisa Smith on the other hand over the termination of their employment”.



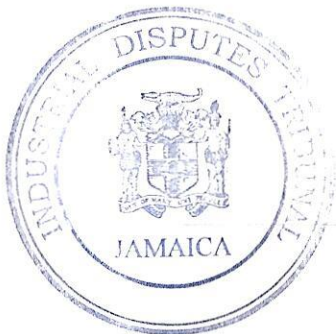
**THE COMPANY'S CASE:**

5. Mr. Orrett Stephenson, Managing Director for SOS Foods Limited, was the first of two witnesses. He testified that the Company is in the business of manufacturing and distributing syrups, wines and juices. He said that based on the guidelines provided by the Bureau of Standards and the Ministry of Health (the Authorities), the Company has to take the necessary precautions to prevent foreign objects from contaminating its products. This includes installing mesh over doors and windows to prevent and trap insects and rodents from entering. It also fitted micro and cloth filters between mixing, filling and holding tanks to remove foreign objects. He further testified that the Authorities carry out audits of the operations every three to six months. The persons who work on the production lines are therefore required to monitor the lines to ensure that the required quality control processes are observed.
6. Mr. Stephenson also testified that Ms. Tana-Lisa Smith and Ms. Denise Allen were employed to the Company and worked on the production lines. On October 8, 2015, four employees including Ms. Smith and Ms. Allen were dismissed for failure to observe proper quality control.
7. Subsequent to the dismissal of the workers, the Company received a letter dated October 13, 2015, from Mr. Howard Duncan, Industrial Relations Consultant who was engaged by Ms. Smith and Ms. Allen to represent them. Mr. Duncan's letter advised that the dismissals were without adherence to the principles of natural justice and the Labour

Relations Code and therefore requested an “**appeal hearing**” with a view to their reinstatement.

8. Mr. Stephenson testified the Company contacted the Ministry of Labour and Social Security and based on the instructions received, the decision was made to reinstate all four workers who were dismissed. He said that although the workers had breached their contracts of employment, the Company rescinded the letters of dismissal as it had not followed proper procedure in executing the dismissals. The workers were therefore advised of their reinstatement, without loss of pay, effective October 20, 2015.
9. Mr. Stephenson further testified that instead of Ms. Allen and Ms. Smith returning to work, Mr. Duncan submitted a “Heads of Agreement” (HOA) and advised that it must be agreed before the workers returned. Mr. Stephenson said that the HOA sought payment for the period May 12 to June 17, 2015, which was not in dispute and he said that the period October 8 - 20, 2015, was already paid for in lieu of notice when the workers received the dismissal letters. He said that the Company did not agree with the HOA being proposed and that those objections were conveyed to Mr. Duncan.
10. Ms. Moya Stephenson, General Manager, was the other witness for the Company. She testified that the four workers who were dismissed were recalled by similar letters dated October 14, 2015. She said that she had written directly to two of those workers, Ms. Natalie Robinson and Ms. Devonne Burgess, who returned to work as advised and who are currently employed to the Company. Similar letters dated October 14, 2015, were written to Ms. Allen and Ms. Smith through Mr. Duncan, advising him that the workers were being reinstated without loss of pay and that they should return to work on October 20, 2015. She explained that the letters were directed to Mr. Duncan and not personally to the workers, since Mr. Duncan advised the Company that he represented them. The text of the letters is as under:

**We are in receipt of your letter re Ms. Denise Allen/Ms. Tana-Lisa Smith. Based on consultations we have done re your letter to us, we have decided to reinstate Ms. Allen/Ms. Smith in her job without any loss of pay. Ms. Denise Allen/Ms. Tana-Lisa Smith must return to work on Tuesday October 20, 2015.**





**You may contact me at ..... (Telephone numbers given).**

11. Ms. Stephenson testified that Ms. Smith and Ms. Allen did not report for work as directed and that she did not hear from Mr. Duncan until October 22, 2015, when she received an email from him. The email pointed out that he had sent a previous email to another address and that he subsequently called the Company and was advised that the email address was not working. It is the Company's submission that its letter heads were pre-printed and that the email address may have been outdated.
12. Mr. Duncan's latter email contained a copy of the misdirected email dated October 15, 2015, in which he acknowledged receipt of the Company's letter dated October 14, 2015 and indicated that the Company's position to reinstate the workers was accepted but that **"before they are reinstated, the parties must first sign a Heads of Agreement to protect both interest."** The contents of the proposed HOA are as follows:

***"Heads of Agreement reached between SOS Foods Limited and Ms. Denise Allen and Ms. Tana-Lisa Smith on October 14, 2015.***

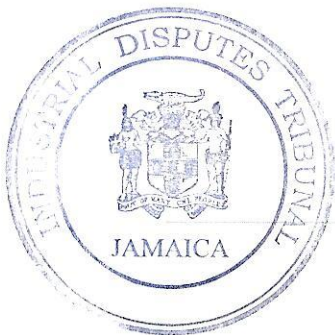
- 1. That both employees, Ms. Tana-Lisa Smith and Ms. Denise Allen will be reinstated on Tuesday October 20, 2015.***
- 2. That the employees will be paid for the period May 12, 2015 to June 17, 2015 and further for the period October 8, 2015 to October 20, 2015.***
- 3. That the letters of terminations is hereby withdrawn***
- 4. That the payments will be made on Tuesday October 20, 2015***
- 5. That there will be no victimization on either side."***

13. Miss Stephenson said that neither Ms. Smith nor Ms. Allen reported to work as directed on October 20, 2015, and as a result, she wrote to Mr. Duncan by letter dated November 3, 2015, outlining that:

***".....the Company has taken note that either person has not made contact with the intent of returning to work.***

***Your last correspondence to us indicated that before they are reinstated, the parties must sign a Heads of Agreement to protect both interest.***

***The draft terms contained in your email surely does not constitute a proper Heads of agreement, and as formulated represents the dictates of one side to the other.***



*We note further that your response was dated 22<sup>nd</sup> October 2015, two days after the specified date of reinstatement and six working days after our response to you.*

*.....  
You would have been aware that the total payment made to the claimants include three weeks' vacation and two weeks' pay in lue (sic) of notice which would have ended on October 22, 2015.*

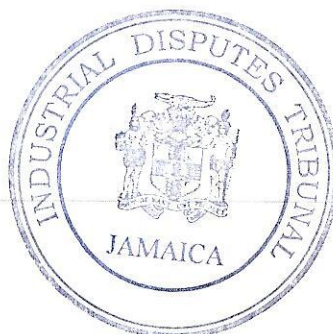
*.....  
The fact that they have not turned up for work on the 20<sup>th</sup> could be adjudged on abandonment of job."*

14. Mr. Duncan, in an email response dated November 5, 2015, said :

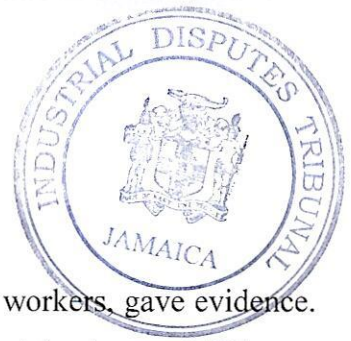
**"Please be advised that we object to your conclusion and will surely give until Monday November 9, 2015 to ensure that the heads of agreement is signed with the view for the workers to be in their jobs and without any loss of pay. Failing which the matter will be referred to the Ministry of Labour".**

15. Ms. Stephenson testified that she responded to Mr. Duncan's email by letter dated November 9, 2015. She indicated in her letter that the contents **"did not state categorically that the persons had abandoned their jobs"**. However **".... the fact that they had not turned out for work on the appointed date one could adjudge they do not any longer want their job"**. Miss Stephenson said that if Ms. Allen and Ms. Smith had turned up for work on October 20, 2015, she would have reinstated them. She said that the positions occupied by Allen and Ms. Smith were not specialized jobs, are currently not vacant and had to be filled to prevent disruptions in the Company's operations.

16. The Company's position is that, despite letters inviting the workers concerned to return to work in 2015, they have not done so to date. It therefore contends that they have abandoned their jobs and are not entitled to any compensation and neither are they entitled to be reinstated as other persons are employed in their stead.







### THE CASE OF THE AGGRIEVED EMPLOYEES:

17. Ms. Denise Allen and Ms. Tana-Lisa Smith, the two affected workers, gave evidence. Ms. Allen testified that she was employed to SOS Foods Ltd in August 2005 as a Production Worker. Her duties included sanitizing bottles, filling them with juice, corking them and then have them date stamped on the production line.
18. She said that at the end of the workday on October 8, 2015, she received a letter from her supervisor informing her that her employment was terminated due to foreign object found in the sprout juice. She said that four persons worked on the sprout juice line but only three were dismissed, that is Tana-Lisa Smith, Natalie Robinson and herself. Ms. Allen testified that she visited the Ministry of Labour and Social Security (MLSS) and reported her dismissal. She said the Ministry advised her that she was wrongfully dismissed. She subsequently reported the matter to Mr. Duncan, who she had engaged, together with Ms. Smith, to represent them.
19. Mr. Duncan advised her that the Company indicated that it would reinstate both herself and Ms. Smith. Ms. Allen said she returned to work on October 20, 2015 at about 7:20/7:30 a.m. and spoke to Miss Stephenson while she was loading a truck. She said Ms. Stephenson advised her that **“she didn’t get a response from Mr. Duncan and she is waiting on her lawyer”**. She then left the workplace, called Mr. Duncan and informed him of what had taken place. She said that they have been calling **“back and forth to find out what’s going on, up to today’s date we are still waiting to hear what’s going on, because I would gladly go back to my work, even now...”**
20. Ms. Tana-Lisa Smith, in her testimony, said that she was employed as a Production Worker to the Company on January 22, 2001. At the time it was only producing bag juice and syrup.
21. She said that she was on her day off on Thursday October 8, 2015 and was informed that some of her co-workers were dismissed. Upon arriving at work on the Friday, she received a letter of termination. Miss Smith said that both she and Ms. Allen went to the Ministry of Labour where they made a complaint and were advised that they were

wrongfully terminated. As a result, they engaged the services of Mr. Duncan to represent them.

22. She testified that they were subsequently informed by Mr. Duncan to return to work on October 20, 2015. On that day she reported to work at 8:00 a.m. since work would begin at 8:30 a.m. She said that she saw Ms. Stephenson outside loading the truck. **“Then I said to Moya that we are here”** and Ms. Stephenson said that she was not ready for them as she was waiting on her lawyer and that she will get back to Mr. Duncan. She said that Kevin Rankine otherwise known as Tall Man was there and he followed them to the gate. Both she and Ms. Allen left and advised Mr. Duncan of what had happened.
23. She further testified that since her dismissal, there has been no written or oral communication between herself and the Company. She also stated that she has not worked since being dismissed although she has sought employment and that she has been supported by her spouse and other family members. Ms. Smith’s desire is to get justice, which for her means to be reinstated.

#### **ANALYSIS BY THE TRIBUNAL:**

24. Having heard the evidence that the Company sought to reinstate the workers, the issues that the Tribunal must decide are:
- a. Did the workers return to work as they claimed; and, if not
  - b. Have they abandoned their jobs?
25. It is noted that there was a difference of opinion between the Company and the workers regarding the number of workers affected. What is not in dispute is that in addition to Ms. Smith and Ms. Allen, at least one other worker who was dismissed was advised to return to work and she did so. This worker was unrepresented unlike Ms. Smith and Ms. Allen who were represented by Mr. Duncan.
26. The undisputed evidence is that Mr. Duncan, having been advised by the Company that the workers would be reinstated without loss of pay and that they should return to work on October 20, 2015, responded that **“We accept your position to reinstate them. But**





**before they are reinstated, the parties must first sign a Heads of Agreement to protect both interest**". (our emphasis) This seem contrary to the adage of complying and then complaining.

27. The evidence of both workers are that they returned to work on October 20, 2015 as was directed and reported to Ms. Stephenson and that she advised them that the Company was still in consultation with its lawyers. They said further that after they left the Company's premises and they advised Mr. Duncan what had taken place. However, during cross examination, Ms. Stephenson denied that the workers reported to work on October 20, 2015, as instructed. She said that since giving them the letters of dismissal, she has never seen them back on the Company's compound and that the workers would normally report to their supervisors and not to her.
28. Both workers had submitted witness statements written in December 2021, the contents of which were identical. During cross examination, Ms. Smith said that after hearing the evidence of Mr. Stephenson, she decided to write the witness statement about returning to work on October 20, 2015.

**Q When did you write your statement?**

**A I wrote it on December, 2021, based on what Mr. Stephenson said that we didn't turn up for work**

29. They had written in the statements that they reported for work at 7:20 a.m. on October 20, 2015. Ms. Tana-Lisa Smith, under cross examination, had the following exchange:

**Q If you got there at SOS on the 20<sup>th</sup> of October, 2015, did you get there at seven o'clock in the morning?**

**A Me just tell yuh eight o'clock**

**Q Okay, so you got there at eight o'clock. So when you wrote in your statement that you got there at seven o'clock that was incorrect?**

**A (No response)**

**Q Was that correct, madam?**

**A It was eight o'clock, Sir, me nah remember the exact time, Sir.**

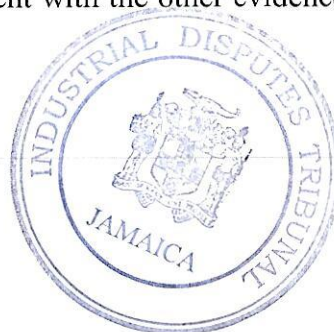
**Q No, no, I am asking you. You just told us the Panel (sic) that you got there at 8:00...**

**A If is 7:00 pon di suppen, a dat mi did write.**





30. When the suggestion was put to her during cross examination that it was not true that she reported to the Company on October 20, 2015, and that is why she was confused about the time, she became evasive. In general, Miss Smith displayed a negative attitude particularly towards the Company's Attorney and had to be cautioned several times by the Panel, including a request for her representative to speak with her.
31. During her cross examination, Ms. Allen said that when she and Ms. Smith reported for work on October 20, 2015, Kevin Rankine, an employee of SOS Foods Ltd. accompanied them to the gate. However, Mr. Rankine was never called as a witness to corroborate Ms. Allen's evidence and he was never mentioned in her statement. She claimed that it was the first time since the events of 2015, that she was mentioning that Kevin walked her to the gate. Her representative, Mr. Duncan, said he was hearing about Kevin Rankine for the first time and he gave an undertaking to make attempts to have Mr. Rankine appear as a witness. However, he never appeared before the Tribunal.
32. After the Company's initial letter to Mr. Duncan advising him that the letters of dismissal to the workers were withdrawn and that they should report for work on October 20, 2015 and having not seen the workers reporting, the Company again wrote to Mr. Duncan by letter dated November 3, 2015, indicating that in spite of its decision, **"...the Company has taken note that either person has not made contact with the intent of returning to work"**. The letter also stated that **"The necessary arrangements were made in expectation of the return of the two employees whose non-attendance has caused the company financial difficulties as to the chain for loss of earnings for the period October 8 – 20"**.
33. It seems unusual that in all the communication between the Company and Mr. Duncan, the workers' claim that they returned to work without being allowed to work was not raised as an issue. The evidence suggests that the workers' claim that they reported for work on October 20, 2015, only came to attention while they were appearing before the Tribunal. This seems quite inconsistent with the other evidence and Ms. Stephenson's denial that they reported for work.



34. On the one hand, Mr. Duncan's actions suggest that he wanted the Company to agree to the proposed Heads of Agreement before the workers returned and there was no evidence that he instructed the workers to report to the Company. His email dated October 15, 2015, stated that "... **before they are reinstated, the parties must first sign a Heads of Agreement to protect both interest**" In the following email dated October 22, 2015, he advised that "**I am awaiting your response to be able to sign the heads of agreement before they return to work**". This was reaffirmed in his email of November 5, 2015 "**.... ensure that the heads of agreement is signed with a view for the workers to be in their jobs and without any loss of pay**". On the other hand, the workers' testimony that they went back to work was unsupported and Mr. Rankine, who appears to be the only person who could substantiate their evidence, was not brought to attest to the accuracy of their claim. The evidence does not support the workers' claim that they went back to work on October 20, 2015, or anytime thereafter.

35. The Company's letter on November 3, 2015, indicated that "**The fact that they have not turned up for work on the 20<sup>th</sup> could be adjudged on abandonment of job.**" Mr. Duncan, in his emailed response dated November 5, 2015, referred to the Company's letter and said that he objected to "**...your conclusion that the workers abandoned their jobs**". In a response dated November 9, 2015, the Company said that the letter "**did not state categorically that the persons had abandoned their jobs..... the fact that they had not turned out to work on the appointed date one could adjudge they do not any longer want their jobs**". When asked in cross examination if she was accusing them of abandoning their jobs, Miss Stephenson said "**But if they didn't turn up, they have abandoned it.**" The conclusion could therefore be properly drawn, that the workers did not report for work on October 20, 2015, or thereafter, as directed by the Company and that Mr. Duncan was awaiting the signing of the HOA to instruct them to return.

36. Mr. Stephenson, during cross examination, said the Heads of Agreement (HOA) was an unreasonable document and he would not sign it. He said that he was not aware of any dispute over payment for the period May 12, 2015 to June 17, 2015 and further that the workers were already paid in lieu of notice for the period October 8 – 20, 2015.





37. Ms. Stephenson, on the other hand, said the Company was prepared to reinstate the workers but Mr. Duncan insisted that a HOA must first be signed. However the Company did not accept the HOA as proposed and the Company decided to meet with its “lawyers to come up with a HOA that would be proper for both sides”. During cross examination, Ms. Stephenson was asked:

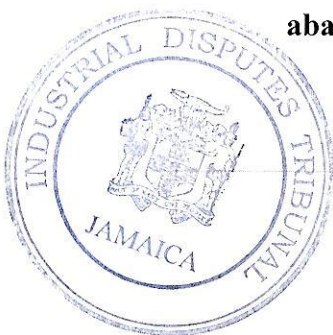
**Q “What were you consulting your lawyers about?”**

**A “We were consulting them because you suggested that before they come back to work we have to sign a Heads of Agreement and so we were consulting re the Heads of Agreement”**

38. Mr. Duncan in his email dated November 11, 2015, said that the Company has not indicated what it would wish to be in the Heads of Agreement. However, in cross examination, Ms. Stephenson said that there was a meeting between the Company and Mr. Duncan regarding the Heads of Agreement but there was no conclusion as Mr. Duncan did not accept the Company’s proposal. She said the Company’s position that the workers had abandoned their jobs would have been solidified after the meeting had taken place and ended without agreement.

39. The evidence, therefore, is that in addition to inviting the workers to return to work which had not been taken up, the Company also met with Mr. Duncan with a view to arrive at a mutually acceptable HOA, but this was unsuccessful. The Tribunal found that Mr. Duncan, even at this stage, could have made representations for the workers to return to work while continuing discussion of the matter. The Tribunal notes, based on the evidence, that the workers have to date, not returned to work.

40. Tim Lethbridge, Director, Croftbridge Law in Perth, Australia, in an article entitled “*Talent & Performance*” dated October 7, 2016, said that **“If an employee fails, without explanation, to attend at work, the point at which the employee will be considered to have abandoned their employment will depend on how long the absence extends and the context in which it occurred.....By the employee abandoning their employment, they have repudiated the employment contract”**.



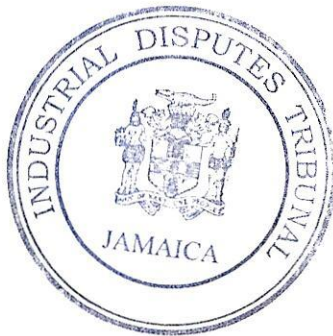



41. In spite of available opportunities, Ms. Allen and Ms. Smith have not returned to work since October 20, 2015, the date the Company asked that they report. The Company has therefore indicated that they have abandoned their jobs, and in the circumstances the decision appears to be quite logical.


**AWARD:**

Ms. Denise Allen and Ms. Tana-Lisa Smith were not terminated from their employment by SOS Foods Limited but they have abandoned their jobs thereby repudiating their contracts of employment.

DATED THIS 26<sup>th</sup> DAY OF OCTOBER, 2022.




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

  
.....  
Mr. Errol Beckford  
Member

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

Witness:

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