

Shop #51, Blue Diamond Shopping Mall
Iron Shore
Montego Bay

IDT 1/2020

October 21, 2022

Permanent Secretary
Ministry of Labour
1F North Street
Kingston

Attention: Mrs. Colette Roberts-Risden

Dear Madam,

RE: Dispute between Tourwise Limited and Ms. Sonia Smith over the termination of her employment.

Enclosed, please see Award handed down by the Industrial Disputes Tribunal in connection with the captioned dispute.

Yours faithfully,


.....
Jody-Ann Lindo (Miss)
For Secretary/Director

JL/dp

Similar letter sent to:

Mr. Karl Samuda	—	Hon. Minister of Labour
Ms. Gillian Corrodus	—	Director, Industrial Relations & Allied Services
Mr. Michael Kennedy	—	Chief Director, Industrial Relations
Ms. Nadine Lawson	—	Attorney-at-Law
Mr. Howard Duncan	—	Industrial Relations Consultant

Encl.

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 1/2020

SETTLEMENT OF DISPUTE

BETWEEN

TOURWISE LIMITED

AND

MS. SONIA SMITH

AND THE

AWARD

I.D.T DIVISION

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

OCTOBER 21, 2022



IDT 1/2020

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF AN INDUSTRIAL DISPUTE

BETWEEN

**TOURWISE LIMITED
(THE COMPANY)**

AND

**MS. SONIA SMITH
(THE DISSMISSED WORKER)**

REFERENCE:

By letter dated February 7, 2020 the Honourable Minister of Labour and Social Security pursuant to Section 11A (1(a)(i) of the Labour Relations and Industrial Disputes Act 1975 (hereinafter called "The Act"), referred to the Industrial Dispute 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 Tourwise Limited on the one hand and Sonia Smith on the other hand over the termination of her 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:

Miss 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 **Company** was represented by:

Mr. Clayton Morgan	-	Attorney-at-Law
Ms. Nadine Lawson	-	Attorney- at-Law
Ms. Monika Maitland- Walker	-	Managing Director

The **Dismissed Worker** was represented by:

Mr. Howard Duncan	-	Industrial Relations Consultant
Ms. Brown	-	Assistant

In attendance:

Ms. Sonia Smith	-	Dismissed Worker
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SUBMISSION AND SITTINGS:

Brief were submitted by both parties who made oral submission during eighteen (18) sittings held between June 25, 2020 and October 12, 2021. The Company was originally represented by Mr. Clayton Morgan, Attorney-at-Law and subsequently by Ms. Nadine Lawson, Attorney-at-Law by the 3rd sitting.



BACKGROUND TO THE DISPUTE

1. Tourwise Limited, *hereinafter referred to as the Company*, is registered under the Companies Act of Jamaica and was founded in 1980 by Mr. Hugh Maitland-Walker J.P., O.D., and Mrs. Monika Maitland-Walker. It operates in the tourism industry where it handles some of the major Tour Operators from North America and Europe by providing transportation and destination support services such as reservations and excursions. Its head office is located in Ocho Rios with branches located in Montego Bay and Negril.
2. Ms. Sonia Smith, *hereinafter referred to as the Dismissed Worker*, was employed to the Company as a Tour Guide in 1989 and later promoted to the position of Tour Representative. On April 1, 2014, the Dismissed Worker's employment was terminated.

The Dismissed Worker engaged the services of Mr. Howard Duncan, Industrial Relations Consultant, who contested her termination and sought the intervention of the Ministry of Labour & Social Security. No resolution was reached and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.



THE COMPANY'S CASE

4. The Company made oral submission and called its sole witness, Mrs. Monika Maitland-Walker, Co-founder and CEO of the Company, in support of its case. Mrs. Walker described the Company's services as selling reservations, air transfers and excursions. The Company also provided transportation to its clients in the event that they faced difficulty arriving at their hotel. She testified that the Head Office was located in Ocho Rios with branch offices located in Montego Bay and Negril. She further stated that there was also a desk located at the Sangster International Airport.
5. Mrs. Walker testified that the Company's management team comprised of Mr. Klent Elson who was the General Manager, Ms. Black who was the involved in overseas marketing and Ms. Debbie Powell who was involved in sales and was also responsible for the sales/tour

representatives. Mrs. Walker stated that the Company had fifteen (15) tour representatives in its staff complement on a contractual basis. She testified that all tour representatives were required to sign a one (1) year contract until the requirement was changed by Mr. Elson. It is Mrs. Walker's evidence that the effect of the said change was to desist tour representatives from signing the contract on a yearly basis. She explained that at the end of the one (1) year period the tour representative went on a two (2) weeks contract break. At the end of the two (2) weeks break, the tour representative received a call to return to work for another year.

6. Mrs. Walker gave evidence that she knew the Dismissed Worker from her years working with the Company. She stated that the Dismissed Worker began working with the Company in the 1990s after which she resigned. She further stated that the Dismissed Worker returned to the Company in September 2004 in the position of a Tour Representative. On her (the Dismissed Worker) return, she signed a one (1) year contract and signed a number of them over the years. The last contract the Dismissed Worker signed was in or about 2006/2007. It is her (Mrs. Walker) evidence that the Dismissed Worker was paid monthly which comprised of her salary amounting to \$23,000, traveling amounting to \$4,000 and commission.
7. She gave evidence that the Dismissed Worker was assigned to the hotels located in Montego Bay and the Sangster International Airport. She then explained the Dismissed Worker's duties to include meeting the client at the airport, assisting the client with check-in at their hotel, to assist with any accommodation issues, to host a welcome meeting with the client in an effort to inform them about the hotel and the country, to sell excursions and to assist them in returning to the airport for departure.
8. In relation to tour sales, Mrs. Walker testified that the Dismissed Worker, in carrying out her duties, was required to issue a voucher with a confirmation number to the client when the sale was completed. On said voucher, it stated the name of the client, the hotel and room number, the name, date and time of the tour/excursion, and checkboxes as to how the monies were paid. Mrs. Walker gave evidence that the Dismissed Worker received payment for the tours by cash, travelers' cheque or credit card. She explained that in 2014



point of sale machines didn't exist. As such, the Dismissed Worker was required to take the client's credit card information which was actioned by the Accountant at the Montego Bay office. She stated that the Dismissed Worker was required to report to the Montego Bay branch office twice per week to submit a sales report and to lodge all the monies and/or credit card information collected.

9. Mrs. Walker gave evidence that the Company encountered issues with the Dismissed Worker concerning the submission of the sales report and vouchers such as late submission, short payment of monies collected and mistakes made on the vouchers where the Dismissed Worker ticked credit card as the mode of payment. When it was investigated, it was discovered that she (the Dismissed Worker) collected cash. It is Mrs. Walker's evidence that she is unable to locate the Dismissed Worker's file but she recalled warning letters, records of meetings with Mr. Elson and other members of the management team regarding such issues. It is also her evidence that the Dismissed Worker was reprimanded for it on numerous occasions in the form of warnings and suspension.

10. She stated that a meeting was held on March 31, 2014 at the Ocho Rios office with the Dismissed Worker and three Managers, namely Mr. Elson, Ms. Debbie Powell and Ms. Mandy Sprague. She stated that she didn't know when the Dismissed Worker was notified of the said meeting. Mrs. Walker later testified that the reason for the meeting was to discuss two (2) credit card charges amounting to \$230USD which declined when the Accounts Clerk attempted to complete the transaction. She further testified that when it was discovered, the guests had already departed the country and the Company was not allowed to contact the guests after they have departed. Mrs. Walker explained that in 2014, it took approximately 2-3 working days for the Company to receive a notification from the bank that a credit card declined. When asked if the credit card charges were eventually approved, Mrs. Walker stated that she was not aware of that.

11. She further stated that the Dismissed Worker admitted to taking the monies. As a result, a letter was drafted to the effect that the Dismissed Worker would reimburse the Company. Mrs. Walker gave evidence that the Dismissed Worker signed the said letter but she is not aware whether the Dismissed Worker paid the monies to the Company or it was deducted



from her final salary. She later testified that the Dismissed Worker signed a document agreeing for the monies to be deducted from her account.

12. It is Mrs. Walker's evidence that the management team decided that the Company could not continue with the Dismissed Worker's employment under the circumstances. Mrs. Walker stated that a termination letter was drafted and signed by Mr. Elson but the Dismissed Worker could not wait on it. She further stated that the said letter was to be sent to the Dismissed Worker on one of the tour buses to the Montego Bay branch office. She further stated that Mr. Elson confirmed with her that it was sent. Mrs. Walker testified that the Dismissed Worker received the said termination letter. She later on testified that she didn't read the letter concerning reimbursement nor the termination letter as she thought they were irrelevant.

13. Mrs. Walker gave evidence that she does not recall any communicate inviting the Dismissed Worker to a disciplinary hearing. She also gave evidence that she wasn't sure whether a disciplinary hearing was held as she is only aware of the meeting on March 31, 2014. She stated that the Dismissed Worker was dismissed with cause, namely, constant short payment of tour sales and not adhering to the Company's rules and regulations (filling out the vouchers incorrectly). She further stated that the consequence of breaching those policies was instant dismissal. Mrs. Walker also stated that she doesn't know if the Dismissed Worker was given the right to appeal.

14. Mrs. Walker testified that the Company has been closed since March 2020 and she is not sure when it will re-open because of the travel restrictions for the England. She stated that there are only two (2) part-time workers at the Company. One person is in charge of the vehicles and the other person is an administrator who goes in office twice per month. She testified that the closure impacted the financial resources of the Company immensely.

THE DISMISSED WORKER'S CASE

15. Mr. Howard Duncan, the Dismissed Worker's representative, adduced documentary evidence and made oral submissions in support of their contention that the Company's



decision to terminate the Dismissed Worker's contract of employment was unfair and unjustifiable.

16. Ms. Smith testified in examination-in-chief that in 1989 she was employed to Carib Tours, a subsidiary of the Company as a Tour Guide. She stated that she was a Tour Guide up until 1991 when she was brought over to the Company as a Tour Representative for Main Land Travel. She gave evidence that her duties entailed: to meet and greet the client at the airport, assist the client with check-in at their hotel, host welcome meetings, book tours and to provide assistance if the client had any issues while staying in the country. She stated that she was paid fortnightly comprising of basic salary amounting to \$66,000 along with commission and traveling. She further stated that she didn't sign a contract for the years she worked at the Company and that she didn't resign at any time.



17. With regards to booking tours, the Dismissed Worker testified that she collected monies and issued vouchers to the client in return to complete the transaction. She explained that the voucher detailed the tour, the client's name and signature, the tour representative's name and signature, items required for the tour and the mode of payment. She testified that the client paid either by cash, travelers' cheque or credit card in Jamaican or United States dollars. It is Ms. Smith evidence that after she collected the monies and/or travelers cheque from the client, she called the dispatcher to make the reservation. In the case of travelers' cheque, she gave evidence that she wrote the client's passport number or driver's license number on the said cheque to prove that they were the ones who gave it to her while in the country.

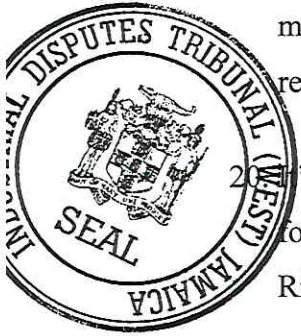
18. If the payment was made with a credit card, the Dismissed Worker stated that the credit card had to be authorized by someone in the office. She testified that it was mostly authorized by the Accounts Clerk or the dispatcher if the Accounts Clerk was unavailable. If the credit card declined, the Accounts Clerk or the dispatcher would call her and inform her as well as to seek an alternative payment. She further testified that if the credit card was not approved, the client was not allowed to board the tour bus. She stated that if she didn't get a call back from the office, she knew the credit card was approved. She gave

evidence that declined credit cards happened often and one reason for it was because the client did not inform their bank that they were leaving the country.

19. She stated that the tour rates were set by the Company and a price list was sent to the tour representatives. Ms. Smith further stated that she had the authority to give discounts up to \$5 USD on certain tours without managerial authorization. If a discount was given, it was recorded on the voucher. It is Ms. Smith's evidence that she reported to the Montego Bay office located at Freeport three (3) times weekly to submit a tour sales report along with the monies collected. She testified that she had a safety deposit box at Holiday Inn where she kept the monies until she reported to the office as she didn't keep the Company's monies with her. After submitting the report and monies, she stated that she received a receipt and a copy of the sales report for her records.

20. It's also her evidence that on March 27, 2014, she received a call from Mr. Elson requesting for her to attend a meeting on March 31, 2014 at 10am at the head office located in Ocho Rios. She was not told the reason for the said meeting. She testified that she reported to work first and left a sign on her desk explaining her absence. She, then, boarded a tour bus to the head office for the meeting. The persons present at the meeting were Mr. Elson, Ms. Debbie Powell and Ms. Mandy Sprague. Ms. Smith gave evidence that at the commencement of the meeting, Mr. Elson informed her that the reason for the meeting concerned two (2) declined credit cards totaling \$230USD and he wanted an explanation.

21. She gave evidence that she explained to Mr. Elson that she gave the credit card information to the Company's Accounts Clerk on March 21, 2014. She further explained that the Accounts Clerk informed her that the credit card declined on March 25, 2014 four (4) days after she (the Dismissed Worker) provided the information. Ms. Smith testified that based on her explanation she informed Mr. Elson that she should not be held responsible for the declined credit card. The client in question departed the country on March 24, 2014. It is Ms. Smith's evidence that in situations where the credit card declined and the client departed the country, it is the responsibility of the Accounts Clerk to contact the client. In practice, the tour representatives called the clients in the presence of the Accounts Clerk as



the client was familiar with the tour representatives. The Dismissed Worker stated that she called clients approximately 2-3 times per year concerning declined credit cards.

22. The Dismissed Worker stated that Mr. Elson asked her to wait outside of the meeting room so he could discuss the matter with the other managers who were in the meeting. She was asked to return to the meeting room fifteen (15) minutes later and was told that her explanation was not accepted. She gave evidence that she was asked if she had anything else to add which she responded no. She testified that Mr. Elson then informed her that she was terminated. Before leaving the meeting room, Ms. Smith stated that she requested her payment as she was not a contract worker. She testified that she waited for forty (45) minutes after which she was informed by the Company that they were unable to calculate the amount at that time and that they needed two (2) days. She gave evidence that when she left the head office she informed her supervisor that she was terminated.
23. She testified that she did not receive the cheque nor the termination letter in the time period set by the Company. She expressed her anger in how the Company dealt with her after working with them for 24 years, 8 months, 3 weeks and 2 days without any disciplinary sanctions nor costing the Company money. She further testified that it was not the Company's policy to terminate someone for a declined credit card. Ms. Smith testified that her representative wrote to the Company requesting an appeal which didn't occur.
24. She gave evidence that she applied to various companies and was unsuccessful as she was unable to provide a reference letter from her previous employer, a resignation letter nor a termination letter. Ms. Smith indicated that the Company was the only place she had worked so she was unable to receive the required documents from another employer. It is Ms. Smith's evidence that she called Mr. Elson about the matter and he informed her that he was not going to pay her nor give her a termination letter.

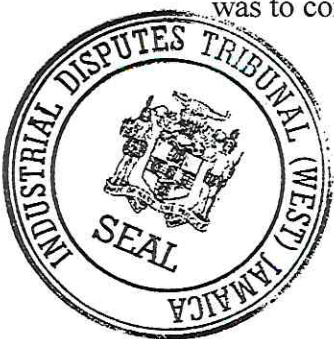


DISMISSED WORKER CONTENTIONS

- a. She was verbally terminated without being charged for an offence;
- b. Due process was not observed in that the Dismissed Worker was not given the right to a fair hearing, the right of representation of her choice, the right to face her accuser, the right to a defence nor the right of appeal;
- c. She was not guilty of any offence and was terminated in breach of the principles of natural justice and the Labour Relations Code; and
- d. She asked that the Tribunal finds that her termination was unjustifiable and awards reinstatement with no loss of pay. If the Tribunal were not to order reinstatement, that it should award payment for the period between her dismissal and the award, an additional sum representing forty (40) months and all salary and emoluments she was entitled to at the time of her dismissal.

THE TRIBUNAL'S RESPONSE AND FINDINGS

25. The Tribunal, after careful examination of the evidence adduced by both parties to the dispute, must determine whether the Company was justified in the termination of Ms. Smith's employment.
26. The Tribunal accepts that the Dismissed Worker was employed in the position of a Tour Representative and partook in monetary transactions on behalf of the Company. The Tribunal finds that the Company did not have a proper system in place for the authorization of credit cards which resulted in declined credit cards not being addressed in a timely manner. The Tribunal further accepts the Dismissed Worker's evidence that the Company had to deal with declined credit cards frequently and one method used to rectify the issue was to contact the clients after they have departed the country to complete the transaction.

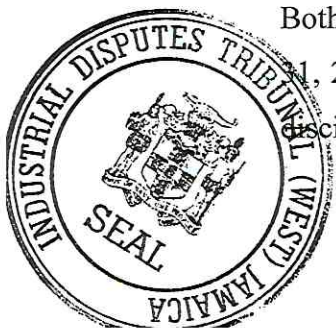


27. The Tribunal also accepts the evidence of the Company's sole witness and the Dismissed Worker that a voucher was issued to the client after purchasing a tour. The voucher contained information filled out by the Dismissed Worker. The Tribunal does not accept the Company's evidence that the Dismissed Worker regularly made errors on the vouchers which affected the Company financially as no evidence of this was provided. The Tribunal also does not accept that the Dismissed Worker was sanctioned with warnings and suspended for not filling out the vouchers correctly as no evidence of this was provided. Further, the Tribunal does not accept that the Dismissed Worker submitted a short payment of monies to the office as no evidence was provided.

28. On March 31, 2014, the Dismissed Worker was invited to a meeting to discuss two (2) declined credit cards. As a result of this meeting, her services were terminated for constant short payment of tour sales and not adhering to the Company's rules and regulations (filling out the vouchers incorrectly). It is the Tribunal's position that a declined credit card cannot be considered a short payment of monies to the Company. The Dismissed Worker had no control over the authorization of the said credit cards and followed the Company's procedure by submitting the credit card information to the Accounts Clerk at the office.

29. The Tribunal finds that the Company's sole witness, Mrs. Maitland –Walker, was not a credible witness. In her evidence, she admitted that she was not involved in the day-to day operation of the Company. She was unsure while giving evidence and all of her evidence were unsupported. Accordingly, the Tribunal does not accept that the Company had cogent reasons to dismiss Ms. Smith.

30. In considering the matter of procedural fairness during the disciplinary process, the Tribunal is tasked to look into the Company's dealings with the Dismissed Worker. The Tribunal finds that the Dismissed Worker was not informed of the reason for the meeting held on March 31, 2014 beforehand. Further, the Dismissed Worker was not informed of the charges laid against her. As such, she was not given an opportunity to prepare her case. Both Mrs. Walker and the Dismissed Worker confirmed that the meeting held on March 31, 2014 was not a disciplinary hearing and that Dismissed Worker was not invited to a disciplinary hearing prior to her termination.



31. The Dismissed Worker was not given an opportunity to defend herself and to choose a representative of her choice. The Tribunal notes that both parties admitted to the Dismissed Worker's termination but not the existence and issuance of the termination letter. The Tribunal accepts the Dismissed Worker's evidence that she was not provided with a termination letter. No evidence was provided to refute such. In addition, the Dismissed Worker was not given the right to appeal the decision of the Company.
32. It is the Tribunal's position that the Company failed to observe Section 22 of the Labour Relations Code. Section 22 of the Labour Relations Code states that:

Disciplinary Procedure

- 1) *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) *specify who has the authority to take various forms of disciplinary action, and to ensure that supervisors do not have the power to dismiss without reference to more senior management;*
 - b) *Indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;*
 - c) *give the worker the opportunity to state his case and the right to be accompanied by his representatives;*
 - d) *provide for a right of appeal, whenever practicable, to a level of management not previously involved;*
 - e) *Be simple and rapid in operation.*



33. The Tribunal must also consider Section 3(4) of the Labour Relations and Industrial Disputes Act, which 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."

34. The Tribunal finds that the procedure followed by the Company was not in keeping with the rules of natural justice and the failure in observing the provisions of the Labour Relations Code in the termination of the Dismissed Worker renders its decision to be unfair.
35. Thus, the Tribunal concludes that the Dismissed Worker was unjustifiably dismissed.

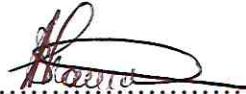


AWARD

In accordance with Section 12 of the Labour Relations and Industrial Disputes Act, the Tribunal awards that Ms. Sonia Smith be compensated in the amount of Six Million Seven Hundred and Ninety-Eight Thousand Dollars (\$6,798,000.00) for her unjustifiable dismissal.

DATED THIS 21st DAY OF OCTOBER 2022





Sadeera Shaw
Chairman


Rodcliffe Robertson
Member


Keith Fagan
Member

Witness


Jody-Ann Lindo (Ms.)
Secretary to the Division