

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 45/2024

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SETTLEMENT OF DISPUTE

BETWEEN

SUSHITECH LIMITED t/a EAST JAPANESE

AND

MR. CHRIS DALEY

AND THE

*AWARD*

I.D.T. DIVISION

MR. BINDLEY SANGSTER, O.D.	-	CHAIRMAN
MRS. JACQUELINE IRONS, J.P.	-	MEMBER
MR. PAUL HINES	-	MEMBER

APRIL 20<sup>th</sup>, 2026

IDT 45/2024

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**SUSHITECH LIMITED t/a EAST JAPANESE  
(THE COMPANY)**

**AND**

**MR. CHRIS DALEY  
(THE AGGRIEVED WORKER)**

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**REFERENCE:**

By letter dated September 12, 2024, 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 for settlement, in accordance with the following Terms of Reference: -

*“To determine and settle the dispute between Sushitech Limited t/a East Japanese on the one hand, and Chris Daley on the other hand, over the termination of his 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. Bindley Sangster, O.D. - Chairman
- Mrs. Jacqueline Irons, J.P. - Member, Section 8(2) (c) (ii)
- Mr. Paul Hines - Member, Section 8(2) (c) (iii)

**REPRESENTATIVES OF THE PARTIES:**

The **Company** was represented by:

- Mr. Y. M. Fitz-Henley - Attorney-at-law
- Mr. Hidaka Hanzawa - Accounts Manager

The **Aggrieved Worker** was represented by:

- Mr. Robert Moore - Attorney-at-law

**In attendance was:**

- Mr. Chris Daley - Aggrieved Worker

By letter dated October 1, 2024, the Company through its Attorney advised the Tribunal of its intention to ‘seek permission for judicial review of the decision to refer this matter to the Tribunal as it does not agree that there was presently a dispute capable of being so referred.’ Subsequently, on December 11, 2024, the Company filed a Notice of Application for leave to apply for judicial review in the Supreme Court of the Minister’s referral along with an application for stay of the Industrial Disputes Tribunal (IDT) proceedings. By letter dated March 7, 2025, the Tribunal was further advised that *“the Company’s application for leave to apply for judicial review was refused by the Supreme Court on February 28, 2025 and consequently its application for a stay of IDT proceedings was also refused.”*



### **SITTINGS AND SUBMISSIONS:**

Briefs were submitted by both parties who made oral submissions during thirteen (13) sittings held between December 11, 2024 and September 23, 2025. During their testimonies, eight (8) exhibits were submitted.

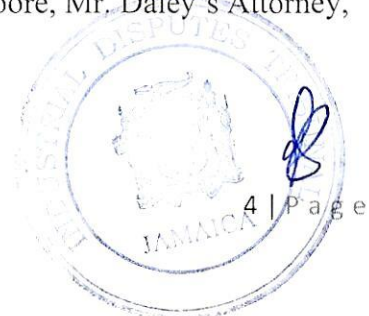
### **BACKGROUND TO THE DISPUTE:**

1. Sushitech Limited t/a East Japanese (*hereinafter referred to as "the Company"*) is a limited liability company that owns and operates restaurants in Kingston and St. Andrew.
2. Mr. Chris Daley was employed by the Company in January 2010. By letter dated October 31, 2020, the Company terminated his employment alleging his failure to attend work at 10:30 a.m. as was requested. On November 2, 2020, Mr. Daley's Attorney wrote to the Company alleging that Mr. Daley was unjustifiably dismissed. This letter was copied to the Ministry of Labour and Social Security.
3. The Company wrote a letter dated December 15, 2020 to Mr. Daley withdrawing the termination and instructing him to return to his previous position effective December 17, 2020.
4. Mr. Daley did not respond to the letter and did not report to work on December 17, 2020. Consequently, he was written to on December 24, 2020 to attend a disciplinary hearing on December 29, 2020 to answer to the charge of failing to appear for work. The letter also stated that if Mr. Daley failed to report to work on December 29, 2020, the Company will be forced to regard his absence as abandonment of his job.
5. The parties were unable to resolve the dispute at the local level, and so, the matter was referred to the Ministry of Labour and Social Security for conciliation. The efforts at conciliation did not result in a resolution and as a consequence, a referral was made to the Industrial Disputes Tribunal for determination and settlement.



**THE COMPANY 'S CASE:**

6. The Company called one (1) witness in support of its case, Mr. Hidaka Hanzawa, the Accounts Manager for twelve (12) years.
7. Mr. Hanzawa testified that Mr. Chris Daley was employed by the Company in or about January 2010 as a Waiter. He said that there was no written employment agreement in place throughout his tenure. He was initially stationed at East Japanese (Marketplace, 67 Constant Spring Road, Kingston 10) before being transferred to the Majestic Branch. According to Mr. Hanzawa's testimony, it was the established norm for workers to report for duty at 10:30 a.m. daily to do 'set up' prior to the opening of the restaurant to the public at 12:00 noon.
8. Mr. Daley was, in 2017, promoted to the position of supervisor until the time of his termination in October 2020. His duties included supervising waiters and serving customers.
9. It is Mr. Hanzawa's evidence that Mr. Daley was a good worker. He was paid five hundred and eighteen dollars (\$518.00) per hour at the time of his dismissal along with a weekly supervisor's fee of twelve thousand dollars (\$12,000.00). Mr. Daley worked reduced hours at the time of his dismissal because of the COVID-19 pandemic. In October 2020, he worked 32.5 hours. Mr. Hanzawa testified that prior to COVID-19, Mr. Daley sometimes worked more than 40 hours. In 2019-2020, Mr. Daley was also paid a guaranteed weekly commission of nine thousand three hundred and thirty-four dollars (\$9,334.00).
10. On October 30, 2020, Mr. Daley failed to attend work at 10:30 a.m. to do set up as was required. It is the Company's case that Mr. Daley's absence was due to a coordinated boycott as a result of alleged issues with the Company. Consequently, Mr. Daley's employment was terminated by letter dated October 31, 2020. In response, the Company received a letter dated November 2, 2020, from Mr. Robert Moore, Mr. Daley's Attorney,



challenging the dismissal. This letter was copied to the Ministry of Labour and Social Security.

11. Regarding Mr. Daley's termination, Mr. Hanzawa testified that, upon receiving advice, the Company did everything within its power to right the wrong. The Company reconsidered its decision and issued a letter dated December 15, 2020, reinstating Mr. Daley. The letter states:

*"15 December 2020*

*Mr. Chris Daley*

*We write to withdraw your termination by letter dated October 31, 2020, having had the chance to consult with our Attorneys.*

*Your reinstatement to your position is effective immediately and will be on the same terms as your previous agreement with us. You will be compensated in keeping with that agreement for the period between your termination and reinstatement. We will also be paying you in compensation for unused vacation days.*

*Please note that you are expected to return to work Thursday, December 17, 2020. If there are any issues with this, please contact us immediately."*

*Regards*

*SUSHITECH LIMITED*

*Kazumi Utoguchi*

*Managing Director"*



12. No response was received from Mr. Daley. The Company extended the response time by an additional week. No replacement was hired during this time, which in fact caused

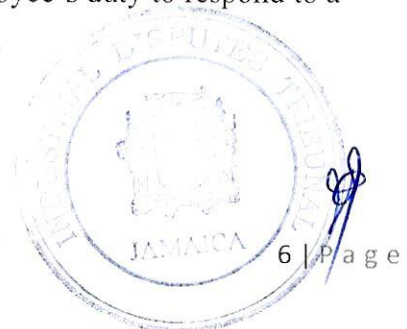
A handwritten signature in blue ink, appearing to be "K. Utoguchi".

deficiencies in the Company's operations. In a letter dated December 24, 2020, sent via email by Mr. Fitz-Henley, Mr. Robert Moore was notified that Mr. Daley was required to resume duties as of December 17, 2020. The Company noted that despite this requirement, Mr. Daley had failed to report for work for over a week and maintained the position that Mr. Daley was still employed by it in law. The letter further stated that Mr. Daley was required to attend a disciplinary hearing on December 29, 2020, to answer to the charge of failing to appear for work. He was further advised that the Company would be forced to regard his client as having abandoned his position, if he failed to attend the hearing.

13. Mr. Fitz-Henley was advised by Mr. Moore via email on December 29, 2020, that his office was closed and would reopen on January 11, 2021.
14. By letter dated January 13, 2021, Mr. Fitz-Henley wrote to Mr. Robert Moore stating that in light of Mr. Daley's non-attendance at the disciplinary hearing, the Company had no choice but to regard Mr. Daley's non-attendance and continued absence from work as abandonment of his position.
15. The Company in its Brief stated that it was contacted by the Ministry of Labour in January 2022 with regards to a matter that it (the Company) thought was settled based on the fact that it had reinstated Mr. Daley. Mr. Daley did not respond to the reinstatement letter, and as such, the Company deemed his refusal as abandonment of his job. In July 2022, Mr. Daley indicated his intention to return to work. However, Mr. Hanzawa stated that the Company, having transformed the way that it conducted operations, had no available position to which Mr. Daley could return.

***The Company contends that:***

- a. Because of the passage of time, no position existed for Mr. Daley to return to.
- b. Referral to the Ministry does not displace an employee's duty to respond to a direct offer of employment.



- c. The worker was given an opportunity to return. He ignored it. He did not object, negotiate or explain; hence, it ought to be fatal to any claim for compensation.
  - d. Its offer for reinstatement via December 15, 2020 letter was genuine and Mr. Daley's duty to mitigate arose immediately upon receipt.
  - e. Mr. Daley abandoned his job by refusing to be reinstated.
16. The Company through its Representative, submits that should the Tribunal find that Mr. Daley was unjustifiably terminated and is therefore entitled to any compensation, such compensation should be limited to the period between October 30, 2020 (date of termination) and December 16, 2020 (date the reinstatement letter was sent by email). It was further submitted that Mr. Daley's conduct is inconsistent with that of a person in need of employment, particularly in light of the offer of reinstatement and the fact that he had returned to rural Jamaica due to a lack of work.

**THE AGGRIEVED WORKER'S CASE:**

17. Mr. Chris Daley gave evidence in support of his case. He testified that he was employed by Sushitech for ten years and ten months starting January 2010. He was interviewed and hired by the Managing Director, Mr. Kazumi Utoguchi. He was initially employed as a Busser (clearing tables and beverage service) before transitioning to a Waiter role after six months. In 2017, he was promoted to Supervisor. His evidence is that he was paid \$518 per hour and a supervisor fee of \$12,000.00 per week plus gratuity and cash tips. He said that he worked six days per week and a 'bit' over 40 hours per week, maybe 45 hours per week.
18. It is Mr. Daley's evidence that he commenced working daily at 10:30 a.m. to facilitate setup prior to the business opening to the public at 12 noon. He testified to having a discussion with Mr. Utoguchi on October 29, 2020, about his hourly pay, as he was paid from 12 p.m. and not 10:30 a.m. He said the conversation was that *'I am not going to come in at 10:30 if I am going to be paid from 12:00 p.m. So I turned up to work at 12 p.m. the next day.'* Upon his arrival, he was sent home and told that he was fired. He received a formal termination letter dated October 31, 2020, which states:



*“31 Oct, 2020*

*Mr. Chris Daley*

*This letter serves as a Termination from East Group.*

*On 30/Oct/2020 (Fri), you and 3 workers didn't come to work on the morning time without telling the management, as like a group boycott.*

*We SUSHITECH LIMITED got a lot of damage from this.*

*Because of this action, we terminate your services as of 30/Oct/2020.*

*SUSHITECH LIMITED*

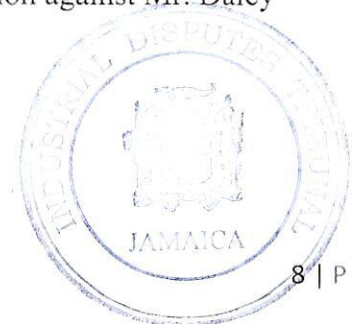
*Kazumi Utoguchi*

*Managing Director”*

19. Mr. Daley testified that the work environment was not the same as working in other restaurants, alleging that the Japanese sometimes were very disrespectful to the Jamaicans, but because workers want to keep their jobs, they remain silent and respectful regardless of what happened.

***The Aggrieved Worker contends that:***

- a. The termination letter imputes disciplinary reasons; however, prior to receiving the letter of dismissal, he was not invited to any disciplinary hearing by the Company.
- b. The Company was not correct in the manner in which it terminated his services.
- c. The principles of natural justice were violated.
- d. Paragraph 22 of the Labour Relations Code was breached.
- e. There is no evidence of any previous disciplinary action against Mr. Daley



20. It is Mr. Daley's evidence that regarding the letter dated December 24, 2020, which directed him to report to work on December 29, 2020, he was only made aware of the letter's existence in 2021 through his Representative.
21. The Aggrieved, through his Representative, submitted that while the Company contends it withdrew the termination and reinstated Mr. Daley on December 17, 2020, subsequently arguing that he abandoned his post; the Company cannot unilaterally restore a contract once it has been breached.
22. Mr. Daley requested that he be reinstated without any loss of pay.

**THE TRIBUNAL FINDINGS AND RESPONSE:**

23. The Tribunal having heard the submissions of both parties, gave careful consideration to the evidence presented, and in arriving at a conclusion as to the settlement of this dispute, asked itself the following question:
  - a. Did Mr. Daley abandon his job?
  - b. Did Sushitech have probable cause to terminate the services of Mr. Daley in the first instance?
  - c. If so, was the termination of Mr. Daley's employment justified by the Company?
24. In relation to (a) above, did Mr. Daley abandon his job? It is the Company's case that it terminated Mr. Daley's contract of employment by letter dated October 31, 2020.
25. However, by letter dated December 15, 2020, the Company wrote Mr. Daley instructing him to return to work on December 17, 2020. Mr. Daley did not respond; neither did he return to work as instructed. It is significant to note that the Company did not provide an offer of reinstatement; rather, it issued a directive informing Mr. Daley of his immediate reinstatement. The Tribunal refers to the Supreme Court decision in the case of *Spur Tree Spices Jamaica Limited vs. the Ministry of Labour and Social Security*. In that matter,

*D. Fraser J* in her judgment opined that the claimant's company offer of reinstatement was accepted by the former employees, which crystallized their return to work. Upon their return to work, the Company took disciplinary action against them.

26. In the instant case, Mr. Daley did not respond to the declaration of reinstatement, nor did he return to work; as such, the Company was not in a position to institute disciplinary action against him for his failure to return as he was not technically an employee at that time.
27. The Tribunal further relies on the precedent established in *Melisa Donalds v. The Industrial Disputes Tribunal (2023)*. In that matter, Mrs. Justice Carr affirmed the settled legal principle that a contract of employment, once terminated, cannot be unilaterally restored. Consequently, the Company lacked the requisite legal authority to unilaterally reinstate Mr. Daley to his former position without his express consent.
28. The Company's letter of December 24, 2020, notified Mr. Moore that Mr. Daley was required to resume duties as of December 17, 2020. The Tribunal notes the Company's submission that Mr. Daley was still employed by it in law. However, the Tribunal finds that the Company was apparently under the misguided impression that the instructions for Mr. Daley to return to work by December 17, 2020, rescinded his termination and reinstated the employer/employee relationship. Consequently, the Company's directive requiring Mr. Daley to attend a disciplinary hearing on December 29, 2020, to address a charge of failing to report for work was entirely without merit. Mr. Daley was well within his right to decline the reinstatement and seek redress for his unjustifiable dismissal.
29. The Tribunal finds reason to doubt whether the Company's declaration/offer of reinstatement was made in good faith. The notice period provided on December 16 for Mr. Daley to return to work on December 17 was unreasonable and made it practically impossible for him to comply with the directive. The subsequent request of Mr. Daley by letter dated December 24, 2020, from the Company for a disciplinary hearing on December 29, 2020, for failing to comply with this unreasonable directive, accords with an intent to facilitate dismissal rather than to restore the employer/employee relationship.

30. An important note is the fact that the letter regarding reinstatement was on the same terms as his previous engagement that Mr. Daley contested and which resulted in his termination. Although the Tribunal acknowledges that Mr. Daley acted prematurely by not allowing the formal process to take its course, there is no evidence to suggest that the core issue leading to his termination was addressed.

31. The Tribunal notes the Company's contention that a referral to the Ministry of Labour does not displace an employee's duty to respond to a direct declaration of reinstatement. However, the Tribunal disagrees with this assertion. We find precedent in IDT Award 6/2008 (University of Technology Jamaica and the University and Allied Workers Union) to be very instructive. The Award stipulates:

*"Once the Ministry of Labour is invited in a matter involving the parties to a dispute, the discussion regarding resolution of the dispute cease until the matter that caused the Ministry's intervention is sorted out or some clear understanding has been reached between the parties."*

32. As far as the Tribunal is aware, no clear understanding was achieved. Instead, the Company simply instructed Mr. Daley to return to work immediately.

33. The Tribunal therefore finds that Mr. Daley's failure to report for duty or respond to the letter of reinstatement does not constitute job abandonment. It further concludes that an individual cannot abandon a position from which he has already been terminated. Therefore, the Company's argument regarding job abandonment is unfounded and cannot be entertained.

34. In relation to (b) above, did Sushitech have probable cause to terminate the services of Mr. Daley in the first instance?

35. The evidence presented to this Tribunal indicates that Mr. Daley had a discussion with Mr. Utoguchi with regards to the lack of compensation for the setup period (10:30 a.m. to 12:00 noon daily). While there is no evidence of a formal agreement regarding a resolution, Mr. Daley unilaterally decided not to report for work at 10:30 a.m. the following day.

36. In dealing with this dispute, the Tribunal refers to Section 3(4) of the Labour Relations and Industrial Disputes Act, which recognizes the Labour Relations Code that contains guidelines for the purpose of promoting good industrial relations practices. Section 3(4) of the Act states:

*“A failure on the part of any person to observe any provision of a labour relations code which is for the time being in operation shall not of itself render him liable to any proceedings; but in any proceedings before the Tribunal or a Board any provision of such code which appears to the Tribunal or a Board to be relevant to any question arising in the proceedings shall be taken into account by the Tribunal or Board in determining that question.”*

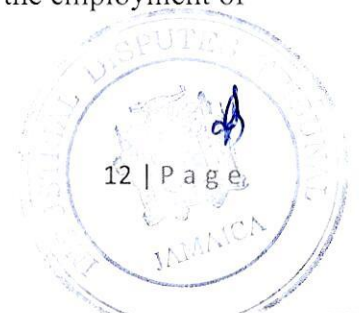
37. The Tribunal will now turn to Paragraph 6 (iii) of the Labour Relations Code:

*“Some workers have special obligations arising out of the nature of their employment. Such worker when acting in the course of his employment should be mindful of those obligations and should refrain from action which conflicts with them”*

38. The Tribunal views the action of Mr. Daley, a Supervisor, as improper and finds that the employer had reasonable grounds to believe that Mr. Daley’s misconduct warranted disciplinary action. However, his actions were not deemed to be gross misconduct, and hence, the Tribunal finds that the penalty of summary dismissal was too harsh. Further, Mr. Daley had an unblemished work record. The evidence is that Mr. Daley was a good worker. Paragraph 22 (ii) (b) of the Labour Relations Code states that no worker should be dismissed for a first breach of discipline except in a case of gross misconduct.

39. There was also no evidence presented of the existence of a code of conduct or handbook against which Mr. Daley’s conduct or the Company’s action could be judged.

40. In relation to (c) above, was the Company justified in the termination of the employment of Mr. Daley?

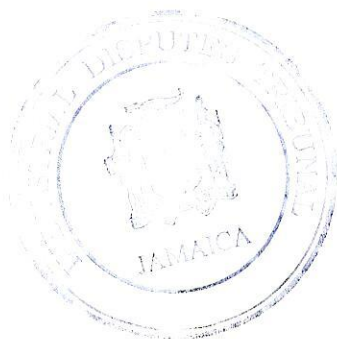


41. The Tribunal finds no evidence to contradict the contention of Mr. Daley that he was unjustifiably dismissed, as the Company failed to observe the provisions of the Labour Relations Code as set out in Paragraph 22 under the rubric Disciplinary Procedure when it terminated Mr. Daley's contract of employment. Paragraph 22 of the Labour Relations Code states that:

***Disciplinary Procedure***

(i) *Disciplinary Procedures should be agreed between management and worker representatives and should ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure should be in writing and should:*


- (a) .....
- (b) *indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties.*
- (c) *give the worker the opportunity to state his case and the right to be accompanied by his representatives.*
- (d) *provide for a right of appeal, wherever practicable, to a level of management not previously involved.*
- (e) ...



42. The Tribunal finds that the directive of reinstatement demonstrates the employer's admission that its action was arguably wrong, and its decision to terminate the service of Mr. Chris Daley was devoid of natural justice principles and in violation of Paragraph 22 of the Labour Relations Code.

43. The Tribunal, therefore, concludes that the dismissal of Mr. Daley was *unjustified*.

44. The worker has expressed the wish to be reinstated. However, in light of the evidence presented by the parties, the Tribunal finds that reinstatement is not a viable or appropriate remedy.

  
13 | Page

45. The Tribunal, in arriving at its decision to award compensation, took several factors into account, some of which are Mr. Daley's previously unblemished record, the Company's improper procedural handling of the dispute, the Company's own admission regarding the failure to compensate Mr. Daley for accrued vacation leave, and the conduct of Mr. Daley in his capacity as a supervisor.


**AWARD:**

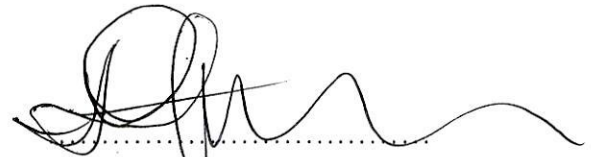
46. The Tribunal, in accordance with Section 12 (5) (c) of the Labour Relations and Industrial Disputes Act, 1975, awards that Mr. Christopher Daley be compensated in the amount of six million five hundred thousand dollars (\$6,500,000.00) for his unjustified dismissal.

The Member appointed under Section 8(2) (c) (ii) is not in agreement with Award and her opinion is appended hereto.


DATED THIS 20<sup>th</sup> DAY OF APRIL 2026



  
.....  
Mr. Bindley Sangster, O.D.  
Chairman

  
.....  
Mr. Paul Hines  
Member

Witness:

  
.....  
Royette Creary (Miss)  
Secretary to the Division

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 45/2024

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SETTLEMENT OF DISPUTE

BETWEEN

SUSHITECH LIMITED t/a EAST JAPANESE

AND

MR. CHRIS DALEY

***MINORITY AWARD***

I.D.T. DIVISION

MR. BINDLEY SANGSTER, O.D.	-	CHAIRMAN
MRS. JACQUELINE IRONS, J.P.	-	MEMBER
MR. PAUL HINES	-	MEMBER

APRIL 20, 2026



**INDUSTRIAL DISPUTES TRIBUNAL**

**MINORITY AWARD**

**IN RESPECT OF**

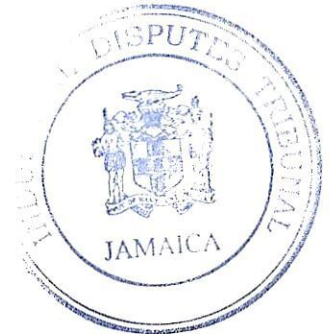
**AN INDUSTRIAL DISPUTE**

**BETWEEN**

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(THE COMPANY)**

**AND**

**MR. CHRIS DALEY  
(THE AGGRIEVED WORKER)**



---

**REFERENCE:**

By letter dated September 12, 2024, 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 **Sushitech Limited t/a East Japanese and Mr. Chris Daley** with the following Terms of Reference: -

*“To determine and settle the dispute between Sushitech Limited t/a East Japanese on the one hand, and Chris Daley on the other hand, over the termination of his employment.”*

**MINORITY AWARD:**

1. The preambles along with the Background are stated in the Award document which I have read carefully and I am in full agreement with. The Member has, however, taken note of the case of both parties as well as the Findings of the Members and feels obliged to express her dissent from the views expressed therein.

**THE COMPANY'S CASE:**

2. The Company called Mt. Hidaka Hanzawa, who served as Accounts Manager for twelve (12) years, as their only witness.
3. Mr. Hanzawa testified that Mr. Chris Daley was employed around January 2010 as a Waiter. He was initially stationed at East Japanese located at "The Market Place" at 61 Constant Spring Road, Kingston 10. There was no written employment agreement in place throughout his tenure.
4. Mr. Daley was then transferred to the Majestic branch. He said that Mr. Daley was a good worker. He was later promoted to Supervisor, and at the time of his dismissal was paid five hundred and eighteen dollars (\$518.00) per hour along with a supervisor's fee of twelve thousand dollars (\$12,000.00). Mr. Daley was working reduced hours at the time of his dismissal because of the COVID-19 pandemic. Mr. Hanzawa testified that prior to COVID-19, Mr. Daley sometimes worked more than 40 hours.
5. The arrangement was that the workers arrived at 10:30 a.m. to do 'set up' prior to the opening of the restaurant to the public at 12:00 noon. On October 30, 2020, Mr. Daley and others failed to attend work to do 'set up' and the Company felt that this was a boycott because of issues with the Company. By letter dated October 31, 2020, Mr. Daley was immediately terminated. The Company received on November 2, 2020 a letter from Mr. Robert Moore, Mr. Daley's Attorney, challenging the dismissal. This letter was copied to the Ministry of Labour and Social Security.



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6. The Company contacted the Ministry of Labour and their Attorney and was told that their procedure was incorrect and that they should request that Mr. Daley return to work.
7. On November 5, 2020, the Company sent a Whatsapp note to Mr. Daley; his response was that the Company should speak with his lawyer, Mr. Robert Moore.
8. As a result of the instructions given, the following letter was written to Mr. Daley:

*"December 15, 2020*

*Mr. Daley*

*We write to withdraw your termination by letter dated October 31, 2020 having had a chance to consult with our Attorneys.*

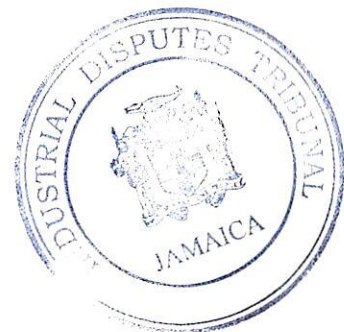
*Your reinstatement to your position is effective immediately and will be on the same terms as previous agreement with us. You will be compensated in keeping with that agreement for the period between your termination and reinstatement. We will also be paying you in compensation for unused vacation days.*

*Please note that you are expected to return to work Thursday, December 17, 2020. If there are any issues with this please contact us immediately.*

*Regards*

*Kuzami Utoguchi*

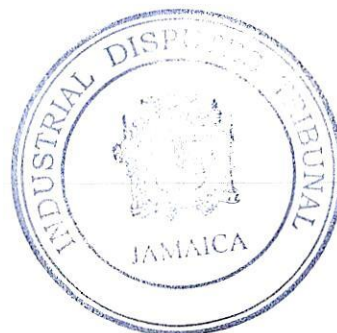
*Managing Director"*



9. After writing the letter to reinstate Mr. Daley, the Company used the same WhatsApp number as above, "asking Mr. Daley to check his email". There were two ticks on the message suggesting that he received it.

10. Having not heard from Mr. Daley, the Company wrote his Attorney, Mr. Moore, on December 24, 2020, asking Mr. Daley to attend a disciplinary hearing on December 29, 2020 at 10:00 am for job abandonment and attached a copy of the letter of December 15, 2020.
11. The reply from Mr. Moore was that his office was closed and would reopen on Monday, January 11, 2020.
12. Mr. Hanzawa testified that the position remained open until January 13, 2021.
13. On January 13, 2021, the Attorney for the Company wrote to the Attorney for Mr. Daley:

*“As indicated in our letter, and in light of your clients’ non-attendance at the disciplinary hearing required by our client and continued absence from work as abandonment of their positions (which included Mr. Daley).”*
14. In July 2022, Mr. Daley returned to East Japanese approximately 15 months after his dismissal, having been advised by his Attorney to do so.
15. The Company advised that because of the passage of time, no position existed for Mr. Daley to return to.
16. ***The Company contends that:***
  - a) That the initial process of the dismissal was not correct/
  - b) That the Company tried to contact Mr. Daley to reinstate him. He did not object, negotiate, or explain his nonattendance.
  - c) Not hearing from Mr. Daley for almost 4 weeks after the letter was written, he was dismissed for “*abandonment of job*”.

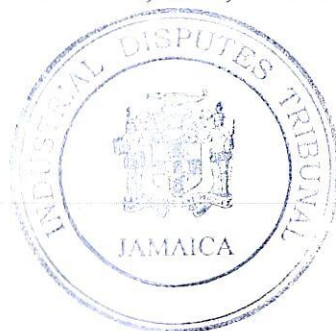


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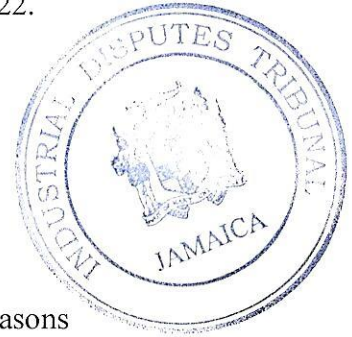
The Company contends that Mr. Daley should only be paid for the period between October 2020, when he was dismissed, and December 2020, when he was expected to return to work.

**THE AGGRIEVED WORKER'S CASE:**

17. Mr. Chris Daley gave evidence in support of his case. He was employed by Sushitech beginning January 2010 for ten-plus years before his dismissal on October 31, 2020. He was interviewed and hired by the Managing Director, Mr. Kazumi Utoguchi (also known as Taca). He was the owner of Sushitech Limited and all other branches. He was told to report the next day at 10:30 a.m. to start working. There was no written contract.
18. Mr. Daley started working at 10:30 a.m. to set up tables for opening to the Public at 12 noon. Some days work finishes at 5:00 p.m. While on other days he finishes when the last customer leaves and the restaurant closes at 10:00.p.m.
19. Mr. Daley was employed as a Busser, clearing tables and beverage service. He was then promoted to a waiter, serving tables, taking orders, and 'overseeing' the floor. Five (5) months later he was promoted to Supervisor and was paid an additional salary of twelve thousand dollars (\$12,000.00) weekly. In addition, he earned cash tips every day and credit card tips weekly, which could add up to forty thousand dollars (\$40,000.00) or fifty thousand dollars (\$50,000.00) per week.
20. Mr. Daley stated that over the period of his employment he did not get any vacation or receive pay in lieu of vacation pay.
21. On October 30, 2020, Mr. Daley and other staff members should have reported to work as usual at 10:30 a.m. but reported at 12 noon. He was sent home and told verbally that he was fired. The following day October 31, 2020, he received a letter terminating his services effective immediately.



22. He got in touch with Attorney-At-Law, Mr. Robert Moore, who wrote to the Company protesting his termination.
23. It is Mr. Daley's evidence that the letter dated December 24, 2020, which directed him to return to work in December 2020, was only shown to him by his Attorney in January 2021 but he did not return to Sushitech until instructed by his Attorney in July 2022.
24. Mr. Daley would like to be reinstated without loss of pay.
25. *The Aggrieved Worker contends that:*
- a) The termination letter of October 31, 2020 imputes Disciplinary reasons however, he was not invited to a disciplinary hearing by the Company
  - b) The Company was not correct in the manner of termination.
  - c) The principles of natural justice was violated
  - d) Paragraph 22 of the Labour Relations Code was breached.
  - e) There is no evidence of any previous disciplinary issues with him



**THE MEMBER'S FINDINGS AND RESPONSE:**

26. The Member asked the following questions, having heard the submissions of both parties.
- A. Did Sushitech in terminating the services of Mr. Daley adhere to fair industrial relations practices in the October termination?
  - B. Did the Company try to right the wrong by reinstating Mr. Daley?
  - C. Did Mr. Daley abandon his job?

**A. Did Sushitech in terminating the services of Mr. Daley adhere to fair industrial relations practices in the October termination?**

27. The Company did not adhere to fair industrial relations practices in the October termination. This Member believes that the action of Mr. Daley gave the Company cause to bring a disciplinary action against him, which could have eventually led to termination. It

appears that Sushitech's management, which is Japanese-based, felt that termination could have been done by the letter they sent him. This is not how the Labour Laws in Jamaica function, as there is a process that must be followed. Hence, the Company's reliance on a termination letter, without observing the prescribed disciplinary process, resulted in a breach of due process.

28. The Company received a letter on November 2, 2020, from Mr. Daley's attorney objecting to the termination and as a result, consulted the Ministry of Labour and an Attorney for advice to find out if Mr. Moore was correct and how the situation could be rectified. The Attorney advised that a letter should be sent to Mr. Daley to return to work and to pay him for the time that he was off.

**B. Did the Company tried to right a wrong by reinstating Mr. Daley?**

29. The Company realized that they had made a mistake in terminating Mr. Daley in the manner that they did and wrote to Mr. Daley offering to reinstate him, thereby attempting to correct the initial error. Mr. Daley contends in his evidence that he did not see the December 15, 2020 letter until January 2021 and was instructed by his Attorney to return to Sushitech in July 2022. The Company's evidence was that Mr. Daley requested that the Company deal with his Attorney and this is what they did.
30. It is curious that Mr. Daley stated that he was only informed about the letter of reinstatement in January 2021 by his Attorney but was directed to return to work in July 2022. Did his Attorney expect that Sushitech would be holding Mr. Daley's job for over eighteen (18) months when he was informed that if Mr. Daley did not report by December 17, 2020, the Company would assume "*job abandonment*" As stated in their letter of December 24, 2020 to Mr. Daley's Attorney.
31. WHAT IS JOB ABANDONMENT?

My definition is as follows:

Job abandonment occurs when an employee fails to report to work for a prolonged period



without notifying their employer usually over at least three (3) to four (4) days. It is usually used when the employer expects the employee to return to work within a specific timeframe.

32. As far as the Company was concerned Mr. Daley was still on their payroll when the letter of December 29, 2020 was sent to Mr. Daley's Attorney.
33. The Company did not hear from Mr. Daley at all, (even though he said he saw the letter in January 2021) as they were dealing with his Attorney and therefore informed said Attorney in the letter of December 24, 2020 about its position.
34. While this Member agrees that once terminated, one cannot unilaterally be restored to his job, neither Mr. Daley nor his Attorney got in touch with the Company to confirm or deny whether Mr. Daley was interested in his job, **thereby activating a discussion on the matter.**
35. There was no communication from Mr. Daley, himself to the Company to get his consent or refusal to return to work. If one does not hear from the individual then "*his express consent*" cannot be ascertained. The fact that he returned to the Company eighteen (18) months later asking for reinstatement tells this Member that there was some interest in his job.
36. The Company did not know that Mr. Daley was still interested in his job, his Attorney replied to the December 29, 2020 letter that his Company was closed until January 11, 2021. One would have thought that with the urgency of the matter, Mr. Daley's Attorney would have contacted the Company immediately after he returned to work in January 2021. As he did not, the Company confirmed "*absence from work as abandonment of their position*" (3 other persons including Mr. Daley) in their letter of January 13, 2021. (Exhibit 6)



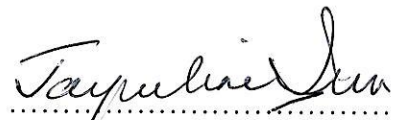
**C. Did Mr. Daley abandon his job?**

37. This Member believes that Mr. Daley abandoned his job after the Company tried to reinstate him. Despite the offer to return to his previous position following his dismissal, his failure to report for work constitutes job abandonment. However, because of the time frame in which the Company did not hear from him, it is the member's view that Mr. Daley is still due compensation from the time of his dismissal which is October 31, 2020 to December 17, 2020 when it would have tried to reinstate him. He is also entitled to vacation leave earned but not taken for his ten (10) years of service and notice pay for 10-plus years of service.
38. The Member finds that Mr. Daley's initial dismissal was not justified, however, it is to be noted that the Company made several unsuccessful attempts to contact him to rectify the situation both directly and through his Attorney. Consequently, the Company's eventual conclusion that Mr. Daley had abandoned his post served as the final basis for the separation of employment.

**MINORITY DECISION:**


39. This Member therefore awards Mr. Daley one million dollars (\$1,000,000.00) for outstanding payments that have been due to him.

**DATED THIS 20<sup>th</sup> DAY OF APRIL 2026**

  
.....  
Mrs. Jacqueline Irons, J.P.  
Member



Witness:

  
.....  
Royette Creary (Miss)  
Secretary to the Division

58