

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 25/2023

SETTLEMENT OF DISPUTE
BETWEEN
THE OLYMPIA CROWN HOTEL
AND
MR. DONOVAN CARTER

AND THE

AWARD

I.D.T. DIVISION

MRS. SHARON ANDERSON	-	CHAIRMAN
MRS. JACQUELINE IRONS, J.P.	-	MEMBER
MR. PAUL HINES	-	MEMBER

APRIL 23, 2024

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

THE OLYMPIA CROWN HOTEL
(THE COMPANY)

AND

MR. DONOVAN CARTER
(THE AGGRIEVED WORKER)

REFERENCE:

By letter dated August 28, 2023, the Honourable 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 The Olympia Crown Hotel and Donovan Carter with the following Terms of Reference: -

"To determine and settle the dispute between The Olympia Crown Hotel on the one hand, and Donovan Carter on the other hand, over the termination of his employment."



DIVISION:

The Division of the Tribunal selected in accordance with Section 8(2)(c) of the Act to hear the dispute comprised:

Mrs. Sharon Anderson	-	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:

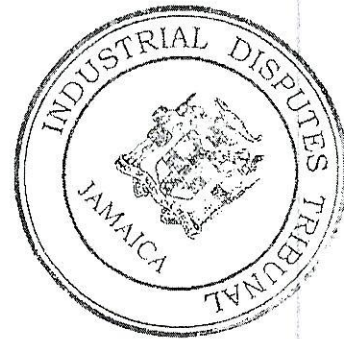
There was no representative from the **Company** throughout the entire proceedings.

The **Aggrieved Worker** was represented by:

Mr. John Levy	-	Industrial Relations Consultant
---------------	---	---------------------------------

In attendance was:

Mr. Donovan Carter	-	Aggrieved Worker
--------------------	---	------------------



SUBMISSIONS AND SITTINGS:

A Brief was submitted by the Aggrieved Worker, but none was received by the Tribunal on behalf of the employer. Two (2) sittings were held on November 20, 2023 and February 19, 2024.

Despite its many efforts, the Tribunal was unable to have the employer or their representative attend any of the sittings. In fact, following the adjournment of the first sitting on November 20, 2023, due to the absence of the employer, the Tribunal informed the Managing Director of the Company, Mr. Robert Forbes, by way of a hand delivered letter dated November 20, 2023, of the confirmed dates of "Monday, February 19, 2024 at 10:00 a.m. and Thursday, February 22, 2024 at 10:00 a.m. and 2:00 p.m. to continue hearing the captioned dispute." The said letter also stated, "I am directed to inform you that failure to attend on the dates contained therein, the Tribunal will proceed to hear the dispute ex parte, this is in accordance with Section 16A of The Labour Relations and Industrial Disputes Act, 1975, which states, *'The Tribunal shall have the power to hear an industrial dispute referred to it for settlement, on the*

Tribunal being satisfied that due notice of the hearing was served on a party to the dispute notwithstanding that that party fails to appear before the Tribunal."

At the scheduled hearing on February 19, 2024 at 10:00 a.m., having not received a response from the Company, the Tribunal commenced the hearing *ex parte*. During the hearing, a total of four (4) exhibits, along with oral presentations, were examined.

BACKGROUND TO THE DISPUTE:

1. The Olympia Crown Hotel is a limited liability company that is a tourist establishment located at 53 Molynes Road, Kingston 10, close to Half Way Tree.
2. Mr. Donovan Carter, the Aggrieved Worker, was employed from September 1999 to February 2022 by The Olympia Crown Hotel as a Janitor.
3. Mr. Carter alleges that on January 9, 2022, he tested positive for the COVID-19 virus and was placed in quarantine by the Kingston and St. Andrew Public Health Department under the direction of the Ministry of Health and Wellness for twenty (20) days.
4. He was given the Quarantine Release on January 30, 2022, by the Medical Officer of the said Kingston and St. Andrew Public Health Department, which he took to his employer.
5. This Quarantine Release was not accepted and Mr. Carter was required by the Company to have another COVID-19 test done, which he complied with at his expense. This test was conducted by a private sector laboratory which was approved by the Ministry of Health and Wellness. The result was negative. This result was also rejected by The Olympia Crown Hotel.
6. Mr. Carter then wrote to the Managing Director of the Company enquiring when he could return to work. No response was given.
7. Mr. Carter engaged the services of Mr. John Levy, Industrial Relations Consultant who wrote to the



Ministry of Labour and Social Security requesting intervention by its Conciliation Services. This produced no resolution and consequently, the dispute was referred to the Tribunal for settlement.

THE COMPANY'S CASE:

The Company did not present a case as they failed to appear before the Tribunal on any of the scheduled sittings.

THE AGGRIEVED WORKER'S CASE:

8. Mr. Carter, in providing testimony on his own behalf, told the Tribunal that he began working at The Olympia Crown Hotel on September 1999 as a Janitor.
9. On Saturday, January 8, 2022, he fell ill and advised Cassie, the Front Desk employee, and sought medical intervention. He was tested for COVID-19 at a facility run by the Kingston and St. Andrew Public Health Department as directed by the Ministry of Health and Wellness. The result was positive for COVID-19 and consequently, he was placed in quarantine under the Quarantine Act (1951), for twenty (20) days effective January 9, 2022.
10. Mr. Carter, submitted the Isolation/Quarantine Release letter dated January 30, 2022, signed by a Medical Officer of Health of Kingston and St. Andrew Health Department, which stated, "*Donovan Carter has completed the mandatory time in quarantine under health monitoring by the Kingston and St. Andrew Health Department and is hereby granted medical clearance on January 30, 2022 to resume normal daily activities.*" This document was refused by The Olympia Crown Hotel and further testing was mandated before resumption.
11. In further evidence, Mr. Donovan Carter submitted the negative test result from a Private Sector Laboratory approved by the Ministry of Health and Wellness in Kingston, dated February 14, 2022. This result was also not accepted by The Olympia Crown Hotel.
12. As per his testimony, Mr. Carter informed the Tribunal that he was chased off the premises of The Olympia Crown Hotel when he tried to resume work and prevented from entering, subsequently, by the security guards at the Company.



13. Mr. Carter tendered a letter that he wrote to the Managing Director outlining his difficulties since testing positive for COVID-19 on January 9, 2022. He outlined his compliance with all required COVID-19 protocols, plus his efforts to return to work since the end of his quarantine and a subsequent negative test result. He ended this letter by asking about his resumption to work and indicated the need for a quick response since his no pay absence was impacting negatively on his finances.
14. Mr. Carter did not receive a response from The Olympia Crown Hotel.
15. Mr. Carter indicated that he does not want to be reinstated, as he has mitigated his circumstances by employment at another hotel.

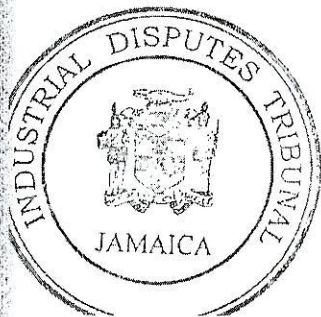
ISSUES:

16. The Tribunal formed the view that the issues for consideration should focus on the following:
 - (i) **What were the Protocols established by the Health Authorities governing the COVID-19 Pandemic at the time?**

On the international level, the International Labour Organization (ILO) at the start of the COVID-19 pandemic, issued guidelines regarding the impact on employment, stating that *'workers whose employment is terminated/suspended due to the economic impact of COVID-19 or for health and safety reasons should be entitled to a severance allowance or other separation benefits...to compensate for the loss of earnings incurred as a consequence of the termination/suspension.'* The ILO further stated that *'As a basic principle, the employment of a worker shall not be terminated in the absence of a valid reason for such termination, connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking. Temporary absence from work due to illness or family responsibilities do not constitute valid reasons for termination.'*

The World Health Organization (WHO) issued a policy brief: COVID-19 testing key points:

- *"It remains critical for national programmes to continue to offer testing for COVID-19 in line with three main objectives: reduce morbidity and mortality through*



linkage to prompt care and treatment, reduce onward transmission and track the evolution of the epidemic and the virus itself.

- *Testing of suspected cases early in the disease course - especially among people at increased risk of hospitalization or severe COVID-19 - enables access to supportive care and COVID-19 therapeutics."*

On the local level, the Government of Jamaica issued COVID-19 Ministry of Tourism Health and Safety Protocols. Protocols for the Jamaican Tourism Sector 2020.

"General Protocols - General protocols include: Employee Well-being - Check in formally on the health of employees on a regular basis, every 4-6 weeks, and if they are showing symptoms or have other risk factors, testing may be appropriate. Those who test positive are required to be reported to the Ministry of Health & Wellness for quarantine and contact tracing."

The Disaster Risk Management Act Proclamations, Rules and Regulations April 21, 2020 states in Section 9:

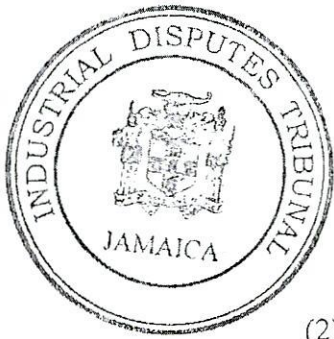
(1) *'A person in Jamaica who develops a respiratory illness or flu-like symptoms and who may have had contact with someone who—*

(a) ...

(b) is infected with the SARS- CoV-2 (Coronavirus COVID-19) or has been exposed to a person so infected,

shall forthwith inform the Ministry with responsibility for health and wellness... and comply with all applicable directions given, and requirements imposed by, a Medical Officer (Health)...

(2) *A person in Jamaica who tests positive for the SARS - CoV-2 (Coronavirus COVID-19) shall be quarantined at a facility designated by the Government, or such other place designated by the Medical Officer (Health)'*



Labour Relations Code 1976, Paragraph 12(A): *'Management has a duty to—(i) furnish, equip and otherwise provide factories, workshops, offices and other places where work is performed with such facilities as meet the reasonable requirements of safety, health and welfare regulations and to adopt suitable measures for the workers protection and the prevention of the spread of epidemic or infectious disease;'*



(ii) Did Donovan Carter follow the protocols governing COVID -19?

Based on the evidence submitted to the Tribunal, the answer is yes. Mr. Carter, upon feeling ill on Saturday, January 8, 2022, informed his colleague (Front Desk employee) and sought medical attention at a medical facility run by the Kingston and St. Andrew Public Health Department on Sunday, January 9, 2022. He tested positive for COVID-19 and was quarantined for 20 days. He returned to work with the Isolation/Quarantine Release Form (on the letterhead of the Ministry of Health & Wellness) from the Kingston and St. Andrew Health Department, signed by the Medical Officer (Health) dated January 30, 2022. The Form stated, *'Donovan Carter has completed the mandatory time of quarantine under health monitoring by the Kingston and St Andrew Health Department and is hereby granted medical clearance on January 30, 2022 to resume normal daily activities.'*

This Quarantine Release Form was rejected by his employer with a request that he (Donovan Carter) complete another COVID-19 test. He complied and produced a Form from a Ministry of Health & Wellness approved private sector Laboratory dated February 14, 2022, which stated result - **Negative**. This second test result was also rejected by his employer.

(iii) Whether the rejection by The Olympia Crown Hotel of the Isolation/Quarantine Release Form and the result of the COVID-19 test which was negative, the chasing of Mr. Carter out of the Hotel (his place of employment) and subsequent denial of any further entry to the premises by the security guards, constituted a unilateral termination of his employment contract?

Based on the evidence, the answer is yes. Donovan Carter followed all protocols regarding his COVID-19 illness as documented above. His efforts to return to his job as a Janitor at the Tourism destination, The Olympia Crown Hotel were blocked and entry denied. On February 14, 2022, Mr. Carter was absent from work for a total of thirty-seven (37) days. He was not on paid leave of absence. His contract was terminated.



(iv) Was the termination/dismissal of Mr. Donovan Carter justifiable?

Based on the evidence provided, the Tribunal finds that the dismissal was unjustifiable. Based on protocols outlined, suggested (internationally), and established (locally - COVID-19 Ministry of Tourism Health and Safety Protocols for the Jamaican Tourism Sector and the Ministry of Health Disaster Risk Management Act 2020) regarding COVID-19, Donovan Carter complied with all such protocols.

(v) In the event, the evidence is conclusive regarding the unjustifiable dismissal of Mr. Donovan Carter, what remedy will be reasonable?

17. It is important for the Tribunal to assert, within the statutory regime provided for in the legislation, that its decision must be guided by ‘...*concepts of fairness, reasonableness, co-operation and human relationships...*’. These are conceptions, the former President of the Court of Appeal, the Hon. Justice Carl Rattray persuasively argued, were never before contemplated by the common law. [See Rattray, P. Village Resorts Limited v. Industrial Disputes Tribunal and Uton Green].

18. The Award of the Tribunal in relation to the dismissal of a worker is guided by Section 12(5)(c) of the LRIDA. The Section contemplates the following:

“If the dispute relates to the dismissal of a worker the Tribunal, in making its decision or award –

- (i) may, if it finds that the dismissal was unjustifiable and that the worker wishes to be reinstated, then subject to subparagraph (iv), order the employer to reinstate him, with payment of such wages, if any, as the Tribunal may determine;*
- (ii) shall, if it finds that the dismissal was unjustifiable and that the worker does not wish to be reinstated, order the employer to pay the worker such compensation or to grant him such other relief as the Tribunal may determine....” [our emphasis].*



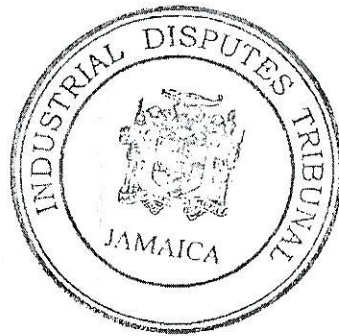
Donovan Carter does not wish to be reinstated.

19. The Labour Code.....

"recognises that work is a social right and obligation, it is not a commodity; it is to be respected and dignity must be accorded to those who perform it..."

No dignity or respect was shown to Mr. Donovan Carter.

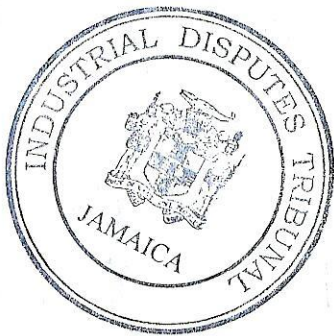
20. In making an award of compensation to be paid by the employer to a dismissed worker, the Tribunal is also guided by Halsbury's Law of England, 4th Edition which provides four (4) headings to include: (i) immediate loss of earnings; (ii) the manner of dismissal; (iii) future loss of wages; and (iv) loss of protection in respect of unfair dismissal.
21. In light of all the circumstances listed above, coupled with the lack of evidence from the employer/company who chose not to attend the sittings, the Tribunal finds that Mr. Donovan Carter was unjustifiably dismissed.

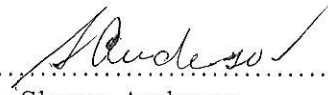


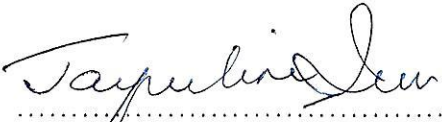
THE AWARD:

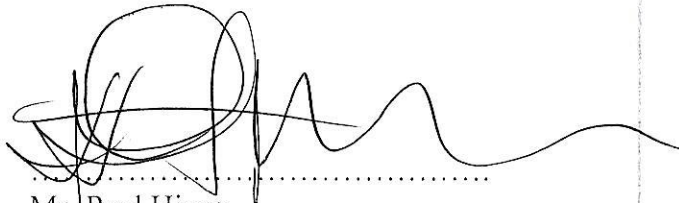
22. Accordingly, in exercise of the powers conferred by Section 12(5)(c) of the Act, the Tribunal orders that Mr. Donovan Carter be compensated in the sum of Two Million Dollars (\$2,000,000.00).

DATED THIS 23rd DAY OF APRIL 2024





.....
Mrs. Sharon Anderson
Chairman


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


.....
Mr. Paul Hines
Member

Witness:


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